

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting:

Monday:

April 1, 2013:

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, April 1, 2013.

The Commissioners present or absent were as shown following:

Present: Mahoney, Sobolik, Williams, Wimmer, Walaker.

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved moving Item "a" from the Consent Agenda to the Regular Agenda after Item 3e and adding two Annexation Resolutions to the Regular Agenda after the ambulance item.

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

Minutes Approved:

Commissioner Mahoney moved that the Minutes of the Regular Meeting of the Board held on March 18, 2013 be approved as read.

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

Consent Agenda Approved:

Commissioner Mahoney moved the Consent Agenda be approved as follows:

- a. Receive and file an Ordinance Enacting Article 13-15 of Chapter 13 of the Fargo Municipal Code Relating to Ambulance Service (moved to the Regular Agenda).
 - (1) Approval of Ambulance Service Agreement.

- b. Compensation for employees performing personal/volunteer flood preparation activities during regularly scheduled hours and for up to two weeks of paid leave if they receive major flood damage to their personal property.

- c. Resolution Approving Plat of Osgood Townsite Marketplace Second Addition (Attachment "A").

- d. Resolution Approving Plat of Brandt Crossing Seventh Addition (Attachment "B").

- e. Site Authorization for West Fargo Hockey Association at the Holiday Inn on 4/13/13.
- f. Applications for Games of Chance:
 - (1) Roger Maris Celebrity Golf Tournament for a raffle on 6/23/13.
 - (2) Roger Maris Celebrity Golf Tournament for a raffle on 6/24/13.
 - (3) Fargo Moorhead Cosmopolitan Club for a sports pool from 9/16/13 to 12/31/13.
 - (4) Fargo Moorhead Cosmopolitan Club for raffles from 9/1/13 to 6/30/14.
 - (5) YWCA Cass Clay for a raffle on 4/29/13.
 - (6) NDSU Residence Hall Association for a raffle on 4/20/13.
- g. Amended Resolution Authorizing the Issuance and Sale of \$51,375,000.00 City of Fargo Capital Financing Program Bonds, Series 2013A (Attachment "C").
- h. Contract with Konrad Olson to represent the City as the buyer's representative for the purchase of lots for parking in downtown Fargo.
- i. List price of Neighborhood Stabilization Program property at 1102 3rd Street North at \$58,000.00.
- j. Revisions to Law Enforcement Mutual Aid Agreement, particularly as it relates to shared resources of the SWAT Team.
- k. RouteMatch Software, Inc. training agreement for the Transit Department.
- l. FAA Aerial Mosquito Spraying Authorization for Airborne Custom Spraying.
- m. Bid award for water main repair materials to Fargo Water Equipment in the amount of \$9,502.18 and \$75,084.53.
- n. Notice of Claim of Easement for road in the Chrisan First Subdivision.
- o. Contract with H2M to provide public relations services for the 1st Avenue & NP Avenue project from the Red River to University Drive (Improvement District No. 5996).
- p. Placement of temporary poles to support overhead power lines in the 1300 block of 13th Avenue South.
- q. Agreement with Xcel Energy for payment of \$368,429.91 to relocate power lines on 32nd Avenue South between 42nd and 45th Streets to accommodate a future roadway expansion.
- r. Purchase Agreement – Permanent Easements for Kurt and Jill Kollman (Project No. 5958-03).

- s. Purchase Agreement – Permanent Easements for John and Katherine Leitch (Project No. 5958-03).
- t. Access Agreements with Tony and Karen Grindberg, and Rachel and Matthew Ness (Project No. 5962).
- u. NDDOT Cost Participation and Maintenance Agreement for the Safe Routes to School Project (Improvement District No. 6164).
- v. Contract Amendment #4, in the amount of \$45,072.00, for Project No. 5902.
- w. Contract Amendment #1, in the amount of \$70,000.00, for Project No. 5906.
- x. Contract Amendment #2, in the amount of \$21,692.00, for Project No. 5962.
- y. Bid award for Project No. 6066 to S & S Landscaping Company, Inc. in the amount of \$48,028.15.
- z. Bid advertisements for Project Nos. 6196 and 6206.
- aa. Bills in the amount of \$3,228,146.21

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

No Protests Received for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176:

The Statutory Resolution of Necessity for the construction of Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on February 11 and 18, 2013 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Mahoney moved that the Board declare that no protests have been filed to the construction of Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Bids Received for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176:

The bids for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., March 27, 2013 and the bids were found to be as follows:

Dakota Underground Company Bid:	Fargo, ND \$2,186,916.25
Northern Improvement Company Bid:	Fargo, ND \$2,230,999.67
Border States Paving, Inc. Bid:	Fargo, ND \$2,293,939.87
Master Construction Company, Inc. Bid:	Fargo, ND \$2,305,420.20
Sellin Brothers, Inc. Bid:	Hawley, MN \$2,477,239.00

Contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176 Awarded to Dakota Underground Company in the Amount of \$2,186,916.25:

Commissioner Mahoney 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 Replacement, Street Reconstruction and Incidentals Improvement District No. 6176; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received March 27, 2013 for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176 shows the bid of Dakota Underground Company of Fargo, North Dakota, in the sum of \$2,186,916.25 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 Dakota Underground Company in the sum of \$2,186,916.25 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6176 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground Company for the sum of \$2,186,916.25, 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 Sobolik. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

No Protests Received for Asphalt Wearing Course and Incidentals Improvement District No. 6182:

The Statutory Resolution of Necessity for the construction of Asphalt Wearing Course and Incidentals Improvement District No. 6182 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on February 28 and March 4, 2013 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Mahoney moved that the Board declare that no protests have been filed to the construction of Asphalt Wearing Course and Incidentals Improvement District No. 6182.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Bids Received for Asphalt Wearing Course and Incidentals Improvement District No. 6182:

The bids for Asphalt Wearing Course and Incidentals Improvement District No. 6182 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., March 27, 2013 and the bids were found to be as follows:

Northern Improvement Company Bid:	Fargo, ND \$648,754.14
Border States Paving, Inc. Bid:	Fargo, ND \$684,521.71
Aggregate Industries Bid:	Moorhead, MN \$724,753.30
Central Specialties, Inc. Bid:	Alexandria, MN \$760,801.75
Mark's Sand and Gravel Bid:	Fergus Falls, MN \$783,861.32

Contract for Asphalt Wearing Course and Incidentals Improvement District No. 6182 Awarded to Northern Improvement Company in the Amount of \$648,754.14:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Asphalt Wearing Course and Incidentals Improvement District No. 6182; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received March 27, 2013 for Asphalt Wearing Course and Incidentals Improvement District No. 6182 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Asphalt Wearing Course and Incidentals Improvement District No. 6182 shows the bid of

Northern Improvement Company of Fargo, North Dakota, in the sum of \$648,754.14 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 Northern Improvement Company in the sum of \$648,754.14 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Asphalt Wearing Course and Incidentals Improvement District No. 6182 in the City of Fargo, North Dakota, be and the same is hereby awarded to Northern Improvement Company for the sum of \$648,754.14, 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 Sobolik. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Final Balancing Change Order No. 1 for Improvement District No. 6141 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of \$7,689.40 for Improvement District No. 6141.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Shared Use Path and Incidentals Improvement District No. 6157 (Various Locations in North Fargo):

Commissioner Mahoney moved the following action be taken in connection with Shared Use Path and Incidentals Improvement District No. 6157:

Adopt Resolution Creating Improvement District No. 6157:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6157 in the City of Fargo, North Dakota, be created

12th Avenue North from 38th Street North to 45th Street North
45th Street North from 7th Avenue North to 16th Avenue North

COMPRISING:

Lot 1, Block 1 of Galarneau Subdivision, and S 1/2 of Lot 1, Block 1.

Block 1 of Industrial Acres Addition.

Lots 1 and 2, Block 1.

All in Interstate Services Addition.

Lot 1, Block 1 less 113 SF for 12 Avenue NW right-of-way.

All in Llad Addition.

Lot 1, Block 1 less 113 SF for 12 Avenue NW right-of-way.
All in Persellin Addition.

Unplatted NW 1/4 of Section 3, Township 139N, Range 49W.

Unplatted NE 1/4 of Section 4, Township 139N, Range 49W.

Lot 3, Block 2
East 25' of Lot 1 and all of Lot 2, Block 1.
All in Sheyenne Industrial Center 3rd Addition.

Lot 1, Block 1.
All in A I 2nd Addition.

Lots 1 and 5, Block 1.
All in Sheyenne Industrial Center 4th Addition.

Lots 1 and 2, Block 1.
All in Sheyenne Industrial Center 5th Addition.

Lots 2 through 4, Block 1.
Lots 1 through 3, Block 2.
All in Fayland Industrial 1st Addition.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Shared Use Path and Incidentals Improvement District No. 6157 in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 6157:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6157 in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$578,517.15.)

Order Plans and Specifications for Improvement District No. 6157:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6157 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6157:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6157 in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 6157 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring Shared Use Path and Incidentals Necessary:

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

That it be and is hereby declared necessary to construct Shared Use Path and Incidentals Improvement District No. 6157 in the City of Fargo, North Dakota, according to the Engineer's Report for this district and the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection. A map of the district is attached hereto and incorporated as if fully set forth herein.

That the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Shared Use Path and Incidentals must be in writing and must be filed with the City Auditor's Office within thirty days after the first publication of this Resolution.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

Direct City Auditor's Office to Call for Bids for Improvement District No. 6157:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6157 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Contract for Street Rehabilitation and Incidentals Improvement District No. 5996 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Street Rehabilitation and Incidentals Improvement District No. 5996 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Contract Bond for Street Rehabilitation and Incidentals Improvement District No. 5996Approved:

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

Western National Mutual Insurance Company, in the amount of \$1,173,311.00, for Street Rehabilitation and Incidentals Improvement District No. 5996 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6171 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Kindred Plumbing and Heating, Inc. for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6171 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6171 Approved:

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

Western Surety Company, in the amount of \$448,088.67, for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6171 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Contract for Seal Coat and Incidentals Improvement District No. 6181 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Asphalt Surface Technologies Corporation for Seal Coat and Incidentals Improvement District No. 6181 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Contract Bond for Seal Coat and Incidentals Improvement District No. 6181 Approved:

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

Employers Mutual Casualty Company, in the amount of \$695,195.85, for Seal Coat and Incidentals Improvement District No. 6181 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Contract for Street Rehabilitation and Incidentals Improvement District No. 6189

Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Roadway Services, Inc. for Street Rehabilitation and Incidentals Improvement District No. 6189 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Contract Bond for Street Rehabilitation and Incidentals Improvement District No. 6189

Approved:

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

Interchange Corporate Center, in the amount of \$45,684.32, for Street Rehabilitation and Incidentals Improvement District No. 6189 in the City of Fargo, North Dakota.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Receive and File Request from Highland Park Properties, LLC for Waiver from the River Setback Ordinance: Appropriate Staff Directed to Evaluate the Waiver for Property Located at 1505, 1509 and 1513 Highland Avenue:

The Board received a communication from Assistant City Attorney Nancy Morris stating Attorney Robert Manly of the Vogel Law Firm, who is representing Highland Park Properties, LLC, is requesting a setback waiver for Block 1, Lots 4, 5 and 6 of the Highland Park Subdivision. She said she visited with Mr. Manly and his clients would like a determination brought before the Board in sixty days.

Commissioner Wimmer moved the request from Highland Park Properties for a waiver from the River Setback Ordinance be received and filed and that appropriate staff be directed to evaluate the request for a waiver for property at 1505, 1509 and 1513 Highland Avenue and submit their recommendation to the Board in sixty days.

Second by Sobolik. On call of the roll Commissioners Wimmer, Sobolik, Williams, Mahoney and Walaker voted aye.

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

Discussion Regarding the Status of the GO2030 Comprehensive Plan:

The Board received a communication from City Commissioner Mike Williams stating the City of Fargo is entering into its first year of the implementation of the Fargo GO2030 Comprehensive Plan. He said the top five key initiatives are as follows:

1. Permanent Flood Protection
2. Infill, Neighborhoods
3. Arts and Culture
4. Bike and Pedestrian Facilities
5. Quality Design Standards

Commissioner Williams said he thinks all of the Commissioners have been approached by citizens questioning the status of the goals and key initiatives of the GO2030 plan and how they can help. He said even though the plan was developed by the Planning Department, he feels all departments have the opportunity to help implement these goals. He said he wants to work to keep citizens apprised of what is happening to keep them engaged in helping with achieving the goals of the plan and to understand that they can work on their own to achieve the goals without it being filtered through the City.

Commissioner Sobolik said it is important to tell citizens that this is not just a check list, but a guideline for the work of the City. She said she thinks that the staff Technical Committee may need to be recalled to go back over the check list. She said the website is also in the process of being transferred from the host server back to the City, which will help in updating the site on a regular basis.

Application Filed by R.I. of Fargo, Inc. d/b/a Fargo Residence Inn for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by R.I. of Fargo, Inc. d/b/a Fargo Residence Inn for a Class "GH" Alcoholic Beverage License at 4335 23rd Avenue 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.

Commissioner Wimmer moved the application be approved.

Second by Sobolik. On call of the roll Commissioners Wimmer, Sobolik, Mahoney, Williams and Walaker voted aye.

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

Hearing on a Petition for a Zoning Change in Evelyn Acres Addition Continued to April 15, 2013 (4810, 4844, 4874 and 4942 39th Avenue South):

This was the time and date set for a Hearing on a petition for a zoning change from MR-1, Multi-Dwelling to SR-4, Single-Dwelling on Lots 5, 6, 7 and 8, Block 3,

Evelyn Acres Addition, however, the petitioner has requested that the Hearing be continued to April 15, 2013.

Commissioner Sobolik moved the Hearing be continued to April 15, 2013.

Second by Mahoney. On call of the roll Commissioners Sobolik, Mahoney, Wimmer, Williams and Walaker voted aye.

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

Application Filed by Square One d/b/a Square One for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Square One d/b/a Square One for a Class "G" Alcoholic Beverage License at 1407 1st Avenue North, 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.

Commissioner Wimmer moved the application be approved.

Second by Sobolik. On call of the roll Commissioners Wimmer, Sobolik, Williams, Mahoney and Walaker voted aye.

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

Application Filed by Avalon Events Center d/b/a The Avalon Events Center for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Avalon Events Center d/b/a The Avalon Events Center for a Class "F" Alcoholic Beverage License at 613 First Avenue North, 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.

Commissioner Wimmer moved the application be approved.

Second by Sobolik. On call of the roll Commissioners Wimmer, Sobolik, Williams, Mahoney and Walaker voted aye.

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

Parcels of Land in Brandt Crossing Sixth Addition Rezoned (5049 33rd Avenue South):

At a Hearing held on March 5, 2013, the Fargo Planning Commission recommended approval of a change in zoning from LC, Limited Commercial with a Conditional Overlay to MR-3, Multi-Dwelling, and the extinguishment of the existing Conditional Overlay on Lot 3, Block 1 of the proposed Brandt Crossing Sixth 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.

Commissioner Sobolik 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 RESOLVED, 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 Plans, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

Second by Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Wimmer, Williams, Mahoney and Walaker voted aye.

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

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Brandt Crossing Sixth Addition, Fargo, Cass County, North Dakota:

Commissioner Sobolik 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 Brandt Crossing Sixth Addition, Fargo, Cass County, North Dakota be placed on first reading.

Second by Wimmer. On call of the roll Commissioners Sobolik, Wimmer, Williams, Mahoney and Walaker voted aye.

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

Resolution Adopted Approving Brandt Crossing Sixth Addition:

Commissioner Sobolik offered the following Resolution and moved its adoption:

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

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "Brandt Crossing Sixth Addition" containing 3 Lots, 1 Block, and 9.04 acres of land more or less, located at 5049 33rd Avenue South; and

WHEREAS, A Hearing was held November 6, 2012 and continued to December 4, 2012, and continued to January 8, 2013, and further continued to March 5, 2013 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, As announced in the City Commission agenda which was made available on March 28, 2013 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., on April 1, 2013 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 "Brandt Crossing Sixth 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 the Petitioner to file same for record in the office of the Register of Deeds of Cass County, North Dakota.

Second by Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Wimmer, Williams, Mahoney and Walaker voted aye.

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

Ordinance Relating to Ambulance Service to be Placed on First Reading at the Next Regular Meeting of the Board: Ambulance Service Agreement with F-M Ambulance Service, Inc. Approved:

Commissioner Mahoney said he felt the Board needed to be filled in on the discussions that took place and what the final result was.

Director of Public Health Ruth Bachmeier said she and Assistant City Attorney Jason Loos worked closely with Sanford Health and F-M Ambulance to hammer out the details of the ordinance and the agreement. She said the final product took more out of the ordinance and put most of the specifics into the agreement that the City will have with F-M Ambulance. All the details that were talked about earlier, like the Advisory Group, are now included in the agreement, she said.

Commissioner Mahoney moved the Ordinance Enacting Article 13-15 of Chapter 13 of the Fargo Municipal Code Relating to Ambulance Service be received and filed and placed on first reading at the next Regular Meeting of the Board.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Wimmer, Sobolik and Walaker voted aye.

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

Commissioner Mahoney moved the Ambulance Service Agreement between the City of Fargo and F-M Ambulance Service, Inc. be approved.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Wimmer, Sobolik and Walaker voted aye.

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

Resolution Adopted Annexing Approximately 81.80 Acres of Land in Stanley Township:

The Board received a communication from Planning Director Jim Gilmour requesting adoption of two Annexation Resolutions. One is for land in Stanley Township, he said, and the other is for the City of Fargo's extraterritorial area. He said the first resolution is a request received by a developer who has the option of purchasing 81.80 acres of land owned by Fred Hector. The developer is proposing a residential subdivision on that site, he said. The second resolution is for City owned

land in close proximity to the borrow pits, he said and would ensure the availability of fill material within the city limits and the abutting right-of-way. City staff, he said, will be contacting the City of Briarwood since the tracts of land are within the joint jurisdictional control. He stated there was an agreement with Briarwood giving them a portion of land; however, that agreement has expired and past efforts to work out a new agreement have not gotten anywhere as there have not been any proposed developments until now.

In response to a question from Commissioner Williams as to why the need for the annexation now when the City has used the area for borrow pits in the past, Mr. Gilmour stated for long-term use of the property the City may need to bring utilities through this area in order to serve new developments. He continued by saying that it would be nice to have a cleaner boundary as well.

Commissioner Mahoney offered the following Resolution and moved its adoption:

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, with about one hundred ten thousand (110,000) inhabitants; and

WHEREAS, There is contiguous and adjacent to the City of Fargo, a tract or parcel of land hereinafter specifically described, containing approximately 81.80 acres, more or less, which tract or parcel of land is not presently a part of the City of Fargo.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that the boundaries of the City of Fargo be, and they hereby are, extended so as to include and incorporate within the corporate limits of the City of Fargo, Cass County, North Dakota, all the land within the northwest quarter of section twelve (12) of Stanley Township not previously annexed into the city, described as follows:

Part of the Northwest Quarter (NW 1/4) of Section Twelve (12), Township One Hundred Thirty-eight (138) North, Range Forty-nine (49) West of the 5th Principal Meridian, Cass County, ND, being more fully described as:

Beginning at a point on the West line of the East half of said Section 12, said point located on a line parallel to and 426' South of the North line of said Section 12; thence South along the West line of the East half of said Section 12 to the southeast corner of the Northwest Quarter of said Section 12; thence Westerly along the South line of the Northwest Quarter of said Section 12 to a point 980.96 feet East of the West line of said Section 12; thence Northerly and parallel to the West line of said Section 12 to a point on the existing City of Fargo corporate limit line, a line parallel to and 426.00 feet South of the North line of said Section 12, thence easterly along a line parallel to and 426' South of the North line of said Section 12 to the point of beginning.

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 once each week for two successive weeks, and a hearing be held

on the 10th day of June, 2013, at 5:15 p.m., in the City Commission Room, City Hall, Fargo, North Dakota.

Second by Sobolik. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Sobolik, Wimmer and Walaker voted aye.

Commissioner Williams voted nay.

The Resolution was adopted.

Resolution Adopted Annexing Approximately 38.42 Acres of Land in the Extraterritorial Area:

Commissioner Mahoney offered the following Resolution and moved its adoption:

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, with about one hundred ten thousand (110,000) inhabitants; and

WHEREAS, There is contiguous and adjacent to the City of Fargo, a tract or parcel of land hereinafter specifically described, containing approximately 38.42 acres, more or less, which tract or parcel of land is not presently a part of the City of Fargo.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that the boundaries of the City of Fargo be, and they hereby are, extended so as to include and incorporate within the corporate limits of the City of Fargo, Cass County, North Dakota, certain land described as follows:

Part of the Northeast Quarter (NE 1/4) of Section Twelve (12), Township One Hundred Thirty-eight (138) North, Range Forty-nine (49) West of the 5th Principal Meridian, Cass County, ND, being more fully described as:

Beginning at a point 300' East of the East line of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of Section 12 on a line parallel to and 426' South of the North line of Section 12, thence Easterly along said line parallel to and 426' South of the North line of Section 12 to the Centerline of the Right-of-Way of Cass County Highway 81, thence northerly along said Centerline to the North line of Section 12, thence easterly along the North line of Section 12 to the Easterly Right-of-Way line of Cass County Highway 81, thence southerly and easterly along said Easterly Right-of-Way line of Cass County Highway 81 to the South line of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of Section 12, thence Westerly along the South line of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of Section 12 to a point 300' East of the East line of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of Section 12, thence northerly on a line parallel to and 300' East of the East line of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of Section 12 to the point of beginning.

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 once each week for two successive weeks, and a hearing be held

on the 10th day of June, 2013, at 5:15 p.m., in the City Commission Room, City Hall, Fargo, North Dakota.

Second by Sobolik. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Sobolik, Wimmer, Williams and Walaker voted aye.

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

Legislative Update:

City Administrator Pat Zavoral provided a summary of the hearings taking place this week.

Chief of Police Keith Ternes said HB1048, which will be heard later this week, will give home rule power to cities relating to speeding and moving violations. He said if the bill passes speeding fines could double and moving violations could triple in the City, which is an improvement over what the City currently has.

Flood Update:

Commission Mahoney offered the following Resolution and moved its adoption:

WHEREAS, Public Law 84-99, as amended, (33 U.S.C., § 701n) provides a means of preparing for and combating damage by floods and flood waters; and

WHEREAS, The City of Fargo, North Dakota has exhausted all resources available to it for flood fighting and rescue operations; and

WHEREAS, On the date of this Resolution, flood fighting and emergency assistance is required for the purposes of preserving life and public property.

NOW, THEREFORE, BE IT RESOLVED, That the U.S. Army Corps of Engineers be, and is hereby, requested to furnish assistance in flood fighting and rescue operations.

BE IT FURTHER RESOLVED that in consideration of such assistance the above-named Governmental body agrees to:

- a. Provide to the United States all lands, easements and rights-of-way for the emergency work, including, but not limited to, levee, borrow, spoil and access rights-of-way, determined to be necessary by the Corps for purposes of providing the requested assistance.
- b. Hold and Save the United States free from all claims for damages attributable to the construction, operation, maintenance, repair, replacement, and rehabilitation of emergency work, except for damages due to the fault or negligence of the United States or its Contractors.
- c. Operate and maintain the emergency construction works for the duration of the flood emergency.
- d. Provide common labor.
- e. Provide as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of

dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency work.

- f. Remove, after the flood emergency, without cost to the U.S. Army Corps of Engineers, any temporary emergency works constructed for the flood emergency, with the initiation of the removal within 30 days of the conclusion of the flood event as determined by the U.S. Army Corps of Engineers.

BE IT FURTHER RESOLVED, That Dennis R. Walaker, Mayor, be authorized to enter into agreements in furtherance of this Resolution, with the U.S. Army Corps of Engineers, as a means of supplementing the local flood emergency preparation and flood fighting and rescue operations, and that such agreements shall be binding upon the Public Sponsor.

Second by Sobolik. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Sobolik, Wimmer, Williams and Walaker voted aye.

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

Commissioner Mahoney moved the Mayor's Emergency Declaration be extended for an additional thirty days.

Second by Williams.

In response to a question from Mayor Walaker in regards to extending the declaration further than two weeks, City Attorney Erik Johnson said the City Commission has the authority to extend the Declaration for as long as they would like.

Commissioner Wimmer moved the motion be amended to extend the Mayor's Emergency Declaration for thirty days from April 7, 2013.

Second by Mahoney. On call of the roll Commissioners Wimmer, Mahoney, Williams, Sobolik and Walaker voted aye.

On call of the roll on the original motion as amended Commissioners Mahoney, Williams, Wimmer, Sobolik and Walaker voted aye.

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

The Board received a communication from Planning Director Jim Gilmour stating First Assembly is requesting an Indemnification Agreement with the City of Fargo. The Agreement, he said, would hold them harmless during operations from their facility during the flood event.

Commissioner Mahoney moved the Indemnification Agreement between First Assembly and the City of Fargo be approved.

Second by Sobolik. On call of the roll Commissioners Mahoney, Sobolik, Williams, Wimmer and Walaker voted aye.

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

Yard Damage Restoration Program and Consent to Construct or Remove Emergency Flood Control Structures Form Approved:

The Board received a communication from Division Engineer Nathan Boerboom stating after the 2009, 2010 and 2011 spring flood events, the City had a Yard Damage Restoration Program developed for property owners that experienced damage to their property from the temporary levee construction leading up to the spring floods. A similar Yard Damage Restoration Program has been developed again this year, he said. Also, he said, he would like the Board's review and approval of a form consenting to right of entry onto private property.

Commissioner Mahoney moved the Yard Damage Restoration Program 2013 and the form for Consent to Construct or Remove Emergency Flood Control Structures be approved

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Wimmer, Sobolik and Walaker voted aye.

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

City Engineer April Walker said the RFP's for rapid deploy products were accepted today and have been evaluated. She said there were a number of submitters and of those submitted Trap Bag came in with the lowest bid. She said Engineering is recommending approval of the RFP submitted by Trap Bag; however, Engineering was contacted by the Iowa Department of Transportation indicating that they would be willing to sell their previously purchased Trap Bags to the City of Fargo for their cost. She said there are several thousand feet and it would require purchasing a little bit of equipment from Trap Bag to install it, as well as paying for freight, but even considering those items their offer to sell to the City was lower than Trap Bag's RFP for new product. The cost of about 2,870 lineal feet at \$15 per lineal foot would be \$50,150.00, she said. The City, she said, would still need the six foot product which will have to come directly from Trap Bag at a cost of \$9,450.00 for 350 lineal feet. And finally, she said, they received a call from Bismarck to buy back the Aqua Fence that the City sold to them in their last flood fight. She said they are willing to sell it to the City for 3%, which is the portion that was not reimbursed by the State or Federal government. The total for the Aqua Fence would be \$20,516.00, she said, bringing the grand total for all three products to \$80,116.00.

Commissioner Mahoney moved the recommendations submitted by Ms. Walker be accepted.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Wimmer, Sobolik and Walaker voted aye.

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

City Engineer April Walker said two weeks ago there was a discussion regarding preparation of an RFP for the removal of the homes purchased in Oakcreek. One of the items of information that was requested by the Commission, she said, was a summary of how the City got to where they are with the development of the project in Oakcreek. The second piece was to prepare an RFP and come back to the Commission with the prices for removal of the homes in Oakcreek.

Jerry Bents, Houston Engineering, gave a power point presentation summarizing the project.

Commissioner Wimmer said he would like to see the City wait on demolition of the homes so that there may be a better consensus from everyone.

Ms. Walker said the RFP looked at demolishing up to 8 homes, the construction of an emergency levee and plugging the emergency levee on Harwood Drive. The bid does require the contractor to have seven calendar days from the notice to proceed, she said. Industrial Builders came in as the low bidder, she said, with a bid of \$207,969.50.

Commissioner Williams said a decision does not need to be made now since the City is not able to build certifiable protection there at this time anyway.

At 6:15 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Gary Cavett, 4449 Oakcreek Drive, said he is speaking for the residents of Oakcreek and Copperfield Court when he says he feels there are other alternatives available. He said there are fifty-five homes in the combined neighborhoods with a combined assessed value of approximately \$20 million dollars. He said he is appealing to the Commission to recognize the value that these two developments have. He said he does not see the urgency in tearing the homes down and putting up an earthen dike. He said in looking back at the last four floods, starting in 1997, these neighborhoods have gotten good at sandbagging. In the last flood, Oakcreek was able to sandbag to 42.5 feet in nine hours, he said and Cooperfield Court did it in four hours. He said he feels the urgency is in stabilizing the rear yards because once that is accomplished the dikes can be decided upon. He said he does not feel that all the options have been exhausted and thinks that there are opportunities to allow all of those homes to stay.

Mayor Walaker said he is not comfortable with this option either and thinks that if the residents are willing to sandbag with the City, then other options should be reviewed.

Keith McGovern, 4473 Oakcreek Drive, said he wonders how big of an impact the surveys that were done had on their decision, due to the fact that the people who would not allow a dike or a wall in their back yards have been bought out by the City. He said he feels that if the survey was done again there would be a different result.

Ms. Walker said the survey was more important during the process of developing the alternatives; therefore, other alternatives were looked at so that the City could hopefully get consensus. However, in the end, the decision and the recommendation, she said, was the best technical recommendation to be both permissible and have long term sustainability.

Commissioner Wimmer moved the RFP to remove homes in Oakcreek be denied.

Second by Williams.

Commissioner Wimmer moved the motion be amended to hold the RFP in place with any further action to come before the Commission for a final decision.

Second by Williams. On call of the roll on the original motion as amended Commissioners Wimmer, Williams, Sobolik, Mahoney and Walaker voted aye.

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

Commissioner Sobolik moved that the Board adjourn to 5:00 o'clock p.m., Monday, April 15, 2013.

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

The time at adjournment was 7:05 o'clock p.m.