

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: November 2, 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, November 2, 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 Mahoney moved the Order of the Agenda be approved.

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

Minutes Approved:

Commissioner Mahoney moved that the Minutes of the Regular Meeting of the Board held on October 19, 2009 be approved as read.

Second by Williams. 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. Contract with MEDCO for prescription management services for 2010.
- b. Identity Theft Prevention Program (Red Flag Rules) effective November 1, 2009.
- c. Master Services Agreement with Paymentus Corporation to provide web and IVR payment options for City utility billing customers.
- d. Resolution giving preliminary approval to MIDA bond financing in the amount of \$10,000,000 for MeritCare Hospital, MeritCare Medical Group and MeritCare Health Enterprises and setting a public hearing for 11/30/09 (Attachment "A").
- e. Acceptance of offer of \$61,900 to purchase property at 816 8th Street North.
- f. Grant award from the North Dakota Department of Human Services, Children and Family Services Division, in the amount of \$5,000 for the Metro Interpreter Resource Center (Contract #600-07890).

- g. Contracts with area law enforcement to develop security plans for Point of Dispensing (POD) sites in the event of a public health emergency.
- h. Health Department budget adjustments and grant agreement with Dakota Medical Foundation to place 15 AED's with first responders in North Dakota and Minnesota.
- i. Plat of West Central Addition.
- j. Bid awards for skyway replacement to Comstock Construction in the amount of \$277,600 (general); Charlie and Sons Electric in the amount of \$13,550 (electrical); Manning Mechanical in the amount of \$21,000 (mechanical).
- k. Rental agreement with RDO Equipment for a motor grader.
- l. Applications for Games of Chance:
 - (1) Shanley High School for raffles from 10/15/09 to 5/20/10.
 - (2) Fargo Angels Youth Hockey for a raffle on 12/19/09.
 - (3) El Zagal Shrine for a raffle on 2/13/10.
- m. Change Orders for the GTC deck repair work project: No. CO 002 for an increase of \$11,770.82; No. CO 003 for an increase of \$250.00.
- n. Agreements for Entry and Construction with Specialty Developments, LLP and Union Storage and Transfer Corp. for property along the Fayland Spur Line in the Industrial Park, west of 47th Street NW.
- o. Access agreement with Lampert Yards, Inc. for property along 42nd Street South.
- p. Sole source procurement for KorTerra GIS Mapping Software.
- q. Contract Amendment No. 1 in the amount of \$93,000 for Project No. 5683-05.
- r. Agreement/Scope of Services contract with Ulteig Engineers for Project No. 5905.
- s. Bid award for Project No. 5909 to Hough, Inc. in the amount of \$84,767.56.
- t. Final Balancing Change Order No. 1 for an increase in the amount of \$45,654.21 for Project No. 5867.
- u. Contract time extensions for Project Nos. 5860 and 5871.
- v. Bid advertisements for Project Nos. 5747-22 and 5747-23.
- w. Contract and bond for Project No. 5875.

- x. Bills in the amount of \$5,883,092.29.

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.

Final Balancing Change Order No. 2 for Improvement District No. 5314, Phase 9 Approved:

Commissioner Wimmer moved approval of Final Balancing Change Order No. 2 for an increase of \$175,870.43 for Improvement District No. 5314, Phase 9.

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.

Final Balancing Change Order No. 3 for Improvement District No. 5746 Approved:

Commissioner Wimmer moved approval of Final Balancing Change Order No. 3 for an increase of \$4,467.76 for Improvement District No. 5746.

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.

Contract Time Extension for Improvement District No. 5889 Approved:

Commissioner Wimmer moved approval of a Contract Time Extension to July 10, 2010 for Improvement District No. 5889.

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.

Contract for Railroad Spur Tracks and Incidentals Improvement District No. 5827 Approved:

Commissioner Wimmer moved approval of the Contract between the City of Fargo and Industrial Builders, Inc. for Railroad Spur Tracks and Incidentals Improvement District No. 5827 in the City of Fargo, North Dakota.

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.

Contract Bond for Railroad Spur Tracks and Incidentals Improvement District No. 5827 Approved:

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

Hartford Accident and Indemnity Company, in the amount of \$629,056.00, for Railroad Spur Tracks and Incidentals Improvement District No. 5827 in the City of Fargo, North Dakota.

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.

Contract for Shared Use Path Improvement District No. 5838-3 Approved:

Commissioner Wimmer moved approval of the Contract between the City of Fargo and Adelman Concrete and Excavating, Inc. for Shared Use Path Improvement District No. 5838-3 in the City of Fargo, North Dakota.

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.

Contract Bond for Shared Use Path Improvement District No. 5838-3 Approved:

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

AMCO Insurance Company, in the amount of \$266,985.02, for Shared Use Path Improvement District No. 5838-3 in the City of Fargo, North Dakota.

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.

Contract for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 Approved:

Commissioner Wimmer moved approval of the Contract between the City of Fargo and Rising Sun Construction, Inc. for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 in the City of Fargo, North Dakota.

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.

Contract Bond for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 Approved:

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

Granite RE, Inc., in the amount of \$333,288.47, for Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 in the City of Fargo, North Dakota.

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.

Fargo Moorhead Area Long Range Transportation Plan Adopted:

The Board received a communication from Senior Planner Jim Hinderaker submitting the Executive Summary of the Fargo Moorhead Area Long Range Transportation Plan. This document, he said, provides a comprehensive, coordinated program of projects and strategies to improve the regional transportation system and itemizes transportation projects eligible for future federal funding.

Brian Gibson, Metro COG, said it is a requirement of the federal government to complete a long range plan in order for the projects to become eligible for funding. He said the plan identifies future needs with projects to address those needs.

In response to a question from Commissioner Williams regarding cuts in federal funding, Mr. Gibson said Metro COG will plan accordingly for funding cuts and concentrate on more efficient use of projects already in place.

Commissioner Williams offered the following Resolution and moved its adoption:

WHEREAS, The Board of City Commissioners is the duly elected governing body for the City of Fargo and is responsible for the planning and development of a safe and functional transportation system; and

WHEREAS, The Fargo-Moorhead Metropolitan Council of Governments (Metro COG), is the metropolitan planning organization designated by the Governors of North Dakota and Minnesota to maintain the metropolitan area's transportation planning process in accordance with federal regulations; and

WHEREAS, The Fargo-Moorhead Metropolitan Council of Governments has undertaken the task of updating its Metropolitan Transportation Plan, which is a vital element of this planning process, and which documents transportation projects' eligibility for future federal funding; and

WHEREAS, The metropolitan transportation planning process was guided by the Metropolitan Transportation Technical Committee (TTC) composed of a wide cross-section of local multi-modal technical experts including engineers, planners, transit directors, and state and federal transportation officials; and

WHEREAS, Public and private organizations representing numerous transportation interests, as well as groups and individuals from socially disadvantaged groups were invited, encouraged, and involved in this Plan's preparation, in full compliance with Metro COG's Public Participation Plan; and

WHEREAS, The Fargo-Moorhead Area Long Range Transportation Plan (2009-2035) was prepared using an extensive intermodal planning process; and

WHEREAS, The Fargo-Moorhead Area Long Range Transportation Plan (2009-2035) provides a comprehensive, coordinated program of projects and strategies that will improve the urban and extraterritorial transportation system of the Fargo-Moorhead area.

NOW, THEREFORE BE IT RESOLVED, That the Board of City Commissioners of the City of Fargo does hereby adopt the Fargo Moorhead Area Long Range Transportation Plan (2009-2035), and agrees to use it as a tool to implement metropolitan transportation goals and objectives, which will complement overall development of the metropolitan transportation system.

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

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

Helen Levitt Appointed to the Library Board:

The Board received a communication from Mayor Walaker recommending that Helen Levitt be appointed to the Library Board to fill the unexpired term of Gale Chapman who resigned.

Commissioner Mahoney moved the appointment of Helen Levitt to the Library Board for the term ending June 30, 2012 be approved.

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.

Appropriate Staff Authorized to Obtain an Appraisal for the Firestone Facility, Solicit Proposals for Architectural Services for Conversion of the Firestone Facility and Transit Terminal and Create a Financing Plan for Both Projects:

The Board received a communication from Director of Finance Kent Costin stating the Finance Committee recently discussed the concept of converting the existing regional bus terminal, east of the Ground Transportation Terminal, to a City owned Municipal Court facility as well as the potential to acquire the Firestone facility for use by the Police Department. Presently, he said, the Municipal Court functions reside in a privately-owned, leased facility and the Police squad cars are staged and stored at the Central Garage. He stated the Finance Committee as well as City staff supports the acquisition of the Firestone facility and the remodeling of the terminal into a permanent Municipal Court facility which will create greater operational efficiency for the Police Department and will bring the Court functions back into a City owned facility. Mr. Costin said salary savings currently accrued in the public safety operational budgets can be reallocated towards partial funding of the Firestone facility. A financing plan, he said, needs to be created for the terminal remodeling and the balance of the Firestone project.

City Administrator Pat Zavoral said the Police Department has been talking about attaining additional space downtown for squad cars and office space. Firestone approached the City regarding a possible use for their space, he said, and that City staff has requested Assistant City Attorney Butch McConn review the lease arrangement and get an appraisal of the Firestone facility. Use of the Firestone building for the Police Department, he said, would free up space at the Ground Terminal Center (GTC) so Municipal Court could move out of its current leased space and into the GTC.

Commissioner Wimmer moved appropriate staff be authorized to obtain an appraisal for the Firestone facility, solicit proposals for architectural services for conversion of the Firestone facility and Transit terminal and create a financing plan for both projects.

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.

Hearing on a Petition for a Right-of-Way Vacation Plat of Land in Chapin Johnson and Barrett Addition Continued to December 14, 2009 (604 and 608 Broadway):

This was the time and date set for a Hearing on a petition for a right-of-way vacation plat of land in Chapin Johnson and Barrett Addition, Section 6, Township 139 North, Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota however, there was a publication error and therefore, the City Commission will need to continue their Hearing to December 14, 2009.

Commissioner Mahoney moved the Hearing be continued to December 14, 2009.

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.

Parcels of Land in J Starr Second Subdivision Rezoned (10908 38th Street South, Horace):

At a Hearing held on September 9, 2009 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to GC, General Commercial on Lot 1, Block 1 a replat of J Starr Subdivision of part of the southwest quarter of Section 26, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota.

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.

Senior Planner Jim Hinderaker stated the property was previously platted as commercial before it was brought into the extraterritorial zone. The former Starr Fireworks building, he said, is on the lot so the request brings the property into conformance. The southern lot, he said, will remain zoned Agricultural.

In response to a question from Commissioner Wimmer regarding the existing infrastructure for the area, Mr. Hinderaker said the building has a sprinkler system but would need alternative storage for pumping. He said staff is comfortable with the rezoning because it brings the property into compliance. The petitioner backed away on the rezoning request for the southern lot, he said, because of fire protection services.

In response to a question from Commissioner Williams regarding the change in the flood plain, Mr. Hinderaker said the flood plain may change in that area after the remapping.

Commissioner Williams said he would not support the motion because of the uncertainty of the floodplain and the property is too far south for City services.

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

Commissioner Williams voted nay.

The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in J Starr Second Subdivision, Cass County, North Dakota:

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 J Starr Second Subdivision, Cass County, North Dakota be placed on first reading.

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

Commissioner Williams voted nay.

The motion was declared carried.

Resolution Adopted Approving J Starr Second Subdivision:

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "J Starr Second Subdivision" containing 2 Lots, 1 Block and 14.73 acres of land more or less, located at 10908 38th Street South, Horace, North Dakota; and

WHEREAS, A Hearing was held July 8, 2009, continued to August 12, 2009, and further continued to September 9, 2009 by the Fargo Planning Commission, and notice of such Hearing had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer; and

WHEREAS, Announced in the City Commission agenda made available on October 29, 2009 that a Hearing would be held in the City Commission Room at the City Hall, Fargo, North Dakota at 5:15 o'clock p.m., November 2, 2009 at which time said Plat would be considered and all interested persons would be heard.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission be accepted and the Plat entitled "J Starr Second Subdivision" be and the same is hereby in all things affirmed and approved on the basis that it complies with the Standards of Article 20-06, and all other applicable requirements of the Land Development Code, and that the Mayor of the City of Fargo and the appropriate City Officials are hereby directed to endorse their approval on the Plat and then direct Petitioner to file same for record in the office of the Register of Deeds of Cass County, North Dakota.

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

Commissioner Williams voted nay.

The Resolution was adopted.

Parcels of Land in Mehl First Addition Rezoned (3401 25th Street South and 2621 35th Avenue South):

At a Hearing held on October 14, 2009 the Fargo Planning Commission recommended approval of a change in zoning from MR-3, Multi-Dwelling to PI, Public Institutional on Lot 1, Block 1, less the south 65 feet of the west 330 feet and Lot 2, Block 1, Mehl First Addition, less Lot 1, Block 1, Mehl Second 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.

Senior Planner Jim Hinderaker stated the rezoning request is from First Assembly of God Church. Originally, he said, the church was requesting a zone change for a larger sign, but after meeting with the neighborhood, the church decided against the LED sign and instead went with a request for Public Institutional zoning. The zoning change, he said, will allow the church to move forward with a master plan which will soften the industrial look of the facility, add striping and islands to the parking lot and add an alternate street access.

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 Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Williams, Mahoney, 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 Mehl First Addition to the City of Fargo, Cass County, North Dakota:

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 Mehl First Addition to the City of Fargo, Cass County, North Dakota be placed on first reading.

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.

Amendment to a Developer Agreement for Tax Increment Financing District 2007-03 Approved (1915 Dakota Drive North):

This was the time and date set for a Hearing on an Amendment to a Developer Agreement for Tax Increment Financing (TIF) District No. 2007-03 which allows additional costs for sidewalks but reduces the total amount of the TIF funding. The

redevelopment project is an apartment building with 58 units. Funds from the TIF district are being used to pay for demolition, public infrastructure and administration.

The Board received a communication from Planning Director Jim Gilmour stating the project redeveloped the former University Motors business into the East Bridge apartment building at 1951 Dakota Drive. The apartment building developer, he said, requested an amendment to the developer agreement to provide additional TIF funds for sidewalk costs and City staff encouraged the installation of a sidewalk along the east edge of the project to provide better pedestrian pathways in the area. He stated while this amendment would increase the amount allowed for sidewalks, other TIF costs are well below budget, so the overall TIF amount is reduced. He said the Finance Committee reviewed the request and recommends approval. The description of the specific dollar amounts of the amendment, he said, is described as follows:

East Bridge Apartments, 1951 Dakota Drive North - This amendment would reduce the total amount of Tax Increment Financing funds to assist the redevelopment from \$367,500 to \$251,000. While the total project amount is being reduced, the amendment increases the amount allowed for sidewalks and lighting from \$25,000 to \$47,000.

Commissioner Williams said he supports the amendment because of the reduction in the amount of the TIF.

Commissioner Williams moved an Amendment to the Developers Agreement with East Bridge Apartments, LLC that reduces the total amount of TIF assistance from \$367,500 to \$251,000 and increases the maximum costs for sidewalks and lighting from \$25,000 to \$47,000 be approved.

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

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

City Attorney Erik Johnson announced that there are pending litigation matters to be discussed in Executive Session, specifically the Lundeen and Schott claims as well as a potential litigation matter, the name of the defendant for which is not to be disclosed for the reason that disclosure of the name or names would be detrimental to the City's position.

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

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

At 5:45 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

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

The Executive Session closed at 6:25 o'clock p.m. and the meeting was adjourned.

The next meeting of the Board will be held at 5:00 o'clock p.m., Monday, November 16, 2009.