

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: October 5, 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, October 5, 2009.

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 removing the relinquishment of a 20' sewer easement from Item "aa" in the Consent Agenda.

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

Minutes Approved:

Commissioner Williams stated the third page was missing in the September 21, 2009 minutes he received. He said he would like to reserve the opportunity to make sure some of the comments he made about targeting new home tax exemptions to certain geographic areas are included in the record so people understand why he did not support the motion. He said his comments should include his suggestion that the City target those new home tax exemptions to areas where there is existing infrastructure which would be more effective than having it across the board without having a geographic area.

Commissioner Mahoney moved that the Minutes of the Regular Meeting of the Board held on September 21, 2009 be approved adding comments made by Commissioner Williams relative to new home tax exemptions.

Second by Wimmer. 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, 9/21/09:
 - (1) Amending Section 25-1509.C and Section 25-1515 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages (allowing persons under 18 years of age to serve alcohol in a restaurant).
 - (2) Rezoning Certain Parcels of Land Lying in Prairie Grove Addition to the City of Fargo, Cass County, North Dakota.

- b. Resolution relating to extension of the existing lease agreement between the City and the Fargo Building Authority for the 2010 calendar year confirming appropriation of funds for required debt service payments in the amount of \$380,105.00 for the City Hall and Civic Center expansion project (Attachment "A").
- c. Temporary policy amendments as they relate to seasonal and H1N1 influenza.
- d. Health insurance plan design changes to become effective January 1, 2010.
- e. Bid award for the City's dental insurance to Assurant.
- f. Grants fiscal cash management policy.
- g. Justice Assistance Grant (JAG) in the amount of \$42,731.00 for the Rape and Abuse Crisis Center (CFDA #16.803).
- h. Grant Agreement with the Dakota Medical Foundation in the amount of \$4,000 for a Baby Steps/Nurse-Family Partnership Program.
- i. Health Department budget adjustment and grant agreement with Dakota Medical Foundation in the amount of \$22,000.00 to support an H1N1 Prevention and Education Project.
- j. Police Department budget adjustment and NDDOT grant funding in the amount of \$12,000 to conduct impaired driving enforcement activities (CFDA #20.601).
- k. Request from the Downtown Community Partnership to hang banners in the skyway from October 6-12, 2009 to promote Oktoberfest Fargo.
- l. Change Orders for the Main Library: No. M-9 for an increase of \$1,249.00; No. E-7 for an increase of \$260.70.
- m. Application filed by St. Mark's Lutheran Church for a raffle on 11/15/09.
- n. Plat of Malme Addition.
- o. Agreement with US Bank regarding parking ramp demolition, construction of replacement bank facilities and easement for new skyway.
- p. Contract with Northern Technologies, Inc. for environmental monitoring during the US Bank parking ramp demolition.
- q. Change Orders for the US Bank parking ramp demolition: No. 1 for an increase of \$4,300.00 and No. 2 for an increase of \$12,654.00.
- r. Addendum to the vehicle lease agreement with Fargo Senior Services.

- s. Addendum to the vehicle lease agreement with Handi-Wheels Transportation.
- t. Memorandum of Understanding with the Fargo Housing Authority regarding use of a wheelchair accessible van.
- u. NDDOT transit funding in the amount of \$164,218.00 for the period 7/1/09 to 6/30/11.
- v. Five-year lease with Jefferson Lines for space in the Ground Transportation Center.
- w. Five-year contract with Enhanced Properties for transit shelter maintenance services.
- x. Five-year vending contract with VendingAmericas for the Ground Transportation Center.
- y. Purchase of an emulsion storage tank utilizing Street Rehabilitation funding in the amount of \$75,000.00.
- z. Declaration Concerning Dedication (Improvement Dist. No. 5729).
- aa. Relinquishment of a 10' utility easement on Lots 2 and 3, Block 1, Fayland Industrial First Addition.
- bb. Updated Project Management Plan and local cost share funding for the F-M Metro Flood Protection Feasibility Study.
- cc. Engineering services Contract Amendment No. 1 with Ulteig Engineers for Project No. 5073.
- dd. NDDOT Cost Participation and Maintenance Agreement for Improvement District No. 5700.
- ee. Joint Powers Agreement with Cass Rural Water Users District for Improvement District No. 5880.
- ff. Bid award for Project No. 5875 to Rising Sun Construction in the amount of \$19,750.00.
- gg. Change Order No. 1 for an increase of \$76,526.46 for Project No. 5221.
- hh. Bid advertisement for Project No. 5909.
- ii. Contract and bond for demolition of the US Bank parking ramp and a portion of the skyway and installation of a parking lot on the site.
- jj. Bills in the amount of \$8,277,769.99.

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

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

Resolution Adopted Regarding Improvement District No. 5314 Recognizing the Project is Substantially Complete:

The Board received a communication from City Auditor Steve Sprague stating the City entered into an agreement with the North Dakota Department of Transportation for the construction of 52nd Avenue South (Improvement District No. 5314). He said construction of this roadway is substantially complete with only minor punch list items remaining to be completed. He said the Resolution recognizes the incomplete work as a separate section or work unit.

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, the City has established a Special Improvement District 5314 which includes improvements to 52nd Avenue South and related items; and

WHEREAS, Special Improvement District 5314 includes work performed by and at the direction of the North Dakota Department of Transportation the cost of which was to be funded, in part, by the City, which funding is to be obtained and financed by the City through special assessments and Special Improvement District 5314 includes work performed by and at the direction of the City, which work is also to be funded and financed through said special assessments; and

WHEREAS, Although portions of the above-described project are complete, nevertheless, to the extent any additional work remaining undone is the responsibility of the City and of the North Dakota Department of Transportation, it is desirable that said incomplete work be recognized as a separate section or work unit;

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Fargo, North Dakota:

1. The separate sections or work units that remain incomplete are described as follows:

1.1. Of the work to be included in Special Improvement District 5314 that will be performed by or at the direction of the City that is yet to be completed is the installation of approximately 400 feet of fence adjacent to Sunset Memorial Gardens. This work was intentionally not completed to facilitate the tie in to Improvement District #5601 (South University).

1.2 Of the work to be included in Special Improvement District 5314 that will be performed by or at the direction of the North Dakota Department of Transportation (NDDOT) that is yet to be completed is the so-called punch list items described on the attached Exhibit A, incorporated herein by reference.

2. This Resolution is established for the purpose of meeting any requirements set forth in N.D.C.C. § 40-23-06.

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

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

No Protests Received for Railroad Spur Tracks and Incidentals Improvement District No. 5827:

The Statutory Resolution of Necessity for the construction of Railroad Spur Tracks and Incidentals Improvement District No. 5827 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 Railroad Spur Tracks and Incidentals Improvement District No. 5827.

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

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

Bids Received for Railroad Spur Tracks and Incidentals Improvement District No. 5827:

The bids for Railroad Spur Tracks and Incidentals Improvement District No. 5827 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 30, 2009 and the bids were found to be as follows:

Industrial Builders, Inc. Bid:	Fargo, ND \$629,056.00
Sellin Brothers, Inc. Bid:	Hawley, MN \$665,697.50
Strata Corporation Bid:	Grand Forks, ND \$672,897.25
R & R Contracting, Inc. Bid:	Grand Forks, ND \$715,287.32
Northern Improvement Company Bid:	Fargo, ND \$742,094.25
Nelson Services, Inc. Bid:	Thief River Falls, MN \$797,855.50

Contract for Railroad Spur Tracks and Incidentals Improvement District No. 5827 Awarded to Industrial Builders, Inc. in the Amount of \$629,056.00:

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 Railroad Spur Tracks and Incidentals Improvement District No. 5827; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 30, 2009 for Railroad Spur Tracks and Incidentals Improvement District No. 5827 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Railroad Spur Tracks and Incidentals Improvement District No. 5827 shows the bid of Industrial Builders, Inc. of Fargo, North Dakota, in the sum of \$629,056.00 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 Industrial Builders, Inc. in the sum of \$629,056.00 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Railroad Spur Tracks and Incidentals Improvement District No. 5827 in the City of Fargo, North Dakota, be and the same is hereby awarded to Industrial Builders, Inc. for the sum of \$629,056.00, 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, Williams, Wimmer and Walaker voted aye.

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

Bids Received for Shared Use Path Improvement District No. 5838-3:

The bids for Shared Use Path Improvement District No. 5838-3 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 30, 2009 and the bids were found to be as follows:

Adelman Concrete and Excavating Bid:	Fargo, ND \$266,985.02
Ti-Zack Concrete, Inc. Bid:	LeCentre, MN \$288,923.00
Dakota Underground Bid:	Fargo, ND \$304,679.10
A J Construction Bid:	West Fargo, ND \$316,782.78
Opp Construction Company Bid:	Grand Forks, ND \$361,539.26

Contract for Shared Use Path Improvement District No. 5838-3 Awarded to Adelman Concrete and Excavating in the Amount of \$266,985.02:

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. 5838-3; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 30, 2009 for Shared Use Path Improvement District No. 5838-3 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. 5838-3 shows the bid of Adelman Concrete and Excavating of Fargo, North Dakota, in the sum of \$266,985.02 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 Adelman Concrete and Excavating in the sum of \$266,985.02 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Shared Use Path Improvement District No. 5838-3 in the City of Fargo, North Dakota, be and the same is hereby awarded to Adelman Concrete and Excavating for the sum of \$266,985.02, 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, Williams, Wimmer and Walaker voted aye.

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

Bids Received for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880:

The bids for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 30, 2009 and the bids were found to be as follows:

Rising Sun Construction, Inc. Bid:	Fargo, ND \$333,288.47
Kuechle Underground Bid:	Kimball, MN \$358,656.02
Dakota Underground Bid:	Fargo, ND \$382,848.42
Master Construction Company, Inc. Bid:	Fargo, ND \$399,650.45
Robert Gibb and Sons, Inc. Bid:	Fargo, ND \$421,826.23
R L Larson Excavating, Inc. Bid:	St.Cloud, MN \$458,446.77

Contract for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 Awarded to Rising Sun Construction, Inc. in the Amount of \$333,288.47:

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 and Incidentals Improvement District No. 5880; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 30, 2009 for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 shows the bid of Rising Sun Construction, Inc. of Fargo, North Dakota, in the sum of \$333,288.47 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 Rising Sun Construction, Inc. in the sum of \$333,288.47 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 in the City of Fargo, North Dakota, be and the same is hereby awarded to Rising Sun Construction, Inc. for the sum of \$333,288.47, 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, Williams, Wimmer and Walaker voted aye.

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

Change Order No. 1 for Improvement District No. 5583 Approved:

Commissioner Mahoney moved approval of Change Order No. 1 for an increase of \$953.90 for Improvement District No. 5583.

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

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

Contract Time Extension for Improvement District No. 5855 Approved:

Commissioner Mahoney moved approval of a contract time extension to December 1, 2009 for Improvement District No. 5855.

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

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

Contract for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 in the City of Fargo, North Dakota.

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

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

Contract Bond for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 Approved:

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

United Fire and Casualty Company, in the amount of \$214,387.70, for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 in the City of Fargo, North Dakota.

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

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

Discussion Regarding Bond Sales:

The Board received a communication from Director of Finance Kent Costin stating the City will be selling three different municipal bond issues on Monday, October 5, 2009 as follows:

“Series B General Obligation Development Bonds \$2.8 million: Issued to fund the construction costs of the new fire station and a fire truck. Terms are twenty year payback with an eight year call provision. Debt service payments funded out of the General Fund.

Series C Refunding Improvement Bonds \$38.1 million: Issued to reimburse the City's capital project fund for projects completed in 2009. Terms are twenty five year payback with a ten year call provision. Debt service paid from special assessments.

Series D Sales Tax Revenue Bonds \$28.1 million: Issued to fund flood control projects including flood buyouts and levees. Terms are five year payback with a three year call provision. Debt service paid from sales tax revenues.”

Dave MacGillivray, Springsted, Inc. summarized the three bond sales as outlined above. He stated two things benefit the City in regards to the bond market which are the City's good credit rating and the healthy general fund reserves. He said he recommends award to the lowest bidder on the three bond sales.

At 5:15 p.m., the time advertised for public hearings, the Board deferred additional discussion on this item until after the hearings.

Parcels of Land in Osgood Townsite 8th Addition Rezoned (4685 South 49th Avenue and 4822 South 47th Street):

At a Hearing held on September 9, 2009 the Fargo Planning Commission recommended approval of a change in zoning from MR-2, Multi-Dwelling and LC, Limited Commercial to MR-3, Multi-Dwelling on Lots 3 and 4, Block 1 of Osgood Townsite 8th 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 Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Mahoney, Williams, 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 Osgood Townsite 8th Addition to the City of Fargo:

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 Osgood Townsite 8th Addition to the City of Fargo be placed on first reading.

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

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

Discussion Regarding Bond Sales (Continued):

Attorney Jonathan Garaas, 1314 23rd Street South, stated he is opposed to the sale of the Series C Refunding Improvement Bonds. He stated he is representing property owners from two improvement districts that are part of the bond sale and he questioned how something can be refunded when the projects are incomplete. He said City records show that the amounts spent on the projects are inaccurately recorded as well. These issues, he said, have been brought to the attention of the Special Assessment Commission. Mr. Garaas submitted documents reflecting the objections of the property owners from Improvement District Nos. 5314 and 5547.

City Attorney Erik Johnson said the Board is authorized to issue the bonds because both projects have completed Resolutions of Necessity and the contracts have been initiated for creation of the districts. He said the issue Mr. Garaas is referring to pertains to Special Assessments and that matter will come back to the Board after the Special Assessment Commission makes a determination.

In response to a question from Director of Finance Kent Costin regarding the need to move forward with the bond sale, Dave MacGillvary, Springsted, Inc., said if the sales are not awarded tonight, there could be severe repercussions not only now but with future sales. He said the City has to comply with the rules and regulations for issuance of the bonds.

Mr. Johnson said there are mechanisms built into the bond sales to cover shortfalls and the bonds are backed by full faith of the City.

Resolution Adopted Authorizing the Sale of \$2,890,000 General Obligation Development Bonds, Series 2009B and Providing for Their Issuance:

Commissioner Wimmer moved the Resolution entitled "Resolution Authorizing the Sale of \$2,890,000 General Obligation Development Bonds, Series 2009B and Providing for Their Issuance" and referred to as Attachment "B", be adopted and attached hereto.

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 Certain Actions and Awarding Sale of \$38,150,000 Refunding Improvement Bonds, Series 2009C:

Commissioner Wimmer moved the Resolution entitled "Resolution Approving Certain Actions and Awarding Sale of \$38,150,000 Refunding Improvement Bonds, Series 2009C" and referred to as Attachment "C", be adopted and attached hereto.

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 Authorizing the Issuance of \$28,120,000 Sales Tax Revenue Bonds of 2009 of the City of Fargo, North Dakota:

Commissioner Wimmer moved the Resolution entitled "Resolution Authorizing the Issuance of \$28,120,000 Sales Tax Revenue Bonds of 2009 of the City of Fargo, North Dakota" and referred to as Attachment "D", be adopted and attached hereto.

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.

Request for Tax Increment Financing for a Project Northeast of 11th Avenue and 16th Street North, Adjacent to the NDSU T-Lot Parking Lot Referred to Appropriate Staff for Review:

The Board received a communication from Planning Director Jim Gilmour submitting a request from Roers Development, Inc. President Jim Roers for Tax Increment Financing (TIF) for a project located northeast of 11th Avenue and 16th Street North. He said the project is for the development of a student housing project adjacent to the T-Lot near NDSU.

Planning Director Jim Gilmour said the property has some deteriorated structures which is one of the criteria for Tax Increment Financing. He said Planning staff would evaluate the qualifications under state law and what the options are for the TIF.

In response to a question from Commissioner Williams regarding unresolved issues the City has with a previous project Roers Development, Inc. did for the City, Mr. Gilmour said the City is still trying to resolve that issue and it would need to be completed before the plan would be finalized.

Commissioner Williams moved staff be directed to submit the proposal to the City's financial advisors for review, to prepare a renewal plan and to draft a development agreement subject to the exterior tile being replaced at the Metro Transit Garage by the developer.

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

Commissioners Wimmer and Piepkorn voted nay.

The motion was declared carried.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, October 19, 2009.

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

The time at adjournment was 6:03 o'clock p.m.