

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: August 22, 2011:

The Regular Meeting of the Board of City Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 5:00 o'clock p.m., Monday, August 22, 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 Wimmer moved the Order of the Agenda be approved.

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

Minutes Approved:

Commissioner Piepkorn moved that the Minutes of the Regular Meeting of the Board held on August 8, 2011 be approved as read.

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

Consent Agenda Approved:

Commissioner Piepkorn moved the Consent Agenda be approved as follows:

- a. Receive and file an Ordinance Amending Ordinance No. 4674 Rezoning Certain Parcels of Land Lying in Corwin Addition to the City of Fargo.
- b. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 8/8/11:
 - (1) Rezoning Certain Parcels of Land Lying in Charles A. Roberts Addition, Fargo, Cass County, North Dakota.
 - (2) Rezoning Certain Parcels of Land Lying in Brandt Crossing Third Addition, Fargo, Cass County, North Dakota.
- c. Extension of unpaid leave for Fargo Landfill employee Maynard Johnson through November 1, 2011.
- d. Health Department Contracts:
 - (1) Emergency Preparedness and Response contracts with the North Dakota Department of Health (CFDA # 93.069).
 - (2) Tobacco Community Health Grant Program contract with Sanford Medical Center.

- (3) Water pollution program contract with the North Dakota Department of Health (CFDA #66.605).
 - (4) State Aid to Local Public Health Units contract with the North Dakota Department of Health (Contract No. 11.294).
 - (5) West Nile Virus Program contract with the North Dakota Department of Health (CFDA #93.283).
 - (6) Women's Way Program contract with the North Dakota Department of Health (CFDA #93.919).
- e. Grant agreements with NDDOT in the amount of \$177,500.00 in Job Access Reverse Commute funds and \$75,700.00 in New Freedom funds (CFDA # 20.516).
- f. Trade agreement with Radio Fargo-Moorhead to install a full bus wrap in return for radio promotions.
- g. Request for Proposals for transit vehicle advertising services from January 1, 2012 to December 31, 2017.
- h. Amended Site Authorization for Northern Prairie Performing Arts at the Windbreak Saloon.
- i. Applications for Games of Chance:
- (1) Fargo Davies High School for raffles from 8/26/11 to 3/10/12 at Davies High School.
 - (2) Fargo Davies High School for raffles from 11/22/11 to 2/23/12 at Scheels Arena.
 - (3) NDSU Athletic Department for a raffle on 11/12/11.
 - (4) North Dakota Society of CPA's Foundation for a raffle on 9/20/11.
 - (5) Make-A-Wish Foundation of North Dakota for a raffle on 9/9/11.
- j. Plat of Urban Plains Recreational Second Addition.
- k. Donation of three light bars and two controllers to the Felton Fire Department.
- l. Purchase of one loader mounted boom mower from Swanston Equipment in the amount for \$34,100.00.
- m. Purchase of one rear load refuse packer from Sanitation Products for \$56,990.00.
- n. Sole source procurement of robotic survey equipment through Frontier Precision, Inc. for \$26,157.00.
- o. Agreements for Special Improvements in connection with the following Improvement Districts:
- (1) PROffutt Limited Partnership (Nos. 6060 and 6061).
 - (1) HN Development LLC (No. 6057).

- p. Agreements for Entry and Construction in connection with the following Projects:
 - (1) James and Kristi Johnson (No. 5949-3).
 - (2) Derek and Tammy Sunderland (No. 5949-3).
 - (3) Ulteig Engineers, Inc. (No. 6042).
- q. Bid award to Lorz Construction in the amount of \$16,439.00 for shingle replacement of City owned house at 4332 Timberline Drive.
- r. Direct City Attorney to incorporate design standards for City owned and maintained storm water ponds into a City ordinance.
- s. Engineering Services Contract Amendment No. 2 in the amount of \$7,500.00 for Project No. 5983.
- t. Engineering Services Contract Amendments in the total amount of \$419,335.00 for Project No. 5031-2.
- u. Engineering Services Contract Amendment with KLJ in the amount of \$37,500.00 for Project No. 5073-08.
- v. Engineering Services Contract Amendment with KLJ in the amount of \$330,000 for Project No. 5951-01.
- w. Qwest proposal in the amount of \$38,024.78 for utility line relocation (Project No. 5049).
- x. Change Order No. 1 for an increase of \$27,855.00 and staff authorization to negotiate with H & S Construction for Change Order No. 2 for Project No. 6031.
- y. Contract time extensions for Project Nos. 5944 and 5949.
- z. Bid award for Project No. 6025 to Fritz Electric in the amount of \$31,400.00.
- aa. Bid advertisement for Project Nos. 6002-2, 6029 and 6064.
- bb. Contracts and bonds for Project Nos. 5949-03, 5951-2 and SW 11-02.
- cc. Bills in the amount of \$5,088,994.43.

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:
Protests Received and Declared Insufficient:

The Statutory Resolution of Necessity for the construction of P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on July 18 and 25, 2011 and protests representing 34.52 percent of the legal protest area have been received and filed in the office of the City Auditor within the legal protest period.

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

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 P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037:

The bids for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., August 17, 2011 and the bids were found to be as follows:

Opp Construction Company	Fargo, ND
Bid:	\$55,259.95
Heston Contracting, Inc.	Frazee, MN
Bid:	\$57,421.00
Adelman Concrete & Excavating	West Fargo, ND
Bid:	\$59,932.50

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 Awarded to Opp Construction Company in the Amount of \$55,259.95:

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 P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received August 17, 2011 for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 shows the bid of Opp Construction Company of Fargo, North Dakota, in the sum of \$55,259.95 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 Opp Construction Company in the sum of \$55,259.95 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6037 in the City of Fargo, North Dakota, be and the same is hereby awarded to Opp Construction Company for the

sum of \$55,259.95, 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 motion was declared carried.

Change Order No. 1 for Improvement District No. 5971 Approved:

Commissioner Piepkorn moved approval of Change Order No. 1 for an increase of \$126,764.83 for Improvement District No. 5971.

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 Time Extension for Improvement District No. 5987 Approved:

Commissioner Piepkorn moved approval of a Contract Time Extension to September 2, 2011 for Improvement District No. 5987.

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 Time Extension for Improvement District No. 5988 Approved:

Commissioner Piepkorn moved approval of a Contract Time Extension to August 26, 2011 for Improvement District No. 5988.

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.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6049 (MGB Second Addition):

Commissioner Piepkorn moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6049:

Adopt Resolution Creating Improvement District No. 6049:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6049 in the City of Fargo, North Dakota, be created

15th Street South from 70th Avenue South to a point 80 feet south of the intersection of 15th Street South and 72nd Avenue South.

71st Avenue South from 15th Street South to its termination approximately 600 feet to the east.

72nd Avenue South from 15th Street South to its termination approximately 600 feet to the east.

COMPRISING:

All lots platted in the MGB 1st Addition bounded to the north by 70th Avenue South and bounded to the south by 73rd Avenue South located in the Southeast quarter of Section 12, Township 138 North, Range 49 West to include that portion to be platted as MGB 2nd Addition.

All of the foregoing land lying 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 any land lying outside said city limits is deemed not a part of the district.

NOW, THEREFORE, BE IT RESOLVED, That Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6049 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. 6049:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6049 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 \$660,000.)

Order Plans and Specifications for Improvement District No. 6049:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6049 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6049:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6049 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. 6049 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. 6049:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6049 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.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055 (26th Avenue South – 41st to 42nd Street; 41st Street – 26th to 28th Avenue South):

Commissioner Piepkorn moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055:

Adopt Resolution Creating Improvement District No. 6055:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6055 in the City of Fargo, North Dakota, be created

On 41st Street South from 26th to 28th Avenue.

On 26th Avenue South from 41st to 42nd Street.

COMPRISING

Lot 1 and 2, Block 1.

To be platted as West 29 3rd Addition.

The unplatted land located within the northern 575' (feet) of the NW 1/4 of the SE 1/4 of Section 22, Township 139 North, Range 49.

The unplatted land located within the southern half (1/2) of the SW 1/4 of the NE 1/4 of Section 22, Township 139 North, Range 49.

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. 6055 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. 6055:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6055 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 \$597,960.)

Order Plans and Specifications for Improvement District No. 6055:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6055 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6055:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6055 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. 6055 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. 6055 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 thirty 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. 6055:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6055 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.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6057 (Silverleaf 2nd Addition):

Commissioner Piepkorn moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6057:

Adopt Resolution Creating Improvement District No. 6057:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6057 in the City of Fargo, North Dakota, be created

On 27th Street South from Silverleaf Drive South to a point located approximately 200 feet south of Samuel Drive South,
On Samuel Drive South.

And also for the installation of storm sewer on 62nd Avenue South from 27th Street South to a point located approximately 175 feet east of 27th Street South.

And also for the installation of water main on 27th Street South from a point located approximately 200 feet south of Samuel Drive to 64th Avenue South.

COMPRISING:

Lot 24, Block 2.

Lots 16 and 17, Block 3.

Lot 1, Block 5.

All in Silverleaf Addition.

Lots 25 through 41, Block 2, Silverleaf Addition, which is to be platted as Silverleaf Second Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6057 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. 6057:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6057 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 \$303,170.)

Order Plans and Specifications for Improvement District No. 6057:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6057 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6057:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6057 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. 6057 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. 6057:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6057 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.

Request for an Extension of the Noise Ordinance for Woody's Bar Approved:

The Board received a communication from Tim Burtness of Woody's Bar requesting an extension of the City's Noise Ordinance on Thursday, September 8, 2011 from 10:00 p.m. to 11:00 p.m. for an end of summer give-away at Woody's Bar.

Commissioner Piepkorn moved the request for a one hour extension of the City's noise ordinance for an end of summer giveaway from 10:00 p.m. to 11:00 p.m. on Thursday, September 8, 2011 be approved.

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 with Master Construction for Improvement District No. 5960 Continued:

The Board received a communication from City Engineer Mark Bittner stating Master Construction was the successful bidder for Improvement District No. 5960 on April 27, 2011 with a notice to proceed being sent out on May 23, 2011. He said the contract specifications did not allow Master Construction to start on this contract until after July 4, 2011. To date, he said, Master Construction has not commenced work on this project and the contract provides that if Master Construction fails to prosecute work within 30 days following the notice to proceed, the City can declare the contract forfeited. He said the City has successfully notified Master Construction and their bonding company and the procedure was reviewed and approved by PWPEC and the Finance Committee, therefore his recommendation is to declare the contract with Master Construction forfeited.

The Board received another communication from City Engineer Mark Bittner stating, following the notification to Master Construction and their bonding company,

Master Construction has commenced work on this project. He said Master Construction began work on Thursday, August 18 and has furnished the Engineering Office with a construction schedule that details the planned construction activity for the project with a completion date of September 30, 2011.

Commissioner Piepkorn moved the contract with Master Construction for Improvement District No. 5960 be continued with the original requirements.

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.

Resolution Adopted Authorizing the Issuance of Bonds by the City of Surrey, North Dakota, on Behalf of Dakota Boys and Girls Ranch Foundation Under the Municipal Industrial Development Act:

The Board received a communication from Finance Director Kent Costin stating the Dakota Boys and Girls Ranch Foundation is planning to finance a building project located in Fargo with the issuance of MIDA bonds.

Commissioner Wimmer moved the Resolution entitled "Resolution Approving the Issuance of Bonds by the City of Surrey, North Dakota, On Behalf of Dakota Boys and Girls Ranch Foundation Under the Municipal Industrial Development Act" and referred to as Attachment "A", be adopted and attached hereto.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Application to Transfer the Alcoholic Beverage License from Village West Enterprises, LLC d/b/a Village West Liquors to Cash Wise Liquor, LLC d/b/a Cash Wise Liquor Approved:

A Hearing had been set for this day and hour on an application to transfer the Class "B" Alcoholic Beverage License from Village West Enterprises, LLC d/b/a Village West Liquors at 1401 13th Avenue South to Cash Wise Liquor, LLC d/b/a Cash Wise Liquor notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Application Filed by The M Foods Group d/b/a Mezzaluna for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by The M Foods Group d/b/a Mezzaluna for a Class "F" Alcoholic Beverage License at 309 Roberts Street, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Application Filed by PPC Fargo 45, Inc. d/b/a Noodles for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by PPC Fargo 45, Inc. d/b/a Noodles for a Class "GH" Alcoholic Beverage License at 4501 15th 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 and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Parcels of Land in 42nd Street Addition Rezoned (3610 42nd Street South):

At a Hearing held on August 2, 2011 the Fargo Planning Commission recommended approval of a change in zoning from LC, Limited Commercial with a conditional overlay use permit to allow multi-dwelling residential to MR-3, Multi-Dwelling for Lot 1, Block 1, 42nd Street Addition.

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

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning be approved on the basis that the proposal satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

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

Absent and not voting: Commissioner Mahoney.

The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in 42nd Street Addition, Fargo, Cass County, North Dakota:

Commissioner Wimmer moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in 42nd Street Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Parcels of Land in Urban Plains by Brandt First Addition Rezoned (4831 28th Avenue South):

At a Hearing held on August 2, 2011 the Fargo Planning Commission recommended approval of a change in zoning from MR-3, Multi-Dwelling to GO, General Office on part of Lot 8, Block 2, Urban Plains by Brandt First Addition.

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

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning be approved on the basis that the proposal satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

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

Absent and not voting: Commissioner Mahoney.

The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Urban Plains by Brandt First Addition, Fargo, Cass County, North Dakota:

Commissioner Wimmer moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in Urban Plains by Brandt First Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Parcels of Land in Osgood Townsite Eighth Addition Rezoned (4685 49th Avenue South and 4822 47th Street South):

At a Hearing held on August 2, 2011 the Fargo Planning Commission recommended approval of a change in zoning from LC, Limited Commercial with conditional overlay to MR-3, Multi-Dwelling on portions of Lots 1 and 2, Block 1, Osgood Townsite Eighth Addition.

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

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff and the Planning Commission be accepted and the rezoning be approved with the Conditional Overlay requirements listed in the Ordinance on the basis that it satisfactorily complies with the Comprehensive Plans, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

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

Absent and not voting: Commissioner Mahoney.

The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Osgood Townsite Eighth Addition, Fargo, Cass County, North Dakota:

Commissioner Wimmer moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in Osgood Townsite Eighth Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Parcels of Land Lying in Section 5, Township 138 North, Range 49 West Rezoned (5310 68th Street South):

At a Hearing held on August 2, 2011, the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to SR-1, Single-Dwelling on part of the Northwest Quarter of Section 5, Township 138 North, Range 49 West of the 5th Principal Meridian Cass County, North Dakota, as more particularly described below:

Commencing at the northwest corner of the Northwest Quarter; thence on an assumed bearing of North 89°01'22" East a distance of 539.57 feet; thence South 00°00'00" West and distance 630.64 feet to the Point of Beginning; thence South 05°46'10" East a distance of 114.75 feet; thence South 08°57'26" West a distance of 80.91 feet; thence South 84°56'32" West a distance of 526.00 feet to the east bank of the Sheyenne River, thence northerly along the bank of the Sheyenne River 280 feet more or less; thence North 88°04'14" East a distance of 340 feet to the Point of Beginning.

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

Commissioner Williams offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning be approved on the basis that the proposal satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

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

Absent and not voting: Commissioner Mahoney.

The Resolution was adopted.

(Commissioner Mahoney present)

Parcels of Land in Courts Plus Addition Rezoned (3601 University Drive South):

At a Hearing held on August 2, 2011 the Fargo Planning Commission recommended approval of a change in zoning from LC, Limited Commercial to MR-3, Multi-Dwelling on Lot 3, Block 1, Courts Plus Addition.

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

Senior Planner Jim Hinderaker said the petitioner is seeking a zoning change in order to construct a 42 unit apartment complex with a fair amount of underground parking. The original proposal was for a 36 unit complex with above ground parking.

He said written notice was sent to all property owners within 300 feet of the subject property and staff has received a number of written letters, phone calls and a signed petition in opposition to the proposal, as well as concerns from property owners outside of the subject property. The property owners' concerns are, he said, that there would not be sufficient parking, thus tenants would be parking in the neighborhood, population density, negative impact on the neighborhood, traffic, and single lane access onto University Drive.

At 5:58 the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Donnavon Moser, 3640 15th Street South, said there are a couple of other items that the property owners are concerned about. There is a daycare in this area, he said, and tenants of this complex would be able to look directly into the area where the kids are playing. He said the same would be true for his own home, tenants would be able to look directly into his backyard and he would no longer have a living space if this project goes in. He said the neighborhood would also hate to see more trees lost from this proposal and another concern is what this will do to the property values of the homes in this area if this project goes in. With all the traffic that will be created by this project, he said, he would like to formally request a traffic study.

In response to a question from Commissioner Piepkorn regarding whether or not the neighborhood would prefer a strip mall or the proposed apartment complex, Mr. Moser said the neighborhood would prefer a strip mall due to the fact that it would close between 8:30 and 9:00 in the evening.

Dave Noah, petitioner, said he appreciates what the neighborhood has to say about the proposal. He said when they presented their proposal to the Planning Commission they went with the mind set of being good stewards and showing the neighborhood what could go into that location. This proposal, he said, is not etched in stone and was not switched from the proposal presented to the Planning Commission. He said they want this to be a nice facility and be an asset to the community.

In response to a question from Commissioner Piepkorn regarding flipping the structure around so that it pulls away from the neighborhood, Clay Deitrich, Dietrich Construction, said the proposal is as far to the east as it can possibly go. He said whether it is a 36 or a 42 unit complex it will sit in the same location and with the underground parking everything will have a place to be put away.

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, Written protests to the rezoning representing 26.87% of the legal protest area have been received and filed in the office of the City Auditor.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning be approved on the basis that the proposal satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

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

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

First Reading of an Ordinance Rezoning Lot 3, Block 1, Courts Plus Addition:

Commissioner Wimmer moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Lot 3, Block 1, Courts Plus Addition to the City of Fargo be placed on first reading.

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

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

Hearing on the Special Assessment List for Maintenance of the Skyway System Approved:

A Hearing had been set for this day and hour on the special assessment list for maintenance of the Skyway System in the City of Fargo, North Dakota.

No appeals have been filed in writing against any item appearing on such special assessment list and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Mahoney moved that the special assessment list for maintenance of the Skyway System be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor and that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law.

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

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

Hearing on the Special Assessment List for Maintenance of the Broadway Mall Approved:

A Hearing had been set for this day and hour on the special assessment list for maintenance of the Broadway Mall in the City of Fargo, North Dakota.

No appeals have been filed in writing against any item appearing on such special assessment list and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Mahoney moved that the special assessment list for maintenance of the Broadway Mall be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor and that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law.

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

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

Hearing on the Special Assessment List for the Island Park Ramp Approved:

A Hearing had been set for this day and hour on the special assessment list for the Island Park Ramp in the City of Fargo, North Dakota.

No appeals have been filed in writing against any item appearing on such special assessment list and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Mahoney moved the special assessment list for the Island Park Ramp be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor and that the City Auditor's Office be instructed to proceed to collect the Assessments in the manner provided by law.

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

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

Hearing on Special Assessments for Sewer Repairs on Certain Properties in the City of Fargo:

A Hearing had been set for this day and hour on special assessments for sewer repairs on the list of properties on file in the City Auditor's Office.

No appeals have been filed in writing against any item appearing on such special assessment list and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Mahoney moved the sewer repair special assessment list be approved as submitted.

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

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

Hearing on Special Assessments for Nuisance Abatement Fees on Certain Properties in the City of Fargo:

A Hearing had been set for this day and hour on special assessments for nuisance abatement fees on the list of properties on file in the City Auditor's Office.

No appeals have been filed in writing against any item appearing on such special assessment list and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Mahoney moved the special assessments for nuisance abatement fees be approved as submitted.

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

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

City Commission Meeting Schedule for 2012 Approved:

The Board received a communication from Executive Assistant Sharon Odegaard submitting the proposed schedule for City Commission meetings for calendar year 2012. Additionally, she said, December 24th is Christmas Eve, therefore, her recommendation is that the Board meet the following Monday, December 31st with a start time of 3:00 pm due to it being New Year's Eve.

Commissioner Wimmer moved the Commission meeting schedule for 2012 be approved as submitted with the final meeting in December to be held at 10:00 am on Monday, December 24, 2012.

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

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

Flood Mitigation Projects in River Vili Addition, Harwood Drive South (431-619) and Timberline Phase 2 Approved:

The Board received a communication from the Public Works Projects Evaluation Committee recommending the following items be reviewed:

1. Prioritization of projects.
2. Available funding.
3. Projects for completion in 2011.
4. Possible interim projects in anticipation of 2012 spring flood.
5. Project specific issues and receive public input on the following projects.
 - River Vili Addition
 - Harwood Drive South
 - Timberline Phase 2
6. Presentation to City Commission on remaining flood mitigation projects will be scheduled for future Commission meetings to identify project specific issues and receive public comment.

City Engineer Mark Bittner stated the Engineering Department is in a position where the rainfall that has been received has their department looking at planning for a potential spring 2012 flood. He said what the Engineering Department is trying to do is put together projects that can still get done this year and that will be compatible with the long term plan.

Senior Engineer April Walker provided an update of the flood mitigation projects that are under construction in the City. She said Phase 2 of the Timberline project involves both a levee and a flood wall. The bid was awarded on July 25th to Master Construction, however, she said, the City has been unable to grant the contract or the notice to proceed due to the fact that not all rights of entries had been received from property owners and some of the homeowners would prefer to see a wall rather than an earthen levee. The Engineering Department evaluated the cost of a wall versus an earthen levee and the wall, she said, got to be very expensive. At this time, she said, 7 of the 11 property owners have signed right of entries and notice has been sent to the property owners that the earthen levee will be built as bid. She said she feels that at this point enough right of entries have been received to grant the notice to proceed to the contractor to begin construction on the north end and the

very south end of this neighborhood, leaving a gap in the middle that would have to be addressed at a later time.

Commissioner Piepkorn said he feels if a property owner wants to build a wall where the City has suggested an earthen levee, the extra money for the wall should not be at the City's expense.

Randy Thorson, 4202 Timberline Drive, said he received the documents from the City and is quite concerned. He said if the Commission does not approve Phase 2 in his neighborhood, the City will need to approve about 30,000 sandbags for his property. He said this is really important to the neighborhood and the City really needs to do something in this area.

Commissioner Mahoney moved the Notice to Proceed be issued to Master Construction for Timberline Phase 2 and appropriate staff directed to continue working with property owners to attain the missing rights of entries.

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

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

Ms. Walker said the next two neighborhoods to discuss include buyouts and a proposal from staff for a voluntary acquisition program. She said two methods of establishing value would be used, with the first method being that immediate offers would be based on 110% of the 2011 assessed value as found on the 2011 tax statement. The second method, she said, would be for the homeowner to choose to have an appraisal done to establish value. This method, she said, could cause delays with appraisers being so busy due to the Minot and Bismarck flooding. The goal with either of the methods, she said, would be to close on the property and homeowners be vacated by December 31, 2011. This program, she said, would continue to offer moving expenses reimbursement and a special assessment credit for homeowners who relocate within city limits.

At 7:33 the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Mr. Bittner said one of the issues is that the Engineering Department is working on projects that were leftovers from last spring's flooding. He said last spring the Engineering Department tried to determine if the City should immediately remove all those levees or dress them down so the levees could stand for another year, which would cost the City a couple of million dollars. He said the Engineering Department decided to hold off doing that hoping to apply those dollars towards permanent protection. He said if the Commission would like the Engineering Department to go back down that road and restore those levees to being good enough so they will last until next spring, the Engineering Department is willing to do that. He said it will be a lot less expensive, but it will be throwing some money away.

Commissioner Williams said what the Commission needs to know is how much can be protected for 8 million dollars and where the City can get the most bang for the buck with the money that is available. He said even though there may be some homes that want to be bought out, those homes may not be the ones that the City

needs to work on right now. The City, he said, has to be cognizant that there are 5 years to this and the City will likely be battling this again next year, however, the City cannot do it all now.

Michael Traynor, 501 Harwood Drive South, said he is really confused due to the fact that the City keeps coming out to the neighborhood with different programs and projects. Now, he said, the neighborhood met with the City's experts who told the neighborhood at a meeting Friday night that there is only one home in their neighborhood that can potentially have a clay dike due to drainage issues and the cost of the wall is too prohibitive just to put it in. The real value to this property, he said, is not just to protect his house; the real value of this property is to help provide permanent flood protection for the City of Fargo. He said this has not been a picnic for the neighborhood either.

Charlie Hanish, 517 Harwood Drive South, said 3 feet from his porch would be a 42.5 foot wall that cannot be added to. He said he would not even consider placing a wall in his backyard because it is not going to be high enough. He said if the Commission feels that adding a wall to his backyard will add value to his home then the City should purchase his home, and sell it. The City, he said, has to do something.

(Commissioner Wimmer absent)

Ms. Walker said the last neighborhood to discuss is River Vili. She said on the south side the City built an emergency levee during the 2011 flood. She said the Engineering Department is proposing to try and button up River Vili and be done with this area so that in future flood events this would be an area that the City would not have to come back to.

Frank Racek, 1130 55th Avenue South, said his neighborhood has really worked with the City. He said his neighborhood was one that was evacuated in 2009 and the neighborhood really needs some decisions to be made. The neighborhood, he said, has looked at every option and would really appreciate a decision as there is nothing else for the neighborhood to do.

Commissioner Piepkorn moved to proceed with Alternative 1 and acquire all of the properties in River Vili Addition.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Commissioner Piepkorn moved 619 and 601 Harwood Drive South be acquired by the City of Fargo.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Tuesday, September 6, 2011.

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

The time at adjournment was 8:21 o'clock p.m.