

Consent Agenda Approved:

Commissioner Mahoney moved the Consent Agenda be approved as follows:

- a. 1st reading of an Ordinance Amending Section 20-0305.J.1 of Article 20-03 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Specific Historic Overlay (H-O) Districts.
- b. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 10-0601 of Article 10-06 of Chapter 10 of the Fargo Municipal Code Relating to Theft and Shoplifting; 1st reading, 10/15/12.
- c. Extension of unpaid leave for Pam Nygaard through 3/1/13.
- d. 2012 Bureau of Justice Assistance Bulletproof Vest Partnership Grant in the amount of \$8,999.88 (CFDA #16.607).
- e. Agreement with Lutheran Social Services of North Dakota for refugee health services and interpreters (Contract #2013-32).
- f. Applications for property tax exemptions for improvements made to buildings:
 - (1) Marvin and Carol Wright, 3401 Par Street North (3 year).
 - (2) Susan Thiers, 1113 7th Street North (5 year).
 - (3) Danielle Knoll, 513 23rd Avenue North (5 year).
 - (4) Angie and Ronnie Holm, 1701 1st Street North (5 year).
- g. Applications for Games of Chance:
 - (1) NDSU Development Foundation BBB for a raffle on 10/6/12.
 - (2) Nativity Elementary School for a raffle on 2/1/13.
 - (3) Bethany Homes Auxiliary for a raffle on 12/6/12.
 - (4) NDSU Theta Chi for a raffle on 3/23/13.
 - (5) Brayden Hill Benefit for a sports pool on 11/10/12; Public Spirited Resolution.
 - (6) Fargo North Spartacus Dance Team for a raffle on 12/1/12.
- h. Plat of Metropolitan Park Addition (Attachment "A").
- i. Recommendation to purchase 3 Harley Davidson police motorcycles from Stutsman Harley Davidson for \$34,800.00.
- j. Encroachment Agreement with Brenan's Dry Cleaning & Laundry, Inc. at 921 4th Avenue North.
- k. Encroachment Agreement with Doyle Properties, LLC at 421 North University Drive.
- l. Purchase Agreements:
 - (1) William and Laura Porter for Permanent Easements (Project No. 5946-02).

- (2) Donald Kounovsky for Permanent Easement (Project No. 6032).
 - (3) Richard and Delores Kounovsky for Permanent Easement (Project No. 6032).
 - (4) Farm Power, Inc. for Permanent Street and Utility Easement (Improvement District No. 6112).
 - (5) Erin Kerfoot and JDC Real Estate I, LLC (Improvement District No. 5915).
 - (6) Erin Kerfoot (Improvement District No. 5915).
- m. Memorandum of Understanding with NDDOT for the 52nd Avenue South project near University Drive.
- n. Final Balancing Change Order No. 1 for an increase of \$9,097.82 for Project No. 6024.
- o. Contract and bond for Project No. 6168.
- p. Bills in the amount of \$9,485,494.53.

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

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

Request for Proposals for Consulting Services for Completion of a Storm Water Master Plan, Lift Station Design and Construction Administration Approved (Improvement District No. 6173):

The Board received a communication from the Public Works Projects Evaluation Committee (PWPEC) stating they concur with the recommendation of Division Engineer Brenda Derrig that staff seek consulting services through a Request for Proposals (RFP) to complete a Storm Water Master Plan, lift station design and construction administration for the area generally bounded by 45th Street on the east, Veterans Boulevard on the west, I-94 on the north and 40th Avenue on the south. She said with the construction of the new Sanford facility underway and a proposed plat just north of 40th Avenue South, it is increasingly important that the City develop a Storm Water Master Plan for this area, which will include a new lift station.

Commissioner Mahoney moved appropriate staff be directed to solicit a Request for Proposals for consulting services for completion of a Storm Water Master Plan, lift station design and construction administration for Improvement District No. 6173.

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

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

Updated Cost Share for Engineering Services for Improvement District No. 6093-01 Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating a three-year project is being undertaken by the City in conjunction with Metro COG and the City of West Fargo. They said the City of Fargo's share of the updated cost share for engineering services totals \$164,346.80.

Commissioner Mahoney moved the updated cost share for engineering services in the amount of \$164,346.80 for Improvement District No. 6093-01 be approved.

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

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

Contract Time Extension for Improvement District No. 6160 Approved:

Commissioner Mahoney moved approval of a contract time extension to November 6, 2012 for Improvement District No. 6160.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Sobolik, Wimmer 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. 5945-02 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of \$32,080.88 for Improvement District No. 5945-02.

Second by Williams. On call of the roll Commissioners Mahoney, Williams, Sobolik, Wimmer 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. 6099 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of \$3,006.59 for Improvement District No. 6099.

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

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

Presentation of the National Fire Academy Executive Fire Officer Award to Fire Chief Steve Dirksen:

Mayor Walaker presented a FEMA certificate to Fire Chief Steve Dirksen for his participation in the U.S. Fire Administration's National Fire Academy's (NFA) Executive Fire Officer Program (EFOP). He said Chief Dirksen received the title of "Executive Fire Officer" through his participation and completion of the Executive Officer Program.

Chief Dirksen said he started the four-year course in 2007 when he was with the Sioux Falls Fire Department and finished after becoming Fire Chief in Fargo. He said the course included two weeks in Emmitsburg, Maryland and a research paper

each year. He said he was able to get a couple of his papers published, which are in the U.S. Fire Administration Library.

Final Adoption 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 the approval of the Ordinance for a third time is necessary due to minor changes between the first and second readings of the Ordinance.

Chief of Police Keith Ternes said because of concerns about the Ordinance having unintended adverse affects on community-wide events, some new language was incorporated. He said the only new issue since the second reading is the establishment of a fee for a permit.

Commissioner Mahoney moved that a vote be taken on the question of the final passage and adoption of an 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 and second reading October 15, 2012.

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

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

Resolution Adopted Setting the Permit Fee for Outdoor Use of Sound Amplifying Equipment:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The Board of City Commissioners is authorized to establish the fee to accompany an application for a permit for outdoor use of sound amplifying equipment, pursuant to Fargo Municipal Code Section 11-0209; and

WHEREAS, The Board of City Commissioners desires to approve such a fee.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners as follows:

The fee for an application for a permit for outdoor use of sound amplifying equipment, pursuant to Fargo Municipal Code Section 11-0209 shall be in the amount of \$30.00.

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

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

Free Transit Rides to Early Voting Sites Approved:

The Board received a communication from Commissioner Mike Williams stating Fargo MAT Transit has offered free bus service on Election Day for quite some time and it has helped a few more people vote. He said he would like the Board to consider offering free bus service to and from the early voting sites in Fargo

that are on a current bus route (the Doublewood Inn and Hilton Garden Inn) to help make voting more convenient. He said as early voting begins on Monday, October 29, 2012, and the Commission meeting is not being held until that evening, one voting day will already be missed; however, there will still be four days for people to have free access to MAT Transit to vote in Fargo. He said the route at the Doublewood Inn has a 15-minute frequency and the Hilton Garden Inn is also on a regular route, with a one-hour frequency.

In response to a question from Mayor Walaker about how the information would get out, Planning Director Jim Gilmour said MAT Transit can announce it on their website and through alerts sent out to subscribers.

Commissioner Wimmer moved the offer of free transit rides to early voting sites from Tuesday, October 30, 2012 through Friday, November 2, 2012 be approved.

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

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

Recommendation for the Creation of a Youth Advisory Commission Approved: Appropriate Staff Directed to Work with Commissioner Sobolik to Assist in the Development of a Steering Committee:

The Board received a communication from Commissioner Sobolik stating she wishes to explore the establishment of a City Commission recognized Youth Advisory Commission. Young adults say they wish there were more to do in Fargo, she said, and non-profits and community groups are looking to reach out and get youth input. Two findings from a research study done in 2007 struck her, she said, that only 25% of youth felt valued in the community and only 20% said they had good role models. She said she talked with some other youth organizations in existence, including the Cass County Youth Commission, the Barry Foundation's Philanthropy and Youth Program, and Venture Youth Alliance, and they all felt a Youth Advisory Commission could complement their groups. Many young people are looking for ways to get involved, she said, and a Youth Advisory Commission could serve as a sounding board on community issues. This is all in a planning stage, she said, with youth being a part of creating it. She said she envisions a group of youth advisors under 18 years of age who are nominated and selected from the community. The advisors would serve for a term to be determined, she said, and the size of the Youth Advisory Commission could be any range from 7 to 13 members. She said she would like the Board's support to get started and would like to use Planning staff to assist in developing a Steering Committee, made up of primarily youth, to establish the framework for the Youth Advisory Commission. She said once the Steering Committee puts the guidelines into place, she will come back and make a formal presentation to share how the Youth Advisory Commission will move forward.

Commissioner Wimmer moved the recommendation from Commissioner Sobolik for the creation of a Youth Advisory Commission be approved and appropriate staff be directed to assist in the development of a Steering Committee.

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

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

Parcels of Land in Calico Prairie Addition Rezoned (4400 Calico Drive South):

At a Hearing held on April 3, 2012 the Fargo Planning Commission recommended approval of a change in zoning from MR-3, Multi-Dwelling to LC, Limited Commercial on the west 103 feet of Lots 3 and 4, Block 3, Calico Prairie Addition.

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 Sobolik 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 Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Wimmer, 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 Calico Prairie Addition, Fargo, Cass County, North Dakota:

Commissioner Sobolik moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance relating to rezoning certain parcels of land lying in Calico Prairie Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

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

Setback Waiver Request for Property at 4435 Riverwood Drive Approved Contingent Upon a Favorable Geotechnical Report:

The Board received a communication from Division Engineer Nathan Boerboom stating the Engineering Department has reviewed the drawing supplied by Lee Bonn for the proposed structure and improvements on his property at 4435 Riverwood Drive. He said it appears the structure will be located outside of the minimum disturbance zone (MDZS) but located entirely within the limited disturbance zone (LDZS). The structure is located outside the 100-foot setback from the current adopted FEMA floodway, he said, which allows for Mr. Bonn to request a waiver from the Setback Ordinance. Along with the structure, he said, Mr. Bonn is proposing to

construct a levee in his rear yard. He said the drawing provided indicates that the proposed elevation of this levee would be 897.00, which is approximately equal to a river gauge elevation of 43.0 feet. The levee will tie into the same elevation on both the north and south sides of the property, he said, and the proposed structure footprint would not be located in the existing 100-year floodplain nor the preliminary 100-year floodplain. He said Mr. Bonn is requesting a contingent approval based upon favorable results on the geotechnical study that he will have completed, depending on the decision of this request.

City Engineer April Walker said staff has reviewed the request in relationship to the criteria listed within the Setback Ordinance and determined Mr. Bonn is eligible to request a waiver. She said the final piece is for the geotechnical survey to be completed and a building permit would not be issued if the report says the land is not stable. She said Mr. Bonn asked that his application be brought to the Board due to the fact that he felt there is significant expense to obtaining a geotechnical analysis and he did not want to proceed down that path if a building permit would be denied.

City Administrator Pat Zavoral said the geotechnical report would be for the levee the property owner would like to construct.

In response to a question from Commissioner Williams about whether dry, as well as wet, conditions are considered and if there is an established framework for a geotechnical analysis, Ms. Walker said they have not historically looked at dry conditions and there is not a prescribed format, although both could be developed. She said scenarios like saturation, how long for seepage to form and rapid drawdown are looked at. With the newest FEMA floodplain maps and in comparison to the rest of the City, she said, this neighborhood will always require some real flood protection measures to be taken. She said it is not high on the list of certifiable projects because, to achieve that certifiable level, the homes would have to be removed.

Commissioner Williams said he will not support this request. He said it is important not to allow houses to be built in unstable areas and he prefers the property owner obtain a geotechnical analysis first.

Commissioner Wimmer moved the setback waiver request for property at 4435 Riverwood Drive be approved, contingent upon a favorable geotechnical report.

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

Commissioner Williams voted nay.

The motion was declared carried.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Tuesday, November 13, 2012.

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

The time at adjournment was 5:36 o'clock p.m.