

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: August 9, 2010:

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 9, 2010.

The Commissioners present or absent were as shown following:

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

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Piepkorn moved the Order of the Agenda be approved omitting Item "f" in the Consent Agenda and Item No. 5 in the Regular Agenda.

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

Minutes Approved:

Commissioner Mahoney moved that the Minutes of the Regular Meeting of the Board held on July 26, 2010 be approved as read.

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

Consent Agenda Approved:

Commissioner Mahoney moved the Consent Agenda be approved as follows:

- a. 1st reading of the following Ordinances:
 - (1) Amending Article 13-11 of Chapter 13 of the Fargo Municipal Code Relating to Child Care Centers.
 - (2) Amending Section 13-0306 of Article 13-03 of Chapter 13 of the Fargo Municipal Code Relating to Control and Regulation of Food Service Establishments.
 - (3) Amending Article 13-12 of Chapter 13 of the Fargo Municipal Code Relating to Pet Stores.
 - (4) Enacting Article 13-14 of Chapter 13 of the Fargo Municipal Code Relating to Hotels and Motels.

- b. 2nd reading, waive reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Robert's 2nd Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 6/14/10.
 - (1) Communication regarding Historic Preservation Commission action to support the zone change.

- c. 2011 City Commission meeting dates.
- d. Investment management services agreement with PFM Financial Advisors Group for short term asset management.
- e. Acceptance of a ND Department of Emergency Services Homeland Security Grant to reprogram channels for police and public works radios to facilitate statewide communications during emergency events (CFDA #97.067).
- f. Contract with the North Dakota Department of Health for the Women's Way Program (CFDA #93.283) (omitted).
- g. School contracts with Central Cass School District, Fargo Public School District, Kindred Public School District, Mapleton School District and Northern Cass School District for nursing services for the 2010-2011 school year.
- h. Application filed by Laurie Lind for a five-year tax exemption for improvements made to a building at 448 16th Avenue South.
- i. Change Order No. E-8 for an increase of \$3,291.20 for the Main Library project.
- j. Plat of Urban Plains Recreational Addition.
- k. Findings of Fact Order and Notice regarding a dangerous building at 17-19 North University Drive.
- l. Applications for Games of Chance:
 - (1) Holy Spirit Catholic Church for bingo and a calendar raffle from 10/6/10 to 10/31/10.
 - (2) Villa Nazareth d/b/a Friendship, Inc. for a raffle on 10/9/10.
 - (3) Make-A-Wish Foundation of North Dakota for a raffle on 9/10/10.
 - (4) Spartan Boosters, Inc. for raffles from 8/26/10 to 2/21/11.
 - (5) David Danielson Benefit for a raffle on 9/11/10; Public Spirited Resolution.
 - (6) Zonta Club of Fargo-Moorhead for a raffle on 9/16/10.
- m. Sewer Agreement with Lake Shure Estates.
- n. Bid awards for Project #WA0901: General Construction to PKG Contracting, Inc. in the amount of \$11,321,000.00; Mechanical Construction to Peterson Mechanical, Inc. in the amount of \$729,600.00; and Electrical Construction to Sun Electric, Inc. in the amount of \$1,656,000.00.
- o. Construction Services Task Order with AE2S in the amount of \$624,950 for Project #WA0901.

- p. Contract Amendment No. 3 with AE2S in the amount of \$67,550 for Project No. 5725-1.
- q. Change Order No. 6 (Part A) for an increase of \$48,527.39, Change Order No. 3 (Part B) for an increase of \$4,895.63 and Change Order No. 1 (Part C) for an increase of \$2,843.55 for Improvement District No. 5729.
- r. Change Order No. 10 for a decrease of \$1,774.00; Change Order No. 11 for an increase of \$5,408.70 and Final Balancing Change Order No. 12 for an increase of \$11,782.30 for Project No. 5798.
- s. Addendum #3 to a Transportation Planning Agreement with the FM Metro COG for the University Drive Corridor Study.
- t. Agreement for Entry and Construction with Northwestern College for property located south of 52nd Avenue South along Veterans Boulevard (Improvement District No. 5732).
- u. Engineering Consultant Professional Services Agreements with Houston Engineering, Inc. for Timberline Addition flood protection improvements (Project No. 5949) and North Oaks flood protection improvements (Project No. 5946).
- v. Professional Services Agreement with Houston Engineering, Inc. in the amount of \$83,376.20 for Project No. 5962.
- w. Joint Powers Agreement with Cass Rural Water Users District for Improvement District No. 5966.
- x. NDDOT Cost Participation and Maintenance Agreement for Improvement District No. 5601.
- y. Request for Proposals for survey assistance for future Improvement District Nos. 5971, 5727, 5730, 5973, 5974 and 5975.
- z. Engineering Services Contract Amendment No. 2 with Houston Engineering, Inc. in the amount of \$100,800 for the FM Metro Flood Protection Feasibility Study (Project No. 5683-03).
- aa. Pedestrian cross-walk and associated traffic lane revisions on 2nd Street South as a Change Order on Project No. 5947.
- bb. Crosswalk with median on 4th Street North with special assessment of crosswalk and street curb/sidewalk repair costs.
- cc. Change Order No. 1 for an increase of \$6,210.00 for Project No. 5959.

- dd. Balancing Change Order No. 1 for an increase of \$844.96 for Project No. 5872-01.
- ee. Bid advertisement for Project Nos. 5906, 5915 and 5970.
- ff. Bills in the amount of \$5,087,209.82.

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

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

No Protests Received for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5940:

The Statutory Resolution of Necessity for the construction of P.C. Concrete Alley Paving and Incidentals Improvement District No. 5940 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on July 5 and 12, 2010 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 P.C. Concrete Alley Paving and Incidentals Improvement District No. 5940.

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

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

Bids Received for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5940:

The bids for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5940 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., August 4, 2010 and the bids were found to be as follows:

Paras Contracting, Inc. Bid:	Fargo, ND \$87,237.10
Adelman Concrete and Excavating Bid:	Fargo, ND \$89,752.00
Asplin Excavating, Inc. Bid:	Fargo, ND \$90,344.58
Opp Construction Company Bid:	Fargo, ND \$112,758.00

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5940 Awarded to Paras Contracting, Inc. in the Amount of \$87,237.10:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of P.C. Concrete Alley Paving and Incidentals Improvement District No. 5940; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received August 4, 2010 for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5940 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. 5940 shows the bid of Paras Contracting, Inc. of Fargo, North Dakota, in the sum of \$87,237.10 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Paras Contracting, Inc. in the sum of \$87,237.10 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. 5940 in the City of Fargo, North Dakota, be and the same is hereby awarded to Paras Contracting, Inc. for the sum of \$87,237.10, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

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

Bids Received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5966-1:

The bids for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5966-1 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., August 4, 2010 and the bids were found to be as follows:

Master Construction Company, Inc. Bid:	Fargo, ND \$2,622,108.80
Dakota Underground Company Bid:	Fargo, ND \$2,791,441.00
S.J. Louis Construction, Inc. Bid:	Waite Park, MN \$2,798,300.00
Duininck Brothers, Inc. Bid:	Prinsburg, MN \$3,127,959.65
S.R. Weidema, Inc.	Maple Grove, MN

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5955-1 in the City of Fargo, North Dakota, be created

56th Avenue South between 49th Avenue South and 58th Street South.
57th Avenue South between 66th and 67th Streets South.
55th Avenue South between 58th Street South and Deer Creek Parkway.
58th, 59th, 60th, and 62nd Streets South between 55th and 56th Avenues South.
61st Street South between 56th and 57th Avenues South.
Deer Creek Parkway between 55th and 56th Avenues South.
66th and 67th Streets South between 56th and 57th Avenues South.

COMPRISING:

Lots 48 through 60, inclusive, Block 5.
Lots 1 through 23, inclusive, Block 6.
Lots 1 through 14, inclusive, Block 7.
Lots 1 through 7, inclusive, Block 8.
Lots 1 through 13, inclusive, Block 9.
Lots 1 through 12 and 28 through 32, inclusive, Block 10.
Lots 1 through 61, inclusive, Block 11.
Lots 1 through 17, inclusive, Block 12.
Lots 1 through 22, inclusive, Block 13.
Lots 1 through 26, inclusive, Block 14.
Lots 1 through 18, inclusive, Block 15.
Lots 1 through 19, inclusive, Block 17.
All platted in Deer Creek.

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 and Incidentals Improvement District No. 5955-1 in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5955-1:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5955-1 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 \$3,907,200.)

Order Plans and Specifications for Improvement District No. 5955-1:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5955-1 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5955-1:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5955-1 in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5955-1 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5955-1:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5955-1 in the City of Fargo, North Dakota.

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

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

Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5955-2 (Deer Creek First Addition):

Commissioner Mahoney moved the following action be taken in connection with Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5955-2:

Adopt Resolution Creating Improvement District No. 5955-2:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5955-2 in the City of Fargo, North Dakota, be created

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

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

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

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

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

Deer Creek Parkway between 52nd and 56th Avenues South.

66th and 67th Streets South between 56th and 57th Avenues South.

COMPRISING:

Lots 48 through 60, inclusive, Block 5.

Lots 1 through 23, inclusive, Block 6.

Lots 1 through 14, inclusive, Block 7.

Lots 1 through 7, inclusive, Block 8.

Lots 1 through 13, inclusive, Block 9.

Lots 1 through 12 and 28 through 32, inclusive, Block 10.

Lots 1 through 61, inclusive, Block 11.
Lots 1 through 17, inclusive, Block 12.
Lots 1 through 22, inclusive, Block 13.
Lots 1 through 26, inclusive, Block 14.
Lots 1 through 18, inclusive, Block 15.
Lots 1 through 19, inclusive, Block 17.
All platted in Deer Creek.

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

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

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

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

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

All unplatted lots south of 52nd Avenue South and north of the platted Deer Creek Addition within Northwest quarter-section of Section 5-T138N-R49W.
All of the foregoing is located in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5955-2 in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5955-2:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5955-2 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 \$3,517,800.)

Order Plans and Specifications for Improvement District No. 5955-2:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5955-2 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5955-2:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5955-2 in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5955-2 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5955-2 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks 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. 5955-2:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5955-2 in the City of Fargo, North Dakota.

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

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

Contract for Shared Use Path, Bridge Construction, P.C. Concrete Paving and Incidentals Improvement District No. 5905 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Industrial Builders, Inc. for Shared Use Path, Bridge Construction, P.C. Concrete Paving and Incidentals Improvement District No. 5905 in the City of Fargo, North Dakota.

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

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

Contract Bond for Shared Use Path, Bridge Construction, P.C. Concrete Paving and Incidentals Improvement District No. 5905 Approved:

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

Hartford Accident and Indemnity Company, in the amount of \$915,529.50, for Shared Use Path, Bridge Construction, P.C. Concrete Paving and Incidentals Improvement District No. 5905 in the City of Fargo, North Dakota.

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

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

Contract for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5932 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Border States Paving, Inc. for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5932 in the City of Fargo, North Dakota.

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

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

Contract Bond for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5932 Approved:

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

Liberty Mutual Insurance Company, in the amount of \$1,269,569.00, for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5932 in the City of Fargo, North Dakota.

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

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

Contract for P.C. Concrete Pavement and Incidentals Improvement District No. 5938 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Opp Construction L.L.C. for P.C. Concrete Pavement and Incidentals Improvement District No. 5938 in the City of Fargo, North Dakota.

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

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

Contract Bond for P.C. Concrete Pavement and Incidentals Improvement District No. 5938 Approved:

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

Travelers Casualty and Surety Company of America, in the amount of \$227,284.05, for P.C. Concrete Pavement and Incidentals Improvement District No. 5938 in the City of Fargo, North Dakota.

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

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

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5953 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Adelman Concrete and Excavating, Inc. for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5953 in the City of Fargo, North Dakota.

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

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

Contract Bond for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5953 Approved:

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

United Fire and Casualty Company, in the amount of \$32,851.50, for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5953 in the City of Fargo, North Dakota.

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

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

Request for an Extension of the Noise Ordinance for the Lobster and Lefse Festival Approved:

The Board received a communication from Randy Long of the Fargo-Moorhead AM Rotary Club requesting an extension of the City's Noise Ordinance on August 13 and 14, 2010 from 10:00 p.m. to 11:00 p.m. for the Lobster and Lefse Festival at Newman Outdoor Field.

Commissioner Williams moved the request for a one hour extension of the City's noise ordinance for the Lobster and Lefse Festival from 10:00 p.m. to 11:00 p.m. on August 13 and 14, 2010 be approved.

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

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

Resolution Adopted Placing Restrictions on Over-Width Vehicles on 36th Street Between 1st Avenue North and Main Avenue:

The Board received a communication from Engineering Technician Supervisor Allen Schumacher stating 36th Street is a single lane road for both north and south bound traffic and implements of husbandry (farm equipment) are being moved on that narrow, single lane road by Case New Holland, located at 3401 1st Avenue North. He said 36th Street is too narrow to allow movement of a load that is over 14 feet 6 inches in width. He stated that over-width equipment being moved takes up the full width of one lane plus a portion of the oncoming traffic lane, creating unsafe driving conditions for oncoming traffic since the sight distance at this area for seeing oncoming traffic is very limited due to a sharp curve in the roadway.

Commissioner Williams offered the following Resolution and moved its adoption:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, The City is charged with maintaining the health, safety and welfare of its residents, including the safe use of its streets; and

WHEREAS, The City Engineer has determined that a portion of 36th Street North between Main Avenue and 1st Avenue North, as a result of vehicular traffic and climatic conditions, has deteriorated to the extent that its present condition creates a safety hazard to vehicles and their occupants traveling upon such street; and

WHEREAS, Section 8-0924 of the Fargo Municipal Code provides that the City Commission, by Resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations as to weight, on designated streets provided such prohibitions and limitations are designated by appropriate signs placed on such streets.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota:

1. That a section of 36th Street North between Main Avenue and 1st Avenue North, shall be restricted as to use in the following manner:
 - a. The traffic side of all oversize vehicles shall be marked plainly with red flags so that the clearance width and vehicle's length are readily determinable to drivers of other vehicles. Such flags shall be a minimum 12 inches by 12 inches.
 - b. A pilot car is required for all movements exceeding 14 feet 6 inches in width. Pilot car shall stop oncoming traffic traveling in the opposite direction to allow for the over-width movement.

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

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

Flood Protection Cooperation Agreement between Cass County, Cass County Water Resource District and the City of Fargo Approved:

At the July 26, 2010 meeting, the Board received a communication from City Attorney Erik Johnson stating there have been negotiations between Cass County and the City of Fargo for an agreement between the two political subdivisions in regard to the Metro Flood Project. Discussion of the agreement was continued to this date.

City Attorney Erik Johnson stated the agreement identifies the relationship between the sponsors and other parties. He said it is contingent upon a 50/50 cost share if the Cass County sales tax goes through and allows other terms to be negotiated if a Cass County sales tax does not pass. He circulated copies of his proposed language to establish a deadline of March 15, 2011 should problems arise in negotiating the cost sharing and methods.

Commissioner Wimmer stated he does not feel the deadline is necessary and issues could be dealt with if the sales tax should fail.

Commissioner Wimmer suggested the Flood Protection Cooperation Agreement between Cass County, Cass County Water Resource District and the City of Fargo be approved with no contingencies.

Commissioner Mahoney moved the Flood Protection Cooperation Agreement between Cass County, Cass County Water Resource District, and the City of Fargo be approved with the addition of the following language proposed by Mr. Johnson:

"In the event the County-wide sales tax vote in November 2010 is unsuccessful and thereafter if Cass County and Fargo are unable to arrive at such agreement for the appropriate sharing of such costs and the method for such by March 15, 2011, then this agreement shall terminate immediately and be of no further force or effect."

Second by Williams.

Commissioner Piepkorn said he has concerns about the vagueness in the wording of the sales tax proposal and he would like the document to be very specific to the diversion. He said even though the relationships are good now, it is what is in writing that will be the guide.

Commissioner Mahoney said in section four of the document it states Cass County will match the money expended towards the Project from Fargo's one-half percent sales tax.

Mr. Johnson said the sales tax resolution already approved clearly refers to this project but with some latitude for other flood mitigation. He said this agreement allows Fargo to spend money on the diversion with Cass County willing to match funds.

Commissioner Williams said as the Joint Powers Agreement moves forward and addresses funding issues, there is an opportunity to implement more specific wording.

Commissioner Mahoney said Fargo has already spent money on the project and part of the language is to be able to apply the cost share to those expenditures.

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

Commissioner Piepkorn voted nay.

The motion was declared carried.

Parcels of Land in Evelyn Acres Addition Rezoned (4771 38th Avenue South):

At a Hearing held on July 14th, 2010 the Fargo Planning Commission recommended approval of a change in zoning from SR-3, Single-Dwelling to SR-4, Single-Dwelling on Lot 1, Block 1, Evelyn Acres Addition to the City of Fargo, Cass County, North Dakota

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 the zone change due to the fact that the lot is smaller than allowed for a twin home.

Commissioner Williams said he likes more dense plan use and asked if the Planning Department had any suggestions on how to avoid what can be a 'cookie cutter' approach to development.

Mr. Hinderaker stated educating developers on providing affordable housing without using the same template would be the best approach and if that does not work, the Land Development Code can be changed.

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, Mahoney, Williams and Walaker voted aye.

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

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying In Evelyn Acres Addition to the City of 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 Evelyn Acres Addition to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

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

Parcels of Land in Scilley's Subdivision Rezoned (5207 University Drive South):

At a Hearing held on July 14th, 2010 the Fargo Planning Commission recommended approval of a change in zoning from SR-2, Single-Dwelling to GC, General Commercial on Lot 1, Block 1, Scilley's Subdivision.

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 stated the property owner, MinnKota Power, proposed the zoning change for expansion of their substation, buffer and landscaping. He said the request received unanimous approval from the Planning Commission

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

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

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Scilley's Subdivision to the City of 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 Scilley's Subdivision to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

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

Text Amendment to Amend Section 20-0202 of the Land Development Code Approved:

A Hearing had been held by the Fargo Planning Commission on July 14th, 2010 for the purpose of considering a request for a Text Amendment to Amend Section 20-0202 of the Land Development Code related to wind generation structures which would allow a wind generation structure up to 90 foot in height in AG-Agricultural zoning districts and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the request be approved.

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.

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

Senior Planner Jim Hinderaker stated the change does not open up to a lot of wind tower use because of the 10 acre minimum lot size assigned.

Commissioner Wimmer moved the request be approved on the basis the proposed Text Amendment of Section 20-0202 of Article 20-02 of Chapter 20 complies with Section 20-0904.E (1-3) of the Land Development Code.

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

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

First Reading of an Ordinance Amending Section 20-0202 of Article 20-02 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to AG, Agricultural Districts:

Commissioner Mahoney moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Amending Section 20-0202 of Article 20-02 of Chapter 20 of the Fargo Municipal Code Relating to AG, Agricultural Districts be placed on first reading.

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

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

Item No. 5 Omitted:

Item No. 5 (Recommendation to reject request submitted by America Builders to purchase and redevelop City owned land at 320 and 324 7th Street North) was omitted.

Communication from the Garaas Law Firm Regarding Special Assessments for Improvement Districts Nos. 5904, 5903, 5966 and 5969 Received and Filed:

Commissioner Williams stated this is an opportunity to again analyze how development is implemented. He said the Commission has done a good job encouraging means of transportation other than vehicles and perhaps part of the analysis should be to encourage multiuse paths and tweak the way they are assessed, possibly to use more sales tax revenue to pay for things the whole City uses. He said he encourages the Commission to analyze current methods and to see what methods can be improved upon.

Commissioner Piepkorn moved the communication from the Garaas Law Firm regarding special assessments for Improvement District Nos. 5904, 5903, 5966 and 5969 be received and filed.

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

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

Andrew Nielsen Appointed to the House Moving Board:

The Board received a communication from Mayor Walaker recommending that Andrew Nielsen be appointed to the House Moving Board to replace Paul Gleye whose term has expired. He stated there are no term limits for members of the House Moving Board.

Commissioner Mahoney moved Andrew Nielson be appointed to the House Moving Board.

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

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

City Attorney Erik Johnson announced there is a pending litigation matter to be discussed in Executive Session, specifically Rupprecht v. City of Fargo.

Commissioner Wimmer moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.2 to discuss said pending litigation matter.

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

At 5:50 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

Members present were: Mahoney, Wimmer, Williams, Piepkorn and Walaker.

The Executive Session closed at 6:15 o'clock p.m. and the meeting was adjourned.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, August 23, 2010.

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

The time at adjournment was 5:50 o'clock p.m.