

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:                                              Monday:                                              October 1, 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, October 1, 2012.

The Commissioners present or absent were as shown following:

Present: Mahoney, Williams, Wimmer, Walaker.

Absent: Sobolik.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved.

Second by Williams. All the Commissioners present 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 September 17, 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. 1st reading of an Ordinance Amending Section 1-0305.C.6 of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Classification of Ordinance Violations (to include the panhandling violation).
- b. 2nd reading, waive reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Asleson Farms 1st Addition, Fargo, Cass County, North Dakota; 1st reading, 9/17/12.
- c. Expenditure of \$23,637.60 by Cass Fargo Emergency Management for an all hazard outdoor warning siren system update.
- d. North Dakota Department of Transportation State Aid for Public Transit Agreement in the amount of \$401,268.00 for July 1, 2012 through June 30, 2013 (Contract #38121936).
- e. Revised Inter-local agreement with the City of West Fargo and Cass County relative to the Department of Justice Assistance Grant (CFDA #16.738).

- f. Grant Agreement with Dakota Medical Foundation in the amount of \$4,000.00 for the Nurse-Family Partnership Program.
- g. Health Department 2012 Budget Adjustment and grant with the North Dakota Department of Health for Suicide Prevention – Family Planning Program (Contract #G11-832).
- h. Health Department 2013 Budget Adjustment and grant with the North Dakota Department of Health for Suicide Prevention – Family Planning Program (Contract #G11-832).
- i. Receive and file Ordinance Amending Section 10-0601 of Article 10-06 of Chapter 10 of the Fargo Municipal Code Relating to Theft and Shoplifting.
- j. Applications for Games of Chance:
  - (1) The Village Family Service Center for a raffle on 11/9/12.
  - (2) Sigma Nu Fraternity for a raffle on 10/6/12.
  - (3) Nick Schmit Benefit for a raffle on 12/15/12; Public Spirited Resolution.
  - (4) NDSU SAE for a raffle on 10/5/12.
  - (5) Mortar Board National Honor Society for a raffle on 10/28/12.
- k. Sale of Neighborhood Stabilization Program property at 714 10th Avenue North for \$139,900.00.
- l. Extension of the Noise Ordinance to 10:45 p.m. on October 4, 2012 for a fireworks display at Newman Field for NDSU Homecoming.
- m. Contract with Simplex Grinnell to install Simplex Access Controls at Fire Stations 2, 3, 4 and 5 for \$19,848.00.
- n. Contract with Home Heating – Plumbing & Air Conditioning, Inc. to replace the boiler at the Fire Headquarters for \$54,200.00.
- o. Sale of a street sweeper to the Municipal Airport Authority for \$125,000.00.
- p. Contracts for ADA dugout renovations at Newman Field: general construction - Naseth Construction in the amount of \$109,000.00; and electrical construction - Grants Mechanical in the amount of \$2,436.00.
- q. No-Build Easement between Integrity 4 Group, LLC and APM, LLLP for Lot 24, Great Northern Second Addition.
- r. Purchase Agreement – Permanent Easements Agreement for John Hansen (Project No. 6002-2).
- s. Purchase Agreement with Tracy Differding for property at 1213 71st Avenue South (Improvement District No. 6111).

- t. Amendment to Cost Participation and Maintenance Agreement with West Fargo for Project No. 6163.
- u. Change Order No. 5 for an increase of \$33,355.52 for Project No. 5946-02.
- v. Final Balancing Change Order No. 1 for an increase of \$2,975.03 for Project No. 6105.
- w. Contract and bond with Boyer Electric, Inc. d/b/a Fritz Electric for transient voltage surge suppression in the Public Safety Building.
- x. Bills in the amount of \$13,092,685.52.

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

Absent and not voting: Commissioner Sobolik.

The motion was declared carried.

Bids Received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6036:

The bids for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6036 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 26, 2012 and the bids were found to be as follows:

Dakota Underground Company Bid:	Fargo, ND \$364,668.00
Master Construction Company, Inc. Bid:	Fargo, ND \$370,870.40
Kindred Plumbing and Heating, Inc. Bid:	Kindred, ND \$386,747.00
Sellin Brothers, Inc. Bid:	Hawley, MN \$464,628.00
Robert Gibb & Sons, Inc. Bid:	Fargo, ND \$558,865.00
H & S Contracting Bid:	Moorhead, MN \$584,113.50
Quam Construction DBA Kvamsdal Construction Bid:	Willmar, MN \$711,172.00

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6036 Awarded to Dakota Underground Company in the Amount of \$364,668.00:

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. 6036; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 26, 2012 for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6036 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. 6036 shows the bid of Dakota Underground Company of Fargo, North Dakota, in the sum of \$364,668.00 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 \$364,668.00 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. 6036 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground Company for the sum of \$364,668.00, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

Absent and not voting: Commissioner Sobolik.

The Resolution was adopted.

No Protests Received for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158:

The Statutory Resolution of Necessity for the construction of Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on August 27 and September 3, 2012 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, Asphalt Pavement and Incidentals Improvement District No. 6158.

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

Absent and not voting: Commissioner Sobolik.

The motion was declared carried.

Bids Received for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158:

The bids for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 26, 2012 and the bids were found to be as follows:

Dakota Underground Company Bid:	Fargo, ND \$977,430.00
Master Construction Company, Inc. Bid:	Fargo, ND \$1,055,146.80
Sellin Brothers, Inc. Bid:	Hawley, MN \$1,089,699.50
Border States Paving, Inc. Bid:	Fargo, ND \$1,118,915.50
R. L. Larson Excavating, Inc. Bid:	St. Cloud, MN \$1,271,240.75
Duininck Bros Bid:	Prinsburg, MN \$1,297,121.40
Robert Gibb & Sons, Inc. Bid:	Fargo, ND \$1,465,333.00

Contract for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 Awarded to Dakota Underground Company in the Amount of \$977,430.00:

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, Asphalt Pavement and Incidentals Improvement District No. 6158; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 26, 2012 for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 shows the bid of Dakota Underground Company of Fargo, North Dakota, in the sum of \$977,430.00 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 \$977,430.00 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 in the City of

Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground Company for the sum of \$977,430.00, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

Absent and not voting: Commissioner Sobolik.  
The Resolution was adopted.

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Dakota Underground Company, Inc. for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161 in the City of Fargo, North Dakota.

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

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

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161 Approved:

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

United Fire and Casualty Company, in the amount of \$1,362,763.49, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161 in the City of Fargo, North Dakota.

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

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

Contract for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 6162 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Dakota Underground Company, Inc. for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 6162 in the City of Fargo, North Dakota.

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

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

Contract Bond for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 6162 Approved:

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

United Fire and Casualty Company, in the amount of \$1,376,969.48, for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 6162 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Sobolik.

The motion was declared carried.

Second Reading, Waive Reading of an Ordinance Amending Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference:

City Attorney Erik Johnson said this item was continued from the last meeting because there were minor revisions from the initial draft.

Police Chief Keith Ternes said he worked with Assistant City Attorney Jason Loos on drafting this ordinance and it became clear to them that noise regulation is challenging. He said there is no ideal solution to managing noise throughout the City. There were many items to consider, he said, including decibel readings, locations, times and constitutionally protected speech. A minor modification to timeframes has been included, he said. Originally noise limitations existed from 10:00 p.m. to 6:00 a.m. every night, he said, and the Ordinance is now adjusted by one hour on the weekends, limiting noise Friday night through Sunday morning between 11:00 p.m. to 7:00 a.m. He said some of these changes may affect events such as the Fargo Marathon due to the fact that there are live bands with amplified sound in residential areas during the event. The focus of the Ordinance is amplified noise, he said, and outdoor events are not eliminated; however, a permit from the Police Department will be required for amplified sound in a residential area. For events within 500 feet of a residential area, a permit for outdoor amplified sound must be obtained with only one amplified event allowed every thirty days, he stated, and if the business or venue is outside the 500 foot barrier a permit would not be required. Chief Ternes said the revisions should help with the inundation of applications that come before the Board for noise extensions, particularly during the summer. He recommended that the Board not entertain every request brought forward for an exception unless there is a very compelling reason to go outside the time parameters set in the Ordinance.

Commissioner Wimmer moved that the proposed Ordinance Amending Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference which was placed on its first reading September 4, 2012 be now placed on its second reading.

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

Absent and not voting: Commissioner Sobolik.

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.

Appointments to the Housing and Redevelopment Authority:

The Board received a communication from Mayor Walaker recommending that Thomas Jefferson and Bryce Alme Johnson be reappointed to the Housing and Redevelopment Authority.

Commissioner Mahoney moved Thomas Jefferson and Bryce Alme Johnson be reappointed to the Housing and Redevelopment Authority for three-year terms ending September 30, 2015.

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

Absent and not voting: Commissioner Sobolik.

The motion was declared carried.

Application to Transfer the Alcoholic Beverage License from Monte's Downtown, LLC d/b/a Monte's Downtown to New Monte's, Inc. d/b/a Monte's Downtown Approved:

A Hearing had been set for this day and hour on an application to transfer the Class "FARZ" Alcoholic Beverage License from Monte's Downtown, LLC d/b/a Monte's Downtown at 220 Broadway to New Monte's, Inc. d/b/a Monte's Downtown, 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 Wimmer moved the application be approved.

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

Absent and not voting: Commissioner Sobolik.

The motion was declared carried.

Application Filed by The Beefsteak Club LLC d/b/a Beefsteak Club for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by The Beefsteak Club LLC d/b/a Beefsteak Club for a Class "FARZ" Alcoholic Beverage License at 612 1st Avenue North, 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 Wimmer moved the application be approved.

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

Absent and not voting: Commissioner Sobolik.

The motion was declared carried.

Application Filed by Banta HSM, Inc. d/b/a India Palace for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Banta HSM, Inc. d/b/a India Palace for a Class "GH" Alcoholic Beverage License at 5050



13th Avenue South, Suite 3, 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 Wimmer moved the application be approved.

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

Absent and not voting: Commissioner Sobolik.

The motion was declared carried.

Resolution Adopted Vacating a Public Utility Easement on the Southerly 10 Feet of Lots 15 and 16, Except the Westerly 34.07 Feet of Said Lot 15, Block 4, Dakota Park Addition (2700 34th Avenue South):

The Board received a communication from Senior Planner Jim Hinderaker stating Bruce Hoyt, the owner of property at 2700 34th Avenue South, originally requested a utility easement be vacated to build a structure. The property was recently sold, he said, and he has been in contact with the new owners, Dennis and Alice Metzger, who favor going ahead with the request. He said a Reciprocal Release and Relinquishment of Easement document is necessary to extinguish a portion of public utility easement established by Plat (Dakota Park Addition) on June 6, 1994. The easement does not currently contain any utilities, he said, and they are unlikely to be needed in the future. He said the Public Works Projects Evaluation Committee (PWPEC) reviewed and recommended approval of the public utility easement relinquishment at their June 7, 2011 meeting and the Board received and filed the petition at their August 20, 2012 meeting, setting the public hearing for this date.

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, A public utility easement was established as a result of a Plat dated June 6, 1994, and recorded in the Office of the Recorder for Cass County, North Dakota on the 15th day of June 1994, as document number 813857, for which a public utility easement was appurtenant to the following described real property:

The southerly 10 feet of Lots 15 and 16, except the westerly 34.07 feet of said Lot 15, Block 4, Dakota Park Addition to the City of Fargo, Cass County, North Dakota.

WHEREAS, Dennis Metzger and Alice F. Metzger, are the owners of Lots 15 and 16, except the westerly 34.07 feet of said Lot 15, Block 4, Dakota Park Addition to the City of Fargo, Cass County, North Dakota subject to the public utility easement for the City of Fargo; and

WHEREAS, Said owners desire the reciprocal release and relinquishment of said public utility easement in order to more fully utilize their property in a manner free from said encumbrance; and

WHEREAS, The City of Fargo has determined that there are no public utilities currently located or likely to be located within said public utility easement.

NOW, THEREFORE, It is hereby agreed.

1. The City of Fargo, together with Dennis Metzger and Alice F. Metzger, mutually and reciprocally release, terminate and relinquish the public utility easement located on the southerly 10 feet of Lots 15 and 16, except the westerly 34.07 feet of said Lot 15, Block 4, Dakota Park Addition to the City of Fargo, Cass County, North Dakota wherein said easement was established as a result of a Plat dated June 6, 1994, and recorded in the Office of the Recorder for Cass County, North Dakota on the 15th day of June 1994, as document number 813857.
2. The subject of this instrument is that certain real property described as follows:

The southerly 10 feet of Lots 15 and 16, except the westerly 34.07 feet of Lot 15, Block 4, Dakota Park Addition to the City of Fargo, Cass County, North Dakota.

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

Absent and not voting: Commissioner Sobolik.

The Resolution was adopted.

Report on Effects of the Dry Weather on Streets, Sidewalks and Trees in the City:

The Board received a communication from Director of Operations Ben Dow stating he would like to provide information to the Board on infrastructure issues and what the dry conditions are doing to the City's above ground and below ground assets.

Mr. Dow stated unplanned costs associated with these issues will reflect negatively on related budgets. Sidewalks are settling requiring temporary repairs and mud jacking, he said, and it remains unknown whether or not moisture will bring some areas back up. He encouraged citizens to assist by reporting problem sidewalks and streets to the City. He said some streets with a clay base instead of gravel have contracted, resulting in fractures, and major potholes could develop next spring. Curbs and gutters can be negatively affected as well, he said. In some places gate valve stems and manhole structures are sticking up in the streets due to adjacent areas sinking, he said, and damage to vehicles and snow plows could result if repairs are not made in a timely manner. He stated 22 water main breaks occurred in August, which is a large amount when compared to 45 during all of last year. There have been breaks in areas not seen before, he said, and recently there were four breaks in a single day. Trees have been impacted by the dry summer as well, he said, and the real affects will become apparent in the spring. Homeowners can help by paying attention to their trees and watering them, particularly newly planted trees, he said.

City Engineer April Walker stated the Engineering Department is working with the Public Works Department to solve the issues as damages are found. She said the Engineering Department continues to do long term planning and prioritizing, including identifying which streets are gravel or clay based, and mapping where particular water main materials have been used. She said the information is helpful in anticipating where problems may arise. She said many of the water main breaks

have occurred in areas where cast iron pipe was used and those areas have been the focus of the water main replacement program.

Mayor Walaker said the number of water main breaks is unusual and it shows the value of the water main replacement program which is underway. He said there are approximately 55 miles yet to be replaced and that work will continue for up to ten years.

Commissioner Williams said, in addition to flooding issues, the expansion and contraction of the soil is another reason why the river setback policy makes sense.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, October 15, 2012.

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

The time at adjournment was 5:38 o'clock p.m.