



Public Information

Full-time Programming Manager Position (Grade 5). This position was approved for the 2012 budget and will replace the part-time camera operator and videographer positions. Annual cost of request: \$27,144 which is included in the 2012 budget effective immediately.

Public Health

- (a) Combine two part-time benefited Nurse Practitioner positions into one full-time position following the vacancy of one of the part-time positions effective immediately. Annual cost of request: \$3,000 savings.
- (b) Combine two part-time benefited Public Health Nurse Positions into one full-time position following a vacancy of one of the part-time positions effective immediately. Annual cost of request: \$3,200.

Public Works

Rescind the Equipment Tech I, 12-month Promotion Policy and return to the previous method of promotion through position vacancy effective immediately. Annual cost of request: \$0.

- d. Minor Subdivision Plats:
  - (1) Shotwell Commons Addition.
  - (2) Silverleaf Second Addition.
  - (3) Amity Addition.
- e. House Listing Agreement with Betty Wieland of Park Company Realtors for property located at 2506 64th Avenue South.
- f. Sale of NSP purchase rehab property at 810 25th Street North for \$122,000.00.
- g. Purchase Agreement with American Builders for City-owned property at 320 and 324 7th Street North, contingent upon submission of final plans.
- h. Amendments to the Red River Regional Dispatch Center Joint Powers Agreement.
- i. Direct City Attorney to draft an ordinance relating to texting while driving.
- j. Memorandum of Agreement with the State of North Dakota through the Department of Emergency Management for the Fargo Fire Department to respond to major hazardous materials emergencies throughout the State.
- k. Applications for Games of Chance:
  - (1) The Village Family Service Center for a raffle on 11/18/11.
  - (2) Sanford Health Foundation North for a raffle on 10/27/11.
- l. Traffic Technical Advisory Committee's recommendation to install "No Parking November 1-April 15" signs on one side of the street or avenue, between 12th

Avenue North and I-94 from the Red River to 25th Street, including the Madison Neighborhood.

- m. Sale of a 10' strip of land on the west side of Lot 1, Block 1, Alverson Subdivision to Reginald Wolsky; direct City Engineer to prepare replat of revised property ownership and authorize sale of house and lot at 2501 58th Avenue South (Improvement District No. 5969-01).
- n. Agreement for Special Improvements for Carefree Investments, LLC (Improvement District No. 6049).
- o. Purchase Agreement for a permanent dike easement with D. James and Cynthia O'Day.
- p. Purchase Agreement with 312 Third Street Limited Partnership in connection with Improvement District No. 5364-4.
- q. Purchase Agreement with U-tag Investments I, LLC in connection with Project No. 6042.
- r. Agreement for Entry and Construction with Susan K. Shook, trustee for the Susan K. Shook Revocable Living Trust for property located at 4126 Timberline Drive South (Project No. 5949-3)
- s. Change Order No. 2 for an increase of \$115,180.20 for Project No. 5946-02.
- t. Final Balancing Change Orders No. 4 for an increase of \$160,398.48 for Project No. 5747-22 and for an increase of \$19,768.02 for Project No. 5747-23.
- u. Contract time extension requests for Project Nos. 6031, 6032, 6007, 5860, 5747-24 and 5747-25.
- v. Cost proposal with Xcel Energy to provide electrical service to the new storm sewer lift station at 15th Avenue North and 2nd Street in the amount of \$48,299.97 for Project No. 6058 (omitted).
- w. Xcel Energy Utility Relocation Agreement in the amount of \$4,947.78 for Project No. 6002-02.
- x. Bid award to Border States Paving in the amount of \$372,273.00 for the landfill paving construction project (Project No. SW 11-03).
- y. Rejection of bids and reevaluation of project conditions and components for Project No. 6058.
- z. Bid award to Adelman Concrete and Excavating in the amount of \$256,415.25 for Project No. 6029.

- aa. NDDOT Cost Participation and Maintenance Agreement for Improvement District No. 5699-01.
- bb. Contract and bonds for Project Nos. 6064 and 6002-02 (moved to the Regular Agenda).
- cc. Bills in the amount of \$10,088,316.04.

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

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

Contract Time Extension Request for Improvement District No. 5727 Approved:

Commissioner Mahoney moved approval of a Contract Time Extension to October 27, 2011 for substantial completion and to November 18, 2011 for final completion on Improvement District No. 5727.

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

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

Contract Time Extension Request for Improvement District No. 5806 Approved:

Commissioner Mahoney moved approval of a Contract Time Extension to November 23, 2010 for substantial completion and to July 13, 2011 for final completion on Improvement District No. 5806.

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

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

No Protests Received for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055:

The Statutory Resolution of Necessity for the construction of Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on August 29 and September 5, 2011 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Mahoney 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. 6055.

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

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

Bids Received for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055:

The bids for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 28, 2011 and the bids were found to be as follows:

Dakota Underground Company Bid:	Fargo, ND \$440,387.90
Aggregate Industries Bid:	Moorhead, MN \$498,015.65
Master Construction Company, Inc. Bid:	Fargo, ND \$500,332.10
Ryan Development, Inc. Bid:	Elko, MN \$509,618.70
Northern Improvement Company Bid:	Fargo, ND \$511,092.10
Kindred Plumbing and Heating, Inc. Bid:	Kindred, ND \$515,383.50

Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055 Awarded to Dakota Underground Company in the Amount of \$440,387.90:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 28, 2011 for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 6055 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. 6055 shows the bid of Dakota Underground Company of Fargo, North Dakota, in the sum of \$440,387.90 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 Dakota Underground Company in the sum of \$440,387.90 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. 6055 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground Company for the sum of \$440,387.90, 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 Piepkorn. On call of the roll Commissioners Mahoney, Piepkorn, Williams, Wimmer and Walaker voted aye.

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

Bids Received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6060:

The bids for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6060 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 28, 2011 and the bids were found to be as follows:

Dakota Underground Company Bid:	Fargo, ND \$995,396.23
Ryan Development, Inc. Bid:	Elko, MN \$1,025,049.23
Master Construction Company, Inc. Bid:	Fargo, ND \$1,130,491.97
Sellin Brothers, Inc. Bid:	Hawley, MN \$1,487,830.38
S. R. Weidema, Inc. Bid:	Maple Grove, MN \$1,616,154.64

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6060 Awarded to Dakota Underground Company in the Amount of \$995,396.23:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6060; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 28, 2011 for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6060 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 and Incidentals Improvement District No. 6060 shows the bid of Dakota Underground Company of Fargo, North Dakota, in the sum of \$995,396.23 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 Dakota Underground Company in the sum of \$995,396.23 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6060 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground Company for the sum of \$995,396.23, 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 Piepkorn. On call of the roll Commissioners Mahoney, Piepkorn, Williams, Wimmer and Walaker voted aye.

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

Street Rehabilitation and Incidentals Improvement District No. 5699 (Various Locations in North Fargo):

Commissioner Mahoney moved the following action be taken in connection with Street Rehabilitation and Incidentals Improvement District No. 5699:

Adopt Resolution Creating Improvement District No. 5699:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5699 in the City of Fargo, North Dakota, be created

On 10th Street North from 12th Avenue to 19th Avenue North.

COMPRISING:

The west 669 feet of Lots 1 and 2, Block 1.  
All in Fargo North Addition.

The east 517 feet of Lot 1, Block 1.  
All in NDSU 1st Addition.  
The east 517 feet of University Village Addition.

Lots 1 through 24, inclusive, Block 3.  
Lots 1 through 24, inclusive, Block 4.  
Lots 1 through 24, inclusive, Block 5.  
Lots 1 through 12, inclusive, Block 6.  
Lots 1 through 11, inclusive, Block 9.  
Lots 1 through 24, inclusive, Block 10.  
Lots 1 through 24, inclusive, Block 11.  
Lots 1 through 24, inclusive, Block 12.  
All in Chandlers Broadway Addition.

Lots 25 through 56, inclusive.  
All in Ohmers Addition.

Lots 1 through 19, inclusive, Sub of Lots 47 and 48.  
All in Ohmers Subdivision.

Lots 1 through 8, inclusive, Block 29.

Lots 1 through 8, inclusive, Block 44.  
All in Bolleys Subdivision.

Lots 1 through 16, inclusive, Block 1.  
Lots 3 through 32, inclusive, Block 2.  
All in Todd's Subdivision.

Lots 1 through 3, inclusive, Block 1.  
All in Heide 1st Subdivision.

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

NOW, THEREFORE, BE IT RESOLVED, That Street Rehabilitation and Incidentals Improvement District No. 5699 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. 5699:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5699 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 \$5,085,000.00.)

Order Plans and Specifications for Improvement District No. 5699:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5699 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5699:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5699 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. 5699 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 Street Rehabilitation 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 Street Rehabilitation and Incidentals Improvement District No. 5699 in the City of Fargo, North Dakota, according to the Engineer's Report for this district and the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open

for public inspection. A map of the district is attached hereto and incorporated as if fully set forth herein.

That a portion of said Street Rehabilitation and Incidentals improvement is to be paid from Street Sales Tax and approximately 20% is to be assessed against the benefited property in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Street Rehabilitation 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. 5699:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5699 in the City of Fargo, North Dakota.

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

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

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6053 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Key Contracting for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6053 in the City of Fargo, North Dakota.

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

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

Contract Bond for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6053 Approved:

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

Western Surety Company, in the amount of \$123,716.00, for P.C. Concrete Alley Paving and Incidentals Improvement District No. 6053 in the City of Fargo, North Dakota.

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

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

Contract for Asphalt Pavement and Incidentals Improvement District No. 6038Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Northern Improvement Company for Asphalt Pavement and Incidentals Improvement District No. 6038 in the City of Fargo, North Dakota.

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

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

Contract Bond for Asphalt Pavement and Incidentals Improvement District No. 6038Approved:

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

Western Surety Company, in the amount of \$133,053.00, for Asphalt Pavement and Incidentals Improvement District No. 6038 in the City of Fargo, North Dakota.

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

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

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6049 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Ryan Development Inc. for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6049 in the City of Fargo, North Dakota.

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

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

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6049 Approved:

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

Arch Insurance Company, in the amount of \$404,560.72, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6049 in the City of Fargo, North Dakota.

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

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

Resolution Adopting the 2011 Metropolitan Bicycle and Pedestrian Plan:

The Board received a communication from the Fargo-Moorhead Metropolitan Council of Governments (Metro COG) Executive Director Wade Kline requesting an opportunity to present the draft summary of the Metropolitan Bicycle and Pedestrian

Plan. He said the current surface transportation authorization expired in 2009 and there has been a series of continuing resolutions since with details beginning to emerge about a new authorization act. There are concerns about possible loss of local control over planning and programming, he said; however, Metro COG's Policy Board remains committed to working cooperatively to ensure sound technical decisions will drive wise public investments in our local surface transportation system.

Metro COG Planner Katie White gave an overview of current projects and a report of the current status of the federal surface transportation authorization. She said the outline presented is not the Metropolitan Bicycle and Pedestrian Plan in its entirety, the complete document is available online at [fmmetrocog.org](http://fmmetrocog.org). Bicycle and pedestrian issues are important to the Fargo-Moorhead area, she said, and every five years Metro COG creates a new Metropolitan Bicycle and Pedestrian Plan. Some major projects will be done in the next five years; however, she said, some gaps will take longer than that to accomplish. She said some major barriers are as follows: crossing the Red River from 40th Avenue South to the Bluestem Center; crossing I-94 in south Moorhead; crossing I-29 at 28th Avenue South; crossing the Red River at 13th Avenue South; and crossing I-29 from 32nd Street South to Prairiewood Drive. She said funds are available from the North Dakota DOT through the Safe Routes to School program.

In response to a question from Commissioner Williams about whether the money available from the State could be implemented at the Summit for Bicycle Education, Ms. White said that may be too soon since current plans are for a summit in the spring of 2012 and a summit would probably need to be focused specifically on bicycle issues to use that funding. She said the next meeting of the Metro Bicycle and Pedestrian Committee will be at the end of November and programming and agenda items for a summit will be discussed then.

Commissioner Williams moved the Board approve the following Resolution adopting the 2011 Metropolitan Bicycle and Pedestrian Plan as presented by Metro COG:

WHEREAS, the Board of City Commissioners of the City of Fargo, North Dakota, the duly elected governing body responsible for the planning and development of safe and functional transportation systems including bicycle and pedestrian facilities; and

WHEREAS, the Fargo-Moorhead Metropolitan Council of Governments, as the metropolitan planning organization, is designated by the Governors of North Dakota and Minnesota to maintain the metropolitan area's transportation planning process in accordance with federal regulations; and

WHEREAS, the Fargo-Moorhead Metropolitan Council of Governments has undertaken the task of updating the Metropolitan Bicycle and Pedestrian Plan, which is a vital element of this planning process, and which makes transportation related bikeway projects eligible for future federal funding; and

WHEREAS, the metropolitan bikeway and pedestrian planning process was directed by the Metropolitan Bicycle and Pedestrian Committee composed of a wide cross section of bicycle and pedestrian interest groups including park district representatives, police officers, bike club members, local school and higher education officials, technical staff and various interest groups; and

WHEREAS, the 2011 Metropolitan Bicycle and Pedestrian Plan was prepared using an extensive planning process; and projects or strategies proposed in the short-

and long-range programs were reviewed utilizing a stringent screening process that considered technical soundness and social acceptability; and

WHEREAS, the 2011 Metropolitan Bicycle and Pedestrian Plan provides a comprehensive, coordinated program of projects and strategies that will improve the urban and rural bikeway system; and

WHEREAS, the 2011 Metropolitan Bicycle and Pedestrian Plan will further enhance the area's bicycling environment so that the bicycle becomes a convenient transportation and recreation alternative contributing to the health, safety, and quality of life for citizens in the metropolitan area; and

NOW, THEREFORE BE IT RESOLVED, that the Board of City Commissioners of the City of Fargo, North Dakota, does hereby adopt the 2011 Metropolitan Bicycle and Pedestrian Plan, and agrees to use it as a tool to implement metropolitan bikeway goals and objectives which will complement overall development of the metropolitan transportation system.

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.

Renaissance Zone Project for Brandborg Law, PC Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Brandborg Law, PC at 35 North 4th Street.

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 application presented by Brandborg Law, PC 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 Brandborg Law, PC for a project located at 35 North 4th Street be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

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

Renaissance Zone Project for Red River Title Services, Inc. d/b/a Cass County Abstract Company Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Red River Title Services, Inc. d/b/a Cass County Abstract Company at 35 North 4th Street.

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 Red River Title Services, Inc. d/b/a Cass County Abstract Company 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 Red River Title Services, Inc. d/b/a Cass County Abstract Company for a project located at 35 North 4th Street be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

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

Renaissance Zone Project for David C. Wightman, DCW Enterprises Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for David C. Wightman, DCW Enterprises at 35 North 4th Street.

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 David C. Wightman, DCW Enterprises 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 David C. Wightman, DCW Enterprises, for a project located at 35 North 4th Street be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

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

Application Filed by Phoenix International Corporation for Payment in Lieu of Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by Phoenix International Corporation for payment in lieu of property tax exemption for a property where the applicant will expand the operation of engineering and manufacturing electrical components designed for harsh environments for OEM customers at 4301 19th Avenue North.

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

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

Commissioner Wimmer moved that the application filed by Phoenix International Corporation for a ten year payment in lieu of tax exemption pursuant to Chapter 40-57.1, NDCC be approved as follows:

Year 1 through 5 - \$0  
Year 6 through 10 - \$134,015

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.

Application to Transfer the Alcoholic Beverage License from Providence Inc. d/b/a Jalapenos to Dos Mangos Inc. d/b/a Mango's Mexican and American Grill Approved:

A Hearing had been set for this day and hour on an application to transfer the Class "F" Alcoholic Beverage License from Providence Inc. d/b/a Jalapenos at 2901 Main Avenue to Dos Mangos Inc. d/b/a Mango's Mexican and American Grill, notice of which had been duly published in the official newspaper for the City of Fargo.

City Auditor Steve Sprague said Jalapenos Restaurant has had a couple of ownership changes and this is the same location with a different concept.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

Application Filed by KTL, Inc. d/b/a Mahoney's Bar and Grill for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by KTL, Inc. d/b/a Mahoney's Bar and Grill for a Class "Z" Alcoholic Beverage License at 305 Broadway North, #100, notice of which had been duly published in the official newspaper for the City of Fargo.

City Auditor Steve Sprague said this application is for a bar license with no food requirements. He said about six years ago the Board created four nontransferable Class "Z" licenses, two for downtown and two for outside the downtown area with additional licenses coming available based on growth. Since the population is now 105,000, he said, this new license is available.

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 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.

Application Filed by Fargo Hospitality Group LLC d/b/a Hampton Inn and Suites for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Fargo Hospitality Group LLC d/b/a Hampton Inn and Suites for a Class "GH" Alcoholic Beverage License at 4776 Agassiz Crossing South, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

Application Filed by Osaka Fargo, Inc. d/b/a Osaka Sushi and Hibachi for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Osaka Fargo, Inc. d/b/a Osaka Sushi and Hibachi for a Class "F" Alcoholic Beverage License at 1111 38th Street South, notice of which had been duly published in the official newspaper for the City of Fargo.

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

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

Commissioner Piepkorn moved the application be approved.

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

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

Special Assessment List for New Construction and Reconstruction of City Ordered Sidewalks Approved:

A Hearing had been set for this day and hour on the special assessment list for New Construction and Reconstruction of City Ordered Sidewalks Project Nos. 5917 and 5918 in the City of Fargo, North Dakota, on which special assessment list a Hearing had been held by the Special Assessment Commission after which it had been confirmed and filed with the Board of City Commissioners.

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 Wimmer moved that the special assessment list for New Construction and Reconstruction of City Ordered Sidewalks in the City of Fargo, North Dakota be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

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.

Request for an Addition onto an Existing Home at 5310 68th Street South Approved:

The Board received a communication from Inspections Administrator Ron Strand stating the River Lot Moratorium Committee met on September 28, 2011 to review a request from Timothy LeClair for an addition to his property at 5310 68th Street South. He said the Committee determined the requested addition does not meet the minimum Sheyenne River setback and would be located within the 8:1 setback from that center line as determined necessary by the City Commission. The Committee recommends the request be denied, he said.

Senior Engineer April Walker said the Committee is recommending denial due to the fact that the expansion encroaches closer to the river than the existing structure. She shared maps showing the location of the home and proposed addition in relation to the river and setback lines.

Timothy LeClair, 5310 68th Street South, said he does not understand how his request can be denied when setback requirements have not been established yet. He said the property is on the Sheyenne River Diversion, not on the Red River, and since he purchased it in 1991 there have been no water problems on that land, nor his neighbor's land, likely because of elevation. He said there are inconsistencies in the way the setback rules are being applied.

City Attorney Erik Johnson said the moratorium is a temporary halt, intended to preserve the status quo, while the Board and River Moratorium Committee work toward a final solution.

Commissioner Wimmer said this request is similar to the request the Board denied previously.

Commissioner Williams said the Board has not completed work on a river setback policy so such requests should be denied until that setback ordinance is in place.

City Administrator Pat Zavoral said Cass County has adopted the same setback provisions that the City is trying to adopt. He said it is likely the homeowner purchased the property prior to the County adopting the setback requirements. He said something to consider would be the long term consequences if this land is annexed and plats and easements are needed, as it may be difficult to obtain the homeowner's cooperation later if this decision makes him unhappy.

Commissioner Williams said the Board needs to be sure not to repeat the same mistakes made previously. Concerns are not just with elevation, he said, but

proximity to rivers and drains, and soil stability. The Sheyenne Diversion has helped with flooding issues but slumping issues still exist, he said, and while the City has proven it can fight floods, it needs to get better at avoiding risks.

Commissioner Mahoney said properties vary in the City and being rigid to a rule does not make sense if this property has never flooded.

Commissioner Williams moved the request for an addition onto an existing home at 5310 68th Street South be denied.

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

Commissioners Mahoney, Wimmer and Walaker voted nay.

The motion failed for the lack of a majority.

Mayor Walaker said individual properties vary and the moratorium rules should take that into consideration.

Commissioner Piepkorn cautioned the Board with allowing anyone to build closer to the river.

Commissioner Mahoney moved the request for an addition onto an existing home at 5310 68th Street South be approved

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

Commissioners Williams and Piepkorn voted nay.

The motion was declared carried.

At 6:15 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

#### Request for an Extension of the Noise Ordinance for JT Cigarro/Skky Ultra Lounge Received and Filed:

The Board received a communication from General Manager Ryan Beckman of JT Cigarro/Skky Ultra Lounge requesting an extension of the City's Noise Ordinance on Friday, October 28th and Saturday, October 29th from 10:00 p.m. to 11:00 p.m. for concerts inside an outdoor tent in the JT Cigarro/Skky Ultra Lounge parking lot at 4554 7th Avenue South.

Police Chief Ternes said he has been contacted by residents of both Fargo and West Fargo concerned about noise extension requests at this location. Although outdoor events continue to be scheduled in the parking lot causing neighbor concerns, he said, the management of JT Cigarro/Skky Ultra Lounge has worked very well with the Police Department, making the Police Department aware of outdoor events and taking suggestions about noise mitigation and they have been receptive to citizens' concerns. He said his interpretation of the noise ordinance is that an extension is not needed until 11:00 p.m. and noise is limited to 55 decibels. Any type of music event could surpass that noise limit, he said, so strict enforcement is a precedent he would not want to set. He said the Police Department will take a reasonable approach with the business to mitigate if complaints are received and if inundated with complaints, it is possible the business would be asked to terminate the event simply because of the number of complaints.

City Attorney Erik Johnson said his office is drafting a noise ordinance with Chief Ternes to address the noise issues and there are some interesting problems in regulation of noise that must be thought through.

Commissioner Wimmer said it appears no action is needed tonight as far as extending the time of the event.

Commissioner Mahoney said a consideration for the draft ordinance may be that a single night event would be better tolerated by neighbors rather than two consecutive nights.

Commissioner Mahoney moved the request for a one hour extension of the City's noise ordinance for concerts inside an outdoor tent from 10:00 p.m. to 11:00 p.m. on October 28th and October 29th be received and filed.

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.

Right of Entry Agreement and Draft Purchase Agreement for the Southwood/Fargo Country Club Area Flood Risk Management-Phase 1, Project No. 6002-2 Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating City Attorney Erik Johnson has been negotiating with the Fargo Country Club to gain Right of Entry to allow Levee restoration work to proceed while purchase agreement details are negotiated.

City Engineer Mark Bittner said staff has been working with Fargo Country Club Officials to establish the fair market value and additional considerations.

City Administrator Pat Zavoral said the City placed a temporary levee on the Fargo Country Club property last spring as a quick way to protect that neighborhood. He said staff is seeking a permanent flood solution that would help obtain certification in that area. He said a number of options were looked at around and outside of the Country Club property, however, due to soil stability issues the entire levee needs to be on the Fargo Country Club property. Estimates of cost to protect this area were about \$1.5 million, he said, and figures are now closer to \$1.6 million.

City Attorney Erik Johnson said the Fargo Country Club suffers from the lack of land already and is interested in utilizing some of the land the City will be buying on the east end of Southwood Drive when it becomes available. He said many of the terms of the agreement have been approved with final approval by the Fargo Country Club expected soon.

Commissioner Piepkorn said being able to deal with just one entity to achieve flood protection in this area is far better than having to deal with all the individual properties.

Commissioner Mahoney moved the Right of Entry Agreement and Draft Purchase Agreement with the Fargo Country Club be approved.

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

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

Contract for Project No. 6002-2 Awarded to Ryan Development, Inc.:

The Board received a communication from City Engineer Mark Bittner recommending the contract for Project No. 6002-2 be awarded to Ryan Development, Inc. of Elko, Minnesota in the amount of \$773,611.00.

Commissioner Mahoney moved the contract for Project No. 6002-2 be awarded as recommended.

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.

Contract and Contract Bond for Project No. 6002-2 Approved:

Commissioner Mahoney moved the Contract and Contract Bond for Project No. 6002-2 be approved contingent on final purchase agreement approval and agreement for entry and construction by the Fargo Country Club.

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.

Acquisition and Removal of 517 Harwood Drive South Approved: Harwood Drive Flood Mitigation Project Options Received and Filed (Project No. 6048): Concurrence with Staff that House Acquisition and Removal is the Preferred Flood Protection Option:

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating the Committee reviewed flood protection options for houses along Harwood Drive South from 431 to 619. The Committee recommended acquisition of 517 Harwood Drive South and a review of short and long term flood protection improvements on the three remaining houses.

City Engineer Mark Bittner said the Board previously approved acquisition of 601 and 619 Harwood Drive South and that process is proceeding. He presented options for flood mitigation and said the Committee recommended a short term option of the acquisition and removal of 517 Harwood Drive South and allowing for construction of a certifiable clay levee. He said the preferred long term option would be removal of 437, 501, 509, 517, 601 and 619 Harwood Drive South and to build a certifiable levee adjacent to the sidewalk.

City Administrator Pat Zavoral said the goal would be to have permanent, certifiable flood protection within the next five years. He said the remaining homeowners on that stretch will want to know whether these homes would be purchased sometime in the future. There may not be funds available to purchase the other homes now, he said, unless the City again bonds for it and pledges more of the sales tax. He said entering into negotiations immediately to purchase these homes could limit flood mitigation efforts in other areas.

Mr. Bittner said the philosophy on acquiring properties should be discussed; the City may be paying too much to buy out property. In working with appraisers and the Assessor's Department staff, he said, a difference of opinion exists about whether or not putting up floodwalls diminishes value or if the property is already devalued. He stated the City has been paying 110% of value for acquisitions, plus reduction in value of the house and the impact of the floodwall and perhaps once the public can see that the addition of protection adds to the value rather than taking it away, opinions could change. Smaller projects are being built and the results look good, he said.

Commissioner Williams said the value of anything is only what someone will pay for it, if it is not protected it is not valuable.

Commissioner Wimmer moved the acquisition and removal of 517 Harwood Drive South be approved with restoration of the levee, maps of Harwood Drive Flood Mitigation Project Options be received and filed, and the Board concur with staff recommendations that house acquisition and removal is the preferred flood protection option.

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.

Change Order No. 3 for Improvement District No. 5966-1 Approved:

Senior Engineer Brenda Derrig said this change order is for underground utilities that were installed along 64th Avenue South and 25th Street in the area of the new Davies High School. She said it is being brought to the attention of the Board due to the size and cost of this change order. She said Master Construction continued to maintain the road during underground work and the majority of the cost is due to maintaining the gravel road during the wet summer. There were some impacts from the Cass Rural Water line along the road, she said, and additional gravel backfill was needed for the roundabout to minimize settlement under the concrete paving.

Commissioner Williams said he would not support the change order because these are added expenses for inefficient development he has warned about.

Commissioner Mahoney moved approval of Change Order No. 3 for an increase of \$240,272.73 for Improvement District No. 5966-1.

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

Commissioner Williams voted nay.

The motion was declared carried.

Reimbursement to U-tag Investments for the Actual Cost of Parking Lot Reconstruction at 3350 38th Avenue South Approved: Change Order No. 1 for Improvement District No. 6042 Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee regarding the reconstruction of the Ulteig Engineers' parking lot at 3350 38th Avenue South, owned by U-Tag Investments. They said they are recommending reimbursement for the parking lot affected by the levee construction, which is not to exceed \$321,126.00.

Senior Engineer April Walker said pre-flood 2011, emergency levees were constructed on the north side of Drain 27 through this area. She said emergency levees have steeper slopes and when the time came to convert the levees to permanent, more land was needed. The owner of the Ulteig property, U-tag Investments, has agreed to accept replacement parking for property lost, she said.

Commissioner Wimmer moved reimbursement for the actual cost of parking lot reconstruction, not to exceed \$321,126.00 at 3350 38th Avenue South be approved.

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.

Commissioner Wimmer moved Change Order No. 1 for an increase of \$85,795.10 for Improvement District No. 6042 be approved.

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 Project Status Report and Discussion:

Pat Zavoral said Engineering staff will update the Board on existing flood mitigation projects and more discussion is needed on setback policies as well as building policies in existing platted properties, adoption of the new flood maps and the acquisition policy. He said he would propose the Board meet informally for more discussion on these issues.

Senior Engineer April Walker said the current cost estimate for ongoing flood projects is about \$15.8 million. She said major projects in progress are in the River Vili, Oak Creek, Copperfield Court, Harwood Drive South and Rose Creek - Phase 2 neighborhoods, with a cost of nearly \$31 million. Since flood mitigation is not complete in some areas, she said, 432,500 sandbags would need to be placed to protect Oak Creek and Copperfield Court up to 43 feet which would make this an area of critical need. She said channel work could not be done this fall but perhaps one of the compromise options could work and buyouts could be accomplished prior to the next flood season.

Commissioner Piepkorn said the City does not have money to do everything this year. He said when looking at establishing priorities, trees should be kept when and where they can be; however, if flood protection comes down to a choice between acquiring houses or preserving trees, then trees would be a lower priority.

City Engineer Mark Bittner outlined alternatives and issues affecting flood mitigation. He said guidance from the Board is needed on current acquisition procedures. Property owners at this time are offered 110% of assessed value, he said, and also given an option to get an appraisal and his suggestion is if the appraisal comes in lower, the homeowner should take that amount and not be given a choice between the two. He said the property owner should also participate in the cost of the appraisal if declining the original offer. The policy of offering 110% of assessed value may not be appropriate, he said, due to the fact that not all property is valued at that. He said there have been cases in which a homeowner wants to keep and relocate their home and procedures should be established for that as well.

Commissioner Mahoney moved that the Board adjourn to 5:00 o'clock p.m., Monday, October 17, 2011.

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

The time at adjournment was 7:15 o'clock p.m.