

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Tuesday: February 22, 2011:

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., Tuesday, February 22, 2011.

The Commissioners present or absent were as shown following:

Present: Mahoney, Piepkorn, Williams, Walaker.

Absent: Wimmer.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved omitting item "k" and moving items "d" and "i" from the Consent Agenda to the Regular Agenda.

Second by Williams. All the Commissioners present 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 February 7, 2011 be approved as read.

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

Consent Agenda Approved:

Commissioner Piepkorn moved the Consent Agenda be approved as follows:

- a. Receive and file Notice of Appeal from Decision of Local Governing Body filed by Stanley Township and Fred M. Hector, Jr. vs. the City of Fargo, Inspections Department and/or Dakota Boys and Girls Ranch (and/or Dakota Boys and Girls Ranch Foundation) Building Permit Holder & Issuer.
- b. 2011 update to the 3-year contract with Parking Service for operation of the City's parking facilities.
- c. Extension of the Mayor's Emergency Declaration to April 30, 2011.
- d. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Relating to Emergency Powers (moved to the Regular Agenda).

- e. Resolution Authorizing Declaration of Official Intent by City Auditor and Department Heads to Reimburse Itself from the Proceeds of Debt for Capital Expenditures and Costs of Issuance Temporarily Funded from Revenues or Other Sources (Attachment "A").
- f. Extension of unpaid leave for Steven Gee through April 13, 2011.
- g. Holiday Time During a Disaster Period Guide.
- h. Extension of the noise ordinance to 11:00 pm for live entertainment for the Rib Fest & More event at the Fargodome from June 8 through June 12, 2011 and for low level sound until midnight.
- i. Receive and file communication and attachments regarding the Dakota Boys and Girls Ranch application and paid fee (moved to the Regular Agenda).
- j. Agreement with HB Consulting for \$3,500.00 to update the 2010 Fargo Cass Community Health Snapshot Report.
- k. Agreement with Roger Johnson & Associates for the purchase and service of AED's for \$24,527.42 (omitted).
- l. Notice of Grant Award Amendment from the North Dakota Department of Health for the Maternal and Child Health Block Grant (CFDA #93.994).
- m. Applications for tax exemptions for improvements made to buildings:
 - (1) Erik and Anna Johnson, 1225 4th Street North (5 year).
 - (2) Scott and Shannon Dahms, 423 8th Street South (5 year).
 - (3) Joshua Kamrud, 1537 25th Avenue South (5 year).
 - (4) Gary and Pamela Lorenz, 6409 14th Street South (3 year).
- n. Amended Site Authorization for American Gold Gymnastics at Big D's Bar and Grill.
- o. Applications of Games of Chance:
 - (1) Hunt of a Lifetime for a raffle on 3/12/11.
 - (2) Red River Valley FSC for a raffle on 3/13/11.
 - (3) Kiwanis Club of Lake Agassiz for a raffle on 3/19/11; Public Spirited Resolution.
 - (4) Weible Hall – NDSU, for bingo and a raffle on 4/6/11.
 - (5) Lincoln Elementary School for bingo and a raffle on 4/1/11.
 - (6) Cathedral of St. Mary for a raffle on 5/15/11.
 - (7) Bison Dairy Club NDSU for a raffle on 4/28/11.
- p. Superseding Rights Agreement with Moorhead Public Service in connection with Improvement District No. 5803.

- q. Memorandum of Agreement (Clay Material Removal, together with Right of Entry) with the Municipal Airport Authority.
- r. Resolution of right-of-way issues with Fred M. Hector and Earlyne Hector; authorize payment of \$575,000.00 in exchange for necessary documents for Improvement District Nos. 5314-9, 5944, 5969, 5945-1 and 5966-2.
- s. Emergency compact track loader rental contract with Swanston Equipment Company for \$43,125.00.
- t. Emergency flood pump rental contract with Bierschbach Equipment for \$118,842.80.
- u. Sidewalk installation and tree planting compliance in Pointe West 3rd, Autumn Fields and similar subdivisions.
- v. Addendum #4 to the Transportation Planning Agreement with FM Metro COG for the University Drive Corridor Study.
- w. Revised Loan Application Package to the North Dakota Department of Health for the wastewater stabilization pond improvements.
- x. Engineering Services Contract Amendment No. 7 in the amount of \$236,700.00 for FM Metro Feasibility Project No. 5683-05.
- y. Declaration of flood protection elevation for Scott and Debra Johnson at 430 Hackberry Drive South.
- z. Receive and file Status Report and Statistics National Flood Insurance Policy.
- aa. Acceptance of proposals for 2011 emergency levee projects (considered during flood discussion later in the agenda).
- bb. Bid award for Project No. 5747-27 to Asplin Excavating, Inc. in the amount of \$253,299.45.
- cc. Change Order No. 1 for an increase of \$7,103.46 for Project No. 5917.
- dd. Bid advertisement for Project No. 5929.
- ee. Contracts and bonds for Project Nos. 5153-3, 5747-24, 5747-25.
- ff. Bills in the amount of \$3,897,125.81.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

No Protests Received for Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971:

The Statutory Resolution of Necessity for the construction of Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on January 17, 24 and 31, 2011 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Piepkorn moved that the Board declare that no protests have been filed to the construction of Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Bids Received for Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971:

The bids for Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., February 16, 2011 and the bids were found to be as follows:

Kuechle Underground Bid:	Kimball, MN \$2,330,302.46
Border States Paving, Inc. Bid:	Fargo, ND \$2,356,061.55
Dakota Underground Company Bid:	Fargo, ND \$2,381,959.74
Robert Gibb & Sons, Inc. Bid:	Fargo, ND \$2,424,233.20
Riley Brothers Construction Bid:	Morris, MN \$2,467,041.51
Shermans, LLC Bid:	West Fargo, ND \$2,515,936.23
Northern Improvement Company Bid:	Fargo, ND \$2,521,889.97
Sellin Brothers, Inc. Bid:	Hawley, MN \$2,714,465.55

Contract for Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971 Awarded to Kuechle Underground in the Amount of \$2,330,302.46:

Commissioner Piepkorn offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received February 16, 2011 for Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971 shows the bid of Kuechle Underground of Kimball, Minnesota, in the sum of \$2,330,302.46 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 Kuechle Underground in the sum of \$2,330,302.46 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals Improvement District No. 5971 in the City of Fargo, North Dakota, be and the same is hereby awarded to Kuechle Underground for the sum of \$2,330,302.46, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

Absent and not voting: Commissioner Wimmer.

The Resolution was adopted.

Change Order No. 1 for Improvement District No. 5943 Approved:

Commissioner Piepkorn moved approval of Change Order No. 1 for an increase of \$22,525.64 for Improvement District No. 5943.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5965 (Various locations in South Fargo):

Commissioner Piepkorn moved the following action be taken in connection with Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5965:

Adopt Resolution Creating Improvement District No. 5965:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5965 in the City of Fargo, North Dakota, be created

Seter Parkway South between Veterans Boulevard and 31st Avenue South.
30th Avenue South between 51st Street South and 28th Avenue South.
31st Avenue South between 51st Street South and Seter Parkway South.
28th Avenue South between 30th Avenue South and Seter Parkway South.

COMPRISING:

Lot 2, Block 2

Lot 6, Block 3

Lot 1, Block 4

All platted in the Urban Plains Center Addition

Lots 1, 2, & 3; Block 1

All platted in the Urban Plains Recreational Addition

Lots 1, 2, 3, & 4, Block 5

Lot 2, Block 4

All platted in the Urban Plains by Brandt 1st Addition

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

NOW, THEREFORE, BE IT RESOLVED, That Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5965 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. 5965:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5965 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 \$502,920.00)

Order Plans and Specifications for Improvement District No. 5965:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5965 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5965:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5965 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. 5965 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights 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 concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5965 in the City of Fargo, North Dakota, according to the Engineer's Report for this district and 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. A map of the district is attached hereto and incorporated as if fully set forth herein.

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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals must be in writing and must be filed with the City Auditor's Office within 30 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. 5965:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5965 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5985 (34th Avenue South in Asleson Industrial Park 6th Addition between 39th and 42nd Streets South):

Commissioner Piepkorn moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5985:

Adopt Resolution Creating Improvement District No. 5985:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5985 in the City of Fargo, North Dakota, be created

34th Avenue South in Asleson Industrial Park 6th Addition between 39th and 42nd Streets South

COMPRISING:

- Lot 1, Block 1, West Wind Addition.
- Lot 2, Block 1, West Wind 2nd Addition.
- Lot 1, Block 1, Northland Addition.
- Lot 1, Block 1, Northland 2nd Addition.
- Lot 1, Block 1, Asleson Industrial Park 3rd Addition.
- Lot 1, Block 1, Asleson Industrial Park 5th Addition.
- Lot 1, Block 1, Asleson Industrial Park 6th Addition.

All un-platted land in the western half of the NE 1/4 of Section 27, Township 137, Range 49, less the southern 506.94 feet of the NE 1/4.

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

NOW, THEREFORE, BE IT RESOLVED, That Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5985 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. 5985:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5985 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 \$215,160.)

Order Plans and Specifications for Improvement District No. 5985:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5985 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5985:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5985 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. 5985 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 Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights 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 Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5985 in the City of Fargo, North Dakota, according to the Engineer's Report for this district and 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. A map of the district is attached hereto and incorporated as if fully set forth herein.

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 Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals must be in writing and must be filed with the City Auditor's Office within 30 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. 5985:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5985 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Second Reading and Final Adoption of an Ordinance Repealing Ordinance No. 4772 Relating to Repealing and Re-Enacting the Sign Code of the City of Fargo:

Commissioner Mahoney moved that the proposed Ordinance Repealing Ordinance No. 4772 Relating to Repealing and Re-Enacting the Sign Code of the City of Fargo which was placed on its first reading February 7, 2011 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

There was unanimous consent to waive reading of the Ordinance in its entirety and no one was present to request that the Ordinance be read.

On the vote being taken on the question of the final passage and adoption of the Ordinance, Commissioners Mahoney, Piepkorn, Williams and Walaker voted aye.

Absent and not voting: Commissioner Wimmer.

The Ordinance was duly passed and adopted.

Ordinance Relating to Emergency Powers Received and Filed and Placed on First Reading at the next Regular Meeting of the Board.

The Board received a communication from City Attorney Erik Johnson stating discussion at a staff-level meeting late last week on the Emergency Powers Ordinance indicated some changes were in order. He said the Ordinance has been used in both the 2009 and 2010 floods. When on high-alert, he said, appropriate personnel involved in decision making attend one or two meetings each day, typically run by the City Administrator. He said a publicly broadcast meeting would follow to disseminate information and decisions. He said while emergency decisions may be made outside the staff-level and public meetings, current protocol considers the City Administrator central to gather and disseminate information and direction regarding a particular emergency. He presented a draft Ordinance with a number of revisions to emergency powers, processes and evacuation procedures and stated the following revisions have been made to the Ordinance:

1. Decisions regarding evacuations for portions of the City and regarding levee construction has been changed from the Chief of Police and City Engineer to Incident Commander after consultation with the Chief of Police or City Engineer, as appropriate.
2. The City Administrator is the Incident Commander and provisions inserted for a Deputy Incident Commander.
3. Under State emergency powers law, the Governor's powers are adopted, implemented by the City Commission as appropriate.
4. State emergency services are available to cities declaring a local disaster or emergency. State law recognizes the Mayor's authority to declare a state of emergency or disaster but requires consent of a city commission for a continuance or renewal beyond a period of seven days. The ordinance would be modified to conform to the same time frame.
5. Language of the draft ordinance slightly rearranges the existing ordinance.

Mayor Walaker stated it is premature to take any authority away from the Board of City Commissioners without more discussion.

City Administrator Pat Zavoral said the intention was not to remove any authority. In the 2009 flood, he said, there were evacuations that did not specifically follow the protocol in place at the time and the proposed changes would give the engineer in charge some authority to do what they did in the past. He said no emergency decisions would be made without the Mayor's or City Commission's involvement and there are other areas of the draft that can be reworked.

Mayor Walaker said he felt the response in 2009 was appropriate and there was no problem with the evacuation of nursing homes and other areas but, putting all the responsibility on one person can create problems.

Mr. Johnson stated the Commissioners could review it and have meetings as necessary. He said if the draft were received and filed today it could be discussed and put on first reading at the next regular meeting.

Commissioner Mahoney moved the Ordinance relating to States of Emergency - Declaration and Duration be received and filed and placed on first reading at the next Regular Meeting of the Board.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Communications Regarding the Dakota Boys and Girls Ranch Application and Paid Fee Received and Filed:

The Board received a communication from Planning Director Jim Gilmour responding to Jonathan Garaas' allegations made at the February 7th City Commission meeting. He attached a copy of the Dakota Boys and Girls Ranch Commercial Permit Application and Plan Routing Application submitted on August 16, 2010, and a copy of the City of Fargo ledger showing payment of the \$5,665.00 fee on September 20, 2010.

Attorney Jonathan Garaas, representing Stanley Township and Fred M. Hector, stated he was able to view the letter online but he had not yet received his copy. He said Mr. Gilmour's documentation proved the site plan review and application fee were missing from the original application. He asked that the Commission receive and file his letters and copies of applications which he sees as documentation that the City did not comply with its own ordinances.

Mr. Gilmour said the purpose of the letter was to point out the application was filed and the fee was paid. Often when someone submits a plan, he said, there could be revisions at a later date, making make it appear as though the submission was later. He said payment is made when an application is completed, or if the applicant has an account with the City, it is billed. He said clearly the application was received and the payment made.

Inspections Administrator Ron Strand said sometimes it can appear there are multiple submissions because the plans get rerouted if there are changes from any of the departments.

Mr. Garaas said his letters cite two ordinances that were not complied with. He said the application submitted on August 16, 2010 was superseded by a later application which included a site plan application dated no earlier than October 7, 2010. He asked that the appeal of Stanley Township and Fred M. Hector previously denied on February 7, 2011 be upheld.

Commissioner Piepkorn moved the communication from Mr. Gilmour with the attachments confirming that the Dakota Boys and Girls Ranch application was submitted on August 16, 2010 and a \$5,665.00 fee was paid on September 20, 2010 be received and filed.

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

Commissioner Piepkorn moved the communication from Mr. Garaas be received and filed.

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

Hearing on a Dangerous Building Located at 3700 42nd Street South Continued to March 21, 2011:

A Hearing had been set for this day and hour on a dangerous building located at 3700 42nd Street South; however, Inspections Administrator Ron Strand requested that the Hearing be continued to March 21, 2011. Mr. Strand stated demolition on the building has begun but rather than a cancellation of the hearing it is wise to continue it until demolition is complete.

Commissioner Williams moved the Hearing be continued to March 21, 2011.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Application Filed by North Dakota State University for Payment in Lieu of Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by North Dakota State University for payment in lieu of property tax exemption for operation of a materials and nanotechnology research and education project at 1810 NDSU Research Circle North.

City Assessor Ben Hushka reminded the Board that several meetings ago the policy for the Payment in Lieu of Tax Exemption was altered to include higher education for research. He said the Tax Exempt Review Committee recommends approval.

No written protests have been filed for the attention of the Board.

The Board determined that no person is present at this Hearing to protest or offer objection thereto.

Commissioner Mahoney moved that the application filed by North Dakota State University for a 10 year payment in lieu of tax exemption pursuant to Chapter 40-57.1, NDCC be approved based on 100% exemption of North Dakota State University's proportionate share of the building.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Renaissance Zone Project for Mark and Susan Kolstad Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Mark and Susan Kolstad at 300 Broadway, #303.

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

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

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

Commissioner Piepkorn moved the Renaissance Zone application filed by Mark and Susan Kolstad for a project located at 300 Broadway, #303 be approved and the income tax and property tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Application to Transfer the Alcoholic Beverage License from Vintner's Cellar Fargo, LLC d/b/a Vintner's Cellar to 2 Swionteks, LLC d/b/a Uncorked Approved:

A Hearing had been set for this day and hour on an application to transfer the Class "P" Alcoholic Beverage License from Vintner's Cellar Fargo, LLC d/b/a Vintner's Cellar at 12 Broadway to 2 Swionteks, LLC d/b/a Uncorked 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 and Walaker voted aye.

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Hearing on Application Filed by Gilbert C. Grafton Post No. 2 American Legion d/b/a The Pickled Parrot Continued to March 21, 2011:

This was the time and date set for a Hearing on an application filed by Gilbert C. Grafton Post No. 2 American Legion d/b/a The Pickled Parrot for a Class "AC" Alcoholic Beverage License at 505 3rd Avenue North; however, the Liquor Control Committee has requested the Hearing be continued to March 21, 2011.

City Auditor Steve Sprague said the weekend prior to the Liquor Control Board meeting, fights broke out at an event at the Legion which required all the police resources. He said continuing the hearing would allow time to review police reports and find out from the applicant what will be put in place for prevention of this type of occurrence in the future.

Commissioner Piepkorn said the incident was at a nonalcoholic event since there was no liquor license approved yet.

Commissioner Piepkorn moved the Hearing be continued to March 21, 2011.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Petition Requesting Readoption of the Fargo Sign Code Repealed by the City Commission in Section 1 of Ordinance No. 4772 Approved:

At a Hearing held on February 1, 2011 the Fargo Planning Commission considered approval of the petition requesting readoption of the Fargo Sign Code repealed by action by the City Commission in Section 1 of Ordinance No. 4772, which may include revisions to address electronic message center signs and such other provisions as may be recommended and approved. 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.

A communication was received from Senior Planner Jim Hinderaker stating the readoption of the old Fargo Sign Code is an interim step until such time that action can be taken to revisit the new Fargo Sign Code. He said staff found it appropriate to amend the code to include limitations on electronic messaging center signs near residential zone districts. He said the Planning Commission accepted the findings of staff but did not include the motion on electronic messaging center signs so the proposal this evening is just to readopt the old code without any additional changes. He said there are some questions on the fee schedule which was new in 2008, and the assumption is that fee schedule continues to apply.

Steve Stremick, 1155 13th Avenue South, requested that three individuals from the industry be included on the committee revising the code.

Mr. Hinderaker said at this point, for continuity, he recommends staying with the original committee members. He said it seems to be just the portable sign portion that is not in agreement and only a couple meetings focusing on portable signs would be necessary.

Commissioner Mahoney said ad hoc members could be added to the Sign Committee for input but voting could stay with the five members. He said it would be good to come up with a solution and giving the portable sign industry more input may bring a solution easier.

Mr. Stremick said input was not allowed at the first twelve meetings of the committee and he felt the meetings were slanted against the portable sign industry. He said there should have been representation on the Committee from the beginning.

Commissioner Piepkorn said there was a year and a half for input. He said a balanced committee would have opponents as well as proponents.

Jim Patterson, Fargo, said since the repeal petition the sign industry people have had discussions with the Commission, the Sign Committee and staff and there has not been follow up as expected.

Mayor Walaker acknowledged Mr. Patterson's concerns and asked that he come back if the two meetings are not in place in two months.

Commissioner Mahoney moved to go forward with planning on the portable signs with the Sign Code Committee of five and three additional ad hoc members from the sign industry.

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

Commissioner Piepkorn voted nay.

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Commissioner Piepkorn moved the Fargo Sign Code as repealed by the action of the City Commission in Section 1 of Ordinance No. 4772 be readopted.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Flood Update Received:

Enterprise Director Bruce Grubb said operations at Sandbag Central started on February 14th, operating Monday through Saturday from 8:00 a.m. to 8:00 p.m. He said it was slow to start but has picked up and as of last Saturday 640,000 sandbags had been produced. He said nearly 903,000 have been done as of late today and the one million mark should be surpassed tomorrow. The prescheduled volunteer numbers are strong, he said, with strong support from schools. On President's Day, he said, 163,000 were produced; well above the goal of 150,000.

Mr. Grubb asked Commissioners for their approval to close Sandbag Central early, at 6:00 p.m., on Saturday, February 26th, to allow staff to attend a benefit planned from 5:00 to 9:00 p.m. in support of a coworker battling a long term illness. Mayor Walaker said there would be no problem with that.

Mr. Grubb said he was approached by Michael Strand who asked for 6,000 empty bags in order to have artistic work done on them by those unable to help bag. The decorated sandbags would then be interspersed for baggers to find, he said. He showed a sandbag decorated by an elementary student that said "the flood stops here."

Change Order No. 3 for Project No. 5944 Approved:

City Engineer Mark Bittner said the change order is for a temporary levee on the west side of drain 53 and back side of Meadow Creek.

Commissioner Mahoney moved Change Order No. 3 for Project 5944 for an increase of \$332,616.60 be approved.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Change Order No. 2 for Project No.5949 Approved:

City Engineer Mark Bittner said the change order is to connect the plugs that were put in last year on the east side of Timberline and along the west side of Drain 27.

Commissioner Mahoney moved Change Order No. 2 for Project 5949 for an increase of \$384,218.90 be approved.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Acceptance of Proposals for 2011 Emergency Levee Projects:

A communication was received from Deputy City Engineer David Johnson outlining recommendations for selection of contractors for levee construction.

City Engineer Mark Bittner recommended acceptance of proposals as follows:

Project No. 5946-1 in North Oaks in the amount of \$243,400.00 to Dakota Underground.

Project No. 5958-1 on the north side of Rose Creek in the amount of \$353,714.10 to North Pine.

Project No. 6002-1 in Southwood and Fargo Country Club in the amount of \$255,715.00 to Master Construction.

Project No. 6003 at Drain 53 in the amount of \$265,587.50 to Riley Brothers.

Project No. 6004 in Lindenwood Park in the amount of \$63,781.90 to Asplin Excavating.

Project No. 6005-1 in Harwood Groves and Lemke Park in the amount of \$59,150.00 to H & S Construction.

Project No. 6005-2 in Harwood Groves at 431-601 Harwood Drive in the amount of \$50,850.00 to H & S Construction.

Project No. 6005-3 in Harwood Groves at 402 Harwood Drive in the amount of \$14,065.00.

Project No. 6006 at Drain 27 east of I-29 in the amount of \$146,190.00 to Asplin Excavating.

Mr. Bittner said there would be approximately \$75,000.00 in additional cost in connection with two borrow sites. He said one is located at the landfill and one at 64th Avenue and University Drive. He also reviewed overall estimated costs for a planned 44 foot protection level, including locations, type and amount of product needed, material and installation costs and restoration costs. He said these costs are estimated to exceed \$12 million. Also, he said, seven or eight home acquisitions are in the works and a summary will follow. He said the list does not include levees or the work the Corps would do on their emergency measures where the City would be responsible for clean up but would be eligible for FEMA reimbursement. The intent, he said, would be to install as many permanent levees as possible.

Director of Finance Kent Costin recapped funding accomplishments so far. He said the one-half cent flood sales tax has in place for a year. Early last year, he said, \$25 million was bonded as part of flood acquisition funds and amortized over 5 years with approximately \$6 million per year of the sales tax receipts obligated through 2014 towards paying that back. He said there may be some flexibility to extract some funds that are linked to the capital improvement plans from sales tax from the water and wastewater fund. He said opportunities exist to issue bonds again and there could be opportunities to recapture some of the money already spent on the diversion study when the County sales tax goes in effect and they can repay. He said Cass County is being encouraged to turn the funds around quickly.

City Administrator Pat Zavoral said there are additional sources of funds being looked at. The Legislature has appropriated funds, he said, and while not ready for bond work yet, it could be an option.

In response to a question from Commissioner Piepkorn regarding reimbursement for permanent levees, Mr. Zavoral stated FEMA will not build

permanent levees. He said all of this would have been done by the diversion project so if it is not done now, it will have to be done later.

Commissioner Mahoney stated the funds are being used as intended.

Mr. Bittner said some property owners have asked to be bought out and have their homes repurchased by someone who does not mind a levee near them.

Mayor Walaker stated property would have to be looked at on a case-by-case basis.

Senior Engineer April Walker said she has a circumstance in Timberline where a long term proposed levee takes trees out and two homeowners wanted an alternative plan. She said the cost of the levee would be approximately \$95,000 and to change the plans to allow room for replanting would cost \$375,000. After being told the options, she said, the homeowners asked to be allowed to sandbag this year, and be bought out. Sandbagging those two homes means looking at contingency levees, she said, which would leave approximately half the homes in Timberline on the wrong side of the contingency levee.

Mr. Bittner said work in this area needs to begin soon.

Commissioner Mahoney said a meeting will be held tomorrow night with Timberline residents so the neighborhood will have an opportunity to discuss it.

Commissioner Mahoney moved the Board authorize construction of emergency flood levees as outlined in the letter from Deputy City Engineer David Johnson.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Legislative Update:

City Administrator Pat Zavoral reviewed the updated matrix of legislative bills the City either supports or opposes.

Commissioner Williams moved approval of the support and oppose matrix of bills as presented.

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

Commissioner Mahoney moved that the Board adjourn to 5:00 o'clock p.m., Monday March 7, 2011

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

The time at adjournment was 6:35 o'clock p.m.