

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

**Regular Meeting: Monday: November 1, 2010:**

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 4:30 o'clock p.m., Monday, November 1, 2010.

The Commissioners present or absent were as shown following:

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

Absent: None.

Mayor Walaker presiding.

Mayor Walaker announced that there are pending litigation matters to be discussed in Executive Session, specifically two cases, both entitled Hector v. City of Fargo relating to Improvement District No. 5314.

Commissioner Wimmer moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.2 to discuss two cases, both entitled Hector v. City of Fargo relating to Improvement District No. 5314.

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

At 4:35 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

Members present were: Wimmer, Piepkorn, Williams, Mahoney and Walaker.

The Executive Session closed at 4:55 o'clock p.m. and the Commission reconvened in public session at 5:00 o'clock p.m.

**Order of Agenda Approved:**

Commissioner Mahoney moved the Order of the Agenda be approved.

Second by Williams. 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 October 18, 2010 be approved as read.

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

**Consent Agenda Approved:**

Commissioner Piepkorn moved the Consent Agenda be approved as follows:

- a. Waive the requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of the following Ordinances: Amending Ordinance

No. 4731 (Amending Section 11-0205 of Article 11-02 of Chapter 11 of the Fargo Municipal Code) Relating to Noise Control and Radio Interference – Compression Brakes Prohibited; and Amending Section 1-0305 of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Penalties for Ordinance Violations.

- b. 2nd reading, waive reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Deer Creek Addition, Cass County, North Dakota; 1st reading, 10/18/10.
- c. Contract with Patron Solutions, L.P. d/b/a New Era Tickets for computerized ticketing of Fargodome events for a five-year period beginning January 1, 2011.
- d. Plan design changes for the City of Fargo Health Trust to maintain grandfathered status of the plan and to increase the co-payment of brand name prescription drugs to \$40.00.
- e. Resolution relating to extension of the existing lease agreement between the City and the Fargo Building Authority for the 2011 calendar year, confirming appropriation of funds for required debt service payments in the amount of \$381,180.00 for the City Hall and Civic Center expansion project (Attachment “A”).
- f. Resolution giving preliminary approval to MIDA bond financing in the amount of \$150,000,000.00 to refinance bonds issued previously for Meritcare Obligated Group and setting a public hearing for 11/29/10 (Attachment “B”).
- g. Grant Award Agreement with the North Dakota Department of Health for Radon Awareness (CFDA #66.605).
- h. Maple Valley School contract for the Tobacco Prevention and Control Program.
- i. Fire Department budget adjustment in the amount of \$5,078.48 for Haz Mat training.
- j. Fiscal Services Agreement for Red River Regional Dispatch.
- k. Applications for five-year tax exemptions for improvements made to buildings:
  - (1) Eric and Brittany Sinclair, 317 21st Avenue North.
  - (2) David and Beth Tacke, 1320 5th Avenue South.
  - (3) Scott and Carol Funfar, 410 21st Avenue North.
- l. Applications for Games of Chance:
  - (1) NDSU Student Dietetic Association for a raffle on 11/18/10.
  - (2) North Dakota Autism Center, Inc. for a raffle on 1/22/11.
- m. Donation of three light bars to the Argusville Fire Department.

- n. Staff authorization to contract fuel purchases for the 2011 fiscal year.
- o. Purchase of two buses from the Minnesota Cooperative Purchasing Venture for a total amount of \$114,866.00 for the Senior Ride Service.
- p. Purchase Agreement with Dorothy Heidt for Permanent Easement in connection with Improvement District No. 5747-26.
- q. Engineering Services Contract Amendment in the amount of \$173,270.00 for Project No. 5949.
- r. Engineering Services Contract Amendment in the amount of \$241,365.00 for Project No. 5944.
- s. Priority list for 2012 Transportation Enhancement Project Applications.
- t. Joint Powers Agreement with Minnesota Department of Natural Resources for Project No. 5153-3.
- u. Request for Proposals for Project No. 5981.
- v. Project Concept Report for Improvement District No. 5908-02.
- w. Change Order No. 9 for an increase of \$27,308.00 for Project No. 5726.
- x. Work Change Directive No. 1 for an increase of \$606,485.00 for Project No. 5657.
- y. Change Order No. 1 for an increase of \$1,757.00 for Project No. 5970.
- z. Contract time extension for Project No. 5968.
- aa. Bid award for Project No. 5948 to Asplin Excavating, Inc. in the amount of \$69,343.20.
- bb. Contract and bond for Project Nos. 5928 and SW 10-01.
- cc. Bills in the amount of \$7,935,244.43

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

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

**Contract Time Extension for Improvement District No. 5953 Approved:**

Commissioner Piepkorn moved approval of a Contract Time Extension to October 29, 2010 for Improvement District No. 5953.

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

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

**Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5821 Approved:**

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Sherman's, LLC for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5821 in the City of Fargo, North Dakota.

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

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

**Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5821 Approved:**

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

Western Surety Company, in the amount of \$100,879.58, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5821 in the City of Fargo, North Dakota.

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

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

**Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5964 Approved:**

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Sherman's, LLC for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5964 in the City of Fargo, North Dakota.

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

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

**Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5964 Approved:**

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

Western Surety Company, in the amount of \$329,113.67, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5964 in the City of Fargo, North Dakota.

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

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

**Offer from Microsoft to Loan Artwork by Randy Hayes “Untitled (Woman with Blanket)” to the City of Fargo Approved:**

The Board received a communication from City Administrator Pat Zavoral stating Microsoft has made an offer to loan a piece of art by Randy Hayes “Untitled (Woman with Blanket)” to the City of Fargo. He said the agreement requires the City to carry insurance on the artwork, cover costs for transporting it from Microsoft to City Hall and installation of the same. He said he feels the most appropriate placement of the artwork would be in the skyway outside the City Commission offices. He said he is recommending the City graciously accept this offer from Microsoft.

Commissioner Williams moved the offer from Microsoft to loan the Randy Hayes “Untitled (Woman with Blanket)” artwork to the City of Fargo for a period of five years be accepted, that the City agree to keep insurance coverage on the art and pay approximately \$150.00 to transport the artwork from the Microsoft offices and install it in the City Hall and that the Mayor be authorized to execute the loan agreement on behalf of the City.

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.

**Option 5 for Drain 53 Improvements Along Silverleaf Addition Approved:**

The Board received a communication from City Engineer Mark Bittner stating the Drain 53 project for drainage and flood protection improvements would require removal of shelter belt trees and shrubs located along the east side of Drain 53 paralleling and west of the west line of Silverleaf Addition. He said the Southeast Cass Water Resource District is the lead agency on the project. At the request of property owners, he stated, meetings were held with Southeast Cass Water Resource District Board and City staff to discuss options for preserving trees which resulted in the development of five options. Property Owners, he said, preferred Option 4 which moves the levee without disrupting the trees at an estimated cost of \$260,000.00; however, the Public Works Project Evaluation Committee recommended Option 5 which would move the location of the levee 60 feet west, saving the tree rows west of Silverleaf Addition, except where the levee crosses the tree row. Mr. Bittner said property owners were willing to accept Option 5 as a compromise to save the majority of the shelter belt and recommends preservation of the trees be funded through flood protection sources rather than special assessments to Silverleaf properties.

Mayor Walaker stated he received a letter from a landowner complimenting Mark Bittner and April Walker for their role in arriving at a viable solution.

Commissioner Wimmer moved the recommendation from the Public Works Projects Evaluation Committee for Option 5 for Drain 53 improvements along Silverleaf Addition 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.

**Kurt Losee Appointed to the Civil Service Commission:**

The Board received a communication from Mayor Walaker recommending that Kurt Losee be appointed to the Civil Service Commission to fill the unexpired term of Bonnie Guttormson.

Commissioner Mahoney moved Kurt Losee be appointed to the Civil Service Commission for a term ending June 30, 2011.

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

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

**Karen Stoker and Rick Engen Reappointed to the Parking Commission:**

The Board received a communication from Mayor Walaker recommending that Karen Stoker and Rick Engen be reappointed to the Parking Commission.

Commissioner Wimmer said he has concerns about Rick Engen being on the Commission while negotiations have taken place for a couple years in regards to the parking lot next to his downtown bar.

In response to a question from Mayor Walaker on whether or not Mr. Engen excuses himself from voting, Commissioner Williams stated Mr. Engen does recuse himself when this particular topic comes up. He said Mr. Engen has been a good Parking Commissioner; however, work toward an agreement with him needs to continue as a gravel parking lot on Broadway is not acceptable.

Commissioner Williams moved Karen Stoker and Rick Engen be reappointed to the Parking Commission for three-year terms ending June 30, 2013.

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

Commissioner Wimmer voted nay.

The motion was declared carried.

**Off-Premise Advertising Signs to be Allowed Abutting Principal Arterial Roadways:**

The Board received a communication from Senior Planner Jim Hinderaker stating at the October 18, 2010 meeting the Commission approved the draft Sign Code and staff was directed to prepare a map depicting areas of the City abutting principle arterial roadways where off-premise advertising signs would be permissible. Mr. Hinderaker presented a map indicating where billboards could be placed on arterial roads and indicated many areas that already have conditional overlays preventing large billboards. He said the sign companies favor large billboards along the arterials, while the recently approved draft Sign Code allows them only in General Industrial Zoning Classifications or along interstates.

At 5:15 p.m., the time advertised for public hearings, the Board deferred additional discussion on this item until after the hearings.

**Addition of Route 23 to the Fargo Metro Area Transit Between West Acres Shopping Center and the Osgood, Woodhaven and Microsoft Neighborhoods in Southwest Fargo Approved:**

A Hearing had been set for this day and hour for the purpose of adding Route 23 to the existing transit system with the proposed starting date for Monday, November 22, 2010. The notice stated Route 23 will travel from West Acres Shopping Center to the Osgood, Woodhaven and Microsoft neighborhoods in southwest Fargo and will also serve retail locations on 52nd Avenue South Monday through Saturday year-round, including evening service.

Commissioner Piepkorn moved the addition of Route 23 to the Fargo Metro Area Transit between West Acres Shopping Center and the Osgood, Woodhaven and Microsoft Neighborhoods in Southwest Fargo effective November 22, 2010 be approved.

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

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

**Application to Transfer the Alcoholic Beverage License from Genesis, Inc. d/b/a Jalapenos to Jalapenos Mexican Restaurant, Inc. d/b/a Jalapenos Mexican Restaurant Approved:**

A Hearing had been set for this day and hour on the application to transfer the Class "F" Alcoholic Beverage License from Genesis, Inc. d/b/a Jalapenos to Jalapenos Mexican Restaurant, Inc. d/b/a Jalapenos Mexican Restaurant at 2901 Main Avenue, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

**Application to Transfer the Alcoholic Beverage License from Windbreak, Inc. d/b/a Windbreak Saloon to Liquid Hospitality, LLC d/b/a/ Windbreak Saloon Approved:**

A Hearing had been set for this day and hour on the application to transfer the Class "AB" Alcoholic Beverage License from Windbreak, Inc. d/b/a Windbreak Saloon to Liquid Hospitality, LLC d/b/a/ Windbreak Saloon at 3150 39th Street South, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

**Application Filed by El Mezcal Mexican Restaurant, LLC d/b/a El Mezcal Mexican Restaurant for an Alcoholic Beverage License Approved:**

A Hearing had been set for this day and hour on the application filed by El Mezcal Mexican Restaurant, LLC d/b/a El Mezcal Mexican Restaurant for a Class "F" Alcoholic Beverage License at 2515 University Drive 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 Williams. On call of the roll Commissioners Piepkorn, Williams, Mahoney, Wimmer and Walaker voted aye.

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

**Application Filed by Samurai Japanese Cuisine, Inc. d/b/a Samurai Japanese Cuisine for an Alcoholic Beverage License Approved:**

A Hearing had been set for this day and hour on the application filed by Samurai Japanese Cuisine, Inc. d/b/a Samurai Japanese Cuisine for a Class "GH" Alcoholic Beverage License at 1775 45th Street South, Suite B, 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 Williams. On call of the roll Commissioners Piepkorn, Williams, Mahoney, Wimmer and Walaker voted aye.

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

**Application Filed by River Smash, LLC d/b/a SmashBurger for an Alcoholic Beverage License Approved:**

A Hearing had been set for this day and hour on the application filed by River Smash, LLC d/b/a SmashBurger for a Class "GH" Alcoholic Beverage License at 1801 45th Street South, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

**Resolution Adopted Approving a Vacation Plat of Part of Second Avenue North Adjacent to Block 10, Keeney & Devitt's Addition (abutting property located at 201 5th Street North):**

Senior Planner Jim Hinderaker said this request is for an area 63 feet by 19 feet wide along Second Street North on the south corner of the Radisson Hotel for an expansion of the bar and related facilities. He said reducing the street right-of-way from 80 feet on Second Avenue North down to 61 feet still allows for sidewalk, drive aisles and parking. He said the Planning Commission and the Public Works Projects Evaluation Committee have approved the plan; however, there were concerns that downtown right-of-ways should be preserved.

Commissioner Piepkorn said he is concerned that vacating the area may impede future plans for the street to become a main corridor to the river or for other uses. He said he felt the work should not have started before the project was finalized.

Commissioner Williams agreed and said the Second Avenue Corridor is filling in much as designed and the goal is wider sidewalks, not narrower. He said the applicant should take a step back and see if a street level lounge could be done without encroaching on the sidewalk.

City Administrator Pat Zavoral said he believes there was an understanding when the Radisson was built that expansion could be done under the columns, which is what is being done. He said by the Radisson moving the bar to ground level this would encourage more activity off Broadway and along Second Street North.

Commissioner Mahoney 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 "Vacation Plat of Part of Second Avenue North, Adjacent to Block 10, Keeney & Devitt's Addition to the City of Fargo, Cass County, North Dakota" abutting property located at 201 5th Street North; and

WHEREAS, A Hearing was held September 7, 2010 by the Fargo Planning Commission, and notice of such Hearing had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer; and

WHEREAS, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on September 27, October 4, 11, and 18, 2010 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., November 1, 2010 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 "Vacation Plat of Part of Second Avenue North, Adjacent to Block 10, Keeney & Devitt's Addition to the City of Fargo, Cass County, North Dakota" 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 Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Wimmer and Walaker voted aye.

Commissioners Piepkorn and Williams voted nay.

The Resolution was adopted.

**Amendment to the Growth Plan Approved (4102, 4106, 4206, 4210, 4212, 4300 and 4456 19th Avenue North and 1801, 1805, 1809, 1817, 1825, 1833, 1841, 1849 and 1857 43rd Street North):**

A Hearing had been set for this day and hour to consider approval of an amendment to the Growth Plan from commercial use to industrial use on Lots 13 and 14, Hector's Subdivision.

The Fargo Planning Commission recommended approval of the amendment to the Growth Plan at their September 7, 2010 meeting.

No written protest or objection to the amendment to the Plan 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 Growth Plan amendment.

Senior Planner Jim Hinderaker said staff issued this request for an area south of 19th Avenue North and north of the railroad tracks in order for the area to mirror what is actually going on south of that property. He said the Growth Plan recommends commercial use while this amendment is for more industrial. He said long range plans and existing growth plans would move the intersection at 45th Street and 19th Avenue further north when work is done on 19th Avenue North. Drainage is of some concern, he said; however, much of that has been resolved until the future when 19th Avenue North may be changed.

Commissioner Wimmer moved to accept the findings of staff and the Planning Commission and approve the Growth Plan Amendment as the proposal complies with the Comprehensive Plan and all other applicable requirements of the Land Development Code.

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 Subdivision Rezoned (4210 19th Avenue North):**

At a Hearing held on September 7, 2010 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to LI, Limited Industrial on part of Lot 13 of Hector's Subdivision.

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

Commissioner Wimmer offered the following Resolution and moved its adoption:

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

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

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

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners 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 Hector's Subdivision to the City of Fargo, Cass County, North Dakota:**

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

Second by Piepkorn. On call of the roll Commissioners 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 Urban Plains by Brandt First Addition Rezoned (51st Street and 28th Avenue South):**

At a Hearing held on October 5, 2010 the Fargo Planning Commission recommended approval of a change in zoning to repeal Section 1.1.1 Massing of Dwelling Units of the existing Conditional Overlay Ordinance No. 4320 applying to the MR-3, Multi-Dwelling zoned land in Block 2 and Block 3 of Urban Plains by Brandt First 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.

Senior Planner Jim Hinderaker said there was a split decision by the Planning Commission recommending the rezoning in Urban Plains, South of 32nd Avenue. He said the developer feels that it is not economically feasible to develop under the current restrictions of the conditional overlay limiting density to 144 units per quarter

section if taller than three stories. He said repealing the conditional overlay and returning to the MR-3, Multi-Dwelling would not change design standards, just the density portion, allowing for taller buildings.

Commissioner Wimmer offered the following Resolution and moved its adoption:

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

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

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

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners 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 Amending an Ordinance Rezoning Certain Parcels of Land Lying in Urban Plains by Brandt 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 an Ordinance Rezoning Certain Parcels of Land Lying in Urban Plains by Brandt 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.

At 6:03 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

**Text Amendment to the Land Development Code Approved:**

A Hearing had been held by the Fargo Planning Commission on October 5, 2010 for the purpose of considering a City of Fargo initiated text amendment to establish a "Group Living Restricted Residency" Use Category within Table 20-0401 of the Land Development Code and to establish an accompanying set of Use Standards setting forth the general characteristics, minimum standards and conditions of approval of all Group Living Restricted Residency land uses, which shall be incorporated within Article 20-04 of the Land Development Code and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the request be approved.

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

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

Senior Planner Jim Hinderaker said staff initiated creation of the "Group Living Restricted Residency" Use Category within the Land Development Code. He said this came about after the denial of a conditional use permit for a proposed residence to house sex offenders was considered earlier this year. He said the Planning Commission is recommending this also apply to felons on probation or parole. The amendment, he said, requires a conditional use permit for group living of more than three convicted felons under the control of the Department of Corrections.

Chief of Police Keith Ternes said he supports the amendment; it is a broader scope than restricting where only one category of individuals, namely sex offenders live. He said it is about ensuring public safety as a priority and this would provide an opportunity to scrutinize and assure such facilities are located in appropriate locations. He said the Department of Corrections plays a large role in transitioning convicts back into the communities and would be in the best position to assess whether behavioral programs are legitimate or beneficial.

In response to a question from Commissioner Williams about the availability of state funding for behavioral programs, Chief Ternes stated the Department of Corrections would say there is funding; however, there is not enough. Chief Ternes said this amendment will not impact existing facilities such as the Gladys Ray Shelter which provides broader services and is not focused on felons.

Commissioner Piepkorn moved that the findings and recommendations of staff and the Planning Commission be accepted and the proposed Text Amendment of Article 20-04 of Chapter 20 of the Land Development Code be approved as the proposal complies with Section 20-0904.E (1-3) of the Land Development Code.

Second by Wimmer. On call of the roll Commissioners Piepkorn, Wimmer, 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 Section 20-0401 and Section 20-0402 of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Use Regulations:**

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 Amending Section 20-0401 and Section 20-0402 of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Use Regulations be placed on first reading.

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

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

**Off-Premise Advertising Signs to be Allowed Abutting Principal Arterial Roadways (Continued):**

Senior Planner Jim Hinderaker continued his explanation of the arterial roadways where billboards could be placed.

Russ Newman, Newman Outdoor Signs, said customers such as auto dealers receive standardized size signs that would not be usable under the draft Sign Code. He stated much of his business is on other people's land and the current draft does not allow replacement of billboards in another location if a lease is lost. He said he is not asking for more signs, but would like the current number be maintained. He suggested allowing replacement billboards in conforming areas when a billboard lease is lost and suggested capping the number of billboards at the current number as an option.

Commissioner Wimmer said the Planning Commission and Sign Code Committee have done a good job; some members wanted even stricter rules than the final draft. He said the draft Sign Code is middle ground and he would like to leave it as it is and relook at it in six months.

Commissioner Mahoney moved placement of off-premise advertising signs abutting principal arterial roadways be permitted and a cap be placed on the number of signs allowed.

Second by Piepkorn.

In response to a question from Mr. Hinderaker regarding whether the cap applies only to billboards, Mayor Walaker said the motion is for a cap on billboards of 672 square feet along arterial roadways, not for smaller signs.

Commissioner Williams said changes do not have to be done this evening; amendments could be added later.

Mr. Hinderaker said the Sign Code Committee discussed caps and provisions allowing for changes tied to growth, and although these were not included in the draft, they certainly could be done.

Commissioner Mahoney said growth provisions could be considered in six months when the Sign Code is looked at again.

City Attorney Erik Johnson said in terms of his drafting a final Sign Code, a billboard count of Newman Signs and any competitors that currently have billboards will need to be quantified to arrive at a final number.

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

Commissioners Williams and Wimmer voted nay.

The motion was declared carried.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, November 15, 2010.

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

The time at adjournment was 6:44 o'clock p.m.