BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: August 11, 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, August 11, 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 moving Item "u" from the Consent Agenda to the beginning of the Regular Agenda.

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

Minutes Approved:

Commissioner Piepkorn moved that the Minutes of the Regular Meeting of the Board held on July 28, 2008 be approved as read.

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

Consent Agenda Approved:

Commissioner Mahoney moved the Consent Agenda be approved as follows:

a. Receive and file Year to Date – Budget to Actual Report for July 2008.

b. Contract with Steve Martens in the amount of $7,298 to perform the Oak Grove historic survey.

c. Waive requirement for receipt of an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Enacting Article 3-20 of Chapter 3 of the Fargo Municipal Code Relating to Imposition of a Sales and Use Tax (Infrastructure Capital Improvements).

d. Justice Assistance Grant (JAG) for the Rape and Abuse Crisis Center (CFDA #16.738).

e. Contract with the North Dakota Department of Health for the Women's Way Program (CFDA #93.919).

f. Contract with the North Dakota Department of Health for the Epidemiology and Laboratory Capacity Program (West Nile Virus CFDA #93.283).

g. Grant agreement with ND DOT for state aid transit funding in the amount of $270,082.

h. Site Authorizations for Games of Chance:
   (1) Sts. Anne & Joachim Catholic Church at the Church.
   (2) West Fargo Hockey Association at Fort Noks Bar of Gold.

i. Applications for Games of Chance:
   (1) Nativity Church of Fargo for a calendar raffle from 9/28/08 to 10/26/08.
   (2) Rape and Abuse Crisis Center of Fargo-Moorhead for a raffle on 10/10/08.
   (3) Spartan Boosters, Inc. for a calendar raffle from 8/22/08 to 3/14/09.
   (4) FM/AM Rotary Club for a sports pool from 9/8/08 to 1/9/09.
   (5) Adam Dellaneva Fundraiser for a raffle on 9/9/08; Public Spirited Resolution.

j. Change Orders for the Fargo Public Library: No. G-6 for an increase of $17,830; No. M-4 for an increase of $3,996.

k. Final Change Orders for the Emergency Shelter and Detox Center: No. 5G for an increase of $275; No. 1M for an increase of $5,277.

l. Bid award for rehabilitation of primary clarifier No. 2 at the Wastewater Treatment Plant to John T. Jones in the amount of $252,175.

m. Contract amendment with Houston Engineering in the amount of $153,400 for Project No. 5656.

n. Addendum to Agreement for a 5-year extension to the Valley City Landfill Agreement.

o. Alley Encroachment Agreement adjacent to 64 Broadway.

p. Agreements Regarding Special Assessments with Susan Lynn Anderson regarding 43rd Street North improvements.

q. Federal Cost Share Agreement for Project No. 5683.

r. Change Orders for the following Projects: No. 1 for an increase of $9,816.32 for No. 5807-1; No. 1 for an increase of $10,769.91 for No. 5812-1.

s. Bid advertisements for Project Nos. 5798 and 5813.

t. Contracts and bonds for Project Nos. 5747-6, 5811 and SW 08-02.

u. Bid award to Meggitt Defense Systems-Caswell in the amount of $298,865 to repair and/or replace the shooting range at the Regional Law Enforcement Training Center (moved to the beginning of the Regular Agenda).

v. Bills in the amount of $5,379,891.33.

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

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

No Protests Received for Street Lighting Improvement District No. 5738:

The Statutory Resolution of Necessity for the construction of Street Lighting Improvement District No. 5738 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on July 7, 14 and 21, 2008 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Mahoney moved that the Board declare that no protests have been filed to the construction of Street Lighting Improvement District No. 5738.

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

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

Bids Received for Street Lighting Improvement District No. 5738:

The bids for Street Lighting Improvement District No. 5738 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., August 6, 2008 and the bids were found to be as follows:

Strata Corporation	Grand Forks, ND
Bid:	$423,687.45
Fargo Electric Construction	Fargo, ND
Bid:	$499,049.70
Fritz Electric	Fargo, ND
Bid:	$524,046.90
Scott's Electric	Wahpeton, ND
Bid:	$571,959.10
Moorhead Electric	Moorhead, MN
Bid:	$576,933.38

Contract for Street Lighting Improvement District No. 5738 Awarded to Strata Corporation in the Amount of $423,687.45:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Street Lighting Improvement District No. 5738; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received August 6, 2008 for Street Lighting Improvement District No. 5738 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Street Lighting Improvement District No. 5738 shows the bid of Strata Corporation of Grand Forks, North Dakota, in the sum of $423,687.45 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 Strata Corporation in the sum of $423,687.45 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Street Lighting Improvement District No. 5738 in the City of Fargo, North Dakota, be and the same is hereby awarded to Strata Corporation for the sum of $423,687.45, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

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

Change Order No. 2 for Improvement District No. 5690 Approved:

Commissioner Mahoney moved approval of Change Order No. 2 for an increase of $16,228 for Improvement District No. 5690.

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

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

Final Balancing Change Order No. 1 for Improvement District No. 5748 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of $18,465.58 for Improvement District No. 5748.

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

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

Contract Time Extension for Improvement District No. 5781 Approved:

Commissioner Mahoney moved approval of a Contract Time Extension to August 14, 2008 for Improvement District No. 5781.

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

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

Street Reconstruction and Incidentals Improvement District No. 5601 (On University Drive from 40th to 52nd Avenues South):

Commissioner Mahoney moved the following action be taken in connection with Street Reconstruction and Incidentals Improvement District No. 5601:

Adopt Resolution Creating Improvement District No. 5601:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5601, in the City of Fargo, North Dakota, be created

On University Drive South from 40th Avenue to 52nd Avenue South.

COMPRISING:
Lots 1 through 6, inclusive, Block 1.
Lots 1 through 27, inclusive, Block 2.
All in Rosewood Park.

Lot 1, inclusive, Block 1.
All in Mlar Addition.

Lots 1 and 2, inclusive, Block 1.
All in Agassiz Nursery Addition.

Lot 1, inclusive, Block 1.
All in PKG First Addition.

Lots 1 through 4, inclusive, Block 1.
All in Rose Creek Golf Course Annex Addition.

Lot 1, inclusive, Block 1.
All in Chandler First Subdivision.

Lot 1, inclusive, Block 1.
All in Atonement First Addition.

Lots 3, inclusive, Block 1.
All in A Replat of Rose Creek Golf Course Addition.

Lot 1, inclusive, Block 1.
Lot 1, inclusive, Block 2.
All in Rose Creek 7th Addition.

Block 1, inclusive.
Block 2, inclusive.
Block 3, inclusive.
Block 4, inclusive.
Block 5, inclusive.
Block 6, inclusive.

All in Sunset Memorial Gardens.

Lot 1, inclusive, Block 1.
All in WDAY Subdivision.

Lot 1.
All in Burritt's Second Subdivision.

Lots 1 through 10.
All in Burritt's First Subdivision.

Lots 1 through 4, inclusive, Block 1.
All in Sweeney Addition.

Lots 1 and 2, inclusive, Block 1.
All in Solberg Addition.

Lots 1 through 6, inclusive, Block 1.
Lots 1 through 6, inclusive, Block 2.
Lots 1 through 3, inclusive, Block 3.
All in Maier First Subdivision.

Lots 1 through 3, inclusive, Block 1.
All in Sabo Addition.

All of the unplatted land lying in the east half of Section 36, Township 139, Range 49 bounded on the East by the Red River of the North excluding the portion of Lot 1, Block 1 of Rose Creek Golf Course lying in the east half of Section 36, Township 139, Range 49.

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

NOW, THEREFORE, BE IT RESOLVED, That Street Reconstruction and Incidentals Improvement District No. 5601, 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. 5601:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5601, 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 $15,318,802.)

Order Plans and Specifications for Improvement District No. 5601:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5601, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5601:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5601, 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. 5601, 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 Street Reconstruction 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 Street Reconstruction & Incidentals, Improvement District No. 5601 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 Street Reconstruction & Incidentals improvement is to be paid from Street Sales Tax, and approximately 6% 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 Street Reconstruction & 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. 5601:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5601, in the City of Fargo, North Dakota.

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

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

Contract for Sanitary Sewer, Paving and Incidentals Improvement District No. 5826 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Aggregate Industries for Sanitary Sewer, Paving and Incidentals Improvement District No. 5826 in the City of Fargo, North Dakota.

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

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

Contract Bond for Sanitary Sewer, Paving and Incidentals Improvement District No. 5826 Approved:

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

Safeco Insurance Company of America, in the amount of $87,663.16, for Sanitary Sewer, Paving and Incidentals Improvement District No. 5826 in the City of Fargo, North Dakota.

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

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

Bid Awarded to Repair and/or Replace the Shooting Range at the Regional Law Enforcement Training Center:

The Board received a communication from Police Chief Keith Ternes stating for the past several months, members of the area law enforcement agencies that oversee the Fargo Regional Law Enforcement Training Center Shooting Range, have been planning for the replacement and/or upgrade of the range because the range is in desperate need of repair. He said bids to do the repair and replacement work at the training center were solicited and Meggitt Defense Systems-Caswell provided the training center advisory board with a quote of $298,865. He said Fargo's Finance Director Kent Costin has suggested financing this project by securing a low interest loan (5 years at 4%) to finance Fargo's portion of this project. The following users of the training center, he said, have agreed to pay the following annual amounts over the next five years to finance the replacement needs at the training center:

Fargo	$22,744
Cass County	$16,173
West Fargo	$ 8,592
NDSU	$ 3,032

He said the total amount needed to pay for the City of Fargo's share of this project would be approximately $113,720 over the five year period.

Assistant Chief Todd Osmundson said the current range was built by Meggitt Defense Systems 27 years ago and three-fourths of the 10 lanes are in operating condition. He said they have known about the need for repair for three years and have already built in $75,000 for the expense. The remainder, he said, will be paid back by the agencies involved.

In response to a question from Commissioner Wimmer, Mr. Costin said the project was discussed at the Finance Committee meeting several months ago and, with costs going up, it was decided to proceed now utilizing a short term 5 year loan.

Commissioner Wimmer moved the bid be awarded to Meggitt Defense Systems-Caswell in the amount of $298,865 to repair and/or replace the shooting

range at the Fargo Regional Law Enforcement Training Center and that the financing of this project be approved as proposed by the City's Finance Director.

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.

Amended Resolution of Annexation of a Part of Section 5, Township 138 North, Range 49 West Adopted: Agreements for Future Annexation and Deferral of Special Assessments with Certain Property Owners Approved:

The Board received a communication from City Attorney Erik Johnson requesting approval of an Amended Resolution of Annexation of part of Section 5 of Stanley Township and of certain agreements with property owners relating to future annexation and the deferral of special assessments. Mr. Johnson stated at the July 28, 2008 City Commission meeting, he presented an Agreement with the City of Horace and other protesting property owners regarding the disputed annexation in Sections 5 and 6 of Stanley Township. He submitted a copy of the July 24th letter that provided an explanation as to the basic terms of the agreements, an Amended Resolution of Annexation and a map depicting the boundaries of the annexation. He stated the map also depicts an area to the west of this annexation and to the east of the Sheyenne River that will be the subject of future annexations and is the subject of the Agreements Regarding Future Annexation with property owners Diede, LeClair, Nudell, Smylie and Gensler. He said a formal public hearing on this Amended Resolution of Annexation is not required, however, he published a notice of the Resolution in the newspaper once a week for two successive weeks to give any property owners notice that the City would be moving forward with this amended annexation, in accordance with the agreement entered into at the mediation in April, 2007. He said assuming the Board approves the following agreements and the Amended Resolution, the Amended Resolution, along with an accurate map of the annexation area, will be recorded at the courthouse and this will finalize the annexation:

1. Agreement for Future Annexation (Diede);
2. Agreement for Future Annexation (LeClair);
3. Agreement for Future Annexation (Nudell);
4. Agreement for Future Annexation (Smylie);
5. Agreement for Future Annexation (Gensler);
6. Agreement for Deferral of Special Assessments (Gensler); and
7. Agreement for Deferral of Special Assessments (Diede).

Mr. Johnson stated the agreements with these property owners call for future annexation to occur within 15 years after they connect to Fargo's sewer system. He said the Agreements for Deferral of Special Assessments pertain to property owned by the Gensler's and Diede's that is located within the immediate annexation area. He said the Gensler's and Diede's intend to farm this land for the foreseeable future and wanted the benefit of a deferral agreement for special assessments that might otherwise be levied against their property for improvements installed to support

development in neighboring properties. He said the special assessment deferral agreements are consistent with the City's standard policy for such deferrals.

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, The City of Fargo, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota, with about ninety-five thousand (95,000) inhabitants; and

WHEREAS, The City of Fargo, by resolution proposed to annex all of Sections 5 and 6, Township 138 North, Range 49 West [Stanley Township], County of Cass and State of North Dakota, approved by the City Commission on January 20, 2003; and,

WHEREAS, Upon hearing before the Fargo City Commission, held on November 24, 2003, it was established that protests to said annexation of Sections 5 and 6 of Stanley Township were submitted in writing by the owners of one-fourth or more of the territory proposed to be annexed and the Fargo City Commission approved the submission of the proposed annexation to a committee for mediation as provided in § 40-51.2-07.1 N.D.C.C.; and,

WHEREAS, Subsequent to the approval of the January 20, 2003 resolution by the city of Fargo proposing to annex Sections 5 and 6; the City Council of the City of Horace did accept certain petitions for annexation into the city of Horace of certain property located within Sections 5 and 6 of Stanley Township and, as a result of said acceptance being subsequent in time to Fargo's January 20, 2003 resolution, Fargo's resolution is first in time; and,

WHEREAS, A mediation committee as contemplated by N.D.C.C. § 40-51.2-07 comprised of Bismarck attorney, Timothy Durick, appointed by the governor, representatives of the protestors, and the involved cities, appeared at Fargo City Hall beginning at 10:00 a.m. on Thursday, April 19, 2007 for the purpose of engaging in mediation of Fargo's proposed January 20, 2003 annexation resolution; and,

WHEREAS, As a result of said mediation, an agreement was reached, by which the City of Fargo, the City of Horace and certain protesting property owners agreed, among other things, as follows (Exhibits referred to below not included herewith, but are included with the actual such agreement on file with the Office of the City Auditor, 200 North 3rd Street, Fargo, North Dakota):

> …that, subject to the terms of (said) agreement, Fargo be, and is hereby is, authorized to immediately bring to successful completion an annexation of a certain portion of Section 5, Township 138 North, Range 49 West [Stanley Township], County of Cass and State of North Dakota lying east and north of the line described on attached Exhibit "A".
>
> (hereinafter referred to as the "Fargo/Horace Boundary").
>
> and, subject to the terms of (said) agreement, Horace will refrain from annexing into the city of Horace any land lying east and north of the Fargo/Horace Boundary. A map of the Fargo/Horace Boundary, and the respective "Horace side" lying west and south of said line and the "Fargo

side" lying east and north of said line is attached hereto as Exhibit B and incorporated as if fully set forth herein.

2. … that Fargo may, and Fargo agrees it will forthwith pass an amended resolution of annexation of an area within Section 5 of Stanley Township lying east and north of the Fargo/Horace Boundary [to be referred to herein as the "Fargo Section 5 Annexation"], to complete its annexation as agreed at the mediation.

3. If the [Fargo] Board of City Commissioners approves the amended annexation of the Fargo Section 5 Annexation, then Horace may move forward with annexation of certain land lying within Sections 5 and 6, Township 138 North, Range 49 [Stanley Township][stet], County of Cass and State of North Dakota, lying west and south of the Fargo/Horace Boundary, said land to be referred to herein as the "Horace Annexation Area" and the proposed annexation by Horace of said area to be referred to herein as the "Horace Annexation".

4. Horace acknowledges that Fargo has entered into agreements with certain property owners whose property lies east of the Fargo/Horace Boundary, whereby such property owners will receive a delay or deferral of annexation of such property into Fargo, but which agreements will also serve as a binding commitment that such property will eventually be annexed into the city of Fargo. Pursuant to N.D.C.C. § 40-51.2-02.1, for a term of 20 years, Horace agrees to not interfere with any of said agreements nor cause any breach thereof (again, said agreements pertaining to lands lying east of the Fargo/Horace Boundary). As such, Horace agrees it will neither approve any petition nor approve any resolution for annexation of any such lands.

WHEREAS, There is contiguous and adjacent to the City of Fargo, tract or parcel of land hereinafter specifically described, containing approximately 476.99 acres, more or less, which tract or parcel of land is not presently a part of the City of Fargo.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that:

A. This instrument shall serve as an amendment to the resolution initially approved and adopted on January 20, 2003, and,

B. The boundaries of the City of Fargo be, and they hereby are, extended so as to include and incorporate within the corporate limits of the City of Fargo, Cass County, North Dakota, the following described land:

All that part of Section 5, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota more particularly described as follows:

Beginning at the northeast corner of said Section 5; thence South 2 degrees 01 minutes 05 seconds East a distance of 2474.18 feet along the east line of said Section 5 and along the current City of Fargo Corporate limit line to the east quarter corner of said Section 5; thence continuing along the east line of said Section 5, South 1 degree 25 minutes 48 seconds East a distance of 2735.57 feet to the southeast corner of said Section 5; thence South 87 degrees 04 minutes 03 seconds West a distance of 1304.40 feet along the south line of said Section 5 to the southeast corner of the Southwest Quarter of the Southeast Quarter of said Section 5; thence northerly along the east line of said Southwest Quarter of the Southeast Quarter of said Section 5 to the northeast corner of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter of said Section 5; thence westerly along the north line of the south half of the Southwest Quarter of the Southeast Quarter of said Section 5 to the northeast corner of Lot 1, Block 2, BRC Subdivision as recorded in document 914499, Book Q, Page 113 at the Cass County Recorder's Office; thence westerly, northerly and westerly along the north line of said BRC Subdivision to the northwest corner of Lot 1, Block 1 of said BRC Subdivision on the west line of the Southeast Quarter of said Section 5; thence northerly along said west line to the northeast corner of Lot 1, Block 1, Gray Gables Place Subdivision as recorded in document 821098, Book P, Page 26 at the Cass County Recorder's Office; thence westerly along the north line of said Gray Gables Place Subdivision to the northwest corner of Lot 2, Block 1 of said Gray Gables Place Subdivision; thence westerly and parallel to the south line of said Section 5 to a point on the east line of a tract of land as described by warranty deed document 1169835 at the Cass County Recorder's Office; thence northerly along the east line of said tract to the northeast corner of said tract; thence southwesterly along the north line of said tract to a point 1016.44 feet easterly as measured perpendicular from the west line of said Section 5; thence northerly and parallel to the west line of said Section 5 to the southeast corner of Lot 3, Block 1, Ashwood 3rd Subdivision as recorded in document 1028431, Book T1, Page 8 at the Cass County Recorder's Office; thence northerly along the east line of said Ashwood 3rd Subdivision to the northeast corner of Lot 3, Block 1 of said Ashwood 3rd Subdivision; thence westerly along the north line of said Ashwood 3rd Subdivision to a point on the east line of Ashwood Subdivision as recorded in document 788220, Book O, Page 95 at the Cass County Recorder's Office; thence northerly along the east line of said Ashwood Subdivision to the northeast corner of said Ashwood Subdivision; thence North 2 degrees 10 minutes 58 seconds West a distance of 1405.93 feet, more or less, to the south line of the North Half of the Southwest Quarter of the Northwest Quarter of said Section 5; thence westerly along the south line of the North Half of the Southwest Quarter of the Northwest Quarter of said Section 5 to the centerline of the Sheyenne River; thence northerly along said centerline to a point 1560.04 feet southerly from north line of said Section 5 as measured perpendicular to said north line of Section 5; thence easterly

and parallel to said north line of Section 5 to a point 664.13 feet easterly from the west line of said Section 5 as measured perpendicular to said west line of Section 5; thence North 3 degrees 19 minutes 34 seconds West a distance of 931.98 feet, more or less, to the south line of the North Half of Government Lot 4 of said Section 5; thence easterly along said south line of the North Half of Government Lot 4 a distance of 401.00 feet; thence North 33 degrees 30 minutes 41 seconds West a distance of 572.50 feet to a point 130 feet southerly from the north line of said Section 5 as measured parallel to the west line of said Section 5; thence westerly and parallel to the north line of said Section 5 to the point of intersection with the centerline of the Sheyenne River; thence northerly along said centerline of the Sheyenne River to a point 75.00 feet southerly from the north line of said Section 5 as measured parallel to the west line of said Section 5; thence westerly and parallel to the north line of said Section 5 to a point 218.2 feet easterly from the west line of said Section 5 as measured parallel to the north line of said Section 5; thence northerly and parallel to the west line of said Section 5 a distance of 75.00 feet to the point of intersection with the north line of said Section 5, said point being 218.2 feet easterly along the north line of said Section 5 from the northwest corner of said Section 5; thence North 87 degrees 19 minutes 19 seconds East a distance of 2394.10 feet along the north line of said Section 5 to the north quarter corner of said Section 5; thence continuing along the north line of said Section 5, North 87 degrees 19 minutes 07 seconds East a distance of 2612.24 feet to the point of beginning.

Basis of bearings is the City of Fargo GIS

Said part of Section 5 contains 476.99 Acres, more or less.

C. The mediated agreement also called for certain property owners whose property lies east of the Fargo/Horace Boundary, above-described, to enter into an agreement with the City of Fargo to receive a delay or deferral of annexation of such property into Fargo, but which agreements will also serve as a binding commitment that such property will eventually be annexed into the city of Fargo; and, said property is being excluded from the current annexation set forth in paragraph B, above, but which property will be the subject of future annexation in accordance with said separate agreements with said separate property owners. The Fargo Director of Planning and Development is hereby directed and authorized to denote on the annexation plat or map to be recorded with the Office of the Recorder for Cass County, North Dakota, the location of the said property that is the subject of such deferred annexation as being land that is “Subject to Deferred Annexation Agreements”, or denoted with language substantially similar thereto, so long as such denotation is permitted by the Cass County Recorder.

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.

Commissioner Wimmer moved the Agreements for Future Annexation with Timothy and Tracy LeClair, Norman and Lyla Diede, Sheila Nudell, Michael and Carol Smylie and Howard and Barbara Gensler and the Agreements for Deferral of Special Assessments with Norman and Lyla Diede and Howard and Barbara Gensler be approved.

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

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

Sharon Odegaard Reappointed to the Convention and Visitors Bureau:

The Board received a communication from Mayor Walaker recommending that Sharon Odegaard be reappointed to the Convention and Visitors Bureau.

Commissioner Piepkorn moved the reappointment of Sharon Odegaard to the Convention and Visitors Bureau for the term ending September 1, 2011 be approved.

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

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

Appointments to the Library Board and Parking Commission Approved:

The Board received a communication from Mayor Walaker recommending the appointment of James Council and Gregory Heller to the Library Board. He also recommended the reappointment of Margie Bailly and the appointment of Tracy Walvatne to the Parking Commission.

Commissioner Wimmer moved the appointment of James Council and Gregory Heller to the Library Board and the reappointment of Margie Bailly and the appointment of Tracy Walvatne to the Parking Commission for terms ending June 30, 2011 be approved.

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.

Renaissance Zone Project for Great Plains Integrated Marketing, Inc. Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Great Plains Integrated Marketing, Inc. for a business leasing property as part of a zone project at 64 1/2 Broadway.

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 Law states “a business that purchases or leases property as part of a zone project is exempt from income tax for five taxable years beginning in the year of the investment or lease for income derived from the business locations

within the zone". He said the Fargo Renaissance Zone Development Plan further states "Tenant must be leasing space in a building that has been approved as a zone project to be eligible for consideration". He stated the Renaissance Zone Authority felt that lease projects such as the application from Great Plains Integrated Marketing, Inc. would generally be straightforward and could be advanced to the City Commission following staff review and would generally not require direct Authority action. He said staff review found the applicant has met the aforementioned requirements. He said the project addresses the business retention and expansion goals stated in the Renaissance Zone Development Plan.

Commissioner Mahoney moved the Renaissance Zone application filed by Great Plains Integrated Marketing, Inc. for a project located at 64 1/2 Broadway be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

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

Renaissance Zone Project for Vlana Vlee, Inc. Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Vlana Vlee, Inc. for a business leasing property as part of a zone project at 102 Broadway.

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

Commissioner Mahoney moved the Renaissance Zone application filed by Vlana Vlee, Inc. for a project located at 102 Broadway be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

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

Resolution Adopted Approving Country Grove Addition to the City of Fargo, Cass County, North Dakota (At and Adjacent to 4330 and 4351 Coventry Drive South):

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 "Country Grove Addition" containing 2 Lots, 1 Block and 4.23 acres of land more or less, located at and adjacent to 4330 and 4351 Coventry Drive South; and

WHEREAS, Contained on said Plat, a vacation of a portion of Coventry Drive South has also been filed to allow for a slight re-alignment of this local roadway; and

WHEREAS, A Hearing was scheduled to be held June 11, 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 July 7, 14, 21, and 28, 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., August 11, 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 "Country Grove 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 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.

Resolution Adopted Approving Corwin Addition to the City of Fargo, Cass County, North Dakota (East Side of 40th Street between 2nd and 4th Avenues South):

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 "Corwin Addition" containing 3 Lots, 1 Block and 12.680 acres of land more or less, located on the east side of 40th Street between 2nd and 4th Avenues South; and

WHEREAS, A Hearing was scheduled to be held June 11, 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, Announced in the City Commission agenda and made available on August 7, 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., August 11, 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 and the Planning Commission be accepted and the Plat entitled "Corwin 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 Register of Deeds of Cass County, North Dakota.

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.

Parcels of Land in Corwin Addition Rezoned:

At a Hearing held on June 11, 2008 the Fargo Planning Commission recommended approval of a change in zoning from GC, General Commercial to LI, Limited Industrial on Lots 1, 2, 4 and 5 and part of Lots 3 and 6, Block 1 of West Park Subdivision, to be legally known as Lots 1 and 2, Block 1, Corwin 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 review criteria of Section 20-0906.F (1-4) has 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 Corwin 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 Corwin Addition to the City of Fargo 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 Hector's Addition Rezoned (57 11th Avenue North):

At a Hearing held on July 9, 2008 the Fargo Planning Commission recommended approval of a change in zoning from SR-3, Single-Dwelling to MR-1, Multi-Dwelling on Lots 13 through 19, Block 7, Hector's 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 Piepkorn 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 review criteria of Section 20-0906.F (1-4) has been met.

Second by Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioners Piepkorn, Mahoney, Wimmer, 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 Hector's Addition to the City of Fargo:

Commissioner Piepkorn 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 Addition to the City of Fargo be placed on first reading.

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

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

Amendment to the Planned Unit Development in Skaff's First Addition Approved (1632, 1646 and 1674 51st Street South, 4902 16th Avenue South and 4955 17th Avenue South):

A Hearing had been set for this day and hour to consider an amendment to the Planned Unit Development for Lots 1, 2, 3 and 4, Block 2, Skaff's First Addition.

The Fargo Planning Commission recommended approval of the amendment to the Planned Unit Development at their July 9, 2008 meeting.

No written protest or objection to the amendment has been received or filed in the Planning and Development Department.

The Board determined that no person is present to protest or offer objection to the amendment to the Planned Unit Development.

Commissioner Wimmer moved the amendment to the Planned Unit Development for Skaff's First Addition be approved as presented, reducing the size of the Planned Unit Development, identifying the square footage of retail space allowed and modifying the site plan to the site plan dated July 2008 on the basis that it satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0908.B.7(a-e) and all other applicable requirements of the LDC.

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.

First Reading of an Ordinance Amending Planned Unit Development on Certain Parcels of Land Lying in Skaff's First 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 Amending Planned Unit Development on Certain Parcels of Land Lying in Skaff's First Addition to the City of Fargo 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.

Recommendation from the Finance Committee to Retain Ownership of the City-Owned Property at 324 7th Street North Approved:

The Board received a communication from Finance Director Kent Costin stating the City of Fargo currently owns property at 324 7th Street North which is the former location of the FM Indian Center. He said a development group inquired about the City's willingness to sell this property so they could build a multi-family housing unit. He said this site includes a 50' x 140' parking lot and, as this property was purchased with Community Development Block Grant funds, the rental income from the parking lot is accruing to this fund in accordance with HUD program income regulations. He said the Finance Committee met with the developers' representative to discuss their development plans and is recommending the City retain this property until the impact of the NDSU Downtown campus can be assessed.

In response to a question from Commissioner Wimmer, Mr. Costin said the City is taking a slow and cautious approach in deciding whether to sell the property. He said the City may wait a year to see how the situation goes with increased parking demands from the new downtown NDSU buildings.

Commissioner Williams said waiting gives the City flexibility for future planning.

Mark Thelen, 3633 17th Street South, said he represents the development group that expressed interest in buying the property. He said multi-family housing is consistent with zoning in this area and housing is needed more than parking.

In response to a question from Commissioner Mahoney, Mr. Costin said a formal process needs to be followed because federal funding was used for the Community Development Block Grant project for this property.

Commissioner Piepkorn moved the recommendation from the Finance Committee to retain ownership of the City-owned property at 324 7th Street North be approved.

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

Commissioner Wimmer voted nay.

The motion was declared carried.

Joint Powers Agreement with Southeast Cass Water Resource District for Southside Flood Control Project Approved (Improvement District No. 5073):

The Board received a communication from Senior Engineer April Walker submitting a Public Works Projects Evaluation Committee Report of Action recommending approval of a Joint Powers Agreement (JPA) with Southeast Cass Water Resource District for Southside Flood Control project development and construction, as well as a flow chart of the Fargo/SE Cass responsibilities based on the JPA.

The Board also received a communication from Attorney Jonathan Garaas stating he has been authorized by the Horace City Council to present two proposals in regard to some general concepts which would be acceptable to the governing body of the City of Horace. The first proposal, he said, is that due consideration should be given to a flood control project because of elevation concerns adjacent to the inlet of the Sheyenne Diversion located near the intersection of Cass No. 14 and the Horace city limits. He said some overland flooding caused by the Sheyenne River water may occur resulting in the possibility of minor flooding in the vicinity of the Country Acres subdivision. The Horace City Council, he said, would be interested in the possible development of a flood control project in that specific area (a small levee with gates from the existing Sheyenne Diversion project extending to the southeast to connect to the natural high ground in Section 30-138-49). He said an engineer opined that the project cost would be approximately $625,000. N.D.C.C. § 40-22-06, he said, seems to coincide with these project concepts. He said the actual implementation of the statute for the development of a flood control project, and the creation of an appropriate Joint Powers Agreement between the City of Horace and Southeast Water Resource District would likely be favorably considered and such flood control project would also be advantageous to the City of Fargo. The second proposal, he said, refers to the Wild Rice River Levee Alternative and there is little likelihood acceptance by the Horace City Council for that project's boundaries as currently envisioned exists. The Sheyenne Diversion project, he said, provides adequate flood protection for most of Horace's land. As was recently pointed out by FEMA officials, any revision of the FEMA map presently being done for the City of Fargo will not be relevant to any other city - including the City of Horace, he said. Mr. Garaas stated even if proposed map revisions are deemed somehow relevant, the July 10, 2008 submissions to the Fargo City Commission establish only small quantities of land within the existing boundaries of the City of Horace and its extra-territorial jurisdiction immediately adjacent to the existing legal drain would be influenced by the preliminary 100-year base flood event. He said if the proposed Joint Powers Agreement between the City of Fargo and the

Southeast Cass Water Resource District is substantially revised, there is some possibility that the City of Horace could join in such an agreement, so long as it is not construed to be a municipal endorsement of the Wild Rice River Levee Alternative. All of the alternative flood projects appear to include lands protected by the Sheyenne Diversion, or lands in the 500 year floodplain, he said. He stated the City of Horace would likely oppose any provision within a Joint Powers Agreement whereby the authority of the Southeast Cass Water Resource District, or the City of Horace, would be granted or shared with any other municipality - in this case the City of Fargo. He said such proposed document could be revised to reflect a single Southeast Water Resource District project with two separate components; a Horace component limited in assessment area to its city limits/extraterritorial jurisdiction and a Fargo component limited in assessment area to its city limits/extraterritorial jurisdiction. He said the purpose is to ascertain if the development of a flood control project within the City of Horace can be developed by the Southeast Cass Water Resource District.

City Attorney Erik Johnson said the concerns raised by Attorney Garaas' letter can be addressed as the City moves forward with the project. He said it is only the beginning of planning for the project and there will be a number of steps taken between now and when the project actually starts.

Mayor Walaker said this agreement does not pre-empt Horace from making an agreement with SE Cass Water Resource District.

Commissioner Williams moved the Joint Powers Agreement with Southeast Cass Water Resource District be approved.

Second by Wimmer.

In response to a question from Commissioner Mahoney, Mr. Johnson said the Water Resource Board will handle assessments for the project.

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

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

Commissioner Mahoney moved that the Board adjourn to 5:00 o'clock p.m., Monday, August 25, 2008.

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

The time at adjournment was 5:58 o'clock p.m.