

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:

Monday:

May 2, 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, May 2, 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 moving Items "s" and "t" from the Consent Agenda to the end of the Regular Agenda.

Second by Wimmer. 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 18, 2011 be approved as read.

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

Consent Agenda Approved:

Commissioner Mahoney moved the Consent Agenda be approved as follows:

- a. Request of the Downtown Community Partnership and the Old Broadway for an extension of the noise Ordinance to 11:00 p.m. on Saturday, June 4, 2011 for the MDA Old Fashioned Fun Run (Bike Run) and Downtown Street Dance.
- b. Request of the Downtown Community Partnership and the Empire Tavern for extensions of the noise ordinance to 11:00 p.m. for "Cruisin' Broadway" on June 2, July 7, August 4 and September 1, 2011; Street Fair dates of July 14 and 15, 2011; and outdoor music dates on June 17, July 29, August 19 and September 9, 2011.
- c. Contract with Lucas Pagel for a Meter Reader I position for 2011.
- d. Contract with Nolan Vanyo for a Meter Reader I position for 2011.
- e. Extension of unpaid leave for Maynard Johnson through August 1, 2011.
- f. 2011 grant allocation in the amount of \$70,000.00 from the Otto Bremer Foundation for the Gladys Ray Shelter.

- g. Healthcare for Homeless Veterans allocation in the amount of \$162,000.00 from the Department of Veterans Affairs for drop-in services at the Gladys Ray Shelter (Contract # VA-263-P-1173).
- h. 2009 Community Development Action Plan amendment to allow the site at 402 11th Street North to be used as the Emergency Food Pantry.
- i. Agreement with Lutheran Social Services of North Dakota for Refugee Health Services and interpreters.
- j. Agreement with the North Dakota Department of Health for Ryan White Case Management (CFDA #93.917).
- k. Appointment of John Q. Paulsen to the Fargo Comprehensive Plan Steering Committee.
- l. Application filed by Lacey and Jason McDonald for a five-year tax exemption for improvements made to a building at 818 26th Street North.
- m. Settlement Agreement with Howard W. Kremer.
- n. Site Authorizations for Games of Chance:
  - (1) Teamsters at the Teamsters.
  - (2) Red River Human Services Foundation at The Fargo Elks, The Northern and The Hub.
  - (3) Jon Greenley Amvets Post #7 at the Amvets and the Nestor Tavern.
- o. Applications for Games of Chance:
  - (1) El Zagal Provost Guard for sports pools from 9/11/11 to 1/1/12.
  - (2) FM Walleyes Unlimited for a raffle on 9/15/11.
  - (3) USA Wrestling of North Dakota for a raffle on 7/19/11.
- p. Acceptance of proposal in the amount of \$58,850.00 from Elert & Associates for IP Telephony consulting services.
- q. Bid award for Sections 1 and 2 for water main repair materials to Fargo Water Equipment.
- r. NDDOT Federal Aid Project list for 2012-2015.
- s. Agreements with FEMA for levee accreditation for the Dike West and Waste Water Stabilization Pond levees and the West Fargo and Horace to West Fargo Diversion Channel Levee systems (moved to the Regular Agenda).
- t. Action plan and project list for emergency flood levee reconstruction to upgrade levees to permanent standards (moved to the Regular Agenda).

- u. Option 5 for Drain 53 improvements along Silverleaf Addition and Release of Easement (dike for flood control) for Lots 10 through 13, Block 2, Silverleaf Addition (Improvement District No. 5904).
- v. Bid awards for Project Nos. 5923 to Midwest Landscaping Inc. in the amount of \$284,072.00; 6013-1 to Tom's Backhoe Service in the amount of \$292,818.85; 6013-2 to Tom's Backhoe Service in the amount of \$194,808.75; 6014 to Hough, Inc. in the amount of \$285,829.65 and 6023 to Alsop Enterprises in the amount of \$3,960.50.
- w. Contract award for Project No. 6010-05 to H & S Contracting in the amount of \$572,645.00.
- x. Contract award for Project No. 6010-02 to Industrial Builders, Inc. in the amount of \$27,885.00.
- y. Contract for Project No. 6012.
- z. Change Orders: No. 1 for an increase of \$50,562.00 for Project No. 5946-01; No. 1 for an increase of \$112,356.28 for Project No. 6010-04B; and No. 2 for an increase of \$8,666.00 for Project No. 6005.
- aa. Bid advertisements for Project Nos. 5946-02 and 6024.
- bb. Bills in the amount of \$3,540,124.92.

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.

Special Assessment Financing for Improvement District No. 6034 for Sanitary Sewer Service Installation at Osgood Villas Third Addition Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating they reviewed a request from Dave Noah for special assessment financing for installation of water and sewer services to serve two lots in the Osgood Villas Third Addition along the Osgood Clubhouse entry road. They said the replat of the property results in the need to add service connections to the second lot; the initial plat contained only one lot. They recommended the request be approved.

Commissioner Mahoney moved the special assessment financing for Improvement District No. 6034 for sanitary sewer service installation at Osgood Villas Third Addition be approved.

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.

Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973: Protests Received and Declared Insufficient:

The Statutory Resolution of Necessity for the construction of Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on March 28, April 4 and 11, 2011 and protests representing 4.7 percent of the legal protest area have been received and filed in the office of the City Auditor within the legal protest period.

Commissioner Mahoney moved the protests be received and filed and declared insufficient.

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 Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973:

The bids for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., April 27, 2011 and the bids were found to be as follows:

Tom's Backhoe Service Bid:	Brainerd, MN \$1,755,903.10
Master Construction Company, Inc. Bid:	Fargo, ND \$1,895,235.43
Dakota Underground Company Bid:	Fargo, ND \$2,064,638.97
Sellin Brothers, Inc. Bid:	Hawley, MN \$2,341,854.53
Riley Brothers Construction Bid:	Morris, MN \$2,517,266.48

Contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973 Awarded to Tom's Backhoe Service in the Amount of \$1,755,903.10:

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 Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received April 27, 2011 for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973 shows the bid of Tom's Backhoe Service of Brainerd, Minnesota, in the sum of \$1,755,903.10 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 Tom's Backhoe Service in the sum of \$1,755,903.10 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5973 in the City of Fargo, North Dakota, be and the same is hereby awarded to Tom's Backhoe Service for the sum of \$1,755,903.10, 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.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5963 (Osgood Third Addition):

Commissioner Mahoney moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5963:

Adopt Resolution Creating Improvement District No. 5963:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5963 in the City of Fargo, North Dakota, be created

Beach Lane South, a cul de sac located within the 4500 block of Osgood 3rd Addition.

COMPRISING:

Lot 1 through 7, Block 1, inclusive, Osgood 3rd Addition.

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. 5963 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. 5963:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5963 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 \$178,200.)

Order Plans and Specifications for Improvement District No. 5963:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5963 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5963:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5963 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. 5963 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. 5963 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. 5963:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5963 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.

Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5974 (On 11th Street South from 8th Avenue to 10th Avenue South; On 8th, 9th and 10th Avenues South from 10th Street to University Drive):

Commissioner Mahoney moved the following action be taken in connection with Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5974:

Adopt Resolution Creating Improvement District No. 5974:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5974 in the City of Fargo, North Dakota, be created

On 11th Street South from 8th Avenue to 10th Avenue South.  
On 8th, 9th and 10th Avenues South from 10th Street to University Drive.

COMPRISING:

Lots 1 through 3 and 12 through 16, Block 1.  
Erskines Monsons Subdivision.

Lots 4 and 9, Block 2.  
Erskines Phelps Subdivision.

Lots 1 through 15, Block C.  
Lots 1 through 4 and Lot 22, Block D.  
Lots 1 through 24, Block O.  
Lots 1 through 9 and Lots 22 through 30, Block P.  
Chas A. Roberts Addition.

Lots 1 through 6, Block P.  
Chas A. Roberts Addition

Lots 1 through 30, Block Q.  
Chas A. Roberts Addition.

Lots 1 through 24, Block R.  
Chas A. Roberts Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5974 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. 5974:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5974 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 \$1,280,000.)

Order Plans and Specifications for Improvement District No. 5974:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5974 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5974:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5974 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. 5974 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 Water Main Replacement, Street Reconstruction 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 Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5974 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 a portion of said Water Main Replacement, Street Reconstruction and Incidentals improvement is to be paid from Street Sales Tax and approximately 24% is to be assessed against the benefited property in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Water Main Replacement, Street Reconstruction 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. 5974:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5974 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.



Resolution Adopted Authorizing the Issuance of Refunding Improvement Bonds, Series 2011A and Refunding Improvement Bonds, Series 2011B:

David McGillivray, Springsted, Inc., summarized the results of the bond issues and reaffirmed the City's excellent credit rating. He said he is recommending award to UBS Financial Services Inc. for both issues.

Commissioner Piepkorn moved the Resolution entitled "Resolution Authorizing the Issuance of Refunding Improvement Bonds, Series 2011A and Refunding Improvement Bonds, Series 2011B, Approving Certain Actions, Awarding the Sale Thereof and of the Warrants Related Thereto, Prescribing the Terms and Covenants Thereof, and Creating a Fund for the Payment Thereof" and referred to as Attachment "A", and the Resolution entitled "Resolution Creating the Funds of Improvement Districts, Providing for and Appropriating Special Assessments for the Support and Maintenance of Said Funds, and Authorizing the Issuance of Improvement Warrants Thereon" and referred to as Attachment "B", be adopted and attached hereto.

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

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

Revised PILOT Agreement for \$675,000 of Assistance for the T-Lofts Student Housing Project Approved:

The Board received a communication from Planning Director Jim Gilmour stating last year the City Commission approved a PILOT incentive for the T-Lofts Student Housing project; however, after the approval both the City and the Developer noticed some changes were needed to the agreement. He said the changes include a correction to the administrative costs to the City which will increase the payment to \$47,275.00, budget changes to the line items, a change in the allowed materials that will allow for the use of seamless steel siding with ceramic hybrid paint and a correction to the legal description.

Larry Nygard, Roers' Development, Inc., stated the rental units will include all amenities that a renter may use, such as utilities, cable, internet, laundry, etc. In comparison to a dorm, he said, the rental unit would be slightly less; however, a dorm room is on a 9-month rental basis whereas this would be a yearlong lease. He said their target market is for individuals who would like year round living.

Commissioner Wimmer moved the revised PILOT agreement for \$675,000 of assistance for the T-Lofts Student Housing project be approved.

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.

Application to Transfer the Alcoholic Beverage License from Service Oil, Inc. d/b/a North Town Grill to Hungry's Restaurant, Inc. d/b/a Marlin's Family Restaurant Approved:

A Hearing had been set for this day and hour on an application to transfer the Class "F" Alcoholic Beverage License from Service Oil, Inc. d/b/a North Town Grill to Hungry's Restaurant, Inc. d/b/a Marlin's Family Restaurant at 3520 12th Avenue

North, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

Application Filed by Lucky U, LLC d/b/a Lucky's 13 Pub for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Lucky U, LLC d/b/a Lucky's 13 Pub for a Class "FA" Alcoholic Beverage License at 4301 17th Avenue South, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

Application Filed by SJH Holdings, Inc. d/b/a Taste of Italy for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by SJH Holdings, Inc. d/b/a Taste of Italy for a Class "F" Alcoholic Beverage License at 612 1st Avenue North, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

Request Submitted by American Builders to Purchase and Redevelop City Owned Land at 320 and 324 7th Street North Denied:

The Board received a communication from Senior Planner Dan Mahli stating last year the City received a request to take formal proposals for City owned land located at 320 and 324 7th Street North. An RFP was published, he said, and one proposal was received from American Builders for the development of an apartment building named the Winchester. The City Commission discussed the proposal in July of 2010, he said, and asked that the item be delayed for the developer to revise the proposal and meet with the neighbors. The revised plan, he said, is generally unchanged except that the builder will remove the top floor to address an issue of scale, making the apartment complex a 3-story building with 18 units rather than 4-stories with 24 units. After reviewing the revised proposal the recommendation, he said, is to reject the proposal for the following reasons:

- (1) The RFP called for a price of \$93,500 for the lots. The builder offered \$39,000 and the proposed development does not meet the minimum requirements of the RFP.
- (2) Neighbors have expressed concern about this proposal.
- (3) Parking would be a problem. Although there are no parking requirements in the Downtown Mixed Use zoning district, this block is residential in nature and parking would be an issue in the neighborhood.

Mark Thelen, representing American Builders, Inc., stated the price offered by the developer was based on the market value of the property and in reference to the parking the development will be providing more parking than what is required.

Troy Walseth, American Builders, Inc., stated he met with the neighbors and made every change that the neighborhood asked for. He said American Builders, Inc. would pay the \$93,500 for the lots if the City would allow them to develop the area as a 4-story structure. He said he appreciates the neighbors' opinions; however, he does not feel that anything that is put on those lots will make the neighborhood happy. He said he feels that he is willing to do something that looks nice and fits the neighborhood but he is running out of feasibility.

Commissioner Piepkorn stated one of the main concerns is how this development ties in with the rest of the neighborhood due to the fact that this block of homes is very historically significant.

Paul Gleye, 311 8th Street North, stated this development is wrong for downtown and for the future of Fargo. He said this proposal has no vision attached to it and he urges the City not to get rid of the property just to get rid of it. He said he would like this to be looked at again as he feels downtown needs more housing, but not urgently.

Kay Schwarzwalter, 723 3rd Avenue North, stated she is excited about the future development of this area; however, she does not feel that this development would be right for this area.

City Administrator Pat Zavoral stated he was a member of the ad hoc committee and Community Development Block Grant Funds were used initially to purchase the home that sat on that lot. He said the City has an obligation to put back as much money as possible into that fund. He said he thinks that there may be room to work with neighbors and the developer to come up with a better plan to benefit the entire neighborhood.

Commissioner Williams moved the request submitted by American Builders to purchase and redevelop City owned land at 320 and 324 7th Street North be denied

and that appropriate staff be directed to work with the developer and neighborhood to come up with a suitable plan and come back to the Commission in 60 days with a recommendation.

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

Commissioner Wimmer voted nay.

The motion was declared carried.

#### Discussion Regarding the River Setback Ordinance:

Commissioner Piepkorn stated the current moratorium is only for the Red River and his intention is to include any other rivers in the City while the river setback ordinance is being discussed. He said he does not believe that the City should be allowing development along the river when the City is purchasing lots along the river. It just does not make sense, he said.

In response to a question from Commissioner Mahoney regarding the current moratorium, City Attorney Erik Johnson stated the current moratorium is placed on all building permits on platted river lots and allows Engineering, Planning and Inspections staff to evaluate each request on a case-by-case basis.

NDSU Professor of Geology Donald Schwert stated the basic geological setting of any of the rivers in the Fargo-Moorhead area is identical and the rivers are flowing across the same geology.

In response to a question from Commissioner Mahoney regarding the difference between the Sheyenne River and the Red River, Professor Schwert stated there really is no difference between the two. He said the Sheyenne has a little deeper river channel; however, he is still dealing with lots of problems along the Sheyenne in terms of soil stability which are the same types of issues that can be seen along the Red and Wild Rice Rivers.

Commissioner Wimmer said he would like to leave the moratorium as is and get the river setback ordinance done as quickly as possible.

Commissioner Piepkorn stated for clarity purposes the moratorium should include "all rivers".

Commissioner Williams stated staff is currently reviewing permits on a case-by-case basis; however, he believes these applications should be brought to the Commission for final approval.

City Administrator Pat Zavoral said the City has not dealt with any new construction permit applications and he wonders if the revision to the moratorium will include remodeling of existing homes and out buildings as well.

Commissioner Piepkorn stated the main priority is for new construction of homes and he feels it is very important to be clear in what the City's intentions are.

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

After recess: All Commissioners present. Mayor Walaker presiding.

City Engineer Mark Bittner stated the plan was to try to establish a line of protection and not impact homes on the opposite side of the street. He said he agrees with Commissioner Piepkorn that the City needs to start sometime, but he is not sure this is the right time. Lots on the Sheyenne are a lot more stable now, than they have been in the past, he stated, and the impact of establishing the 450 foot

setback on all rivers is that if a home were to burn down or be destroyed the lot would be unbuildable.

Commissioner Williams moved to require that any new, previously unplatted lots along the Red, Wild Rice and Sheyenne Rivers follow the greater of 450 feet from the centerline of the river or 100 feet from the floodway and follow the Cass County watercourse setback standards provided outside the floodway with minimum disturbance the first 350 feet and limited disturbance the last 100 feet, that levees be allowed within that area and that permits be brought to the City Commission for final approval.

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

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

Commissioner Williams moved existing vacant platted lots along the Red and Wild Rice Rivers follow the greater of 450 feet from the centerline of the river or 100 feet from the floodway and follow the Cass County watercourse setback standards provided outside of the floodway with minimum disturbance the first 350 feet and limited disturbance the last 100 feet.

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

Commissioner Mahoney voted nay.

The motion was declared carried.

Commission Mahoney moved the motion be amended to state the 450 foot setback would not apply to homes on the opposite side of the street.

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.

On call of the roll on the original motion as amended, Commissioners Mahoney, Williams, Wimmer, Piepkorn and Walaker voted aye.

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

#### John Q. Paulsen Appointed to the Fargo Dome Authority:

The Board received a communication from Mayor Walaker stating he received a letter from Bruce Frantz resigning from the Fargo Dome Authority and a letter from NDSU President Dean Bresciani submitting two nominations for the vacant seat. He said he is recommending John Q. Paulsen be appointed to the Fargo Dome Authority to fill the unexpired term of Bruce Frantz.

Commissioner Mahoney moved John Q. Paulsen be appointed to the Fargo Dome Authority for the term ending April 1, 2012.

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.

Agreements with FEMA for Levee Accreditation for the Dike West and Waste Water Stabilization Pond Levees and in West Fargo and Horace to West Fargo Diversion Channel Levee Systems Approved:

The Board received a communication from the Public Works Projects Evaluation Committee stating prior to distribution of updated Flood Insurance Rate maps, FEMA requires that owners of current accredited levees declare their intentions in levee certification for ongoing accreditation. They said the City currently has accredited levees at three locations, which are as follows:

1. Dike West Levee along 4th Street from 2nd Street to 13th Avenue South.
2. Waste Water Stabilization ponds north of 52nd Avenue North and east of 25th Street.
3. 37th Avenue North, north of the Waste Water Treatment Plant from Broadway to Royal Oaks Drive and following along the Red River to the 3700 block east of 10th Street North.

Southeast Cass Water Resource District, they said, currently has accredited levees located at the West Fargo Diversion Channel Levee System and at the Horace to West Fargo Diversion Levee System.

Commissioner Piepkorn moved the agreements with FEMA for levee accreditation for the Dike West and the Waste Water Stabilization Pond levees and in West Fargo and Horace to West Fargo Diversion Channel Levee Systems 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.

Action Plan and Project List for Emergency Flood Levee Reconstruction to Upgrade Levees to Permanent Standards Approved:

Commissioner Piepkorn moved the action plan and project list for emergency flood levee reconstruction to upgrade levees to permanent standards be approved.

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

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

Deputy City Engineer Dave Johnson gave a status report on flood levee clean-up. He said most everything will be cleaned up by this weekend with the exception of the Trap Bags, which could take up to two more weeks to be completed.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, May 16, 2011.

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

The time at adjournment was 7:00 o'clock p.m.