

- e. Request from the Multiple Sclerosis Society to hang banners in the Skyway from April 1st to April 19th to promote the MS Walk.
- f. Applications for property tax exemptions for improvements made to buildings:
 - (1) Johnson Block 1900 LLC, 216 Broadway (3 year).
 - (2) Carl Knudson, 1225 University Drive South (3 year).
 - (3) William and Raquel Ibach, 1311 Elm Street North (5 year).
- g. Applications for Games of Chance:
 - (1) El Zagal Shrine Center Arab Patrol for a raffle on 5/13/10.
 - (2) YWCA Cass Clay for a raffle on 4/12/10.
 - (3) Fargo Babe Ruth League, Inc. for a calendar raffle from 5/9/10 to 6/20/10.
- h. Memorandum Agreement with the Airport Authority for a borrow site for the 2010 flood event.
- i. Bid award for Project No. 5919-01 in the amount of \$37,735.20 to Strata Corporation.
- j. Bills in the amount of \$5,302,959.56.

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 Seal Coat and Incidentals Improvement District No. 5912:

The Statutory Resolution of Necessity for the construction of Seal Coat and Incidentals Improvement District No. 5912 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on February 15 and 22, 2010 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 Seal Coat and Incidentals Improvement District No. 5912.

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 Seal Coat and Incidentals Improvement District No. 5912:

The bids for Seal Coat and Incidentals Improvement District No. 5912 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., March 17, 2010 and the bids were found to be as follows:

Pearson Brothers, Inc.
Bid:

Hanover, MN
\$645,163.85

Astech Corporation
Bid:

St. Cloud, MN
\$716,758.50

Bituminous Paving, Inc.
Bid:

Ortonville, MN
\$784,066.61

Contract for Seal Coat and Incidentals Improvement District No. 5912 Awarded to Pearson Brothers, Inc. in the Amount of \$645,163.85:

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 Seal Coat and Incidentals Improvement District No. 5912; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received March 17, 2010 for Seal Coat and Incidentals Improvement District No. 5912 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Seal Coat and Incidentals Improvement District No. 5912 shows the bid of Pearson Brothers, Inc. of Hanover, Minnesota, in the sum of \$645,163.85 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 Pearson Brothers, Inc. in the sum of \$645,163.85 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Seal Coat and Incidentals Improvement District No. 5912 in the City of Fargo, North Dakota, be and the same is hereby awarded to Pearson Brothers, Inc. for the sum of \$645,163.85, 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.

Contract for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Dakota Underground Company, Inc. for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 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 P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 Approved:

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

United Fire and Casualty Company, in the amount of \$14,485,767.10, for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 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.

Presentation of Scholarships by Dakota Medical Foundation to Student Volunteers:

Senior Planner Dan Mahli stated thousands of students helped with this year's flood and sandbagging efforts so it was appropriate to reward ten college and high school students with \$2000 scholarships.

Pat Traynor, President of Dakota Medical Foundation (DMF), credited Jennifer Thompson from his organization with the scholarship idea. DMF, he said, agreed to match the five \$2000 scholarships from the Spirit of Fargo fund so that ten scholarships could be awarded.

The Mayor presented the students with the scholarships.

Virginia Clark Reappointed to the Airport Authority:

The Board received a communication from Mayor Walaker recommending that Virginia Clark be reappointed to the Airport Authority.

Commissioner Wimmer moved Virginia Clark be reappointed to the Airport Authority for a term ending April 8, 2015.

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.

Board of Equalization to Meet at 7:30 a.m. on Tuesday, April 13, 2010:

Commissioner Wimmer moved the Board of Equalization meet at 7:30 a.m. on Tuesday, April 13, 2010.

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.

Petition for a Planned Unit Development in Island Park Addition Withdrawn (370 and 390 6th Avenue South):

This was the time and date set for a Hearing to consider removal of Lots 1 through 5, less the south 10 feet of the west 48 feet of Lot 5, Block 2, Island Park Addition from the Island Park Historic Overlay District and a petition requesting a Planned Unit Development to establish new dimensional standards to construct two twenty-nine (29) unit luxury apartment buildings on Lots 1 through 5, Block 2, Island

Park Addition to the City of Fargo, Cass County, North Dakota, however, the petition has been withdrawn by the petitioner.

Application Filed by MBA Development Company d/b/a The Nail Bar for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by MBA Development Company d/b/a The Nail Bar for a Class "GH" Alcoholic Beverage License at 505 North Broadway, notice of which had been duly published in the official newspaper for the City of Fargo.

City Auditor Steve Sprague said there was discussion at the Liquor Control Board meeting regarding the serving of alcohol at a manicure business. He said several years ago an application for this type of business was denied, but by serving food a business can comply with a Class "GH" license. Mr. Sprague said, in the past food sales were monitored at the time of renewal, but the Auditor's office staff will do a quarterly review.

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, Mahoney, Williams and Walaker voted aye.

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

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

A Hearing had been set for this day and hour on the application filed by Spicy Pie, LLC d/b/a Spicy Pie for a Class "F" Alcoholic Beverage License at 322 Broadway, notice of which had been duly published in the official newspaper for the City of Fargo.

City Auditor Steve Sprague said at the March 17, 2010 Liquor Control Board meeting, the Board discussed the issue of a pizza shop having a full liquor license. He said the applicant told the Board the plan is to serve proprietary drinks with the intent of starting a franchise. Mr. Sprague said the Board recommended the Auditor's office do a quarterly review of food sales.

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.

Parcels of Land in Brandt Crossing First Addition Rezoned (4802, 4902 and 5402 32nd Avenue South):

At a Hearing held on January 13, 2010 the Fargo Planning Commission recommended approval of a change in zoning from LC, Limited Commercial and MR-3, Multi-Dwelling to SR-4, Single-Dwelling on Blocks 6 through 10 and SR-2 Single-Dwelling on Blocks 11 through 14 (except Lots 28, 29 and 30, Block 14) and P/I, Public Institutional on Lot 2, Block 3 and Lot 28, Block 14, Brandt Crossing 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.

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 Article 20-06 and 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 Brandt Crossing First Addition, 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 Brandt Crossing First Addition, 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.

Resolution Adopted Approving Brandt Crossing First Addition to the City of Fargo, Cass County, North Dakota:

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 "Brandt Crossing First Addition" containing 173 Lots, 14 Blocks and 282.04 acres of land more or less, located at part of the North half of Section 28, Township 139 North, Range 49 West, Cass County, North Dakota; and

WHEREAS, A Hearing was held January 13, 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 March 15 and 22, 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., March 22, 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 "Brandt Crossing First 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.

Appeal of the Denial of a Conditional Use Permit to Allow a Group Living Facility at 106 16th Street North Denied:

A Hearing had been held by the Fargo Planning Commission on February 10, 2010 to consider a request for a Conditional Use Permit to allow a Group Living facility intended to accommodate the housing needs of up to 12 individuals paroled or on probation, including sex offenders, as a permitted use on part of Lot 9, Block 16, Reeves Addition, and the Fargo Planning Commission at such Hearing recommended that the Conditional Use Permit be denied.

The City received an appeal of the denial of the Conditional Use Permit from the Christian Sports Commission, which requires that a Public Hearing be held by the City Commission.

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

Senior Planner Jim Hinderaker said the Planning Commission denied Craig Richie's request for the Conditional Use Permit for a Group Living facility by a 5/2 vote on February 10, 2010. An appeal was filed in a timely manner by Mr. Richie, he said, so it comes to the Board as a new request with all the information included in the packet. He said the criteria per Section 20-0909.D (1-6) of the Land Development Code were satisfied and the factors for a Conditional Use Permit could also be met upon approval by Inspections Department staff.

Mayor Walaker asked that legal counsel for the opposing groups limit their remarks to 15-20 minutes and individuals limit comments to 3-5 minutes with no repetition.

Craig Richie, 1241 Broadway and petitioner for the property, said there have been some points misinterpreted in the discussion of the request for a Group Living Facility. He said the house would not only be for sex offenders, but would include individuals paroled or on probation. The fact is, he said, the need for this type of housing is driven by the needs of officials and to keep the offenders safe. He said a problem exists for available housing and community living is safer for them. The Christian based facility, he said, would be staffed by a full-time employee and the offenders would have GPS monitoring. He said he has been looking for a location for eight years and feels this neighborhood is a good location because of the adjacent commercial area and not many nearby houses.

In response to a question from Commissioner Piepkorn regarding a nearby park, Mr. Richie said the park is seldom used and the commercial zoned area would be an ideal location.

Barbara Breiland, North Dakota Department of Corrections, said housing provides stability for offenders. The residents would be monitored by the Department of Corrections, she said, and exclusionary zones could be set up through the GPS monitors for certain areas like parks and bus stops. She said this would be a solution to a problem and would provide needed monitoring and mentoring with probation officers being able to visit several offenders at one address.

In response to a question from Commissioner Mahoney regarding relapse rates and effects of a Christian environment on offenders, Ms. Breiland said the relapse rates vary depending on the level of offender and research reflects a Christian environment promotes safety.

At 6:10 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Jonathan Garaas, Attorney representing the neighborhood and commercial owners, said the law is supposed to protect the people and the law is not being followed for this request. Mr. Garaas submitted a document outlining the reasons for opposition to the Application for the Conditional Use Permit and a Web site based document "Recidivism of Sex Offenders" condemning the concept of housing offenders living together. He said the Christian Sports Commission does not have the right to appeal because Heaven House LLC is the original applicant. He also said the parking information outlined by Mr. Hinderaker is inaccurate and does not meet Code. The needs of the neighborhood need to be considered, he said, and he urged the Board to reject this appeal.

Debbie Thielbar, 1509 3rd Avenue North, said the area north and east of the property is residential, not just commercial, and the neighborhood park is used a lot by children. She said a Group Living Facility for sex offenders would degrade the value of area homes. Her three children, she said, should not have to be afraid in their own neighborhood.

Jamie Kreidar, 1517 3rd Avenue North, said she was a friend of Jeanna North and still lives in the neighborhood. Offenders have broken the law, she said, but children have the right to be safe. She said the City of Bismarck puts housing for offenders near the jail and Fargo should consider a similar plan.

Larry Swatfager, 218 16th Street North, said Craig Richie is giving misleading information by saying there are not any other houses nearby. He said he has lived in

his home for 53 years and it is on the same street just north of 106 16th Street North. He asked the Board to not push this project into his neighborhood which would tarnish the name of Jeanna North.

Donovan Larson, 224 14th Street North, said the Fargo Police Department has a full-time detective to track and monitor sex offenders. The last thing the neighborhood needs, he said, is more transients. In 2001, he said, Planning Department staff changed a large portion of the neighborhood back to single family zoning so a group living facility is not appropriate housing.

Paul Mohror, 1529 3rd Avenue North, said he wished Mr. Richie would have come to the residents and explained things before the request got this far in the process.

In response to a question from City Attorney Erik Johnson regarding an explanation of who the applicant is, Mr. Hinderaker said the original application was made by Craig Richie for Heaven House LLC. He said the appeal was filed by Christian Sports Commission because they are the end user.

Jillian Gould, 2001 4th Street South, Moorhead, said she was a victim of sexual abuse by a family friend. A large percentage of offenders know their victims, she said, so it would be helpful to have offenders in one place to help keep children safe.

Mr. Richie stated these people are in the community and this property would provide a place for twelve men to live. He said if the project is not approved, he would like to know where the City would like to put them.

Karen Friese, 4231 33rd Avenue South, said her daughter was a victim of sexual abuse and they were forced to move because the offender was not prosecuted and continued to torment her child. She said there is never a good place to house offenders but it would be helpful to have them where they can be monitored.

Marsha Wichmann, 1527 41st Avenue South, Moorhead, said as a parent of three children, she would like to know where offenders live so her children can be protected.

Jason Goodmanson, 1420 3rd Avenue North, said he has four daughters and is concerned for their safety. He said the people in support of the house do not even live in the neighborhood. He said he does not want it in his neighborhood.

Suzanne Hanson, 1414 3rd Avenue North, said the neighborhood is doing their part by protesting the facility. Sex offenders need more than a place to live, she said, and she questioned who would be responsible for the offenders.

Commissioner Piepkorn moved the appeal on the denial of the Conditional Use Permit be denied based on the proposed facility would be detrimental to the long term welfare of both businesses and citizens in the area and is too close to a residential neighborhood and park and therefore the proposal does not comply with the general intent or purpose of the Land Development Code.

Second by Wimmer.

Commissioner Williams said he appreciated everyone turning out and speaking up regarding this issue, but it is a problem that is not going to go away. He said everyone deserves a place to live and he would like to see everyone work together to find a solution.

Commissioner Mahoney said in order for offenders to be rehabilitated they need employment and a treatment program, not just a place to live. He said Planning

Department staff should focus on a better way to handle the offenders rather than just providing housing.

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.

At 7:10 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Recommendations from the Metro Flood Study Work Group for the Diversion Project Approved:

City Administrator Pat Zavoral said the Metro Flood Study Work Group voted unanimously at the March 18, 2010 meeting to support a ND 35k cfs as the Locally Preferred Plan (LPP). Fargo, Moorhead, Cass and Clay counties, he said, will be asked to approve the ND plan individually as the LPP before it can be presented to the Corps by the April 15th deadline. The cost of studying the LPP and an increase of the National Economic Development plan (NED) is \$2.6 million, he said. Generally, he said, the cost share of a study is split 50% federal/50% local. He said it is proposed the local share (\$1.3 million) be split as follows: North Dakota (\$900,000), Minnesota (\$400,000) and an amount to be determined from the local watersheds. He said the Corps will continue to study the (NED), which at this time is the MN 20k cfs plan. The Corps, he said, has made some suggestions to analyze the MN 25k or MN 30k options which may elevate the NED to a higher level. He said the NED would become the default plan if the ND plan does not receive federal approval.

City Engineer Mark Bittner gave a presentation with a series of maps and a spreadsheet comparing how the Minnesota and North Dakota diversions would affect the floodplains of both states. He said the MN 20k cfs does not reduce the floodplain as much as the 35k options, and the ND 35k is much more effective than the MN 35k plan.

Mr. Zavoral said the first step is for the local entities to accept the Metro Flood Study Work Group's recommendation for the ND 35k cfs as the Locally Preferred Plan. He said the sponsorship piece of the agreement will be decided by July 15, 2010.

Commissioner Mahoney moved the selection of the ND 35k cfs option as the "Locally Preferred Plan", based upon the following:

1. provides 500-year flood protection to the FM metro area for the Red, Wild Rice, Sheyenne, Maple, Rush and Lower Rush Rivers;
2. meets the objective of the Work Group in that it provides protection for the greatest amount of land for the greatest number of citizens;
3. has received strong support from the citizens on both sides of the river and from local and state leaders;
4. reduces the risk to the loss of life;
5. provides greater protection for the economic base of the area;
6. mitigates the cost, and reduces the need, for construction of levees and other temporary measures;
7. provides regional benefits that are not included in the required analysis by the Corps;

8. is the plan that provides the least amount of residual damage; and
9. meets the cost/benefit criteria.

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.

Commissioner Wimmer moved the Board determine that an equitable cost sharing arrangement must be resolved.

Second by Mahoney.

Commissioner Mahoney said the states, counties and local entities will be working on an equitable financial plan.

Commissioner Williams said all possibilities need to be explored so Fargo citizens are not placed at a disadvantage.

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

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

Commissioner Mahoney moved the Board recognize the value and need for downstream mitigation and upstream retention and support both efforts.

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.

Emergency Declaration Extended to April 5, 2010:

Commissioner Piepkorn moved the extension of the Emergency Declaration for a period ending April 5, 2010 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.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, April 5, 2010.

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

The time at adjournment was 7:42 o'clock p.m.