

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: July 11, 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 4:00 o'clock p.m., Monday, July 11, 2011.

The Commissioners present or absent were as shown following:

Present: Piepkorn, Williams, Wimmer, Walaker.

Absent: Mahoney.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Williams moved the Order of the Agenda be approved moving Item "q" from the Consent Agenda to the end of the Regular Agenda.

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

Minutes Approved:

Commissioner Wimmer moved that the Minutes of the Regular Meeting of the Board held on June 27, 2011 be approved as read.

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

Mayor Walaker announced that there are pending litigation matters to be discussed in Executive Session, as authorized by NDCC Section 44-04-19.1, for the purpose of conferring with the City attorneys regarding pending or threatened litigation. He said litigation to be discussed is in cases or claims with the following parties: Red River Freethinkers; Cheryl Plante; Progressive Direct Insurance Company; Fred M. Hector, Jr.; Fred M. Hector, individually and on behalf of all landowners specially assessed for Special Assessment Project No. 5314, D&P Terminal, Inc., Potter Enterprises, and William F. Rakowski; Vickie Lee; Stanley Township and Fred M. Hector, Jr. (appeals of City Commission and of Board of Adjustment decisions); Shaun Alan Duciaume; David Lundeen and Jane Lundeen; Nodak Mutual Insurance Company; Otter Tail Power Company and Northern States Power Company 345 kV Transmission Line – Fargo to Monticello (Public Service Commission – CapX2020); Comstock Land Company.

Commissioner Piepkorn moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.1

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

At 4:09 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

Members present were: Williams, Piepkorn, Wimmer and Walaker.
Absent and not voting: Mahoney.

The Executive Session closed at 4:36 o'clock p.m. and the Commission reconvened in public session at 4:40 o'clock p.m.

All Commissioners present except Commissioner Mahoney. Mayor Walaker presiding.

Consent Agenda Approved:

Commissioner Piepkorn moved the Consent Agenda be approved as follows:

- a. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Amending Section 13-1108 of Article 13-11 of Chapter 13 of the Fargo Municipal Code Relating to Child Care Centers.
- b. 2nd Reading, waive reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Spiry First Addition, Fargo, Cass County, North Dakota; 1st Reading, 6/27/11.
- c. Request from Big D's Bar and Grill for an extension of the noise ordinance until 11 p.m. on Thursday, August 25, 2011 for an outdoor concert.
- d. Out of grade pay for Thomas Anderson retroactive to June 29, 2011.
- e. Programmatic Agreement among the U.S. Army Corps of Engineers, St. Paul District, the North Dakota State Historic Preservation Officer and the Minnesota State Historic Preservation Officer regarding the Fargo-Moorhead Metro Flood Risk Management Project, Cass County, North Dakota and Clay County, Minnesota.
- f. Receive and file 2011 Second Quarter Financial Status Report for all Major Operating Funds.
- g. Site Authorization for Sts. Anne & Joachim Catholic Church, at the Church from 8/1/11 through 6/30/12.
- h. Applications for Games of Chance:
 - (1) Freedom Resource Center for a raffle on 9/15/11.
 - (2) St. Anthony's Church for a raffle and bingo on 9/25/11.
 - (3) Nativity Church of Fargo for a raffle on 11/6/11.
- i. Contract Amendment with the North Dakota Department of Health for the Immunization Program (CFDA #93.268).
- j. Grant Awards from the North Dakota Tobacco Prevention and Control Executive Committee for the Tobacco Prevention and Control Programs (Contract Nos. G11-36 and G11-08).

- k. Resolution and Quit Claim Deed conveying the City's interest to Dr. James W. McCulley for property located at 1220 Main Avenue, Unit 4.
- l. Temporary Construction Easement with the NDDOT for the 10th Street North Project.
- m. Access Agreements with J R Bakke Properties, LLC and Goldstar Enterprises, LLC for property located along 53rd Avenue South (Improvement District No. 5960).
- n. Declaration Concerning Dedication (Project No. 5949).
- o. Police Department budget adjustment in the amount of \$6,300 and grant agreement with the ND Highway Patrol for enforcing underage drinking laws (CFDA #16.727).
- p. Inter-Local Agreement with West Fargo and Cass County (CFDA #16.738).
- q. Bid advertisement for Project Nos. 5958-2 and 5951-02 (moved to the end of the Regular Agenda).
- r. Bid award to Key Contracting in the amount of \$184,695.11 for Demolition, Site Restoration and Incidentals for Project No. 5747-28.
- s. Contract with Ulteig Engineers, Inc. for structural services in the amount of \$5,000 for Improvement District No. 5955-4.
- t. Cost reimbursement for Change Order No. 1 for an increase of \$2,855.00 and Change Order No. 2 for an increase of \$3,025.00 to the Park District for associated work for the Rose Creek Golf Course Earth Levee modifications. (Project No. 6044).
- u. Right of Entry and Access Agreement with Barr Engineering at 4145 and 6469 University Drive South.
- v. Engineering Services Contract Amendment No. 5 with Houston Engineering in the amount of \$291,192 (Project No. 5683-04) and Amendment No. 8 with Moore Engineering in the amount of \$330,257 for the FM Metro Feasibility Study (Project No. 5683-05).
- w. Change Order No. 1 for an increase of \$24,590.37 for Project No. 5981 and RFP for Project No. 6050.
- x. Contracts and bonds for Project Nos. 5946-02, 5995, 6031 and SW 11-01.
- y. Bills in the amount of \$4,166,637.94.

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

Absent and not voting: Commissioner Mahoney.
The motion was declared carried.

Change Order No. 10 for Improvement District No. 5601 Approved:

Commissioner Piepkorn moved approval of Change Order No. 10 for an increase of \$63,700.00 for Improvement District No. 5601.

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

Absent and not voting: Commissioner Mahoney.
The motion was declared carried.

Final Balancing Change Order for Improvement District No. 5908-1 Approved:

Commissioner Piepkorn moved approval of the Final Balancing Change Order for an increase of \$260,713.55 for Improvement District No. 5908-1.

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

Absent and not voting: Commissioner Mahoney.
The motion was declared carried.

Bids Rejected for Water Main Replacement, Street Reconstruction and Incidentals Improvement District 5975: Project to be Rebid:

The Board received a communication from Deputy City Engineer David Johnson stating bids were opened at 11:30 a.m. on June 22, 2011 for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5975. He said the 2011 Spring Flood has caused a number of summer construction projects to be delayed which is causing coordination problems with adjacent projects, school zones and general neighborhood access. He said Improvement District No. 5975 includes water main replacement and street reconstruction around Clara Barton Elementary School and scheduling issues will prevent completion prior to commencement of the school year. He recommended the bids be rejected and the project be rebid with a revised schedule to be coordinated with Clara Barton School and other adjacent projects.

Commissioner Piepkorn moved the bids for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5975 be rejected and the project be rebid for 2012 construction.

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

Absent and not voting: Commissioner Mahoney.
The motion was declared carried.

P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 (Block 31 of College 2nd Addition Between 26th and 27th Streets North from 7th to 8th Avenues North):

Commissioner Piepkorn moved the following action be taken in connection with P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037:

Adopt Resolution Creating Improvement District No. 6037:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6037 in the City of Fargo, North Dakota, be created

LOCATION:

From 7th to 8th Avenues North between 26th Street and 27th Street, Block 31 of College 2nd Addition.

COMPRISING:

Lots 1 through 18, Block 31.
All in College 2nd Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 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. 6037:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6037 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 \$66,000.)

Order Plans and Specifications for Improvement District No. 6037:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6037 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6037:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6037 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. 6037 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 P.C. Concrete Alley Paving 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 P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 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 P.C. Concrete Alley Paving 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. 6037:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6037 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

No Protests Received for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020:

The Statutory Resolution of Necessity for the construction of Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on June 6 and 13, 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 Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Bids Received for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020:

The bids for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., July 6, 2011 and the bids were found to be as follows:

Master Construction Company, Inc. Bid:	Fargo, ND \$1,040,388.95
Dakota Underground Bid:	Fargo, ND \$1,044,097.30
Northern Improvement Company Bid:	Fargo, ND \$1,172,970.87
Border States Paving, Inc. Bid:	Fargo, ND \$1,211,673.49

Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020 Awarded to Master Construction Company, Inc. in the Amount of \$1,040,388.95:

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 Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received July 6, 2011 for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020 shows the bid of Master Construction Company, Inc., of Fargo, North Dakota in the sum of \$1,040,388.95 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 Master Construction Company, Inc. in the sum of \$1,040,388.95 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6020 in the City of Fargo, North Dakota, be and the same is hereby awarded to Master Construction Company, Inc. for the sum of \$1,040,388.95, 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, Williams and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The Resolution was adopted.

Contract for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 5955-4 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Tom's Backhoe Service, Inc. for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 5955-4 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract Bond for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 5955-4 Approved:

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

Granite Re, Inc., in the amount of \$728,400.00, for Storm Sewer Lift Station, Storm Sewer and Incidentals Improvement District No. 5955-4 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5963 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Border States Paving, Inc. for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5963 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5963 Approved:

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

Liberty Mutual Insurance Company, in the amount of \$134,805.59, for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5963 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5974 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Tom's Backhoe Service, Inc. for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5974 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.
The motion was declared carried.

Contract Bond for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5974 Approved:

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

Granite Re, Inc., in the amount of \$1,030,121.50, for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5974 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.
The motion was declared carried.

Recommendation from Mayor Walaker for Appointments to Various Boards and Commissions Approved:

The Board received communications from Mayor Walaker recommending the following appointments to several Boards and Commissions of the City for the terms listed:

<u>Board of Adjustment</u>	<u>Term Expires</u>
Ken Lepper (reappointment)	June 30, 2014
Deborah Wendel Daub (reappointment)	June 30, 2014
<u>Board of Appeals</u>	
Joel Davy (reappointment)	June 30, 2016
Terry Welle (reappointment)	June 30, 2016
<u>Civil Service</u>	
Paul Grindeland (reappointment)	June 30, 2014
Kurt Losee (reappointment)	June 30, 2014
<u>Convention and Visitors Bureau</u>	
Sharon Odegaard (reappointment)	September 1, 2014
<u>Library Board</u>	
Dawn Morgan (reappointment)	June 30, 2014
John Dietz (reappointment)	June 30, 2014
Herbert Snyder	June 30, 2014
<u>Native American Commission</u>	
Jaclynn Davis Walette (reappointment)	June 30, 2014
Dereck Stonefish	June 30, 2014

Planning Commission

Peggy Palmes (reappointment)

June 30, 2014

Jan Ulferts Stewart (reappointment)

June 30, 2014

Special Assessment Commission

Steve Bladholm (reappointment)

July 1, 2014

Commissioner Wimmer moved the appointments be approved as outlined above.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Request from American Builders to Purchase and Redevelop City Owned Land at 320 and 324 7th Street North Approved: Staff Directed to Work with City Attorney to Prepare Purchase Agreement:

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, formerly the Native American Programs office and parking lot. The City Commission discussed the proposal in July of 2010, he said, and asked the item be delayed for the developer to revise the proposal and meet with the neighbors. In May, he said, the City Commission discussed a revised proposal and again delayed the item for the developer to meet with staff and neighbors on a revised plan. He said a revised proposal is now being submitted suggesting a four story structure consisting of 28 apartments be constructed. He said an ad hoc review committee discussed the current request and recommends approval of the sale with the following conditions:

1. The developers must submit final plans to the City prior to closing.
2. The architecture must be the same around the building.
3. The developer will use brick and shingles, as annotated in the plans, as well as swinging doors rather than sliding on the patios around the building.
4. The developer will submit a landscape and maintenance plan prior to closing.
5. The developer will move the parking lot landscaping west to buffer the alley and parking lot and plant trees along 7th Street and 4th Avenue.
6. Any deviation from the proposed development must be approved by the City Commission.

Commissioner Piepkorn stated Commissioner Wimmer and himself were involved in the process and the architect revised the plan doing a good job of making it fit in with the neighborhood. He said green space and parking are concerns expressed by neighbors.

Planning Director Jim Gilmour said the developer is going beyond what is required downtown for parking.

Commissioner Williams stated since this is City owned property, it is important to proceed correctly. He said this is a much improved project and there is a need for affordable housing

Commissioner Piepkorn moved the sale of City owned land at 320 and 324 7th Street North to American Builders for \$60,000.00 be approved contingent upon the submission of final plans, and that staff be directed to work with the City Attorney to prepare a purchase agreement making sure all the conditions as outlined above are included in the agreement.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Withdrawal of the Renaissance Zone Fund Agreement with Rick Engen (Downtown Renaissance Fund, LLC):

The Board received a communication from Senior Planner Robert Stein stating in May 2009 the Board gave preliminary approval of an agreement with an entity to be created by Rick Engen to establish an authorized Renaissance Zone Fund. He said since that time Mr. Engen has not finalized the formation of the business entity that would have formed the business zone fund. Mr. Stein said in August 2010, 15 months after the approval, there had been no contract so he sent Mr. Engen a letter withdrawing the offer. He said he feels it is not in the City's best interest to maintain an open ended offer and he is asking the Board to formally revoke the offer to avoid any concerns over whether it is appropriate for staff to withdraw the offer. Mr. Engen has been notified that the offer made by the City in May 2009 was withdrawn, he said, and Mr. Engen has contacted him requesting he ask the Board to delay action.

Commissioner Wimmer said he feels this should move forward because there has been ample time and it has been sitting dormant for two years. He said if Mr. Engen has a project he could reapply and bring it to the Board again.

In response to a question from Commissioner Williams about whether future contracts should address time periods, Mr. Stein stated that could be appropriate. He said when this offer was made, there were some time constraints placed on Mr. Engen's business and a defined window when investments could be accepted, but the City was in the position of not knowing when or if that would happen.

City Attorney Erik Johnson said the City never entered into a contract. He stated in May 2009 an offer was made to enter into a contract with the expectation that Mr. Engen was going to form his entity and within days or weeks would be able to formulate a contract. He said the offer stayed open-ended for some time, but became stale and is no longer open to be accepted.

Commissioner Piepkorn moved to withdraw from and revoke approval for the Renaissance Zone Fund proposed by Rick Engen.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Amendments to Chapter 19 of the Fargo Municipal Code to include Tree Preservation Referred Back to Committee:

The Board received a communication from City Forester Scott Liudahl outlining a draft Tree Preservation Ordinance. He said details include applicability, key definitions, permit required to remove trees and replacement requirements. He said

following numerous committee meetings and draft revisions, the committee is ready to propose the ordinance but seeks input from the Board on three items.

1. Requiring preservation of a healthy significant tree on an existing lot.
2. Excluding properties or entities.
3. Riparian area definition.

(Commissioner Mahoney present.)

In response to a question from Commissioner Piepkorn about how this would affect homeowners when trees are damaged by a wind storm, Mr. Liudahl said the ordinance is to address removal of healthy trees, not trees damaged by natural disasters. The ordinance, he said, requires a no-cost permit and the homeowner would have to replace the tree if removal is allowed. He said the goal is to retain the tree canopy. He said trees 8 to 18 inches in diameter would need to be replaced by a new tree at least 2 inches in diameter. For example, he said, if removal of a significant tree of greater than 18 inches was permitted, it would need to be replaced with three, six inch or six, three inch trees. If trees cannot be replanted on the same lot, he said, the homeowner would pay the City to plant elsewhere. He said an appeal process is part of the ordinance and there are allowances for site specific hardships.

Commissioner Williams said recent removal of trees and roots in Lindenwood Park along 5th Street was necessary for dike construction to qualify for future FEMA accreditation which requires 20 feet from the center of the dike on either side be free of trees and roots, and more trees will need to be removed for that same purpose.

Mayor Walaker explained the reasoning is that the tree canopy system is similar above ground and below ground. He said in a dry period, having tree roots in dikes provides failure points.

Commissioner Piepkorn said the situation where a developer removed a large amount of trees on 25th Street and 52nd Avenue brought awareness to the need for tree preservation. He said his concern about this ordinance is about homeowners needing permission to remove trees in their own backyard and decisions being made for them.

Commissioner Williams said this is about property rights, however, ordinances do exist about the height of grass, storing junk in yards and parking cars in front of houses. He said this is not outside of that.

In response to a question from Commissioner Mahoney about whether it would be the Forestry or Planning Department making decisions on replanting trees in cases where trees cannot be replaced on the same lot, City Attorney Erik Johnson said the process would need to be clarified in the ordinance.

Ron Sorvaag, Park Board Commissioner, said the Park District is asking to be exempt from such a policy. He said the Park District oversees thousands of trees, and as a separate government entity, should have latitude to be exempt from an ordinance for as long as the Park District maintains a separate Forestry Department. He said there is an excellent relationship between the two entities. He said the Park District is a good steward and takes tree cutting seriously; however, they do not want to be required to get permission from the City when dealing with just a few trees.

Mayor Walaker said he did not see a problem separating the two entities; however, decisions should be made on a mutual agreement basis.

Commissioner Piepkorn said he is concerned that exempting one entity could lead to requests from others for exemptions also.

Mary Johnson, Park Board Chair, said she agrees with Mr. Sorvaag's request for exemption on behalf of the Park Board. She also said, as a property owner, if the parameters dictating the need for such an ordinance could be more clearly defined she would be in agreement, however, as it stands now this is an overreach and more credence should be given to the property rights of individuals.

Commissioner Williams said he respects the authority of other entities and feels a common goal should be attainable. He said plans should include public and private property and he suggested this be done in phases, with those areas of agreement put in place first.

Justin Kristan, 1204 10th Street South, said the clear cutting of trees is a very different issue than one or two trees on private property and he agreed it could be phased, dealing with development first.

Rocky Schneider, Homebuilders Association of Fargo Moorhead, said he is a member of the committee and the draft is well written; however, it may be more than is needed. It would be easier to write the ordinance if just new development and the riparian buffer were addressed, he said, and writing the ordinance across the entire city has been difficult.

Commissioner Mahoney said a citizen may be surprised that there is not only an expense in taking a tree down, but possibly an additional \$400-\$600 for replacement. He said citizens could have second thoughts about even planting new trees. Public areas and new development could be the first items the committee should look at, he said.

City Engineer Mark Bittner said there are many issues to consider and no simple solutions. He said in the past neither the developer nor the City wanted to pay costs associated with maintaining trees in developments. Also, he said, projects such as along Drain 27, could have significant impact on vegetation and trees but costs may not be factored in which could make other alternatives look better.

Mayor Walaker said Commissioners and citizens with comments should get them to Mr. Liudahl and the Committee in written form. He asked Mr. Liudahl to return to the Commission with revisions from the Committee, keeping in mind property rights are an important issue.

Renaissance Zone Project for the Kilbourne Group, LLC Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for the Kilbourne Group, LLC at 208, 210 and 212 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 the Kilbourne Group, LLC 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 the Kilbourne Group, LLC for a project located at 208, 210 and 212 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 Piepkorn, Mahoney, Williams, Wimmer and Walaker voted aye.

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

Appointments to the Metro Flood Diversion Authority Board Approved:

The Board received a communication from City Attorney Erik Johnson stating at the last meeting the Board approved the most recent draft of the Limited Joint Powers Agreement pertaining to the Metro Flood Diversion Project and favorable approval by the five other member entities is anticipated. He said in order for the Diversion Board of Authority created by this Joint Powers Agreement to come to life it will be necessary for each entity to appoint representatives to serve as members on the Diversion Authority. The Diversion Authority, he said, is to consist of three members appointed by the City of Fargo, one member appointed by the City of Moorhead, three members appointed by Cass County, one member appointed by the Cass County Joint Water Resource District and one member appointed in accordance with a separate Joint Powers Agreement between Clay County and the Buffalo-Red River Water Shed District for a total of nine Diversion Authority Board members. He said the agreement also authorizes the appointment of designate alternate members to sit in place of an appointed voting member of the Authority when the appointed voting member is unable to attend a meeting of the Diversion Authority.

Commissioner Williams moved Commissioners Mahoney and Wimmer and Mayor Walaker be appointed to serve on the Diversion Authority Board for the Metro Flood Diversion Project as contemplated by the Limited Joint Powers Agreement approved by the City on June 27, 2011 and Commissioners Piepkorn and Williams be named as the alternate members of the Diversion Authority with terms for both members and alternate members to continue as long as they serve as elected officials.

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

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

Bid Advertisement for Project Nos. 5958-2 and 5951-02 Approved:

Commissioner Williams said this item was moved from the Consent Agenda to the Regular Agenda due to citizen concerns on Project 5958-2 Dike Construction and Incidentals along the north side of the Rose Coulee.

City Engineer Mark Bittner said the Engineering staff has been busy with many projects and working with the neighborhoods getting projects to construction. He said the Meadow Creek project is going slow due to extremely wet conditions along Drain 53. Timberline Phase One includes reconstruction of dikes built in 2009, he said, with another phase in Timberline to finish up gaps which would complete Timberline. Two phases in North Oaks are to be done this year, he said, and work continues in the area of 32nd Avenue to 40th Avenue South which has involved a

number of public meetings attempting to reach consensus. He said the focus is on those projects, as well as the Fargo Country Club. Other areas, such as Southview, South River Road, and River Drive South are not getting the necessary attention due to these demands, he said. He said the call for bids for Project 5958-2 is for the first phase and it is important to go ahead with the project during construction season with the understanding there may not be a consensus of the design in time and that could mean moving the bid opening back. He asked how much flexibility the staff may have in decision making when working with property owners to find answers and impacting value.

(Commissioner Wimmer absent)

Senior Engineer April Walker said four concerns exist for the project: alignment along Centennial Rose so the viewshed can be expanded, whether or not to build retaining walls, bike trail access off Centennial Rose Drive (homeowners are asking for removal of access) and levee height. She said consultants are looking at whether a foot of overbuild is necessary and the decision on removing the bike trail access is ultimately a Park District decision.

In response to a question from Commissioner Williams about the required height of levees and FEMA certification, Mr. Bittner said the question is when to certify and who is going to do the certification. He said Ulteig Engineers, Inc. has been asked to certify that standards are met based on a geotechnical report which states a levee will settle a certain number inches over a certain time period. Based on that, a levee will need to be built to 42 feet plus whatever that settlement may be, he said, and top soil will be there for erosion protection. He said certification from the consultant will be kept on file so when and if the need arises to certify at a later date, levees will be surveyed to verify they are still at that certification level and raised to the certification level if needed. He said the City wants the level at 42 1/2 feet; however, they must be built to the height necessary to obtain certification.

Chuck Hendricks, 2308 Centennial Rose Drive, said last month this item was tabled to allow more time for discussion and neighbors have been discussing options. Points being discussed by neighbors, he said, are levee height, bike path access, potential movement of the dike, wall or no retaining wall, the bike path access and minimum 4 to 1 slope on the dry side, or ideally, 5 to 1.

Rod Ballinger, 2224 Centennial Rose Drive, said the height of the levee was an important point for the neighbors. He said access to the bike trail is a very steep climb and not heavily used and if it were removed the neighbors would have more side yard. He said he has talked to Park Board representatives and they will look at it. He stated he understands the time constraints but also wants the points worked out better before proceeding.

Commissioner Mahoney said it is important to have dikes that are certifiable, as well as moving the process along before fall.

Justin Kristan, 1204 10th Street South, said as a bike path user he would like to be included in discussions about removing bike path access.

Commissioner Piepkorn said there will never be 100% consensus in the neighborhoods and there will be a point when a decision has to be made to do what is best for the whole city.

Mr. Bittner said some tools used to address neighborhood concerns are structural tools such as floodwalls, landscaping and significant planting and replanting, and he wants the Board aware additional effort and money is being spent

in gaining consensus. He said bike path access is a Park District Board issue and will remain in the project until the Park District removes it.

In response to a question from Mayor Walaker about whether discussion is needed for Project 5951-02, Relocation of Storm Sewer Lift Station and Levee Construction bid advertisement, Ms. Walker said there are no issues with that project.

Commissioner Williams moved the bid advertisements for Project Nos. 5958-2 and 5951-02 be approved.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, July 25, 2011.

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

The time at adjournment was 6:20 o'clock p.m.