

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

**Regular Meeting: Monday: December 17, 2007:**

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, December 17, 2007.

The Commissioners present or absent were as shown following:

Present: Coates, Mahoney, Williams, Wimmer, Walaker.

Absent: None.

Mayor Walaker presiding.

**Order of Agenda Approved:**

Commissioner Coates moved the Order of the Agenda be approved adding an extra item at the end of the Regular Agenda to consider action on an agreement relating to the TransCanada Keystone Pipeline siting application.

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

**Minutes Approved:**

Commissioner Coates moved that the Minutes of the Regular Meeting of the Board held on December 3, 2007 be approved as read.

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

**Consent Agenda Approved:**

Commissioner Coates moved the Consent Agenda be approved as follows:

- a. List price for NRI property at 1122 7th Avenue South at \$119,900.
- b. Change Orders for the libraries: M-1, E-1, G-2 and G-3 for the Main Library; and G-3, G-4, M-1, E-1, E-2, E-3, E-4, E-6, EQ-1 and Ernst Trenching for the Dr. James Carlson Library.
- c. Addendum 1 to an agreement with the Metropolitan Council of Governments for funding of a third fixed route dispatch position for transit.
- d. Receive and file Year to Date - Budget to Actual report for November 2007.
- e. Distribution of surplus computer equipment to non-profit organizations.

- f. Health Department budget adjustment and grant agreement addendum with Dakota Medical Foundation/Dakota Medical Charities for the cervical cancer prevention project.
- g. Contract amendment with the North Dakota Department of Health for the West Nile Virus Program (CFDA # 93.283).
- h. Contract with the North Dakota Department of Health for the Fargo Five Program (CFDA # 93.991).
- i. Contract with the North Dakota Department of Human Services for Refugee Health Care Services (CFDA # 93.576).
- j. Resolution relating to extension of the existing lease agreement between the City and the Building Authority for the 2008 calendar year confirming appropriation of funds for required debt service payments in the amount of \$381,510 (Attachment "A").
- k. Receive and file Summons in the matter of Robert Rudnick vs. City of Fargo and refer to the City Attorney.
- l. Applications for five-year property tax exemption for improvements made to buildings:
  - (1) Gary and Joanne Stuhr, 1626 8th Street North.
  - (2) Ronald and Sherry Lusk, 814 11th Avenue North.
- m. Site Authorization for Fargo West Rotary at Newman Outfield Field on 5/10/08.
- n. Application filed by F-M Walleyes Unlimited, Inc. for a raffle on 3/20/08.
- o. Receive and file Ordinance Relating to Tanning Facilities.
- p. Receive and file Ordinance Relating to Fire Hazards.
- q. Accept proposal from Progressive SM in the total amount of \$30,800 for replacement of the help desk software.
- r. Bid awards for chemicals for the Wastewater Treatment Plant.
- s. Bid awards for chemicals for the Water Treatment Plant.
- t. 3-year guaranteed cost contract with Pristine Water Solutions for polymers for the Water Treatment Plant.
- u. Agreement for Special Improvements with Denise and Duane Mischel for improvements in Maple Valley Addition.

- v. FM COG Transportation Planning Agreement and Request for Proposals for 2008 Digital Ortho Color Aerial Photograph, Contour Mapping and Planimetric Updates.
- w. ND DOT Borrow Option Agreement for City-acquired property north and east of the I-29 and 52nd Avenue South Interchange.
- x. Resolution regarding property acquisition for the 52nd Avenue South project (Attachment "B").
- y. Dedication of City-owned property on 52nd Avenue South for a Permanent Utility Easement (Lot 50, Block 1, Meadow Creek Addition).
- z. Change Orders for Project Nos. 5628 for an increase of \$18,423.75, 5717 for an increase of \$83,903.78 and 5766 for an increase of \$18,839.29.
- aa. Contract and bond for Project No. 5747-2.
- bb. Bills in the amount of \$3,369,657.93.

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

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

**City of Fargo Concurs with the NDDOT Bid Award for Improvement District No. 5547:**

Commissioner Coates moved the City of Fargo concur with the NDDOT bid award for Improvement District No. 5547 to Industrial Builders, Inc. in the amount of \$11,769,514.18.

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

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

**Change Order No. 1 for Improvement District No. 5163-4 Approved:**

Commissioner Coates moved approval of Change Order No. 1 in the amount of an increase of \$72,919.13 for Improvement District No. 5163-4.

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

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

**Change Order No. 1 for Improvement District No. 5497 Approved:**

Commissioner Coates moved approval of Change Order No. 1 in the amount of an increase of \$127,082.87 for Improvement District No. 5497.

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

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

**Contract for Ridgewood Flood Control Improvement District No. 5229-5 Approved:**

Commissioner Coates moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Ridgewood Flood Control Improvement District No. 5229-5 in the City of Fargo, North Dakota.

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

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

**Contract Bond for Ridgewood Flood Control Improvement District No. 5229-5 Approved:**

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

United Fire and Casualty Company, in the amount of \$168,627.46, for Ridgewood Flood Control Improvement District No. 5229-5 in the City of Fargo, North Dakota.

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

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

**Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5762 Approved:**

Commissioner Coates moved approval of the Contract between the City of Fargo and Rising Sun Construction for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5762 in the City of Fargo, North Dakota.

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

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

**Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5762 Approved:**

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

Granite Re, Inc., in the amount of \$228,365.85, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5762 in the City of Fargo, North Dakota.

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

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

**Ordinance Relating to Use and Care of Streets and Sidewalks to be Placed on First Reading at the Next Regular Meeting of the Board (Sidewalk Entertainers):**

The Board received a communication from Community Development Planner Nate Bailly submitting an Ordinance amending certain sections of Article 18-03 of the Fargo Municipal Code Relating to Use and Care of Streets and Sidewalks. Mr. Bailly stated specifically, this Ordinance is a revision of the current Sidewalk Entertainment Ordinance and puts in place a permit process whereby sidewalk performers may obtain a permit allowing them to ask for and receive tips. Mr. Bailly said there was an incident in June 2007 in downtown Fargo involving contact juggler Ashraf Kamel who was asked to cease his performance due to an apparent violation of the City's prohibition on panhandling in the Central Business District. He said it was believed that Mr. Kamel was soliciting tips and, therefore, "panhandling" under the definitions within the former ordinance. He said the incident made it clear to many that the previous Sidewalk Entertainment Ordinance (which prohibited "panhandling") was not meant to deter those wanting to entertain for tips in the Central Business District. Therefore, he continued, a Task Force consisting of Downtown business leaders, police, City staff, a City Commissioner, an assistant City Attorney and a sidewalk performer was assembled in order to focus on changing the ordinance to reflect the intentions of those working and living downtown. He said the group has met four times since June to take a look at similar ordinances in other cities and to develop one that makes sense within the context of downtown Fargo. He also submitted a proposed resolution by which the Commission would approve the permit fee of \$50 after second reading of the ordinance.

Police Chief Keith Ternes stated the Police Department supports the proposed ordinance.

Commissioner Coates moved the Ordinance Relating to Use and Care of Streets and Sidewalks be received and filed and placed on first reading at the next Regular Meeting of the Board.

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

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

**Hearing on the Rezoning of Parcels of Land in Erskines Addition Delayed (1117 13th Avenue South):**

The Hearing on the rezoning of parcels of land in Erskines Addition is being delayed at the request of staff until January 14, 2008 in order to republish to satisfy notice requirements.

**Renaissance Zone Project Application for James and Lori West Approved:**

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for James and Lori West at 319 Broadway, #205.

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 James and Lori West 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 Wimmer moved the Renaissance Zone application filed by James and Lori West for a project located at 319 Broadway, #205 be approved and the income tax credits and property tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

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

**Renaissance Zone Project Application for Johnson Block 1900, LLC Approved:**

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Johnson Block 1900, LLC at 216/218 Broadway.

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 Johnson Block 1900, LLC 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 Wimmer moved the Renaissance Zone application filed by Johnson Block 1900, LLC for a project located at 216/218 Broadway be approved and the income tax and property tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

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

**Petition Referring an Ordinance Relating to Smoking in Public Places Accepted: Ordinance to be Placed on the June 10, 2008 Ballot:**

The Board received a communication from City Auditor Steven Sprague stating the City Auditor's Office received petitions to refer an Ordinance re-enacting and amending Article 10-11 Chapter 10 of the Fargo Municipal Code relating to prohibiting smoking in all public indoor workplaces except for in all enclosed bar areas which prohibit entry of any customers under age of 21, in designated areas of truck stops restricted for the use of professional drivers and their adult companions only, and in JT Cigarro Tobacco Bar. He stated the Auditor's Office examined the sufficiency and validity of the petition on December 12, 2007. Mr. Sprague said during this procedure 3,884 signatures were examined and approximately 12.42% of the required number of petitioners needed to refer an ordinance were contacted by phone. He said the phone conversations verified the signer indeed signed the petition and verified their address and that they are qualified to vote in the City of Fargo. He said the Auditor's Office is of the opinion that the petitions are valid and sufficient and the requisite number of

signatures were gathered. He said the petitioner is requesting the referral question be placed on the June 10, 2008 ballot.

Byrum Cartwright, 506 18th Avenue South, stated he is asking that the City Commission consider, as soon as possible, a vote on the ordinance to completely ban smoking in public places in the City of Fargo.

Randy Thorson, petitioner, asked the City Commission to submit the petition to the voters for their approval or rejection.

City Attorney Erik Johnson stated the City Commission can either repeal the present ordinance or place the proposed ordinance on the ballot. However, he continued, the home rule charter does not indicate a time frame like the 21 days that is required for an initiated ordinance.

Mayor Walaker stated the people should decide this issue and that is a given. He said what the Commission can or cannot do is becoming extremely confusing. He said people have to understand the Commission has to do something with the 4,000 signatures that have been presented today. He said he does not think the Commission has the right to not refer this item.

Commissioner Wimmer moved the validity and sufficiency of the petitions referring the Ordinance allowing smoking in certain public places be accepted and the Ordinance be placed on the June 10, 2008 ballot.

Second by Williams.

Commissioner Coates stated it is the Commission's desire to see an entire smoking ban in Fargo and a clear choice on the ballot as well.

Commissioner Wimmer stated the Commission should have passed the smoking ban ordinance instead of tabling it and then the petition submitted by Mr. Thorson could have gone forward for a vote.

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

Commissioners Mahoney and Coates voted nay.

The motion was declared carried.

### **Contract with Erik R. Johnson and Associates to Provide City Attorney Services Approved:**

The Board received a communication from City Administrator Pat Zavoral submitting a proposed agreement between Erik R. Johnson and Associates and the City of Fargo for legal services beginning January 1, 2008 and running five years to December 31, 2012. He said the 2008 compensation for services has been increased by \$75,000 to reflect an increase in the number of hours Erik R. Johnson and Associates will provide to the City--2600 hours instead of 2100 hours. He said Mr. Johnson will also provide prosecution services for Municipal Court, which is in addition to the other legal services provided. Mr. Zavoral stated he asked Attorney Paul Skatvold to make an independent review of the proposed contract and Mr. Skatvold did not find any major errors or omissions to the contract. Mr. Zavoral requested that the Board approve the contract.

Commissioner Mahoney moved the contract be approved.

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

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

**Federal Aid Project Priorities Approved:**

The Board received a Report of Action from the Public Works Projects Evaluation Committee stating federal aid project priorities must be submitted annually to the North Dakota Department of Transportation (ND DOT). The Committee listed the categories the projects are to be submitted in along with a summary of project submittal revisions as compared to the 2007 project submittal. They recommended the following for this year's submittal:

**A. Interstate Projects**

2007	I-29 (Main Avenue to County Road 20)
2007	I-94/University Drive
2007	I-29/52nd Avenue South Interchange
2007/2008	I-94/57th Street
2008	I-29/52nd Avenue South Interchange
2008	I-94/57th Street
2008	I-94/25th Street Interchange
2009	I-94/57th Street Interchange
2010	I-94 45th Street Interchange
2010	I-29/7th Avenue North

**B. Regional Highway System**

2006/2007	University Drive – 1st Avenue South to 1st Avenue North
2007/2008	Main Avenue – 25th to 45th Streets
2009	South University Drive – 40th to 52nd Avenues South
2009	12th Avenue North – 10th Street to I-29
2009	10th Street at Main and 4th Avenues North
2012	10th Street North – 12th to 19th Avenues
2013	Main Avenue – University Drive to 25th Street
2014	Main Avenue – Red River to University Drive

**C. Urban Roads Program Projects**

2006/2007	University Drive – 1st Avenue South to 1st Avenue North
2008	52nd Avenue South – University Drive to 31st Street South
2008	57th Street/I-94
2010	45th Street South – 32nd to 52nd Avenues South
2011	1st Avenue-University to 25th Street
2013	Main Avenue – University Drive to 25th Street
2014	Main Avenue – Red River to University Drive
?	County Road 20 – 10th Street to I-29
?	64th Avenue South at I-29

**D. Bridge Projects**

2008/2009	12th Avenue North Viaduct
2011	38th Street South at Drain 27
2012	64th Avenue South at Drain 53
2013	52nd Avenue South at Drain 27

**E. Safety Projects**

2006/2007 University Drive – 1st Avenue South to 1st Avenue North  
 2008 13th Avenue South and 44th Street

**F. Transportation Enhancement Projects**

2007 Bike Trail – Drain 27 – 42nd Street to 44th Avenue South  
 2007 Bike Trail – Oak Grove Area  
 2007 Landscaping/Tree Planting – Main Avenue – 25th to 45th Streets  
 2008 Bike Trail -- Red River Corridor, North of County Road 20  
 2009 Bike Trail Bridge across Drain 27 – Osgood Park at Drain 27  
 2009 Shared use Path w/Bridge over Drain 27 – 36th Street South –  
 38th to 40th Avenues  
 2009 Shared Use Path – 36th Street South – 32nd to 38th Avenues  
 South  
 2009 Shared Use Path Bridge over Red River - 40th Avenue South at  
 Red River  
 2009 Shared Use Path – 36th Street South – 28th to 32nd Avenues,  
 28th Avenue South – Wheatland Drive to 36th Street, Wheatland  
 Drive South – 28th Avenue South to Woodbury Park

City Engineer Mark Bittner summarized the proposed revisions.

Commissioner Williams moved the Federal Aid Project Priorities be approved as outlined above.

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

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

**Appointments to the City Hall-Auditorium Commission Approved:**

The Board received a communication from Mayor Walaker recommending that Dan Armbrust be reappointed and Jim Deutsch be appointed to the City Hall-Auditorium Commission.

Commissioner Mahoney moved the Board approve and confirm the reappointment of Dan Armbrust and the appointment of Jim Deutsch to the City Hall-Auditorium Commission for terms ending January 1, 2011.

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

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

**Appointments to the Metropolitan Council of Governments Policy Board Approved:**

The Board received a communication from Mayor Walaker stating the City has been asked by the Fargo-Moorhead Metropolitan Council of Governments to certify the names of its appointees to the Metropolitan Council of Governments Policy Board for 2008. He said current members are:

City Commissioner Linda Coates  
 City Commissioner Tim Mahoney

City Commissioner Mike Williams  
City Commissioner Brad Wimmer  
Planning Commission Chair John Paulsen  
Planning Commissioner Rich Slagle  
Planning Commissioner Jeffrey Morrau  
Jan Ulferts Stewart and Kristine Fremstad will serve as the Planning  
Commission's alternates

Mayor Walaker requested that the Board confirm these appointments for the year 2008.

Commissioner Wimmer moved the Board approve and confirm the above-listed City of Fargo appointees to the Metropolitan Council of Governments Policy Board for calendar year 2008.

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

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

### **Settlement Stipulation Between TransCanada Keystone Pipeline, LP and the City of Fargo Approved:**

City Attorney Erik Johnson stated on November 26th through 28th, City staff attended a Public Service Commission hearing in Bismarck on the City's concerns regarding the safety and public health issues relating to the water supply associated with the proposed construction of a pipeline by TransCanada Keystone Pipeline, LP. He said shortly after that hearing, City staff and he were able to visit with representatives of the TransCanada Keystone Pipeline Company and, as a result of that meeting, they were able to come up with a settlement. He said the City's concern was for a safe water supply for now and in the future.

Mr. Johnson handed out the proposed agreement and stated the agreement provides additional design features that go quite a ways in giving the assurances the City is looking for and he is recommending it be approved.

Mayor Walaker stated the City did not get everything that was requested, however, TransCanada Keystone Pipeline Company did agree to some of the requested assurances and the City will be involved in the process.

Commissioner Mahoney moved the Settlement Stipulation with TransCanada Keystone Pipeline, LP be approved

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

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

Commissioner Mahoney moved that the Board adjourn to 3:00 o'clock p.m., Monday, December 31, 2007.

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

The time at adjournment was 6:00 o'clock p.m.