

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

**Regular Meeting: Monday: February 22, 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, February 22, 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 Wimmer moved the Order of the Agenda be approved adding an extra item at the end of the Regular Agenda to discuss flood fight and flood recovery compensation guidelines.

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

**Minutes Approved:**

Commissioner Mahoney moved that the Minutes of the Regular Meeting of the Board held on February 8, 2010 be approved as read.

Second by Williams. 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. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 2/8/10:
  - (1) Amending Section 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Issuance and Transfer of Licenses (requiring that Class "E" Alcoholic Beverage Permit applications be received seven days prior to event).
  - (2) Amending Sections 12-0104, 12-0105 and 12-0111, Repealing and Re-Enacting Section 12-0112, Repealing Section 12-0113 and Enacting Sections 12-0113 through 12-0117 of Article 12-01 and Amending Sections 12-0201 and 12-0203 of Article 12-02, all in Chapter 12 of the Fargo Municipal Code Relating to Dogs and Cats.
  - (3) Amending Section 1-0305.A of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Ordinance Violations (potentially dangerous and dangerous dogs).
  - (4) Amending Section 11-0205 of Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference.

- (5) Amending Section 10-0318 of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to States of Emergency - Declaration and Duration.
  - (6) Rezoning Certain Parcels of Land Lying in Osgood Villas Fourth Addition to the City of Fargo.
  - (7) Rezoning Certain Parcels of Land Lying in Kirkham's 2nd Addition to the City of Fargo, Cass County, North Dakota.
- b. Expenditure of Neighborhood Stabilization Program funds for the acquisition of 1362 16th Avenue South for \$69,900.00 and 1806 5th Street North for \$89,000.0.
  - c. Funding agreements for \$71,000.00 in Job Access and Reverse Commute (JARC) funds (CFDA #20.516) and \$68,885.00 in New Freedom (NF) funds (CFDA #20.521).
  - d. Contract with the North Dakota Department of Human Services for the Refugee Program (Contract #600-07863 Amendment "A").
  - e. Purchase of Service Agreement with the North Dakota Department of Health for HIV counseling, testing and referral program (CFDA #93.943).
  - f. Health Department budget adjustment in the amount of \$3,000 and grant agreement with the North Dakota Department of Health to support the Moving More, Eating Smarter community program (CFDA #93.991).
  - g. Applications for 5-year property tax exemptions for improvements made to buildings:
    - (1) Curtis Goroski, 2847 Edgewood Drive.
    - (2) Gary and Sally Nelson, 809 North 27th Street.
    - (3) Bryce and Heidi Livingston, 34 18th Avenue North.
    - (4) Kathryne Gerst, 712 3rd Street North.
  - h. Applications for Games of Chance:
    - (1) Annabelle Hannig Benefit for a raffle on 3/6/10; Public Spirited Resolution.
    - (2) MDA "Old Fashioned Motorcycle Run" for a raffle on 6/5/10.
    - (3) Hunt of a Lifetime Foundation for a raffle on 3/13/10; Public Spirited Resolution.
    - (4) Clara Barton Hawthorne PTA for bingo on 3/6/10.
    - (5) The Saddle & Sirloin Club for a raffle on 4/8/10.
  - i. Bid award for lighting upgrades at the Island Park Ramp, GTC and Solid Waste Transfer building to Bergstrom Electric, Inc. in the amount of \$108,100.
  - j. Acceptance of Titan Machinery quote in the amount of \$74,999 annual rental rate and \$480,370 total five-year cost of a new landfill compactor.

- k. Resolution authorizing submittal of an application to the North Dakota Department of Health for a loan for the wastewater stabilization pond improvements under the Clean Water State Revolving Fund program (Attachment "A").
- l. Temporary license agreement with Northern States Power Company (Xcel Energy) in connection with Improvement District No. 5700.
- m. NDDOT Agreement for Safe Routes to School Infrastructure Improvements (Project No. 5919-02).
- n. Cost Participation, Construction and Maintenance Agreements with the NDDOT for flood damage repairs on various streets (Project No. 5900-1).
- o. Cost Participation and Maintenance Agreement with the NDDOT for Project No. 5839.
- p. Change Order No. 1 for an increase of \$9,192.41 for Project No. 5828.
- q. Bid award for Project No. 5657 to Industrial Builders, Inc. in the amount of \$2,399,690.00.
- r. Bid advertisement for Project No. 5919-01.
- s. Bills in the amount of \$3,531,739.18.

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

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

**Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5913 (11th Street South from 10th to 13th Avenues and 11th and 12th Avenues South from 10th Street to South University Drive):**

Commissioner Mahoney moved the following action be taken in connection with Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5913:

**Adopt Resolution Creating Improvement District No. 5913:**

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5913 in the City of Fargo, North Dakota, be created

**LOCATION:**

On 11th Street South from 10th to 13th Avenue.

On 11th Avenue South from 10th Street to South University Drive.

On 12th Avenue South from 10th Street to South University Drive.

**COMPRISING:**

Lots 1, and 20 through 24, inclusive, Block RR.  
Lots 11 through 15, inclusive, Block SS.  
All in Erskine's Addition.

Lots D through O and R through Y, inclusive, Block 2.  
All in McLaren's Subdivision of Erskine's Addition.

Lots 5 through 13, inclusive, & vacated alley, Block 1.  
Lots 1, and 4 through 8, inclusive, Block 2.  
All in Monson's Subdivision of Erskine's Addition.

Lots 2, 3, 5, 6 & 7, Block 1.  
All in Northrop's Addition.

Lots 1, and 4 through 10, inclusive, Block 1.  
All in Nelson's Addition.

Lots 1 through 6, inclusive, and Lot 12, Block 2.  
All in Phelp's Subdivision of Erskine's Addition.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5913 in the City of Fargo, North Dakota, be and the same is hereby created.

**Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5913:**

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5913 in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$781,385.00.)

**Order Plans and Specifications for Improvement District No. 5913:**

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5913 in the City of Fargo, North Dakota.

**Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5913:**

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5913 in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement

District No. 5913 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

**Adopt Resolution Declaring Water Main Replacement, Street Reconstruction and Incidentals Necessary:**

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

That it be and is hereby declared necessary to construct Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5913 in the City of Fargo, North Dakota, according to 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.

That a portion of said Water Main Replacement, Street Reconstruction and Incidentals improvement is to be paid from Special Assessments and approximately 18.45% is to be assessed against the benefited property in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Water Main Replacement, Street Reconstruction and Incidentals must be in writing and must be filed with the City Auditor's Office within 30 days after the First publication of this Resolution.

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

**Direct City Auditor's Office to Call for Bids for Improvement District No. 5913:**

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5913 in the City of Fargo, North Dakota.

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

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

**P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700: Protests Received and Declared Insufficient:**

The Statutory Resolution of Necessity for the construction of P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on December 7 and 14, 2009 and protests representing less than one percent of the legal protest area have been received and filed in the office of the City Auditor within the legal protest period.

Commissioner Mahoney moved the protests be received and filed and declared insufficient.

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

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

**Bids Received for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700:**

The bids for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 in the City of Fargo, North Dakota were opened by NDDOT on January 29, 2010 and the bids were found to be as follows:

Dakota Underground Company Bid:	Fargo, ND \$14,485,767.10
Northern Improvement Company Bid:	Fargo, ND \$15,044,455.40
Upper Plains Contracting, Inc. Bid:	Aberdeen, SD \$15,234,445.53
Strata Corporation Bid:	Grand Forks, ND \$18,220,263.67

**Contract for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 Awarded to Dakota Underground Company in the Amount of \$14,485,767.10:**

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 P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received January 29, 2010 for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 shows the bid of Dakota Underground Company of Fargo, North Dakota, in the sum of \$14,485,767.10 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 \$14,485,767.10 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground Company for the sum of \$14,485,767.10,

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, subject to bid award concurrence from the North Dakota Department of Health.

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

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

**Request for an Extension of the Noise Ordinance for Rib Fest and More Approved:**

The Board received a communication from Michael Brooks, Vice President/Market Manager, Go Radio Broadcasting, LLC and Rib Fest Committee Member, requesting a one hour extension of the City's Noise Ordinance for Rib Fest and More from June 9 through June 13, 2010 from 10:00 p.m. to 11:00 p.m. for live entertainment. Mr. Brooks stated they will make certain all City guidelines are followed and that noise is reduced as much as possible by the direction of the sound equipment. He also requested that they be able to maintain low-level sound up to midnight using their low-level PA for background music while patrons are exiting.

Commissioner Piepkorn moved the request for a one hour extension of the City's noise ordinance for Rib Fest and More from 10:00 p.m. to 11:00 p.m. from June 9 through June 13, 2010 be approved and that they be allowed to maintain low-level sound up to midnight.

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

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

**Contract with Dunham Engineering for Commissioning Services for the Main Library Approved:**

The Board received a communication from Civic Center Director Bob Getz stating a Request for Proposals for building commissioning services for the Main Library were opened Friday, February 19, 2010. He said the urgency of approving commissioning services is due to the building warranty period ending this spring. Mr. Getz submitted a communication stating there were five responses to the request for proposals and a committee composed of Pat Zavoral, Bruce Grubb, Richard Moorhead and he met and ranked the proposals. He said the proposal from Dunham Engineering falls within the expected range for the services and funds are available through the Library design and construction budget.

Commissioner Williams said the use of a commissioning agent can make a new building more efficient. Grand Forks, he said, used a commissioning service on a new County building and saved \$100,000 a year by tweaking the building systems.

Commissioner Williams moved the contract with Dunham Engineering for commissioning services for the Main Library be approved.

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

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

**2010 Compensation Guidelines for Flood Fight and Flood Recovery Approved:**

The Board received a communication from Finance Director Kent Costin and Human Resources Director Jill Minette stating, in preparation for the potential upcoming flood event, City staff has prepared guidelines for employee compensation and payroll cost reimbursement purposes based on how flood related activities were compensated during the 2009 flood. They said Department heads reviewed the guidelines and recommend they be adopted.

Commissioner Mahoney moved the 2010 Compensation Guidelines for City Employees for flood related activities be approved.

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

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

**Application Filed by ALBA, Inc. d/b/a Green Market Kitchen and Green Market Catering for an Alcoholic Beverage License Approved:**

A Hearing had been set for this day and hour on the application filed by ALBA, Inc. d/b/a Green Market Kitchen and Green Market Catering for a Class "F" Alcoholic Beverage License at 69 North 4th Street, 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.

**Application Filed by Genesis, Inc. d/b/a Jalapenos for an Alcoholic Beverage License Approved:**

A Hearing had been set for this day and hour on the application filed by Genesis, Inc. d/b/a Jalapenos for a Class "F" Alcoholic Beverage License at 2901 Main Avenue, 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 Wimmer. On call of the roll Commissioners Piepkorn, Wimmer Mahoney, Williams and Walaker voted aye.

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

**Resolution Adopted Approving Rocking Horse East Second Addition to the City of Fargo, Cass County, North Dakota (5301 through 5675 51st Avenue South, 4802 Veterans Boulevard, 6202 47th Avenue South and 5801 52nd Avenue South):**

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 "Rocking Horse East Second Addition" containing 20 Lots, 6 Blocks and 45.012 acres of land more or less, located at 5301 through 5675 51st Avenue South, 4802 Veterans Boulevard, 6202 47th Avenue South, and 5801 52nd Avenue South; and

WHEREAS, A Hearing was held January 12, 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 February 15 and 22, 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., February 22, 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 "Rocking Horse East Second 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, Mahoney, Williams and Walaker voted aye.

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

**Parcels of Land in Veterans Park First Addition Rezoned (4802 Veterans Boulevard South; between 53rd Street South and Veterans Boulevard and 47th Avenue South and 50th Avenue South):**

At a Hearing held on February 10, 2010 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to SR-3, Single-Dwelling on Lots 2-19 of Block 1, Lots 1-10 and Lots 12-24 of Block 2 and Lots 1-13 of Block 3; to SR-4, Single-Dwelling on Lots 15-34 of Block 3, Lots 1-26 of Block 4 and Lots 2-25 and 27-58 of Block 5; and to P/I, Public and Institutional on Lot 1 of Block 1, Lot 11 of Block 2, Lot 14 of Block 3 and Lots 1, 26 and 59 of Block 5, Veterans Park First 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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Piepkorn, Mahoney, Williams 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 Veterans Park First 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 Veterans Park First Addition to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

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

**Resolution Adopted Approving Veterans Park First Addition to the City of Fargo, Cass County, North Dakota:**

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 "Veterans Park First Addition" containing 162 Lots, 5 Blocks and 44.860 acres of land more or less, located at 4802 Veterans Boulevard South; between 53rd Street South and Veterans Boulevard, and 47th Avenue South and 50th Avenue South; and

WHEREAS, A Hearing was held January 13, 2010 and continued to February 10, 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 February 15 and 22, 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., February 22, 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 "Veterans Park 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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Piepkorn, Mahoney, Williams and Walaker voted aye.

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

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, March 8, 2010.

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

The time at adjournment was 5:30 o'clock p.m.