

- g. NDDOT Section 5316 Transit Grant Agreement for \$256,302.00 in Job Access Reverse Commute funds (CFDA #20.516) and Section 5317 Transit Grant Agreement for \$23,298.00 in New Freedom Program funds (CFDA #20.521).
- h. Health Department budget adjustment and Grant Agreement with Dakota Medical Foundation and Consultant Deb Haugen for dietitian consulting services for a Cass-Clay School Wellness Policy Project.
- i. Receive and file Ordinance Amending Subsection O of Section 25-1506 and 25-1507 of Article 25-15, of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages (to increase the food component from 50% to 65% and decrease the initial issuance fee from \$25,000.00 to \$10,000.00).
- j. Applications for 5-year tax exemptions for improvements made to buildings:
 - (1) Joshua and Stacy Duncan, 458 Elmwood Avenue South.
 - (2) Joshua and Stacy Duncan, 458 Elmwood Avenue South.
 - (3) Marietta Rasmussen, 2922 12th Street South.
- k. 3-month extension of the liquor license for Big D's Bar and Grill and name change to Shotgun Sally's Rock 'N' Roll Saloon.
- l. Applications for Games of Chance:
 - (1) Bethany Homes Auxiliary for a raffle on 12/6/13.
 - (2) NDSU Judging Club for a raffle on 3/12/14.
 - (3) The Village Family Service Center for a raffle on 11/15/13.
 - (4) FM Rotary Foundation for a calendar raffle from 3/1/14 to 3/31/14.
 - (5) NDSU Tau Sigma Delta for a raffle on 12/1/13.
 - (6) Benefit for Chris McCrackin for a raffle on 11/3/13; Public Spirited Resolution.
- m. Contract with Team Laboratory Chemical Corp., in the amount of \$66,000.00, for 2013/2014 Hydrant Guard.
- n. Resolution approving Plat of Amber Valley West Fourth Addition (Attachment "B").
- o. Purchase Agreement – Permanent Easement with Gerald D. Eid (Project No. 6032).
- p. Easement request from Cass County Electric at 1600 51st Street North.
- q. NDDOT Agreement to install and maintain flashing beacons on 19th Avenue North for the NDSU barn entrances and exits (CFDA #20.205).
- r. Professional Services Agreement Amendment #4 with Houston Engineering, Inc., in the amount of \$66,737.00, for Project No. 5681-02.
- s. Distribution of surplus computer equipment to designated non-profit organizations.

- t. Bid award for Project No. 6227 to Industrial Builders, Inc. in the amount of \$314,969.50.
- u. Contract and bond for Project No. 6234.
- v. Bills in the amount of \$9,386,420.59.

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.

P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258: Protests Received and Declared Insufficient:

The Statutory Resolution of Necessity for the construction of P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on September 23 and 30, 2013 and protests representing 38.02 percent of the legal protest area have been received and filed in the office of the City Auditor within the legal protest period.

Commissioner Mahoney moved the protests be received and filed and declared insufficient

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.

Bids Received for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258:

The bids for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., October 23, 2013 and the bids were found to be as follows:

Key Contracting	Fargo, ND
Bid:	\$128,817.00
Kindred Plumbing and Heating, Inc.	Kindred, ND
Bid:	\$133,172.00
Sellin Brothers, Inc.	Hawley, MN
Bid:	\$145,589.00

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258 Awarded to Key Contracting in the Amount of \$128,817.00:

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 P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received October 23, 2013 for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258 shows the bid of Key Contracting of Fargo, North Dakota, in the sum of \$128,817.00 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 \$128,817.00 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6258 in the City of Fargo, North Dakota, be and the same is hereby awarded to Key Contracting for the sum of \$128,817.00, 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 Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Williams, Sobolik, Wimmer and Walaker voted aye.

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

Resolution Adopted Supporting Equal Protection of all Citizens Regardless of Sexual Orientation, Gender Identity or Gender Expression: Appropriate Staff Directed to Explore the Inclusion of the Terms "Gender Identity" and "Gender Expression" to the City of Fargo Policy 200-002-A:

Commissioner Sobolik said she asked for the Commission's support last July in exploring protection from sexual orientation discrimination in the City of Fargo. She said since that time she has worked with the City Attorney's office to see what could be done. The City's HR policy included a reference prohibiting discrimination based on sexual orientation in 2000, she said, a move that was ahead of its time. While the City can regulate itself as an employer, she stated, there is nothing that the City can do without legislation at the state level. She said she is proposing a Resolution as a first step to promote tolerance as a City and said she has asked that gender identity and expression be added to the City policy. Grand Forks was recently able to ban housing discrimination based on sexual orientation or gender identity because it has a rental building registry, she said, which is something Fargo could explore at another time.

Joshua Boschee, District 44 Representative, said he was a primary sponsor of legislation against such discrimination when it was introduced to the State Legislature last session. He said there was support; however, it did not pass. He said Fargo has been a leader in civil and human rights since the creation of the Human Relations Commission in 2000. He said the City includes sexual orientation as a protected class in City employment and is one of the first cities to have a liaison in the Police Department to the lesbian, gay, bisexual, transgender (LGBT) Community. It is good to know the City of Fargo is moving forward on these issues, he said.

Barry Nelson, member of the North Dakota Human Rights Coalition, also commended the actions of the City Commission and the leaders in the community.

He said the ND Human Rights Coalition is a statewide organization working to affect change so all citizens enjoy full civil rights. He said there are people in Fargo who have lost, or fear they will lose, their housing or their job because of sexual orientation or gender identity. He said this is a first step in attaining equal protection and he urged the Board to vote yes.

Tom Fiebiger, former State Senator and attorney, said for more than 20 years he has represented citizens who have been discriminated against. He said he does not get as many calls, not because discrimination isn't happening, but because people know that they have no recourse. He said this is outrageous in the year 2013 and he challenged the Commission to figure out a way to move this to the next step.

Tom Freier, North Dakota Family Alliance, said while he applauds the efforts to be inclusive, he feels there is already an acceptance in the community and that the efforts may divide more than they unite. In adding the terms "gender identity" and "gender expression," he said, it is important for those terms to be defined. He said when the issue was debated on the state and national levels, the definition of those terms became important when it came to implementation. He said there was a high level of debate at the state level during the last two legislative sessions and the result was that a special status would not be granted. He said he sees this Resolution as the Board really going on the record as supporting and understanding the implications and definitions of gender identity, and how it relates, not only to the employee handbook, but down the road to housing discrimination.

John Trandem said while he understands advocating on behalf of victims, he questions whether there has been adequate representation of those victims for whom these efforts are extended for, and whether this is the appropriate juncture to proceed with such a Resolution.

Brad Friesen, a rental property owner, said he supports existing housing laws and he feels the present system is working. He said he supports the heterosexual standards and traditional family structures that have been the basis of a strong society. He said he does not support granting special status to splinter groups with unnecessary laws that put restrictions and controls on the entire City, removes civil liberties and conflicts with religion, forcing support of a lifestyle one does not agree with. He said he questions where one draws the line when it comes to discrimination.

Commissioner Sobolik introduced the following resolution and moved its adoption:

WHEREAS, The Fargo City Commission encourages tolerance and acceptance of all citizens regardless of sexual orientation, gender identity or gender expression; and

WHEREAS, City of Fargo employee policy manual (Policy 200-002-A) currently prohibits conduct or harassment based on sexual orientation; and

WHEREAS, The City Commission recognizes there are citizens in the City whose gender identity or gender expression may not fit their assigned sex at birth.

NOW, THEREFORE, BE IT RESOLVED, That the Fargo City Commission supports equal protection of all citizens regardless of sexual orientation, gender identity or gender expression.

BE IT FUTHER RESOLVED, That City staff is directed to explore the inclusion of the terms "gender identity" and "gender expression" to City of Fargo Policy 200-002-A.

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.

Application Filed by Novum Pharmaceutical Research Services for a Payment in Lieu of Tax Exemption (PILOT) Approved:

A Hearing had been set for this day and hour on an application filed by Novum Pharmaceutical Research Services for payment in lieu of property tax exemption for a new project consisting of clinical research, data management, statistical and reporting services to pharmaceutical and related industries at 4801 Amber Valley Parkway.

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

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

City Assessor Ben Hushka said this is the former PRACS building where the applicant will occupy 47% of the building. The applicant originally asked for a ten-year payment in lieu of taxes, he said, 100% for the first 5 years and a 50% payment in lieu of taxes for the remaining 5 years. He said the Tax Exempt Review Committee feels the request meets the necessary criteria to be eligible for the payment in lieu of tax for the portion of the building to be occupied by the applicant and recommends a five-year \$0 payment PILOT.

Commissioner Wimmer moved that Novum Pharmaceutical Research Services at 4801 Amber Valley Parkway be granted a five-year, \$0 payment in lieu of tax exemption pursuant to Chapter 40-57.1, NDCC for the portion of the building to be occupied by the applicant.

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

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

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

A Hearing had been set for this day and hour on an application filed by Aldevron, LLC for payment in lieu of property tax exemption for a project which the applicant will use in the operation of its worldwide headquarters and base manufacturing of nucleic acid products for research at 4801 Amber Valley Parkway.

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

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

City Assessor Ben Hushka said this applicant will also occupy the former PRACS building. The applicant originally asked for a ten-year payment in lieu of taxes, he said, 100% for the first 5 years and a 50% payment in lieu of taxes for the remaining 5 years. He said the Tax Exempt Review Committee feels the request meets the necessary criteria to be eligible for the payment in lieu of tax for the portion of the building to be occupied by the applicant and recommends a five-year, \$0 payment PILOT.

Commissioner Wimmer said it is good to see the former PRACS building being used again. He said this is a better fit for the applicant who originally purchased the Woodrow Wilson building, which they now intend to repurpose or sell, he said.

Commissioner Wimmer moved that Aldevron, LLC at 4801 Amber Valley Parkway be granted a five-year, \$0 payment in lieu of tax exemption pursuant to Chapter 40-57.1, NDCC for the portion of the building to be occupied by the applicant.

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

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

Application Filed by Midwest Burrito LLC d/b/a Sweeto Burrito for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Midwest Burrito LLC d/b/a Sweeto Burrito for a Class "H" Alcoholic Beverage License at 117 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 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 Filed by Golf Addiction ND, LLC d/b/a Golf Addiction for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Golf Addiction ND, LLC d/b/a Golf Addiction for a Class "I Entertainment" Alcoholic Beverage License at 4474 23rd Avenue South, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Wimmer moved the application be approved.

Second by 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 to Transfer the Alcoholic Beverage License from Oeluck, Inc. d/b/a Tips & Taps to Oeluck d/b/a Blu-Sky/Billiards on Broadway Continued to November 25, 2013:

This was the time and date set for a hearing on the application to transfer the Class "F" Alcoholic Beverage License from Oeluck, Inc. d/b/a Tips & Taps at 206-208 Broadway to Oeluck d/b/a Blu-Sky/Billiards on Broadway to be located at 122 1/2 Broadway, notice of which had been duly published in the official newspaper for the City of Fargo; however, the applicant has requested that the Hearing be continued until November 25, 2013.

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

Commissioner Mahoney moved the Hearing be continued to November 25, 2013 at 5:15 p.m.

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.

Hearing on Application Filed by Labby's Inc. d/b/a Labby's Grill & Bar for an Alcoholic Beverage License:

A Hearing had been set for September 30, 2013 on the application filed by Labby's Inc. d/b/a Labby's Grill & 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.

At the September 30, 2013 meeting, the Hearing was continued to this day and hour.

City Attorney Erik Johnson said the Hearing for this application was continued due to two additional applications being submitted for the single Class "Z" Alcoholic Beverage License available and discussions at that time suggested adding additional "Z" licenses as well as finding a process for doing that. By ordinance, he said, a drawing would be held to determine which applicant would be granted that single license. He said his understanding is that the Liquor Control Board recommends an approach to determine population in a manner other than awaiting the census numbers each decade which will result in additional "Z" Licenses being available. Reasonable extrapolation is used by the Planning staff, he said, and if the Commission were to adopt such a methodology to determine population and if the population is recognized to be 10,000 more than the 2010 Census, one additional "Z" license would be available. A drawing today could determine awarding one applicant the available "Z" license, he said, or two could be available if a population increase were recognized. If the desire is to have three licenses available, he said, adding a third would require an amendment to the City Ordinance and would require at least two additional meetings for adoption. He said a drawing could be done now to award the license, or alternatively, if one or more of the applicants would be willing to let one applicant go forward without a drawing, the additional licenses could be addressed later.

Commissioner Wimmer said the recommendation of the Liquor Control Board was to find a vehicle allowing all three "Z" licenses and in essence there would be a net gain of one license. He said if two applicants would be agreeable to awarding

Labby's the "Z" License immediately; the remaining two could be moved forward in roughly a month. If not, he said, there would be a drawing tonight and one of the three would move ahead faster. Or, alternatively, he said, all three could wait until there are more "Z" licenses, which could be a month.

City Auditor Steve Sprague said the first step is to conduct the Hearings as scheduled to approve each of the applicants with the assignment of the appropriate licenses happening later. He said the application for Labby's has been approved by the Police Department as to the character of the applicant.

Commissioner Mahoney moved the applicant 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.

Hearing on Application Filed by JR Hospitality Group, LLP d/b/a Catherine's for an Alcoholic Beverage License:

A Hearing had been set for this day and hour on the application filed by JR Hospitality Group, LLP d/b/a Catherine's for a Class "Z" Alcoholic Beverage License at 609 NP Avenue, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

City Auditor Steve Sprague said he received a communication from Chief of Police Keith Ternes recommending approval of the application; however, he said a Class "FA" may be more appropriate than a Class "Z" license. He said as with the previous application, the next step is for approval of the applicant with assignment of the license to come later.

Commissioner Mahoney moved the applicant 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.

Hearing on Application Filed by The Pink Pussy Cat Lounge, LLC d/b/a The Pink Pussy Cat Lounge for an Alcoholic Beverage License:

A Hearing had been set for this day and hour on the application filed by The Pink Pussy Cat Lounge, LLC d/b/a The Pink Pussy Cat Lounge for a Class "Z" Alcoholic Beverage License at 2600 52nd Avenue South, Suite 110, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

City Auditor Steve Sprague said he received a communication from Chief of Police Keith Ternes stating the application indicates the business will be located at 2600 52nd Avenue South and this location creates a conflict for another tenant who owns and operates a daycare facility. The existing lease agreement clearly describes how the existence of a "bar" adjacent to the daycare facility is prohibited, he said. He stated the applicant has since amended his application and determined an alternative location near 52nd Avenue South and 27th Street; thus, he is inclined to recommend approval. Mr. Sprague stated that, as with the previous two businesses applying for Class "Z" licenses, at this time the Board is approving the applicant with the assignment of a license at a later date.

Commissioner Wimmer moved the applicant 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.

City Attorney Directed to Prepare an Ordinance Change Creating Additional Class "Z" Alcoholic Beverage Licenses: Assignment of Licenses for Labby's, Catherine's and The Pink Pussy Cat Delayed for Four to Six Weeks:

Mayor Walaker said the three applicants are likely looking for assurances that there will be additional licenses granted. He said it makes sense to base license availability on Planning Department population determinations rather than wait for the official census. He asked whether the applicants were willing to go forward awarding a "Z" license to Labby's and wait four to six weeks for the creation of additional licenses for the other two applicants.

Randy Thorson, representing JR Hospitality Group, said he does not have a problem waiting; however, he would like to be assured a license would be granted. He said if not, he would like to have all applicants wait, and if there remains only one license, a drawing should be held between all three to make a determination.

Daniel Labernik, Labby's Grill and Bar, said he would be willing to wait and waived the need for a drawing.

Jeff Thomas said he also would like assurances that additional licenses will be available. He said he is also willing to waive the need for a drawing now with the understanding that if licenses are not available to all three applicants through an Ordinance change, the assignment of the license would be determined by a drawing.

City Attorney Erik Johnson said, technically, assurances or action on an Ordinance cannot be binding until the actual Ordinance has been passed. He said if all three are willing to wait, the process to pass an Ordinance takes two to three meetings, which is four to six weeks.

Michael Page, owner of Fargo Billiards and Gastro Pub, said his business received an "FA Entertainment" Alcoholic Beverage License prior to the creation of the "Z" Alcoholic Beverage Licenses and is the only liquor establishment that is not allowed to discount or advertise. He said as part of the Ordinance revisions, he would like to see that changed.

Mr. Sprague said not advertising was part of the negotiations when the license for Fargo Billiards and Gastro Pub was created. He said Mr. Page could make a request for the Liquor Control Board to reconsider that.

Commission Wimmer moved the City Attorney be directed to prepare an Ordinance change creating additional Class "Z" Alcoholic Beverage Licenses and that the assignment of licenses for Labby's, Catherine's and The Pink Pussy Cat be delayed for four to six weeks.

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.

Resolution Adopted Approving Steidl Hawes Addition (1611 and 1615 1st Avenue North and 106 16th Street North):

Commissioner Sobolik offered the following Resolution and moved its adoption:

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

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "Steidl Hawes Addition" containing 1 Lot, 1 Block, and 0.55 acres of land more or less, located at 1611 and 1615 1st Avenue North and 106 16th Street North; and

WHEREAS, The plat includes the vacation of part of an alley within the boundaries of the proposed "Steidl Hawes Addition"; and

WHEREAS, A Hearing was held August 6, 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 September 23 and 30, 2013 and October 7 and 14, 2013 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., October 28, 2013 at which time said Plat would be considered and all interested persons would be heard.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission be accepted and the Plat entitled "Steidl Hawes 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.

At 6:02 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Parcels of Land in James Holes Subdivision Rezoned (1332 and 1336 5th Street North and 1351 and 1337 North Broadway):

At a Hearing held on October 1, 2013 the Fargo Planning Commission recommended approval of a change in zoning from SR-2, Single-Dwelling, MR-2, Multi-Dwelling and MR-3, Multi-Dwelling to MR-3, Multi-Dwelling with a Conditional Overlay on Lots 1 through 3, and the north 90 feet of Lot 4, Block 2, James Holes Subdivision.

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

Planning Administrator Nicole Crutchfield said there has been opposition to the rezoning and planned addition to Rosewood on Broadway. She said Rosewood on Broadway is trying to unify and square off their campus and is seeking a zoning change on properties at 1332 and 1336 5th Street North, and 1351 and 1337 North Broadway. Based on neighborhood concerns and comments, she said, staff has placed a Conditional Overlay on top of the MR-3 zoning. An overlay is one tool the Planning Department can use as a way to include additional standards, she said, and tonight she is presenting one that is slightly amended from one proposed earlier. She said this project has caused confusion due to some construction happening that was already approved. She said the applicant has been willing to work with the neighborhood on some of their concerns and has agreed to design components and a 35 foot height restriction for an addition, as well as exceeding setback requirements.

Mayor Walaker said it is important to have the nursing home facility on the north side. He said he has visited with representatives from Rosewood on Broadway, as well as concerned neighbors. He said he heard neighbors' fear that allowing rezoning of neighboring lots will lead to additional future expansion of the nursing home into residential areas. He assured residents that as long as he is in his position, he will not vote for additional zoning changes in the future. He said he can see by the numbers in the audience that there is a strong representation, both for and against the proposed zoning change.

Tony Keelin, CEO and Administrator at Rosewood on Broadway, said occupancy of the home has remained above 98 percent for over five years and 20 people are presently on the waiting list. He said a goal of this rezoning is to construct an addition to improve resident accommodations, converting 17 semi-private rooms to private and adding more beds to meet the demands of the community. He said the skilled nursing home is owned by the Sisters of Mary of the Presentation Health System and has been a part of the community for over 60 years. In May 2012, he said, a 5-plex apartment at 1332 5th Street North was gifted to Rosewood by the Berg family. After that, Rosewood on Broadway also acquired the property adjacent to that to avoid problems with spot-zoning, he said. Due to opposition of the rezoning, he said, a conditional overlay has been developed and a more residential appeal was implemented. The services of a landscape architect have also been obtained to assist with proper landscape buffers, he said.

Sister Marlyss Dionne, Chair of the Sisters of Mary of the Presentation (SMP) Health System's Long Term Care Board, said the small addition was approved by that Board to provide more private rooms and continue the commitment to serve the residents with respect and compassion.

Jerry Franek, resident of Rosewood on Broadway since 1999, said he spent his first three years there in a small semi-private room. When he was finally able to be in a private room with more space, more dignity, privacy and room for visitors, it made all the difference in the world to him, he said.

Zachary Hanson Thurn, 1328 5th Street North, said his home is adjacent to the properties being requested for rezoning. While he acknowledges nursing homes have a vital role in the community, he said, this proposal is not about double versus single occupancy rooms; it is about rezoning properties and the result of that. He said the neighborhood has already endured parking problems and noise from construction projects and demolition for months, and more development will extend that. The scale of the proposed addition will dwarf his home and the other houses in the neighborhood, he said, and he begs the Commission to not let this happen to his family and his neighborhood.

Ray Gross, 1329 5th Street North, asked the Board to help the neighborhood restore the former buffer zone on 5th Street. He said it was a surprise when the neighborhood became aware of Rosewood's intention to recover that green space. He said they believed the special use zoning put in effect in 1994 was still applicable. They learned Fargo's revised land use code approved in 2004 negated many special use permits issued prior, he said, and now it appears the only method available to recover the buffer is to oppose this zoning change. Rosewood's reasoning about concerns for liability for children attracted to the green space to play, he said, could perhaps be solved with a hold harmless agreement with the City to absolve the potential liabilities. As far as protests, he said, nursing home residents and renters are not directly responsible for payment of property taxes and not legally eligible to protest local zoning changes. This area has a 90 percent protest by property owners, he said, and 52 percent protest by land area. He said communication with Rosewood management has been frustrating, leaving neighbors feeling they have had little consideration in the process. He asked the Board to deny this rezoning request.

Linda Forseth, 1358 4th Street North; Jim and Anita Syvertson, 1354 4th Street North; and Jeremy Cahill, 1350 4th Street North also spoke as neighbors in opposition to the rezoning request.

At 7:10 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Liz Hughes, 1353 5th Street North, said this has been her neighborhood for 30 years and she would like to keep her neighborhood. She said she opposes the zoning change.

Patrick Brown, 1306 5th Street North, said it appears the rezoning must be denied due to the concept plan lacking the green space and parking places mandated by existing Ordinances, as well as density issues with the MR-3 zoning.

Jonathan Garaas, Garaas Law Firm, said many residents of the area banded together to form the "James Holes Neighborhood Group" and asked him to appear in opposition to the proposed rezoning. He said there are problems with the conditional overlay, the parking standards, the density issues, the green space and open space requirements, as well as maximum building requirements imposed by law. He said it does not make sense to change the zoning to allow construction that is not legal.

Mike Bruckbauer, Vice Chair of the SMP Health System's Long Term Care Board, said Rosewood on Broadway has been a good neighbor. He said the proposal is for a small expansion to the existing facility and they are not looking to buy up additional space. He said Rosewood on Broadway has gone along with the overlays and suggestions, and continues to do what they can to be a good neighbor, and he asked for the Board's support for the rezoning.

Ms. Crutchfield said the points brought up by Mr. Garaas are all site plan administration details and the proposal in front of the Board is for a zoning change. The diagram presented is conceptual, she said, and not a requirement for the rezoning.

Commissioner Williams said he would like to point out that neighborhoods and infill are part of the GO2030 and regardless of the vote, it is important that both parties continue to get along. He said while he does not agree with the zoning change, he is pleased spot zoning was avoided.

Commissioner Wimmer said the neighborhoods are important to the Board and these decisions are not taken lightly.

Commissioner Mahoney thanked the neighbors for their input. He said it appears reasonable overlays have been implemented and that Rosewood is working to satisfy the neighborhood.

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, The Fargo Planning Commission approved the rezoning on October 1, 2013; and

WHEREAS, Written protests to the rezoning representing over 20% of the legal protest area have been received and filed in the Office of the City Auditor.

NOW, THEREFORE, BE IT RESOLVED, That the rezoning be approved as recommended by the Planning Commission.

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

Commissioner Williams voted nay
The motion was declared carried.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in James Holes Subdivision, 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 James Holes Subdivision, Fargo, Cass County, North Dakota be placed on first reading.

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

Commissioner Williams voted nay.
The motion was declared carried.

Parcels of Land in Deer Creek Second Addition Rezoned (6771 and 6793 60th Avenue South):

At a Hearing held on September 3, 2013 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to SR-2, Single-Dwelling of the proposed Deer Creek Second Addition.

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

Commissioner Sobolik offered the following Resolution and moved its adoption:

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

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

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff 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 Deer Creek Second 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 Deer Creek Second 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 Section 20-0401, Use Table, and Section 20-0402, Use Standards of Article 20-04, of Chapter 20 of the Fargo Municipal Code (Land Development Code) Approved:

A Hearing had been held by the Fargo Planning Commission on September 3, 2013 for the purpose of considering a request for a text amendment to Amend Section 20-0401, Use Table, and Section 20-0402, Use Standards of Article 20-04, of Chapter 20 of the Fargo Municipal Code (Land Development Code) all relating to Off-Premise Advertising Signs 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 text amendment resolves some conflicts between the Sign Code passed in 2011 and the Land Development Code. She said this amends the Land Development Code to reflect the Sign Code.

Commissioner Wimmer 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 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.

First Reading of an Ordinance Amending Sections 20-0401 and 20-0402.B of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Off-Premise Advertising Signs:

Commissioner Wimmer 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 20-0401 and 20-0402.B of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Off-Premise Advertising Signs be placed on first reading.

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.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Tuesday, November 12, 2013.

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

The time at adjournment was 7:38 o'clock p.m.