

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:

Monday:

October 6, 2008:

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, October 6, 2008.

The Commissioners present or absent were as shown following:

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

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved.

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

Minutes Approved:

Commissioner Mahoney moved that the Minutes of the Regular Meeting of the Board held on September 22, 2008 be approved as read.

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

Consent Agenda Approved:

Commissioner Wimmer moved the Consent Agenda be approved as follows:

- a. Waive requirement for receipt of an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Amending the Ordinance Rezoning Certain Parcels of Land Lying in Section 4, Township 138 North, Range 49 West, Cass County, North Dakota.
- b. 2nd reading, waive reading and final adoption of an Ordinance Amending Article 3-20 of Chapter 3 of the Fargo Municipal Code Relating to Imposition of a Sales, Use and Gross Receipts Tax (Infrastructure Capital Improvements) And Also to Amend the Effective Date of the Ordinance; 1st reading, 9/22/08.
- c. PEC recommendation to reclassify one Assistant Planner position and frontload the FTE approved in the 2009 budget to include a .5 Reservationist and a .5 Assistant Planner effective 10/6/08.
- d. Establishment of a short term bond anticipation financing arrangement.

- e. Agreement for Special Improvements with Urban Plains Land Co. LLC for improvements in Urban Plains Center Addition (Improvement District Nos. 5843 and 5844).
- f. Agreement for Special Improvements with Urban Plains Land Co. LLC for improvements in Urban Plains Center Addition (Improvement District Nos. 5748 and 5749).
- g. Fire Department budget adjustments in the amount of \$19,535.37 for F-M HazMat training.
- h. Police Department budget adjustment in the amount of \$12,000 and Traffic Safety Contract with the NDDOT (CFDA #20.601).
- i. 2008 Homeland Security Grant spending plans for Cass County.
- j. Applications for Games of Chance:
  - (1) Gene Hebl Benefit for a raffle on 1/29/09; Public Spirited Resolution.
  - (2) New Horizons Manor Residents Council for a raffle on 11/8/08.
- k. Warranty Deed conveying property along 52nd Avenue South to the Park District (Improvement District No. 5798).
- l. Easement Agreement with Moorhead Public Service for relocation of a transmission line on Lot 1, Block 2, West 29 First Addition.
- m. Plat of University Motors Second Addition.
- n. Plat of Town Square Village Second Addition.
- o. Priority list for project application submittal to the NDDOT for 2010 Transportation Enhancement Funding.
- p. Cost Participation and Maintenance Agreement with the NDDOT for Project No. 5530.
- q. Cost Participation and Maintenance Agreement with the NDDOT for Improvement District No. 5601.
- r. Houston Engineering contract amendment for Project No. 5031-2.
- s. Houston Engineering contract amendment for Project No. 5313.
- t. Agreement and Improvement District No. 5777 funding for Xcel Energy power pole relocation at 32nd Avenue South and Brandt Drive.
- u. Final Balancing Change Orders for the following Projects: No. 5747-2 for an increase of \$1,821.77; No. 5786 for an increase of \$16,415.52.

- v. Bid awards for Project Nos. 5221 to Adelman Concrete and Excavating in the amount of \$29,940, 5693 to Master Construction Company, Inc. in the amount of \$319,701.50; 5799 to Dakota Underground Company in the amount of \$4,426,662.50; 5828 to Northern Plains Contracting, Inc. in the amount of \$93,500; and 5846 to Excavating, Inc. in the amount of \$85,881.15.
- w. Contracts and bonds for Project No. 5814 and SW 08-03.
- x. Bills in the amount of \$5,324,761.58.

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

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

Contract Time Extension for Improvement District No. 5746 Approved:

Commissioner Wimmer moved approval of a Contract Time Extension to November 15, 2008 for Improvement District No. 5746.

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

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

Contract Time Extension for Improvement District No. 5782 Approved:

Commissioner Wimmer moved approval of the following Contract Time Extension for Improvement District No. 5782: Substantial Completion - October 13, 2008 and Final Completion - October 27, 2008.

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

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

Contract Time Extension for Improvement District No. 5783 Approved:

Commissioner Wimmer moved approval of the following Contract Time Extension for Improvement District No. 5783: Substantial Completion – October 27, 2008 and Final Completion – November 10, 2008.

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

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

No Protests Received for Street Reconstruction and Incidentals Improvement District No. 5601:

The Statutory Resolution of Necessity for the construction of Street Reconstruction and Incidentals Improvement District No. 5601 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota, on August 18 and 25, 2008 and no protests either written or verbal have

been received or filed in the office of the City Auditor within the legal protest period, nor at any time.

Commissioner Wimmer moved that the Board declare that no protests have been filed to the construction of Street Reconstruction and Incidentals Improvement District No. 5601.

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

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

Bids Received for Street Reconstruction and Incidentals Improvement District No. 5601-4:

The bids for Street Reconstruction and Incidentals Improvement District No. 5601-4 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., October 1, 2008 and the bids were found to be as follows:

Master Construction Company, Inc. Bid:	Fargo, ND \$ 95,895.00
Aggregate Industries Bid:	Moorhead, MN \$135,204.00
Northern Improvement Company Bid:	Fargo, ND \$150,931.60

Contract for Street Reconstruction and Incidentals Improvement District No. 5601-4 Awarded to Master Construction Company, Inc. in the Amount of \$95,895.00:

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Street Reconstruction and Incidentals Improvement District No. 5601-4; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received October 1, 2008 for Street Reconstruction and Incidentals Improvement District No. 5601-4 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Street Reconstruction and Incidentals Improvement District No. 5601-4 shows the bid of Master Construction Company, Inc. of Fargo, North Dakota, in the sum of \$95,895.00 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 Master Construction Company, Inc. in the sum of \$95,895.00 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Street Reconstruction and Incidentals Improvement District No. 5601-4 in the City of Fargo, North Dakota, be and the same is hereby awarded to Master Construction Company, Inc. for the sum of \$95,895.00, 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 Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Mahoney, Piepkorn, Williams and Walaker voted aye.

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

Bids Received for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-2:

The bids for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-2 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., October 1, 2008 and the bids were found to be as follows:

Specialized Contracting Bid:	Fargo, ND \$254,674.50
Adelman Concrete and Excavating Bid:	Fargo, ND \$262,228.45
A J Construction Bid:	West Fargo, ND \$274,705.60
Heston Contracting, Inc. Bid:	Frazee, MN \$321,295.80
Paras Contracting, Inc. Bid:	Fargo, ND \$379,580.75
Northern Improvement Company Bid:	Fargo, ND \$433,609.95

Contract for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-2 Awarded to Specialized Contracting in the Amount of \$254,674.50:

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-2; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received October 1, 2008 for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-2 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-2 shows the bid of Specialized Contracting of Fargo, North Dakota, in the sum of \$254,674.50 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 Specialized Contracting in the sum of \$254,674.50 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-2 in the City of Fargo, North Dakota, be and the same is hereby awarded to Specialized Contracting for the sum of \$254,674.50, 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 Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Mahoney, Piepkorn, Williams and Walaker voted aye.

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

Bids Received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5843:

The bids for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5843 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., October 1, 2008 and the bids were found to be as follows:

Dakota Underground Bid:	Fargo, ND \$113,805.02
Rising Sun Construction, Inc. Bid:	Fargo, ND \$127,461.15
Kindred Plumbing and Heating, Inc. Bid:	Kindred, ND \$128,649.85
Master Construction Company, Inc. Bid:	Fargo, ND \$129,917.50
George E. Haggart, Inc. Bid:	Fargo, ND \$143,304.00
Shermans, LLC Bid:	West Fargo, ND \$143,424.48
United Crane and Excavation, Inc. Bid:	Grand Forks, ND \$149,104.50
Robert Gibb and Sons, Inc. Bid:	Fargo, ND \$161,186.00
Ernst Trenching, Inc. Bid:	Fargo, ND \$166,846.85

Hough, Inc.  
Bid:

Detroit Lakes, MN  
\$167,754.35

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5843 Awarded to Dakota Underground in the Amount of \$113,805.02:

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5843; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received October 1, 2008 for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5843 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5843 shows the bid of Dakota Underground of Fargo, North Dakota, in the sum of \$113,805.02 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Dakota Underground in the sum of \$113,805.02 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5843 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground for the sum of \$113,805.02, 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 Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Mahoney, Piepkorn, Williams and Walaker voted aye.

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

Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5530 (South of I-94 Along 57th Street South):

Commissioner Wimmer moved the following action be taken in connection with Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5530:

Adopt Resolution Creating Improvement District No. 5530:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5530, in the City of Fargo, North Dakota, be created

On 57<sup>th</sup> Street South from I-94 Overpass to 32<sup>nd</sup> Avenue South.

On 32<sup>nd</sup> Avenue South from 51<sup>st</sup> Street South to 57<sup>th</sup> Street South.

COMPRISING:

Lots 1 through 3, inclusive, Block 1.  
Lots 1 through 21, inclusive, Block 2.  
Lots 1 through 12, inclusive, Block 3.  
Lot 1, Block 4.  
Lot 1, Block 5.  
All in Amber Valley 6<sup>th</sup> Addition.

Lot 10, Block 2.  
Lots 1 through 3, inclusive, Block 3.  
Lots 1 and 2, Block 4.  
Lots 1 through 4, inclusive, Block 5.  
All in Urban Plains by Brandt 1<sup>st</sup> Addition.

Lots 1 and 2, Block 2.  
Lots 1 through 6, inclusive, Block 3.  
Lot 1, Block 4.  
Lot 1, Block 5.  
All in Urban Plains Center Addition.

Lot 3, Block 1.  
Brandt Park Addition.

The unplatted land in the W ½ of Section 28, Township 139 North, Range 49 West.

The unplatted land in the NW ¼ of Section 21, Township 139 North, Range 49 West.

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

NOW, THEREFORE, BE IT RESOLVED, That Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5530, 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. 5530:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5530, 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 \$22,324,457.00.)

Order Plans and Specifications for Improvement District No. 5530:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5530, in the City of Fargo, North Dakota.



Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5530:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5530, in the City of Fargo, North Dakota, as required by law; and

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

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5530, in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Necessary:

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

That it be and is hereby declared necessary to construct Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail & Incidentals, Improvement District No. 5530 in the City of Fargo, North Dakota, according to the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection.

That a portion of said Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail & Incidentals improvement is to be paid from Fargo Sales Tax, and approximately 20% is to be assessed against the benefited property in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail & Incidentals must be in writing and must be filed with the City Auditor's Office within thirty days after the first publication of this Resolution.

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

Direct City Auditor's Office to Call for Bids for Improvement District No. 5530:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5530, in the City of Fargo, North Dakota.

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

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

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5845 Approved:

Commissioner Wimmer moved approval of the Contract between the City of Fargo and Adelman Concrete and Excavating, Inc. for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5845 in the City of Fargo, North Dakota.

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

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

Contract Bond for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5845 Approved:

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

Amco Insurance Company, in the amount of \$58,367.50, for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5845 in the City of Fargo, North Dakota.

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

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

Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5853 Approved:

Commissioner Wimmer moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5853 in the City of Fargo, North Dakota.

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

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

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5853 Approved:

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

United Fire and Casualty Company, in the amount of \$430,381.40, for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5853 in the City of Fargo, North Dakota.

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

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

Appropriate Staff Authorized to Advertise for Proposals for the NP and 1st Avenue North Corridor Study: Commissioner Williams Appointed to the Study Review Committee:

The Board received a communication from Senior Engineer Jeremy Gorden stating City staff wrote a Request for Proposals for Consulting Engineering Services to complete a Corridor Study on both NP and 1st Avenue North. Mr. Gorden said the limits of the study would be the Red River on the east side and University Drive on the west side and it would also include intersections along Main Avenue. He said this study comes at a time when the City has realized the need to completely replace the underground municipal services (water, storm sewer, and sanitary sewer) that serve the downtown area. Mr. Gorden said the study would do a number of things and the objective would be to analyze the current traffic operations and conditions germane to the NP Avenue/1st Avenue corridors, determine future downtown infrastructure needs, identify alternatives for the two corridors, analyze the impacts of each alternative with respect to cost, traffic operations, transit, safety, emergency vehicle movement, parking, loading zones, economic vitality, aesthetics, bicycling, and pedestrian movement. He said in addition to the operational issues, the consultant must devote significant resources to analyze the potential economic and development issues associated with the alternatives. He said the focus of the study will be at the street level, from building front to building front.

Commissioner Wimmer moved the appropriate staff be authorized to solicit Request for Proposals for the NP and 1st Avenues North Corridor Study and that Commissioner Williams be appointed as a member of the Study Review Committee.

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

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

Karen Moore and Ken Krajsa Reappointed to the Housing and Redevelopment Authority:

The Board received a communication from Mayor Walaker recommending that Karen Moore and Ken Krajsa be reappointed to the Housing and Redevelopment Authority.

Commissioner Williams moved the reappointment of Karen Moore and Ken Krajsa to the Housing and Redevelopment Authority for terms ending September 30, 2011 be approved.

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

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

Renaissance Zone Project for Bullinger Enterprises, LLLP Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Bullinger Enterprises, LLLP at 630 1st Avenue North.

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

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

The Board received a communication from Senior Planner Robert Stein stating the Renaissance Zone Project application presented by Bullinger Enterprises, LLLP meets all of the minimum criteria set forth in the Renaissance Zone Plan and is consistent with the established goals and objectives. Mr. Stein recommended that the project be approved.

Commissioner Wimmer moved the Renaissance Zone application filed by Bullinger Enterprises, LLLP for a project located at 630 1st Avenue North be approved as recommended by the Renaissance Zone Authority and the income tax and property tax exemptions be granted contingent upon completion of the project and verification of costs.

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

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

Application Filed by Bullinger Enterprises, LLLP for Payment in Lieu of Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by Bullinger Enterprises, LLLP for payment in lieu of property tax exemption for a five-story mixed use building at 630 1st Avenue North.

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.

In response to a question from Commissioner Williams, City Administrator Pat Zavoral said the Tax Exempt Review Committee discussed the retail portion of the project being included in the PILOT exemption. He said the language for the PILOT exemption allows retail to be included with the housing portion of the project.

City Assessor Ben Hushka said Mr. Bullinger's request for the PILOT exemption is similar to the 12th Avenue North project that received PILOT status. Both projects, he said, have housing above retail ground level space.

Commissioner Piepkorn moved that the application filed by Bullinger Enterprises, LLLP for a 10 year payment in lieu of tax exemption pursuant to Chapter 40-57.1, NDCC be approved as follows:

Year 1 through 5 - \$0

Year 6 through 10 - \$103,284

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

Commissioner Williams voted nay.

The motion was declared carried.

Resolution Adopted Approving North 81-20 Second Subdivision to the City of Fargo, Cass County, North Dakota (4962 through 5184 43rd Street North and 4370 52nd Avenue North):

Commissioner Wimmer 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 "North 81-20 Second Subdivision" containing 3 Lots, 2 Blocks and 13.26 acres of land more or less, located at 4962 through 5184 43rd Street North and 4370 52nd Avenue North; and

WHEREAS, A Hearing was scheduled to be held August 13, 2008 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 29 and October 6, 2008 that a Hearing would be held in the City Commission Room at the City Hall, Fargo, North Dakota at 5:15 o'clock p.m., October 6, 2008 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 be accepted and the Plat entitled "North 81-20 Second Subdivision" 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 Register of Deeds of Cass County, North Dakota.

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

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

Parcels of Land in the East Half of Section 27, Township 139 North, Range 49 West Rezoned (3520 39th Street South):

At a Hearing held on September 10, 2008 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to LI, Limited Industrial on a tract of land located in the east half of Section 27, Township 139 North, Range 49 West.

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 Wimmer 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 complies with the adopted Area Plan and the standards of Article 20-06, Section 20-0906.F (1-4) and all other applicable requirements of the Land Development Code have been met.

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Piepkorn, Mahoney, Williams 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 the East Half of Section 27, Township 139 North, Range 49 West, Fargo, Cass County, North Dakota:

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 Rezoning Certain Parcels of Land Lying in the East Half of Section 27, Township 139 North, Range 49 West, Fargo, Cass County, North Dakota be placed on first reading.

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

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

Parcels of Land in Town Square Village Second Addition Rezoned (3853 and 3921 Village Lane and 4706, 4722 and 4752 38th Avenue South):

At a Hearing held on July 9, 2008 the Fargo Planning Commission recommended approval of a change in zoning from MR-1, Multi-Dwelling to SR-4, Single Dwelling on Lots 1 and 2, Block 1, Town Square Village 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 Wimmer 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 complies with the adopted Area Plan and the standards of Article 20-06, Section 20-0906.F (1-4) and all other applicable requirements of the Land Development Code have been met.

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Piepkorn, 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 Town Square Village Second Addition to the City of Fargo:

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 Rezoning Certain Parcels of Land Lying in Town Square Village Second Addition to the City of Fargo be placed on first reading.

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

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

Petition Requesting a Sidewalk Installation Waiver in Osgood 1st Addition Denied:

A Hearing had been held by the Fargo Planning Commission on September 10, 2008 for the purpose of considering a petition requesting a Sidewalk Installation Waiver for Lots 29 through 32, Block 12 and Lots 1 through 5, Block 14, Osgood 1st Addition, and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the change 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.

Senior Planner Jim Hinderaker stated a petition in support of a Sidewalk Installation Waiver for two cul-de-sacs on 66th Street South was submitted to the Planning Department on July 27, 2008. He said the neighborhood had been misinformed by City of Fargo staff in the last few years that sidewalks were not required so they wanted to bring their request forward. Mr. Hinderaker said it is the intent of the Land Development Code to provide walkability among neighborhoods. Mr. Hinderaker said it is the policy of the Planning Department staff to enforce installation of sidewalks for pedestrian safety.

Don Hastings, 4246 66th Street South, stated he has talked to City staff and appreciates their willingness to listen to the concerns of the residents. He submitted copies of the petitions, the notice sent out by the Engineering Department, a copy of the developer's covenant and a timeline of the correspondence with City staff. He said the homeowners felt the sidewalks would not be used because of the isolation of the cul-de-sacs from 66th Street. He said the City does not do a very good job of snow removal from the cul-de-sac area which would make it more difficult to keep sidewalks clear.

In response to a question from Commissioner Wimmer regarding the intent of the developer, City Engineer Mark Bittner said the developer intended to have sidewalks installed but, with the change of code in 1998, it became the responsibility of the homeowner. He said it is not about the cost but the miscommunication by City staff that has frustrated the homeowner. He said sidewalks are for citizens coming through the neighborhood as well as for the homeowners.

Commissioner Wimmer moved the findings and recommendations of staff and the Planning Commission be upheld and the request for the Sidewalk Installation Waiver be denied on the basis the proposal does not meet the intent of the Comprehensive Plan or the policies of Section 20-0609.1.b (1-7) of the Land Development Code.

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

Commissioners Mahoney and Walaker voted nay.

The motion was declared carried.

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

After recess: All Commissioners present. Mayor Walaker presiding.

Corridor Study Report for 25th Street and 64th Avenue South Received and Filed:  
Appropriate Staff Authorized to Implement the Study Recommendations:

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating SRF Consulting Group was retained in 2007 to analyze short and long term transportation needs for the 25th Street and 64th Avenue South corridors and the major issues and study recommendations are as follows:

"A. 64th Avenue South

1. Roadway Alignment

Three alignments were evaluated for 64th Avenue between 36th Street and University Drive South.

- a) Alignment 1 with frontage road - on existing alignment
- b) Alignment 2 - shifted 1/8 mile to the south of existing
- c) Alignment 3 - shifted 1/4 mile to the south of existing

The shifted alignments were considered to reduce traffic along direct fronting residential properties between 25th Street and Drain 53 and between 18th Street South and University Drive. The corridor study report recommends utilizing existing 64th Avenue South alignment with south frontage road between 25th Street and Drain 53. The frontage road and wide median will provide access and separation from traffic for south fronting lots.

2. Interchange or Grade Separation

The study compared the merits of a full interchange with I-29 at 64th Avenue versus a grade separation (overpass of I-29). Based on this evaluation, the study report recommends planning for and preservation of necessary right-of-way for future interchange.

3. Roadway Type

The study report recommends the following roadway types:

- a) West of 36th Street - 4 or 6 lane divided with wide planted medians and boulevards on 200' R/W.
- b) East of Drain 53 - 3 lane undivided with planted boulevards on varying R/W widths.
- c) Extensive landscaping and tree planting in medians and boulevards along the entire corridor.
- d) Bike trails and sidewalks along the entire corridor with grade separated crossings at Drain 53 and possibly at 18th Street (Old Milwaukee Railroad).

B. 25th Street South

1. Roadway Alignment



The study report recommends only one minor deviation from current street alignment. A slight shift to the east, north and south of 64th Avenue is recommended to improve access to west frontage road in the area.

2. Roadway Type
  - a) 3 lane (expandable to 5 lane) undivided with 200' R/W where possible
  - b) Boulevard tree planting
  - c) Bike trails and sidewalks

### C. Implementation Plan

The study report includes an implementation plan primarily focused on providing access to the Davies High School to be constructed at 70th Avenue South and open for students in August, 2011.”

Rick Lane, SRF Consulting Group, presented an overview of the Corridor Study.

There was discussion regarding the need for access for the commercial areas as well as the right-of-way for an interchange at 64th Avenue and I-29.

In response to a question from Commissioner Williams, Mr. Lane said different alternatives were looked at in regards to utilizing the interchange and 64th Avenue for flood control measures.

Senior Engineer Jeremy Gorden said the City is currently negotiating to purchase some lots for right-of-way and authorization will be requested in two weeks.

Commissioner Wimmer moved the Corridor Study Report for 25th Street and 64th Avenue South be received and filed and the appropriate staff be authorized to implement the study recommendations.

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

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

### Recommendations From the Southside Flood Control Technical Team Regarding the Southside Flood Control Project Concurred With and Forwarded to the Southeast Cass Water Resource District for Their Consideration: Appropriate Staff Authorized to Move Forward with the Project:

The Board received a communication from Storm Sewer Utility Engineer April Walker stating the City Commission has determined that the Wild Rice River Levee Alternative is preferred for the Southside Flood Control Project. At this time, she said, the Southside Flood Control Technical Team (SFCTT) has evaluated several potential modifications to the base alignment and the process that led to this point has been detailed with extensive public input, a high level of technical data gathering and study, as well as with debate and careful consideration where the SFCTT is comfortable making recommendations. She said each of these decisions involved the preliminary development of the project feature (Channels, Levees, Drain Extensions, etc.) based on purely technical data. She said this included siting of the feature, making a first cut

judgment on its feasibility, and developing a preliminary estimate of the size and cost. Ms. Walker stated the preliminary design was presented to the public for review and comment and was generally done through public meetings at which oral comments were accepted and participants were also encouraged to put their concerns in writing. The input, she said, was collected, evaluated by the team and changes were made to the designs in response to these comments where it was necessary or feasible to do so. She said this resulted in the need for multiple public meetings in some areas, to communicate updates to the plans and get the public's reaction. She stated the gathering of technical data was continued concurrent to the public process and all of this information was used to refine the features. She said once these features were fairly well defined the SFCTT prepared 3-D virtual models to further assist the public in visualizing the scale and impact of the feature and the SFCTT also conducted many onsite visits with the understanding of what impact they would have to property. She said during this process the SFCTT continued to meet and debate the merits of each of the features taking into account the most current data and the public input culminating in a recommendation. A series of meetings, she said, was then conducted to inform the public of these recommendations prior to bringing them forward to this body. Ms. Walker submitted the following information:

- an overall map of the recommended alignment
- a summary of the eight (8) recommendations including a cost breakdown and a short list of pros and cons
- a Report of Action from the SFCTT identifying unresolved issues
- additional areas of study and coordination that needs to be performed
- a map of the recommended alignment or location associated with the feature
- a Report of Action from the PWPEC and supporting attachments

In addition, she said, an overall summary of the project costs is as follows:

Base Project Cost	\$104.00 Million
Impacts of the current recommendations	+ 43.30 Million
Total	<u>\$147.30 Million</u>
Assume State Split:	
50% State	\$68.15 Million
50% Local Split	\$68.15 Million
Assume Local Split:	
Specials	\$43.09 Million
City of Fargo	\$25.06 Million

Ms. Walker stated it is important to note that this set of recommendations does not resolve all of the concerns of the public, nor does it represent the end of decisions for this Commission. She said this set of decisions does, however, set the stage for the continued development of the project.

Irene Olson, 415 4th Street South, said as a landowner in the area of the proposed mini-bypass, she does not support it and will not agree to sell any property for the project.

Warren Solberg, 11601 25th Street South, Horace, said he is grateful for the accommodations given by the technical team in regards to the planning of the SSFC

project and their land. He said the addition of a mini-bypass would destroy a large portion of their land and the original homestead. He asked the Commission to consider removing the mini-bypass from the project.

Jonathan Garaas, Attorney for the City of Horace, submitted copies of correspondence regarding the City of Horace and their position on the SSFC project.

Sean Fredricks, Attorney for Southeast Cass Water Resource District, said Southeast Cass Water Resource District has reviewed the information from Horace and they plan on addressing it at the County level. He said they will work with the concerns of the City of Horace before they come back with a final decision.

Commissioner Piepkorn moved the Board concur with the recommendations from the Southside Flood Control Technical Team as supported by the Public Works Project Evaluation Committee, and forward the project as defined by these decisions to the Southeast Cass Water Resource District for their consideration and that staff be authorized to continue working with the public, adjacent jurisdictions, and other interested agencies or individuals to further advance the project, proceed with an Environmental Assessment, develop the necessary data sets to support a Conditional Letter of Map Revision submittal for FEMA and to prepare said submittal, prepare plans and specifications and continue development of a financing plan.

Second by Mahoney. On call of the roll Commissioners Piepkorn, Mahoney, Williams, Wimmer 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., Monday, October 20, 2008.

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

The time at adjournment was 7:07 o'clock p.m.