

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

**Regular Meeting: Monday: November 29, 2010:**

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 29, 2010.

The Commissioners present or absent were as shown following:

Present: Mahoney, Piepkorn, Williams, Wimmer, Walaker.

Absent: None.

Mayor Walaker presiding.

**Order of Agenda Approved:**

Commissioner Mahoney moved the Order of the Agenda be approved.

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 November 15, 2010 be approved as read.

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

**Consent Agenda Approved:**

Commissioner Mahoney moved the Consent Agenda be approved as follows:

- a. Final adoption of an Ordinance Amending Sections 20-0401 and 20-0402 of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Use Regulations; 1st reading, 11/1/10; amendment and 2nd reading, 11/15/10.
- b. Receive and file an Ordinance Amending Section 8-0314 of Article 8-03 of Chapter 8 of the Fargo Municipal Code Relating to the Traffic Code (reckless driving).
- c. Receive and file an Ordinance Repealing and Re-Enacting Section 1-0305 of Article 03 of Chapter 1 of the Fargo Municipal Code Relating to Ordinance Violations (traffic fines in the penalty ordinance).
- d. Housing Rehab assistance forgiveness for properties at 1442 16 1/2 Street South and 1021 8th Avenue South.
- e. Agreement with Richland County Health Department to facilitate the provision of 24/7 on call public health services for the southeast region.

- f. Memorandum of Understanding Agreements with Ransom, Richland, Trill and Sargent Counties to share resources in the event of a public health emergency.
- g. Grant Agreement with Dakota Medical Foundation for a Cass-Clay School Wellness Policy Project.
- h. Health Department budget adjustment in the amount of \$32,430.00 and Grant Agreement with Dakota Medical Foundation to place 18 AED's with first responders in ND and MN.
- i. Purchase of Service Agreement with Centre, Inc. for minimum security placement services and detoxification services through December 31, 2015.
- j. Applications for Games of Chance:
  - (1) Pheasants Forever NDSU Chapter for a raffle on 12/17/10.
  - (2) North Central Turf Grass Association for a raffle on 2/24/11.
  - (3) Muskies, Inc. F-M chapter for a raffle on 2/10/11.
  - (4) Fargo Davies High School for raffles from 12/7/10 to 2/12/11.
  - (5) Fargo Davies High School for raffles from 12/7/10 to 3/1/11.
- k. Contract award for Sunday lift transportation to Handi-Wheels Transportation, Inc.
- l. Contract with Cougar Tree Care, Inc. for winter pruning operations.
- m. Deferral Agreement, Purchase Agreement and easements with Engebretson, et al for property on 73rd Avenue, 76th Avenue and 25th Street South.
- n. No-Build Easement Agreement between Integrity 4 Group, LLC and Plains Art Museum to provide a 60 foot clear area between buildings.
- o. Acquisition of property at 2985 Peterson Parkway for flood protection improvement (Project No. 5946).
- p. Bid award to Gast Construction Company, Inc. in the amount of \$173,527.00 for Project No. 5957.
- q. Right of Entry and Access Agreement with Asplin Excavating on City-owned property between 3638 and 3538 River Drive South.
- r. Rescind Resolution adopted on June 29, 2010 placing restrictions on over-width movements on 36th Street South from 32nd to 35th Avenue South.
- s. Engineering Services Contract Amendment No. 3 in the amount of \$356,692.00 for Project No. 5683-04.

- t. Engineering Services Contract Amendment No. 6 in the amount of \$1,547,057.00 for Project No. 5683-05.
- u. Engineering Services Contract Amendment No. 1 in the amount of \$18,415.00 for Project No. 5499.
- v. Sole source procurement and Engineering Services Proposal and Agreement with Houston Engineering in the amount of \$1,125,000.00 for Project No. 5246-03.
- w. Contract and bond for Project Nos. 5948 and SW 10-02.
- x. Bills in the amount of \$6,533,135.10.

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

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

**Change Order No. 1 for Improvement District No. 5942 Approved:**

Commissioner Mahoney moved approval of Change Order No. 1 for an increase of \$44,300.00 for Improvement District No. 5942.

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

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

**No Protests Received for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5202:**

The Statutory Resolution of Necessity for the construction of Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5202 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on August 31 and September 7, 2009 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Mahoney moved that the Board declare that no protests have been filed to the construction of Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5202.

Second by Wimmer. On call of the roll Commissioners Mahoney, Wimmer, Williams, Piepkorn 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, Paving, Street Lights and Incidentals Improvement District No. 5202:**

The bids for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5202 in the City of Fargo, North Dakota were

opened at 11:30 o'clock a.m., November 19, 2010 and the bids were found to be as follows:

Master Construction Company, Inc. Bid:	Fargo, ND \$4,097,099.77
Dakota Underground Company Bid:	Fargo, ND \$4,393,796.74
Northern Improvement Company Bid:	Fargo, ND \$4,591,418.05
Riley Brothers Construction, Inc. Bid:	Morris, MN \$4,799,324.49
Opp Construction Company Bid:	Fargo, ND \$5,248,706.90
Upper Plains Contracting, Inc. Bid:	Aberdeen, SD \$5,457,401.70
Duininck Brothers, Inc. Bid:	Prinsburg, MN \$5,648,895.29

**Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5202 Awarded to Master Construction Company, Inc. in the Amount of \$4,097,099.77:**

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5202; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received November 19, 2010 for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5202 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, Paving, Street Lights and Incidentals Improvement District No. 5202 shows the bid of Master Construction Company, Inc. of Fargo, North Dakota, in the sum of \$4,097,099.77 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 Master Construction Company, Inc. in the sum of \$4,097,099.77 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5202 in the City of Fargo, North Dakota, be and the same is hereby awarded to Master Construction Company, Inc. for the sum of \$4,097,099.77, subject to the

supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

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

### **Second Reading and Final Adoption of an Ordinance Repealing and Re-Enacting the Sign Code of the City of Fargo:**

Commissioner Piepkorn moved that the proposed Ordinance Repealing and Re-Enacting the Sign Code of the City of Fargo which was placed on its first reading November 15, 2010 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

Second by Wimmer.

Commissioner Williams stated he feels it is too early to amend the Sign Code.

On call of the roll Commissioners Piepkorn, Wimmer, Mahoney and Walaker voted aye.

Commissioner Williams voted 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 Piepkorn, Wimmer, Mahoney and Walaker voted aye.

Commissioner Williams voted nay.

The Ordinance was duly passed and adopted.

### **Appointments to the Native American Commission Approved:**

The Board received a communication from Mayor Walaker recommending the following appointments to the Native American Commission: Monique Vondall-Rieke be reappointed, Crystal Gonzales be appointed to fill the expired term of Donald Martin and Human Relations Commission member Lori Brownshield be appointed as an ex-officio member to fill the vacancy created by the resignation of Prairie Rose.

Commissioner Wimmer moved approval of the following appointments to the Native American Commission: the reappointment of Monique Vondall-Rieke for a three-year term ending June 30, 2013, the appointment of Crystal Gonzales for a three-year term ending June 30, 2013 and the appointment of Lori Brownshield for a three-year term ending June 30, 2013.

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

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

### **Appointments to the Housing and Redevelopment Authority Approved:**

The Board received a communication from Mayor Walaker recommending the reappointment of Michael Leier and appointment of Tonna Horsley to the Housing and Redevelopment Authority.

Commissioner Wimmer moved the reappointment of Michael Leier and the appointment of Tonna Horsley to the Housing and Redevelopment Authority for terms ending September 30, 2013 be approved.

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

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

**Melissa Sobolik and Andrew Nielsen Reappointed to the Historic Preservation Commission:**

The Board received a communication from Mayor Walaker recommending that Melissa Sobolik and Andrew Nielsen be reappointed to the Historic Preservation Commission.

Commissioner Wimmer moved the reappointment of Melissa Sobolik and Andrew Nielsen to the Historic Preservation Commission for terms ending October 31, 2013 be approved.

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

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

**Resolution Relating to Health System Revenue Bonds on Behalf of Sanford; Authorizing the Issuance and Sale Thereof Pursuant to the Municipal Industrial Development Act of 1955, North Dakota Century Code, Chapter 40-57 and the Execution of Documents:**

Director of Finance Kent Costin said Sanford Health's request for refinancing of revenue bonds is for savings in interest rates and consolidation of debt.

In response to a question from Mayor Walaker regarding whether or not this is strictly a refinancing and not for building a south-side hospital, Jeff Sandene, Regional CFO of Sanford Health, said it is all for refinancing and to streamline the organization from the three obligated groups in Thief River Falls, Sioux Falls and Fargo into a single obligated group.

Mr. Costin stated this does not represent liability for the City and is a conduit refinancing, something the City has done in the past.

Commissioner Piepkorn moved the Resolution entitled "Resolution Relating to Health System Revenue Bonds on Behalf of Sanford; Authorizing the Issuance and Sale Thereof Pursuant to the Municipal Industrial Development Act of 1955, North Dakota Century Code, Chapter 40-57 and the Execution of Documents" and referred to as Attachment "A", be adopted and attached hereto.

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

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

**Application Filed by T Lofts LLC for Payment in Lieu of Tax Exemption Approved:**

A Hearing had been set for this day and hour on an application filed by T Lofts LLC for payment in lieu of property tax exemption for operation of the T-Lofts Student Housing Project at 1515 11th Avenue North near NDSU's T parking lot.

Planning Director Jim Gilmour said this item has been on the agenda before; however, this is for the PILOT part of the application. He stated the applicant will pay tax on the land and value of the improvements as assessed prior to the project, in addition to the in lieu payments.

In response to a question from Commissioner Williams referring to his previous suggestion that rent be limited to a percentage over market value while the owner receives PILOT assistance, Mr. Gilmour said that language is not in this agreement because the thought is with other competing projects in the area the market should dictate rates.

Larry Nygard, Roers Development, said this business model is priced per student and while the rates may seem high, they are all inclusive so rent includes electricity, heat, cable and high speed internet.

Commissioner Piepkorn said this is an improvement and may put pressure on other landlords in that area to improve what is offered, as others will be in competition with the dorms. He said this project removes three blighted buildings and is in walking distance of NDSU.

Commissioner Williams said with ample parking and cooperative use of NDSU's T-lot parking, perhaps more could be asked of the developer, such as incorporating more trees.

City Administrator Pat Zavoral said the City has had some experience with rent control in the past and it always comes back to what the market will bear. He said fair market rents could be built into PILOT agreements; however, in this case, the proximity to the college would keep rents competitive. Fair market rents, he said, may be something the Commission would like staff to look into; however, there are always tradeoffs when more government involvement is the result.

Commissioner Williams said he would like the Commissioners to think about putting some control on rent increases, such as tying it to inflation in future applications.

Mr. Gilmour said the property will be back on the tax rolls in ten years and developers scaled back the project from the original plans because of the policy the Commission adopted limiting the amount of funding.

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 Wimmer moved that the application filed by T Lofts LLC for \$675,000.00 of payment in lieu of tax exemption pursuant to Chapter 40-57.1, NDCC based on a 2% annual growth factor be approved as follows:

Years 1-5 \$0; Year 6 - \$54,649, Year 7 - \$55,742, Year 8 - \$56,857, Year 9 - \$57,994, and Year 10 - \$59,154.

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

Commissioner Williams voted nay.  
The motion was declared carried.

**Application to Transfer the Alcoholic Beverage License from Mr. G's Inc. d/b/a Mr. G's to WOW, Inc. d/b/a WOW, the Bar Approved:**

A Hearing had been set for this day and hour on an application to transfer the Class "AB" Alcoholic Beverage License from Mr. G's Inc. d/b/a Mr. G's at 1150 43 1/2 Street South to WOW, Inc. d/b/a WOW, the Bar, notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Piepkorn moved the application be approved.

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

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

**Resolution Adopted Approving Trautman Addition (3307 US Highway 81 North):**

Senior Planner Jim Hinderaker said this is the culmination of the process that began with a request by the petitioner to allow a wind turbine on the property.

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 "Trautman Addition" containing 1 Lot, 1 Block and 12.29 acres of land more or less, located at 3307 US Highway 81 North; and

WHEREAS, A Hearing was held November 2, 2010 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 November 22 and 29, 2010 that a Hearing would be held in the City Commission Room at the City Hall, Fargo, North Dakota at 5:15 o'clock p.m., November 29, 2010 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 "Trautman 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 Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Williams, Mahoney, Piepkorn and Walaker voted aye.

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

**Parcels of Land in Asleson Industrial Park 6th Addition Rezoned (3950 34th Avenue South):**

At a Hearing held on November 2, 2010 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to GC, General Commercial on the proposed Asleson Industrial Park 6th 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.

Senior Planner Jim Hinderaker stated the owner is reluctant to plat the entire area at one time. The property owner's concern is taxes, he said, and he wants to retain most of the AG, Agricultural zoning rate vs. GC, General Commercial, until he is ready to develop more of the surrounding area. He said planning staff looked at future streets and based on staff's findings, it did not seem necessary to plat the remaining area at this time.

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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Piepkorn, 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 Asleson Industrial Park 6th Addition to the City of 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 Asleson Industrial Park 6th Addition to the City of Fargo be placed on first reading.

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

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

**Resolution Adopted Approving Asleson Industrial Park 6th Addition:**

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "Asleson Industrial Park 6th Addition" containing 1 Lot, 1 Block and 3.32 acres of land more or less, located at 3950 34th Avenue South; and

WHEREAS, A Hearing was held November 2, 2010 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 November 22 and 29, 2010 that a Hearing would be held in the City Commission Room at the City Hall, Fargo, North Dakota at 5:15 o'clock p.m., November 29, 2010 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 "Asleson Industrial Park 6th 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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Piepkorn, Williams, Mahoney and Walaker voted aye.

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

**Parcels of Land in Beardsley's Addition Rezoned (1705 11th Avenue North and 1005 17th Street North):**

At a Hearing held on November 2, 2010 the Fargo Planning Commission recommended approval of a change in zoning from SR-3, Single-Dwelling to UMU, University Mixed Use on the West 60 feet of Lots 10 and 11, Block 3 and from MR-3, Multi-Dwelling to UMU, University Mixed Use on Lot 14, Block 19 both in Beardsley's 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.

Senior Planner Jim Hinderaker said staff received one objection letter dated October 26, 2010 from Donna Bjerke, 1711 11th Avenue North, stating concerns about potential density issues. He said in spite of the objection letter, staff feels it is a move in the right direction and supports the zoning change.

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, Written protests to the request for rezoning have been received by the Planning Department representing 1.98 percent of the legal protest area.

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 Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Williams, Mahoney, Piepkorn 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 Beardsley's Addition to the City of 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 Beardsley's Addition to the City of Fargo be placed on first reading.

Second by Williams. On call of the roll Commissioners Wimmer, Williams, Mahoney, Piepkorn and Walaker 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, December 13, 2010.

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

The time at adjournment was 5:40 o'clock p.m.