

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:                                      Monday:                                      September 28, 2015:

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 28, 2015.

The Commissioners present or absent were as shown following:

Present: Gehrig, Piepkorn, Sobolik, Williams, Mahoney.

Absent: None.

Mayor Mahoney presiding.

Order of Agenda Approved:

Commissioner Gehrig moved the Order of the Agenda be approved moving Item No. "7" from the Consent Agenda to the Regular Agenda and omitting Item No. "11b" from the Consent Agenda.

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

Minutes Approved:

Commissioner Piepkorn moved that the Minutes of the Special Meeting of the Board and the Regular Meeting of the Board held on September 14, 2015 be approved as read.

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

Consent Agenda Approved:

Commissioner Williams moved the Consent Agenda be approved as follows:

1. Renewal of MetLife Dental Insurance, Avesis Vision Insurance, Mutual of Omaha Life Insurance and Lincoln Financial Group Long-Term Disability Insurance effective 1/1/16.
2. Resolution Authorizing the Issuance of Taxable Revenue Bond, Series 2015C (Qualified Energy Conservation Bond – Direct Payment) Approving Certain Actions, Awarding the Sale Thereof, Prescribing the Terms (Attachment "A").
3. Service Agreement with the North Dakota Department of Health for \$15,000.00 for Viral Hepatitis Vaccination/Linkage-to-Care Program (Contract # PF15.055).
4. Contract with the North Dakota Department of Health for \$53,479.00 for Title V Maternal and Child Health Block Grant activities (CFDA #93.994).

5. Application filed by Timothy Strommen for a 5-year tax exemption for improvements made to a building at 1506 5th Avenue South.
6. Developers Agreement to utilize CDBG housing and neighborhood allocations for the HomeField Senior Housing Project at 4245 28th Avenue South and offer a letter of support for the Low Income Housing Tax Credit application.
7. Issuance of RFP for Consulting Services for a Public Art Master Plan (moved to the Regular Agenda).
8. Agreement with KLJ for sub-area transportation planning and preliminary engineering services (19th Ave. and 45th St. N.).
9. Applications for Games of Chance:
  - a. Lewis and Clark Elementary PTA for bingo on 10/30/15.
  - b. Red River Children's Advocacy Center for a raffle on 11/19/15; Public Spirited Resolution.
  - c. Fargo North Spartacas Dance Team for a raffle on 12/5/15.
  - d. Kappa Psi CoEd Pharmaceutical Fraternity for a raffle on 10/19/15.
10. 5-year lease with Kinetic Leasing, in the amount of \$154,015.00 per year, for one crawler dozer for the Landfill.
11. Deferral Agreements for Improvement District No. 6104:
  - a. Gregory and Jeri Wettstein.
  - b. Francis K. Bohn, Jr. (omitted).
12. Employee Testing Services Agreement with Sanford Health for biometric testing.
13. Access Agreement - Soil Borings with the Fargo Park District for Project No. FM-15-L1.
14. Permanent Easement for Midcontinent at 2425 and 2500 17th Avenue South.
15. Temporary Construction Easement for the Fargo Park District at 3913 10th Street North.
16. Memorandum of Agreement with NDDOT for Project No. FM-15-M1.
17. Contract time extension for Project No. FM-14-61 to 10/5/15.
18. Contract time extension for Project No. FM-14-62 to 11/1/16.
19. Temporary Parking and Road Closure Agreement for Improvement District No. BN-15-F1 (5225 23rd Avenue South).
20. Bills in the amount of \$16,141,295.52.

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

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

Amended Engineer's Report for Improvement District No. BN-15-N:

The Board received an Amended Engineer's Report from City Engineer April Walker stating this project is for the new construction of underground utilities and concrete paving on 13th Avenue North, 14th Avenue North and 55th Street North in the Commerce on 12th Addition. She said Sanitary Sewer, Water Main, Storm Sewer, P.C. Concrete Paving, Street Lights and Incidentals Improvement District BN-15-N also includes the purchase of the land from the developer for the construction of the retention pond in Block 3, Lot 1. She said the land acquisition cost is \$502,973.00.

Commissioner Williams moved the Amended Engineer's Report for Improvement District No. BN-15-N to include the land acquisition cost of \$502,973.00 be approved.

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

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

Storm Sewer Lift Station and Incidentals Improvement District No. NN-15-B (Commerce on 12th Avenue North):

Commissioner Williams moved the following action be taken in connection with Storm Sewer Lift Station and Incidentals Improvement District No. NN-15-B:

Adopt Resolution Creating Improvement District No. NN-15-B:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. NN-15-B in the City of Fargo, North Dakota, be created

On 12th Avenue North between 55th Street North and 47th Street North.

On 13th Avenue North between 57th Street North and 55th Street North.

On 14th Avenue North between 57th Street North and 55th Street North.

On 55th Street North between 14th Avenue North and 12th Avenue North.

COMPRISING

Lots 1 through 4, Inclusive, Block 1.

Lots 1 through 8, Inclusive, Block 2.

Lots 1 through 9, Inclusive, Block 3.

All platted in Commerce on 12th Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That Storm Sewer Lift Station and Incidentals Improvement District No. NN-15-B in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. NN-15-B:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. NN-15-B in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$2,951,750.00.)

Direct City Auditor's Office to Call for Bids for Improvement District No. NN-15-B:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. NN-15-B in the City of Fargo, North Dakota.

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

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

Communication Regarding the "Ponyland Farm" on 32nd Avenue North and University Drive and Required Drain Setback Received and Filed:

The Board received a communication from City Attorney Erik Johnson stating Kerber Ponyland LLLP owns land commonly known as "Ponyland" located at 32nd Avenue North and University Drive. He said Kerber family members have had conversations with staff members at City Hall regarding the 175 foot setback requirement (from legal drains) and the Kerber's are working to sell some or all of their property for development. They have urged the City to compensate them for the area required to be set back from the legal drain, he said, and have offered to sell 407,045 square feet (9.344 acres) at a price of \$3.50 per square foot, a total of \$1,424,657.00. The Kerber's have mentioned the possibility of bringing a legal claim for loss and if the Board wishes to confer with the City Attorney it could be discussed in Executive Session, pursuant to N.D. Century Code Section 44-04-19.1(2), or, he said, the offer could be received and filed.

Beverly Kerber said her family has owned the land for more than 50 years and the setback requirement has rendered 1/3 of the property, over 9 acres, valueless and the Kerber family feels compensation is justified.

City Engineer April Walker said when the river setback ordinance was adopted, it included a drain setback requirement of 175 feet which does get dedicated back to the public, and in this case it is the Southeast Cass Water Resource District that takes ownership of the land. She said the purpose is to provide drainage and while this is not an area where it is necessary to build flood control, the 175 feet is still necessary for facilitating drainage and to make sure buildings get set back far enough.

Commissioner Williams moved the communication regarding the Ponyland Farm on 32nd Avenue North and University Drive and required drain setback be received and filed.

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

Issuance of RFP for Consulting Services for a Public Art Master Plan Approved:

Planning Administrator Nicole Crutchfield stated that in May of 2012, the City adopted the GO2030 Comprehensive Plan which contains an Arts and Culture Initiative. She said the plan includes recommendations to incorporate public art into the public realm, develop dedicated public gathering spaces and public spaces in neighborhood centers; promote programming of public spaces with festivals and other cultural events and establish an Arts Commission. In January of 2014, a Public Art Taskforce was established, and specifically recommended the City establish an Arts and Culture Commission, she said, and develop a Public Art Master Plan. She said an Arts and Culture Commission was established in November of 2014 and was authorized to "guide the development of a Public Art Master Plan." A Request for Proposals (RFP) was drafted to seek proposals from interested consultants to provide services for a Public Art Master Plan which is intended to build upon ideas and opportunities outlined within the GO2030 Comprehensive Plan and to provide a strategy and guidebook for creating public art within both public and private development. Four members of the Arts and Culture Commission will serve as the selection committee, she said. She said a Master Plan would help determine a process and policies to work with artists, process requests, and establish guidelines and parameters on how to operate with technicalities and liabilities and how to administer art.

Commissioner Sobolik said the taskforce had questions about ownership of existing art and maintenance. She said an inventory was started; however, it was determined to be beyond the scope of staff. She said a consultant could make recommendations and present ideas on how to pay for public art and give examples of what other communities are doing, such as how a public private partnership could work.

Commissioner Gehrig says he feels there is a large difference between public art and publicly funded art and this could be a step towards creating publicly funded art. He said while it is possible to be a facilitator, funding art is not the role of government. He said it would be better to use private dollars to fund the Master Plan. There are many private organizations, artists and businesses in the community, he said, and he does not feel it is the job of the City to venture into this.

Commissioner Williams said he sees this as a way to find out how the arts may be funded and determine the City's role. He said the public weighed in during the development of GO2030 and determined Arts and Culture as the third highest priority, after flood protection and healthy neighborhoods.

In response to a question from Mayor Mahoney about the cost of an RFP, Ms. Crutchfield said it is estimated that the bids will come in between \$40,000.00 to \$60,000.00; however, it is not known until proposals come back. She said funds have already been allocated in the Planning Department's 2015 budget.

Commissioner Sobolik moved the issuance of an RFP for Consulting Services for a Public Art Master Plan be approved.

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

Commissioner Gehrig voted nay.

The motion was declared carried.

Resolution Adopted Authorizing the Issuance of Revenue Bonds by the South Dakota Health and Educational Facilities Authority for Sanford and Authorizing the Execution of Certain Documents in Connection Therewith:

The Board received a communication from Director of Finance Kent Costin stating this is a public hearing relating to the issuance of revenue bonds by the South Dakota Health and Education Authority on behalf of Sanford. He said a hearing is required since a portion of the bond proceeds will be used for the construction of medical facilities in Fargo.

Sanford Vice President Don Marty said about \$90 million of the face value of the bonds would be used to finish up the medical facility project in Fargo. He said the \$494 million project is on time and on budget.

Commissioner Williams moved the Resolution entitled "Resolution Providing for Issuance of Revenue Bonds by the South Dakota Health and Educational Facilities Authority for Sanford and Authorizing the Execution of Certain Documents in Connection Therewith" and referred to as Attachment "B", be adopted and attached hereto.

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

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

Application Filed by Transcendent Hospitality Group LLC d/b/a Four Points by Sheraton for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Transcendent Hospitality Group LLC d/b/a Four Points by Sheraton for a Class "FA" Alcoholic Beverage License at 5064 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 Piepkorn moved the application be approved.

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

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

Application Filed by Barbacoa ND, LLC d/b/a Barbacoa for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Barbacoa ND, LLC d/b/a Barbacoa for a Class "FA" Alcoholic Beverage License at 3241 42nd 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 Piepkorn moved the application be approved.

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

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

Parcels of Land in Hector's Subdivision Rezoned (1801, 1809, 1811, 1817, 1833 and 1841 43rd Street North):

At a Hearing held on September 1, 2015 the Fargo Planning Commission recommended approval of a change in zoning from GC, General Commercial with a C-O, Conditional Overlay to LI, Limited Industrial with the extinguishment of the C-O, Conditional Overlay on part of Lot 13, Hector's 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 the applicant is in the process of adding a building and would like to rezone the property in order to develop in accordance with the standard LI, Limited Industrial, similar to other properties in the area.

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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Piepkorn, Williams, Gehrig and Mahoney 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 Hector's Subdivision to the City of Fargo, Cass County, North Dakota :

Commissioner Sobolik moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in Hector's Subdivision to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

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

Parcels of Land in Hinks Addition Rezoned (4445 17th Avenue South; 1650, 1680 and 1690 45th Street South):

At a Hearing held on September 1, 2015 the Fargo Planning Commission recommended approval of a change in zoning from GC, General Commercial to LC, Limited Commercial on part of Lot 4 and all of Lot 5, Block 1, Hinks 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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Piepkorn, Williams, Gehrig and Mahoney 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 Hinks Addition to the City of Fargo, Cass County, North Dakota:

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

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

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

Petition Requesting the Rezoning of Parcels of Land in Commerce on I29 Approved Contingent Upon Approval of a Growth Plan Amendment (3800, 3801, 3900, 4000, 4100, 4101 98th Avenue South and 9500, 9501, 9600, 9601 and 9700 38th Street South):

A Hearing had been held by the Fargo Planning Commission on September 1, 2015, for the purpose of considering a petition requesting that the zoning be changed from GC, General Commercial with a C-O Conditional Overlay to LI, Limited Industrial with a C-O, Conditional Overlay, on all of Commerce on I29 Addition, and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the change in zoning as petitioned for be denied.



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 at the September 1, 2015 Planning Commission meeting, the Planning Commission recommended denial. She said their main concerns went back to the original application in 2014 when the applicant tried to zone this area LI, Limited Industrial and there was public opposition. She said the applicant amended their plan to zone the area GC, General Commercial. The Planning Commission upheld the decision from 2014, she said, and agreed with past public comments that the area should remain commercial. She said staff received a letter in opposition of the proposed zone change and growth plan amendment from an adjacent property owner.

Patty Constant said she is the neighbor directly to the west. She said she is concerned about the consequences of industrial uses adjacent to farmland and urged the Board to put protections in place for the farm lands surrounding development.

Gerald Pronovost said he owns 80 acres east of Ms. Constant and agrees farm land needs protection. He said Fargo is growing faster than expected and it is hard to see the farmland go.

Nate Vollmuth, Paces Lodging Corporation, said the primary reason for the zoning change request is to allow the use of a crushed concrete product rather than a hard surface paving material in the rear yard storage area.

In response to a question from Commissioner Sobolik about whether water contaminate issues are clearly spelled out in the Conditional Overlay, Ms. Crutchfield said storm water management issues are outside the Land Development Code. She said what is allowed in GC, General Commercial and LI, Limited Industrial are more or less the same land uses; however, with a GC, General Commercial, there is more control on a case by case basis through the Planning Commission.

Commissioner Williams said this dialogue is helpful, knowing circumstances have changed due to the multiple floods and the need for a diversion. The 2007 Growth Plan was developed prior to the record flooding, he said, and there may be a need to address zoning plans, as well as the far reaching areas that the City is unable to protect.

Commissioner Sobolik moved the protests be received and filed.

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

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 denied the request on September 1, 2015.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff and the Planning Commission be rejected and the rezoning be approved with the Conditional Overlay requirements listed in the Ordinance on the basis that it satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC, all with the stipulation that a Growth Plan amendment must first be approved by the Planning Commission prior to final City Commission approval.

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Piepkorn, Gehrig and Mahoney voted aye. Commissioner Williams voted nay.  
The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Commerce on I29 Addition to the City of Fargo, Cass County, North Dakota:

Commissioner Sobolik moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in Commerce on I29 Addition to the City of Fargo, Cass County, North Dakota be placed on first reading.

Second by Piepkorn. On call of the roll Commissioners Sobolik, Piepkorn, Gehrig and Mahoney voted aye.  
Commissioner Williams voted nay.  
The motion was declared carried.

Parcels of Land in Timber Creek Fifth Addition Rezoned (5100, 5170 and 5180 Prosperity Way South):

A hearing had been set for July 20, 2015 on a petition for a zoning change in Timber Creek Fifth Addition.

At the July 20, 2015 meeting, the Hearing was continued to August 31, 2015

At the August 31, 2015 meeting, the Hearing was continued to this day and hour.

At Hearings held on June 2, 2105 and September 1, 2015, the Fargo Planning Commission recommended approval of a change in zoning from MR-1, Multi-Dwelling and GO, General Office to GO, General Office and to repeal and re-establish a C-O, Conditional Overlay on the proposed Timber Creek Fifth Addition.

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

Planning Administrator Nichole Crutchfield said the need for the change came about because there is day care operating on one parcel that requires additional parking.

Commissioner Sobolik offered the following Resolution and moved its adoption:

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

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

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

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Piepkorn, Williams, Gehrig and Mahoney 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 Timber Creek Fifth Addition to the City of Fargo, Cass County, North Dakota:

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

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

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

Resolution Adopted Approving Timber Creek Fifth Addition:

Commissioner Sobolik offered the following Resolution and moved its adoption:

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

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "Timber Creek Fifth Addition" containing 4 Lots, 1 Block, and 4.609 acres of land more or less, located at 5100, 5170, and 5180 Prosperity Way South; and

WHEREAS, A Hearing was held September 1, 2015 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 14 and 21, 2015 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., September 28, 2015 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 "Timber Creek Fifth Addition" be and the same is hereby in all things affirmed and approved on the basis that it complies with the Standards of Article 20-06, and all other applicable requirements of the Land Development Code, and that the Mayor of the City of Fargo and the appropriate City Officials are hereby directed to endorse their approval on the Plat and then direct Petitioner to file same for record in the Office of the Recorder of Cass County, North Dakota.

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

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

Discussion of Appeals of Denials of Conditional Use Permits to Allow Off-Premise Advertising in Urban Plains Additions:

Planning Administrator Nichole Crutchfield said over the course of the last month, staff met with the applicant to discuss possible amendments to the application for all four appeals in Urban Plains. She said the sign locations requested were Lot 1, Block 4, Urban Plains by Brandt First Addition (2633 55th Street South); Lot 4, Block 5, Urban Plains by Brandt First Addition (3151 Seter Parkway South); Part of Lots 3 and 4, Block 1, Urban Plains Northeast Retail Addition (2911 45th Street South) and Lot 4, Block 1, Urban Plains Retail Addition (4525 32nd Avenue South). Meetings were also held with Commissioners Piepkorn and Sobolik, she said, to seek direction about off-premise sign policy development. She said Sign Code amendments were investigated in an attempt to resolve similar future issues; however, more time is needed to work with the City Attorney and coordinate with the sign industry and property owners. Staff maintains that the review criteria of the conditional use permit were not met, she said, and that the proposed sign is too large, not meeting the intent of the Urban Plains zoning ordinance and staff's recommendation continues to be denial. She said this case may set a precedent for future billboard-scale sign requests that are currently prohibited by the Sign Code and the Zoning Ordinance. She said the applicant has reduced the total request from four signs down to two, the priority locations would be at 32nd Avenue and Veterans Boulevard and at 32nd Avenue and 45th Street South. Also, she stated, the sign application has been amended, not in the 10' x 30' requested sign face, but to include a pedestrian scale directional sign at the middle column. She said the applicant contends their application is the smallest sign feasible for a proper graphic standard for billboards. She said it was discovered that when the Sign Code was drafted it included a minimum requirement for off-premise signs to be a minimum of 280 square feet, which is by far larger than what was intended when staff was coordinating with the applicant. She said that was a late amendment and believed to be the result of dealing with portable signage, and work will be done with the City Attorney's office to remove that minimum.

Joel Fremstad, Fremstad Law, said he represents Urban Plains whose request has evolved through a number of discussions which has resulted in a plan for reasonable, safe signs, and a walkability element has been added. Four sign locations were originally requested, he said, now the request is for two or, at the very least, they would like one allowed at 32nd and Veteran's which would give his client an opportunity to demonstrate that it could fit in. He said other businesses in the area would benefit from the signage too.

Commissioner Piepkorn said it seems the signs would need to be within sight of the arena if the intent is to promote the hockey arena. He said the precedent that would be set could allow for things like a FargoDome sign at 12th and University or even by the Interstate. He said it is the duty of the Board to look at the big picture.

Scheels Arena General Manager Jon Kram said all arenas are looking to get exposure to their events through digital signage. He said the locations being requested are near main arteries and within the proximity of the arena.

Ace Brandt said Urban Plains is not taxpayer funded, making promotions and marketing necessary to help with sales. Digital billboards need to be at the corners where the cars are in order to attract people to the facility, he said.

In response to a question from Commissioner Sobolik about whether he foresees legal issues if the application is denied, City Attorney Erik Johnson said there is always a possibility of a legal challenge when dealing with discretionary decisions whether to allow a sign or not. He said his outlook would be best given confidentially in an Executive Session if a claim is brought.

Commissioner Gehrig said the applicant has worked with the City in this case and the signs are attractive. He said he does not feel it is right to penalize this applicant because the next person may do something egregious. He said he feels the applicant's request is more than reasonable, it is a good facility and they are just trying to advertise.

In response to a statement from Mr. Fremstad that 280 square feet was not presented as an option in the meeting with staff last week, Ms. Crutchfield agreed that dimension was not discussed. The minimum limitations for off-premise signage is 280 square feet, she said; however, in their meetings, staff requested the dimension of 200 square feet, which is the on-premise dimensional standard

Appeal of the Denial of a Conditional Use Permit to Allow Off-Premise Advertising on Lot 1, Block 4, Urban Plains by Brandt First Addition Denied (2633 55th Street South):

A Hearing had been held by the Fargo Planning Commission on August 4, 2015 to consider a request for a Conditional Use Permit to allow Off-Premise Advertising on Lot 1, Block 4, Urban Plains by Brandt First Addition and the Fargo Planning Commission at such Hearing recommended that the Conditional Use Permit be denied.

The City received an appeal of the denial of the Conditional Use Permit from Urban Plains Land Company LLC which requires that a Public Hearing be held by the City Commission.

A Hearing had been set for August 31, 2015 on an appeal of the denial of a Conditional Use Permit to Allow Off-Premise Advertising.

At the August 31, 2015 meeting, the Hearing was continued to this day and hour.

Commissioner Sobolik moved the appeal of the denial of the Conditional Use Permit to Allow Off-Premise Advertising on Lot 1, Block 4, Urban Plains by Brandt First Addition be denied on the basis that the proposal does not comply with Section 20-0909.D (1, 3, & 4) and other requirements of the LDC.

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

Commissioners Gehrig and Mahoney voted nay.

The motion was declared carried.

Appeal of the Denial of a Conditional Use Permit to Allow Off-Premise Advertising on Lot 4, Block 5, Urban Plains by Brandt First Addition Denied (3151 Seter Parkway South):

A Hearing had been held by the Fargo Planning Commission on August 4, 2015 to consider a request for a Conditional Use Permit to allow Off-Premise Advertising on Lot 4, Block 5 Urban Plains by Brandt First Addition and the Fargo Planning Commission at such Hearing recommended that the Conditional Use Permit be denied.

The City received an appeal of the denial of the Conditional Use Permit from Urban Plains Land Company LLC which requires that a Public Hearing be held by the City Commission.

A Hearing had been set for August 31, 2015 on an appeal of the denial of a Conditional Use Permit to Allow Off-Premise Advertising.

At the August 31, 2015 meeting, the Hearing was continued to this day and hour.

Commissioner Sobolik moved the appeal of the denial of the Conditional Use Permit to Allow Off-Premise Advertising on Lot 4, Block 5, Urban Plains by Brandt First Addition be denied on the basis that the proposal does not comply with Section 20-0909.D (1, 3, & 4) and other requirements of the LDC.

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

Commissioners Gehrig and Mahoney voted nay.

The motion was declared carried.

Appeal of the Denial of a Conditional Use Permit to Allow Off-Premise Advertising on Part of Lots 3 and 4, Block 1, Urban Plains Northeast Retail Addition Denied (2911 45th Street South):

A Hearing had been held by the Fargo Planning Commission on August 4, 2015 to consider a request for a Conditional Use Permit to allow Off-Premise Advertising on Part of Lots 3 and 4, Block 1, Urban Plains Northeast Retail Addition and the Fargo Planning Commission at such Hearing recommended that the Conditional Use Permit be denied.

The City received an appeal of the denial of the Conditional Use Permit from Urban Plains Land Company LLC which requires that a Public Hearing be held by the City Commission.

A Hearing had been set for August 31, 2015 on an appeal of the denial of a Conditional Use Permit to Allow Off-Premise Advertising.

At the August 31, 2015 meeting, the Hearing was continued to this day and hour.

Commissioner Sobolik moved the appeal of the denial of the Conditional Use Permit to Allow Off-Premise Advertising on Part of Lots 3 and 4, Block 1, Urban Plains Northeast Retail Addition be denied on the basis that the proposal does not comply with Section 20-0909.D (1, 3, & 4) and other requirements of the LDC.

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

Commissioners Gehrig and Mahoney voted nay.

The motion was declared carried.

Appeal of the Denial of a Conditional Use Permit to Allow Off-Premise Advertising on Lot 4, Block 1, Urban Plains Retail Addition Denied (4525 32nd Avenue South):

A Hearing had been held by the Fargo Planning Commission on August 4, 2015 to consider a request for a Conditional Use Permit to allow Off-Premise Advertising on Lot 1, Block 4, Urban Plains by Brandt First Addition and the Fargo Planning Commission at such Hearing recommended that the Conditional Use Permit be denied.

The City received an appeal of the denial of the Conditional Use Permit from Urban Plains Land Company LLC which requires that a Public Hearing be held by the City Commission.

A Hearing had been set for August 31, 2015 on an appeal of the denial of a Conditional Use Permit to Allow Off-Premise Advertising.

At the August 31, 2015 meeting, the Hearing was continued to this day and hour.

Commissioner Sobolik moved the appeal of the denial of the Conditional Use Permit to Allow Off-Premise Advertising on Lot 4, Block 1, Urban Plains Retail Addition be denied on the basis that the proposal does not comply with Section 20-0909.D (1, 3, & 4) and other requirements of the LDC.

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

Commissioners Gehrig and Mahoney voted nay.

The motion was declared carried.

#### Appeal of the Denial of a Conditional Use Permit to Allow Group Living at 1350 12th Street North Denied:

A Hearing had been held by the Fargo Planning Commission on September 1, 2015 to consider a request for a Conditional Use Permit (CUP) to allow Group Living in an SR-3, Single-Dwelling Residential Zoning District on Lot 20, Subdivision of Lots 65, 66, 67 and 68, Ohmer's Subdivision, and the Fargo Planning Commission at such Hearing recommended that the Conditional Use Permit be denied.

The City received an appeal of the denial of the Conditional Use Permit from Steve and Rachelle Bill which requires that a Public Hearing be held by the City Commission.

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 Nichole Crutchfield said members of the Roosevelt Neighborhood Association spoke at the Planning Commission Meeting in opposition of the CUP and a petition against the CUP was signed by property owners within the area of the subject property. That discussion related to the City's rental inspection procedures, review schedules and permitting requirements, concern of precedent setting, the need for a CUP in order to allow a fourth occupant in the house that is currently occupied by three renters, she said, and whether the CUP is revocable upon inappropriate/disruptive behavior by the renter(s). She said staff maintains the proposed CUP is consistent with adopted policies of the City and the future land-use component of the Roosevelt-NDSU Neighborhood Plan identifies the property as being suitable for "Mixed Density Residential" which is intended to serve as a transition between higher and lower density residential areas and allow for a mix of residential types. The subject property is located in a transitional location, she said, including apartments and fraternities/sororities, located across the alley to the west and having single family houses across the street to the east. Staff suggests the CUP would serve as an appropriate transition, she said, and for group living density purposes the LDC equates each four person sleeping capacity as being one dwelling unit. Along the same lines, she said, staff suggests there is little detectable difference between a single family house being occupied by four unrelated persons versus being

occupied by a large family of related persons. She said although staff maintains approval is appropriate based on the technical factors of the case, the suggested recommendation of the Planning Commission is for denial, and as such there is a difference of recommendations between the Planning Commission and staff, and staff defers to the Planning Commission.

Steve Bill, owner of 1350 12th Street North, said he has invested a lot of money into improving the property. He said he feels allowing four people, which would be one person per bedroom, is common sense.

Roosevelt Neighborhood Association members and neighbors who spoke in opposition to granting Group Living status to the property included: Ken Enockson, 2102 8th Street North; Martha Berryhill, 1354 12th Street North; Nathan Larson, 819 8th Avenue North; and Jim Laschkewitsch, 1016 College Street. They said their concerns include consistent zoning rules, preserving and maintaining older neighborhoods and single-family homes, density, effective enforcement of existing rules and how neighboring property values may be affected. They said there were 23 homeowners who signed a petition in opposition of the proposal.

Commissioner Gehrig said it is important that property rights be kept in mind.

Commissioner Sobolik moved the appeal of the denial of the Conditional Use Permit be denied as the proposal does not comply with Section 20-0909.D (1-6) and other requirements of the LDC.

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

Commissioner Gehrig voted nay.

The motion was declared carried.

At 6:40 the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Mahoney presiding.

#### Tax Levies for the Budget Year Beginning January 1, 2016 and Ending December 31, 2016 Approved:

The City Auditor's Office published a Notice of Hearing stating this is the time and date set for a Hearing on the 2016 Budget at which time all interested persons could appear and would be heard.

Finance Director Kent Costin said a requirement added by the Legislature requires that property owners be notified if their valuation increased 10% or \$3,000.00 and approximately 10,000 letters were mailed out due to an overall increase in valuations in the City of Fargo this year. He said the few calls he received were largely for assistance in understanding the content of the letter. He said many callers were not aware the City of Fargo levy is just a small portion of the entire levy and that it is Cass County that is responsible for consolidating all of the taxes. He said it is also confusing to citizens that the public notification process also includes notifications about public hearings from the County, the School District and the Park District. He said a proposal is being worked on that would send a single notice to taxpayers to reduce confusion and cut costs.

Nick Bauroth, 1350 10th Avenue South, encouraged City leaders to keep the long term fiscal security of the City in mind and what would happen if the property tax base were to stagnate. He said what seems to be a minor change now could be of significance if there are changes in the future.



Mayor Mahoney said he has asked for 10 year projections on personnel needs, as well as laying out the capital improvements.

In response to a question from Darrell Hedgepeth about the reassessment and valuation process, City Assessor Ben Hushka said property values are always changing and not all property types change in the same way. He encouraged Mr. Hedgepeth to visit with staff at the Assessor's Department with questions or concerns.

Erick Momsen, 1220 4th Street North, said he felt it confusing that at first he heard more money would be put toward a stronger police presence, yet in the end property taxes were cut. He said it felt like the \$10-\$20 savings on his property taxes could be better invested back into services like police or public health that the City should be addressing.

Commissioner Gehrig said nearly every department has been expanded and the budget has gone up by over \$4 million. He said there was a rate adjustment, not a tax reduction. There has been a dramatic increase in the budget relative to the population growth, he said. The budget has tripled over a 20 year period, he said, which is not sustainable.

Commissioner Williams said a 3-5% range is a goal and it is helpful to analyze the budget on a yearly basis because things do change.

Warren Christensen, 513 9th Avenue North, stressed the importance of a vibrant downtown and reminded the Board the importance of compassion for all citizens.

Commissioner Williams moved the 12-month budget beginning January 1, 2016 and ending December 31, 2016 be approved as follows:

General Fund	\$85,155,000
Special Revenue Funds:	
City Share of Special Assessments	\$400,000
Noxious Weeds	50,000
Emergency 911	-
Convention Bureau	2,525,850
Regional Law Enforcement Training Center	90,534
Court Forfeits	160,000
Skyway Maintenance	102,000
Downtown Business Improvement District	194,000
Neighborhood Revitalization Initiatives (NRI)	21,259
Community Development Block Grants	777,080
HOME Program	30,000
Neighborhood Stabilization Grant	600,000
HOME Projects	515,316
Parking Authority Operations	1,245,370
Parking Repair and Replacement	75,000
Newman Outdoor Stadium	-
Total Special Revenue Fund Expenditures	\$6,786,409
Debt Service Fund Expenditures	\$68,286,634

Enterprise Funds:	
Water	\$22,224,053
Solid Waste	14,156,000
Wastewater	9,647,771
Water Revenue Bond	3,949,212
Forestry	1,978,000
Street Lighting	1,889,000
Storm Sewer	1,511,000
Vector Control	748,000
Southeast Cass Sewer	49,000
Total Enterprise Fund Expenses	\$56,152,036

Pension Trust Funds:	
City Employee Pension	2,515,700
Police Pension	3,609,000
Total Pension Trust Funds	\$6,124,700

Airport Authority:	
Operations & Maintenance	\$4,809,144
Airport Construction	15,026,450
Passenger Facility Surcharge (PFC)	-
PFC Bond Fund	-
Total Airport Authority Expenses	\$19,835,594

FargoDome:	
Operations	\$7,735,539
Sales Tax Surplus	50,000
Restricted Capital	2,086,475
Total FargoDome	\$9,872,014

Convention Bureau:	
Operations	\$2,149,873
Restricted Capital	753,395
Total Convention Bureau	\$2,903,268

Grand Total - All Funds \$264,075,655

Preliminary Tax Levies Are:	
General Fund	51.90
City Share of Special Improvements	1.10
Noxious Weeds	0.00
Airport Construction	2.00
Total Proposed Mills to be Levied for 2016 Budget	55.00

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

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

Special Assessment Lists for Various Improvement Districts Approved:

A Hearing had been set for this day and hour on the special assessment lists for the construction of the following Improvement Districts in the City of Fargo, North Dakota all having been approved by the Special Assessment Commission on 8/26/15; set the interest rate at 1% per annum over the net rate on bonds financing said projects:

- m. Water Main, Storm Sewer and Incidentals No. 6104.
- n. Street Reconstruction and Incidentals No. 6116.
- o. Water Main Replacement, Street Reconstruction and Incidentals No. 6175.
- p. Sanitary Sewer, Water Main, Storm Sewer Site Improvements and Incidentals No. 6204.
- q. Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 6243.
- r. Regional Park (Deer Creek) and Incidentals Improvement District No. 7144.
- s. Regional Park (Golden Valley) and Incidentals Improvement District No. 7145.
- t. Regional Park (Cottagewood) and Incidentals Improvement District No. 7146.
- u. Shared Use Path and Incidentals Improvement District No. SN-14-21.
- v. Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. UN-14-2.
- w. Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. UN-14-3.
- x. Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. UN-15-G.
- y. Storm Sewer Repairs Improvement District No. UR-14-1.
- z. Sanitary Sewer and Incidentals No. UR-14-6.

Special Assessments Coordinator Dan Eberhardt said a late protest was received from Edward and Elizabeth Fischer. He said they are seeking some relief or a reduction in the amount special assessed to their property for work done related to Water Main Replacement, Street Reconstruction and Incidentals No. 6175. The Fischer's purchased their home after the project was started, he said, and the prior owner signed an agreement to repair the sewer system to the house. The previous owner did not disclose this to the purchaser, he said, and the Fishers are seeking relief for that bill.

Commissioner Piepkorn said that would be a matter that they would need to take up with the previous owner.

Commissioner Piepkorn moved that the special assessment lists for the construction of the above listed Improvement Districts be and the same are hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

Second by Williams. On call of the roll Commissioners Piepkorn, Williams, Gehrig, Sobolik and Mahoney 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 12, 2015.

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

The time at adjournment was 7:19 o'clock p.m.