

**REGULAR MEETING OF CASS COUNTY BOARD OF COMMISSIONERS  
AUGUST 15, 2016**

**1. MEETING CALLED TO ORDER**

Chairwoman Mary Scherling called the meeting to order at 3:30 PM with all members present as follows: Ken Pawluk, Rick Steen, Arland H. Rasmussen, Chad M. Peterson and Mary Scherling.

**2. PLEDGE OF ALLEGIANCE**

Heather Worden led the Pledge of Allegiance.

**3. MINUTES APPROVED**

***MOTION, passed***

**Mr. Peterson moved and Mr. Rasmussen seconded that the minutes of the previous meeting be approved as written. Motion carried.**

**4. AGENDA, Order approved**

***MOTION, passed***

**Mr. Pawluk moved and Mr. Peterson seconded to approve the order of the agenda. Motion carried.**

**5. CONSENT AGENDA APPROVED**

***MOTION, passed***

**Mr. Pawluk moved and Mr. Rasmussen seconded to approve the consent agenda as follows: On roll call vote, the motion carried unanimously.**

- a. Authorize the publication of the annual notice for weed cutting.
- b. Receive financial statement from the Auditor's Office for the month ended July 31, 2016.
- c. Approve a special event permit for Jack Nick LLC d/b/a the Knickerbocker Liquor Locker to serve alcoholic beverages during the hours of 6:00 PM Friday, August 26, 2016, to 2:00 AM Saturday, August 27, 2016, for an event to be held at the Hickson Community Center in Hickson, North Dakota—the event is scheduled to be held outdoors at the Knickerbocker, so this permit would only be used in the case of inclement weather and would be moved to the Hickson Community Center; approve a special event for the Black Pelican, LLC to serve alcoholic beverages on August 27, 2016, during the hours of 5:00 PM to 12:00 AM for a wedding reception to be held at the Red River Valley Fairgrounds in West Fargo, North Dakota; approve two special event permits for Bar Nine to serve alcoholic beverages on September 17, 2016, during the hours of 5:00 PM to 12:00 AM for two wedding receptions to be held at Bonanzaville, U.S.A. in West Fargo, North Dakota; approve a special event permit for Bar Nine to serve alcoholic beverages on October 8, 2016, during the hours of 5:00 PM to 12:00 AM for a wedding reception to be held at Bonanzaville, U.S.A. in West Fargo, North Dakota; and approve two special event permits for Bar Nine to serve alcoholic beverages on October 22, 2016, during the hours of 5:00 PM to 12:00 AM for two wedding receptions to be held at Bonanzaville, U.S.A. in West Fargo, North Dakota.
- d. Approve a raffle permit for Sanford Health Foundation to be held August 19, 2016, at the Wild Rice Bar and Grill in Wild Rice, North Dakota.
- e. Approve omitted assessments according to notices sent by the county auditor to the affected property owners.
- f. Grant final plat approval for Corner Subdivision in Section 8, Township 137N, Range 50W of the 5<sup>th</sup> Principal Meridian, Cass County, North Dakota and for Chris Hansen Subdivision in Section 21, Township 143N, Range 53W of the 5<sup>th</sup> Principal Meridian, Cass County, North Dakota.
- g. Authorize the U.S. Army Corps of Engineers and Cass County Joint Water Resource District and their contractors and consultants access to county-owned properties to conduct surveys and testing of land needed as part of the Metro Flood Diversion Project, and authorize the County Administrator to sign all future Right of Entry Agreements on behalf of Cass County.
- h. Approve an abatement for the 2011 taxes for Shiloh Evangelical Free Church in the amount of \$1,595.33 and the related penalty on the taxes of \$9.67 for a total of \$1,605.00.

- i. Approve the purchase of additional office furnishings for new Social Service office space in the amount of \$12,215.16 as outlined in Christianson's Business Furniture Quote #25470 to be paid from 2016 Social Service budget line item 201-5010-444.74-02.
- j. Authorize the County Auditor to offer three vehicles at public sale with the proceeds to be deposited into the General Fund.
- k. Authorize the Cass County Auditor to act as fiscal officer for the Youthworks Human Trafficking-Victim Treatment and Support Services Grant (program period February 1, 2016, through June 30, 2017), for the eastern portion of the grant.

**6. RESOLUTION #2016-20, Sales, use and gross receipts tax for F-M Area Diversion Project and other flood control measures discussed**

John Shockley, Attorney from Ohnstad Twichell, P.C., Tom Rousakis from Ernst & Young Advisors, and Martin Nicholson from CH2M provided a presentation on the financial plan and sales tax extension proposal for the F-M Area Diversion Project.

The project is using a Public-Private Partnership (P3)—an agreement between the Metro Flood Diversion Authority and private developer. The process will provide a competitive procurement with a fixed price delivery of design, construction, finance and maintenance of the Diversion channel and associated infrastructure for 30 years. The financial plan is a multi-generational approach which utilizes an extension of existing City of Fargo and Cass County flood-related sales taxes, which is subject to voter approval. The project will be financed through federal funding, state funding, sales tax revenues, and an assessment district, which will help secure improvement bonds and availability payments. Special assessments will only be used if sales and use tax funds and the reserve fund do not have sufficient funds. The sales tax extension enables long-term amortization of the debt and future sales tax revenues could be used for early debt retirement.

A resolution was prepared regarding extension of the sales tax, which needs to be approved by the board in order to place the question on the upcoming General Election ballot. The board discussed a few revisions to clarify language regarding retirement of the tax. Commissioners tabled the item and asked Mr. Shockley to incorporate the changes and return later in the meeting.

**7. WATER RESOURCE DISTRICTS, Lake Bertha Flood Control District No. 75 project ballot question**

Mike Opat from Moore Engineering, Inc. was present to discuss an assessment district being proposed by the Cass County Joint Water Resource District (CCJWRD) for Lake Bertha Flood Control District No. 75. He showed a map of the area and discussed the project which, if approved, will construct a controlled outlet for the Lake Bertha basin in Eldred Township in Cass County located approximately two miles east of Alice, North Dakota. The outlet will help the CCJWRD mitigate damages caused by excess water levels during flooding and will provide an opportunity to utilize existing storage capacity within the basin for future floodwater detention benefits.

Tom Soucy, Assistant County Engineer, said County Road 6 has been under water for extended periods of time during floods over the last few years. This project will help alleviate some of the issues with area roads being underwater.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Peterson seconded to cast a "yes" vote on the Lake Bertha Flood Control District No. 75 ballot question as follows: "Should the Cass County Joint Water Resource District proceed with Lake Bertha Flood Control District No. 75 Project described herein?" On roll call vote, the motion carried unanimously.**

**8. INFORMATION TECHNOLOGY, Contract approved with Vision Technologies for website design**

Terry Schmaltz, Information Technology Director, said last year the board approved funds to update the county website, which was designed in 2007. There are technical upgrades needed to hardware

and software used to publish to the current site, and the appearance and functionality also need to be updated. Four different vendors were considered. He recommends the county contract with Vision Technologies. The project will take several months to complete and will extend into 2017. Funds from this year will pay for upfront costs and 2017 funds will pay for the actual project, which will be completed in stages. He said Grand Forks and Moorhead use the same vendor for their websites.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Peterson seconded to authorize the chair to sign a contract with Vision Technologies in the amount of \$109,420 for county website design services. On roll call vote, the motion carried unanimously.**

**9. TAX DIRECTOR OF EQUALIZATION, Offer to be made to candidate**

Keith Berndt, County Administrator, said a third interview was held for the County Tax Director of Equalization position two weeks ago. The candidate asked for a higher salary than what was offered and requested a transfer of sick leave and vacation leave balances from his current position. Mr. Berndt recommends the board hire the individual at a Step 6 of the paygrade for an annual salary of \$79,730 and allow him to start with 12 hours of vacation accrual per month. Commissioners were in agreement to present this offer to the candidate.

**10. FLOOD CONTROL, State Water Commission reimbursement request approved for Metro Flood Diversion Authority**

The state legislature approved a total of \$450 million during the last three legislative sessions to be spent on flood control costs. For consideration today is the 32<sup>nd</sup> request from the Metro Flood Diversion Authority, which covers eligible costs incurred from July 1, 2016, to July 31, 2016 for local matching share requirements of House Bill 1020. The costs are for residential relocation assistance for homeowners displaced by the OHB levee; commercial relocation assistance for Oxbow Country Club; in-town levee projects; flood risk management projects for 4<sup>th</sup> Street, Harwood, Hackberry, River Drive South and Drain 27 Prairie Rose Area; demolition, site restoration, and incidentals for the Belmont Park and Prairie Rose Additions; levee construction, storm sewer, paving and incidentals for Southwood Addition; utility relocations for in-town levee projects; and land acquisitions that are part of home buyouts.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Steen seconded to authorize the chair to sign reimbursement request #32 in the amount of \$3,725,044 to the State Water Commission to distribute funds to the Metro Flood Diversion Authority according to the terms and conditions of House Bill 1020. On roll call vote, the motion carried unanimously.**

**11. VOUCHERS, Approved**

***MOTION, passed***

**Mr. Steen moved and Mr. Peterson seconded to approve Voucher No. 294,967 through Voucher No. 295,235. On roll call vote, the motion carried unanimously.**

**12. VOTER ID LAW REPEAL; MEETING UPDATES, Committee reports**

Michael Montplaisir, County Auditor, said a federal judge recently ruled to repeal the voter identification law approved by the state legislature in 2015, which required individuals to present an ID with a current address and birth date in order to vote. The Secretary of State is supposed to provide some direction to county auditors on how the change should be handled. He said the previous method of voter affidavits will be used in the upcoming November election for those individuals who do not have an ID.

Commissioners and staff reported on meetings they have attended or will be attending in the upcoming weeks.

13. **RESOLUTION #2016-20, Sales, use and gross receipts tax for F-M Area Diversion Project and other flood control measures adopted**

Mr. Shockley presented the resolution with revisions previously discussed by the board to Paragraph 3 and the ballot question.

***MOTION, passed***

**Mr. Pawluk moved and Mr. Steen seconded to adopt Resolution #2016-20 Regarding Sales, Use and Gross Receipts Tax for Fargo-Moorhead (F-M) Area Diversion Project and Other Flood Control Measures; and direct the County Auditor to publish a Notice of Proposed Home Rule Charter Amendment on August 29, 2016 in *The Forum* and to place the question on the November 8, 2016 ballot: On roll call vote, the motion carried unanimously.**

**RESOLUTION #2016-20  
REGARDING SALES, USE AND GROSS RECEIPTS TAX FOR  
FARGO-MOORHEAD (F-M) AREA DIVERSION PROJECT  
AND OTHER FLOOD CONTROL MEASURES**

WHEREAS, the Red River and its tributaries regularly exceed the flood stage in Cass County; and

WHEREAS, the frequent flooding on the Red River and its tributaries threatens the life and property of the citizens of Cass County; and

WHEREAS, the County of Cass desires to protect the lives and property of the citizens of Cass County from the frequent flooding on the Red River and its tributaries; and

WHEREAS, the Army Corps of Engineers has studied various options for reducing the amount of damage caused by the frequent flood stages in Cass County; and

WHEREAS, the Metro Flood Group, now formally named as the Flood Diversion Board of Authority, the cities of Fargo and Moorhead, and the counties of Cass and Clay have adopted a locally preferred option for flood control; and

WHEREAS, the cost of the Fargo-Moorhead (FM) Area Diversion Project will be borne by various entities, including Cass County and the citizens of Cass County; and

WHEREAS, the Cass County Board of Commissioners, under its charter, may on its own motion submit any question to the electorate for a vote of the people and the electorate must approve that action by a majority vote of the electors voting.

NOW, THEREFORE, BE IT RESOLVED, that the Cass County Board of Commissioners hereby elects to proceed with a vote of the electorate at the next regularly scheduled election on whether a retail sales, use and gross receipts tax should be imposed and subject to limitations as follows:

1. Sales taxed shall be limited to those which are taxed by the State of North Dakota pursuant to Chapter 57-39.2 of the North Dakota Century Code.
2. The amount of the tax shall not exceed one half of one percent of the sales, use and gross receipts, which are taxed by the State of North Dakota pursuant to Chapter 57-39.2 of the North Dakota Century Code, nor shall the tax exceed twelve dollars and fifty cents on any single purchase; provided, that a higher rate of tax may be imposed and collected on sales of less than one dollar and on sales of fractional dollar amounts and the bracket system for the application of the state sales tax set forth in Section 57-39.2-08.2 of the North Dakota Century Code shall be adjusted to incorporate the additional county tax. The retail sales tax imposed shall be computed and collected in the same manner provided by law for the collection of the state sales tax.

3. The sales, use and gross receipts tax, which is adopted by this Resolution and is imposed pursuant to the authority granted by the Cass County Home Rule Charter, shall remain in effect until December 31, 2084, or until such time as all Fargo-Moorhead (FM) Area Diversion Project construction costs, availability payments, related special assessments and any and all debt obligations, including but not limited to loans, credit facilities, bonds or any other debt associated with the Fargo-Moorhead (FM) Area Diversion Project are paid in full and satisfied, whichever event occurs first. In no event shall the tax be lowered or discontinued until all costs of construction and while any bonded debt, including special assessments and/or availability payments for the construction remains unpaid for the Fargo-Moorhead (FM) Area Diversion Project.
4. The proceeds of the sales, use and gross receipts tax, which is imposed pursuant to the Cass County Home Rule Charter, shall be solely utilized for the Fargo-Moorhead (FM) Area Diversion Project and other flood control purposes including the payment of special assessments and indebtedness for the Fargo-Moorhead (FM) Area Diversion Project and other flood control measures.

AND, BE IT FURTHER RESOLVED, the Cass County Board of Commissioners hereby certifies a ballot question for consideration by Cass County electors for an election to be held November 8, 2016.

### **FLOOD PROTECTION SALES, USE AND GROSS RECEIPTS TAX PROPOSAL**

Shall the Cass County Home Rule Charter be amended to extend the existing flood- protection-related sales, use and gross receipts tax of one-half of one percent (1/2%) to be used solely for the engineering, land purchase, construction, and maintenance of flood control measures including the Metro Flood Diversion Project including associated special assessments and indebtedness, through December 31, 2084, and shall be rescinded when all of the costs, obligations and debt for said project have been paid in full and satisfied, whichever event occurs first as provided in Resolution #2016-20 and in the Notice of Proposed Cass County Home Rule Charter Amendment as published in THE FORUM on the 29<sup>th</sup> day of August, 2016.

### **SHALL SUCH AMENDMENT BE APPROVED?**

Yes 0

No 0

Dated at Fargo, North Dakota, this 15<sup>th</sup> day of August, 2016.

### **14. CORRESPONDENCE, Received and filed**

#### ***MOTION, passed***

**Mr. Rasmussen moved and Mr. Peterson seconded to receive and file correspondence outlined by the secretary as follows: Motion carried.**

- Information from the North Dakota Department of Commerce about a voting meeting of the North Dakota State Building Code amendment process for participating jurisdictions and organizations to be held September 7<sup>th</sup> and September 8<sup>th</sup> at the Great River Energy Building in Bismarck, North Dakota;
- Notice of Public Hearing on a renewal plan for a tax increment financing district for property located at 828 14<sup>th</sup> Street North in Fargo.

### **15. ADJOURNMENT**

#### ***MOTION, passed***

**On motion by Mr. Peterson, seconded by Mr. Rasmussen and all in favor, the meeting was adjourned at 4:59 PM.**

ATTEST:

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Michael Montplaisir – Auditor  
Cass County, North Dakota

APPROVED:

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Mary Scherling, Chairwoman  
Cass County Board of Commissioners