

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: September 30, 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, September 30, 2013.

The Commissioners present or absent were as shown following:

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

Absent: None.

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 September 16, 2013 be approved as read.

Second by Sobolik. 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. 1st reading of an Ordinance Amending Sections 25-1506 and 25-1507 of Article 25-15, of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages (to allow the sale and consumption of beer and wine in a venue whose primary business is entertainment).
- b. 2nd reading, waive reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Located in Cottagewood First Addition, Fargo, Cass County, North Dakota; 1st reading, 9/16/13.
- c. Resolution prescribing rates and charges for Wastewater Utility services for 2014 (Attachment "A").
- d. Request to hang Bras on Broadway and Breast Cancer Awareness promotional items in the skyway from 10/21/13 to 10/31/13.
- e. Amendment No. 2 to the agreement with First Transit for management, driver and fixed route dispatch services effective January 1, 2014.

- f. Purchase and installation of an Automatic Voice Announcement System for Fargo Transit by exercising the option from Moorhead's award to RouteMatch Software, Inc.
- g. PEC recommendation to reclassify a vacant Property Appraiser III (Grade 14) to a Property Appraiser II (Grade 13) in the Assessor's Office effective immediately.
- h. Renewal of MetLife Dental Insurance, Avesis Vision Insurance, Mutual of Omaha Life Insurance and Lincoln Financial Group Long-Term Disability Insurance effective 1/1/14.
- i. Contract with Mutchler Bartram Architects, P.C. for plan review and inspection services for the Sanford Health Care Project.
- j. Purchase of the home at 1408 South River Road through the flood buyout program.
- k. Police Department budget adjustments in the amounts of \$43,850.00 and North Dakota Department of Transportation Traffic Safety Contract for Seatbelt Enforcement and Education (CFDA #20.600) and Impaired Driving Enforcement (CFDA #20.601).
- l. Health Department budget adjustment and Grant Agreement with United Way of Cass-Clay for the Nurse Family Partnership Program.
- m. Contract with the North Dakota Department of Health for the WIC Program, (CFDA #10.557).
- n. Site Authorization for Fargo Youth Hockey Association at Teamsters Arena.
- o. Applications for Games of Chance:
 - (1) Peggy Tommeraus Benefit for a raffle on 10/26/13; Public Spirited Resolution.
 - (2) Bennett Elementary PTA for bingo on 10/4/13.
 - (3) Shaina Adelman Benefit for a raffle on 10/4/13; Public Spirited Resolution.
 - (4) NDSU Sigma Alpha Epsilon for a raffle on 10/11/13.
 - (5) North Dakota State University for a raffle on 12/6/13.
- p. Resolution Approving Plat of South Beach Townhomes Addition (Attachment "B").
- q. Purchase of one loader mounted snow blower from Swanston Equipment for \$186,640.00.

- r. Sole source procurement of a Kann Manufacturing curbside recycling truck to Sanitation Products and 5-year lease agreement with Kinetic Leasing in the amount of \$33,680.00 per year.
- s. Infrastructure Request Policy.
- t. Agreement for Special Improvements with Matrix Properties for Improvement District No. 6248.
- u. Recreation Trails Program Project Agreement for Red River Shared Use Path Reconstruction in the amount of \$225,000.00.
- v. Contract Amendment #1 from KLJ in the amount of \$144,000.00 for Project No. 6234.
- w. Bid award for Project No. SW 13-03 to R.J. Zavoral & Sons, Inc. in the amount of \$645,802.40 and rejection of bids for Project No. 6255.
- x. Engineering Services Agreement with Apex Engineering Group, Inc. for Project No. 6252.
- y. Contracts and bonds for Project Nos. 5902-02 and 6051.
- z. Bills in the amount of \$8,040,395.22.

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.

Bids Received for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 6249:

The bids for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 6249 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 25, 2013 and the bids were found to be as follows:

Key Contracting	Fargo, ND
Bid:	\$1,218,822.00
Industrial Builders, Inc.	Fargo, ND
Bid:	\$1,406,900.00
Dakota Underground Company	Fargo, ND
Bid:	\$1,545,412.55
J.R. Ferche, Inc.	Rice, MN
Bid:	\$1,936,055.25

Wanzek Construction, Inc.
Bid:

Fargo, ND
\$1,985,254.80

Contract for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 6249 Awarded to Key Contracting in the Amount of \$1,218,822.00:

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 Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 6249; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 25, 2013 for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 6249 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 6249 shows the bid of Key Contracting of Fargo, North Dakota, in the sum of \$1,218,822.00 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Key Contracting in the sum of \$1,218,822.00 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 6249 in the City of Fargo, North Dakota, be and the same is hereby awarded to Key Contracting for the sum of \$1,218,822.00, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

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

Contract Time Extension for Improvement District No. 6202 Approved:

Commissioner Mahoney moved approval of a contract time extension to September 28, 2013 for Improvement District No. 6202.

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.

Contract Time Extension for Improvement District No. 6204 Approved:

Commissioner Mahoney moved approval of a contract time extension to September 14, 2013 for Improvement District No. 6204.

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.

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6241 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Dakota Underground Company for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6241 in the City of Fargo, North Dakota.

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.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6241 Approved:

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

United Fire and Casualty Company, in the amount of \$1,694,787.10, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6241 in the City of Fargo, North Dakota.

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.

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6245 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Dakota Underground Company for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6245 in the City of Fargo, North Dakota.

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.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6245 Approved:

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

United Fire and Casualty, in the amount of \$269,423.50, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6245 in the City of Fargo, North Dakota.

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.

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6248 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 and Incidentals Improvement District No. 6248 in the City of Fargo, North Dakota.

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.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6248 Approved:

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

Western National Mutual Insurance Company, in the amount of \$289,583.60, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6248 in the City of Fargo, North Dakota.

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.

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6250 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Dakota Underground Company for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6250 in the City of Fargo, North Dakota.

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.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6250 Approved:

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

United Fire and Casualty Company, in the amount of \$294,597.50, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6250 in the City of Fargo, North Dakota.

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.

Contract for Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 6251 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Northern Improvement Company for Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 6251 in the City of Fargo, North Dakota.

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.

Contract Bond for Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 6251 Approved:

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

Western Surety Company, in the amount of \$285,478.06, for Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 6251 in the City of Fargo, North Dakota.

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.

Recommendation from the City Hall Site Selection Committee for a New City Hall to be Located Within the Four Block Civic Center Area Approved:

The Board received a communication from the City Hall Site Selection Committee Co-Chairs Dennis Walaker and Bruce Furness stating the committee was created from suggestions made by the Commissioners and others. Each Commissioner recommended two members, they said, and all willingly agreed to serve. At the first meeting on July 18, 2013, they said, members were asked to dream a bit about what a new city hall could mean to the community and what criteria should be considered. Citizen input was included through Facebook and phone calls, they said, and the Committee received information from prior studies of the need for a new city hall. They stated at the July 25th meeting, committee members and some citizens described sites to be reviewed and analyzed, with nineteen specific sites selected to examine, they said. However, they said, one site was removed from consideration because the owner indicated that property would be utilized in the near future. They said a bus trip on August 8th was devoted to viewing all 18 remaining properties with commentary on the pros and cons, information which proved very useful in the final determination of sites. The Committee then ranked the sites, they stated, and at the August 22nd meeting the rankings were discussed at length and a decision was made to study the top five sites in more detail. They stated the top five sites were as follows:

1. The four-block Civic Center area.
2. Tenth Street between 1st Avenue North and 2nd Avenue North.
3. Opposite the Ground Transportation Facility.
4. Mid-America Steel property.
5. US Bank block.

They stated a meeting on September 12th was devoted to examining the top five sites, along with site layouts and analyses. They said it became apparent that the four-block Civic Center area was the preferred solution. Discussion then ensued, they said, about variables over which the Committee had no control or authority such as the following:

1. Flood protection along Second Street.
2. A possible convention center downtown.
3. Private-sector developments.
4. The need for amenities such as green spaces.
5. Development of a 2nd Avenue corridor.
6. Plazas, walkways and river access.

They said the Committee shared five suggested scenarios for placement of a new city hall in the Civic Center area.

Mr. Furness said different scenarios for placement of a new City Hall were presented and some Committee members wanted to make a recommendation on the specific placement within the Civic Center area; however, with placement dependent on floodwalls and green space, it was recommended it be placed within the four-block Civic Center area. He said the Committee thought it was best that the final location reflect the need for flood protection, including the possible relocation of Second Street, and the maximum of aesthetic and functional values, including green spaces, gathering spaces and plazas.

Commissioner Sobolik said the Committee suggested that at least one of the members of the Site Selection Committee be included when a building committee is named.

In response to a question from Commissioner Wimmer about the cost of rehabilitation of the existing City Hall, City Administrator Pat Zavoral said there have been questions on costs and suggestions that the current City Hall be expanded. He said there are issues as to whether additional floors could be added to the existing structure and considering the square footage needed, rehab costs could be as much as building new. Another issue, he said, is where to put the functions of City Hall during a remodel

Commissioner Mahoney moved the recommendation of the City Hall Site Selection Committee for a new City Hall to be located within the four block Civic Center area be accepted with the final location to reflect the need for flood protection, including the possible relocation of Second Street, maximizing aesthetic and functional values, including green spaces, gathering spaces and plazas.

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.

City Hall Design/Building Committee to be Established: Appropriate Staff Directed to Develop and Publish a Request for Proposals for Architectural/Engineering Design Services for a New City Hall:

The Board received a communication from City Administrator Pat Zavoral stating there are other actions to consider in the process of a new City Hall building. He suggested that a 6 to 8 person Design/Building Committee made up of Commissioners, citizens and City staff be formed. He suggested the Committee

include a couple of staff members as voting members along with some ex-officio staff members to work with the architect. He said he and the Mayor could bring suggestions to the Board for confirmation. He said he has drafted a Request for Proposals for architectural services which he would like to send out immediately, the results of which would come back in about six weeks. There would likely be a couple Building Committee meetings prior to a recommendation on an architect being brought to the Board, he said, which will likely come sometime in November.

Commissioner Williams said Commissioners participated in the Site Selection Committee in an ex-officio status and now it sounds like two Commissioners will be voting members on the Building Committee. He said it is important that all the Commissioners have access and are welcome as part of this public process.

Commissioner Mahoney moved the Mayor and staff be directed to establish a City Hall/Design Building Committee, and that appropriate staff be directed to publish a request for proposals for architectural and engineering design services.

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.

Up to \$50,000.00 to be Allocated from Flood Sales Tax to Contract an Urban Landscape Architectural Firm to Assist City Engineers in Design of Flood Protection Measures in Downtown Fargo Approved:

City Administrator Pat Zavoral said construction of flood protection along Second Street is somewhat related to the development activities on the City Hall/Civic Center/Library quadrant. One issue during the City Hall Site Selection Committee's deliberations on evaluating sites was access to the Red River and green space, he said. It became evident during discussions that more thought needs to be put into how the development and the parking needs of City Hall are integrated and interfaced with the flood protection work, he said. He said he is recommending the Board allocate up to \$50,000 from flood sales tax for an urban landscape effort to be incorporated into the flood protection plans. With these funds, he said, the Engineering Department would secure the services of an urban landscape architectural firm to assist in design features that would enhance the flood protection project. The recommendations of these design efforts would be forwarded to the City Commission as part of the final design of the flood protection plans, he said. It is hoped that such plans could be developed within 120 days of the selection of a firm, he said, so as not to delay design and construction of the flood protection project.

Commissioner Wimmer moved up to \$50,000.00 be allocated from flood sales tax to contract an urban landscape architectural firm to assist City Engineers in the design of flood protection measures downtown.

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.

Committee to be Established to Meet with Fargodome Representatives to Discuss a Closer Management and Operations Arrangement Approved:

City Administrator Pat Zavoral said discussions focusing on the need for more convention space in Fargo have been ongoing at various venues in the community. He said before moving forward with this matter, it would be best to decide if a single management and/or joint operational agreement between the Fargo Dome Authority and the Civic Auditorium Board and staff is feasible. He said a single focal point for promotion and coordination of events in the two facilities may be a first step in a much broader discussion involving management and operation of facilities and expansion of facilities. He said he recommends that the Board consider forming a committee of Commissioners, staff and Civic Board members to work with an appointed group from the Fargodome to discuss the opportunities for a closer management and operations arrangement.

Commissioner Wimmer moved a committee of Commissioners, staff and Auditorium Board members be established to work with an appointed group from the Fargodome to discuss opportunities for a closer management and operations arrangement.

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 Great Northern 5th Addition Rezoned (1003 and 1103 35th Street North):

At a Hearing held on September 3, 2013, the Fargo Planning Commission recommended approval of a change in zoning from LI, Limited Industrial to MR-3, Multi-Dwelling on Lots 1 and 2, Block 2, Great Northern 5th 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, although the land is in a well developed central location, the property has been vacant for about 15 to 20 years and aligns well with the City's 2030 Comprehensive Plan.

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 Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Williams, Mahoney, Wimmer 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 Great Northern 5th 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 Great Northern 5th Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

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

Annexation of Approximately 18.2 Acres of Land Located in Section 5, Township 138 North, Range 49 West, Cass County, North Dakota Approved: No Protests Received:

A Hearing had been set for June 24, 2013 on a Petition for the annexation of a portion 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 meeting the Hearing was continued to July 22, 2013.

At the July 22, 2013 meeting, the Hearing was continued to August 5, 2013.

At the August 5, 2013 meeting, the Hearing was continued to August 19, 2013.

At the August 19, 2013 meeting, the Hearing was continued to September 16, 2013.

At the September 16, 2013 meeting, the Hearing was continued to this day and hour.

A Notice was published in the official newspaper for the City of Fargo, as required by law, on September 23, 2013, stating that a petition had been filed with the City of Fargo for annexation of 18.2 Acres of Land Located in Section 5, Township 138 North, Range 49 West, Cass County, North Dakota.

No protests have been filed with the City Auditor's Office after publication of the Notice.

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

Planning Administrator Nicole Crutchfield said there have been several continuations due to the petitioner's request to have the annexation and plat appear on the same agenda. She said questions arose pertaining to access to potential trails and tree protection when the petition was first brought to the Board. With the river setback in place, she said, staff feels there is adequate tree protection. She said access to trail connectivity does not appear appropriate due to this plat being a completion of the Deer Creek Addition and private property, with no connectivity either north or south of the plat.

First Reading of an Ordinance Enacting Section 32-0104 of Article 32-01 of Chapter 32 of the Fargo Municipal Code Relating to Annexation:

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 Enacting Section 32-0104 of Article 32-01 of Chapter 32 of the Fargo Municipal Code Relating to Annexation 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 Ashwood Fourth Addition Rezoned (6050 Unit A County Road 17; 6705 56th Avenue South; 6691, 6696, and 6684 58th Avenue South; 6722, 6746, 6770, 6797, 6775, 6741 and 6719 Smylie Lane South; 6680, 6683, 6694, 6699, 6708, 6711, 6724, and 6729 59th Avenue South; and 5773 and 5791 67th Street South):

At a Hearing held on April 2, 2013 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural and SR-2, Single-Dwelling to SR-2, Single-Dwelling of the proposed Ashwood Fourth Addition.

The City Auditor's Office published a Notice of Hearing stating September 16, 2013 was the time and date set for said Hearing at which time all interested persons could appear and would be heard.

At the September 16, 2013 meeting the Hearing was continued to this day and hour.

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 Ashwood Fourth 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 Ashwood Fourth 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 Ashwood Fourth Addition:

Commissioner Sobolik offered the following Resolution and moved its adoption:

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "Ashwood Fourth Addition," a replat of Lots 22 through 28, and 39 through 42, Block 1; Lots 8 through 11 and Lots 23 through 26, Block 5; Lot 14, Block 6; and Lot 1, Block 8, Deer Creek Addition to the City of Fargo; a plat of part of the west half of Section 5, Township 138 North, Range 49 West, Cass County, North Dakota; and a vacation of that part of 67th Street South, 58th Avenue South, 59th Avenue South, and Smylie Lane contained within the boundary of said Ashwood Fourth Addition, containing 38 Lots, 4 Blocks and 29.4 acres of land more or less, located at 6050 Unit A County Road 17; 6705 56th Avenue South; 6691, 6696, and 6684 58th Avenue South; 6722, 6746, 6770, 6797, 6775, 6741 and 6719 Smylie Lane South; 6680, 6683, 6694, 6699, 6708, 6711, 6724 and 6729 59th Avenue South; and 5773 and 5791 67th Street South; and

WHEREAS, A Hearing was held April 2, 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, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on August 12, 19, 26 and September 2, 2013 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., September 16, 2013 at which time said Plat would be considered and all interested persons would be heard. At the September 16, 2013 meeting, the Hearing was continued to September 30, 2013.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission be accepted and the Plat entitled "Ashwood Fourth Addition" be and the same is hereby in all things affirmed and approved on the basis that it complies with the Standards of Article 20-06, and all other applicable requirements of the Land Development Code, and that the Mayor of the City of Fargo and the appropriate City Officials are hereby directed to endorse their approval on the Plat and then direct Petitioner to file same for record in the Office of the Recorder of Cass County, North Dakota.

Second by 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.

Appeal of the Board of Adjustment's Denial of a Request for a Variance at 4722 35th Avenue South: Variance Granted:

A Hearing had been set for this day and hour on the appeal of an August 27, 2013 ruling of the Board of Adjustment denying the request from Thomsen Homes to allow a new house to encroach 1.2 feet into the side setback that is required under Section 20-0501 of the Land Development Code at 4722 35th Avenue South. The code requires buildings to be set back at least 4 feet from the side property line in the SR-4, Single-Dwelling residential zoning district.

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

Planning Administrator Nicole Crutchfield said the Board of Adjustment denied the application for a variance and an appeal is treated as a new request and

presented to the Board of City Commissioners for review and a decision. She said the applicant, Thomsen Homes, built a concrete foundation for a home at 4722 35th Avenue South based on the pins set by the developer and later discovered there was an error which created a nonconforming structure violating the setback by 1.2 feet. The only way to negate this error is for a variance to be placed to run with the land, she said. Staff recommended denial, she said, and the Board of Adjustment concurred. She said the Board of Adjustment discussion was that although the applicant did not create the issue, this may be a quality control matter between the developer and the builder. Currently the Land Development Code does not allow any flexibility in place for circumstances like this, she said. A text amendment could be adopted, she said, that would allow a percentage of variance, in the case of errors like this.

Chris Thomsen, owner of Thomsen Homes, said it is very unusual to discover survey pins placed incorrectly. The possibility for human error exists, he said, and it would be impractical to have a staff person watch every step of the process. If the variance is denied, he said, the entire foundation will need to be torn out and re-poured which would be intrusive to the neighbors on either side. He said the neighbors on either side are agreeable to a variance and the two protests received were not from adjacent neighbors. He said he does not feel his company should be punished for coming forward after discovering this mistake on their own.

Josh Caroon, draftsman at Thomsen Homes, said before work begins the normal procedure is to have survey pins checked by staff and necessary steps are taken if they are missing or appear to have been moved. He said in this case everything appeared normal and work proceeded. Initial concerns about placement of the foundation came after the second neighboring foundation was poured, he said, and following much research, it was determined the placement of the foundation was skewed due to two pins being placed incorrectly.

Commissioner Sobolik said the Board must consider the bigger picture and setting precedence when the underlying issue, and the message that must be sent, is about quality control.

Mayor Walaker said removing a foundation is difficult at best, especially considering the proximity to the neighboring homes.

Commissioner Mahoney said it is a busy construction season and the possibility of mistakes always exists. He said the protests from neighbors appear to be due to concerns with some of Thomsen Home's construction sites in the area. He suggested staff look at drafting a text amendment that could allow variability for situations like this.

Commissioner Mahoney moved the variance be granted.

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

Commissioner Sobolik voted nay.

The motion was declared carried.

Application Filed by Anderson Franchise Investments d/b/a People's Organic Cafe for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Anderson Franchise Investments d/b/a People's Organic Cafe for a Class "FA"

Alcoholic Beverage License at 2653 45th Street South, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Wimmer moved the application be approved.

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.

At 6:00 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Application Filed by D'Vine LLC d/b/a D'Vine LLC for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by D'Vine LLC d/b/a D'Vine LLC for a Class "W" Alcoholic Beverage License at 212 Broadway, 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 for an Alcoholic Beverage License Filed by Whiskey Rock Brewery, LLC d/b/a Whiskey Rock Brewery Withdrawn:

This was the time and date set for a Hearing on an application filed by Whiskey Rock Brewery, LLC d/b/a Whiskey Rock Brewery for a Class "ZM" Alcoholic Beverage License at the NW corner of 45th Street and 49th Avenue South; however, the application has been withdrawn by the applicant.

Commissioner Wimmer moved the Board accept withdrawal of the application for an Alcoholic Beverage License filed by Whiskey Rock Brewery, LLC d/b/a Whiskey Rock Brewery be approved.

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.

Application Period for Receipt of Class "Z" Alcoholic Beverage License Applications Extended: Hearing on Application Filed by Labby's, Inc. d/b/a Labby's Grill and Bar for an Alcoholic Beverage License Continued to October 28, 2013:

A Hearing had been set for this day and hour on the application filed by Labby's, Inc. d/b/a Labby's Grill and Bar for a Class "Z" Alcoholic Beverage License at 1180 19th Avenue North, notice of which had been duly published in the official newspaper for the City of Fargo.

Said application has been approved by the Police Department as to the character of the applicant.

The Board received a communication from Jeff Thomas requesting the Commission extend the application period so that all interested parties could apply for the license.

The Board received a communication from City Auditor Steve Sprague stating in April and May of this year he worked with Terry Kragero from Mahoney's to try and facilitate the addition of investors to the business; however, Mahoney's closed the doors to the business on July 31st. At the August 21st Liquor Control meeting, he said, he informed the Board that there was a good chance that the license would come back to the City for a violation of Fargo Municipal Code 25-1512 A, #2a. He said he informed the Board at that time that two applications had been received for the Class "Z" license. He said he brought up the possibility of advertising the "Z" license; however, was advised not to advertise, which may have been due to having two possible applicants already. Mr. Sprague stated at the September 18th Liquor Control Board meeting Whiskey Rock Brewery withdrew their application, leaving Labby's Grill and Bar as the only application received in time to go through the application process. He said on the morning of the Liquor Control Board meeting he received an additional application and Commissioner Wimmer suggested the Board extend the application period for 30 days to allow other applicants. He said an additional applicant has come forward subsequent to that. The Liquor Control Board forwarded the approved application to the City Commission for their consideration and for the Commissioners to determine if additional time should be allowed to accept other applicants.

Mr. Sprague stated subsequent to the September 18th Liquor Control meeting, an application was received for a bar and restaurant called Catherine's in downtown Fargo and a the third party, Jeff Thomas, is interested in opening a business called the Pink Pussy Cat Lounge at 52nd Avenue and 25th Street South. In the case of multiple applications, he said, the Ordinance states that a drawing is held to determine who is awarded the license. He said the Board could approve Labby's processed application, extend the application period or consider more options such as holding a drawing now with those applications submitted or more licenses could be created. He said when the "Z" licenses were created they were tied to population based on the census.

Jeff Thomas, 1341 East Rose Creek Parkway, said he would like to see a Class "Z" license granted to all three entities that desire it. The other applicants have proved successful in their business endeavors in the community, he said, and he himself, as a business person, is confident he can also be a success and is willing to take the financial risk. Mr. Labernik applied for the license due to a change in the business model for his existing location in north Fargo, he said, and the group desiring a license for the downtown Catherine's venture has proven success. It is a

valuable license, he said, and the City could benefit greatly from the success of these endeavors. He said if the Board chooses not to grant three licenses, he would like to see the application period extended 30 days. He said there seems to be confusion on how the Liquor Control Board works and there is a great deal of ambiguity around the licensing and the timing of applications. Labby's Grill and Bar and Whiskey Rock Brewery filed for the license even before Mahoney's returned it to the City, he said. The application process for such a desired license has not been given the thoughtful consideration that is expected, he said.

Commissioner Williams said it may be necessary to revisit the Ordinance and how available licenses are publicized. He said he agrees with the idea of an extension in this case; however, he feels it is not fair to grant three licenses when there may be others unaware something this valuable is available.

Commissioner Wimmer said he could see extending the application deadline and more parties may be interested in applying. He said confusion exists around why it was not advertised and whether it should have been advertised. He said the date the license became available is not clear, nor is the timeline for applications or how interested parties would even become aware a license is available.

Daniel Labernik, Labby's Grill and Bar, said he followed the proper procedure and the necessary notice of the hearing on his application and does not feel allowing more applicants is fair.

In response to a question from Commissioner Williams about whether there would be a problem with advertising available licenses, Mr. Sprague said it certainly could be explored. He said one problem may be that licenses sometimes sit with no interest for a variety of reasons and another question would be how often to advertise. Perhaps licenses over a certain value, or just those capped, could be advertised, he said.

Police Chief Keith Ternes said his recollection of the discussion at the Liquor Control Board meeting about possibly advertising came down to what had been done in the past. He said from a public safety aspect he would caution against making multiple "Z" licenses available now as those licenses are associated with a traditional bar. The process of making additional licenses available as population grows makes sense due to the public safety needs, he said, due to the challenges generally being addressed as growth happens. He said he agrees that there are advantages to advertising, although there would be challenges with timing and when to advertise.

Sue Solheim, 2105 Sterling Rose Lane, said unless one attends Liquor Control Board meetings it is difficult to know what the rules and processes are. She said as a matter of fairness and in the interest of transparency, she would like to see the application time for this license extended to give those interested an opportunity to apply.

Mayor Walaker said the liquor control system has become complicated as attempts are made to address everything. He said it does not make sense to add licenses without due process. He said he favors advertising in the paper for a period when licenses become available, particularly for a "Z" license and all those licenses holding a high value. In this case, he said, he agrees with extending the application time.

Commissioner Sobolik said Labby's Grill and Bar followed the rules in place and now it appears the rules are being changed mid-process. She said she agrees that public advertising of available licenses should happen in the future.

Commissioner Wimmer said the Liquor Control Board could consider adding additional licenses. As part of the process in the future, he said, the party giving up a liquor license could submit a dated, formal letter and that could be used as the date the application process begins.

Commissioner Wimmer moved the application time period for the available Class "Z" alcoholic beverage license be extended for up to 30 days, limiting it to those three applications already in process, and the Liquor Control Board's recommendation be brought to the City Commission in four weeks for a drawing to determine which applicant is awarded the license.

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.

Commissioner Mahoney moved the Hearing on the application filed by Labby's, Inc. d/b/a Labby's Grill and Bar for an Alcoholic Beverage License be continued to October 28, 2013 at 5:15 p.m.

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.

At 7:05 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Application Filed by Cash Wise Liquor, LLC d/b/a Cash Wise Liquor to Transfer the Alcoholic Beverage License at 4101 13th Avenue South to 1420 34th Street South Approved:

A Hearing had been set for this day and hour on an application filed by Cash Wise Liquor, LLC d/b/a Cash Wise Liquor to transfer the Class "B" Alcoholic Beverage License at 4101 13th Avenue South to 1420 34th Street South, notice of which had been duly published in the official newspaper for the City of Fargo.

City Auditor Steve Sprague said Cash Wise Liquor is now reapplying following amendments to the Ordinance in which there were revisions to the factors to be considered. The Liquor Control Board recommends approval, he said.

Jade Rosenfeldt, Attorney for The Spirit Shop, said as with the first application by Cash Wise, proximity remains a factor and a concern for her client. She said it seems only Cash Wise will benefit as a result of this transfer and she does not see any public benefit.

Commissioner Wimmer said as times change and the City gets larger, there will continue to be decisions made and areas to be defined. He said new off-sale liquor establishments have come into town, existing ones have remodeled and enlarged. He said it is not the role of the Board to stop any of that from happening. He said competition is good for Fargo and he hopes The Spirit Shop continues to do well.

Commissioner Williams said proximity is key here and with Chief Ternes on the Liquor Control Board, which recommends approval, he does not see any reason not to support the license transfer.

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.

Renewal of the Liquor License Issued to Billiards on Broadway Approved:

The Board received a communication from City Auditor Steve Sprague stating on May 28th the Board approved a six month extension of the liquor license issued to Billiards on Broadway. He said subsequent to that date, the licensee failed to file a timely renewal of his license. The licensee has found a new location, he said, and would like to transfer his license; however, the license needs to be renewed first.

Commissioner Mahoney moved the renewal of the liquor license issued to Billiards on Broadway be approved.

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.

Preliminary Approval of \$230,300.00 of PILOT Assistance to BHC Builders, LLC for a Proposed Project at 1030 and 1034 15th Street North: Appropriate Staff Directed to Draft a Developer's Agreement:

The Board received a communication from Planning Director Jim Gilmour stating BHC Builders, LLC has requested \$230,300.00 of PILOT assistance for a proposed project at 1030 and 1034 15th Street North. He said two single family houses are now located on the property and the proposed project would be redevelopment of the site and the construction of two six unit apartment buildings. He said Fargo PILOT policy calls for the Board to review the request to determine if staff should proceed to work with the developer on the project and forward the PILOT application to the City's financial advisors for review.

Commissioner Mahoney moved preliminary approval of \$230,300.00 for a proposed project at 1030 and 1034 15th Street North and that appropriate staff be directed to draft a developer's agreement.

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.

Appointments to the Board of Adjustment:

The Board received a communication from Mayor Walaker recommending that Mark Lundberg be reappointed to the Board of Adjustment and Russell Ford-Dunker be appointed to fill the unexpired term of Deborah Wendel Daub as an alternate member of the Board.

Commissioner Sobolik moved Mark Lundberg be reappointed to the Board of Adjustment for a three-year term ending June 30, 2016 and Russell Ford-Dunker be appointed as an alternate member of the Board of Adjustment to fill the unexpired term of Deborah Wendel Daub expiring June 30, 2014.

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.

Appointments to the Human Relations Commission:

The Board received a communication from Mayor Walaker recommending that Sandra Holbrook be reappointed to the Human Relations Commission for a three-year term expiring on June 30, 2016; Sean Coffman and Cizaria Malia Vuni be appointed to replace Amy Jacobson and Joshua Boschee, and Rachel Hoffman be appointed to fill the unexpired term of Raul Gomez on the Human Relations Commission. He also recommended that Sandra Holbrook be appointed to serve as an ex-officio member on the Native American Commission for a three-year term expiring on June 30, 2016;

Commissioner Sobolik moved to approve the reappointment of Sandra Holbrook as a member of the Human Relations Commission for a three-year term expiring on July 1, 2016, as well as an ex-officio member of the Native American Commission for a three-year term ending June 30, 2016; to approve the appointment of Sean Coffman and Cizaria Malia Vuni to the Human Relations Commission for three-year terms expiring on July 1, 2016; and to approve the appointment of Rachel Hoffman to the Human Relations Commission to fill the unexpired term of Raul Gomez expiring on July 1, 2014

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.

Commissioner Sobolik moved that the Board adjourn to 5:00 o'clock p.m., Monday, October 14, 2013.

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

The time at adjournment was 7:33 o'clock p.m.