

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:   Tuesday:   September 4, 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., Tuesday, September 4, 2012.

The Commissioners present or absent were as shown following:

Present: Williams, Mahoney (via conference call), Sobolik, Wimmer, Walaker.

Absent: none.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Sobolik moved the Order of the Agenda be approved moving Items "a1" and "k" from the Consent Agenda after Item No. 8 on the Regular Agenda.

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

Minutes Approved:

Commissioner Williams moved that the Minutes of the Regular Meeting of the Board held on August 20, 2012 be approved as read.

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

Consent Agenda Approved:

Commissioner Wimmer moved the Consent Agenda be approved as follows:

- a. 1st reading of the following Ordinances:
  - (1) Amending Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference (moved to the Regular Agenda).
  - (2) Amending Section 10-0304 of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to Breaches of Peace and Order.
  - (3) Amending Section 11-0821 of Article 11-08 of Chapter 11 of the Fargo Municipal Code Relating to Environmental Nuisances.
  
- b. 2nd reading, waive reading and final adoption of an Ordinance Repealing Article 25-32 of Chapter 25 of the Fargo Municipal Code Relating to Dealers in Precious Metals and Precious Gems and Amending Section 25-1013 of Article 25-10 of Chapter 25 of the Fargo Municipal Code Relating to Pawnbrokers and Amending Section 25-3512 of Article 25-35 of Chapter 25 of the Fargo Municipal Code Relating to Secondhand Goods Dealers; 1st reading, 8/20/12.

- c. Receive and file limited franchise agreement with Cass County Electric, adding the area annexed by the City of Fargo on 7/27/12.
- d. Contract with Fargo Public Schools for nursing services for special education students for school year 2012-2013.
- e. Health Department budget adjustment and Contract Amendment with the North Dakota Department of Health for the WIC Program (CFDA #10.557).
- f. Grant Award Agreement with the North Dakota Department of Health for Water Pollution – EPA Block (CFDA #66.605).
- g. Notice of Appeal from Decision of Local Governing Body filed by Fred M. Hector and Earlyne L. Hector.
- h. Applications for Games of Chance:
  - (1) Make-A-Wish Foundation of North Dakota for a raffle on 9/7/12.
  - (2) Fargo Davies HS for raffles at Davies High School from 9/4/12 to 3/5/13.
  - (3) Fargo Davies HS for raffles at the Scheels Arena from 11/24/12 to 2/23/13.
  - (4) Fargo South High School for raffles at Fargo South High School, Scheels Arena and Bennett Elementary from 9/13/12 to 5/25/13.
  - (5) John Miller Benefit for a raffle on 9/9/12; Public Spirited Resolution.
  - (6) Eventide Senior Living Communities for a raffle on 10/26/12.
  - (7) NDSU for a raffle on 11/2/12.
- i. Fifth Amended Lease Agreement between North Dakota State University and the Fargo Dome Authority.
- j. Resolution authorizing submittal of a DWSRF loan application to the North Dakota Department of Health for Water Treatment Plant improvements (Attachment “A”).
- k. 2013 tree order award to Paul Bunyan Nurseries in the amount of \$39,082.70 plus freight (moved to the Regular Agenda).
- l. Contract with HighPoint Networks for the IP Telephony system and performance bond.
- m. Agreement with County 20 Storage & Transfer, Inc. regarding Airport and noise attenuation.
- n. Early building permits for Prinsco, Inc. at 4141 37th Street North and County 20 Storage and Transfer, Inc. at 4083 37th Street North.
- o. Deferral Agreement for Jill Bollinger in connection with Improvement District Nos. 5969, 5966 and 5904, and any additional districts.

- p. Deferral Agreement with Terry and Rhonda King for Improvement District Nos. 5969, 5966 and 5904, and any additional districts.
- q. Final Balancing Change Order for an increase of \$178,989.98 for Project No. 5153-3, grant agreement with the U.S. Fish and Wildlife Service for \$57,500.00 and commitment of \$101,489.98 from the Water Utility.
- r. Final Balancing Change Order for an increase of \$8,858.46 for Project No. 5901.
- s. Bid awards for Project Nos. 6112 to Northern Improvement Company in the amount of \$141,970.25 and 6113-04 to Aevenia in the amount of \$61,300.00.
- t. Contracts and bonds for Project Nos. 5992, 6042-01, 6043-02, 6115 and 6148.
- u. Bills in the amount of \$6,171,108.03.

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.

Final Balancing Change Order for Improvement District No. 5955-4 Approved:

Commissioner Wimmer moved approval of Final Balancing Change Order in the amount of \$20,836.96 for Improvement District No. 5955-4.

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.

Final Balancing Change Order for Improvement District No. 5973 Approved:

Commissioner Wimmer moved approval of Final Balancing Change Order in the amount of \$33,791.45 for Improvement District No. 5973.

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.

Bids Received for Sanitary Sewer, Water Main and Incidentals Improvement District No. 6147:

The bids for Sanitary Sewer, Water Main and Incidentals Improvement District No. 6147 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., August 29, 2012 and the bids were found to be as follows:

Key Contracting  
Bid:

Fargo, ND  
\$67,062.00

Rising Sun Construction Company, Inc. Bid:	Fargo, ND \$70,010.00
Master Construction Company, Inc. Bid:	Fargo, ND \$71,625.00
Sellin Brothers, Inc. Bid:	Hawley, MN \$84,385.00
Kindred Plumbing and Heating, Inc. Bid:	Kindred, ND \$89,951.00
Dakota Underground Company Bid:	Fargo, ND \$98,170.00

Contract for Sanitary Sewer, Water Main and Incidentals Improvement District No. 6147 Awarded to Key Contracting in the Amount of \$67,062.00:

Commissioner Wimmer 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 and Incidentals Improvement District No. 6147; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received August 29, 2012 for Sanitary Sewer, Water Main and Incidentals Improvement District No. 6147 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Sanitary Sewer, Water Main and Incidentals Improvement District No. 6147 shows the bid of Key Contracting of Fargo, North Dakota, in the sum of \$67,062.00 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 Key Contracting in the sum of \$67,062.00 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main and Incidentals Improvement District No. 6147 in the City of Fargo, North Dakota, be and the same is hereby awarded to Key Contracting for the sum of \$67,062.00, 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 Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Williams, Mahoney, Sobolik and Walaker voted aye.

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

No Protests Received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161:

The Statutory Resolution of Necessity for the construction of Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on July 30 and August 6, 2012 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Wimmer moved that the Board declare that no protests have been filed to the construction of Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161.

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.

Bids Received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161:

The bids for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., August 29, 2012 and the bids were found to be as follows:

Dakota Underground Company Bid:	Fargo, ND \$1,362,763.49
Master Construction Company, Inc. Bid:	Fargo, ND \$1,416,038.61
Sellin Brothers, Inc. Bid:	Hawley, MN \$1,448,007.65
Ryan Contracting Bid:	Shakopee, MN \$1,507,361.00

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161 Awarded to Dakota Underground Company in the Amount of \$1,362,763.49:

Commissioner Wimmer 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. 6161; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received August 29, 2012 for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6161 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. 6161

shows the bid of Dakota Underground Company of Fargo, North Dakota, in the sum of \$1,362,763.49 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 \$1,362,763.49 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. 6161 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground Company for the sum of \$1,362,763.49, 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 Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Williams, Mahoney, Sobolik and Walaker voted aye.

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

Contract for Street Lighting Improvement District No. 6159 Approved:

Commissioner Wimmer moved approval of the Contract between the City of Fargo and Fritz Electric for Street Lighting Improvement District No. 6159 in the City of Fargo, North Dakota.

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.

Contract Bond for Street Lighting Improvement District No. 6159 Approved:

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

United Fire and Casualty Company, in the amount of \$98,836.10, for Street Lighting Improvement District No. 6159 in the City of Fargo, North Dakota.

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.

Application Filed by Abdoulie Barry d/b/a F-M Road Force for a Taxicab License Approved:

The Board received a communication from City Auditor Steve Sprague stating the Taxi License Committee held a public hearing on Thursday, August 23, 2012 on the application filed by Abdoulie Barry d/b/a F-M Road Force for a taxicab license. Mr. Sprague submitted minutes of the hearing and copies of the police report and stated no serious concerns were raised in the police report or review of Mr. Barry's personal financial status. A couple minor concerns were addressed by the applicant, he said, including having a vehicle inspection and increased insurance limits. He said the Taxi License Committee voted unanimously to recommend that the application be approved.

Commissioner Williams moved the application be approved.

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

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

First Amendment to the Limited Joint Powers Agreement (JPA) Approved:

The Board received a communication from City Attorney Erik Johnson stating the existing Limited Joint Powers Agreement was entered into during the summer of 2011 and provided authorization for funding of \$16.5 million to be expended on design and other project related expenses during the fiscal year 2012. The principal purpose for this amendment, he said, is to approve funding of the fiscal year 2013 budget in the amount of \$29 million and identify the Minnesota share as being \$290,000.00 subject to final negotiation of the Minnesota/North Dakota cost-share ration. In addition, he said, since the Summer of 2011, it has been determined that the "Diversion Authority" should be added as a non-federal sponsor, along with the cities of Fargo and Moorhead, which is recognized in this First Amendment. The JPA is also being amended to clarify that the Diversion Authority has authorization to acquire land, he said, and although the Diversion is still in the design phase, certain project elements may be considered to be construction; therefore, the JPA is also authorized to clarify those costs.

Commissioner Wimmer moved the First Amendment to the Limited Joint Powers Agreement, including the Fiscal Year 2013 Budget, be approved as presented.

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.

Commissioner Sobolik Appointed as an Alternate Member of the Diversion Authority:

The Board received a communication from Mayor Walaker stating he and Commissioners Mahoney and Wimmer were the three Fargo members of the Flood Diversion Board of Authority when it was created. He said Fargo also had two Alternate Members – Commissioners Williams and Piepkorn. With the change in City Commissioners, he said, it is necessary to appoint a new Alternate Member and he is recommending Commissioner Melissa Sobolik be appointed.

Commissioner Williams moved the appointment of Commissioner Melissa Sobolik as an Alternate Member of the Flood Diversion Board of Authority be approved.

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

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

Communication Received from the City Attorney Regarding Property at 1205 16th Avenue South (Buland's Subdivision):

The Board received a communication from City Attorney Erik Johnson stating on August 20, 2012 the Board directed him to provide a report regarding the status of the zoning and special use permit pertaining to the property located at 1205 16th

Avenue South, owned by Dr. William Hunter, (the "Hunter property"). He said on November 1, 1976, the City Commission approved a special use permit allowing the property to be used as a "professional office." He said with the adoption of the Land Development Code in 1998, the City ceased issuing special use permits; however, previously-issued special use permits are still honored and are treated like any other zoning categories. Special use permits run with the land and not the landowner, he said, and do not end upon sale of the property. He said under Section 20-1002 of the Land Development Code, properties like the Hunter property are called "legal nonconforming properties" and current use is allowed subject to the conditions in Section 20-1002 of the LDC. Mr. Johnson summarized that the Hunter property is zoned SR-3, single-dwelling; however, it is subject to a special use permit for a professional office. He said any purchaser of the property would need to maintain a use equal to or less intensive than the use as it existed prior to the adoption of the LDC in 1998, a dental office and the Zoning Administrator will determine if the new use is equal to or less intensive than the existing, legal nonconforming use. The zoning change request was withdrawn by the applicant, he said, and no action is necessary.

Bonnie Hansen, 1105 16th Avenue South, said the property is being advertised as commercial property and she is concerned an unsuspecting buyer could be misled.

Mr. Johnson said any buyer would hopefully be aware of the zoning and the responsibility lies with the buyer to be sure zoning fits the use of a property.

Parcels of Land in Eagle Pointe First Addition Rezoned (Between 14th and 15th Streets South and between 72nd and 76th Avenues South):

At a Hearing held on July 3, 2012 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural, P/I, Public and Institutional, SR-2, Single-Dwelling, and SR-4, Single-Dwelling to SR-2, Single-Dwelling and P/I, Public and Institutional of the proposed Eagle Pointe First Addition.

The City Auditor's Office published a Notice of Hearing stating August 20, 2012 was the time and date set for said Hearing at which time all interested persons could appear and would be heard.

At the August 20, 2012 meeting, the Hearing was continued to this day and hour.

Commissioner Williams stated he would not support the proposed development because he feels it is premature expansion and the City has better places to build.

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 review criteria of Section 20-0906.F (1-4) has been met.



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

Commissioner Williams voted nay.

The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Eagle Pointe First 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 Pointe First Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

Commissioner Williams voted nay.

The motion was declared carried.

Resolution Adopted Approving Eagle Pointe First 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 Pointe First Addition to the City of Fargo, A Replat of All of Blocks 2, 3, and 8 and that part of Blocks 1, 4, 6, 7, and 9, MGB First Addition and that Part of Block 2, MGB Second Addition to the City of Fargo, Cass County, North Dakota, and a Vacation of that Part of 72nd Avenue South, 73rd Avenue South, Walsh Avenue South, 14th Street South, 15th Street South and 16th Street South within the Boundary of Said Eagle Pointe First Addition" containing 148 Lots, 7 Blocks, and 78.74 acres of land more or less, located between 14th and 15th Streets South and between 72nd and 76th Avenue South; and

WHEREAS, A Hearing was held July 3, 2012 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 July 16, 23, 30, and August 6, 2012 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., August 20, 2012. On August 20, 2012, the Hearing was continued to September 4, 2012, 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 Pointe First Addition to the City of Fargo, A Replat of All of Blocks 2, 3, and 8 and that part of Blocks 1, 4, 6, 7, and 9, MGB First Addition and that Part of Block 2, MGB Second Addition to the City of Fargo, Cass County, North Dakota, and a Vacation of that Part of 72nd Avenue South, 73rd Avenue South, Walsh Avenue South, 14th Street South, 15th Street South and 16th Street South within the

Boundary of Said Eagle Pointe First 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 Register of Deeds of Cass County, North Dakota.

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

Commissioner Williams voted nay.

The Resolution was adopted.

Maintenance Agreement Approved:

Planner Nicole Crutchfield said a new form titled “Maintenance Agreement (Public Works)” has been introduced by the Director of Operations Ben Dow and will be used for more complicated or ambiguous plats to clarify areas that may need further definition of the responsibilities between the Developer and the City.

Commissioner Sobolik moved the Maintenance Agreement be approved.

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

Commissioner Williams voted nay.

The motion was declared carried.

Parcels of Land in Agassiz Crossing Fifth Addition Rezoned (2221 51st Street South):

At a Hearing held on August 7, 2012 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to GC, General Commercial of the proposed Agassiz Crossing Fifth 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 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 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 Sobolik. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Sobolik, 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 Agassiz Crossing Fifth 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 Agassiz Crossing Fifth Addition, Fargo, Cass County, North Dakota be placed on first reading.

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

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

Resolution Adopted Approving Agassiz Crossing Fifth Addition:

Commissioner Wimmer 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 "Agassiz Crossing Fifth Addition" containing 2 Lots, 2 Blocks, and 50.72 acres of land more or less, located at 2221 51st Street South; and

WHEREAS, A Hearing was held August 7, 2012 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 August 27 and September 3, 2012 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., September 4, 2012 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 "Agassiz Crossing Fifth 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 Register of Deeds of Cass County, North Dakota.

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

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

Maintenance Agreement Approved:

Commissioner Wimmer moved the Maintenance Agreement for the internal public right-of-way be approved.

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

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

Parcels of Land in Original Townsite Addition Rezoned (1100 3rd Avenue South):

At a Hearing held on August 7, 2012 the Fargo Planning Commission recommended approval of a change in zoning from MR-3, Multi-Dwelling to NO, Neighborhood Office on Lots 1 and 2, Block 30, Original Townsite 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 Original Townsite 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 Original Townsite 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.

Resolution Adopted Authorizing the Issuance of Healthcare Revenue Refunding Bonds by the City of Moorhead (Evercare Senior Living, LLC Projects):

The Board received a communication from Director of Finance Kent Costin stating IRS regulations require a public hearing and local approval for the issuance of Health Care Revenue Refunding Bonds by the City of Moorhead, Minnesota for the benefit of Evercare Senior Living, LLC Projects, due to the fact that a portion of the bond proceeds will be used on a project located in Fargo at 1401-1411 West Gateway Circle. He said there is no liability assumed by the City of Fargo relating to the approval of this bond transaction.

Commissioner Wimmer moved the Resolution entitled "Resolution Giving Host Approval to the Issuance by Moorhead, Minnesota of Health Care Revenue

Refunding Bonds (Evercare Senior Living, LLC Projects)" and referred to as Attachment "B", be adopted and attached hereto.

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

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

Second Reading and Final Adoption of an Ordinance Amending Section 10-0311 of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to Panhandling:

Commissioner Wimmer moved that the proposed Ordinance Amending Section 10-0311 of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to Panhandling which was placed on its first reading August 20, 2012 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

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.

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 Wimmer, Williams, Mahoney and Walaker voted aye.

Commissioner Sobolik voted nay.

The Ordinance was duly passed and adopted.

Downtown Business Improvement District (BID) Report of Costs Approved and Plans and Specifications Received and Filed: Appropriate Staff Directed to Create a Memorandum of Understanding Detailing the City's Participation in the Downtown Business Improvement District:

The Board received a communication from President/CEO of the Downtown Community Partnership Mike Hahn stating an informational meeting was held with the Board on August 30th to share the information compiled and to answer questions about the Downtown Business Improvement District. During that meeting, he said, information was shared about the research and public meetings that took place in the development of the BID. He stated the total budget proposed for the Public-Private Partnership is \$193,542.40 annually and the City's proposed investment annually would be \$67,739.84. In addition to the annual investment by the City, it is proposed that the City's administration fee be waived, he said. He shared a chart of proposed joint obligations outlining the City's responsibilities, the BID's responsibilities and the benefits to the City. He said the money would be distributed toward the maintenance of the original investment in downtown so the value of that work is maintained. He said the DCP is hoping to get the BID in as part of their next year's budget. On behalf of the DCP, he said, he is asking for the support of the Board. He said this is the first time this has been done in the State of North Dakota.

City Auditor Steve Sprague said during most of 2012, the Downtown Community Partnership (DCP) has been meeting with downtown business owners to build support for a Downtown Business Improvement District (BID) with a goal of

getting the BID assessed this year. He said business owners in the area have agreed to be assessed for the costs. Some of the area includes land the City owns, he said, and the DCP is also looking for a contribution from the City. As a result of these meetings, he said, it was determined that a Memorandum of Understanding be created to detail the City's participation.

In response to a question from Commissioner Sobolik about whether the annual investment is a static amount or a percentage, Mr. Hahn said in most BID districts the annual investment is kept at a static amount. He said the DCP is recommending this be a five year process, during which the value of the BID must be proven, and to continue after five years, it will be necessary to come back to the Board.

Commissioner Wimmer moved the Downtown Business Improvement District (BID) Report of Costs (Non City assessments of \$193,542.00 plus City assessment of \$22,539.00) be approved and the Downtown Business Improvement District be declared necessary, BID plans and specifications be received and filed, and appropriate staff be directed to create a Memorandum of Understanding detailing the City's participation in the Downtown Business Improvement District (maximum City contribution of \$45,200.84).

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.

Resolution Adopted Declaring Downtown Business Improvement District Necessary:

Commissioner Wimmer offered the following Resolution and moved its adoption:

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

That it be and is hereby declared necessary to create Downtown Business Improvement District Improvement District No. 9112 in the City of Fargo, North Dakota, according to the Auditor'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 the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Downtown Business Improvement District must be in writing and must be filed with the City Auditor's Office within thirty days after the first publication of this Resolution. The Downtown Community Partnership shall reimburse the City Auditor for any costs incurred by the City if this improvement project is later barred by Section 40-22.1-08, NDCC.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

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

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

2013 Preliminary Budget Adopted: Public Hearing Set for September 17, 2012:

The Board received a communication from Director of Finance Kent Costin stating the 2013 preliminary budget was received and filed at the last Board meeting. The BID amount of \$193,542.00 which was approved earlier will need to work its way into the budget, he said. The next step in the budget process is to approve the 2013 preliminary budget with recommended amendments, he said, and schedule property tax and budget hearings. He recommended the City Commission approve the preliminary budget as presented and set the required hearing date for September 17, 2012, at which time any citizen or other interested individuals can comment or make inquiries about the proposed budget. He said the final budget approval must be completed by October 7, 2012. He stated federal revenues have declined, specifically related to grant funds that previously paid salaries of firefighters and public safety officers and those 19 FTE positions have been absorbed in the budget. State aid received from sales tax sharing is up considerably, he said, with almost \$8 million expected this year. There is no change in the mill rate, he said, although there is some trending in value so some people will pay slightly more in taxes. He said no increases are being recommended in utility fees. Capital expended by the Fargodome is considerably higher, he said, mostly due to turf replacement and a parking lot expansion. He stated the overall spending growth has slowed and the budget growth in the last three years is 4.4%, which is fairly conservative compared to others. He said because federal grant funds are declining, two full time positions in the Planning Department will be lost and the budget team did not recommend moving those positions to the general fund.

Commissioner Williams said his primary concern is with staffing in the Planning Department. He said the GO2030 plan was a highly engaged, community activity for more than a year with lots of work yet to do and he would hate to see it not be implemented because of less staff. With two senior staff leaving and only one being replaced, there will be a strain on the already overworked staff, he said, and he hopes there can be some flexibility in the budget to keep as much coverage as there is now, and maybe more. He said even with federal funds going away, a close look should be taken internally because efforts like the Neighborhood Stabilization Program have a good return on investment.

Mr. Costin said one FTE is still in the budget as a downgrade to a Planner from a Senior Planner. He said when the issues were discussed Planning staff said they were willing to try to manage within the resources available to see if it is workable.

City Administrator Pat Zavoral said a placeholder could possibly be held for the Senior Planner position so the two Senior Planner positions could be maintained. If a candidate came forward with the credentials to be a Senior Planner, he said, perhaps that position could be reinstated. He said the Planning Department is set up in two parts, Community Development, and Zoning and Planning, with the reduction in federal funds affecting Community Development the most. He said it is likely there will be even more federal cuts next year and he feels staffing is adequate for the GO2030 plan, however, he is more concerned about the social planning Community Development staff took on as there is only 25% of general funding for that.

Commissioner Sobolik said she is also concerned that the workload would increase. She said It will be necessary to prioritize and not as much can be done if there is less staff. A quality, well staffed Planning Department is vital for the community to thrive and grow, she said, and ways to keep it should be explored.

In response to a question from Mayor Walaker about when federal funding would end, Senior Planner Dan Mahli said funding is adequate until March.

Commissioner Wimmer moved the 2013 preliminary budget be adopted and the public hearing on the preliminary budget be set for September 17, 2012 at 6:00 p.m.

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

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

#### 2013 Tree Order Awarded to Paul Bunyan Nurseries:

The Board received a communication from City Forester Scott Liudahl stating RFP's were received August 17, 2012 for the 2013 tree order and the bids were found to be as follows:

Paul Bunyan Nurseries

Bid: \$ 39,082.70 plus freight

Midwest Landscapes

Bid: \$40,404.25 plus freight

Bailey Nurseries, Inc.

Bid: \$40,404.25 plus freight

Mr. Liudahl said he has learned tree quantities are down overall due to a decrease in demand and the need to lock in the order as soon as possible is critical to getting the species, sizes and quantities requested.

Commissioner Williams moved the 2013 tree order be awarded to Paul Bunyan Nurseries in the amount of \$39,082.70 plus freight.

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

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

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

Commissioner Mahoney said he moved the Ordinance from the Consent Agenda to discuss some concerns raised by bar owners. He said there were concerns that events like Ribfest could obtain extensions to the noise ordinance for three days and bars would only be allowed one or two days.

Assistant City Attorney Jason Loos said he and Chief Ternes worked with several bar owners in drafting the Ordinance and their absence tonight would indicate they do not object too strongly. He said the purpose of the Ordinance is to regulate outdoor entertainment, which came about from neighborhood complaints about



outdoor concerts in the area of JT Cigarro's and other bars in town. He said now a permit will be required for outdoor entertainment using amplified sound equipment. The Ordinance has exclusions for sporting events and community events such as the Street Fair, he said, and Ribfest, for example, will need a multiple day permit for music. He said businesses within 500 feet of a residential zoning district could only get a one day permit and would have to wait a month before being granted another.

Commissioner Wimmer moved First Reading of an Ordinance Amending Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference.

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

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

Presentation on the Transit American Public Transportation Association; 2011 Annual Report and Updated Transit Schedule:

Fargo Transit Administrator Julie Bommelman shared information on the Transit American Public Transportation Association (APTA) conference held in Fargo. She shared the video that was presented at the conference held here in June. She said it is quite a competition to get the national conference, and in partnership with NDSU, the application to be host of the conference was submitted in 2006. About 125 participants attended, she said, with 27 states represented. She said the conference was accomplished with no local funds used because a number of local agencies contributed. She stated there was a lot of focus on University partnerships and sessions on sustainability and marketing with a focus on student involvement and technology.

Ms. Bommelman gave an overview of the 2011 Annual Report. She said ridership on fixed routes in the entire system surpassed the national average, increasing about 5%, with over 2.1 million rides in Fargo-Moorhead. She said the hiring of a mobility manager has helped toward the goal of keeping Paratransit stable. In 2010, MATBUS won two national first place awards for its "210 in 2010" marketing campaign, she said, winning in both the Social Media and Shoestring Campaign categories. 210 NDSU students participated, she said, and 210 different ads were done. She said she just learned that their 2011 Annual Report won first prize out of 100 submissions in the 2012 Annual ADWord Awards Competition. Gregg Schildberger, who she credits for doing most of the work, will travel to Seattle in October to accept the award, she said. A new, completely revamped, easier to read map was released in July, she said, and is being well received. She said the current outreach campaign "Take the Challenge" just kicked off, which encourages drivers to leave their car home at least once a week and use another form of eco-friendly transportation.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, September 17, 2012.

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

The time at adjournment was 6:30 o'clock p.m.