

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: January 5, 2015:

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 4:30 o'clock p.m., Monday, January 5, 2015.

The Commissioners present or absent were as shown following:

Present: Sobolik, Williams, Piepkorn, Mahoney.

Absent: None.

Mayor Mahoney presiding.

City Attorney Erik Johnson announced that the Board will meet in Executive Session in the River Room pursuant to NDCC §44-04-19.1 to consult with the City's attorneys regarding a forthcoming decision to award a contract for bids on a project known as "PR-15-G1 Street Reconstruction and Incidentals between 25th Street and Leahy" which decision may result in civil litigation or adversarial administrative proceedings.

Commissioner Sobolik moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.1 to discuss said matter.

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

At 4:33 p.m. the Board moved to the River Room to discuss said matter in Executive Session.

Members present were: Sobolik, Williams, Piepkorn and Mahoney.

The Executive Session closed at 4:58 o'clock p.m. and the meeting reconvened in public session at 5:00 p.m.

All Commissioners present. Mayor Mahoney presiding.

Order of Agenda Approved:

Commissioner Sobolik moved the Order of the Agenda be approved moving Item No. "14" from the Consent Agenda to the end of the Regular Agenda and omitting Item No. "23" from the Regular Agenda.

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

Minutes Approved:

Commissioner Sobolik moved that the Minutes of the Regular Meeting of the Board held on December 22, 2014 be approved as read.

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

Consent Agenda Approved:

Commissioner Piepkorn moved the Consent Agenda be approved as follows:

1. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 3-1301 of Article 3-13 of Chapter 3 of the Fargo Municipal Code Relating to Lodging Tax; 1st reading, 12/22/14.
2. Receive and file an Ordinance Repealing and Re-Enacting Article 25-04 of Chapter 25 of the Fargo Municipal Code Relating to Vehicles for Hire.
3. Direct City Attorney to draft ordinance relating to noise in parks.
4. Release of Claims Agreement for damage to City property in the 3700 block of 18th Street South.
5. Resolution Authorizing Officers to Make Deposits and Withdrawals and Approving Designated Depositories (Attachment "A").
6. Tax exemptions for improvements made to buildings:
 - a. Polly Kloster, 420 6th Avenue South (3-year).
 - b. Bradley and Sonja Kjar, 2935 2nd Street North (3-year).
 - c. Paul and Virginia Kruse, 1018 7th Street North (5-year).
 - d. David and Heather Klundt, 2816 Edgewood Drive North (5-year).
 - e. Richard and Lyn Reis, 1309 7th Street North (5-year).
 - f. Brian and Sandra Korbel, 801 Park Drive South (5-year).
 - g. Gene Zachgo, 1006 1st Street North (5-year).
7. Applications for Games of Chance:
 - a. Fargo Rotary Club for a calendar raffle from 1/1/15 to 6/17/15.
 - b. North Central Turf Grass Association for a raffle on 2/5/15.
8. Lease Agreement with Swanston Equipment Company for the use of two Bobcats in 2015; one by the Fire Department and one by Buildings and Grounds.
9. Purchase one motorgrader with wing from RDO Equipment for \$223,744.62.
10. Purchase of one Quint Ladder Truck from Spartan Fire for \$887,736.00.
11. Trail project between 5th and 7th Avenues South in the vicinity of 5th Street to be advanced to MetroCOG as the City's top priority for 2016 Federal Transportation Alternative Project funding.
12. Contract time extension for Project TR-14-31 to 2/28/15.
13. Bills in the amount of \$7,484,373.92.

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

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

Contract Amendment No. 2 for Improvement District No. PR-14-00 Moved to the Regular Agenda:

The Contract Amendment No. 2 for an increase of \$10,960.00 for Improvement District No. PR-14-00 was moved to the Regular Agenda.

Final Balancing Change Order No. 1 for Improvement District No. 6174 Approved:

Commissioner Piepkorn moved approval of Final Balancing Change Order No. 1 for an increase of \$28,656.50 for Improvement District No. 6174.

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

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

Final Balancing Change Order No. 2 for Improvement District No. 6211 Approved:

Commissioner Piepkorn moved approval of Final Balancing Change Order No. 2 for an increase of \$9,124.44 for Improvement District No. 6211.

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

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

Contract for Street Lighting Improvements and Incidentals Improvement District No. SL-14-01 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Fargo Electric Construction, Inc. for Street Lighting Improvements and Incidentals Improvement District No. SL-14-01 in the City of Fargo, North Dakota.

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

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

Contract Bond for Street Lighting Improvements and Incidentals Improvement District No. SL-14-01 Approved:

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

United Fire and Casualty Company, in the amount of \$306,363.40, for Street Lighting Improvements and Incidentals Improvement District No. SL-14-01 in the City of Fargo, North Dakota.

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

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

State Water Commission Request for Cost Reimbursement for FM Diversion Flood Project Costs Approved:

Commissioner Piepkorn said he feels that this is good information for the public to know.

Commissioner Williams said this information helps the residents see that the City is investing money in real flood protection.

Commissioner Piepkorn moved the cost reimbursement from the State Water Commission for FM Diversion Flood Project costs in the amount of \$1,153,978.00 be approved.

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

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

Advertisement of a Request for Proposals for a Feasibility Study to Evaluate the Repurposing of the Civic Center into a Multi-Purpose Performance Facility Approved:

The Board received a communication from Enterprise Director Bruce Grubb stating at the September 2, 2014 City Commission meeting appropriate staff was directed to work with a Task Force to draft a Request for Proposals (RFP) for a feasibility study analyzing the repurposing of the Civic Center into a multi-purpose performance facility. The RFP has been developed by the Civic Center Task Force, he said, and is now ready for advertising.

Commissioner Williams said what was learned when touring Sioux Falls, SD was that they are not able to accommodate Off Broadway shows due to their facility being too small. He said the City will need a facility to accommodate 2,000 to 2,400 seats with an 80 foot backstage in order to accommodate sets for Off Broadway shows which will provide additional flexibility.

Commissioner Piepkorn said food and beverages are also key to the economic model, as well as being a viable and busy facility that has the potential for being used a lot of the time. He said he realizes that the possibility of spending \$100,000.00 for the study is a lot of taxpayers' money; however, the City wants to make sure that things are done correctly.

Commissioner Piepkorn moved the advertisement of a Request for Proposals for a feasibility study to evaluate the repurposing of the Civic Center into a multi-purpose performance facility be approved.

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

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

Resolution Adopted Placing an Amendment on the Ballot Removing the Requirement that a City Commissioner Resign Before Becoming a Candidate for the Office of Mayor:

The Board received a Resolution drafted by City Attorney Erik Johnson removing the requirement that a seated City Commissioner resign before becoming a candidate for the Office of Mayor. He said at the December 22nd Commission meeting he was directed to prepare a Resolution to amend the Home Rule Charter, which is the first step in the amendment process. He said if the Commission

approves the Resolution it would be placed on the April 28, 2015 ballot for a citywide vote; however, the amendment, if approved on April 28th, would not take effect until the next election.

Commissioner Williams offered the following Resolution and moved its adoption:

WHEREAS, The Home Rule Charter presently requires a seated City Commissioner to first resign as a member of the Board of City Commissioners before becoming a candidate for the Office of Mayor, which resignation can be made effective on a date two weeks after the mayoral election; and

WHEREAS, The Board of City Commissioners finds it desirable and appropriate to propose for city-wide vote an amendment to the Home Rule Charter to remove the resignation requirement.

NOW, THEREFORE, BE IT RESOLVED, That Article 2 of the Home Rule Charter of the City of Fargo be amended to remove the requirement that a City Commissioner resign before becoming a candidate for the Office of Mayor as follows:

Home Rule Charter

Article 2 - Governing body and Mayor

A. 1 through 11 (no change)

12. Candidates for the governing body must be qualified electors of the City of Fargo, and must have been in continuous residence in the city for at least six months prior to filing their nomination papers.

13 through 19 (no change)

BE IT FURTHER RESOLVED, That said proposed amendment be placed before the voters at a Special City Election to be held April 28, 2015.

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

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

Application Filed by Brooks Johnson, Northside Properties, LLC for Payment in Lieu of Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by Brooks Johnson, Northside Properties, LLC for payment in lieu of property tax exemption (PILOT) for a proposed 12-unit, townhome-style apartment project at 1122 and 1126 19th Street North.

No written protests have been filed for the attention of the Board.

The Board determined that no person is present at this Hearing to protest or offer objection thereto.

Commissioner Sobolik moved that the application filed by Brooks Johnson, Northside Properties, LLC for a ten-year payment in lieu of tax exemption in the amount of \$247,170.00 pursuant to Chapter 40-57.1, NDCC be approved.

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

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

Application Filed by Chao You and Yechun Wang d/b/a Daxter Properties, LLC for Payment in Lieu of Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by Chao You and Yechun Wang d/b/a Daxter Properties, LLC for payment in lieu of property tax exemption (PILOT) for a proposed 12-unit, townhome-style apartment project at 1022 and 1026 15th Street North.

No written protests have been filed for the attention of the Board.

The Board determined that no person is present at this Hearing to protest or offer objection thereto.

Commissioner Sobolik moved that the application filed by Chao You and Yechun Wang d/b/a Daxter Properties, LLC for a ten-year payment in lieu of tax exemption in the amount of \$247,170.00 pursuant to Chapter 40-57.1, NDCC be approved.

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

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

Application Filed by SRS Properties, LLC for Payment in Lieu of Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by SRS Properties, LLC for payment in lieu of property tax exemption (PILOT) for a proposed 12-unit, townhome-style apartment project at 1415, 1417 and 1421 8th Avenue North.

No written protests have been filed for the attention of the Board.

The Board determined that no person is present at this Hearing to protest or offer objection thereto.

Commissioner Sobolik moved that the application filed by SRS Properties, LLC for a ten-year payment in lieu of tax exemption in the amount of \$340,672.50 pursuant to Chapter 40-57.1, NDCC be approved.

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

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

Parcels of Land in Legacy I Second Addition Rezoned (2247, 2269, 2281, and 2297 58th Avenue South):

At a Hearing held on December 2, 2014 the Fargo Planning Commission recommended approval of a change in zoning from MR-1, Multi-Dwelling to SR-4, Single-Dwelling on the East 24 feet of Lot 10, all of Lot 11, and the West 91 feet of Lot 12, all in Block 3, Legacy I Second 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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Piepkorn, Williams and Mahoney 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 Legacy I Second 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 Rezoning Certain Parcels of Land Lying in Legacy I Second Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

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

Parcels of Land in Eagle Valley Addition Rezoned (7270 25th Street South):

At a Hearing held on November 4, 2014 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to SR-4, Single-Dwelling, MR-2, Multi-Dwelling, P/I, Public and Institutional and LC, Limited Commercial of the proposed Eagle Valley 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.

In response to a question from Commissioner Piepkorn regarding the overall vision for the neighborhoods, Planner Nicole Crutchfield said the Planning Department does have an overall vision in the Growth Plan that was adopted in 2007. She said the Plan gives overall guidance in terms of land use and this area does meet the intent of the Plan.

In response to a question from Mayor Mahoney regarding walkability in this development, the developer Jonathan Youness said he worked with Planning staff and the Park District to come up with a pedestrian plan so that residents in the area can get to the local park facilities and trails.

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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Piepkorn, Williams and Mahoney 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 Eagle Valley 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 Rezoning Certain Parcels of Land Lying in Eagle Valley Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

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

Resolution Adopted Approving Eagle Valley Addition:

Commissioner Sobolik offered the following Resolution and moved its adoption:

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

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "Eagle Valley Addition" containing 153 Lots, 7 Blocks, and 77.79 acres of land more or less, located at 7270 25th Street South; and

WHEREAS, A Hearing was held November 4, 2014 by the Fargo Planning Commission, and notice of such Hearing had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer; and

WHEREAS, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on December 22 and 29, 2014 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., January 5, 2015 at which time said Plat would be considered and all interested persons would be heard.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission be accepted and the Plat entitled "Eagle Valley Addition" be and the same is hereby in all things affirmed and approved on the basis that it complies with the Standards of Article 20-06, and all other applicable requirements of the Land Development Code, and that the Mayor of the City of Fargo and the appropriate City Officials are hereby directed to endorse their approval on the Plat and then direct Petitioner to file same for record in the Office of the Recorder of Cass County, North Dakota.

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

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

Bid Award for Improvement District No. PR-15-G1 Delayed Until Further Discussions with Master Construction:

City Engineer April Walker said bids were opened on December 17th with three bidders submitting bids and the lowest bidder being Master Construction. She said the Commission has previously raised concerns about the performance of this contractor therefore she sees that the Commission has two options: One, the Commission can award the bid or two, the bid award can be delayed pending an investigation to determine if Master Construction is capable of completing the work.

Commissioner Piepkorn said there were some obvious concerns with the contractor from last year especially with the 19th Avenue project and he would recommend delaying the bid award until further discussions are held with Master Construction.

Commissioner Piepkorn moved that the bid award for Improvement District No. PR-15-G1 be delayed until there are further discussions with Master Construction.

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

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

Item No. 23 Omitted:

Item No. 23 (Application for abatement or refund of taxes #4443 submitted by Robert Hill Law, Ltd. on behalf of The Shoppes at Osgood, LLC/SuperValu on 4151 45th Street South) was omitted.

Contract Amendment No. 2 for Improvement District No. PR-14-00 Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee (PWPEC) stating a Contract Amendment was submitted by Apex Engineering in the amount of \$10,960.00. The additional costs covered in the request, they said, are related to additional time necessary to revise the originally designed work zone traffic control plan sheets and to revise the "Special Instructions to Bidders".

Commissioner Piepkorn said he has a few concerns and questions about whether the contractors are going to work at night, if they will make sure that the overhead power lines are buried and three new conduits for technology, and if there will be incentives for early completion of the project. He said he feels that in high impact intersections these questions should be asked.

City Engineer April Walker said she will have to look into whether the overhead lines will be buried. She said as far as night work, it is not currently proposed for this project due to the fact that with night work it puts a huge burden on staff because an employee would have to monitor the construction site 24 hours a day.

Commissioner Piepkorn said he is not proposing they work 24 hours a day but at least until nine or ten p.m. in the summer months which is not an unreasonable request, especially with 13th Avenue being such a heavily traveled section of town.

Ms. Walker said in general those hours are worked; however, the City does not have the ability to force the contractors to work if they are not working during those

hours. She said the City is really tied to those end of the year liquidated damages as a sticking point to the contractors.

Commissioner Piepkorn said there has to be a way to have some teeth into the contractors, because what happened on 19th Avenue will not be tolerated on this section of road and the public is not going to put up with it. He said the incentives are great; however, it is frustrating that the City cannot say that they need to be working on days that it is nice out and wishes there was more that the City could do.

Ms. Walker said a possible tool the City would have are incentives. They expect the work to take fifty days, she said, and if the work is completed in less than fifty days there would be a potential incentive of \$5,000.00 a day that the work is achieved ahead of the fifty days with a cap of \$100,000.00. She said the disincentive is \$2,500.00 per day for every day beyond the fifty days.

Commissioner Piepkorn moved Contract Amendment No. 2 in the amount of \$10,960.00 for Improvement District No. PR-14-00 be approved.

Second by Williams. On call of the roll Commissioners Piepkorn, Williams, Sobolik and Mahoney 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 19, 2015.

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

The time at adjournment was 5:44 o'clock p.m.