

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: October 19, 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 19, 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.

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 October 5, 2009 be approved as read.

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

Consent Agenda Approved:

Commissioner Wimmer moved the Consent Agenda be approved as follows:

- a. 2nd reading, waive reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Osgood Townsite 8th Addition; 1st reading, 10/5/09.
- b. Receive and file Year to Date – Budget to Actual Report for September 2009.
- c. Receive and file 2009 Third Quarter Financial Status Report.
- d. 2009 Rapid Rehousing and Homeless Prevention Grant in the amount of \$441,666.66 to assist with services at the Gladys Ray Shelter (CFDA #14.257).
- e. Expenditure of Neighborhood Stabilization Program funds to acquire 2910 10th Street North for \$100,000 and 113 16th Street South for \$45,000.
- f. Acceptance of Juvenile Accountability Block Grant funds in the amount of \$21,493 and distribution of funding to Fargo, West Fargo and Cass County (CFDA #16.523).

- g. Fire Department budget adjustment in the amount of \$2,823.68 for M-F Haz Mat Training.
- h. Fire Department budget adjustment in the amount of \$514,288.72 for an FY2008 Homeland Security Grant for Hazardous Materials Response Unit and Equipment.
- i. Contract with the NDDOT for the Safe Communities Program (CFDA #20.600).
- j. Staff authorization to begin implementation of the energy efficiency and conservation activities approved by the Department of Energy.
- k. Ulteig Engineers contract amendment to include lighting upgrades to the Solid Waste Transfer Building.
- l. Applications for Games of Chance:
 - (1) Roger Rocks for a raffle on 9/26/09; Public Spirited Resolution.
 - (2) Sandra Kay Morrison Cancer Benefit for a raffle on 10/10/09; Public Spirited Resolution.
 - (3) Fargo South High Bruinkix for a raffle on 11/21/09.
 - (4) El Zagal Director's Staff for a raffle on 2/15/10.
 - (5) NDSU Native American Student Association for a raffle on 11/30/09.
- m. Receive and file amendment to the limited franchise agreement with Cass County Electric adding the area annexed by the City on June 29, 2009.
- n. Contract award for Fargo transit courtesy benches to Custom Graphics/Bench Works.
- o. Purchase Agreement with Integrity Windows, Inc. for temporary easement (Improvement District No. 5729).
- p. Change Orders for the US Bank Demolition contract: No. 3 for an increase of \$6,824.35; No. 4 for an increase of \$11,685; and No. 5 for an increase of \$12,710.
- q. Consulting services contract award to Ulteig Engineers, Inc. for Project No. 5905.
- r. Contract Amendment No. 2 with AE2S in the amount of \$47,000 for Project No. 5725.
- s. Contract Amendment No. 2 with Moore Engineering in the amount of \$255,129 for Project No. 5729.
- t. Change Order No. 1 for an increase of \$1,814.31 for Project No. 5725.
- u. Change Order No. 4 for an increase of \$25,436 for Project No. 5726.

- v. Change Order No. 2 – Part A in the amount of \$11,624.99 and Change Order No. 1 – Part B for an increase of \$6,724.82 for Project No. 5729.
- w. Change Order No. 2 for an increase of \$21,850 for Project No. 5656.
- x. Bid awards for Project Nos. 5897-2 to Master Construction Company, Inc. in the amount of \$122,000.00 and 5902 to Master Construction Company, Inc. in the amount of \$370,333.62.
- y. Contract and bond for Project No. 5860.
- z. Bills in the amount of \$8,463,898.85.

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

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

City's General Liability Self Insurance Fund Discontinued: Placement of General Liability Coverage with the North Dakota Insurance Reserve Fund Approved:

The Board received a communication from Director of Finance Kent Costin stating the Finance Committee discussed a proposal from the North Dakota Insurance Reserve Fund (NDRF) at its last meeting. The Finance Committee and the risk consultant, AON Risk Services, believe that the City's overall long term risk profile and related cost of risk will be mitigated by switching to this program, he said. NDRF, he stated, is a State operated insurance pool that can be used by political subdivisions. The City was insured under this program prior to 1986, he said. He attached a copy of the recommendation letter from AON.

Commissioner Piepkorn moved the City's general liability self insurance fund be discontinued and the City's general liability coverage be placed with the North Dakota Insurance Reserve Fund upon settlement of outstanding claims.

Second by Williams. Commissioner Piepkorn, Williams, Mahoney, Wimmer and Walaker voted aye.

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

Deborah Wendel Daub Appointed as an Alternate Member of the Board of Adjustment:

The Board received a communication from Mayor Walaker recommending that Deborah Wendel Daub be appointed to fill the unexpired term of Michael Love as an Alternate Member of the Board of Adjustment.

Commissioner Mahoney moved the appointment of Deborah Wendel Daub as an Alternate Member of the Board of Adjustment for the term ending June 30, 2011 be approved.

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

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

Monique Vondall-Rieke Appointed to the Native American Commission:

The Board received a communication from Mayor Walaker recommending that Monique Vondall-Rieke be appointed to the Native American Commission to fill the unexpired term of Gus Claymore.

Commissioner Mahoney moved the appointment of Monique Vondall-Rieke to the Native American Commission for the term ending June 30, 2010 be approved.

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

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

Michael Burns and Christine Kloubec Reappointed to the Historic Preservation Commission:

The Board received a communication from Mayor Walaker recommending that Michael Burns and Christine Kloubec be reappointed to the Historic Preservation Commission.

Commissioner Mahoney moved the reappointment of Michael Burns and Christine Kloubec to the Historic Preservation Commission for the terms ending October 31, 2012 be approved.

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

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

Appeal of the Board of Adjustment's Denial of a Request for a Variance at 475 11th Street North: Variance Granted:

A Hearing had been set for this day and hour on the appeal of a September 29, 2009 ruling of the Board of Adjustment denying the request from Pan-O-Gold Baking Company for an 8 foot variance of the 20 foot required rear setback for primary structures within an LI-Limited Industrial Zoning District at 475 11th Street North.

No written protest or objection to the granting of the variance has been received or filed in the office of the City Auditor.

The Board determined that no person is present at this Hearing to protest or offer objection thereto.

Bob Gartland, Pan-O-Gold Baking Company, stated the request is for the construction of a 50x160 foot sales center on the existing property. They would be loading product out of the bakery and trucking it the short distance to the proposed sales center, he said. He stated there is no other physical place to put the building without interrupting the flow of the whole business.

In response to a question from Mayor Walaker as to whether or not this footage is critical to the construction of the building, Mr. Gartland stated it is very critical to the proposed construction of the new sales center.

Commissioner Williams moved the Board of Adjustment's denial be overturned and the variance be granted.

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

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

Special Assessment List for Relocation of Public Utilities at 64 Broadway Approved (Hennen Agreement):

A Hearing had been set for this day and hour on the special assessment list for relocation of public utilities at 64 Broadway (Hennen Agreement) in the City of Fargo, North Dakota.

No appeals have been filed in writing against any item appearing on such special assessment list and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Mahoney moved that the special assessment list for relocation of public utilities at 64 Broadway (Hennen Agreement) be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law.

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

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

Special Assessment Lists for Various Improvement Districts Approved:

A Hearing had been set for this day and hour on the special assessment lists for the construction of the following Improvement Districts in the City of Fargo, North Dakota, on which special assessment lists Hearings had been held by the Special Assessment Commission after which they had been confirmed and filed with the Board of City Commissioners:

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights, Bridge Construction and Incidentals No. 5547 (Omitted by Special Assessment Commission).

Ridgewood Flood Control and Incidentals No. 5229.

Sanitary Sewer, Water Main, Streets, Sewer, Site Improvements and Incidentals No. 5516-2.

Street Reconstruction and Incidentals No. 5601.

Water Main Replacement, Street Reconstruction and Incidentals No. 5713.

Storm Sewer and Incidentals No. 5744.

Storm Sewer, Paving, Street Lights, Traffic Signal Improvements and Incidentals No. 5746.

Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals No. 5749-1.

Sidewalks and Incidentals No. 5749-2.

Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals No. 5758.

Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals No. 5760.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 5762.
Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 5763.
Street Lighting and Incidentals No. 5773.
Sanitary Sewer, Water Main and Incidentals No. 5774.
Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 5775.
Mill and Overlay and Incidentals No. 5780.
Water Main Replacement and Incidentals No. 5781.
Water Main Replacement, Street Reconstruction and Incidentals No. 5782.
Water Main Replacement, Street Reconstruction and Incidentals No. 5783.
Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 5792.
Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals No. 5793.
Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 5796.
Storm Sewer, Sanitary Sewer, Force Main, Street Reconstruction and Incidentals No. 5824.
Sanitary Sewer, Paving and Incidentals No. 5826.
P.C. Concrete Alley Paving and Incidentals No. 5832.
P.C. Concrete Alley Paving and Incidentals No. 5833.
Access Road and Incidentals No. 5835.
Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 5843.
P.C. Concrete Alley Paving and Incidentals No. 5845.
P.C. Concrete Paving, Storm Sewer, Water Main, Signals, Street Lighting and Incidentals No. 5314.

Mayor Walaker stated Improvement District Nos. 5229, 5601, 5781 and 5314 need to be pulled from the list and considered separately.

No appeals have been filed in writing against any item appearing on such special assessment lists with the exception of Improvement District No. 5314 and no person is present at this Hearing to appeal or offer any objection thereto with the exception of Improvement District Nos. 5229, 5601, 5781 and 5314.

Commissioner Wimmer moved that the special assessment lists for the construction of the above listed Improvement Districts except for Improvement District Nos. 5229, 5601, 5781 and 5314 be and the same are hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

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.

Special Assessment List for Ridgewood Flood Control and Incidentals Improvement District No. 5229 Approved:

A Hearing had been set for this day and hour on the special assessment list for the construction of Ridgewood Flood Control and Incidentals Improvement District No. 5229 in the City of Fargo, North Dakota, on which special assessment list a Hearing

had been held by the Special Assessment Commission after which it had been confirmed and filed with the Board of City Commissioners.

No appeals have been filed in writing against any item appearing on such special assessment list.

Anna Kiebke, 1625 8th Street North, stated she spoke with people on the other side of 19th Street North that had been assessed between \$40 and \$50 and she is being assessed at the \$200 range. She said she doesn't understand what added benefit she is receiving that the other residents are not.

In response City Engineer Mark Bittner stated originally there were 2 bases for establishing benefits. The first one was for properties that were below the level of protection provided by the project, he said and the second one was for the benefitting area that was attributable to the protection of the sanitary storm sewer. He said they decided on the secondary benefit because there were things related to the flood plain removal that were not resolved. He said they assessed the lots at \$.05 a square foot, which was according to policy, and capped the assessments at \$200 for a large lot. The other thing that was done, he stated, was to credit properties back that were previously assessed for storm sewer protection.

Commissioner Piepkorn moved that the special assessment list for the construction of Ridgewood Flood Control and Incidentals Improvement District No. 5229 be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

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

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

Special Assessment List for Street Reconstruction and Incidentals Improvement District No. 5601 Approved:

A Hearing had been set for this day and hour on the special assessment list for the construction of Street Reconstruction and Incidentals Improvement District No. 5601 in the City of Fargo, North Dakota, on which special assessment list a Hearing had been held by the Special Assessment Commission after which it had been confirmed and filed with the Board of City Commissioners.

No appeals have been filed in writing against any item appearing on such special assessment list.

Kathy Wu, 4726 University Drive South, stated this project is being assessed as a full new development, not as reconstruction and she would like to see the assessed amount adjusted to reflect that it is a reconstruction project. She said these are older homes that are being assessed and 40% of the value of her home is for specials.

Art Jacque, 4734 University Drive South, stated every house in South Acres, 21 total, have access to 48th Avenue South and there is no direct access to University Drive, but only 9 residents are being assessed. He said assessments should be divided up over those 21 homes or assessed at the \$40 front foot level for the 9 homes, not the \$150 front foot that is currently being assessed. He said this is a big

burden for 9 residents to take on and he recommended that the assessment be postponed and that the City work towards a better solution.

Special Assessments Coordinator Dan Eberhardt stated these residents have never been assessed for paving projects in this area. He said they are being assessed for two arterial roads, University Drive and 52nd Avenue South.

Robert Penner, 4902 University Drive South, stated the assessment is one-fifth of what he paid for his property. It would have been nice, he said, to have had some options or a say in the options for this project.

In response to a question from Commissioner Williams as to whether or not there is some way to assist these individuals through a deferral process, City Engineer Mark Bittner stated there is a Special Assessment Assistance Program however, the money is used up very quickly. In the past he said there has been talk about banking the specials and placing a lien on the property, so that when it sells the City would get the money back. He explained the deferral program has a cap on a 135 foot lot. None of these homes, with the exception of Ms. Wu's lot at 140 feet, would meet the criteria for a deferral, he said.

Mr. Eberhardt said his recommendation to the City Commission would be to approve the assessment as a whole and work with the residents to come up with a suitable plan. Adjustments to the assessments can be made at a later date, he said.

Commissioner Mahoney moved that the special assessment list for the construction of Street Reconstruction and Incidentals Improvement District No. 5601 be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects and that staff be directed to work on a deferral plan for residents.

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.

At 6:20 the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Special Assessment List for Water Main Replacement and Incidentals Improvement District No. 5781 Approved:

A Hearing had been set for this day and hour on the special assessment list for the construction of Water Main Replacement and Incidentals Improvement District No. 5781 in the City of Fargo, North Dakota, on which special assessment list a Hearing had been held by the Special Assessment Commission after which it had been confirmed and filed with the Board of City Commissioners.

No appeals have been filed in writing against any item appearing on such special assessment list.

In response to a question from Don Gerlitz, representing Shirley Gerlitz, 1708 Plumtree Road North, regarding assessments to the property next year, City Engineer Mark Bittner stated they would be assessed next year for street paving.

Commissioner Williams moved that the special assessment list for the construction of Water Main Replacement and Incidentals Improvement District No.

5781 be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

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

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

Special Assessment List for P.C. Concrete Paving, Storm Sewer, Water Main, Signals, Street Lighting and Incidentals Improvement District No. 5314 Approved:

A Hearing had been set for this day and hour on the special assessment list for the construction of P.C. Concrete Paving, Storm Sewer, Water Main, Signals, Street Lighting and Incidentals Improvement District No. 5314 in the City of Fargo, North Dakota, on which special assessment list a Hearing had been held by the Special Assessment Commission after which it had been confirmed and filed with the Board of City Commissioners.

Jonathan Garaas, Attorney representing Fred and Earlyne Hector, submitted a packet appealing the special assessments for Improvement District No. 5314. He stated the objections to the assessments and reasons for the appeal.

Alan Koch, 5208 17th Street South, stated his concern over projects being done properly and asked how many more special assessments will be assessed to his property.

Commissioner Piepkorn moved that the special assessment list for the construction of P.C. Concrete Paving, Storm Sewer, Water Main, Signals, Street Lighting and Incidentals Improvement District No. 5314 be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

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

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

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, November 2, 2009.

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

The time at adjournment was 6:58 o'clock p.m.