

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: April 18, 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., Monday, April 18, 2011.

The Commissioners present or absent were as shown following:

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

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved.

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 April 4, 2011 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. Receive and file Year to Date – Budget to Actual Report for March 2011.
- b. Receive and file bond sale recommendation report and set the date for sale as May 2, 2011.
- c. Receive and file 2011 First Quarter Financial Status Report.
- d. Request from NDSU for an extension of the noise ordinance until midnight on Saturday, May 7, 2011 for an outdoor movie at the Memorial Union.
- e. Extension of the Mayor's Emergency Declaration to May 14, 2011.
- f. 2nd reading, waive reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in R & B Subdivision, Cass County, North Dakota; 1st reading, 4/4/11.
- g. Application filed by John and Pam Clemson for a five-year tax exemption for improvements made to a building at 2525 Willow Road North.

- h. Out of grade pay for Matt Amundson retroactive to March 17, 2011.
- i. Compensation for employees performing personal/volunteer flood preparation activities during regularly scheduled hours.
- j. Revision of Policy No. 300-004 Education Assistance/Tuition Reimbursement.
- k. Applications for Games of Chance:
 - (1) Fargo-Moorhead Cosmopolitan Club for sports pools from 5/1/11 to 12/31/11.
 - (2) Fargo-Moorhead Cosmopolitan Club for raffles from 8/1/11 to 6/30/12.
 - (3) Saddle and Sirloin Club NDSU for a raffle on 4/28/11.
 - (4) Lewis and Clark PTA for bingo and a raffle on 4/30/11.
 - (5) Project HERO for a raffle on 6/9/11; Public Spirited Resolution.
 - (6) Clara Barton Hawthorne PTA for a raffle on 5/14/11.
- l. Memorandum of Understanding with Cass Rural Water Users District for water and sewer utility services billing.
- m. Acceptance of quote from Industrial Builders, Inc. in the amount of \$38,660.00 for residential waste collection and cleanup services for the 2011 Cleanup Week event.
- n. Change Order No. 2A for an increase of \$15,974.18 for Project No. WW0901.
- o. Change Order No. 5, Part B, for an increase of \$49,737.63 for Improvement District No. 5729.
- p. Final Balancing Change Order for an increase of \$160,798.55 for Improvement District No. 5729.
- q. Intergovernmental Agreement with the Park District for the Vacation of 6th Avenue North.
- r. Revision to the FM Metro Project Management Plan and cost/funding estimates for Project No. 5683.
- s. Engineering Services Contract Amendment No. 1 in the amount of \$57,150.00 for Project No. 6018-05.
- t. Engineering Services Contract Amendment No. 1 in the amount of \$30,000 for Project No. 5915.
- u. Engineering Services Contract Amendment No. 1 in the amount of \$23,970.00 for Project No. 6018-02.
- v. Engineering Services Contract Amendment No. 4 in the amount of \$103,000.00 for Project No. 5683-04.
- w. Change Order No. 4 for an increase of \$120,680.70, for Project No. 5958-01.

- x. Change Order No. 4 for an increase of \$92,777.25 for Project No. 5944 and Change Order No. 3 for an increase of \$106,164.36 for Project No. 5949.
- y. Bid advertisements for Project Nos. 6007, 6008, 6013-1 and 6013-2.
- z. Professional Services Agreement with Ulteig Engineers, Inc. for 2011 flood assistance.
- aa. Contracts and bonds for Project Nos. 5747-27, 5929 and 5990.
- bb. Bills in the amount of \$7,040,250.67.

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.

No Protests Received for Asphalt Wearing Course and Incidentals Improvement District No. 5988:

The Statutory Resolution of Necessity for the construction of Asphalt Wearing Course and Incidentals Improvement District No. 5988 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on March 14 and 21, 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 Asphalt Wearing Course and Incidentals Improvement District No. 5988.

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.

Bids Received for Asphalt Wearing Course and Incidentals Improvement District No. 5988:

The bids for Asphalt Wearing Course and Incidentals Improvement District No. 5988 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., April 13, 2011, and the bids were found to be as follows:

Border States Paving, Inc. Bid:	Fargo, ND \$1,279,375.80
Northern Improvement Company Bid:	Fargo, ND \$1,358,067.38
Aggregate Industries Bid:	Moorhead, MN \$1,424,673.20
Central Specialties, Inc. Bid:	Alexandria, MN \$1,594,999.19

Knife River Materials – ND Division
Bid:

Bismarck, ND
\$1,845,491.89

Contract for Asphalt Wearing Course and Incidentals Improvement District No. 5988
Awarded to Border States Paving, Inc. in the Amount of \$1,279,375.80:

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 Asphalt Wearing Course and Incidentals Improvement District No. 5988; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received April 13, 2011 for Asphalt Wearing Course and Incidentals Improvement District No. 5988 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Asphalt Wearing Course and Incidentals Improvement District No. 5988 shows the bid of Border States Paving, Inc. in the sum of \$1,279,375.80 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 Border States Paving, Inc. in the sum of \$1,279,375.80 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Asphalt Wearing Course and Incidentals Improvement District No. 5988 in the City of Fargo, North Dakota, be and the same is hereby awarded to Border States Paving for the sum of \$1,279,375.80, 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 Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Piepkorn, Wimmer, Mahoney, Williams and Walaker voted aye.

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

Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 5955-4 (Deer Creek Addition):

Commissioner Piepkorn moved the following action be taken in connection with Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 5955-4:

Adopt Resolution Creating Improvement District No. 5955-4:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5955-4 in the City of Fargo, North Dakota, be created

56th Avenue South between 49th Avenue South & 58th Street South.

57th Avenue South between 66th & 67th Streets South.

55th Avenue South between 58th Street South & Deer Creek Parkway.

58th, 59th, 60th and 62nd Streets South between 55th & 56th Avenues South.

61st Street South between 56th & 57th Avenues South.

Deer Creek Parkway between 55th & 56th Avenues South.
66th and 67th Street South between 56th & 57th Avenues South.

COMPRISING:

Lots 1-42, inclusive, Block 1
Lots 1-11, inclusive, Block 2
Lots 1-9, inclusive, Block 3
Lots 1-31, inclusive, Block 4
Lots 1-26, inclusive, Block 5
Lots 1-14, inclusive, Block 6
Lots 1-14, inclusive, Block 7
Lot 1, inclusive, Block 8
Lots 1-23, inclusive, Block 9
Lots 1-32, inclusive, Block 10
Lots 1-123, inclusive, Block 11
Lots 1-17, inclusive, Block 12
Lots 1-22, inclusive, Block 13
Lots 1-26, inclusive, Block 14
Lots 1-35, inclusive, Block 15
Lots 1-31, inclusive, Block 16
Lots 1-89, inclusive, Block 17
Lots 1-21, inclusive, Block 18
Lots 1-20, inclusive, Block 19
Lots 1-40, inclusive, Block 20
Lots 1-43, inclusive, Block 21
Lots 1-38, inclusive, Block 22
Lots 1-31, inclusive, Block 23
Lots 1-33, inclusive, Block 24
All platted in Deer Creek.

Lots 1 through 4, inclusive, Block 1
Lots 1 through 4, inclusive, Block 2
All platted in the Richard 3rd Subdivision

Lots 1 through 3, inclusive, Block 1
All platted in the Dittmer Subdivision

Lots 1 through 2, inclusive, Block 1
All Platted in the Carrier Trust Subdivision

Lots 1 through 4, inclusive, Block 1
All Platted in the Ken's Subdivision

All unplatted lots adjacent to the 63rd Street South/Deer Creek Parkway right-of-way between 52nd Avenue South and north of the platted Deer Creek Addition within Northeast quarter-section of Section 5-T138N-R49W.

All unplatted lots south of 52nd Avenue South and north of the platted Deer Creek Addition within Northwest quarter-section of Section 5-T138N-R49W.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota, said district to include only land lying within the city limits of the City of Fargo and land lying outside said city limits is deemed not a part of the district.

NOW, THEREFORE, BE IT RESOLVED, That Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 5955-4 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. 5955-4:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5955-4 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 \$676,936.)

Order Plans and Specifications for Improvement District No. 5955-4:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5955-4 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5955-4:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5955-4 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. 5955-4 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5955-4:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5955-4 in the City of Fargo, North Dakota.

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.

Contract for Water Distribution, Water Main Replacement and Incidentals Improvement District No. 5730 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Dakota Underground Company for Water Distribution, Water Main Replacement and Incidentals Improvement District No. 5730 in the City of Fargo, North Dakota.

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.

Contract Bond for Water Distribution, Water Main Replacement and Incidentals Improvement District No. 5730 Approved:

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

United Fire and Casualty Company, in the amount of \$2,736,814.85, for Water Distribution, Water Main Replacement and Incidentals Improvement District No. 5730 in the City of Fargo, North Dakota.

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.

Contract for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5955-2 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Border States Paving, Inc. for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5955-2 in the City of Fargo, North Dakota.

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.

Contract Bond for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5955-2 Approved:

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

Liberty Mutual Insurance Company, in the amount of \$1,846,158.62 for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5955-2 in the City of Fargo, North Dakota.

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.

Contract for Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5965 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Border States Paving, Inc. for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5965 in the City of Fargo, North Dakota.

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.

Contract Bond for Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5965 Approved:

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

Liberty Mutual Insurance Company, in the amount of \$652,993.49, for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5965 in the City of Fargo, North Dakota.

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.

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5972 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Adelman Concrete and Excavating, Inc. for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5972 in the City of Fargo, North Dakota.

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.

Contract Bond for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5972 Approved:

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

United Fire and Casualty Company, in the amount of \$80,479.00 for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5972 in the City of Fargo, North Dakota.

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.

Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5985 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Dakota Underground Company, Inc. for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5985 in the City of Fargo, North Dakota.

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.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5985 Approved:

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

United Fire and Casualty Company, in the amount of \$169,695.20, for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5985 in the City of Fargo, North Dakota.

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.

Presentation of Denny's Bucks for Bags and Scholarships to Student Volunteers:

The Board received a communication from Senior Planner Dan Mahli stating over 12,000 volunteers contributed 47,300 volunteer hours at Sandbag Central making 2.5 million sandbags in nineteen days. He said the Bucks for Bags program contributes \$75.00 to qualified organizations for every 100 hours of sandbag filling and organizations with more than 500 hours receive a \$50 bonus. He said this is the first year The Chamber and Chamber members have been involved, which helped immensely with the sandbag filling efforts. This year the total earned is \$14,075.00, he said, and is shared with 30 nonprofit agencies and schools.

Mayor Walaker presented Denny's Bucks for Bags award checks to the following organizations: Fargo Public Schools, 7,355 hours; Fargo Catholic Schools, 2,263 hours; NDSU, 1,980 hours; and the Salvation Army, 1,075 hours. Mayor Walaker thanked the volunteers and said he always found it to be uplifting to be where the volunteers were working. He said he found them so upbeat and seemed to be having fun. He thanked the United Way and Dakota Medical Foundation for their part in the scholarship process and said the people of Fargo and Moorhead are appreciative of the work of the volunteers.

Moorhead Mayor Mark Voxland thanked the participants in the flood fight of 2011. He said a number of people worked very hard to get both the cities of Moorhead and Fargo so well prepared.

Mr. Mahli said the scholarship fund was started in 2009 as a way to say thank you to student volunteers. This year, he said, the primary contributors to the Spirit of Fargo Flood Fund are: Essentia Health, Sanford Health, Xcel and Case-New Holland. Dakota Medical/Impact Foundation matched \$10,000.00 and United Way of Cass Clay provided \$20,000 in matching funds, he said.

Impact Foundation Executive Director Pat Traynor said this year 40 randomly selected local student volunteers each received \$1,000.00 scholarships.

Renaissance Zone Project for Intelligent InSites, Inc. Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Intelligent InSites, Inc. at 102 Broadway.

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

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

The Board received a communication from Senior Planner Robert Stein stating the Renaissance Zone Project application presented by Intelligent InSites, Inc. meets all of the minimum criteria set forth in the Renaissance Zone Plan and is consistent with the established goals and objectives. He said Intelligent InSites is a growing business which moved downtown a couple years ago and now needs to rent additional space in the same building. He said this is a second project for them and will not run concurrent with the space they now have. Mr. Stein recommended that the project be approved.

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

Second by Mahoney. 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.

Renaissance Zone Project for Chad and Jennifer Stark Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Chad and Jennifer Stark at 300 Broadway, #401/402.

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 Chad and Jennifer Stark meets all of the minimum criteria set forth in the Renaissance Zone Plan and is consistent with the established goals and objectives. Mr. Stein said all of the required information has been provided except the Certificate of Good Standing which has not been returned by the State yet.

Commissioner Wimmer moved the Renaissance Zone application filed by Chad and Jennifer Stark for a project located at 300 Broadway, #401/402 be approved and the income tax and property tax exemptions be granted as recommended by the Renaissance Zone Authority contingent upon the receipt of the Certificate of Good Standing.

Second by Mahoney. 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.

Ordinance Enacting Section 21-0605 of Article 21-06 of Chapter 21 of the Fargo Municipal Code Pertaining to Setbacks from Rivers Tabled: City Attorney Directed to Work with the Staff Committee on a New Ordinance:

Mayor Walaker stated not allowing existing structures to be remodeled is a mistake and he favors delaying the final passage of the Ordinance until further work is done. He said a committee should be assigned to research and make adjustments to the Ordinance.

Commissioner Williams presented an amendment stating nonconforming structures or buildings may be enlarged or altered, provided that such enlargement or alteration is not closer to such river or floodway.

Commissioner Piepkorn agreed the amendment addresses the concerns he has heard from homebuilders and constituents.

City Engineer Mark Bittner said six or seven plats, most on Riverwood Drive, are already impacted by the 100' setback because the floodway is changing.

Senior Planner Jim Hinderaker said he looked at vacant lots not owned by the City; there are 16 vacant lots in the Riverwood Addition; nine are owned by individuals, two are owned by the City as part of the buyout program and 5 are owned by developers. Some are platted but not built on and some of the lots on the west side just touch the 450' setback, he said, and how the setback affects these lots should be looked at more closely as well as three platted lots in Osgood.

In answer to a question from Commissioner Wimmer about whether there should, or could, be different dimensions for setbacks between the Red and the Sheyenne, City Attorney Erik Johnson said there could be separate dimensions but an engineering principal would be needed.

Mr. Bittner stated the 100' setback relates to the floodway line which is the edge of the river and is the critical dimension. The 450' setback is from the center of the river, he said, and while 450' is too much on the Sheyenne, it is appropriate on the Red. He said there are three lots left to be developed in Osgood which are intermixed with built homes and are appropriately designed for 100' from the flood plain; however, he is still concerned about the three in Osgood Addition.

Commissioner Williams said previous discussions have included separating setback requirements for the two rivers, expanding the greenway, connectivity and erosion concerns. He said the City needs to grow in a safe, efficient way and if exceptions are made the process could get delayed. He said Cass County has successfully implemented setbacks since 2006.

Commissioner Mahoney said the details should be looked at; sometimes one simple rule does not fit everything.

Dan Lindquist, past president of the Homebuilders Association, said he is glad the amendment has references to altered buildings removed. He said his concern is with existing buildings and guidelines on lots deemed buildable at one time and now are not. He said he does not want more restrictions on those who live by the river and agrees that one rule does not fit all.

In response to a question from Mr. Bittner whether existing structures could be rebuilt if destroyed, such as by a tornado, City Attorney Erik Johnson said as the Ordinance reads now, structures could not be rebuilt within the setback area. Mr.

Johnson said when an Ordinance is amended, there needs to be a week between the Second Reading and Final Adoption of the Ordinance and if amended, the Ordinance will come back at the next meeting.

Mayor Walaker said he is concerned the City could be put in a position of facing legal action or forced to buy lots that are made unbuildable.

Mr. Bittner said he does not believe the intention is for the Ordinance to be retroactive and said he was not thinking of buying property within the setbacks, floodwall protection could save those homes; however, there should be an option of buying or protecting property, whichever is cheaper and more practical. He said it appears the Commission is on a path to eliminate any structure within the 450' setback, thus creating a floodway. Mr. Bittner said there is still a moratorium on building permits along the river

Commissioner Piepkorn said this has to do with new construction; it should not be by the rivers. Buying vacant lots, he said, is cheaper than buying lots with million dollar homes on them. He said while drains and other aspects may need to be defined, action should be taken as soon as possible.

In response to a question from Commissioner Williams on whether the Ordinance allows building in back yards, Mr. Johnson said his assumption is that it deals with buildings and structures; however, but he does not think it would apply to levees or walls.

Commissioner Mahoney said the Ordinance takes care of new construction but there are questions about how to handle old construction and it may be beneficial to take the time to address some of the issues being raised.

Jon Norberg, 4720 Rosecreek Parkway South, said he owns two vacant platted lots in Osgood he plans to build on. He said the prior owner had problems with the setbacks on one lot and Mr. Norberg purchased the lot to ask for a variance and he would like to know what will happen to those lots. In response to a question from Mayor Walaker about whether he would expect the City to purchase those lots at the purchase price, Mr. Norberg said if the property was purchased with the intent to build on it and the City later says he cannot build after already approving the plat, then yes, he would.

Commissioner Williams said the City has done a good job fighting floods and now it is important to work together to reduce the risk of floods and the amount of money spent. He said this will be evolving and it is better to be more restrictive early and adjust, rather than to try to account for every variable.

Commissioner Williams moved Section 21-0605 of Article 21-06 of Chapter 21 of the Fargo Municipal Code be amended as follows: No building or structure may be erected or constructed unless it is (1) 450 feet from the centerline of a river and (b) 100 feet from the nearest floodway. Nonconforming structures or buildings may be enlarged or altered provided that such enlargement or alteration is not closer to such river or floodway. The terms building or structure shall not include any flood protection wall or levee.

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

Commissioners Mahoney, Wimmer and Walaker voted nay.

The motion was declared lost for a lack of majority.

At 6:25 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Mayor Walaker said a staff committee should be established to include Jim Hinderaker, Erik Johnson, Pat Zavoral, Mark Bittner, Brad Wimmer and Mike Williams. He said the committee can research that matter and bring forward a new proposal.

Commissioner Mahoney moved the Ordinance be tabled and the City Attorney be directed to work with the newly assigned committee to bring forth a new ordinance.

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

Commissioners Piepkorn and Williams voted nay.

The motion was declared carried.

2011 Flood Recovery and Cleanup Project, RFP's and Accelerated Procurement Schedules Approved: Flood Risk Reduction Tasks Approved:

City Administrator Pat Zavoral outlined some immediate actions for flood cleanup. He said some cleanup has been done; however, much of the cleanup will be done once the river is below thirty feet. The issue now, he said, is to bring sandbags back to the curbs to be picked up. Though it had been proposed, he said, it does not appear it will work to leave Trap Bags up due to the possibilities of their integrity being damaged and concerns about vandalism. The Hesco and AquaFence protection systems will be removed, he said, and permanent levees put up prior to the flood will need some restoration. The rear yard restoration program will be the same as past years, he said.

The Board received a communication from the Public Works Projects Evaluation Committee stating the Committee discussed flood recovery and cleanup projects, removal and restoration work plans, schedule and completion priorities, as well as, flood risk reduction, all for the 2011 flood. Their recommendations are as follows:

2011 Flood Recovery and Cleanup:

- (1) Street opening at critical areas
 - Levee removals where possible in locations of high traffic impact areas.
- (2) Removal of contingency sandbags
 - Solid Waste Department will coordinate removal of pallets of sandbags deployed in neighborhoods as a contingency measure.
- (3) Removal of sandbag levees
 - Engineering to solicit proposals for contract removal of used sandbags placed on the street.
 - Field personnel to investigate the need for contractor assistance in hauling sandbags to the street.
- (4) Clay levee removal
 - Engineering to solicit proposals for removal of temporary emergency levees at approximately forty sites.

- (5) Trap Bag Removal
 - PWPEC members and engineering staff are concerned about Trap Bag deterioration from UV exposure, weather changes, exposure to vandalism, damage by adjacent maintenance activities and geotechnical stability of underlying soils.
 - PWPEC is recommending removal of all Trap Bag units.
- (6) Rear Yard Restoration
 - Program will be similar to the 2009 and 2010 programs.
 - Mark Williams will manage this program.
 - Home owner will be responsible for completing restoration of damages caused by sandbag levees. City to pay 80% with a \$2,000 maximum based on insurance company denial of claim for restoration cost coverage.
 - City will be responsible for lot restoration associated with construction impacts related to construction of emergency clay levees.

City Engineer Mark Bittner requested approval of the RFP's and contract awards as outlined for removal of sandbags. Wednesday proposals will be opened for removal of clay levees and he said, as he would like authorization to begin that work Thursday, the contract will be brought to the Board at the next meeting. He said staff is checking with homeowners to see if they want the City to assist with removal of sandbags in the backyards, however, currently the contract only covers hauling them off the boulevard.

Flood Risk Reduction:

- (1) Upgrade emergency levees to permanent
 - Solicit proposals for leveling, seeding and weed control for all sites where emergency levees are to be upgraded to permanent.
 - Complete geotechnical analysis at all sites considered for permanent levee placement to determine resulting soil stability and ability to support long term levee performance.
 - Upgrade levees to permanent.
- (2) Neighborhood Flood Protection Analysis
 - Solicit proposals for consultant evaluation of potential options to enhance flood protection in various neighborhoods.

Mr. Zavoral said departments have been queried about expenses eligible for reimbursement for this particular flood fight and arrived at a figure of \$6,556,000 and if a full federal declaration is obtained, 75% reimbursement or \$4,900,000, can be expected. The State of North Dakota, he said, likely will split the local share 50/50, which would mean the local cost figure is approximately \$750,000 to \$800,000. He said the Board gave permission for property acquisitions and 22 homes have been purchased this year for a total of

\$10,200,000. Pre-flood emergency measures cost \$2,580,000, he said, half of which should come from the State due to the fact those levees will stay in place, and an estimated \$4,300,000 will be needed to reconstruct them to meet FEMA standards. He said another \$300,000 of contractor fees will be submitted for federal reimbursement for sand needed in the Trap Bags and Hesco barriers. Permanent flood protection costs could be over \$20,000,000, he said, and a plan on how to finance that in the long term will be brought forward to the Board at a later date.

In response to Mr. Bittner's comment about 250 homes in Fargo being removed since 1997, Commissioner Wimmer said that is good information to share with neighboring communities that do not feel Fargo has sacrificed for long term flood protection. He said taking that amount from tax rolls has had quite an impact.

Mr. Bittner said approximately 30 homeowners have asked for acquisition, mostly in the River Drive South area, and whether to try to protect them or to buy them out is an important decision to be made.

Commissioner Wimmer moved the following flood recovery and cleanup projects, RFP's and accelerated procurement schedules be approved:

- (1) RFP and Notice to Proceed contract award for sandbag removal Project No. 6012.
- (2) RFP and Notice to Proceed for clay levee removal for Project Nos. 6013-01 and 6013-02.
- (3) RFP and Notice to Proceed for removal of Trap Bags, Hesco Barriers and Big Bag Units Project No. 6814.
- (4) RFP and Notice to Proceed for AquaFence Removal Project No.6023.
- (5) 2011 Rear Yard Restoration Program.

Second by Mahoney. 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 Wimmer moved the following Flood Risk Reduction Tasks be approved:

- (1) Upgrade emergency clay levees to permanent.
- (2) Solicit proposals for neighborhood Flood Risk Reduction Analysis.

Second by Mahoney. 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 Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, May 2, 2011.

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

The time at adjournment was 6:55 o'clock p.m.