

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

**Regular Meeting: Monday: August 29, 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 29, 2016.

The Commissioners present or absent were as shown following:

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

Absent: None.

Mayor Mahoney presiding.

Mayor Mahoney read a statement outlining last week's visit from the new commander of the U.S. Army Corps of Engineers, General Todd T. Semonite and thanking Senator Hoeven and Congressman Peterson for taking part in the discussion on the Diversion Project. He said the city broke ground on the new 150,000 square foot City Hall which will feature innovation and boost efficiency for the future of Fargo. He said there is a call for "Public Art Possibilities" which encourages the public to reimagine Fargo's public realm and civic life, and share ideas for public art.

**Order of Agenda Approved:**

Commissioner Grindberg moved the Order of the Agenda be approved, delaying Item No. "37" on the Regular Agenda until the next Regular Meeting.

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

**Minutes Approved:**

Commissioner Grindberg moved that the Minutes of the Regular Meeting of the Board held on August 15, 2016 be approved as read.

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

**Consent Agenda Approved:**

Commissioner Piepkorn moved the Consent Agenda be approved as follows:

1. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 8/15/16:
  - 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. Recommendation from the Mayor's Budget Committee to implement the classification, reclassification, department restructure and market adjustment requests as outlined.
3. Small Claims Court Claim Affidavit filed by Terry and Lori McGarry vs. Cass County Environmental Health.
4. Application filed by David S. and Mary L. Peterson for a five-year property tax exemption for improvements made to a building at 1345 7th Avenue North.
5. Gaming Site Authorization:
  - a. Metro Sports Foundation at the Scheels Arena.
  - b. Sharehouse Inc. at The Round Up.
6. Applications for Games of Chance:
  - a. Eagles Elementary School for bingo on 9/30/16.
  - b. Fargo South High School for a raffle on 9/30/16.
  - c. Fargo South High School for a calendar raffle at the school from 9/9/16 to 2/21/17.
  - d. Fargo South High School for a calendar raffle at John E. Carlson Coliseum from 12/8/16 to 2/10/17.
  - e. Fargo South High School for a calendar raffle at Scheels Arena from 12/8/16 to 2/10/17.
  - f. Fargo Davies High School for a calendar raffle at the school from 8/30/16 to 5/24/17.
  - g. Fargo Davies High School for a calendar raffle at Scheels Arena from 11/14/16 to 2/13/17.
  - h. NDSU Lions Club for a raffle on 10/5/16.
  - i. Nativity Church of Fargo for a raffle on 11/6/16.
  - j. United Way Cass-Clay for a raffle on 9/16/16.
7. Request from the Human Relations Commission to hang a banner in the skyway from September 16 to 25, 2016 to promote National Welcoming Week.
8. University of North Dakota Community Faculty Contract for medical student training for the 2016-2017 school year.
9. Addendum to the Agreement with Megan Myrdal for the Cass Clay Food Systems Initiative to Address Chronic Disease.
10. Agreement for Services with Child Care Aware of North Dakota.
11. Solid Waste Management Agreement with Red River Roll-off, Inc.

12. Landfill Task Order with Wenck Associates, Inc. for the detailed design of the LFG compressor station upgrade and LFG cleaning equipment detailed design project in an amount not to exceed \$166,700.00 (Project No. SW 16-03).
13. Bid award in the amount of \$109,052.31 to Mid States Wireless for the outdoor warning siren upgrade project.
14. Final Balancing Change Order No. 1 for an increase of \$2,645.96 for Project No. PR-16-A1.
15. Bid awarded to Opp Construction in the amount of \$302,153.20 for Project No. PR-16-E1 and bid awarded to Dirt Dynamics, LLC in the amount of \$124,519.00 for Project No. UR-16-B1.
16. Conversion of Fargo Brewing Company's Class "Y" Alcoholic Beverage License to a Class "M" license at the 7th Avenue location; and to convert both premises current Class "Y" licenses to Class "C" licenses.
17. Transfer of Romo's Tacos Class "H" Alcoholic Beverage License from 118 North Broadway to 1100 19th Avenue North.
18. Right of Entry to Construct and Lease Agreement with Northland Hospitality, LLC for temporary parking for City Hall, the Civic Center, the Police Department and the Library.
19. Towing and Impound Services Agreement with Fargo Moorhead Towing.
20. Bid awarded to George E. Haggart, Inc. in the amount of \$79,144.00 for Project No. WW1605.
21. Land Lease Agreement with Motz Enterprises, Inc. for the former Harwood lagoon land.
22. Final Balancing Change Order No. 3 for a reduction in the contract amount by \$205,251.80 (Project No. WW1402-9).
23. Change Orders for Project No. WW1502:
  - a. No. 1 for an increase of \$550.00.
  - b. No. 2 for an increase of \$1,596.08.
  - c. No. 2 for a decrease of \$2,146.08.
24. Award the contract for an appraisal of the property located at 402 NP Avenue to GEB Appraisals.
25. Amendment to Contract No. 38150106 with the North Dakota Department of Transportation.
26. Section 5310 Transit Grant Agreement with the North Dakota Department of Transportation for the purchase of two replacement vehicles (Contract No. 38161174).

27. Change Order No. 1 for an increase of \$23,532.00 for the Electrical Construction of Project No. WA1501.
28. Concur with and award bids to PCi Roads and Rainbow, Inc. for bridge maintenance work at 52nd Avenue South and approve the Clay County Highway Department to release a Notice of Proceed for the work (Project No. LN-17-B1).
29. Bills in the amount of \$20,902,050.77.

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

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

**Categorical Exclusion and Selection of Alternative B for the City's Portion and Alternative B-3 for the North Dakota Department of Transportation's Portion as the Preferred Alternatives for Improvement District No. PR-17-A1:**

Commissioner Piepkorn moved approval of the Categorical Exclusion and Selection of Alternative B for the City's portion in the amount of \$7,206,000.00 and Alternative B-3 for the North Dakota Department of Transportation's Portion in the amount of \$8,934,600.00 as the Preferred Alternatives for Improvement District No. PR-17-A1.

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

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

**Bids Received for P.C. Concrete Alley Paving and Incidentals Improvement District No. AN-16-E1:**

The bids for P.C. Concrete Alley Paving and Incidentals Improvement District No. AN-16-E1 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., on Wednesday, August 24, 2016 and the bids were found to be as follows:

Dirt Dynamics, LLC Bid:	Fargo, ND \$83,165.00
Adelman Concrete and Excavating, Inc. Bid:	West Fargo, ND \$84,111.50
LM Armstrong/Bridgeford Construction, LLC Bid:	Minot, ND \$101,485.00
Opp Construction, LLC Bid:	Fargo, ND \$136,555.00

**Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. AN-16-E1 Awarded to Dirt Dynamics, LLC in the Amount of \$83,165.00:**

Commissioner Piepkorn offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of P.C. Concrete Alley Paving and Incidentals Improvement District No. AN-16-E1; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received by Dirt Dynamics, LLC for P.C. Concrete Alley Paving and Incidentals Improvement District No. AN-16-E1 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for P.C. Concrete Alley Paving and Incidentals Improvement District No. AN-16-E1 shows the bid of Dirt Dynamics, LLC of Fargo, North Dakota, in the sum of \$83,165.00 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 Dirt Dynamics, LLC in the sum of \$83,165.00 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. AN-16-E1 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dirt Dynamics, LLC for the sum of \$83,165.00, 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 Grindberg. On the vote being taken on the question of the adoption of the Resolution Commissioners Piepkorn, Grindberg, Strand, Gehrig and Mahoney voted aye.

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

**Bids Received for Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. BN-16-K1:**

The bids for Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. BN-16-K1 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., Wednesday, August 24, 2016 and the bids were found to be as follows:

Master Construction Company, Inc. Bid:	Fargo, ND \$716,105.90
George E. Haggart, Inc. Bid:	Fargo, ND \$735,796.00
H&S Contracting, Inc. Bid:	Moorhead, MN \$745,473.60

Dakota Underground Co., Inc. Bid:	Fargo, ND \$775,571.70
Northern Improvement Company Bid:	Fargo, ND \$839,256.05
Gladen Construction, Inc. Bid:	Laporte, MN \$865,119.00
Sellin Brothers, Inc. Bid:	Hawley, MN \$889,600.00
Robert Gibb and Sons, Inc. Bid:	Fargo, ND \$1,104,635.00

**Contract for Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. BN-16-K1 Awarded to Master Construction Company, Inc. in the Amount of \$716,105.90:**

Commissioner Piepkorn offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. BN-16-K1; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received on August 24, 2016 for Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. BN-16-K1 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. BN-16-K1 shows the bid of Master Construction Company, Inc. of Fargo, North Dakota, in the sum of \$716,105.90 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 \$716,105.90 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. BN-16-K1, be and the same is hereby awarded to Master Construction Company, Inc. for the sum of \$716,105.90, 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 Grindberg. On the vote being taken on the question of the adoption of the Resolution Commissioners Piepkorn, Grindberg, Strand, Gehrig and Mahoney voted aye.

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

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

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Master Construction Co. Inc., Fargo, North Dakota 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.

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

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

**Contract Bond for Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District No. BN-16-F1 Approved:**

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

Western Surety Company, in the amount of \$699,548.91 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.

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

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

**Reconsideration of the City Commission's Action Taken on July 18, 2016 Approving the Federal Express Corporation's Payment in Lieu of Tax Exemption (PILOT) Application: Died for the Lack of a Second:**

Commissioner Gehrig said he feels it is important to get everyone on the record and have this vote one more time since he feels the City Commissioners know different things now than when the vote was initially taken and they have had an opportunity to hear from the public as well. He said if the Commission can't identify the bad ones and eliminate those then how can the Commission be trusted to pick out the good ones.

Commissioner Gehrig moved to reconsider the action taken by the City Commission on July 18, 2016, to grant Federal Express Corporation a Payment in Lieu of Tax Exemption (PILOT).

The motion died for the lack of a second.

**Michael Leier and Tonna Horsley Reappointed to the Housing and Redevelopment Authority:**

The Board received a communication from Mayor Mahoney recommending that Michael Leier and Tonna Horsley be reappointed to the Housing and Redevelopment Authority.

Commissioner Piepkorn moved Michael Leier and Tonna Horsley be reappointed to the Housing and Redevelopment Authority for three-year terms ending September 30, 2019.

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

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

**Appointments to the Election and City Governance Task Force:**

The Board received a communication from Commissioners Grindberg and Gehrig recommending that Sean Foss, Daryl Ritchison, Kevin Wilson, Rick Steen and Jed Limke be appointed to the Election and City Governance Task Force and that Mark Johnson and Thomas Ambrosio be named as non-voting, advisory members.

Commissioner Grindberg moved Sean Foss, Daryl Ritchison, Kevin Wilson, Rick Steen and Jed Limke be appointed to the Election and City Governance Task Force and that Mark Johnson and Thomas Ambrosio be named as non-voting, advisory members.

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.

Commissioner Strand moved the motion be amended to include a representative, designated by the League of Women Voters, as an ex-officio member on the Election and City Governance Task Force.

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

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

**Eminent Domain Process for Acquisition of 4449 Oakcreek Drive (Project No. MS-15-K0) Delayed Until the Next Regular City Commission Meeting:**

Commissioner Strand asked that the Eminent Domain Process for Acquisition of 4449 Oakcreek Drive (Project No. MS-15-K0) be delayed until the next Regular City Commission Meeting. He said the property owners are not in town tonight and he thought it would be courteous to give them the opportunity to take part when this very important conversation is taking place. He said the property owners told him they would be able to attend the September 12th meeting and he would appreciate if the Commission would take that into consideration and give them that opportunity.

Commissioner Grindberg said he also spoke with the property owners and he would like to have some time to get more background information.

Commissioner Piepkorn moved to delay the Eminent Domain Process for Acquisition of 4449 Oakcreek Drive (Project No. MS-15-K0) until the next Regular Meeting.

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

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



**No Protests Received for Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1:**

City Engineer April Walker said this type of item is usually on the Consent Agenda, but thought it would be good to have a conversation because of the previous meetings about it when the adjacent property owner opposed rezoning on the previous plat. She said at that time it was mentioned they had a concern about the paving project and the effect it would have on their special assessments. Ms. Walker said Engineering let the Commissioners know that they would have another opportunity to see it before the project moved forward, which involves the paving of about 600 feet of road to line up with 64th Avenue South. She said in addition, some underground utilities will go in, including storm sewer and sanitary sewer. Ms. Walker said there is currently a gray line which picks up the runoff from the property owners' septic systems; however, the septic systems are required to go away on the lot where the house was moved in and other properties are required to tie into the new sewer line if and when their septic systems fail. Ms. Walker said there has been good response with this project. She said the engineers estimate was \$317,818.00 and the low bid was \$201,982.40, about 64 percent of the engineer's estimate. She said she did talk to the gentleman who protested the rezone and that he is happy with the bid price because it lowered his specials almost \$60,000.00 on the multiple large lots he owns in the area. She said he is comfortable with Engineering moving this forward. Ms. Walker also said there are no formal protests to the paving project and that she reviewed existing agreements with property owners and they have waived their right to protest.

In response to a question from Commissioner Strand about the status of the floodplain where this project is located, Ms. Walker said it is along Drain 53, which has been completed on the east side, down to the south side of Golden Valley, a development on the south side of 64th Avenue. She said that an emergency plug will have to be placed at 64th Avenue but there is a primary line of protection and with the house being moved in, it was required that the house be elevated and flood-proofed.

The Statutory Resolution of Necessity for the construction of Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on July 25 and August 1, 2016 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Piepkorn moved that the Board declare that no protests have been filed to the construction of Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1.

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

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

**Bids Received for Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1:**

The bids for Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., Wednesday, August 24, 2016 and the bids were found to be as follows:

George E. Haggart, Inc. Bid:	Fargo, ND \$201,982.40
Border States Paving, Inc. Bid:	Fargo, ND \$243,807.00
Dakota Underground Company, Inc. Bid:	Fargo, ND \$319,954.80
Sellin Brothers, Inc. Bid:	Hawley, MN \$339,853.00
Robert Gibb and Sons, Inc. Bid:	Fargo, ND \$364,376.20

**Contract for Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1 Awarded to George E. Haggart, Inc. in the Amount of \$201,982.40:**

Commissioner Piepkorn offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received August 24, 2016 for Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvements Improvement District No. BN-16-L1 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1 shows the bid of George E. Haggart, Inc. of Fargo, North Dakota, in the sum of \$201,982.40 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 George E. Haggart, Inc. in the sum of \$201,982.40 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. BN-16-L1 in the City of Fargo, North Dakota, be and the same is hereby awarded to George E. Haggart, Inc. for the sum of \$201,982.40, 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 Grindberg. On the vote being take on the question of the Resolution Commissioners Piepkorn, Grindberg, Strand, Gehrig and Mahoney voted aye.

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

**Application to Transfer the Class "GH" Alcoholic Beverage License from Café 38, LLC d/b/a Bangkok Corner to Bravish LLC d/b/a Himalayan Yak at 1450 25th Street South Approved:**

A Hearing had been set for this day and hour on an application to transfer the Class "GH" Alcoholic Beverage License from Café 38, LLC d/b/a Bangkok Corner to Bravish LLC d/b/a Himalayan Yak at 1450 25th Street South, notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

City Auditor Steve Sprague said this is a straightforward ownership change but he said they may be changing up the menus a bit. He said it is a beer and wine license, Liquor Control has gone through the background check and this comes to the Commission with a recommendation for approval.

Commissioner Piepkorn moved the application be approved.

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.

**Parcels of Land in 45th Street Park Fifth Addition Rezoned (307 43 1/2 Street South, 401 43 1/2 Street South, 445 43 1/2 Street South, 400 45th Street South and 474 45th Street South):**

At a Hearing held on August 2, 2016 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural, GC, General Commercial and LI, Limited Industrial with a C-O, Conditional Overlay to GC, General Commercial, LI, Limited Industrial with a C-O, Conditional Overlay, and P/I, Public and Institutional in 45th Street Park Fifth Addition.

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 the property is owned by three property owners, including the City of Fargo, and the applicants want to reorient an existing storm water pond and replat. She said the property owner to the north, Jim Roers of Roers Development, wants to expand the parking lot to the east, bringing along with it the southernmost tract which is a land-locked parcel, therefore Planning wanted to work with that property owner to make sure they were not land-locked. She said there is a little bit of right-of-way dedication on the plat, a quadrant of the cul de sac that would be originally planned and would be dedicated as part of this plat. She said the pond runs east and west on the northern tract which is going to be realigned to run north-south and pushed over to the eastern property lines. She said they are in the process of working with Engineering on a developer's agreement that would be coming forward due to some land negotiation with the stormwater pond. She said they do have a number of conditions related to the approval that talk about the plat and the amenities planned and those need to be reviewed and approved by the City

Engineer prior to recordation, in addition to a developer agreement be signed and executed by the developer and the City of Fargo.

In response to a question from Commissioner Strand about how the Commissioners will know these agreements will be satisfactory or in compliance if they do not know what they are yet, Planning Director Jim Gilmour said normally Engineering would complete the technical review, and then Planning would advertise, so before Planning can get this to the Commission it may be three or four weeks to get those advertisements in. He said technical reviews are backed up about two months so rather than wait two months for the review, then a few more weeks, he is asking the Commission to approve this tonight pending the Engineering technical review so the minute the review is done they can go to the courthouse and file it. Mr. Gilmour said it speeds up final recordation of plats by an average of three weeks. He said Planning will continue to do this if the Commission is comfortable with it and sometimes they cannot build until the plat is done. He said it is also a rezoning issue and Planning did not want to delay the zoning and the plat due to a review needing to be done. He said the review is to determine whether or not the surveyor would have made a one-degree mistake, or there is some technical mistake in the description, it is not something that is going to be completely different than what the Commission sees now. He said the developer's agreement needs to be drafted before they can get a building permit and then the agreement would come back to the Commission.

Commissioner Strand said his concerns are not the project, but the process and not putting the cart before the horse. He said he is not able to vote yes until those terms have been satisfied. He said he would not want to deal a death blow to a project and process, but his concerns are that it has not been satisfied, it is not completed, and his vote would be to simply note that and parlay it down.

Mr. Roers said he has negotiated a lease with another business that is coming to town and bringing 250 employees which facilitates the need for expanded parking. He said the best use of the land was to reconfigure it which precipitated the need for a joint development agreement and zoning change. He said the calendar keeps on going, fall is coming and he needs to have these parking stalls online this fall or early winter. Mr. Roers said if he starts in the winter they will not go online until spring or mid-summer. As for the developer's agreement, he said, he has seen the initial draft, he has no issues with it and everyone has commented on the agreement except City Engineer April Walker. He said there are no issues with the developer's agreement therefore he is asking for advancement of this process so when they get to second reading they are ready to move into construction phase.

In response to a question from Mayor Mahoney about the need for more engineers, Ms. Walker said her staff is running behind on the review of plats; however, there was a retirement and there has been some reorganization within the department to handle plat reviews, but she said they had to backfill a position and a surveyor has been doing double duty reviewing plats and managing a crew for the past several months. She said the Commission authorized the advertisement of this position to take pressure off the surveyor doing plat reviews and she expects things to clear up in the near future. She said she has reviewed the developer's agreement, she did have some comments, and those comments will have to go back to the developer for review. She said it is a critical piece and she cannot give a building permit until we have the developer agreement due to there being a land swap included in the agreement. She said she sees no problem with action tonight;

however, a building permit may not be available until the developer's agreement is in front of the Commission.

Commissioner Grindberg offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RE SOLVED, That the findings of staff and the Planning Commission be accepted and the rezoning be approved with the Conditional Overlay requirements listed in the Ordinance on the basis that it satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

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

Commissioner Strand voted nay.

The Resolution was adopted.

**First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in 45th Street Park Fifth Addition, Fargo, Cass County, North Dakota:**

Commissioner Grindberg moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in 45th Street Park Fifth Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

Commissioner Strand voted nay.

The motion was declared carried.

**Resolution Adopted Approving Plat for 45th Street Park Fifth Addition:**

Commissioner Grindberg offered the following Resolution and moved its adoption:

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "45th Street Park Fifth Addition" containing 3 Lots, 1 Block, and 15 acres of land more or less, located at 307 43-1/2 Street South, 401 43-1/2 Street South, 445 43-1/2 Street South, 400 45th Street South, and 474 45th Street South; and

WHEREAS, A Hearing was held August 2, 2016 by the Fargo Planning Commission, and notice of such Hearing had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer; and

WHEREAS, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on August 22 and 29, 2016 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., August 29, 2016 at which time said Plat would be considered and all interested persons would be heard.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission be accepted and the Plat entitled "45th Street Park Fifth Addition" be and the same is hereby in all things

affirmed and approved on the basis that it complies with the Standards of Article 20-06, and all other applicable requirements of the Land Development Code, and that the Mayor of the City of Fargo and the appropriate City Officials are hereby directed to endorse their approval on the Plat and then direct Petitioner to file same for record in the Office of the Recorder of Cass County, North Dakota.

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

Commissioner Strand voted nay.

The Resolution was adopted.

### **Renewal Plan for Tax Increment Financing District No. 2016-03 and Developer Agreement Approved (828 14th Street North):**

A Hearing had been set for this day and hour to review a Renewal Plan for Tax Increment Financing District No. 2016-03 which consists of the construction of a 23-unit apartment building with 52 surface parking spaces at 828 14th Street North.

The Board received a communication from Planning Director Jim Gilmour and Senior Planner Donald Kress stating the Planning and Development Department completed work on a Renewal Plan for a redevelopment project for blighted property at 828 14th Street North. They said the Finance Committee has received the request and financial adviser report and recommends approval of the Renewal Plan and Developer Agreement providing up to \$190,000.000 in assistance to the developer and additional \$9,500.00 to be paid to the City of Fargo for administrative costs.

Mr. Gilmour said the neighborhood had concerns about the rezoning when the project was approved by the Board this spring. He said there was a neighborhood plan eight to ten years ago that showed this area as a future multi-family zoning district. He said the houses on the site were small and in bad condition with bad foundations.

In response to a question from Commissioner Gehrig about why an analysis of eight years was used when the TIF could be twelve to fifteen years, Mr. Gilmour said up to fifteen years is typically allowed. He said in this case the financial adviser may not have realized how much value is in the existing property when they looked at it. He said the existing value is \$550,000.00 and afterwards it will be about \$2.3 million, therefore property taxes collected on the existing amount will continue to go to all the taxing jurisdictions. The increment the developer receives will be the difference between the \$550,000.00 property value and whatever this is valued after construction, which the financial advisers thought would be about eight years; however, it may be longer than that.

Commissioner Gehrig said the bottom line is that citizens are subsidizing a rate of return. He said taxpayers are giving a loan to this individual and the loan being paid back through property tax that would otherwise be paid to entities like schools and parks until the TIF is repaid. He said he does not feel the taxpayers should be subsidizing someone else's bottom line.

Jim Laschkewitsch, 1016 College Street, representing the Roosevelt Neighborhood Association, said the neighborhood is not opposed to the developer or the idea of positive change; however, they do oppose the idea of the large apartment building and higher density in their small residential neighborhood. The decision had been made to go ahead with the project and the neighborhood is living with the decision, he said. Fargo has a generous tax incentive program, he said, and a

developer would be foolish not to take advantage of it. In this case, he said, the developer has left the area in a sorry state since last spring with debris, broken and dying trees and construction materials. Not only has the neighborhood had to watch the destruction and removal of several single-family homes in the area, he said, they are now being asked to help pay for it through a TIF. He said not every developer's request for money moves Fargo forward, and more care needs to be taken in approving these requests.

Erik Gunderson, EG and Company Properties, said the City still has the tax on the existing value and just has to wait for the increase. Financially the project would not be feasible without something like a TIF, he said, due to the low rate of return. He said he has not been told by the City that there was a concern with the site or he would have addressed it.

Les Herbranson, 1042 14th Street North, said he has concerns with the debris on the site, as well as the way vehicles are being parked in the new alley. He said there is a shortage of affordable homes and a need for smaller, starter homes. One of the homes that was lost was built as recently as 1995, he said, and passing this off on taxpayers is hard to swallow.

Commissioner Piepkorn said some of those houses obviously needed to be replaced.

Commissioner Strand said there will be more of this if the City does not start protecting its neighborhoods. He said he is concerned when core neighborhoods are allowed to get into blight and disrepair without the City checking or helping to upgrade them, then the only option when they get so run down becomes to simply demolish and build apartments. He said he does not support using public funds for a project such as this and that is antithetical to a core value of protecting existing neighborhoods.

Mayor Mahoney said a mission of the Commission is to look at what could be done about blight going on in single-family residential areas of the city. He said it is a challenge and a variety of things influence that. With an increase in the work force, there is a need for single family home availability, he said.

Commissioner Grindberg moved approval of the Developer Agreement with EG & Company Junction 9, LLC to provide up to \$190,000.00 of Tax Increment Financing, and adoption of the following Resolution:

WHEREAS, Certain areas within the City are in need of development in order to prevent further deterioration and to preserve property values; and

WHEREAS, The Board of City Commissioners desires to avail itself of the power and authority granted by Chapter 40-58 NDCC.

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

1. That one or more slum or blighted areas or areas consisting of industrial or commercial property, or a combination of those areas of properties exist in the City of Fargo.
2. That the development, rehabilitation, conservation or redevelopment or a combination thereof, of the area contained within the Renewal Plan for Tax Increment Financing District No. 2016-03 is necessary in the interest of public health, safety, morals or welfare of the residents of the City of Fargo.

3. That the area designated as the Renewal Plan for Tax Increment Financing District No. 2016-03 is underdeveloped and is appropriate for a development or renewal project.
4. That such development, rehabilitation, conservation or redevelopment of the area contained in the Renewal Plan for Tax Increment Financing District No. 2016-03 requires the powers and authority granted in Chapter 40-58 NDCC.
5. That the Renewal Plan for Tax Increment Financing District No. 2016-03 is officially adopted by the Board.
6. That Developer's Agreements be prepared in regard to the Tax Increment exemption.
7. That the appropriate staff be directed to request the county auditor and treasurer to compute, certify and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof and that the county auditor and treasurer shall do so in accordance with this section.

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

Commissioners Strand and Gehrig voted nay.

The Resolution was adopted.

#### **Construction Project Updates:**

City Engineer April Walker shared an update of the current construction projects, progress and closures. She pointed out two major milestones, including all of the floodwall footings are complete and the intersection of 42nd Avenue will be fully open again for the 13th Avenue South project and left turns will be allowed from the side streets onto 13th Avenue.

Mayor Mahoney announced there will be a Special Meeting of the Board on Tuesday, September 6, 2016 at 5:30 o'clock p.m. when he anticipates the preliminary budget will be presented for approval.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, September 12, 2016.

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

The time at adjournment was 5:52 o'clock p.m.