

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting: Monday: November 26, 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, November 26, 2012.

The Commissioners present or absent were as shown following:

Present: Sobolik, Williams, Wimmer, Mahoney.

Absent: Walaker.

Deputy Mayor Mahoney presiding.

Order of Agenda Approved:

Commissioner Sobolik moved the Order of the Agenda be approved moving Item Nos. "d", "h", "q", "u", "w" and "x" from the Consent Agenda to the end of the Regular Agenda and adding an extra item at the end of the Regular Agenda for an update on the statewide smoking ban.

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

Minutes Approved:

Commissioner Wimmer moved that the Minutes of the Regular Meeting of the Board held on November 13, 2012 be approved as read.

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

Consent Agenda Approved:

Commissioner Sobolik moved the Consent Agenda be approved as follows:

- a. Revised investment policy that allows highly-rated corporate bonds to be utilized as an authorized investment for City funds.
- b. Purchasing card policy to increase cardholder purchasing limits for departmental designees and endorsing the purchasing card program rebate goals for 2013.
- c. Mass Transit Agreement with the City of West Fargo for 2013.
- d. Contract with John Olson to provide lobbying services during the 2013 Legislative Session (moved to the Regular Agenda).
- e. Amended Healthcare for Homeless Veterans allocation from the Department of Veterans Affairs to the City of Fargo (Contract #VA-263-P-1173).

- f. North Dakota Department of Health contract amendment for the Women's Way Program (CFDA #93.919).
- g. Agreement with the Nurse-Family Partnership Program for an evidence based program for low income, first time mothers and their children.
- h. Richland County Health Department agreement to share resources in the event of a public health emergency (moved to the Regular Agenda).
- i. Agreement with Nicole Myhre to provide Office Associate II/Transit Reservationist services for 2013 for the Planning and Transit Departments.
- j. Agreements with Nolan Vanyo and Lucas Pagel to provide Meter Reader I services for 2013.
- k. Settlement in the case of Cheryl Plante v. the City of Fargo for \$37,500.00.
- l. Receive and file Ordinance Amending Section 6-0105.A Relating to Pensions (Police).
- m. Receive and file Ordinance Amending Section 6-0218 of Article 6-02 of Chapter 6 of the Fargo Municipal Code Relating to Pensions (City Employees).
- n. Applications for five-year tax exemptions for improvements made to buildings:
  - (1) Angela Goldader, 1221 1st Street North.
  - (2) Jeffrey and Cheri Haarstick, 1117 11th Avenue South.
  - (3) Audrey Schock, 2301 9th Street North.
- o. Applications for Games of Chance:
  - (1) El Zagal Temple Holding Company for a raffle on 2/16/13.
  - (2) Muskies, Inc. F-M Chapter for a raffle on 2/7/13.
  - (3) Fargo Motor Patrol, Inc. for a raffle on 2/1/13.
- p. Recommendation to enter into an agreement with NDSU for exterior advertising on buses through June 30, 2013 for \$50,000.00.
- q. New Flyer proposal for purchase of four hybrid buses at a cost of \$2,515,524.00 (moved to the Regular Agenda).
- r. Award contract for winter pruning operations to Cougar Tree Care, Inc. for the total amount of \$118,215.00.
- s. Authorize staff to contract fuel purchases for 2013.
- t. Quitclaim Deed to the Park District for Lots 1 and 20, Block 1 and Lot 1, Block 3, South Forty at Osgood Second Addition.

- u. Addendum to Developer's Agreement with the North Dakota Horse Park Foundation and Horse Race North Dakota extending the special assessments deferral agreement for fiscal years 2013 and 2014 (moved to the Regular Agenda).
- v. NDDOT Maintenance Certification providing that the City will maintain street projects funded by FHWA funds.
- w. 2013 Flood Acquisition List with the addition of property south of 52nd Avenue adjacent to Drain 27 (moved to the Regular Agenda).
- x. Potential Flood Acquisition List with the addition of property south of 52nd Avenue adjacent to Drain 27 (moved to the Regular Agenda).
- y. Contract time extension for Project No. 6043-02 to 12/6/12.
- z. Professional Services Agreement with Moore Engineering for Improvement District No. 6158.
- aa. Bills in the amount of \$7,734,045.67.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Aaron Hill Appointed to the Human Relations Commission:

The Board received a communication from Mayor Walaker recommending that Aaron Hill be appointed to the Human Relations Commission to fill the unexpired term of Andrea Nordick who resigned.

Commissioner Wimmer moved Aaron Hill be appointed to the Human Relations Commission for the term ending July 1, 2015.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Harold Lee Lindsay Appointed to the Native American Commission:

The Board received a communication from Mayor Walaker recommending that Harold Lee Lindsay be appointed to the Native American Commission to fill the unexpired term of Dereck Stonefish who resigned.

Commissioner Wimmer moved Harold Lee Lindsay be appointed to the Native American Commission for the term ending June 30, 2014.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Contract with John Olson to Provide Lobbying Services During the 2013 Legislative Session Approved:

City Administrator Pat Zavoral said the City of Fargo has used the services of John Olson, a former legislator and registered lobbyist from Bismarck, the last two legislative sessions. He said Mr. Olson was instrumental in lining up support of legislators for diversion funding last session, and will monitor happenings on behalf of the City. He stated Mr. Olson has been contacted about providing lobbying services again during the 2013 Legislative Session for the City at the same rate as in the past, which is a fee of \$30,000.00.

Commissioner Wimmer moved the contract with John Olson to provide lobbying services for the City of Fargo during the 2013 Legislative Session for a fee of \$30,000.00 be approved.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Agreement with the Richland County Health Department to Share Resources in the Event of a Public Health Emergency Approved:

Deputy Mayor Mahoney said this item was moved to the Regular Agenda to promote awareness of services that Fargo Cass Public Health provides to other entities.

Director of Public Health Ruth Bachmeier said Richland County is one of a consortium of six counties in southeast North Dakota comprised of Traill, Steele, Richland, Sargent, Ransom and Cass counties, that receive federal funding to provide public health services in the region. The contract with Richland County specifically deals with sharing resources for 24/7, on-call public health services in the six-county region to deal with public health emergencies, she said.

Commissioner Wimmer moved the agreement with the Richland County Health Department to share resources in the event of a public health emergency be approved.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Purchase of Four Hybrid Buses Approved:

The Board received a communication from Planning Director Jim Gilmour stating the Transit Division is ready to proceed with the purchase of four hybrid fixed route buses. He said the new buses, which will replace several 1997 model buses, have a hybrid propulsion system and are 40-feet in length with a greater capacity than the current 35-foot buses. He said delivery is expected to be mid-2013. The City of Fargo has been awarded grants from the Federal Transit Administration that will pay for \$2,057,800.00 of the costs, he said, with the local share being \$473,636.00. He said City staff reviewed proposals from three bus manufacturers, and based on the quality of the buses and other factors, it is recommended that a contract be awarded to New Flyer at a cost of \$628,881.00 per bus for a total contract price of \$2,515,524.00. Tires are purchased separately by the City for tax savings, he said,

and the tire purchase will be a separate agreement at an estimated cost of \$3,978.78 per bus, for a total cost of \$15,915.12. He stated the final bus price will be \$632,859.78, which is 2% over the \$620,000.00 estimate that was used in the grants.

Commissioner Williams said New Flyer buses are already part of the fleet and, while they may cost more upfront, costs can be recouped in 5 to 6 years. Due to the high quality maintenance provided by the City's fleet management, he said, the buses are expected to operate for as long as 15 years.

Commissioner Williams moved the purchase of four hybrid buses from New Flyer at a cost of \$2,515,524.00 be approved.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

#### Proposed Changes to Fargo Metro Area Transit Routes Approved:

A Hearing had been set for this day and hour to receive comments on the proposed changes to Routes 11, 13, 13U, 14K, 14W, 15, 16 and 18.

The Board received a communication from Planning Director Jim Gilmour stating the 2012-2016 Transit Development Plan (TDP) established the following priorities for MATBUS: 1) maintaining existing systems, 2) investing in core areas and 3) expanding services. He said upon the recommendations of the recently adopted five-year TDP, and to improve on-time route performance, changes to several of Fargo's fixed transit routes are being considered. With increased numbers of passengers and the corresponding addition of vehicle stops, he stated, several routes in the current system were unable to operate on time, given the current paths and configurations. The Board approved several route modifications in July 2012, he said, which have made a substantial difference in improving on-time performance issues; however, additional route path modifications are being proposed to further improve timeliness and reliability. He said MATBUS is also requesting permission to extend many of its evening routes by one additional hour in response to passenger demand. He said common themes of public comments received were to provide fixed route service on Sundays, offer additional evening service, increase the number of vehicles on Route 15 on Saturdays to match weekday service, create 'books' of individual route maps in addition to the current system-wide map and increase the time to transfer between vehicles. Mr. Gilmour said riders are now able to flag buses, which is convenient; however, it slows the routes down making them unreliable. Having designated bus stops will speed up and improve service in the long run, he said.

Commissioner Williams moved the route changes be approved as advertised in the public hearing notice effective January 2, 2013.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Special Assessments Deferral Agreement with the North Dakota Horse Park Foundation and Horse Race North Dakota for Fiscal Years 2013 and 2014 Approved:

The Board received a communication from the Finance Committee stating the North Dakota Horse Park Foundation and Horse Race North Dakota have an existing special assessments deferral agreement that will expire on December 31, 2012. Special assessments were originally levied after construction of the Horse Park, they said, but have been under a deferred billing status since that time. They said a request for a two-year extension of their special assessments deferral agreement was made by these entities at the October Finance Committee meeting. The Finance Committee supports this request, they said, however, the dynamics of the current tax increment district and the lack of overall development within this district may not produce tax increment revenues to pay the annual installments that will be levied in 2015. The Committee also communicated that they will not support additional deferral requests beyond what is currently being requested.

Director of Finance Kent Costin said the infrastructure was originally financed through a Tax Increment Financing District (TIF), and one of the issues is that tax rates have been reduced and it creates some cash flow issues for them.

Ken Pawluk, President of the North Dakota Horse Park Foundation and Horse Race North Dakota, said the vision remains the same as before the two-year hiatus that set everything back. He said the goal has been for development to occur and to help fund the specials. There have been challenges and will continue to be challenges, he said, however, he is encouraged by the way things are going and is gratified to see development in that area now. He said if the request is approved, the Racing Commission will be contacted and alerted that there may be a shortfall in the specials and perhaps a plan can be developed to obtain State funding to help defray the specials. He said the special assessments total slightly over a million dollars.

Commissioner Williams stated, while everyone would like to see the Horse Park do well, he has not seen a sustainable funding model for this. He said deferred specials add interest onto parcels, making them less marketable. He said he feels reducing property taxes with more State aid for education would be beneficial to property owners and developers, and would be preferred over TIF financing.

Commissioner Wimmer moved the addendum to the Developer's Agreement with the North Dakota Horse Park Foundation and Horse Race North Dakota be approved, extending the special assessments deferral agreement for fiscal years 2013 and 2014.

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

Commissioner Williams voted nay.

Absent and not voting: Mayor Walaker.

The motion was declared carried.

2013 Flood Acquisition List Approved:

The Board received a Report of Action from the Public Works Project Evaluation Committee (PWPEC) stating the Committee reviewed a plan submitted by Division Engineer Nathan Boerboom related to the City's Comprehensive Plan for Flood Risk Reduction Projects. The plan identifies 186 properties for acquisition, they said, with 56 of those properties being recommended to receive offers for voluntary acquisition in 2013. To facilitate the buyout offers and to help manage the financial

commitment, they said, the buyouts have been broken into four groups for 2013. They stated the first group is just those properties impacted by the 4th Street levee recertification process and will receive offers during the first quarter of 2013. The second group, they said, includes seven homes on River Drive, five homes in Copperfield Court and six homes in Oak Creek. The next group includes seventeen homes on the south end of River Drive receiving offers in the third quarter of the year, they said. Finally, during the fourth quarter, they said, offers would go to one home on the corner of Harwood and Hackberry, ten homes on Hackberry and the remaining six homes on River Drive. They said they would also like to add a tract of land south of 52nd Avenue adjacent to Drain 27 to the 2013 Flood Acquisition List.

City Engineer April Walker said the list was presented earlier at an informational meeting. She said the intent of the list is to authorize staff to extend offers to 56 property owners identified as potential flood acquisitions in 2013. The voluntary acquisitions would be based on 110% of appraised value, she said, with the acquisitions spread throughout the year to help manage capital outlay. She said there is a group seeking information on their own, hoping it will lead to other alternatives. There is time for that, she said, due to the amount of work that needs to be accomplished and plans will proceed on the most efficient schedule possible.

In response to a question from Commissioner Williams asking if the four houses by the 4th Street levee are being acquired for access when other houses are closer to the river, Ms. Walker said the homes are not being acquired for access. She said three of the homes are adjacent to a lift station and there has been some physical movement of that lift station. The lift station could be rebuilt or moved, she said, however, the most economical solution is to pull further away from the river at that location which impacts those homes. She said the fourth home is by a retaining wall that was seen as a potential problem for stability during the 2009 flood and there are concerns about maintenance and recertification.

Commissioner Wimmer moved the 2013 Flood Acquisition List be approved with the addition of a tract of land south of 52nd Avenue adjacent to Drain 27.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

#### Potential Flood Acquisition List Approved:

The Board received a communication from the Public Works Projects Evaluation Committee stating they reviewed a communication from Division Engineer Nathan Boerboom related to the City's Comprehensive Plan for Flood Risk Reduction Projects. They said the plan identified 186 properties for acquisition, with 56 of those properties being recommended to receive offers for voluntary acquisition in 2013. They said they would also like to add a tract of land south of 52nd Avenue adjacent to Drain 27 to the proposed acquisition list.

City Engineer April Walker said staff is also working on a policy related to early buyouts based on hardships and, in order to be eligible to request an early buyout, a property must be identified as a Potential Flood Acquisition.

Commissioner Wimmer moved the Potential Flood Acquisition List be approved with the addition of a tract of land south of 52nd Avenue adjacent to Drain 27.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Report on Statewide Smoking Measure:

Deputy Mayor Mahoney said Director of Public Health Ruth Bachmeier was asked to explain the new statewide initiative dealing with smoking in the workplace.

Ms. Bachmeier said the new statewide smoking ban passed on the November 6th ballot with a 67% majority and will take effect December 6, 2012. She said the statewide smoking ban is more restrictive than the City of Fargo Ordinance and prohibits smoking in all enclosed areas of public places and places of employment, including all bars, restaurants and tobacco stores. Smoking is prohibited within 20 feet of any entrance, exit, operable window, air intakes and ventilations systems, she said. The definition of an open area is 67% open to air, compared to the City of Fargo Ordinance stating 25% must be open to air, she said, negating many outdoor smoking enclosures. She said smoking is prohibited in retail tobacco stores and hookah establishments, and the ban includes electronic cigarettes. The law also puts restrictions on smoking in sports arenas and events, she said, although clarification is needed on those. She stated information is being distributed to businesses and law enforcement agencies by the North Dakota Center for Tobacco Prevention and Control and a statewide media campaign is being planned. Fargo Cass Public Health will be the initial point of contact for enforcement, she said, and she expects the transition will go smoothly.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, December 10, 2012.

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

The time at adjournment was 5:54 o'clock p.m.