

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: July 28, 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, July 28, 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 Wimmer moved the Order of the Agenda be approved.

Second by Mahoney. 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 July 14, 2008 be approved as read.

Second by Williams. 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. Pledged securities as of June 30, 2008.
- b. Purchase of 2 new pumper trucks for delivery in 2009 from Custom Fire Apparatus for a total amount of \$719,432.
- c. Amendment to agreement with Handi-Wheels Transportation for a Job Access Reverse Commute (JARC) grant to extend the grant until all remaining funds are expended.
- d. Site Authorizations for Games of Chance:
 - (1) The ARC Upper Valley, Inc. at JT Cigarros (amended).
 - (2) Fargo Youth Hockey Association at the Teamsters Arena.
 - (3) Fargo Youth Hockey Association at the Urban Plains Center.
- e. Applications for Games of Chance:
 - (1) Kringen Club, Inc. for bingo from 7/1/08 to 6/30/09.

- (2) Knights of Columbus Fourth Degree Assembly 788 for a calendar raffle from 1/1/09 to 1/31/09.
 - (3) Cardinal Muench Seminary for bingo and a raffle on 1/25/09.
 - (4) Rotary Club of Fargo for a raffle from 7/30/08 to 6/30/09.
 - (5) Freedom Resource Center for a raffle on 9/18/08.
 - (6) El Zagal Director's Staff for a raffle on 10/12/08.
- f. Plat of 45th Street Park Addition.
 - g. Right-of-way easement with the State of North Dakota, North Dakota State Board of Higher Education for NDSU and the City of Fargo for the Tharaldson Ethanol delivery and return forcemains.
 - h. Revised Policy on Replacement of Lead Water Services.
 - i. Final Balancing Change Order No. 1 for an increase of \$3,694.55 for Project No. 5734-2.
 - j. Bid awards for the west end dewatering project at the landfill to George H. Haggart, Inc. in the amount of \$218,560; the purchase of two automated side-load trucks to Sanitation Products in the amount of \$373,606; one hook hoist and plow hitch to Sanitation Products in the amount of \$36,473; and one telescoping aerial lift truck to ABM Equipment and Supply in the amount of \$118,892.
 - k. Bid award concurrence with the NDDOT for Project No. 5811 to Opp Construction Company in the amount \$149,738.40.
 - l. Bid award for Project No. 5747-6 to Master Construction Company, Inc. in the amount of \$80,584.00.
 - m. Bid advertisement for Project Nos. 5647, 5790 and 5849.
 - n. Contract and bond for Project No. 5691.
 - o. Bills in the amount of \$9,395,942.72.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Piepkorn, Wimmer 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. 5743
Approved:**

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of \$10,059 for Improvement District No. 5743.

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

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

Change Order No. 1 for Improvement District No. 5314-10 Approved:

Commissioner Mahoney moved approval of Change Order No. 1 for an increase of \$87,092.00 for Improvement District No. 5314-10.

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

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

Change Order No. 1 for Improvement District No. 5749-1 Approved:

Commissioner Mahoney moved approval of Change Order No. 1 for an increase of \$26,674.93 for Improvement District No. 5749-1.

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

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

Contract Time Extension for Improvement District No. 5796 Approved:

Commissioner Mahoney moved approval of a contract time extension for part 1 of Improvement District No. 5796 from July 5, 2008 to July 19, 2008.

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

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

No Protests Received for P.C. Concrete Pavement and Incidentals Improvement District No. 5777:

The Statutory Resolution of Necessity for the construction of P.C. Concrete Pavement and Incidentals Improvement District No. 5777 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on June 16, 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 P.C. Concrete Pavement and Incidentals Improvement District No. 5777.

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

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

Bids Received for P.C. Concrete Pavement and Incidentals Improvement District No. 5777:

The bids for P.C. Concrete Pavement and Incidentals Improvement District No. 5777 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., July 23, 2008 and the bids were found to be as follows:

Dakota Underground Bid:	Fargo, ND \$2,577,981.71
Master Construction Company, Inc. Bid:	Fargo, ND \$2,606,797.50
Opp Construction Company Bid:	Fargo, ND \$2,903,454.93
Northern Improvement Company Bid:	Fargo, ND \$3,050,023.35
Strata Corporation Bid:	Grand Forks, ND \$3,347,869.75

Contract for P.C. Concrete Pavement and Incidentals Improvement District No. 5777 Awarded to Dakota Underground in the Amount of \$2,577,981.71:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of P.C. Concrete Pavement and Incidentals Improvement District No. 5777; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received July 23, 2008 for P.C. Concrete Pavement and Incidentals Improvement District No. 5777 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for P.C. Concrete Pavement and Incidentals Improvement District No. 5777 shows the bid of Dakota Underground of Fargo, North Dakota, in the sum of \$2,577,981.71 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 \$2,577,981.71 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for P.C. Concrete Pavement and Incidentals Improvement District No. 5777 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground for the sum of \$2,577,981.71, 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, Piepkorn, Wimmer 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. 5818:

The bids for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5818 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., July 23, 2008 and the bids were found to be as follows:

Shermans, LLC Bid:	West Fargo, ND \$361,969.31
Dakota Underground Bid:	Fargo, ND \$394,626.02
Rising Sun Construction, Inc. Bid:	Fargo, ND \$430,765.35
Earth Developers, Inc. Bid:	Fargo, ND \$433,394.00
Master Construction Company, Inc. Bid:	Fargo, ND \$445,631.15
Ryan Contracting Bid:	Shakopee, MN \$477,730.10

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5818 Awarded to Shermans, LLC in the Amount of \$361,969.31:

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 Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5818; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received July 23, 2008 for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5818 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. 5818 shows the bid of Shermans, LLC of West Fargo, North Dakota, in the sum of \$361,969.31 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 Shermans, LLC in the sum of \$361,969.31 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. 5818 in the City of Fargo, North Dakota, be and the same is hereby awarded to Shermans, LLC for the sum of \$361,969.31, 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, Piepkorn, Wimmer and Walaker voted aye.

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

P.C. Concrete Alley Paving and Incidentals Improvement District No. 5845 (Chandler's Broadway Addition):

Commissioner Mahoney moved the following action be taken in connection with P.C. Concrete Alley Paving and Incidentals Improvement District No. 5845:

Adopt Resolution Creating Improvement District No. 5845:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5845, in the City of Fargo, North Dakota, be created

From 16th to 17th Avenue North between Broadway and 7th Street, in Block 14 of Chandler's Broadway Addition.

COMPRISING:

Lots 1 through 11 and 14 through 24, inclusive, Block 14.
Chandler's Broadway Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That P.C. Concrete Alley Paving and Incidentals Improvement District No. 5845, 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. 5845:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5845, 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 \$87,120.)

Order Plans and Specifications for Improvement District No. 5845:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5845, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5845:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5845, 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. 5845, 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 P.C. Concrete Alley Paving 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 P.C. Concrete Alley Paving and Incidentals, Improvement District No. 5845 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 the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed P.C. Concrete Alley Paving and 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. 5845:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5845, in the City of Fargo, North Dakota.

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

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

Winter Decorating Improvements and Maintenance Improvement District No. 5851 (Downtown Area):

Commissioner Mahoney moved the following action be taken in connection with Winter Decorating Improvements and Maintenance Improvement District No. 5851:

Adopt Resolution Creating Improvement District No. 5851:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5851, in the City of Fargo, North Dakota, be created

Along 2nd Street from 4th Avenue North to 4th Street South
 Along 3rd Street North from 3rd Avenue North to 150' south of NP Avenue
 Along 4th Street from 5th Avenue North to 2nd Street South
 Along 5th Street North from 150' north of 4th Avenue North to NP Avenue
 Along Broadway from 6th Avenue North to Main Avenue
 Along 6th Street South from Main Avenue to 1st Avenue South
 Along 7th Street South from Main Avenue to 1st Avenue South
 Along 8th Street from NP Avenue to 1st Avenue South
 Along Roberts Street from 6th Avenue North to NP Avenue
 Along 10th Street from 2nd Avenue North to Main Avenue
 Along 4th Avenue North from 2nd Street North to Roberts Street
 Along 3rd Avenue North from 2nd Street North to Broadway
 Along 2nd Avenue North from 4th Street North to 10th Street North
 Along 1st Avenue North from 2nd Street North to 10th Street North
 Along NP Avenue from 2nd Street North to 10th Street North
 Along Main Avenue from 2nd Street North to 10th Street North
 Along 4th Avenue North from 2nd Street North to Roberts Street
 Along 1st Avenue South from 4th Street South to 8th Street South

COMPRISING:

All of Block 1
 All in Burgum Addition.

Lots D and E, inclusive, Block A
 Lots 1 through 3, inclusive, Sheehans Subdivision, Block A
 Lots D through H, inclusive, Block B
 Lots D through K, inclusive, Block C
 The west 100' of Block D
 Lots 1 through 9, Kirkhams Sub, Block E
 All of Block E south of 4th Avenue North
 All in Chapin, Johnson & Barretts Addition.

Lots A and B, inclusive, Block 1
 All in Great Northern Depot Addition.

Lots A through F, inclusive, Lots 1 through 14, inclusive, and
 Lots 18 through 22, inclusive, Block 1
 Lots A through G, inclusive, Lots 1 through 14, inclusive, and
 Lots 18 through 22, inclusive, Block 2
 Lots 1 through 22, inclusive, Block 3
 Lots 1 through 22, inclusive, Block 4
 Lots 1 through 18, inclusive, Block 7
 Lots 1 through 24, inclusive, Block 8
 Lots 1 through 24, inclusive, Block 9
 Lot 1 and Lots 12 through 18, inclusive, Block 10
 Lot 1 and Lots 8 through 18, inclusive, Block 15
 Lots 1 through 24, inclusive, Block 16
 All in Keeney & Devitts 1st Addition.

(All of Block 17 and Block 18)

Lots 1 through 5, inclusive, and Lots 10 through 12, inclusive, Block 21
Lots 1 through 5, inclusive, and Lots 10 through 12, inclusive, Block 22
Lots 1 through 3, inclusive, and Lots 11 through 12, inclusive, Block 23
Lots 13 through 18, inclusive, Leach and Well Subdivision, Block 23
Lot 1 and Lots 8 through 12, inclusive, Block 34
Lot 1 and Lots 7 through 10, inclusive, Block 35
All in Keeney & Devitts 2nd Addition.

All of Block 1 and Block 2
All in Machinery Row.

Lots 1 through 3, inclusive, Block 1
Lots 1 through 3, inclusive, Block 2
Lot 2, Block 3
All of Block 5 and Block 6
Lots 1 through 2, inclusive, Block 7
Lots 1 through 4, inclusive, Block 8
All in North Dakota Urban Renewal 1st Addition.

All of Block 1, Block 2 and Block 3
Lots 1 through 5, inclusive, Block 4
Lots 1 and 2, inclusive, Block 5
All in North Dakota Urban Renewal 2nd Addition.

Lots 1 through 24, inclusive, Block A1
Lots 1 through 24, inclusive, Block A2
Lots 1 through 15, inclusive, Block A3
Lots 1 through 13, inclusive, Block A4
All in Northern Pacific 2nd Addition.

Lots 1 through 18, inclusive, Block 6
Lots 1 through 18, inclusive, Block 7
Lots 3 through 6, inclusive, and Lots 11 and 12, Block 8
Lots A through F, inclusive, Aldrich's Sub, Block 8
Lots 1 through 6, inclusive, Block 9
Lot 1, Block 10
Lots 1 through 6, inclusive, Fargo Improvement 1st Subdivision, Block 17
Lots 1 through 6, inclusive, Block 18
Lots 1 through 11, inclusive, Block 19
Lots 1 through 12, inclusive, Block 20
Lots 1 through 12, inclusive, Block 21
All in Original Townsite Addition.

Lots 1 through 29, inclusive, Block 1
Lots 1 through 6, inclusive, and Lots 10 through 12, inclusive, Block 2
Lots A through S, inclusive, Hagamans Subdivision, Block 2

Lots 1 through 12, inclusive, Block 3
Lots 1 through 12, inclusive, Block 4
Lots 1 through 14, inclusive, Block 5
Lots 1 through 6, inclusive, Block 6
Lots 1 through 12, inclusive, Hagamans Subdivision, Block 6
Lots 4 through 13, inclusive, and Lots A through M, inclusive, Block 7
Lots 1 through 14, inclusive, Block 8
Lots 1 through 3, inclusive and Lots 10 through 12, inclusive, Block 9
All in Roberts Addition.

Lots 1 through 3, inclusive, and Lots 10 through 12, inclusive, Block 21
Lots 1 through 12, inclusive, Block 22
Lots 1 through 6, inclusive, Block 23
All of Block 24
Lots 8 through 12, inclusive, Block 25
Lots 7 through 12, inclusive, Block 26
Lots 7 through 12, inclusive, Block 27
Lots 11 and 12, Block 28
All in Roberts 2nd Addition.

Lots 1 through 3, inclusive, and Lots 6 through 27, inclusive, Block 3
All in S.G. Roberts Plat #2.

All of NP Outlots 1, 2, 3, 4, 5 and 7

A portion of Northern Pacific Railroad right-of-way, between Red River and 10th Street North, north of Main Avenue and south of NP Avenue.
All in unplatted in assessment area.

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

NOW, THEREFORE, BE IT RESOLVED, That Winter Decorating Improvements and Maintenance Improvement District No. 5851, 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. 5851:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5851, 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 \$146,000.)

Order Plans and Specifications for Improvement District No. 5851:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5851, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5851:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5851, 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. 5851, 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 Winter Decorating Improvements and Maintenance 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 Winter Decorating Improvements and Maintenance, Improvement District No. 5851 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 the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Winter Decorating Improvements and Maintenance 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.

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

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

Request for an Extension of the Noise Ordinance for The Hotel Donaldson's Dalefest Approved:

The Board received a communication from Josh Tandberg, Operations Manager for The Hotel Donaldson, requesting an extension of the City's Noise Ordinance on August 22, 2008 from 10:00 p.m. to 12:00 midnight for The Hotel Donaldson's Dalefest.

Mr. Tandberg stated the event is being held in support of the arts and will include performances by local bands and various arts demos.

In answer to a question, Mr. Tandberg stated he has met with Dave Anderson from the Downtown Community Partnership and the Police Department regarding the event.

Commissioner Wimmer moved the request be approved.

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.

Red River Greenway Study Accepted:

The Board received a communication from Traffic Engineer Jeremy Gorden and Planner Nicole Crutchfield submitting the executive summary for the Red River Greenway Study which focuses on recreation trail connectivity along both sides of the Red River. They stated the City of Fargo is just one jurisdiction involved in the outcome of the study which was conducted by the Metropolitan Council of Governments in 2007 and 2008. They said the study looked at lands along the Red River corridor and highlighted an implementation priority plan for bridges and greenway expansion priorities.

In answer to a question, Ms. Crutchfield stated it is anticipated there will be funding opportunities in the future, however, it is unknown at the present time what that funding will be.

Commissioner Williams moved the Red River Greenway Study be accepted encouraging recreation connectivity along the Red River and as it applies to the Red River corridor within the City limits of Fargo.

Second by Wimmer. 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.

Application Filed by Ristreto Coffee & Tea, Inc. d/b/a Ristreto Coffee & Tea, Inc. for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Ristreto Coffee & Tea, Inc. d/b/a Ristreto Coffee & Tea, Inc. for a Class "GH" Alcoholic Beverage License at 4150 40th Avenue South, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

Second by 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.

Application Filed by Silver Moon Supper Club, Inc. d/b/a Silver Moon Supper Club for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Silver Moon Supper Club, Inc. d/b/a Silver Moon Supper Club for a Class "FARZ" Alcoholic Beverage License at 309 Roberts Street, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Mahoney moved the application be approved.

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

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

Communication Received from Rick Fischer Regarding Raccoons:

The Board received a communication from Rick Fischer, 1832 19th Street South, stating he has witnessed raccoons coming in and out of the City storm sewer drains. He said one idea would be to make sure all outlets have grates so animals cannot access the drain system. He said animals carry disease and citizens need to be educated. He stated the City needs to expand the animal control department to handle these issues.

Mr. Fischer stated he would like to see better coordination between the City pound, animal control and the Police Department. He said he was told it was up to him to go to the City pound, get a trap for the animal and release it himself. He said he was uncomfortable with trapping the animal himself and maybe the City should look at working with the DNR and Red River Zoo. Mr. Fischer stated he also is concerned with the various diseases the raccoons can carry. He suggested the City grate the drains so the raccoons cannot get into them and stated grates with small openings could be placed on the sewer drains and the big culverts that drain into the river.

Lolita Fischer stated as the City continues to grow, the animals are pushed out of their natural habitat. She said she and her husband have been educating their neighbors and telling them not to put their garbage out which would get rid of the raccoon's food source. However, she continued, she does not want to push the problem onto another neighborhood.

Mayor Walaker stated grates hinder the water flowing into the sewers which can add to the flooding problems in the streets. He said the problem is the raccoons are looking for a food source.

Commissioner Wimmer stated once the garbage and food source is gone, the raccoons will wander away. He said most of the problems occur when garbage is left out. He said the garbage should only be brought out on garbage pickup days.

Police Chief Ternes stated if people leave the wild animals alone in most cases they will move on. He said when a citizen utilizes some type of a trap, most of the responsibility is on the homeowner. He said the Police Department will respond only if the animal is a serious threat to public safety and that is frustrating to the homeowners. He said when the animal is trapped and the citizen is questioning what to do with it, the community service officer can pick it up and release it. Chief Ternes

stated he spoke with Doug Leier with the Game and Fish Department and he was not concerned with the City not taking any type of action regarding the raccoons. He said Mr. Leier indicated there is really no way to mitigate the raccoon population along the river. He said the City does not have the resources to respond to every complaint and most of the responsibility is the property owner's.

Mayor Walaker stated in regard to rabies problems, the state of North Dakota only had six raccoons with rabies over a 10 year period.

In answer to a question regarding an animal control service, Environmental Health Services Manager Myron Berglund stated citizens can call his department for information on local animal control companies.

Ms. Fischer stated she agrees with Commissioner Wimmer to wait and see if there are any more raccoons spotted in the neighborhood over the course of the next week. She said she has not seen any since a week ago last Friday. She said this is all about public education regarding the raccoons.

Annexation Agreement with the City of Horace and Certain Property Owners Regarding the Disputed Annexation in Sections 5 and 6 of Stanley Township Approved:

The Board received a communication from City Attorney Erik Johnson submitting for the Board's review and approval an agreement with the City of Horace and other protesting property owners regarding the disputed annexation in Sections 5 and 6 of Stanley Township. Mr. Johnson stated in April 2007, the City of Fargo entered into a conceptual agreement with certain property owners and the City of Horace regarding the disputed annexation as a result of a mediation process. He said the Commission directed his office to prepare the appropriate agreements to formalize the conceptual agreement. Although it has taken some time and a fair amount of interaction between the attorneys for the various parties, he continued, he is pleased to report that this matter is close to being brought to completion. He said the conceptual agreement contains the following terms:

"1. The parties agreed that the boundary between the City of Horace and the City of Fargo would be the meandering Sheyenne River on the West side of Section 5. On the south side, properties that have already been improved (occupied by residents) and property owned by the Catholic Diocese would become part of the City of Horace. The majority of acreage in Section 5 would be annexed into the City of Fargo.

2. There are five parcels along the Sheyenne River that are owner-occupied residences. The conceptual agreement provided that separate written agreements will be entered into with those owners. The agreements would state that their property will be annexed into the City of Fargo in the future - not immediately - the property owners will need to connect to the City's sewer system and, thereafter, they will be annexed into the City of Fargo within 15 years thereafter.

3. Of the foregoing five property owners, the City will enter into agreements with two property owners who expect to continue farming their land (within Section 5) for the foreseeable future. These property owners were looking for some protection from the cost of any development that may surround them before their land is ready for development (i.e. so long as they still wish to farm that land). Agreements will be

made between the City and these two property owners to allow deferrals of special assessments to provide such protection. The deferral agreements are in conformance with the city's standard policy and practice for deferral of special assessments.

4. A form of written agreement has been negotiated and approved by the lawyers for the city of Fargo, the city of Horace and certain protesting property owners represented by attorney Robert Hoy. This agreement will place into effect the previously described terms, including an 'annexation boundary line' to be established between the City of Horace and the City of Fargo. That agreement is enclosed for your approval.

5. As the final steps toward completing the annexation, initiated in January 2003 (which resulted in the lawsuit brought by the City of Horace and subsequently the mediation that occurred in April 2007), the City Commission will need to approve an amendment of the January 2003 Resolution of Annexation to modify the boundary line in accordance with the aforesaid agreements. A map of the annexation area, as amended, will then be recorded with the Office of the Cass County Recorder."

Mr. Johnson stated he is in the process of collecting signatures on the final draft agreements with the neighboring property owners and expects to submit those to the City Commission in the near future; however, he would appreciate the Board's review and approval of the Agreement for Annexation between the City of Fargo, City of Horace and Certain Property Owners. He said he anticipates that the Horace City Council will approve the same agreement at their regular meeting on Tuesday, July 29, 2008. He said he hopes to have all the agreements with affected property owners collected and ready to present to the Board, along with an Amended Resolution of Annexation, at the August 11, 2008 City Commission meeting.

Commissioner Wimmer moved the Annexation Agreement between the City of Horace, the City of Fargo and certain property owners be approved and the Mayor be authorized to execute such instruments or agreements in substantial conformity therewith upon receipt and approval of the Agreements for Future Annexation with property owners LeClair, Diede, Nudell and Smylie, the Sewer Agreement with property owner Gensler and the Agreements for Deferral of Special Assessments with property owners Diede and Gensler.

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

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

At 6:04 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Action on the Joint Powers Agreement with Southeast Cass Water Resource District for the Southside Flood Control Project Tabled Until August 11, 2008:

The Board received a communication from Senior Engineer April Walker submitting a PWPEC Report of Action recommending approval of a Joint Powers Agreement (JPA) with SE Cass Water Resource District for the 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 received a communication from Attorney Jonathan Garaas stating the Horace City Council will next meet on August 4, 2008 and he has been previously authorized to speak out on behalf of the City of Horace in the event he learned of any public event which could potentially adversely impact the City of Horace and its residents. He said he believes the City of Horace, and its residents will likely oppose the execution and implementation of the proposed Joint Powers Agreement contemplated between the City of Fargo and Southeast Cass Water Resource District. He said the Horace City Council has not yet taken any position because they have not had an opportunity to review the 182 page submission recently presented to the Fargo City Commission dated July 10, 2008. Mr. Garaas stated it is likely that the City of Horace and its residents will oppose any Joint Powers Agreement whereby the authority of the Southeast Cass Water Resource District or the City of Horace is granted or shared with any other municipality - in this case the City of Fargo. He said should there be a change in project concept so that the proposed agreement would only include lands within the boundaries of the City of Fargo and its extraterritorial zoning area, he does not believe that the City of Horace will have legal standing to oppose such a Joint Powers Agreement. He summarized sections of the North Dakota Century Code that he believes are in conflict with the Joint Powers Agreement. He said the contemplated project goes beyond the area under the legal jurisdiction of Fargo and it contemplates areas within and without Horace that are not subject to flooding even under the results of the on-going FEMA study. He said on July 22, 2008, it was learned that FEMA is not even contemplating any mapping changes for Horace, Briarwood, Frontier, Prairie Rose, or Oxbow which give reason for pause. Mr. Garaas submitted a preliminary floodplain map and stated the map is being provided to various potentially affected landowners as the preliminary results of Houston Engineering, Inc.'s current FEMA studies predicated upon a misunderstanding of the City of Fargo's extraterritorial jurisdiction which is not 4 miles under the old law. He summarized a number of reasons why he believes the project has no flood control benefit to the City of Horace. He listed a number of state statutes in conflict with the agreement providing for reimbursements of expenses incurred by the City of Fargo for the proposed project and questioned the authority of the City of Fargo to enter into such an agreement. Mr. Garaas also summarized the reasons he felt the Joint Powers Agreement might violate North Dakota legislation that already exists. He said the City of Horace will likely not dispute the right of the two entities to enter into such an agreement with respect to lands in Fargo or those lands under Fargo's jurisdiction. He said the City of Horace will not likely consent to any attempt to expand the City of Fargo's authority to areas within Horace or under their extraterritorial zoning authority. He said the Water Resource District and the City of Horace can determine if any project is advantageous. He said he has been advised that FEMA will not certify that the project will take any property out of the 100 year floodplain and resulting requirements until after actual construction followed by a FEMA inspection. He said he is concerned that misinformation exists and there does not appear to be any way that this project can be presently advertised as meeting projected FEMA standards so that project lands would not be in the 100 year floodplain. To the extent anyone so states, there should be immediate corrective action taken so that no one is misled, he said.

Sean Fredricks, Attorney for Southeast Cass Water Resource District, stated the Water Resource District Board did approve the agreement and Chair Thomas Fischer signed it.

Mr. Garaas reiterated the concerns he outlined in his communication. He said he is alerting the Commission to some legal and factual questions and he believes a meeting is in order before the agreement is signed. He said he is not speaking for Horace because they have not acted on this item yet.

City Attorney Erik Johnson stated his response to Mr. Garaas is that this agreement has been in the works for some time and it was founded on state law.

Mr. Fredricks stated he agrees with Mr. Johnson. He said the City of Horace does have a representative who attended all of the meetings. He said he feels this agreement does have the legal footings in terms of the points raised by Mr. Garaas.

In answer to a question, Mr. Fredricks stated there is an advisory committee and any entity that wants to make comments certainly has the opportunity to do that. He said there is nothing to prohibit them from participating and if they want to enter into an agreement the Water Resource District would be open to that. He said they want to encourage the various entities to participate and they will continue to do that.

City Engineer Mark Bittner stated if the City of Horace wants to become involved in the Joint Powers Agreement, the City of Fargo would like to have them involved. He said he thinks there is a real need to have some agreements in place and he would welcome participation by any cities in the benefitted area. He said he does not see any reason that this cannot wait a little longer.

Mr. Fredricks stated on an administrative standpoint there is no urgency and there is no deadline. However, he continued, if it were up to him, he would say to approve it tonight because it has been sitting for so long.

In answer to a question, Mr. Fredricks said the agreement can be amended to let Horace in. He said he would caution that the agreement not be tabled simply in the interest of obstructing the project.

Mr. Garaas stated if there is a proposal that benefits Horace, they will want to participate.

Mayor Walaker stated he does not see any problem with approving this and sending a letter to Horace to see if they want to participate and then the agreement can be amended.

Mr. Johnson stated the agreement can be approved and amended later.

Commissioner Williams stated it really is not going to make a difference if this item is delayed to give Horace time to review it. He said if the City of Horace is meeting on August 4th, this item can wait until the next City Commission meeting for action.

Mayor Walaker stated waiting does not make any sense at all. He said everything needs to be legal but he has become a little frustrated with this item. He said there are many obstacles lying ahead and the City needs to move forward on this item.

Commissioner Williams moved to delay action on this item for two weeks to give Horace a chance to review the Joint Powers Agreement.

Second by Piepkorn.

There was discussion regarding sending notices to entities that may be interested in participating.

Mr. Fredricks stated he agrees with Mayor Walaker in terms of slowing the process even further if this item is delayed.

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

Commissioners Wimmer and Walaker voted nay.

The motion was declared carried.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, August 11, 2008.

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

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