

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:                                      Monday:                                      August 15, 2016:

The Regular Meeting of the Board of City Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 5:00 o'clock p.m., Monday, August 15, 2016.

The Commissioners present or absent were as shown following:

Present: Gehrig, Grindberg, Piepkorn, Strand, Mahoney.

Absent: None.

Mayor Mahoney presiding.

Order of Agenda Approved:

Commissioner Grindberg moved the Order of the Agenda be approved, moving Item Nos. "2a-h" and Item No. "24" from the Consent Agenda to the Regular Agenda.

Second by Piepkorn. All the Commissioners voted aye and the motion was declared carried.

Minutes Approved:

Commissioner Strand moved that the Minutes of the Regular Meeting of the Board held on August 1, 2016 be approved as read.

Second by Gehrig. All the Commissioners voted aye and the motion was declared carried.

Mayor Mahoney read a statement regarding the report that several new human cases of West Nile virus have been reported in Cass County. He commended Cass County Vector Control for employing all measures available to combat these issues and urged residents and visitors to be vigilant about wearing protective clothing and using effective insect repellent. He said discussion tonight includes proposed language for the sales tax extension, which will be on the ballot in November, and is critical in allowing the City to pay for the vitally important F-M Diversion Project. Mayor Mahoney announced the official ground-breaking ceremony for the new Fargo City Hall will be held on Monday, August 22nd at 11:00 a.m.

Consent Agenda Approved:

Commissioner Grindberg moved the Consent Agenda be approved as follows:

1. 1st reading of the following Ordinances:
  - a. Amending Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to License Classifications.
  - b. Amending Section 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Issuance and Transfer of Licenses.

- c. Amending Section 25-1509 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
2. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 8/1/16:
    - a. Amending Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code Relating to The International Residential Code (moved to the Regular Agenda).
    - b. Amending Article 21.2-01 of Chapter 21.2 of the Fargo Municipal Code Relating to The International Existing Building Code (moved to the Regular Agenda).
    - c. Amending Article 21-01 of Chapter 21 of the Fargo Municipal Code Relating to The International Building Code (moved to the Regular Agenda).
    - d. Amending Article 30.1-01 of Chapter 30.1 of the Fargo Municipal Code Relating to The International Fuel Gas Code (moved to the Regular Agenda).
    - e. Amending Article 31-01 of Chapter 31 of the Fargo Municipal Code Relating to The International Property Maintenance Code (moved to the Regular Agenda).
    - f. Amending Sections 9-0701 and 9-0704 of Article 9-07 of Chapter 9 of the Fargo Municipal Code relating to Fire Protection and Prevention (moved to the Regular Agenda).
    - g. Amending Section 30-0106 of Article 30-01 of Chapter 30 of the Fargo Municipal Code relating to the International Mechanical Code (moved to the Regular Agenda).
    - h. Enacting Chapter 21.3 of the Fargo Municipal Code relating to the International Energy Conservation Code (moved to the Regular Agenda).
    - i. Rezoning Certain Parcels of Land Lying in Osgood Townsite Eleventh and Osgood Townsite Twelfth Addition.
    - j. Rezoning Certain Parcels of Land Lying in Valley View Addition.
    - k. Rezoning Certain Parcels of Land Lying in Commemorative Addition.
  3. Receive and File Year to Date – Budget to Actual Report for July 2016.
  4. Receive and File Comprehensive Annual Financial Report (CAFR) and Independent Auditor's Report for the year ending December 31, 2015.
  5. Purchase of Service Agreement and Addendum with the Fargo Public School District for nursing services for school year 2016-2017.
  6. Recommendation from the PEC to reclassify a Survey Specialist (Grade 17) to a Survey Coordinator (Grade 18) and Mapping and Cartography Specialist (Grade 15) to a Survey Manager (Grade 15) effective immediately.

7. Resolution of Support for ND Cares Community Program and staff be directed to fulfill the application requirements to become a ND Cares Community (Attachment "A").
8. Purchase Agreement with the Cass County Joint Water Resource District for a land purchase and a temporary construction easement associated with the 2nd Street flood protection project.
9. Site Authorization for Boys & Girls Club of the Red River Valley (dba Youth Commission) at the Pickled Parrot.
10. Applications for Games of Chance:
  - a. 4 Luv of Dog Rescue for a raffle on 11/5/16.
  - b. Fargo North High School for a calendar raffle from 11/25/16 to 2/14/17.
  - c. Fargo North High School for a calendar raffle from 8/25/16 to 5/25/17.
  - d. North Dakota Long Term Care Association for a raffle from 9/20/16 to 9/22/16.
  - e. YWCA Cass Clay for a raffle on 9/8/16.
11. Consignment of one 2007 American LaFrance Fire Rescue Truck with Fenton Fire Equipment.
12. Purchase Agreement with New Flyer Industries for two 35-foot diesel buses in an amount not to exceed \$450,000.00 each contingent upon approval of the legal department, the State of North Dakota and the Federal Transit Administration.
13. Developer and Encroachment Agreement with Global Development, LLC at 22 Broadway North.
14. Change Order No. 3 for an increase of \$67,877.65 and time extension to 9/27/16 for Project No. BP-00-26.
15. Memorandum of Offer to Landowner for Permanent Easement (Storm Sewer) with Henry Alison Wani for Project No. PN-14-41.
16. Memorandum of Offer to Landowner for Permanent Easement (Street and Utility) with Waltrust Properties, Inc. for Project No. PR-14-01.
17. Final Balancing Change Order No. 3 for an increase of \$19,703.06 for Project No. FM-14-21.
18. Authorize the Planning Director and City Attorney to move forward with the establishment of a condominium form of ownership for the Civic Center Ramp, in conjunction with the Firestone store, as proposed.
19. Bills in the amount of \$15,892,620.78.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Piepkorn, Strand and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract Time Extension for Improvement District No. NN-15-A1 Approved:

Commissioner Grindberg moved approval of a contract time extension to October 1, 2016 for Improvement District No. NN-15-A1.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Change Order No. 1 and Time Extension for Improvement District No. UR-16-A1 Approved:

Commissioner Grindberg moved approval of Change Order No. 1 for an increase of \$9,248.40 and a time extension to October 2, 2016 for Improvement District No. UR-16-A1.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Final Balancing Change Order No. 3 for Improvement District No. BN-15-H1 Approved:

Commissioner Grindberg moved approval of Final Balancing Change Order No. 3 for an increase of \$816.62 for Improvement District No. BN-15-H1.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Final Balancing Change Order No. 2 for Improvement District No. PN-15-G1 Approved:

Commissioner Grindberg moved approval of Final Balancing Change Order No. 2 for an increase of \$17,061.65 for Improvement District No. PN-15-G1.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Bid Award for Improvement District No. BN-16-F1 Moved to the Regular Agenda:

The bid award for Improvement District No. BN-16-F1 was moved to the Regular Agenda.

Contract for Concrete Curb and Gutter, Asphalt Paving, Street Lights and Incidentals Improvement District No. PN-15-J1 Approved:

Commissioner Grindberg moved approval of the Contract between the City of Fargo and Northern Improvement Company, Fargo, North Dakota, for Concrete Curb

and Gutter, Asphalt Paving, Street Lights and Incidentals Improvement District No. Pn-15-J1 in the City of Fargo, North Dakota.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract Bond for Concrete Curb and Gutter, Asphalt Paving, Street Lights and Incidentals Improvement District No. PN-15-J1 Approved:

Commissioner Grindberg moved approval of the following described Contract Bond as to sufficiency:

Western Surety Company, in the amount of \$1,436,786.35, for Concrete Curb and Gutter, Asphalt Paving, Street Lights and Incidentals Improvement District No. PN-15-J1 in the City of Fargo, North Dakota.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract for Concrete Pavement Rehabilitation and Incidentals Improvement District No. PR-16-F1 Approved:

Commissioner Grindberg moved approval of the Contract between the City of Fargo and Armstrong/Bridgford Construction, LLC, Minot, North Dakota, for Concrete Pavement Rehabilitation and Incidentals Improvement District No. PR-16-F1 in the City of Fargo, North Dakota.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract Bond for Concrete Pavement Rehabilitation and Incidentals Improvement District No. PR-16-F1 Approved:

Commissioner Grindberg moved approval of the following described Contract Bond as to sufficiency:

Granite Re, Inc., in the amount of \$448,254.30, for Concrete Pavement and Incidentals Improvement District No. PR-16-F1 in the City of Fargo, North Dakota.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract for Street Lighting and Incidentals Improvement District No. SL-16-A1 Approved:

Commissioner Grindberg moved approval of the Contract between the City of Fargo and Moorhead Electric, Inc., Fargo, North Dakota, for Street Lighting and Incidentals Improvement District No. SL-16-A1 in the City of Fargo, North Dakota.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract Bond for Street Lighting and Incidentals Improvement District No. SL-16-A1 Approved:

Commissioner Grindberg moved approval of the following described Contract Bond as to sufficiency:

Western Surety Company, in the amount of \$927,125.62, for Street Lighting and Incidentals Improvement District No. SL-16-A1 in the City of Fargo, North Dakota.

Second by Gehrig. On call of the roll Commissioners Grindberg, Gehrig, Strand, Piepkorn and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

State Water Commission Requests for Cost Reimbursement for FM Diversion Flood Project Costs Approved:

Commissioner Grindberg moved the cost reimbursement request totaling \$3,725,044.00 for FM Diversion Flood Project be approved.

Second by Strand. On call of the roll Commissioners Grindberg, Strand, Gehrig and Mahoney voted aye.

Commissioner Piepkorn voted nay.

The motion was declared carried.

Discussion regarding the FedEx Payment in Lieu of Tax Exemption (PILOT):

Andrew P. Wagner, Senior Vice President of the Legal Department at FedEx Corporation, gave a presentation regarding FedEx's decision to expand its business operations at Fargo's Hector International Airport.

Mike Rendine, managing director of Ramp Operations in Chicago for the central region, which includes the North Dakota area, also attended.

Mr. Wagner said FedEx has evaluated the possibility of expanding to Fargo on at least three different occasions over the past 15 years, and during previous reviews FedEx determined the overall costs of expanding and growing services in Fargo did not justify the potential benefits. However, he said, its most recent review resulted in a favorable evaluation of a new Fargo operational center and the calculation included a review of the City's potential tax incentives, including the PILOT option. He said FedEx realizes the PILOT incentive was a commitment, appreciates the City's support of granting the tax exemption and in turn, FedEx is making a commitment by investing \$6.3 million in a new Fargo facility. FedEx is devoted to creating seventy-five full and part time jobs and hiring the number of employees the company committed to within its PILOT application, he said, and hopes to exceed those goals. He said the new facility is expandable and will present additional employment opportunities in the future. He said the City of Fargo's website says it supports the mission of economic development through the use of tax incentives which enhance the city's livability, vibrancy and quality of life. He said businesses consider multiple factors and it is very complex and rarely is it a yes or no or black or white decision. FedEx was provided an estimate of taxes, an estimate of what a PILOT benefit might be, a copy of the guidelines and an application, he said. This was last year and well in advance of the lease agreement, he said, which the PILOT application requires be attached. FedEx

could not apply for the PILOT until a lease was negotiated, which was a long process, he said. A 10-year pilot was approved, he said, in contrast the airport lease has a 15-year term with the option to go longer, and the City of Fargo will receive 50 percent after 5 years and 100 percent after 10 years. FedEx will be putting into the local economy \$30 million in rent, landing fees, payroll and vendor purchase in the long term, he said, and as for the PILOT, it meets the city's stated PILOT objectives. Projects like this are very complex, he said, and it was known to the city and airport that FedEx had a concern about the taxes and operating costs, so the potential of a PILOT and TIF were raised, and the PILOT was determined to be the best alternative. Mr. Wagner said it is clear this project meets the PILOT criteria, the Tax Exempt Review Committee vetted the application and the Commission accepted the committee's reviews and honored the policy. FedEx realizes the PILOT is a commitment from the city and they appreciate the city's support and likewise, he said, FedEx is making a commitment by investing \$6.3 million and hiring the job positions they said they would. A lot went into this decision and FedEx asks Fargo to stand behind its own policy, he said.

In response to a question from Commissioner Gehrig asking whether FedEx would have decided to move to Fargo without incentives, Mr. Wagner said that is a very complicated; it was a factor but he did not know what significance it had.

In response to a question from Commissioner Gehrig asking whether FedEx will make more money in Fargo than it did in Grand Forks, Mr. Wagner said it was a difficult and speculative question and how FedEx determines revenues is propriety.

Commissioner Gehrig said Mr. Wagner was threading the needle between incentives as an important reason FedEx came to Fargo and FedEx did not leave Grand Forks because of incentives. It cannot be both ways, it has to be one or another, he said. Mr. Gehrig said Mr. Wagner is either proving him correct that the City did not need to offer incentives or Mr. Wagner is proving Commissioner Grindberg correct in saying FedEx left because of incentives. He said it is hard to tell which, and neither are good answers. At the last meeting a FedEx representative said FedEx was coming to Fargo regardless, he said, and if that is incorrect and the FedEx representative misspoke, then FedEx is playing Grand Forks against Fargo and it is not a good statewide policy. He said he is not getting the direct answers he needs and he hopes someone on the Commission will ask for reconsideration because he is not able to due to it not being 28 days after the vote. He will call for it the next meeting, he said; however, it would be best if it can get done now while FedEx is here.

City Attorney Erik Johnson said in order to reconsider the vote, all persons present at the original motion on July 18th have to be present or a public hearing scheduled, one or the other.

Commissioner Strand said it was his sense anyone who was in the prevailing majority could call for a motion to reconsider, and if after that window of time has passed, then it would be a motion to rescind, which anybody can present.

Mr. Johnson said a person who was in the majority on July 18th can bring a motion to reconsider at any time, if they are in the minority they have to wait for 28 days to elapse.

In response to a question from Commissioner Strand asking if Fargo had reached out to FedEx or recruit them to come to Fargo based on incentives, Mr.

Wagner said he did not know, the developer discussed with the airport the PILOTs and the information came via the airport.

In response to a question from Mayor Mahoney about whether he contacted FedEx, Airport Executive Director Shawn Dobberstein said he reached out to FedEx many times on behalf of businesses and he was persistent in getting them to come to Fargo. He said he connected the owner of the building FedEx is leasing with Planning Director Jim Gilmour and City Assessor Ben Hushka to answer questions about the PILOT and TIFs.

In response to a question from Commissioner Grindberg about whether this was a business decision tied to the U.S. Postal Service, and efficiency and cost savings is the main reason FedEx is here, Mr. Wagner said it was a business decision that drove this and put the project on the table.

Commissioner Piepkorn thanked Mr. Dobberstein for his hard work and said this is a great thing for the City of Fargo. He said FedEx is investing \$6 million upfront and creating seventy-five high paying jobs, so giving FedEx a deferment of \$600,000.00 is a fantastic deal for Fargo. FedEx will help the competitiveness of many businesses in Fargo and surrounding areas, he said, and the response time will be shortened, it is money well spent.

Resolutions Amending the Home Rule Charter to Extend the Existing Sales Taxes; and Ballot Language for Extension of the Sales Tax to be Placed on the Ballot for the November 8, 2016 Election Approved:

Mayor Mahoney said he asked each of the Commissioners to weigh in on proposed ballot language and the major concerns were to be sure the half-cent sales tax goes toward flood control and that language be included to force future action to rescind it if all the bills were paid.

City Administrator Bruce Grubb said two Resolutions are presented, one to amend the existing Home Rule Charter to extend two existing half-cent sales taxes beyond the current expiration dates to help pay for the FM Metro Flood Diversion Project and the other contains proposed language to place the item on the ballot for November 8, 2016. The idea of permanent flood protection is exciting, he said, and this is an important moment and decision for the Board and voters. He said flood protection goals are to achieve greater than 100-year permanent protection, prevent large swaths of land being placed in the floodplain and related costly flood insurance premiums, and the continuation of the pursuit of in-town flood protection. The financing plan, as it sits today, is multi-generational, he said; however, the infrastructure asset extends past that. He said the hope is to avoid special assessments or increased sales tax rates to achieve the goals. He said the Diversion Authority (DA) took some actions that included assembling a group of experts to work in critical areas like technical design, financial modeling and program management.

Martin Nicholson, CH2M Hill, outlined the improvements, what is included in the project and the costs in the financial plan, which includes DA projects and Fargo Flood Mitigation projects. He outlined the split delivery system, explaining that the Diversion Channel and Associated Infrastructure (DCAI) is to be delivered by the non-federal sponsors or the DA, and the Southern Embankment and Associated Infrastructure, which are the improvements to the south including the dam, the control structures on the Red River and the diversion inlet structure, will be delivered by the US Army Corps of Engineers. In addition to those projects, he said, the financial plan



includes high priority improvements for in-town protection complementary to the diversion, implemented by the City over a five-year planning period. He said the total cost estimate is \$2.2 billion and the funding breakdown is: \$450 million expected in federal funding, a commitment from the State of North Dakota for \$570 million, and \$43 million from the State of Minnesota, leaving a balance of \$1.1 billion in local funding which is the subject of the financial plan. He said the project involves multiple delivery models with both the city and the Corps using traditional design-bid-build methods to initiate construction. The plan accommodates all methods of delivery, he said, the largest being the DCAI using a Public Private Partnership (P3). Through the P3 process the DA will get cost certainty in the next 18 months or so, for roughly a billion dollars of the project costs, he said. This approach is a competitive procurement process resulting in a project agreement between the DA and a private developer for the fixed price delivery of the design, construction, finance and maintenance of the DCAI for approximately 30 years, he said. There is sometimes a misconception that P3 is privatization, he said; however, P3s are a delivery method where the marketplace brings financing, design and value to the process yet the public sector maintains ownership of the land and improvements, and is responsible after the contract period for long-term operation and maintenance.

Tom Rousakis, Ernst and Young, explained various funding and financing sources and overall financial plan development. He said the one and a half cents dedicated to the diversion project is made up of a half cent from Cass County and extending that from 2031, an extension of the City of Fargo's flood control dedicated half cent that currently expires in 2029 and an additional half cent from the City, leading to one and a half cents dedicated to the project. He said these sales taxes will be used first to issue sales tax bonds and the excess will be used to repay improvement bonds issued by the Cass County Joint Water Resource District. Sales tax revenues during construction will be used to pay direct costs, he said, and anything above that will be financed. He shared an assumed amortization of sales tax bonds; however, there will be an ability to pay off the sales tax bonds early, he stated. The plan is designed to provide resiliency to refine it over time to meet the needs, for example, interest rates will change bringing an opportunity to lock into different rates, he said, and there will be opportunities to bring in more grant funding, state and federal financing sources, plus market changes.

City Attorney Erik Johnson said both of the sales taxes exist and have already been voted on, so tonight is the first step of getting the extension of the sales taxes on the ballot. He said approval of a Resolution to amend the Home Rule Charter is requested, particularly with respect to Paragraph 3 of Article 3.T and 3.U. Once the language of the Resolutions is approved by the Board, the Auditor will publish a notice. He said the amendment will include a sunset clause should all the costs and obligations of the project get paid or provided for early, then the City Commission could determine it to be sunsetted and then direct the State Tax Commissioner to discontinue collection.

Commissioner Piepkorn said he is cautiously optimistic there will be additional federal funding. He said the proposed wording indicates the earliest end date is 2054 and he feels it would be best to eliminate the reference to a specific year if it is not needed. He said he would not want the project to be paid off sooner, yet have the half-cent sales tax continue. Perhaps the wording could be strengthened to include

language stating that once the obligations for the flood diversion are done, the sales tax will be ended, he said.

Mr. Johnson said the objective for putting a threshold date of 2054 in the sunset clause was as an assurance that it would stay in place and the obligations would not be eliminated too soon, although that could be changed.

John Shockley, Attorney for Ohnstad Twichell Law Firm and acting as lead local counsel for the DA and for the P3 procurement process, said his suggestion, if the desire is to eliminate the reference of 2054, would be to broaden the language to include all availability payments in order to provide as much confidence to the market as possible.

In response to a question from Commissioner Strand about the implications if the sales tax extension does not pass, Mr. Nicholson said then the procurement process would be delayed. He said the strategy for implementation and funding would have to be revisited in order to find a funding strategy more acceptable to the public. He said there has been years of study refining the infrastructure that would protect the metro and the project would not change; however, delays would likely increase costs.

Commissioner Piepkorn commented this vote represents the largest amount of money these members of the Commission will likely ever consider.

Commissioner Grindberg moved to approve the Resolutions amending the Home Rule Charter to extend the existing Sales Taxes; and Ballot Language for Extension of the Sales Tax entitled "Proposal for Amendment of Home Rule Charter to Extend Collection Periods for Sales, Gross Receipts and Use Taxes Related to Public Infrastructure, Including Flood Protection" to be placed on the Ballot for the November 8, 2016 election.

Second by Piepkorn.

Commissioner Piepkorn moved to amend the motion stating that, as to the Proposal For Amendment Of Home Rule Charter To Extend Collection Periods For Sales, Gross Receipts And Use Taxes Related To Public Infrastructure Including Flood Protection, that the sunset clause, sub-paragraphs 3 of both Articles 3.T and 3.U, be amended so that the words "at any time after 2054" be deleted and the words "including all availability payments" be added and inserted immediately following "Metro Flood Diversion Project".

Second by Gehrig. On call of the roll on the amendment to the motion, Commissioners Piepkorn, Gehrig, Strand, Grindberg and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

On call of the roll on the original motion, as amended, Commissioners Grindberg, Piepkorn, Strand, Gehrig and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried, said Resolutions, therefore, are stated as follows:

**BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:**

WHEREAS, The City of Fargo, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota,

which has adopted a Home Rule Charter, pursuant to the authority of N.D.C.C. Chapter 40-05.1; and

WHEREAS, The voters of the City of Fargo have previously approved Home Rule Charter provisions that implemented sales, gross receipts and use taxes to be used for improvements of the city's infrastructure, including flood protection, said provisions being set forth in Article 3, paragraphs T and U [hereinafter referred to cumulatively as the "Existing Flood-Protection-Related Sales Taxes"] of the Home Rule Charter; and

WHEREAS, The Existing Flood-Protection-Related Sales Taxes each have a period of years during which said sales taxes are to be collected; and,

WHEREAS, The City of Fargo has, in conjunction with other political subdivisions, undertaken the construction of a flood risk reduction project that includes a diversion channel that is approximately 30 miles long and includes multiple highway and railroad bridges as well as two aqueduct structures, includes levees along the rivers and drains through town, earthen embankments, an upstream retention area, one or more flood protection levees within the upstream retention area, three gated control structures, recreational features and related improvements which project is known as the Fargo-Moorhead Metropolitan Area Flood Risk Management Project and as the Metro Flood Diversion Project and which project is to provide greater than 100-year flood risk reduction from flooding caused by the Red River along with the Wild Rice, Sheyenne, Maple, Rush and Lower Rush Rivers; and the City of Fargo has entered into one or more agreements with the Department of the Army of the United States of America and other private parties and political subdivisions for the construction, operation and maintenance of said project; and

WHEREAS, Pursuant to the authority of N.D.C.C. §40-05.1-07, the Board of City Commissioners wish to propose an amendment to the Home Rule Charter of the city which would extend the period for collection of the Existing Flood-Protection-Related Sales Taxes to finance and pay construction and financing costs of the Metro Flood Diversion Project; and

WHEREAS, The Board of City Commissioners wish to allow the one-half percent sales tax described in Article 3, paragraph U of the Home Rule Charter to continue to be used, as approved by the voters in 2012, for infrastructure capital improvements including flood risk protection or flood risk mitigation projects, and related improvements and to allow those eligible expenditures to continue as such through December 31, 2016 and thereafter to further refine the description of the eligible expenditures for such sales tax proceeds to be fully aligned with the eligible purposes for the one-half percent sales tax in said Article 3, paragraph T, except to the extent that certain pre-existing obligations may remain in place for which paragraph U proceeds must be utilized for infrastructure.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, as follows:

**SECTION ONE.** That Paragraph T of Article 3 of the Home Rule Charter of the City of Fargo be amended to read as follows:

- T. To impose a retail sales, gross receipts and use tax subject to the following limitations:
1. Sales, gross receipts and uses taxed shall be limited to those which are taxed by the State of North Dakota pursuant to Chapters

57-39.2, 57-39.4, 57-39.5, 57-39.6 and 57-40.2 of the North Dakota Century Code.

2. The amount of tax shall not exceed one-half of one percent (1/2%) of the gross receipts and purchases which are taxed by the State of North Dakota pursuant to Chapters 57-39.2, 57-39.4, 57-39.5, 57-39.6 and 57-40.2 of the North Dakota Century Code, nor shall the tax exceed twelve and 50/100 dollars (\$12.50) on any single purchase, subject to Section 57-01-02.1 of the North Dakota Century Code; and subject to collection as in Section 57-39.2-08.2 of the North Dakota Century Code. The retail sales, gross receipts and use tax imposed shall be computed and collected in the same manner provided by law for the collection of the state sales, gross receipts and use tax.
3. A sales, gross receipts and use tax, which is imposed pursuant to the authority granted herein, shall extend from and after January 1, 2010, and end on December 31, ~~2029~~2084. Notwithstanding the foregoing, once the governing body of the city determines, by majority vote of its members, that all the costs for the Metro Flood Diversion Project including all availability payments have been paid or are otherwise provided and once all debt and all other contractual obligations related to the financing of said costs have been retired, or the payment for which has been otherwise sufficiently provided and arranged, the governing body may direct the state tax commissioner to cease collecting said tax.
4. The proceeds of a sales, gross receipts and use tax, which is imposed pursuant to the authority granted herein, shall be utilized for such flood risk mitigation and reduction, and related improvements and activities, as the governing body of the city may select. Flood risk mitigation and reduction, and related improvements and activities, shall mean expenditures to reduce or mitigate the risk to the city from flood events, to provide protection from such flood events, including without limitation the providing for retention of water. Such expenditures may be used to acquire property; enter into agreements; make, install, construct or build improvements and engage in projects and activities as are necessary and appropriate for such purposes. The stated goal shall be to reduce the risk to the city to the level of a 500-year flood event. Interest earnings on such proceeds may also be utilized for such purposes. Proceeds from such tax may be used to make direct payment for such purposes or may be pledged to amortize bonds or other debt instruments which may be sold to finance such costs.
5. Revenues raised and collected pursuant to authority granted herein, less administrative expenses, shall be deposited in a separate flood risk mitigation fund to be established, and shall be utilized as directed by the governing body of the city for the purposes set forth herein. Further, sales tax revenues may be used to reduce special assessments, may be pledged to pay

bonds, notes or other obligations established for the financing of eligible project costs and may be used to pay or to secure any obligations incurred through one or more intergovernmental agreements with other political subdivisions and joint powers entities for the purpose of financing the cost of such eligible expenditures, including the Metro Flood Diversion Project, and may be pledged for the repayment of the bonds issued by the city that are payable solely from such revenues.

**SECTION THREE.** That Paragraph U of Article 3 of the Home Rule Charter of the City of Fargo be amended to read as follows:

- U. To impose a retail sales, gross receipts and use tax subject to the following limitations:
1. Sales, gross receipts and uses taxed shall be limited to those which are taxed by the State of North Dakota pursuant to Chapters 57-39.2, 57-39.4, 57-39.5, 57-39.6 and 57-40.2 of the North Dakota Century Code.
  2. The amount of tax shall not exceed one-half of one percent (1/2%) of the gross receipts and purchases which are taxed by the State of North Dakota pursuant to Chapters 57-39.2, 57-39.4, 57-39.5, 57-39.6 and 57-40.2 of the North Dakota Century Code, nor shall the tax exceed twelve and 50/100 dollars (\$12.50) on any single purchase, subject to Section 57-01-02.1 of the North Dakota Century Code; and subject to collection as in Section 57-39.2-08.2 of the North Dakota Century Code. The retail sales, gross receipts and use tax imposed shall be computed and collected in the same manner provided by law for the collection of the state sales, gross receipts and use tax.
  3. A sales, gross receipts and use tax which is imposed pursuant to the authority granted herein shall extend from and after January 1, 2013, and end on December 31, ~~2032~~2084. Notwithstanding the foregoing, once the governing body of the city determines, by majority vote of its members, that all the costs for the Metro Flood Diversion Project including all availability payments have been paid or are otherwise provided and once all debt and all other contractual obligations related to the financing of said costs have been retired, or the payment for which has been otherwise sufficiently provided and arranged, the governing body may direct the state tax commissioner to cease collecting said tax.
  4. (a) The proceeds of a sales, gross receipts and use tax, which is imposed pursuant to the authority granted herein, shall be utilized for such infrastructure capital improvements as the governing body of the city may select; provided, however, that commencing January 1, 2017, said tax proceeds will only be utilized for flood risk mitigation and reduction, and related improvements and activities, as set forth in subparagraph (b), below, and for paying obligations on infrastructure capital improvements that existed prior to January 1, 2017. Infrastructure capital improvements shall mean expenditures for streets and

traffic management; water supply and treatment needs including construction or expansion of water treatment facilities; water distribution system needs; sewerage treatment and collection system needs, including construction or expansion of sewage treatment facilities, and flood protection or flood risk mitigation projects, and related improvements and activities. Flood risk protection or flood risk mitigation projects, and related improvements and activities, shall mean expenditures to reduce or mitigate the risk to the city from flood events, to provide protection from such flood events, including without limitation the providing for retention of water. Such expenditures may be used to acquire property; enter into agreements; make, install, construct or build improvements and engage in projects and activities as are necessary and appropriate for such purposes. Interest earnings on such proceeds may be utilized for other such capital improvements. Proceeds from such tax may be used to make direct payment for such infrastructure improvements or may be pledged to amortize bonds or other debt instruments which may be sold to finance such costs.

(b) From and after January 1, 2017, the proceeds of a sales, gross receipts and use tax, which is imposed pursuant to the authority granted herein, shall be utilized for such flood risk mitigation and reduction, and related improvements and activities, as the governing body of the city may select. Flood risk mitigation and reduction, and related improvements and activities, shall mean expenditures to reduce or mitigate the risk to the city from flood events, to provide protection from such flood events, including without limitation the providing for retention of water. Such expenditures may be used to acquire property; enter into agreements; make, install, construct or build improvements and engage in projects and activities as are necessary and appropriate for such purposes. The stated goal shall be to reduce the risk to the city to the level of a 500-year flood event. Interest earnings on such proceeds may also be utilized for such purposes. Proceeds from such tax may be used to make direct payment for such purposes or may be pledged to amortize bonds or other debt instruments which may be sold to finance such costs.

5. Revenues raised and collected pursuant to authority granted herein, less administrative expenses, and interest earnings on such revenues, shall be deposited in a separate infrastructure fund to be established, and shall be utilized as directed by the governing body of the city for the purposes set forth herein. Further, sales tax revenues may be used to reduce special assessments, may be pledged to pay bonds, notes or other obligations established for the financing of eligible project costs and may be used to pay or to secure any obligations incurred through one or more intergovernmental agreements with other political subdivisions and joint powers entities for the purpose of financing the cost of such

eligible expenditures, including the Metro Flood Diversion Project, and may be pledged for the repayment of the bonds issued by the city that are payable solely from such revenues.

BE IT FURTHER RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that this Resolution be published in the official newspaper for the City of Fargo (1) within thirty (30) days of the approval hereof or (2) prior to sixty (60) days prior to the next city election, whichever is earlier.

and

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, The City of Fargo, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota, which has adopted a Home Rule Charter, pursuant to the authority of N.D.C.C. Chapter 40-05.1; and

WHEREAS, The voters of the City of Fargo have previously approved Home Rule Charter provisions that implemented sales, gross receipts and use taxes to be used for improvements of the city's infrastructure, including flood protection, said provisions being set forth in Article 3, paragraphs T and U [hereinafter referred to cumulatively as the "Existing Flood-Protection-Related Sales Taxes"] of the Home Rule Charter; and,

WHEREAS, The Existing Flood-Protection-Related Sales Taxes each have a period of years during which said sales taxes are to be collected; and

WHEREAS, The City of Fargo has, in conjunction with other political subdivisions, undertaken the construction of a flood risk reduction project that includes a diversion channel that is approximately 30 miles long and includes multiple highway and railroad bridges as well as two aqueduct structures, includes levees along the rivers and drains through town, earthen embankments, an upstream retention area, one or more flood protection levees within the upstream retention area, three gated control structures, recreational features and related improvements which project is known as the Fargo-Moorhead Metropolitan Area Flood Risk Management Project and as the Metro Flood Diversion Project and which project is to provide greater than 100-year flood risk reduction from flooding caused by the Red River along with the Wild Rice, Sheyenne, Maple, Rush and Lower Rush Rivers; and the City of Fargo has entered into one or more agreements with the Department of the Army of the United States of America and other private parties and political subdivisions for the construction, operation and maintenance of said project; and

WHEREAS, Pursuant to the authority of N.D.C.C. §40-05.1-07, the Board of City Commissioners wish to propose an amendment to the Home Rule Charter of the city which would extend the period for collection of the Existing Flood-Protection-Related Sales Taxes to finance and pay construction and financing costs of the Metro Flood Diversion Project; and

WHEREAS, The Board of City Commissioners wishes to approve and certify the language to be used for the ballot for purposes of the city-wide vote on said amendment.

NOW, THEREFORE, BE IT RESOLVED, Board of City Commissioners of the City of Fargo, North Dakota, hereby certifies a ballot question for consideration by Cass County electors for an election to be held November 8, 2016 as follows:

PROPOSAL TO EXTEND EXISTING SALES, USE, AND GROSS RECEIPTS TAX

Shall the City of Fargo's Home Rule Charter be amended to extend the existing flood-protection-related sales taxes to pay for flood protection, including the Metro Flood Diversion Project and associated special assessments and indebtedness, through December 31, 2084 unless rescinded earlier, after the costs, obligations and debt for said project have been paid as determined by the City Commission, all as provided in the Notice of Proposed Fargo Home Rule Charter Amendment as published in THE FORUM on the \_\_\_ day of September, 2016?

SHALL SUCH AMENDMENT BE APPROVED?

(     ) YES

(     ) NO

Second by Gehrig. On call of the roll on the motion to amend, Commissioners Piepkorn, Gehrig, Strand, Grindberg and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

On call of the roll on the original motion as amended, Commissioners Grindberg, Piepkorn, Strand, Gehrig and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

At 6:10 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Mahoney presiding.

Application Filed by Aldevron for Payment in Lieu of Tax Exemption (PILOT) Approved:

A Hearing had been set for this day and hour on an application filed by Aldevron for payment in lieu of property tax exemption (PILOT) for a project in a portion of the building located at 4044 40th Avenue South which the applicant will use in the operation of research, development and manufacturing of plasmid DNA and protein GMP products for research and clinical applications; continued from the 8/1/16 Regular Meeting.

No written protests have been filed for the attention of the Board.

The Board determined that no person is present at this Hearing to protest or offer objection thereto.

In response to a question from Commissioner Gehrig about what the company would do if the exemption were not granted, Ron Robson, CEO of Aldevron said the



purchase of the land has not closed yet. He said if the exemption is not granted an internal meeting will be held to evaluate the options.

Commissioner Gehrig said this is a good business for Fargo and he is happy the company is growing here; however, the company is buying more land now than the company needs for the expansion and he feels the taxpayers should not be asked to pay, not only for current growth, but for future growth for a company.

Commissioner Grindberg said there is some work to do in bringing back the strategy and use of incentives. He said incentives are based on current statutes, and this application is an example of meeting the eligibility of what is on the books today. He said he commends Aldevron for its commitment to move forward and expand.

Commissioner Strand said he feels this is a pretty pure form of the intention of PILOTs. He said he feels the Board needs to expedite the process revisiting and finalizing the language for policies going forward with regard to targeted incentives and exemptions.

Commissioner Piepkorn said there will be discussion at the next Tax Exempt Review Committee meeting and opportunity for public comment, then final policy recommendations will come to the City Commission.

Commissioner Grindberg said he would like to see the timeline extended for a period of time with some ideas for further community involvement.

Commissioner Grindberg moved that the application filed by Aldevron for a 100 percent property tax exemption for years one through five and a 50 percent property tax exemption for years six through ten for a new building at 4044 40th Avenue South pursuant to Chapter 40-57-1, NDCC be approved.

Second by Piepkorn. On call of the roll Commissioners Grindberg, Piepkorn, Strand and Mahoney voted aye.

Commissioner Gehrig voted nay.

The motion was declared carried.

Renaissance Zone Project for Chef's Table Catering, LLC for a Lease of Commercial Property at 670 4th Avenue North, Suite 032 Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Chef's Table Catering, LLC for a business leasing property as part of a zone project at 670 4th Avenue North, Suite 032.

No written protest or objection to the Project has been received or filed in the City Auditor's Office.

The Board determined that no person is present to protest or offer objection to the Project.

The Board received a communication from Planner Derrick LaPoint stating the Renaissance Zone Law states "a business that purchases or leases property as part of a zone project is exempt from income tax for five taxable years beginning in the year of the investment or lease for income derived from the business locations within the zone." He said the Fargo Renaissance Zone Development Plan further states "Tenant must be leasing space in a building that has been approved as a zone project to be eligible for consideration". He stated the Renaissance Zone Authority felt that lease projects such as the application from Chef's Table Catering LLC would generally be straightforward and could be advanced to the City Commission following staff review and would generally not require direct Authority action. He said staff review found the applicant has met the aforementioned requirements. He said the

project addresses the business retention and expansion goals stated in the Renaissance Zone Development Plan.

Commissioner Piepkorn moved the Renaissance Zone application filed by Chef's Table Catering, LLC for a lease project located at 670 4th Avenue North, Suite 032 be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

Second by Grindberg. On call of the roll Commissioners Piepkorn, Grindberg, Strand and Mahoney voted aye.

Commissioner Gehrig voted nay.

The motion was declared carried.

Renaissance Zone Project for Breathe Massage for Lease of Commercial Property at 670 4th Avenue North, Suite 231 Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Breath Massage for a business leasing property as part of a zone project at 670 4th Avenue North, Suite 231.

No written protest or objection to the Project has been received or filed in the City Auditor's Office.

The Board determined that no person is present to protest or offer objection to the Project.

The Board received a communication from Planner Derrick LaPoint stating the Renaissance Zone Law states "a business that purchases or leases property as part of a zone project is exempt from income tax for five taxable years beginning in the year of the investment or lease for income derived from the business locations within the zone." He said the Fargo Renaissance Zone Development Plan further states "Tenant must be leasing space in a building that has been approved as a zone project to be eligible for consideration." He stated the Renaissance Zone Authority felt that lease projects such as the application from Breathe Massage would generally be straightforward and could be advanced to the City Commission following staff review and would generally not require direct Authority action. He said staff review found the applicant has met the aforementioned requirements. He said the project addresses the business retention and expansion goals stated in the Renaissance Zone Development Plan.

Commissioner Piepkorn moved the Renaissance Zone application filed by Breathe Massage for a lease project located at 670 4th Avenue North, Suite 231 be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

Second by Grindberg. On call of the roll Commissioners Piepkorn, Grindberg, Strand and Mahoney voted aye.

Commissioner Gehrig voted nay.

The motion was declared carried.

Appeal of the Denial of a Conditional Use Permit to Allow Household Living in a GC, General Commercial Zoning District Approved with Conditions (1709, 1745, 1781 and 1825 35th Street South):

A Hearing had been held by the Fargo Planning Commission on August 2, 2016 to consider a request for a Conditional Use Permit to allow household living in the GC, General Commercial Zoning District on Lot 1-4, Block 2, Dakota Land

Second Addition, and the Fargo Planning Commission at such Hearing recommended that the Conditional Use Permit be denied.

The City received an appeal of the denial of the Conditional Use Permit from the Harold Newman Estate which requires that a Public Hearing be held by the City Commission.

The City Auditor's Office published a Notice of Hearing stating this is the time and date set for said Hearing at which time all interested persons could appear and would be heard.

Planning Administrator Nicole Crutchfield said there was a lot of discussion on what the applicant can do for buffering; landscaping, berming and architectural materials to help mitigate noise from the nearby Interstate.

Brent Olson, property owner, was accompanied by Brian Pattengale of Houston Engineering, and stated the application is for a Conditional Use Permit to construct two apartment buildings, approximately 72 units each. This is an infill project in an area that has been vacant approximately 20 years and previously had a waterslide on it, he said. There are no financial accommodations being requested from the city, he said, and the construction cost of the project will be approximately \$14 million.

John Bagu, 4259 31st Avenue South, spoke in opposition of the project and shared data and statistical information about the dangers of vehicle exhaust and how it affects health, particularly the health of children. He said 64,000 vehicles per day travel that portion of I29 and he would urge the Board to consider public safety when they vote on this project.

Linda Burchill, 3420 17th Avenue South, said her concern is there is already a large amount of traffic in the neighborhood.

Commissioner Grindberg said the common sense solution needs to be looked at. He said this land has been vacant for many years, there are apartments to the south and north and if the developer wants to take the risk and invest in apartments, it makes sense for the project to go forward. As far as the billboard issue, he said, renters can choose whether they want to live there. There is only one small corner slice within the 300-foot limit of the roadway, he said.

Commissioner Strand said the varying application of policies regarding signage does not make sense. He said at first he supported the project due to there being other apartment buildings in the area that appear equally close to the Interstate; however, when considering the incessant contact to pollutants and the noise, he feels he needs to personally defer to his best judgement and put the public health and welfare of the citizens first.

In response to a question from Commissioner Gehrig about the average rent for these units, Mr. Olson said they will be higher end.

Commissioner Gehrig said low income people are not being forced into a decision where they have to live there, this is a free market.

Commissioner Grindberg moved the Conditional Use Permit to allow household living in the GC, General Commercial, zoning district on Lots 1-4, Block 2, Dakota Land Second Addition be approved with the following conditions:

1. The maximum residential density shall be 20 units per acre.
2. A minimum of 35% of the lot shall remain as open space.

3. A 6-foot-tall earthen berm shall be placed along the entire length of the interstate right-of-way on the west side of the property, except where access is required to be maintained for maintenance of the exiting billboards.
4. There shall be a landscaped buffer strip located along and on the required earthen berm. Said landscaped buffer strip shall comply with the following standards:
  - a. The landscaped buffer strip shall be no less than forty (40) feet wide, as measured east/west.
  - b. The landscaped buffer strip shall consist of at least three (3) rows of trees and shrubs planted to create a shelter belt or windbreak as typically planted in farmstead settings. The western row shall consist of large evergreen trees planted no greater than fourteen (14) feet apart. The middle row shall consist of large deciduous trees planted no greater than fourteen (14) feet apart. The eastern row shall consist of large deciduous shrubs planted no greater than seven (7) feet apart.
  - c. For the purpose of this Conditional Use Permit, large evergreen trees shall have a mature height of at least 35 feet tall, large deciduous trees shall have a mature height of at least 35 feet tall, and large deciduous shrubs shall have a mature height of at least 15 feet tall.
5. Residential buildings shall be set back at least 150 feet from the interstate right-of-way.
6. Residential buildings shall be constructed of noise resistant materials as follows:
  - a. West-facing exterior walls shall be constructed to have a sound transmission class (STC) of 52.
  - b. West-facing exterior windows and doors shall be constructed to have an STC of 31.
7. Pedestrian sidewalks shall be installed from the public sidewalk within the street right-of-way to the entrance of each primary building.  
as the proposal complies with the review criteria of Section 20-0909.D (1-6) of the Land Development Code."  
Second by Piepkorn. On call of the roll Commissioners Grindberg, Piepkorn and Gehrig voted aye.  
Commissioners Strand and Mahoney voted nay.  
The motion was declared carried.

Appointment to the Board of Appeals Approved:

The Board received a communication from Mayor Mahoney recommending that Clay Dietrich be appointed as an Alternate Member on the Board of Appeals to fill the expired term of Terry Welle.

Commissioner Piepkorn moved Clay Dietrich be appointed to the Board of Appeals for a five-year term ending June 30, 2021.

Second by Gehrig. On call of the roll Commissioners Piepkorn, Gehrig, Strand, Grindberg and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 8/1/16 (Moved from the Consent Agenda):

- a. Amending Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code Relating to The International Residential Code.
- b. Amending Article 21.2-01 of Chapter 21.2 of the Fargo Municipal Code Relating to The International Existing Building Code.
- c. Amending Article 21-01 of Chapter 21 of the Fargo Municipal Code Relating to The International Building Code.
- d. Amending Article 30.1-01 of Chapter 30.1 of the Fargo Municipal Code Relating to The International Fuel Gas Code.
- e. Amending Article 31-01 of Chapter 31 of the Fargo Municipal Code Relating to The International Property Maintenance Code.
- f. Amending Sections 9-0701 and 9-0704 of Article 9-07 of Chapter 9 of the Fargo Municipal Code relating to Fire Protection and Prevention.
- g. Amending Section 30-0106 of Article 30-01 of Chapter 30 of the Fargo Municipal Code relating to the International Mechanical Code.
- h. Enacting Chapter 21.3 of the Fargo Municipal Code relating to the International Energy Conservation Code.

Commissioner Grindberg said he asked that this item be moved from the Consent Agenda to the Regular Agenda to have Interim Inspections Administrator Bruce Taralson go through the IBC Code change process.

Mr. Taralson said the process for this code adoption started in June 2015, with Board of Appeals meetings beginning in September. He said the Board of Appeals is an important part of the process, which has two functions: one to hear appeals on the interpretations of the building code and the second is the code adoption process. He said the Appeals Board is made of up citizens in the industry, architects, engineers and contractors. The Board of Appeals hears all the changes in the code book and makes recommendations on adoption, he said, after which the City Attorney drafts the Ordinances for final adoption by the City Commission.

Commissioner Strand said he would like more discussion with the Commissioners about models others use as far as things like public nuisance codes and action plans particularly for things like offensive graffiti.

Commissioner Grindberg moved that the proposed Ordinances which were placed on first reading August 1, 2016 be now placed on second reading and a vote taken on the question of the final passage and adoption.

Second by Piepkorn. On call of the roll Commissioners Grindberg, Piepkorn, Strand, Gehrig and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

There was unanimous consent to waive reading of the Ordinance in its entirety and no one was present to request that the Ordinances be read.

On the vote being taken on the question of the final passage and adoption of the Ordinances, Commissioners Grindberg, Piepkorn, Strand, Gehrig and Mahoney voted aye.

No Commissioner being absent and none voting nay, the Ordinance was duly passed and adopted.

Discussion Regarding Improvement District No. BN-16-F1: Protests Received and Declared Insufficient (Moved from the Consent Agenda):

The Statutory Resolution of Necessity for the construction of Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-16-F1 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on July 11 and July 18, 2016 and protests representing 33.34 percent of the legal protest area have been received and filed in the office of the City Auditor within the legal protest period.

Commissioner Grindberg said he asked that this item be moved from the consent agenda because an email made it clear there were concerns regarding expansion of the street and improvements. He said he felt the protester should be given the opportunity to provide comment.

City Engineer April Walker said when elements of a project can be protested, there is a period of time when the contractor is reviewing the plans that the property owners are notified and they can submit a protest through the Auditor's office. In this case a protest was received, she said. The infrastructure was requested by North Dakota State University, the adjacent property owner, she said, and the project was approved by both the Public Works Projects Evaluation Committee (PWPEC) and the City Commission allowing the call for bids. The paving is calculated on a front foot cost and once calculated it is assigned to the parcel, she said, and the square footage of the parcel is used to determine the benefiting area. Per Century Code protests are based on the square footage they have to protest with, she said, and not the dollar amount. In this case, the property is one of three, she said, and the protest received is 33.34 percent from John Deere. The Engineer's Estimate was just over a million dollars for the project, she said; however, the actual low bid was \$699,548.91 or about 67% of the Engineer's Estimate.

Bryan Bossert operations manager for John Deere Electronic Solutions, said he represents this building and four others in town. The concern is about the benefitting area and from John Deere's standpoint, he said, they do not get a lot of benefit from the project. In addition, he said, there will be projects on two other sides of the property plus 19th Avenue and if there is nothing that can be done about this project, he certainly wants the Planning Commission to take into account the benefits of future improvements for development to come versus the people that are there. He said looking at some proposed projects and proposed special assessments, the amount paid for specials could potentially triple the amount that was paid for the property. He said the main benefits will be to the current development to the east of their property and to future development in the area and John Deere wants to be treated fairly.

In response to a question from Commissioner Gehrig about what he would consider fair treatment, Mr. Bossert said those properties that benefit from future development should be sharing in the cost of that roadway.

Ms. Walker said this is classified as a local street, which adjacent properties pay for. She said an arterial street is paid by adjacent properties plus a larger, secondary benefitting area. The system is set up so each property is assigned one east/west arterial and one north/south arterial and property owners are responsible for any local abutting streets, she said. In their case, being a large lot, they have the potential to be surrounded on three sides by local streets, she said.

In response to a question from Commissioner Gehrig about what would happen if the protest was accepted, Ms. Walker said if it was decided not to award the project based on the protest, the project would basically have to start over. She said construction is underway at the NDSU Vet Center that is dependent on these improvements. She said being at the end of a construction season if the bid award were delayed, it could adversely affect the ability to get the infrastructure in before freeze up.

Commissioner Grindberg moved the protests be received and filed and declared insufficient.

Second by Piepkorn. On call of the roll Commissioners Grindberg, Piepkorn, Strand, Gehrig and Mahoney voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Bids Received for Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-16-F1:

The bids for Water Main, Storm Sewer, PC Concrete Paving, Street Lights and Incidentals Improvement District No. BN-16-F1 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., on August 10, 2016 and the bids were found to be as follows:

Master Construction Company Inc. Bid:	Fargo, ND \$699,548.91
Geo. E. Haggart Inc. Bid:	Fargo, ND \$759,852.15
LM Armstrong/Bridgeford Construction, LLC Bid:	Minot, ND \$818,439.13
Dakota Underground Co. Bid:	Fargo, ND \$1,151,707.08

Contract for Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-16-F1 Awarded to Master Construction Company Inc., Fargo, North Dakota, in the Amount of \$699,548.91:

Commissioner Grindberg offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-16-F1; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received on August 10, 2016 for Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-16-F1 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement

District No. BN-16-F1 shows the bid of Master Construction Company Inc. in the sum of \$699,548.91 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Master Construction Company Inc. in the sum of \$699,548.91 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-16-F1 in the City of Fargo, North Dakota, be and the same is hereby awarded to Master Construction Company Inc. for the sum of \$699,548.91 subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Grindberg, Piepkorn, Strand, Gehrig and Mahoney voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Construction Projects Updates: Request from Griffin Construction Company Inc. to Conduct Work on Sunday, August 21, 2016 Approved:

City Engineer April Walker shared an update of the current construction projects, progress and closures. She shared a drone view of the Second Street Flood Control project. She said under city contracts, in order for a contractor to work on a project on a Sunday, there needs to be approval from the City Commission and the contractor for the Rose Creek Flood Risk Management Project, who had previously requested approval to work two Sundays, is requesting approval to work a third Sunday in order to catch up on the project.

Commissioner Grindberg moved the request from Griffin Construction Company Inc. to work on Sunday, August 21, 2016 in order to complete Project No. FM-15-B1 by the substantial completion deadline be approved.

Second by Piepkorn. All the Commissioners voted aye and the motion was declared carried.

Commissioner Grindberg moved that the Board adjourn to 5:00 o'clock p.m., Monday, August 29, 2016.

Second by Piepkorn. All the Commissioners voted aye and the motion was declared carried.

The time at adjournment was 7:22 o'clock p.m.