

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: April 19, 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, April 19, 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 adding contracts and contract bonds for the GTC remodeling project to Item "aa" in the Consent Agenda.

Second by Williams. 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 April 5, 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 an of Ordinance Amending Sections 19-0101 and 19-0102 of Article 19-01, Article 19-02, and Section 19-0302 of Article 19-03, and Enacting Section 19-0304 of Article 19-03, All in Chapter 19 of the Fargo Municipal Code Relating to the Department of Forestry – Trees, Parks and Boulevards; 1st reading 4/5/10.
- b. 1st reading of the following Ordinances:
 - (1) Repealing Section 12-0111 of Article 12-01 of Chapter 12 of the Fargo Municipal Code Relating to Dogs and Cats.
 - (2) Repealing and Re-Enacting Section 8-0320 of Article 8-03 of Chapter 8 of the Fargo Municipal Code Relating to Driving Without Liability Insurance.

- c. Receive and file an Ordinance Amending Section 18-0305 of Article 18-03 of Chapter 18 of the Fargo Municipal Code Relating to Public Ways and Places (prohibiting the sale of items on public property including driveway approaches).
- d. Out-of-Grade Pay for Blake Hanten from 4/4/10 to 10/17/10.
- e. Resolutions authorizing call and redemption of Series 1998C and 2003C Refunding Improvement bonds and necessary budget amendments (Attachments "A" and "B").
- f. Fire Department budget adjustments in the amount of \$1,549.80 for MF Haz Mat training.
- g. Police Department budget adjustment and North Dakota Department of Transportation Safety Belt Education and Enforcement Grant in the amount of \$5,000.00 (CFDA #20.600).
- h. Agreement with the North Dakota Department of Health for Ryan White Part B/Case Program Management for People Living with HIV/AIDS (CFDA #93.917).
- i. Applications for 5-year property tax exemptions for improvements made to buildings:
 - (1) Deborah Gilmore, 425 12th Avenue South.
 - (2) Cory and Laura Bowden, 813 9th Avenue North.
 - (3) Shaun Kohanowski, 71 6th Avenue North.
- j. Site Authorizations for Games of Chance:
 - (1) VFW Club of Fargo at the VFW Club Post 762.
 - (2) Red River Human Services Foundation at the Northern and the Hub.
 - (3) Plains Art Museum at the Bowler, Big Top Bingo and Cactus Jack's Saloon.
- k. Applications for Games of Chance:
 - (1) Fargo Babe Ruth League, Inc. for a calendar raffle from 5/9/10 to 6/30/10 (amended).
 - (2) Cathedral of St. Mary for a raffle on 5/16/10 (amended).
 - (3) YWCA Cass Clay for a raffle on 6/3/10.
 - (4) Fargo Moorhead Cosmopolitan Club for a sports pool from 6/1/10 to 12/31/10.
 - (5) Fargo Moorhead Cosmopolitan Club for a raffle from 8/1/10 to 6/30/11.
 - (6) Kristi Jorgenson Benefit for a raffle on 5/22/10; Public Spirited Resolution.
 - (7) El Zagal Shrine Provost for a sports pool from 9/1/10 through 1/31/11.
 - (8) USA Wrestling of North Dakota for a raffle on 7/7/10; Public Spirited Resolution.
 - (9) USA Wrestling of North Dakota for a raffle on 7/8/10.

- (10) USA Wrestling of North Dakota for a raffle on 7/9/10.
 - (11) Lincoln Elementary for bingo and a raffle on 5/12/10.
 - (12) Friends of Brad Dehne for a raffle on 8/11/10; Public Spirited Resolution.
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- I. Award of contracted tree and stump removals to Cougar Tree Care, Inc. with option to extend through 2012.
 - m. Award of contracted landscape maintenance to All-Terrain Grounds Maintenance in the amount of \$4,070.
 - n. Mosquito Control Agreement with Cass County for 2010.
 - o. Service Agreement with Friendship, Inc. for 2010 flood lot mowing.
 - p. Acceptance of quote from Industrial Builders, Inc. in the amount of \$39,276.00 for 2010 Cleanup Week contracting services.
 - q. Bid award for water main repair materials to Fargo Water Equipment in the amount of \$7,743.72 for Section 1 (Repair Sleeves) and in the amount of \$47,160.73 for Section 2 (Miscellaneous Materials).
 - r. Acceptance of proposal from Pioneer Excavating & Services for Sandbag Levee Removal, Sandbag Removal, Cleanup and Incidentals (Project No. 5939).
 - s. Purchase Agreements – Temporary Construction Easements in connection with Improvement District No. 5700:
 - (1) Calvary United Church.
 - (2) Calvary United Methodist Church of Fargo.
 - (3) North Dakota District of the Lutheran Church Missouri Synod.
 - t. Agreement for Special Improvements with Jet Land Properties (Improvement District Nos. 5931 and 5932).
 - u. Easement Agreement with Rocking Horse Farm, LLC (Improvement District No. 5706-1).
 - v. NDDOT Cost Participation and Maintenance Agreement and City advance funding of \$280,000 until 2011 for Improvement District No. 5905.
 - w. Engineering Services Contract with Ulteig Engineers in the amount of \$9,500.00 for parking lot work in connection with Improvement District No. 5640-05.
 - x. Engineering Services Contract Amendment with TKDA in the amount of \$32,500.00 for Project No. 5683-06.

- y. Change Orders for demolition, site restoration and incidentals to include demolition of 17 structures for the following: No. 1 for an increase of \$425,000.00 for Project No. 5747-22 and No. 1 for an increase of \$670,000.00 for Project No. 5747-23.
- z. Bid advertisement for Project No. 5900.
- aa. Contracts and bonds for water tower No. 11, GTC remodeling projects and Project Nos. 5921, 5927, 5936-1, 5936-2 and 5657.
- bb. Bills in the amount of \$2,947,239.94.

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

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

Contract for Seal Coat and Incidentals Improvement District No. 5912 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Pearson Brothers, Inc. for Seal Coat and Incidentals Improvement District No. 5912 in the City of Fargo, North Dakota.

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

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

Contract Bond for Seal Coat and Incidentals Improvement District No. 5912 Approved:

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

Merchants Bonding Company, in the amount of \$645,163.85, for Seal Coat and Incidentals Improvement District No. 5912 in the City of Fargo, North Dakota.

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

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

Contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5913 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5913 in the City of Fargo, North Dakota.

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

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

Contract Bond for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5913 Approved:

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

United Fire and Casualty Company, in the amount of \$743,609.00, for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5913 in the City of Fargo, North Dakota.

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

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

GFOA Certificate of Achievement for Excellence in Financial Reporting Presented to Jenica Flanagan, Jason Galonski and Jamie Bullock:

The Board received a communication from Director of Finance Kent Costin stating the City has received the Government Finance Officers Association's (GFOA) Certificate of Achievement for Excellence in Financial Reporting for its Comprehensive Annual Financial Report (CAFR) for the fiscal year ending December 31, 2008. Mr. Costin said the award requires a group effort of many employees; however, Jenica Flanagan, Jason Galonski and Jamie Bullock are primarily responsible for preparation of the CAFR. He said the City has been granted this award for the past twelve years and intends to continue this quality control review process in the future. Mr. Costin said Jenica Flanagan was unable to be at the Commission meeting to receive her award.

Mayor Walaker presented the awards to Jason Galonski and Jamie Bullock and commended the employees for their efforts in this regard.

Payment to Barbara Geeslin, 3131 10th Street North, for the Depreciated Value and Damages from Sewer Backup Approved:

The Board received a communication from City Attorney Erik Johnson stating on April 5, 2010 the Board approved payment of the depreciated value and deductibles for sewer backup properties in the 3100 Block of 9 1/2 and 10th Streets North, however Barbara Geeslin's claim was temporarily excluded so that it could be reviewed on an individual basis. Recently, he said, Commissioner Wimmer, Planner Mark Williams and he met with Barbara Geeslin to review her claim. Mr. Johnson stated, in the claim Ms. Geeslin submitted to Mr. Williams on February 12, 2010, she said her total out-of-pocket costs were \$24,813.71, after which payments of \$17,479.03 were made from the contractor, the consulting engineer and the City; \$2,000 from her insurance company; and another payment of \$600.43 from the North Dakota Insurance Reserve Fund (NDRF) for an error, which would leave the remaining "disputed" balance of \$4,734.25. He said the depreciated value of \$2,290.45 is similar to what was approved by the Board on April 5, 2010 for the other property owners and the disputed balance of \$2,443.80 is for Ms. Geeslin's vanity, sheetrock and wainscoting replacement, leaving an unpaid balance of \$4,734.25. Mr. Johnson said the incident resulted from a construction project on the sewer collection system near the affected property owners which is quite different from a natural event or blockage in the line. He said the City of Fargo, and its insurers, intend to continue claiming immunity from liability and to defend against such claims.

The Board's approval of the program for payment in this particular situation, he said, does not have to be, and should not be considered a precedent for other sewer backup situations.

Commissioner Wimmer said Ms. Geeslin's claim is fair and will make her whole again, just as other homeowners in the neighborhood were compensated two weeks ago at the April 5, 2010 City Commission meeting.

Commissioner Wimmer moved payment of \$4,734.25 to Barbara Geeslin, 3131 10th Street North, for the depreciated value and damages from sewer backup be approved.

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

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

Renaissance Zone Project for Tadd and Jamie Tobkin Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Tadd and Jamie Tobkin at 505 Broadway, #305.

No written protest or objection to the Project has been received or filed in the City Auditor's Office.

The Board determined that no person is present to protest or offer objection to the Project.

The Board received a communication from Senior Planner Robert Stein stating the Renaissance Zone Project application presented by Tadd and Jamie Tobkin meets all of the minimum criteria set forth in the Renaissance Zone Plan and is consistent with the established goals and objectives. Mr. Stein recommended that the project be approved.

Commissioner Piepkorn moved the Renaissance Zone application filed by Tadd and Jamie Tobkin for a project located at 505 Broadway, #305 be approved and the income tax and property tax exemptions be granted as recommended by the Renaissance Zone Authority.

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.

Request By Northern Lights Council to Conduct Shooting Sports for the Cub Scout Day Camp at Cardinal Muench Seminary on June 25-26 and August 6-7, 2010 Approved Contingent Upon Amendment of the Ordinance:

The Board received a communication from Billy Beatty, District Executive for the Northern Lights Council, Boy Scouts of America, requesting permission to conduct shooting sports at Cardinal Muench Seminary for a Cub Scout Day Camp on June 25-26 and August 6-7, 2010. He said safety is always a Scout's first concern so safety is implemented as a top priority into the program. He said shooting takes place on a range, which is roped off to include a safe zone of fire for all events and where a maximum of eight youth per certified range officer will shoot from a distance of 20-25 feet with leaders positioned around the camp to oversee the activities being conducted.

City Attorney Erik Johnson said the current Ordinance does not allow shooting within City limits. He said the Ordinance can be amended before June 25th so approval could be granted contingent upon completion of the amendment.

Police Chief Keith Ternes said he visited with a representative of the Northern Lights Council about the request and he agrees with Mr. Johnson regarding the necessity for an amended Ordinance in order to allow for these types of requests. He said authorization for exceptions to the law would be addressed by the Ordinance revision and would put the City on better footing by allowing groups like the Boy Scouts to operate special events within the law.

Commissioner Wimmer moved the request by Northern Lights Council to conduct shooting sports at the Cub Scout Day Camp at Cardinal Muench Seminary on June 25 and 26 and August 6 and 7 be approved contingent upon amendment of the Ordinance.

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.

Presentation by the Energy and Environmental Research Center Regarding a Waffle Plan:

The Board received a communication from Bethany Kurz, Senior Research Manager for the Energy and Environmental Research Center (EERC) in Grand Forks, stating the EERC and Pinnacle Water Management of Fargo will propose the implementation of a small-scale, distributed water retention pilot project at the April 19 Fargo City Commission meeting. She said the proposal would include the presentation of the Waffle concept, their proposed pilot project, work plan, timeline and a \$264,000 funding request from the City of Fargo.

Ms. Kurz submitted a proposal entitled "Pilot Implementation of Distributed, Temporary Water Retention in the Southern Red River Basin". She said the Waffle concept can help provide much needed water retention and flood damage reduction for Fargo and Moorhead, as well as surrounding communities and rural areas. The proposed approach, she said, would augment existing and proposed structural flood mitigation measures and help reduce the downstream impacts of a diversion. When coupled with landowner reimbursements in exchange for temporary, springtime water storage, she said, the Waffle approach could be a win-win for Fargo/Moorhead, participating landowners and rural residents and farmers of the region. She gave a PowerPoint overview of the pilot project.

Steve Dalen, Pinnacle Water Management, gave an overview of the Pilot Concept Step Process for implementation of the project.

Commissioner Mahoney said the City of Fargo is sponsoring the proposed diversion project and said he feels it is more appropriate for the watershed districts to be involved in this program.

Mayor Walaker said he recently sent a letter to Senator Dorgan regarding Federal support of the EERC's Waffle Plan project. He said he agrees with the Waffle Plan approach but said it is only a portion of the solution for downstream effects from long term flood protection.

City Attorney Erik Johnson announced that there are pending litigation matters to be discussed in Executive Session, specifically the following cases: Rakowski v. City of Fargo; Cheryl Plante v. City of Fargo; David and Jane Lundeen v. City of Fargo; Candice Rupprecht v. Dane Hjelden, a Fargo police officer; Howard W. Kremer v. City of Fargo; Progressive Insurance and John Soltis v. Steven Gee and City of Fargo; Ruben Lopez v. City of Fargo and Officer Skalicky; Nodak Mutual Insurance and Cordell Schott v. City of Fargo; Henderson v. Cochran and City of Fargo; Hector Special Assessment 5314 (Appeal); Hector Special Assessment 5314 (Lawsuit); City of Fargo v. Malloy; Iliina Valkova v. Mike Benton; Red River Freethinkers v. City of Fargo; Sauby v. City of Fargo; Hector v City.

Commissioner Wimmer moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.2 to discuss said pending litigation matters.

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

At 6:02 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

Members present were: Wimmer, Mahoney, Piepkorn, Williams and Walaker.

The Executive Session closed at 6:43 o'clock p.m. and the meeting was adjourned.

The next meeting of the Board will be held at 5:00 o'clock p.m., Monday, May 3, 2010.