

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: January 9, 2012:

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, January 9, 2012.

The Commissioners present or absent were as shown following:

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

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved.

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 December 27, 2011 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. Year to Date – Budget to Actual Report for December 2011.
- b. Resolution Authorizing Officers to Make Deposits and Withdrawals and approval of designated depositories (Attachment "A").
- c. 1st reading of an Ordinance Amending Article 18-02 of Chapter 18 of the Fargo Municipal Code Relating to Construction of Sidewalks and Driveways.
- d. Addendum to the vehicle lease agreement with Handi-Wheels Transportation, Inc. adding one additional vehicle.
- e. Applications for tax exemptions for improvements made to buildings:
 - (1) Randall Rudisel, 111 32nd Avenue NE (3 year).
 - (2) Jason and Ericka Middaugh, 3307 Maple Street (3 year).
 - (3) Brian McCormick, 620 24th Avenue South (5 year).
 - (4) Gary and Margaret Stende, 1338 Third Street North (5 year).
 - (5) Chris and Lisa Boerboom, 1330 4th Street North (5 year).

- f. Bid award for house removals at the Water Treatment Plant to Kvamsdal Construction in the amount of \$69,904.00.
- g. Sale of property at 2501 58th Avenue South for \$269,000.00.
- h. Resolution approving a Plat of Liberty Square Fourth Addition (Attachment "B").
- i. Purchase of one brush chipper from Aspen Equipment for \$34,929.00.
- j. Purchase Agreement with Todd M. Cameron and Colleen A. Cameron for temporary and permanent easements (Project No. 5949).
- k. Purchase Agreement with Bradley T. Sather and Teresa M. Sather for temporary and permanent easements (Project No. 5949-3).
- l. Declaration of Easement document in connection with Project No. 5946-02.
- m. Contract Amendment #1 with Apex Engineering in the amount of \$8,500.00 for Project No. 6063-02.
- n. Change Order No. 3 for an increase of \$11,668.82 for Project No. 5860.
- o. Bills in the amount of \$4,719,012.19.

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.

Additional Work and Final Invoice from Dakota Underground Approved (Improvement District No. 5966-01):

The Board received a communication from the Public Works Projects Evaluation Committee stating Deputy City Engineer Dave Johnson forwarded a request from Cass Rural Water to transfer the water services on the north side of 64th Avenue South, from 25th Street to Drain No. 53, from the existing 2" water line to the 16" water line. The 30" sanitary sewer pipe installed on 64th Avenue South was very deep, they said, and the exact location of the 2" Cass Rural Water line was not known until the pipe excavation began. As the installation of the 30" sanitary sewer pipe began, the existing 2" water main would come into the trench, they said, and would have to be repaired using 2" sleeves. Due to the numerous sleeves that were installed during the project, they said, Cass Rural Water is requesting that the City transfer over the services from the 2" water line to the 16" water line. They said staff is recommending hiring Dakota Underground to transfer the water services and charge the work to Improvement District No. 5966-01.

Commissioner Mahoney moved the additional work and final invoice from Dakota Underground in the amount of \$31,001.86 be approved charging it to Improvement District No. 5966-01.

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.

Final Balancing Change Order No. 1 for Improvement District No. 5838-04 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of \$5,583.34 for Improvement District No. 5838-04.

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 Time Extension for Improvement District No. 5966-01 Approved:

Commissioner Mahoney moved approval of a Contract Time Extension to May 19, 2011 for Improvement District No. 5966-01 and that Master Construction be assessed liquated damages in the amount of \$53,190.00.

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.

P.C. Concrete Alley Paving and Incidentals Improvement District No. 6070 (Block 2, Hogan Addition, between 4th and 5th Streets North from 15th to 16th Avenues North):

Commissioner Mahoney moved the following action be taken in connection with P.C. Concrete Alley Paving and Incidentals Improvement District No. 6070:

Adopt Resolution Creating Improvement District No. 6070:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6070 in the City of Fargo, North Dakota, be created

From 15th to 16th Avenues North between 4th Street and 5th Street, Hogan Addition.

COMPRISING:

Lots 1 through 26, Block 2.

All in Hogan Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That P.C. Concrete Alley Paving and Incidentals Improvement District No. 6070 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. 6070:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6070 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 \$139,920.00.)

Order Plans and Specifications for Improvement District No. 6070:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6070 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6070:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6070 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. 6070 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring P.C. Concrete Alley Paving and Incidentals Necessary:

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

That it be and is hereby declared necessary to construct P.C. Concrete Alley Paving and Incidentals Improvement District No. 6070 in the City of Fargo, North Dakota, according to the Engineer's Report for this district and the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection. A map of the district is attached hereto and incorporated as if fully set forth herein.

That the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed P.C. Concrete Alley Paving and Incidentals must be in writing and must be filed with the City Auditor's Office within 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. 6070:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6070 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.

Appointments to the Parking Commission:

The Board received a communication from Mayor Walaker recommending that Tracy Walvatne be reappointed and Randy Thorson be appointed to the Parking Commission to replace Margie Bailly whose term has expired.

Commissioner Williams moved Tracy Walvatne be reappointed and Randy Thorson be appointed to the Parking Commission for three-year terms ending June 30, 2014.

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

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

2012-2016 Transit Development Plan Adopted:

The Board received a communication from Metro COG Planner Mike Kunza stating the draft 2012-2016 Metro Transit Development Plan was reviewed by the Metro Area Transit Coordination Board and they are recommending approval.

Planning Director Jim Gilmour stated this is a five year plan for how Transit sees the system being developed for the years 2012 thru 2016. He said the plan covers a wide range of topics from looking at how the fixed route system will operate, to looking at how Transit will coordinate with the various other human service transportation systems. This plan also provides a lot of background information on the City's existing system, he said.

Commissioner Williams offered the following Resolution and moved its adoption:

WHEREAS, The City Commission of Fargo is the duly elected body for the City of Fargo and is responsible for the allocation of resources that allow for a safe and functional public transportation system; and

WHEREAS, The Fargo-Moorhead Metropolitan Council of Governments (Metro COG) has updated the current Metropolitan Transit Development Plan, which makes public transit projects eligible for future Federal funding; and

WHEREAS, The 2012-2016 Transit Development Plan was developed in consultation with a cross section of interests including: elected leaders, transit users, the general commuting public, human service agencies, senior citizens, business and industry representatives, private transit providers, bus drivers and technical staff; and

WHEREAS, The 2012-2016 Transit Development Plan outlines service improvements that will help enhance and coordinate the area's transit systems to make them a more convenient and competitive mode of transportation; and

WHEREAS, The 2012-2016 Transit Development Plan contains a Coordinated Public Transit Human Service Plan which meets and in many areas exceeds recent Federal mandates to provide a blueprint for the coordination of human service transportation programs funded with non-Department of Transportation Funds; and

WHEREAS, The 2012-2016 Transit Development Plan supports the continued coordination of the metropolitan transit system, provided independently by the Cities of Fargo and Moorhead and known as MATBUS, to ensure a realistic evolution towards a more uniform transit entity.

NOW, THEREFORE, BE IT RESOLVED, That the City Commission of the City of Fargo does hereby adopt the 2012-2016 Transit Development Plan and agrees to use it as a tool to implement transit goals and objectives, which will complement the overall development of the metropolitan transportation system.

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

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

City of Fargo's Section 5307 Federal Transportation Administration Grant Preliminary Program of Projects for 2012 Approved:

A Hearing had been set for this day and hour to consider the City's Section 5307 Federal Transportation Administration grant preliminary Program of Projects for 2012.

The Board determined that there have been no written or verbal protests and no one is present to protest thereto.

The Board received a communication from Transit Administrator Julie Bommelman stating the Federal Transit Administration will make available to the City \$1,854,410 to be used for the transit system. She said the City of Fargo is required to hold a public hearing prior to submitting this application. She said the Program of Projects, which she attached, was developed by the Transit Division to be submitted with the application for the funds.

Commissioner Williams moved the Program of Projects for 2012 and Federal Transit Grant Award of \$1,854,410 be approved.

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

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

Proposed Change to Metro Area Transit Route 15 Approved:

A Hearing had been set for this day and hour to receive comments on the proposed change to Route 15 to become effective January 23, 2012.

The Board received a communication from Transit Administrator Julie Bommelman stating Fargo Transit is proposing the addition of two buses to the existing Route 15 which is part of the current fixed route system. She said the route travels from Downtown to West Acres then to Wal-Mart and has seen substantial growth since 2007. The proposed start date for the additional buses is January 23, 2012, she said, and they will operate from 6:15 am to 7:00 pm Monday thru Friday. Additional evening service will also be a result of the proposed route adjustment as

well as allowing the public access to Route 15 every 15 minutes versus the current service of every 30 minutes, she said.

Justin Kristan, 1204 10th Street South, said he is very excited about the addition of two buses on this route.

Commissioner Williams said doubling the buses on one of the strongest routes will build the ridership.

Commissioner Williams moved the proposed changes to Metro Area Transit Route 15 be approved effective January 23, 2012.

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

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

Text Amendment to Section 20-0402.E of Article 20-04 of Chapter 20 of the Land Development Code Approved:

A Hearing had been held by the Fargo Planning Commission on January 3, 2012 for the purpose of considering a request for a text amendment to Section 20-0402.E of Article 20-04 of Chapter 20 of the Land Development Code related to Group Living as a use by right in the UMU, University Mixed Use Zoning District and Group Living as a use by right in the MR-1, MR-2 and MR-3, Multi-Dwelling Zoning Districts, but also subject to the use specific standards of Section 20-0402.E of the Land Development Code 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.

Senior Planner Jim Hinderaker said the whole purpose of this amendment is to clarify the intention of this particular section of the Land Development Code (LDC). There has been some confusion as to whether or not a conditional use permit is required for group living in the MR zoning district, he said, and the Planning Department wanted to bring this forward with some language that clearly shows that it is a permitted use by right.

Jonathan Garaas, Attorney representing Fred Hector and Stanley Township, North Dakota, said the district court ruling gave a seven page opinion and that opinion clearly states that the ordinance is clear and unambiguous and that is the opinion of the Garaas Law Firm. He said if the ruling is the reason for the text amendment then it is improper due to the fact that the ordinance is clear and unambiguous.

City Attorney Erik Johnson said he does not agree with Mr. Garaas's point of view on this matter. He said the purpose of the text amendment is to clarify an interpretation of the law that the staff and City Attorney's office have had all along.

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

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.

First Reading of an Ordinance Amending Section 20-0402.E of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Use Standards:

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 Amending Section 20-0402.E of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Use Standards be placed on first reading.

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

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

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, January 23, 2012.

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

The time at adjournment was 5:39 o'clock p.m.