

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:    Monday:    August 5, 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 4:15 o'clock p.m., Monday, August 5, 2013.

The Commissioners present or absent were as shown following:

Present: Sobolik, Williams, Wimmer, Walaker.

Absent: Mahoney.

Mayor Walaker presiding.

City Attorney Erik Johnson announced that the Board will meet in Executive Session for the purpose of attorney consultation regarding threatened litigation or reasonably predictable civil litigation with Wieland and Brandt, all in accordance with ND Century Code Section 44-04-19.1.

Commissioner Wimmer moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.1 to discuss said pending litigation matters.

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

At 4:19 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

Members present were: Sobolik, Williams, Wimmer, Mahoney and Walaker.

Absent: none.

The Executive Session closed at 4:45 o'clock p.m. and the Commission reconvened in public session at 5:00 o'clock p.m.

All Commissioners present. Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved.

Second by Williams. 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 July 22, 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. Mutual Aid Agreement with the City of Sioux Falls Fire Rescue.
- b. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 25-1506.Y of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages (relating to Class “Y” licenses); 1st reading, 7/22/13.
- c. Waive requirement to receive and file the Ordinances one week prior to 1st reading and 1st reading of the following Ordinances Relating to adoption and upgrading of the 2012 International Codes:
  - (1) An Ordinance Amending Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code Relating to the International Residential Code.
  - (2) An Ordinance Amending Article 31-01 of Chapter 31 of the Fargo Municipal Code Relating to the International Property Maintenance Code.
  - (3) An Ordinance Amending Section 30-0106 of Article 30-01 of Chapter 30 of the Fargo Municipal Code Relating to The International Mechanical Code.
  - (4) An Ordinance Amending Article 30.1-01 of Chapter 30.1 of the Fargo Municipal Code Relating to The International Fuel Gas Code.
  - (5) An Ordinance Amending Article 21.2-01 of Chapter 21.2 of the Fargo Municipal Code Relating to The International Existing Building Code.
  - (6) An Ordinance Amending Article 21-01 of Chapter 21 of the Fargo Municipal Code Relating to The International Building Code.
  - (7) An Ordinance Amending Sections 9-0701 and 9-0704 of Article 9-07 of Chapter 9 of the Fargo Municipal Code Relating to Fire Protection and Prevention.
- d. Contract with the North Dakota Department of Health for the Ryan White Part B Program/Case Management for People Living with HIV/AIDS (CFDA #93.917).
- e. Contract with the North Dakota Department of Health for the immunization program (CFDA #93.268).
- f. Contract with the North Dakota Department of Health for public water supply program supervision for non-community water systems (CFDA #66.605).
- g. Grant Awards from the North Dakota Department of Health for the Public Health Emergency Preparedness and Response (CFDA #'s93.074, 93.069 and 93.074).
- h. Health Department budget adjustments and Contract with the North Dakota Department of Health for the immunization program billing (CFDA #93.539).
- i. Direct City Attorney to draft changes to the Secondhand Goods Dealers and Pawnbrokers Ordinances.

- j. Applications for Games of Chance:
  - (1) Holy Spirit Catholic Church for bingo, raffles and a calendar raffle from 10/2/13 to 10/27/13.
  - (2) Fargo Angels Youth Hockey for a calendar raffle from 12/8/13 to 1/6/14.
  - (3) Fargo South High School for raffles at Bennett Elementary Baseball Fields from 8/30/13 to 11/1/13; at Fargo South High School from 8/30/13 to 2/13/14; and at Scheels Arena from 12/3/13 to 2/14/14.
  - (4) Nativity Church of Fargo for a raffle on 11/3/13.
- k. Lease with Butler Machinery for one motorgrader in the amount of \$246,827.00.
- l. Recommendation to deny the request of Xcel Energy to install an overhead power line over 25th Street.
- m. Joint Powers Agreement with Southeast Cass Water Resources District for Drain 10.
- n. Early building permit for Town and Country Credit Union at 5181 38th Street South; waiver of the \$5,800.00 permit fee.
- o. Early Building Permit for Kost Materials at 3950 37th Avenue South.
- p. Amend the Flood Acquisition list to include property at 1421 42nd Avenue South.
- q. Contract award for consulting engineering services for Project No. 6234 to Kadrmas, Lee & Jackson, Inc.
- r. Award construction administration and survey work for Improvement District No. 6204 to Ulteig Engineers.
- s. Authorization for staff to obtain consultant services for Improvement District Nos. 6252 and 6253.
- t. Purchase Agreement – Permanent Easement for Crescent Properties, LLC (Project No. 6032).
- u. Access Agreement – Soil Borings with Brian and Holly Hass (Project No. 5962).
- v. Access Agreement – Soil Borings with Crescent Properties, LLC, Contractors Leasing Corp. and Swanson Health Products Inc. (Project No. 6228).
- w. Access Agreement – Soil Borings with Gerald Eid and Kerry and Helen Buckle (Project No. 6229).

- x. Bid awards for Project No. 6167 to Key Contracting, Inc. in the amount of \$205,111.00 and Project No. 6232 to Strata Corporation in the amount of \$258,106.20.
- y. Bid advertisements for Project Nos. 6199, PAR-13-01 and 5902-02.
- z. Engineering Services Amendment #3, in the amount of \$23,778.00 for Project No. 5884.
- aa. Contract and bond for Project No. 6164.
- bb. Bills in the amount of \$8,936,377.57.

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

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

Amended Engineer's Report for Improvement District No. 6219 Approved:

The Board received an Amended Engineer's Report for Improvement District No. 6219 from City Engineer April Walker. The total estimate of cost has been amended to \$2,595,100.00.

Commissioner Mahoney moved the amended Engineer's Report for Improvement District No. 6219 be approved.

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

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

Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6250 (William Thomas Addition):

Commissioner Mahoney moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6250:

Adopt Resolution Creating Improvement District No. 6250:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6250 in the City of Fargo, North Dakota, be created

51st Avenue South from 38th Street South to 42nd Street South.

COMPRISING:

Lots 1 through 3, Block 1, William Thomas Addition.

The unplatted land in the SE ¼ of Section 34, Township 139, Range 49, bounded on the west by 42nd Street South, on the south by 51st Avenue South, and the east by 38th Street South.

The unplatted land lying east of 42nd Street South in the SW ¼ of Section 34, Township 139, Range 49.

All of the foregoing land lying in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6250 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. 6250:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6250 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 \$475,000.00.)

Order Plans and Specifications for Improvement District No. 6250:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6250 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6250:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6250 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. 6250 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Direct City Auditor's Office to Call for Bids for Improvement District No. 6250:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6250 in the City of Fargo, North Dakota.

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

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

Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 6251 (William Thomas Addition):

Commissioner Mahoney moved the following action be taken in connection with Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 6251:

Adopt Resolution Creating Improvement District No. 6251:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6251 in the City of Fargo, North Dakota, be created

51st Avenue South from 38th Street South to 42nd Street South.

COMPRISING:

Lots 1 through 3, Block 1, William Thomas Addition.

The unplatted land in the SE ¼ of Section 34, Township 139, Range 49, bounded on the west by 42nd Street South, on the south by 51st Avenue South, and the east by 38th Street South.

The unplatted land lying east of 42nd Street South in the SW ¼ of Section 34, Township 139, Range 49.

All of the foregoing land lying in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 6251 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. 6251:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6251 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 \$435,600.00.)

Order Plans and Specifications for Improvement District No. 6251:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6251 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6251:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6251 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. 6251 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 6251 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals must be in writing and must be filed with the City Auditor's Office within 30 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. 6251:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6251 in the City of Fargo, North Dakota.

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

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

Contract for Concrete Pavement, Grading, Storm Drains, Lighting, Street Reconstruction and Incidentals Improvement District No. 5956 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Dakota Underground Company for Concrete Pavement, Grading, Storm Drains, Lighting, Street Reconstruction and Incidentals Improvement District No. 5956 in the City of Fargo, North Dakota.

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

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

Contract Bond for Concrete Pavement, Grading, Storm Drains, Lighting, Street Reconstruction and Incidentals Improvement District No. 5956 Approved:

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

United Fire and Casualty Company, in the amount of \$1,536,670.57, for Concrete Pavement, Grading, Storm Drains, Lighting, Street Reconstruction and Incidentals Improvement District No. 5956 in the City of Fargo, North Dakota.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Sobolik, 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. 6211 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6211 in the City of Fargo, North Dakota.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Sobolik, 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. 6211 Approved:

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

Western National Mutual Insurance Company, in the amount of \$1,861,062.29, for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6211 in the City of Fargo, North Dakota.

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

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

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6214 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Opp Construction Company for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6214 in the City of Fargo, North Dakota.

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

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

Contract Bond for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6214 Approved:

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

Travelers Casualty and Surety Company of America, in the amount of \$126,732.50, for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6214 in the City of Fargo, North Dakota.



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

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

Recommendations Regarding Flood Buyout/House Moving Approved:

The Board received a communication from the Public Works Projects Evaluation Committee (PWPEC) stating staff was asked to research additional ways to handle the auctioning of City flood buyouts in a manner that would facilitate removal of the houses in areas where the tree impact could be justified. They said it has been determined that the only area that would warrant tree removal to facilitate house moving is on River Drive. There is the potential for 12 homes to be moved, they said, 9 of which are currently owned by the City. They said twenty-seven boulevard trees would need to be removed to accommodate a 38' wide structure to be relocated. Staff sought guidance from the auctioneer, they said, and were advised the best path forward would be to accept sealed bids prior to the auction of the affected homes. They said if sealed bids result in an appropriate amount of revenue to justify the tree removal, then the City could proceed with an auction. The low bid would be set at the highest amount received by sealed bid and only those submitting sealed bids would be allowed to participate in the auction, they said.

In response to a question from Commissioner Mahoney as to whether any of the trees being removed could be utilized, April Walker stated if the trees can be spaded they will be moved; however, in some cases, there are obstacles such as utilities that may prevent it. A replanting effort will be made, she said.

Mayor Walaker said there may have been some missteps in the past; however, relocating the houses is the optimum outcome and it is best to do whatever is possible to keep them in the community.

Ms. Walker said each time the City has purchased homes and figured out how to dispose of them, it has been a learning process. She said she believes there is a market for the homes and hopes the auction process can be done this fall.

In response to a question from Commissioner Sobolik regarding whether the owners of the three homes now owned by the City have an option to buy their homes back and relocate them, Ms. Walker said they do not have that option. She said they could repurchase the homes through the auction process if they want to relocate them.

Commissioner Sobolik moved staff be authorized to auction flood buyout homes for salvage if determined that the home is not movable, and to facilitate a sealed bid process with the understating that if an appropriate value can be obtained, twenty-seven boulevard trees on River Drive will be removed to facilitate the moving of flood buyout structures.

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.

Renaissance Zone Project for JLLG Enterprises, LLC Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for JLLG Enterprises, LLC for a business leasing property as part of a zone project at 210 Broadway, Suite 101.

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

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

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

Commissioner Sobolik moved the Renaissance Zone application filed by JLLG Enterprises, LLC for a lease project located at 210 Broadway, Suite 101 be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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.

Renaissance Zone Project for JLLG Enterprises, LLC Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for JLLG Enterprises, LLC for a business leasing property as part of a zone project at 210 Broadway, Suite 102.

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

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

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

applicant has met the aforementioned requirements. He said the project addresses the business retention and expansion goals stated in the Renaissance Zone Development Plan.

Commissioner Sobolik moved the Renaissance Zone application filed by JLLG Enterprises, LLC for a lease project located at 210 Broadway, Suite 102 be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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.

Hearing on an Application for a Zoning Change, Plat and Vacation Plat of Urban Plains by Brandt Second Addition Continued to August 19, 2013 (2667 55th Street South, 2921 and 2960 Seter Parkway South and 5142, 5151, 5343, 5356 and 5447 28th Avenue South):

A Hearing had been set for this time and date on a petition for a change of zoning from MR-3, Multi-Dwelling, GC, General Commercial, and LC, Limited Commercial all with a Conditional Overlay to LC, Limited Commercial and P/I Public and Institutional with the existing Conditional Overlay to remain, and MR-3, Multi-Dwelling with extinguishment of the existing Conditional Overlay; Vacation Plat of part of 28th Avenue South, 30th Avenue South and Seter Parkway South; and Plat of Urban Plains by Brandt Second Addition.

The Board received a communication from Planning Administrator Nicole Crutchfield stating there is a need to continue the zoning, plat and vacation plat for the Urban Plains by Brandt Second Addition due to a 30-day advertising requirement for vacation plats. She said continuing the hearing to August 19th will satisfy this requirement.

Commissioner Sobolik moved the Hearing be continued to 5:15 o'clock p.m. Monday, August 19, 2013.

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.

Hearing on a Petition for Annexation of 22.10 Acres of Land Located in Section 5, Township 138 North, Range 49 West in Stanley Township and Within the Extraterritorial Area Continued to August 19, 2013:

A Hearing had been set for June 24, 2013 on a petition for annexation of 22.10 acres of land located in Section 5, Township 138 North, Range 49 West in Stanley Township and within the extraterritorial area.

At the June 24, 2013, the Hearing was continued to July 8, 2013.

At the July 8, 2013 meeting, the Hearing was continued to July 22, 2013.

At the July 22, 2013 meeting, the Hearing was continued to this day and hour; however, Planning Administrator Nicole Crutchfield is requesting the Hearing be continued to August 19, 2013. She said the petitioner desires to have the proposed plat and zoning request on the same agenda, which is projected to be August 19, 2013.

Commissioner Sobolik moved the Hearing be continued to 5:15 o'clock p.m. Monday, August 19, 2013.

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 Vacating a Public Utility Easement on the North 5 Feet of the 10 Foot Wide Utility Easement Along the South Line of Lot 1, Block 3, Amber Valley West First Addition (2560 55th Street South):

The Board received a communication from Planning Administrator Nicole Crutchfield stating the Reciprocal Release and Relinquishment of Easement is intended to extinguish a portion of a public utility easement established by Plat (Amber Valley West First Addition) on July 6, 2010. She said the easement is requested by the owner due to setback construction issues. The easement does not contain any utilities, she said, and is not likely to be needed in the future. The City of Fargo Engineering Department has reviewed the request and is recommending approval, she said.

Commissioner Sobolik offered the following Resolution and moved its adoption:

WHEREAS, A public utility easement was established as a result of a Plat dated May 11, 2010, and recorded in the Office of the Recorder for Cass County, North Dakota on the 9th day of July, 2010, as document number 1299388, for which a public utility easement was appurtenant to the following described real property:

Lot 1, Block 3, Amber Valley West First Addition to the City of Fargo, Cass County, North Dakota.

WHEREAS, Lot 1, Block 3, Amber Valley West First Addition to the City of Fargo, Cass County, North Dakota subject to the public utility easement for the City of Fargo; and,

WHEREAS, Said owners desire the reciprocal release and relinquishment of said public utility easement in order to more fully utilize their property in a manner free from said encumbrance; and

WHEREAS, The City of Fargo has determined that there are no public utilities currently located or likely to be located on the north five feet of the easement located along the south lot line. The easement extends for a total of ten feet. It is the intention of both parties that only the north five feet of the easement be released and relinquished. The south five feet of the easement shall remain.

NOW, THEREFORE, It is hereby agreed.

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 motion was declared carried.

Parcels of Land in Chas. A. Roberts Addition and King's Subdivision Rezoned (508, 512, 613 and 617 11th Street South and 1109, 1115, 1121 and 1123 7th Avenue South):

At a Hearing held on July 2, 2013 the Fargo Planning Commission recommended approval of a change in zoning from MR-2, Multi-Dwelling to SR-4, Single-Dwelling on Lot 4, the North 75 feet of Lots 5 and 6, Lots 7 through 10, Block A, Chas. A. Roberts Addition, and MR-3, Multi-Dwelling to SR-4, Single-Dwelling on Lots 9 and 10, King's Subdivision of Block 41, Northern Pacific Addition.

Planning Administrator Nichole Crutchfield said the Planning Department began looking at this zoning change a year ago when residents brought it to their attention that the multifamily zoning did not match the actual land use. She said the Planning Department worked with the Special Assessment Department and staff is in support of the change. The down-zoning will bring the properties into greater conformance with the Land Development Code (LDC) and help stabilize single-family dwellings within this neighborhood, she said.

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 be accepted and the rezoning be approved on the basis that the proposal satisfactorily complies with the Comprehensive Plan, 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 Lying in Chas. A. Roberts Addition and King's Subdivision of Northern Pacific 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 Chas. A. Roberts Addition and King's Subdivision of Northern Pacific 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.

Parcels of Land in D.S.I. Addition and Southwood Park Addition Rezoned (3000 32nd Avenue South, 3218, 3234, 3314 and 3320 33rd Street South and 3241 32nd Street South) and Planned Unit Development Master Land Use Plan Approved:

At a Hearing held on July 2, 2013 the Fargo Planning Commission recommended approval of a change in zoning from GC, General Commercial and MR-3, Multi-Dwelling to GC, General Commercial as the underlying zoning district with a PUD, Planned Unit Development Overlay and a Planned Unit Development Master Land Use Plan to allow expansion of the medical hospital, clinic campus and parking lots on Lot 1, Block 1, D.S.I. Addition, Lots 3 through 6, Block 2, Lots 1, 4 and part of 5, Block 3, Southwood Park 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 Director Nichole Crutchfield said staff supports the Planned Unit Development (PUD) Plan. She said by seeing their full plans now, zoning can be customized due to the fact it is a higher, better use than the standardized use in the Land Development Code. She said staff supports the zoning changes and the Planned Unit Development Overlay which includes a parking plan, as well as the Planned Unit Development Master Land Use Plan and the PUD Final Plan.

In response to a question from Commissioner Wimmer about the timeline for Essentia Health's expansion, Ms. Crutchfield stated it will take place over several years. She said right now there are some land use changes where they are demolishing existing storage buildings which will become offsite parking and is part of the PUD.

Commissioner Mahoney stated because of his association with the petitioner, he will exclude himself from voting. He said this expansion has been planned for a number of years and there is a need for more space at Essentia Health.

Commissioner Sobolik offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning, the PUD, Planned Unit Development Overlay and a Planned Unit Development Master Land Use Plan have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning, the PUD, Planned Unit Development Overlay and a Planned Unit Development Master Land Use Plan and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning, the PUD, Planned Unit Development Overlay and a Planned Unit Development Master Land Use Plan be approved on the basis that the proposal satisfactorily complies with the Comprehensive Plan, 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 and Walaker voted aye.

Commissioner Mahoney abstained from voting.

The motion was declared carried.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in D.S.I. Addition and Southwood Park Addition to the City of 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 D.S.I. Addition and Southwood Park Addition to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

Commissioner Mahoney abstained from voting.

The motion was declared carried.

Parcels of Land in Valley View Addition Rezoned (4801 36th Avenue South, 3569, 3577, 3585, and 3593 49th Street South, 3555, 3559, 3560, 3563, 3567, 3568, 3571, 3574, 3575, 3579, 3580, 3583, 3586, 3587, 3591, and 3594 50th Street South, 3550, 3566, and 3582 55th Street South, and 3552, 3556, 3561, 3580, 3584, 3590, 3594, 3562, 3565, 3566, 3569, 3570, 3573, 3574, 3577, 3581, 3593, 3606, 3613, 3620, 3625, 3632, 3637, 3644, 3649, 3654, 3661, 3669, 3680, 3681, 3693, 3701, 3711, and 3723 54th Street South):

At a Hearing held on July 2, 2013 the Fargo Planning Commission recommended approval of a change in zoning from SR-2, Single-Dwelling to SR-4, Single-Dwelling with a Conditional Overlay on Lots 1 through 20 and 22 through 26, Block 2; Lots 1-13, Block 3; Lots 1 through 11, Block 5; and Lots 1 through 5, Block 6; from SR-4, Single-Dwelling to SR-4, Single-Dwelling with a Conditional Overlay on Lot 27, Block 2; Lot 14, Block 3; and Lot 6, Block 6; and from MR-1, Multi-Residential to SR-4, Single-Dwelling on Lot 1, Block 1, Valley View 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 developer is requesting rezoning to allow more building coverage and site setbacks than the SR-2 zoning allows. She said more and more homeowners are requesting three car garages; however, staff had concerns that this rezoning would allow for townhomes, which was not a consideration when the current utility infrastructure was designed and the reason for the Conditional Overlay, she said.

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 Valley View 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 Valley View 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.

Text Amendment to Amend Sections 20-0216 and 20-0901 of Articles 20-02 and 20-09, both of Chapter 20 of the Fargo Municipal Code (Land Development Code)  
Approved:

A Hearing had been held by the Fargo Planning Commission on July 2, 2013 for the purpose of considering a request for a Text Amendment to Amend Sections 20-0216 and 20-0901 of Articles 20-02 and 20-09, both of Chapter 20 of the Fargo Municipal Code (Land Development Code) all relating to UMU, University Mixed-Use requirements and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the request be approved.

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.

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

Planning Administrator Nicole Crutchfield said this item is based on staff working with the Roosevelt Neighborhood over the last year and a half. When the University Mixed-Use Zoning District was originally drafted in 2009, she stated, the issue of how to codify policies that were already being done was not resolved. This includes a provision encouraging applicants to meet with the appropriate neighborhood association or owners of abutting properties upon the submittal of their site plan application. She said a provision is also included that would require written notice to neighborhood associations of certain development applications be provided to neighborhood associations if requested. Additionally, she said, the amendment allows garage structures to be built up to 60 feet in length as opposed to the current 50 feet to allow for a more standard product to be installed.

Commissioner Sobolik moved the request be approved on the basis the proposed Text Amendment complies with Section 20-0904.E (1-3) of the Land Development Code.

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



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

First Reading of an Ordinance Amending Sections 20-0216 and 20-0901 of Articles 20-02 and 20-09 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to UMU, University Mixed-Use District and General Development Review Procedures:

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 Amending Sections 20-0216 and 20-0901 of Articles 20-02 and 20-09 of Chapter 20 of the Fargo Municipal Code (Land Development Code) relating to UMU, University Mixed-Use District and General Development Review Procedures be placed on first reading.

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

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

Hearing on an Application for a Conditional Use Permit Continued to August 19, 2013 (1133 Elm Street North):

A Hearing had been set for July 8, 2013 on a request for a Conditional Use Permit to allow a telecommunication support structure (TSS) in a P/I, Public and Institutional zoning district on Lot 1, Block 1, Mickelson Fields Addition (1133 Elm Street North).

At the July 8, 2013 meeting, the Hearing was continued July 22, 2013.

At the July 22, 2013 meeting, the Hearing was continued to this day and hour; however, Planning Administrator Nicole Crutchfield requested that the Hearing be continued to August 19, 2013.

Commissioner Wimmer moved the Hearing be continued to 5:15 o'clock p.m. Monday, August 19, 2013.

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

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

First Reading of an Ordinance Relating to Alcoholic Beverages:

City Attorney Erik Johnson said when asked to review an application filed by Cash Wise Liquor to transfer their Class "B" Alcoholic Beverage License, provisions came to the attention of the Board that prompted a review of the Ordinance. He said the amended Ordinance reduces the 14 factors for consideration down to 8, with economic impact being one of the factors removed from the list. He said the 100 foot separation remains in the Ordinance giving the Board authorization to determine the separation has been satisfied.

In response to a question from Commissioner Sobolik about whether discussions included completely removing the 100 foot separation requirement, Mr. Johnson said it was considered; however, if it were removed there would still be some separation requirements under state law. He said without the 100 foot separation

requirement there is a potential for liquor license requests to increase, which will be left alone for right now.

Jade Rosenfeldt, Attorney for The Spirit Shop, stated her letter to the Board dated July 22, 2013 outlines the Spirit Shop's objections. She stressed the uniqueness of the liquor industry and asked the Board to reconsider removing the economic impact factor.

Dan Nicholson of the Spirit Shop said there is more to it than profitability. He said his business is locally owned and supportive of local nonprofits, which may not be the case for an out of state entity. He said he encourages representation from the liquor businesses when changes are made to liquor ordinances.

Mayor Walaker said there is good representation on the Liquor Control Board. He said Fargo may have the most control of liquor business of anyplace in North Dakota. The liquor ordinance can be a determining factor when businesses consider locating in Fargo, he said, and may be the reason Costco chose to build in West Fargo rather than Fargo.

Doug Murch, Conmy Law Firm, said he represents the Oppidan Investment Company which acts as the development agent for Cash Wise. He said he favors the amended Ordinance and feels it strikes a balance with Fargo's goals and stays competitive with other cities. Preserving the proximity factor makes sense for public safety, he said, and streamlining the factors in the Ordinance allows the Commissioners to look at public safety rather than all the overlapping factors. The economic impact that is being removed is very subjective, he said, and ultimately competition is good for customers and gives the public choices.

Commissioner Wimmer moved first reading of an Ordinance Amending Section 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages.

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

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

#### Appointments to the Civil Service Commission:

The Board received a communication from Mayor Walaker recommending that Nancy Jordheim and Mike Wenaas be reappointed to the Civil Service Commission.

Commissioner Mahoney moved Nancy Jordheim and Mike Wenaas be reappointed to the Civil Service Commission for three-year terms ending June 30, 2016.

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

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

#### Appointments to the Parking Commission:

The Board received a communication from Mayor Walaker recommending that Brian Hayer and Margie Bailly be appointed to the Parking Commission.

Commissioner Mahoney moved Brian Hayer and Margie Bailly be appointed to the Parking Commission for three-year terms ending June 30, 2016.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Sobolik, Wimmer 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, August 19, 2013.

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

The time at adjournment was 6:07 o'clock p.m.