

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: January 23, 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 23, 2012.

The Commissioners present or absent were as shown following:

Present: Mahoney, Piepkorn, Williams, Walaker.

Absent: Wimmer

Mayor Walaker presiding.

Order of Agenda Approved:

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

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

Minutes Approved:

Commissioner Piepkorn moved that the Minutes of the Regular Meeting of the Board held on January 9, 2012 be approved as read.

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

Consent Agenda Approved:

Commissioner Mahoney moved the Consent Agenda be approved as follows:

- a. Pledged securities as of December 31, 2011.
- b. Sale of property at 2853 Lilac Lane North for \$482,000.00.
- c. Second reading, waive reading and final adoption of an Ordinance Amending Article 18-02 of Chapter 18 of the Fargo Municipal Code Relating to Construction of Sidewalks and Driveways; 1st reading, 1/9/12.
- d. Purchase of Service Agreement with the North Dakota Department of Health for Tuberculosis screening activities (CFDA #93.116).
- e. Purchase of Service Agreement with the North Dakota Department of Health for HIV counseling, testing and referral program (CFDA #93.943).
- f. Agreement with the North Dakota Department of Health for the VFC/AFIX immunization program coordination and immunization program (CFDA #93.268).

- g. Contract with Prairie St. John's in connection with the Community Health Tobacco Grant from the North Dakota Tobacco Prevention and Control Executive Committee.
- h. Donation of self-contained breathing apparatus to the Abercrombie, Buffalo and Gardner/Grandin volunteer Fire Departments.
- i. 2012 update to the 3-year contract with Parking Service for operations of the City's parking facilities.
- j. Application filed by Shawn and Karena Carlson for a 5-year tax exemption for improvements made to a building at 911 21st Avenue South.
- k. Transit advertising agreements for exterior advertising on City buses; authorize Transit Administrator to enter into agreements.
- l. Transit advertising agreements for interior advertisements within City buses; authorize Transit Administrator to enter into agreements.
- m. Agreement with NDSU for exterior advertising on City buses.
- n. Application filed by Darek Knaus Benefit for a raffle on 2/11/12; Public Spirited Resolution.
- o. Appointment of Mark Bittner, Director of Engineering, or his designee to serve as the applicant agent for grant submittals under the Hazard Mitigation Grant Program.
- p. Declaration of flood protection elevation for property at 3650 River Drive South.
- q. Professional Services Contract Amendment No. 1 with Houston Engineering in the amount of \$49,000.00 for Project No. 5246-03.
- r. Engineering Services contract with Houston Engineering in the amount of \$185,413.00 for Project No. 5902.
- s. Purchase Agreement – Permanent Easement for part of Lot 2, Block 1, Ulteig Addition (Project No. 6042).
- t. Purchase Agreements – ROW, Utility and Temporary Easements for 6350 25th Street South, 6155 24th Street South and 2450 62nd Avenue South (Improvement District No. 5969).
- u. Purchase Agreements – ROW and Utility Easements for 2479 60th Avenue South and 2460 60th Avenue South (Improvement District No. 5969).
- v. Purchase Agreements – ROW and Utility Easements for 2461 58th Avenue South and 2460 58th Avenue South (Improvement District No. 5969).

- w. Claim for Permanent Easement (Sanitary Sewer) for the Westside Corridor (Project No. 5656).
- x. Purchase Agreement with Mills Supply, Inc. for construction of a levee (Project No. 6042).
- y. Cooperative Agreement with the North Dakota Game and Fish Department for their contribution of \$100,000 to the Christine and Hickson Dam Safety Improvements Project (Project No. 5153-3).
- z. Practice of carrying rapid deploy products on hand and Engineering staff directed to prepare a Request for Quotes for rapid deploy products (moved to the end of the Regular Agenda).
- aa. Final Balancing Change Order No. 1 for an increase of \$3,395.00 for Project No. 5871.
- bb. Time Extension and Change Order No. 1 for an increase of \$823.90 for Project No. 5951-02.
- cc. Change Order No. 1 for an increase of \$58,309.20 for Project No. 6007.
- dd. Contracts and bonds for house removals at the Water Treatment Plant.
- ee. Bills in the amount of \$4,898,342.88.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Final Balancing Change Order No. 1 for Improvement District No. 6057 Approved:

Commissioner Mahoney moved approval of Change Order No. 1 for an increase of \$5,449.66 for Improvement District No. 6057.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6106 (Various Locations between 6th and 7th Streets and 13th and 17th Avenues South):

Commissioner Mahoney moved the following action be taken in connection with Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6106:

Adopt Resolution Creating Improvement District No. 6106:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 6106 in the City of Fargo, North Dakota, be created

On 7th Street South from 13th to 17th Avenues South.

On 6th Street South from 13th to 15th Avenues South.

On 14th Avenue South from 5th to 7th Streets South.

On 15th Avenue South from 5th to 7th Streets South.

COMPRISING:

Lots 8 through 14, inclusive, Block 1.

Lots 1 through 7, Lots 9 through 13 and the east 55.5 feet of Lot 8, Block 2.

All in Benedicts Addition.

Lots 6 through 10, inclusive, Block 1.

Lot 13 and west 15 feet of Lot 8, Block 2, Benedicts Addition.

Lots 1 through 10, inclusive, Block 2.

Lots 1 through 13, inclusive, Block 3.

Lots 1 through 13, inclusive, Block 12.

Lots 1 through 26, inclusive, Block 13.

Lots 11 through 20, inclusive, Block 14.

Lots 14 through 26, inclusive, Block 16.

Lots 1 through 13, inclusive, Block 17.

All in Huntingtons Addition.

Lots 1 through 8, inclusive, Block 5.

Lots 9 through 16, inclusive, Block 6.

All in Lewis Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6106 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. 6106:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 6106 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 \$1,927,500.00)

Order Plans and Specifications for Improvement District No. 6106:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 6106 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 6106:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 6106 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. 6106 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 Water Main Replacement, Street Reconstruction 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 Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 6106 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 Water Main Replacement, Street Reconstruction and Incidentals improvement is to be paid from Street Sales Tax, and approximately 41% 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 Water Main Replacement, Street Reconstruction 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. 6106:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 6106 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Second Reading and Final Adoption 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 Mahoney moved that the proposed 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 which was placed on its first reading January 9, 2012 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

There was unanimous consent to waive reading of the Ordinance in its entirety and no one was present to request that the Ordinance be read.

On the vote being taken on the question of the final passage and adoption of the Ordinance, Commissioners Mahoney, Piepkorn, Williams and Walaker voted aye.

Absent and not voting: Commissioner Wimmer.

The Ordinance was duly passed and adopted.

Appointments to the Renaissance Zone Authority:

The Board received a communication from Mayor Walaker recommending that Steve Swiontek and Kris Sheridan be reappointed to the Renaissance Zone Authority.

Commissioner Mahoney moved Steve Swiontek and Kris Sheridan be reappointed to the Renaissance Zone Authority for three-year terms ending January 1, 2015.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Clinton Alexander Appointed to the Native American Commission:

The Board received a communication from Mayor Walaker recommending that Clinton Alexander be appointed to the Native American Commission to fill the unexpired term of Monique Vondall-Rieke who resigned.

Commissioner Mahoney moved the appointment of Clinton Alexander to the Native American Commission for the term ending June 30, 2013 be approved.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Dave Selvig Reappointed to the City Hall-Auditorium Commission:

The Board received a communication from Mayor Walaker recommending that Dave Selvig be reappointed to the City Hall-Auditorium Commission.

Commissioner Mahoney moved Dave Selvig be reappointed to the City Hall-Auditorium Commission for a three-year term ending January 1, 2015.

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

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

Kevin Hanson Reappointed as Chair of the Metro Area Transit Coordinating Board:

The Board received a communication from Mayor Walaker recommending that Kevin Hanson be reappointed Chair of the Metro Area Transit Coordinating Board. He said he would also like to confirm Commissioners Williams and Piepkorn as the 2012 Fargo MAT Board members. Both Commissioners, he said, were appointed for two years when Liaison Commissioner assignments were approved in 2010 and will remain members at least until new assignments are made in 2012.

Commissioner Mahoney moved Commissioners Williams and Piepkorn be confirmed as 2012 Fargo MAT Board Members and Kevin Hanson be reappointed as Chair of the Metro Area Transit Coordinating Board for a two-year term ending December 31, 2013.

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

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

City Attorney's Office Directed to Draft Ordinance Revisions Relating to Juvenile Driver's License Laws:

The Board received a communication from Chief of Police Keith Ternes stating during the last session of the North Dakota State Legislature, lawmakers revised several statutes relating to driver's licenses and driving permits for persons under the age of 18. He said juvenile drivers issued a license or permit after January 1, 2012 are now restricted from using any type of electronic device while driving, including cell phones. He said this change extends to recently adopted prohibitions associated with texting while driving to include using a cellular telephone or any other electronic communication device while the vehicle they are operating is in motion. In order for the Fargo Police Department to enforce new juvenile driving laws on a municipal level, he said, it will be necessary to revise Section 8-0303 of Chapter 8 of the Fargo Municipal Code, entitled "Restrictions on Operation of Motor Vehicles by Certain Minors." The ordinance will be challenging to enforce, he said, since it only applies to drivers under 18 issued a driver's license or permit after January 1, 2012. He said the penalty associated with a violation of the revised city ordinance would be the same as the penalty established by the state, \$20.00.

Commissioner Piepkorn moved the City Attorney's office be directed to draft ordinance revisions relating to juvenile driver's license laws.

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

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

(Commissioner Wimmer present).

Parcels of Land in Urban Plains by Brandt 1st Addition Rezoned (4831 28th Avenue South):

At a Hearing held on January 3, 2012, the Fargo Planning Commission recommended approval of a change in zoning from GO, General Office to MR-3, Multi-Dwelling on portions of Lot 8, Block 2, Urban Plains by Brandt 1st Addition.

Senior Planner Jim Hinderaker said this property came before the Board last August for a change in Zoning from MR-3, Multi-Dwelling to GO, General Office; however, that deal fell through and the property owner now has another buyer. He said all criteria has been met for approval and the recommendation from the Planning Commission was unanimous.

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

Commissioner Wimmer offered the following Resolution and moved its adoption:

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

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

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning be approved on the basis that review criteria of Section 20-0906.F (1-4) has been met.

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

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

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Urban Plains by Brandt 1st Addition, Fargo, Cass County, North Dakota:

Commissioner Wimmer moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in Urban Plains by Brandt 1st Addition, Fargo, Cass County, North Dakota 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.

GO2030 Comprehensive Plan Update:

Senior Planner Jim Hinderaker shared a draft of the updated GO2030 Comprehensive Plan with the Commissioners and introduced Project Director Stephen Hardy. He said Mr. Hardy is with the consultant team of BNIM, hired to generate the GO2030 Comprehensive Plan to establish the community's vision for the future of Fargo and provide direction for decision makers in the future.

Mr. Hardy said a town hall open house is scheduled for Tuesday, January 24th to present the draft plan to the public and gather final comments and input. He said nine guiding principles and key initiatives resulted from a public process over the past

year through various formats including traditional town hall public meetings, talks with stakeholder groups, surveys and websites. He said the whole process resulted in numerous good ideas which will power the plan. The MindMixer website utilizes live citizen input, he said, and will again be open for feedback on the key initiatives following the open house. He stated Fargo was one of the first to try the virtual town hall venue and ranks in the top five for success with over 2,500 visitors. Mr. Hardy thanked the local firms AE2S and SRF Consulting Group, Inc., also part of the consulting team, and commended the Fargo Planning Staff for their great work. The Comprehensive Plan will be evolving, he said, and the final version will come back to this Board.

In answer to a question from Commissioner Wimmer about whether the plan was too long, too much or too big, Mr. Hardy said the ambitious plan is accomplishable over time.

Commissioner Wimmer said online applications are helpful, particularly to engage younger people.

Commissioner Williams said there is a strong will to implement the plan. He said some of the suggestions have already been initiated, such as an additional transit route and art projects.

City Attorney's Office Directed to Draft Ordinance Revisions Relating to Carrying, Possession and Discharge of Dangerous Weapons:

The Board received a communication from Chief of Police Keith Ternes suggesting several revisions be made to Chapter 10 of the Fargo Municipal Code, specifically subsection 10-0304 entitled Carrying, Possession, Discharge of Dangerous Weapons. He said the revisions he is proposing are intended to ensure Fargo's ordinance is consistent with the State of North Dakota's law. In addition to ensuring the municipal ordinance is consistent with state law relative to defining what a dangerous weapon or firearm is, he said, the proposed revisions will also more clearly discern how a person may lawfully carry or otherwise possess a dangerous weapon or firearm in an area accessible to the general public within the city limits. He suggested ambiguous language be removed and replaced with a more clear definition that weapons have to be fully encased. As an example, he said, if someone is seen on Broadway carrying a rifle not in a case or only partially contained, it would lead to many calls from concerned citizens which the Police Department must respond to. Also, he said, the revisions reflect the same language found within state law that prohibits a person from possessing a dangerous weapon or firearm at a "public gathering." He stated the intent is not to impose or add additional restrictions on a person's right or ability to lawfully carry or possess a firearm within the City of Fargo. If adopted, he said, the revisions will simply make the municipal ordinance's definition of "dangerous weapon" and "firearm" consistent with the definitions established within state law and will more clearly describe how a dangerous weapon or firearm may be carried and/or possessed in a public area or at a public gathering within the city.

Commissioner Mahoney moved the City Attorney's Office be directed to draft ordinance revisions relating to carrying, possession and discharge of dangerous weapons.

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.

Practice of Carrying Rapid Deploy Products On Hand Approved: Engineering Staff Directed to Prepare a Request for Quotes for Rapid Deploy Products:

The Board received a communication from Senior Engineer April Walker stating as a matter of practice, the City has carried an inventory of three million sandbags and when the sandbags are deployed during a disaster, supplies are replenished to maintain the inventory. She said FEMA usually reimburses for restocking provided set policies are in place and followed. She proposed the same approach be taken with the Rapid Deploy Products (RDPs) which have drastically impacted the number of sandbags needed. Supplies were available in 2009, she said; however, in subsequent years the City was forced to secure products as the water was rising and prior to a presidential disaster declaration, which runs the risk of not being reimbursed. She said delivery can take six to eight weeks and staff is prepared to make recommendations as to the amount of product to carry and methods for securing products. She said Engineering Staff would like to prepare a Request for Quotes (RFQ) and conduct a formal selection process.

In response to a question from Commissioner Wimmer about available space to store products, Ms. Walker said the City has some room available, but it will be necessary to evaluate what can be accommodated based on the product or products chosen. She said the budget would be evaluated during the RFQ process and costs are estimated between \$500,000 and \$2 million, depending on the products selected. She said it would be beneficial to have vendors competing for the business through a performance based RFQ.

City Administrator Pat Zavoral said the supply needed would vary depending on crest predictions. He said he would like to see a policy in place establishing the criteria to use, such as the prediction of the National Weather Service for spring flooding issued in December. He said the RFQ will be brought back to the Board for final approval.

Commissioner Mahoney moved the practice of carrying Rapid Deploy Products on hand be approved and staff be directed to prepare a Request for Quotes for Rapid Deploy Products.

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.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, February 6, 2012.

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

The time at adjournment was 5:42 o'clock p.m.