

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: June 1, 2009:

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, June 1, 2009.

The Commissioners present or absent were as shown following:

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

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Piepkorn moved the Order of the Agenda be approved moving Item "b" from the Consent Agenda to the end of the Regular Agenda.

Second by Mahoney. 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 May 18, 2009 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. 2nd reading, waive reading and final adoption of an Ordinance Amending Sections 23-0203 and 23-0211 of Article 23-02 of Chapter 23 of the Fargo Municipal Code Relating to the Electrical Code; 1st reading, 5/18/09.
- b. Waive the requirement to receive and file an Ordinance one week prior to first reading and first reading of an Ordinance Annexing a Certain Parcel of Land Lying in the North Half of the East Half of the Northwest Quarter of Section 13, T138N, R49W, in Cass County, North Dakota (moved to the Regular Agenda).
- c. Revenue Stabilization Fund Balance policy.
- d. Position Evaluation Committee recommendations:

Police Department: Request to add 3 FTE's for police officers using the FTE's allocated to the fire department in the 2009 budget that are now being grant funded effective immediately upon approval.

PEC recommends approval of this request. Budget Impact: \$0

Health Department: Request to reclassify vacant WIC Certifier (B21) to WIC Nutritionist 1 (B31) effective immediately upon approval.

PEC recommends approval of this request. Budget Impact: \$7,550
(reimbursed through state grant funding)

Health Department: Request to convert City Readiness Coordinator (C42) from a contract position to a regular full-time position and re-title the position to Strategic National Stockpile/City Readiness Initiative Coordinator effective immediately upon approval.

PEC recommends approval of this request. Budget Impact: \$0
(funded through federal grant)

Sick Leave Policy: Review of employee request to change the sick leave policy to include a pay out of accrued sick leave when an employee retires.

PEC recommends no change to the current sick leave policy.

Health Insurance Renewal: Discussion on health insurance renewal process including a comparison of the City of Fargo health insurance plan and the NDPERS health insurance plan.

PEC supports the health insurance renewal process including a comparison of the City of Fargo health insurance plan and the NDPERS health insurance plan.

Job Evaluation Process: Review proposal submitted by Employer's Association, Inc. for a formal job evaluation review process/compensation study for all City of Fargo positions.

PEC recommends a formal job evaluation review process/compensation study for all City of Fargo positions to be conducted by Employer's Association Inc. Budget Impact: \$43,503 (cost of compensation study)

- e. Report from John M. Olson regarding legislative lobbying services during the 2009 Legislative Session.
- f. Contract with the North Dakota Department of Health for the Public Health Emergency Preparedness and Response for pandemic influenza planning.

- g. Application filed by Michael and Jacey Mueller for a 3-year exemption from taxation for improvements made to a building at 95 28th Avenue North.
- h. Sale of NRI property at 812 8th Street North for \$64,500.
- i. Franchise provision and lease document with PM Coffee, LLC for provision of a coffee kiosk in the Main Library.
- j. Site Authorizations for Games of Chance:
 - (1) West Fargo Hockey Association at Old Chicago and Fort Noks.
 - (2) Gilbert C. Grafton Post #2 American Legion at the American Legion Club.
 - (3) Boys & Girls Club of the Red River Valley d/b/a Fargo Youth Commission at Borrowed Bucks Roadhouse, Mr. G's and Slammers Sports Bar.
 - (4) The ARC Upper Valley, Inc. at JT Cigarros.
- k. Applications for Games of Chance:
 - (1) El Zagal Provost Guard for a sports pool from 9/13/09 through 1/3/10.
 - (2) Fargo Firefighters Local 642 for raffles from 6/2/09 through 7/24/09.
- l. Quote from Northern Improvement Company in the amount of \$82,530.75 for construction of the Shanley recycling drop site.
- m. Access Agreements and \$200 payments for properties at 1101 32nd Avenue South, 3000 11th Street South and 912 Southwood Drive (Improvement District No. 5031-02).
- n. Contract award to Laney's, Inc. for 2009 Flood Storm Sewer Cleaning (Project No. 5892).
- o. Contract awards for 2009 flood projects (Project Nos. 5893, 5894 and 5895).
- p. Bid awards for Project Nos. 5867 and 5872-01.
- q. Contract and bond for Project No. 5870.
- r. Bills in the amount of \$3,864,697.76.

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

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

Final Balancing Change Order No. 2 for Improvement District No. 5314-10 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 2 for an increase of \$2,273.95 for Improvement District No. 5314-10.

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

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

Final Balancing Change Order No. 1 for Improvement District No. 5762 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for a decrease of \$1,553.99 for Improvement District No. 5762.

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

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

Contract Amendment with URS for Improvement District No. 5073-7 Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating they reviewed the scope of work and estimated cost for the contract amendment with URS for environmental documentation associated with the South Side Flood Control Project. They said the amendment addresses additional work items associated with FEMA's decree that an Environmental Impact Statement be completed in lieu of the Environmental Assessment as originally proposed. The Committee recommended the contract amendment be approved.

Commissioner Mahoney moved the contract amendment with URS in the amount of \$89,950 for South Side Flood Control Improvement District No. 5073-7 be approved.

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

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

Contract Amendment No. 10 for Improvement District No. 5073 Approved:

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating they reviewed contract amendment No. 10 for engineering services for Project Development activities related to the South Side Flood Control Project. The Committee recommended the contract amendment be approved.

Commissioner Mahoney moved contract amendment No. 10 in the amount of \$358,990 for Improvement District No. 5073 be approved.

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

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

Shared Use Path Improvement District No. 5838: Protests Received and Declared Insufficient:

The Statutory Resolution of Necessity for the construction of Shared Use Path Improvement District No. 5838 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on March 30 and April 6,

2009 and protests representing less than 1 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 Piepkorn. On call of the roll Commissioners Mahoney, Piepkorn, Wimmer, Williams and Walaker voted aye.

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

Contract for Shared Use Path Improvement District No. 5838-01 Awarded to Wanzek Construction in the Amount of \$440,971.40:

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 Shared Use Path Improvement District No. 5838-01; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received May 27, 2009 for Shared Use Path Improvement District No. 5838-01 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Shared Use Path Improvement District No. 5838-01 shows the bid of Wanzek Construction of Fargo, North Dakota, in the sum of \$440,971.40 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 Wanzek Construction in the sum of \$440,971.40 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Shared Use Path Improvement District No. 5838-01 in the City of Fargo, North Dakota, be and the same is hereby awarded to Wanzek Construction for the sum of \$440,971.40, 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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Piepkorn, Wimmer, Williams and Walaker voted aye.

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

Contract for Drain 10 Flood Mitigation and Incidentals Improvement District No. 5525 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Drain 10 Flood Mitigation and Incidentals Improvement District No. 5525 in the City of Fargo, North Dakota.

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

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

Contract Bond for Drain 10 Flood Mitigation and Incidentals Improvement District No. 5525 Approved:

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

United Fire and Casualty Company, in the amount of \$442,678.25, for Drain 10 Flood Mitigation and Incidentals Improvement District No. 5525 in the City of Fargo, North Dakota.

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

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

City Endorses the Census 2010 Complete Count:

The Board received a communication from Senior Planner Jim Hinderaker stating the U.S. Census Bureau is seeking support from the City of Fargo for the 2010 Census. The census population totals determine which states gain or lose representation in Congress, he said, and it also determines the amount of state and federal funding communities receive over the course of a decade. One of the major goals of the Census 2010 is to reduce the undercount of hard-to-count population through a local campaign to educate and motivate participation in the census, he said. He stated staff is working to establish a Complete Count Committee whose focus is to find creative ways to reach out to all groups within the community to ensure that every resident is counted. This is especially important, he said, for New Americans and other diverse groups that may be reluctant to participate. The committee will work to coordinate and nurture a cooperative effort between local government, communities and the U.S. Census Bureau, he said.

Max Wetz, U.S. Census Bureau, stated complete and accurate counts are very important because of the government funding that it provides to a community. He said in 2000 they saw a 75% return rate, but would like to see that number increase with the 2010 Census.

Mayor Walaker stated the City of Fargo will assist the U.S. Census Bureau in each and every way possible.

Commissioner Mahoney moved the City Commission endorse the Census 2010 Complete Count.

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

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

Appointments to the Library Board:

The Board received a communication from Mayor Walaker recommending that Gale Chapman and Richard Zeck be reappointed to the Library Board and John Dietz be appointed to the Library Board to fill the unexpired term of Gregory Heller.

Commissioner Piepkorn moved approval of the following appointments to the Library Board: the reappointment of Gale Chapman and Richard Zeck for the terms ending June 30, 2012 and the appointment of John Dietz for the term ending June 30, 2011.

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

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

Jane Pettinger Reappointed to the Civil Service Commission:

The Board received a communication from Mayor Walaker recommending that Jane Pettinger be reappointed to the Civil Service Commission.

Commissioner Piepkorn moved Jane Pettinger be reappointed to the Civil Service Commission for the term ending June 30, 2012 be approved.

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

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

Application Filed by Drunken Noodle, LLC d/b/a Drunken Noodle for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Drunken Noodle, LLC d/b/a Drunken Noodle for a Class "GH" Alcoholic Beverage License at 623 NP Avenue North, 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 Mahoney. On call of the roll Commissioners Piepkorn, Mahoney, Wimmer, Williams and Walaker voted aye.

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

Application Filed by Kobe's Japanese Cuisine d/b/a Kobe's Japanese Cuisine for an Alcoholic Beverage License Approved (Business Structure Change):

A Hearing had been set for this day and hour on the application filed by Kobe's Japanese Cuisine (Business Structure Change) d/b/a Kobe's Japanese Cuisine for a Class "F" Alcoholic Beverage License at 4228 15th Avenue South, 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 Mahoney. On call of the roll Commissioners Piepkorn, Mahoney, Wimmer, Williams and Walaker voted aye.

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

Parcels of Land on a Portion of the North Half of Section 1, Township 139 North, Range 49 West of the Fifth Principal Meridian Rezoned (South of 12th Avenue North, North and East of the Great Northern and Burlington Northern Rail Road Right-of-Ways, and West of Barrett Street North excluding 1425 11th Avenue North and 1510 12th Avenue North(the NDSU "T" Parking Lot); 1414, 1424 through 1426 and 1430 12th Avenue North):

At a Hearing held on May 13, 2009 the Fargo Planning Commission recommended approval of a change in zoning from SR-2, SR-3, Single-Dwelling; MR-2, MR-3, Multi-Dwelling; LC, Limited Commercial; LI, Limited Industrial; P/I, Public Institutional to UMU, University Mixed Use; and AG, Agriculture and P/I Public Institutional on a portion of the north half of Section 1, Township 139 North, Range 49 West of the Fifth Principal Meridian.

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

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

Amendment to the 2008 Action Plan for Housing and Community Development to Include \$183,168 in CDBG-R Stimulus Funds Approved:

The Board received a communication from Senior Planner Dan Mahli stating the City of Fargo is proposing an amendment to the 2008 Action Plan for Housing and Community Development. He stated the amendment reflects the allocation of an additional \$183,168 of Community Development Block Grant (CDBG) funds through the American Recovery and Reinvestment Act of 2009. He said staff proposes to use the CDBG-R funds for housing rehabilitation projects and urgent housing needs created by the 2009 flood in low-to-moderate income neighborhoods and for administrative costs associated with the delivery of the CDBG-R Stimulus Funds.

Commissioner Mahoney moved the 2008 Action Plan for Housing and Community development be amended to include \$183,168 in CDBG-R stimulus funds to support housing rehabilitation projects, urgent housing needs created by the 2009 flood and administrative costs associated with the delivery of the CDBG-R Stimulus Funds.

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

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

Discussion Regarding Recommendation from the Planning Office Regarding the Moratorium Placed on LED Signs Continued to June 15, 2009:

The Board received a communication from Senior Planner Jim Hinderaker stating on May 26, 2009, staff hosted a workshop with members of the Planning Commission and City Commission to discuss the impact of the moratorium placed on LED signs on local businesses in the community. At the conclusion of the workshop, he said, staff was directed to review the language of the moratorium and to provide recommendations for possible changes.

Mr. Hinderaker said staff is recommending the removal of the moratorium on all on-premise LED signs that are greater than 300 feet from any residential zoned property and to replace the term LED (Light-Emitting Diode) with EMC (Electronic Messaging Center).

Jonathan Garaas, Attorney representing Steven Stremick, stated change is not the issue with the moratorium; the issue is that this is singling out his client and it is wrong.

At 6:05 the Board took a five-minute recess.

After recess: All Commissioners present except Commissioner Wimmer. Mayor Walaker presiding.

Bernie Dardis, Indigo Signworks, Inc., stated he is very concerned over the moratorium. He said this causes issues not only for Mr. Stremick, but also for his company. Mr. Dardis said he has 5 signs that he has signed contracts for but cannot be put up with the current moratorium in place. He stated that the recommended 300 feet from any residentially zoned property is of concern as well.

Natasha Neihart, 1102 9th Street South, stated the Jefferson and Hawthorne Neighborhoods have some concerns about LED signs. This is a highly-charged issue, she said, when commercial is being brought into a residential neighborhood.

Commissioner Williams moved the moratorium on all on-premise LED signs that are greater than 300 feet from any residential zoned property be removed and the term LED (Light-Emitting Diode) be replaced with EMC (Electronic Messaging Center).

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

Commissioners Mahoney and Walaker voted nay.

Absent and not voting: Commissioner Wimmer.

The motion was declared lost for the lack of a majority.

Mayor Walaker relinquished the Chair (Vice Mayor Mahoney presiding).

Mayor Walaker moved the moratorium be removed and that the Jefferson and Hawthorne Neighborhoods be asked to work with Mr. Stremick to resolve this issue.

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

Commissioners Piepkorn and Williams voted nay.

Absent and not voting: Commissioner Wimmer.

The motion was declared lost for the lack of a majority.

Vice Mayor Mahoney returned the Chair (Mayor Walaker presiding).

Mayor Walaker announced that, without objection, this matter will be continued to the June 15, 2009 Regular Meeting.

Update on Flood Cleanup Received:

City Administrator Pat Zavoral gave an update on the Flood Cleanup progress in the City of Fargo. He said all Corps of Engineers contractors will be out of the City by next Monday.

City Program for Restoration of Damage to Yards Approved:

The Board received a communication from City Attorney Erik Johnson stating an ad hoc committee consisting of City Administrator Pat Zavoral and representatives from the Engineering, Planning, Finance and Legal Departments have developed the elements of a City program to assist property owners in restoring their property (frequently backyards) from damage caused in the construction of primary protection levees. Typically, he said, it was equipment and machinery that caused the most damage. He enclosed a draft program explanation by which the City will participate in restoration of damage to property.

City Administrator Pat Zavoral stated if residents do some or all of the restoration work themselves the Planning Department will look at that to determine what kind of reimbursement will be allowed by the City.

Commissioner Mahoney moved the City program for restoration of damage to yards be approved as presented.

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

Absent and not voting: Commissioner Wimmer.

The motion was declared carried.

Discussion Regarding an Ordinance Annexing a Certain Parcel of Land Lying in the North Half of the East Half of the Northwest Quarter of Section 13, Township 138 North, Range 49 West: Tabled Until June 15, 2009:

The Board received an Ordinance Annexing a certain parcel of land lying in the North Half of the East Half of the Northwest Quarter of Section 13, Township 138 North, Range 49 West. At the May 18, 2009 Meeting the Board directed the City Attorney to draft the Ordinance for 1st Reading at this meeting.

Dr. James Carlson, President of the Round Hill Association, stated he is not sure why the change in status. This annexation was voted down last summer, he said. He stated the Round Hill Association has some real concerns with the amount of run-away's and police reports that have come from the Dakota Boys and Girls Ranch facility.

At 7:20 the Board took a five-minute recess.

After recess: All Commissioners present except Commissioner Wimmer. Mayor Walaker presiding.

Dr. Calvin Fercho, 2525 East Country Club; Dale Ziegler, 1630 Round Hill Drive; Heather Budge, 1629 Round Hill Drive; Paula Ekman, 1615 Round Hill Drive; spoke in opposition to the ordinance request and stated their concerns.

Tim Eissenger, Vice President of Programming at the Dakota Boys and Girls Ranch and Gene Kaseman, President of the Dakota Boys and Girls Ranch, spoke in support of the facility.

Eric Wilke, Program Manager at Dakota Boys and Girls Ranch, stated he has worked at the facility for 8 years and is very concerned about the inaccurate statements being made about the adolescents at the facility. Dakota Boys and Girls Ranch is not a detention center or prison, he said, it is a treatment facility. In the last four years, he said, there have been 44 run-aways, which is less than 1% since 2004.

Barry Hegg, 1619 31st Avenue South and Madonna and Murray Nelson spoke in support of the Dakota Boys and Girls Ranch facility.

Commissioner Mahoney moved this matter be tabled for two weeks.

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

Commissioner Mahoney moved that the Board adjourn to 5:00 o'clock p.m., Monday, June 15, 2009.

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

The time at adjournment was 8:10 o'clock p.m.