

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:

Monday:

April 6, 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, April 6, 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 amending Item "b", adding an extra item for a change order for Munters Corporation to Item "h" as Item "h2" and adding an extra item at the end of the Regular Agenda delaying the Board of Equalization meeting set for April 28, 2009 until May 12, 2009.

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 March 23, 2009 be approved as read.

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

Consent Agenda Approved:

Commissioner Mahoney moved the Consent Agenda be approved as follows:

- a. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 3/23/09:
  - (1) Amending Section 10-0318 of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to Breaches of Peace and Order.
  - (2) Amending Article 3-20 of Chapter 3 of the Fargo Municipal Code Relating to Imposition of a Sales, Use and Gross Receipts Tax (Infrastructure Capital Improvements).
- b. Resolution extending the Mayor's emergency proclamation for additional two-week periods through May 1, 2009.
- c. Fire Department budget adjustment in the amount of \$16,959.31 for F-M Haz Mat training.

- d. Traffic Safety Contract Amendment with the NDDOT for the Safe Communities Program (CFDA No. 20.600).
- e. Receive and file report on a zone change granted on 4/21/08 for 922 40th Street North.
- f. Request from the National Day of Prayer Committee to hang banners in the skyway from April 28 to May 7, 2009.
- g. Bid award for custodial services at the Main Library to McFarland Hanson in the amount of \$161,640.00 for 3 years.
- h. Change Order Number 002 from Function Furniture for an increase of \$1,560.52 for Main Library and Change Order from Munters Corporation for an increase of \$38,500 for Fargodome cleanup.
- i. Applications for Games of Chance:
  - (1) Fargo South High School for a raffle on 4/18/09.
  - (2) Krogen, Anderson, Draeger Benefit for a raffle on 8/22/09; Public Spirited Resolution.
  - (3) Raffle date change for the Evan Krogen Benefit Fund to 4/25/09.
- j. Site Authorization for Delta Waterfowl at the Best Western Doublewood Inn on 4/29/09.
- k. Applications for tax exemptions for improvements made to buildings:
  - (1) Nick and Rachel Kjonaas, 3720 Fairway Road NE (3-year).
  - (2) Martin and Barbara Berlinger, 1661 American Way (3-year).
  - (3) Michael and Gail Schutz, 1610 7th Avenue South (5-year).
- l. Yearly quote from Butler Machinery Company in the amount of \$55,877 for rental of a 230 HP crawler tractor at the Landfill.
- m. Yearly quote from Butler Machinery Company in the amount of \$49,332 for rental of a 200 HP crawler tractor at the Landfill.
- n. Bills in the amount of \$3,071,123.14.

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

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

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5855 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Key Contracting, Inc. for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5855 in the City of Fargo, North Dakota.

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

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

Contract Bond for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5855 Approved:

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

Western Surety Company, in the amount of \$26,210.00, for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5855 in the City of Fargo, North Dakota.

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

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

Contract for Seal Coat and Incidentals Improvement District No. 5864 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Astech Corporation for Seal Coat and Incidentals Improvement District No. 5864 in the City of Fargo, North Dakota.

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

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

Contract Bond for Seal Coat and Incidentals Improvement District No. 5864 Approved:

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

Employers Mutual Casualty Company, in the amount of \$366,831.99, for Seal Coat and Incidentals Improvement District No. 5864 in the City of Fargo, North Dakota.

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

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

Resolution Adopted Providing for the Issuance of \$13,665,000 Refunding Improvement Refunding Bonds, Series 2009A:

Finance Director Kent Costin said sixty days ago Springsted, Inc. staff identified ways to refinance the City bonds and this transaction addresses the refinancing. He said there had been a public inquiry regarding purchasing of City bonds.

David McGillivray, Springsted, Inc., summarized the results of the bond issues and reaffirmed the City's excellent credit rating. He said there are ways to make bonds available on the retail level but it would not be simple.

Commissioner Mahoney moved the Resolution entitled "Resolution Providing for the Issuance of \$13,665,000 City of Fargo Refunding Improvement Refunding Bonds, Series 2009A" and referred to as Attachment "A", be adopted and attached hereto.

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.

Building Permit Fees for Flood-Related Repairs and Equipment Replacement Waived:

The Board received a communication from Inspections Administrator Ron Strand stating a necessary part of individual property owners' recovery will include assistance in the form of repair and replacement permits for structures, plumbing, and mechanical work. He said after a couple of flood events during the past several years the decision was made by the Commission to waive permit fees for flood-related permits. He said at those times permits were still required and obtained but no fees were charged.

Commissioner Wimmer moved building permit fees for flood-related repairs and equipment replacement waived.

City Administrator Pat Zavoral said the majority of requests will be outside of the City limits in the extraterritorial area and it is important to show those areas that the City is willing to work with them by helping keep costs down.

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.

Hearing on a Petition for a Zoning Change in Kirkham's 2nd Addition Continued to April 20, 2009 (1404 12th Avenue North):

This was the time and date set for a Hearing on a petition for a zoning change from MR-3, Multi-Dwelling to LC, Limited Commercial on Lots 10 and 11, Block 14 of Kirkham's 2nd Addition, however, the Planning Commission continued their Hearing to April 8, 2009 and therefore, the City Commission will need to continue their Hearing to April 20, 2009.

Commissioner Piepkorn moved the Hearing be continued to April 20, 2009.

Second by Wimmer. On call of the roll Commissioners Piepkorn, Wimmer, 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 Zoning Change in Great Northern 2nd Addition Continued to April 20, 2009 (1812, 1820, 1828 and 1840 Dakota Drive North):

This was the time and date set for a Hearing on a petition for a zoning change from LI, Limited Industrial to UMU, University Mixed Use on Lots 25 through 34 of Great Northern 2nd Addition, however, the Planning Commission continued their Hearing to April 8, 2009 and therefore, the City Commission will need to continue their Hearing to April 20, 2009.

Commissioner Piepkorn moved the Hearing be continued to April 20, 2009.

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

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

Application Filed by Cooper House, LP and the Fargo Housing and Redevelopment Authority for Payment in Lieu of Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by Cooper House, LP and the Fargo Housing and Redevelopment Authority for payment in lieu of property tax exemption for construction of a low income housing project at 414 11th Street North.

No written protests have been filed for the attention of the Board.

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

Commissioner Wimmer moved that the application filed by Cooper House, LP and the Fargo Housing and Redevelopment Authority for a 15 year payment in lieu of tax exemption pursuant to Chapter 40-57.1, NDCC be approved as follows:

Year 1 through 3 - \$0

Year 4 through 15 - pay in lieu payments to total no less than 5% of collected annual rents.

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.

FM City Development 12th Avenue Project Site Plan Application Approved:

A Hearing had been set for this day and hour on an appeal by William Rakowski of the February 11, 2009 Planning Commission decision to deny the appeal of a staff decision to approve the FM City Development project on 12th Avenue North.

Senior Planner Jim Hinderaker submitted a staff report stating that on September 2, 2008 William Rakowski, owner of the property at 1424-1426 12th Avenue North, filed an appeal of the issuance of a building permit on August 25, 2008 for property at 1434 12th Avenue North. The appeal, he said, was made by Mr. Rakowski's attorney, Jonathan Garaas. He stated the appellant contends that Building Permit No. BL20081741 should not have been issued due to insufficient parking. He said although Mr. Garaas argued that the appeal of the building permit issuance should be heard by the Board of Adjustment, Planning staff determined that the appeal should properly be heard by the Planning Commission. On September 8, 2008, he said, staff informed Mr. Garaas that compliance with the parking requirement and the review of the same, is part of a site plan review as governed by FMCILDC §20-0910 and that decisions made under the site plan review process are appealable to the Planning Commission. Mr. Hinderaker said on October 8, 2008 the Planning Commission reviewed the appeal and found, regarding the question of jurisdiction, that the appeal was properly before them and the appellant did have standing to appeal, however the Planning Commission continued the hearing to December 10, 2008. Mr. Hinderaker said on October 28, 2008 the Board of Adjustment reviewed

the appeal and found, regarding the question of jurisdiction, the Board of Adjustment did not have authority to review said appeal. He said the Board of Adjustment cited that the appeal is reserved to the Planning Commission and the Board of City Commissioners. Mr. Hinderaker said on December 1, 2008, the Board of City Commissioners, on appeal from the October 28, 2008 Board of Adjustment decision, held a hearing to review and determine which governing body had jurisdiction to hear the subject appeal and the Board upheld the Board of Adjustment's decision. On December 10, 2008, he said, the appeal was continued by the Planning Commission to February 11, 2009. On February 11, 2009, the Planning Commission determined the site review process was accomplished by staff in an appropriate fashion following the requirements of the Land Development Code, he said, and in a 7-1 decision the Planning Commission moved to deny the appeal.

Mr. Hinderaker submitted a Staff Report stating in accordance with FMC/LDC§20-0910(E)(4) the Planning Commission or Board of City of Commissioners shall consider the appealed Site Plan decision as a new matter without requirement for a public hearing. After considering the matter, he said, the Planning Commission or Board of City Commissioners shall act to approve or deny the original application and the procedure shall be the same as required of the original action before the Zoning Administrator.

Mr. Garaas summarized his reasons for the appeal including the fact that the agreement says nothing about shared parking provisions for FM City Development in the NDSU T-lot. He submitted a packet referencing correspondence of March 4, 2009 directed to Planning Commission Chairman John Paulsen.

City Attorney Erik Johnson submitted an Executive Summary summarized as follows:

1. Mr. Rakowski's arguments related to "inadequate parking arrangements" was recently ruled by Cass County District Court as a "collateral attack" of a final decision, legally enforceable, by the Planning Commission in their April 9, 2008 meeting when they granted the Conditional Use Permit ("CUP") for the parking reduction. Mr. Garaas may agree that such arguments are therefore irrelevant, but if he does not, the City Commission will not be arbitrary, capricious or unreasonable in finding that those arguments are irrelevant.
2. Mr. Rakowski's claim that the Planning Commission's April 9th decision granting the CUP for the parking reduction was an unconstitutional delegation of legislative power by the City Commission is unfounded - the Cass County District Court has approved the CUP.
3. Mr. Garaas' strenuous objection and complaint about the lack of a parking agreement between the developer and NDSU were disingenuous - Mr. Garaas was sent a copy of the agreement on October 11, 2008 - he had the agreement all along.

Commissioner Piepkorn moved approval of the FM City Development 12th Avenue Project (Phase Two) site plan application, as the proposal complies with the standards of the Land Development Code.

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

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

Resolution Adopted Urging Establishment of a Red River Valley Authority:

The Board received a communication from City Administrator Pat Zavoral stating the City of Fargo, along with cooperating agencies, have been working toward a permanent solution for flood problems experienced in Fargo. He said the Red River of the North and its contributing tributaries and watershed area encompass areas lying in Minnesota, North Dakota and South Dakota. It appears appropriate, he said, to suggest that the federal government assist the City of Fargo by creating an appropriate governing body to take control and jurisdiction over the Red River watershed area for the purpose of addressing water quality issues in the Red River to include regulation and control of the retention and flow of water on the Red River. If approved, he said, this Resolution would urge the United States Congress to establish such a body as an agency of the federal government for these purposes. He stated a draft resolution similar to this has been prepared for consideration by the North Dakota State Legislature.

Mr. Zavoral said meetings were held recently with the Governors of North Dakota and Minnesota and groups on both sides of the Red River have the opportunity to work together toward managing water retention and water quality for the Red River Valley by creating the Red River Valley Authority. He said the Red River Valley Authority would also enhance the relationship with Canadian officials. Mr. Zavoral stated both North Dakota and Minnesota would request majority representation on the Authority, and South Dakota would be represented as well.

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, the Red River of the North and its contributing tributaries and watershed have experienced repeated problems with massive dangerous and destructive flooding which flooding has caused or seriously threatened the health, safety and welfare of citizens along the Red River and caused damage to the property of the citizens of federal, state and local government; and,

WHEREAS, The repeated flooding and threat of flooding has required an extraordinary level of time, money and resources of state, local and federal government in fighting and recovering from the repeated floods which, in terms of financial impact, may exceed \$200,000,000 for the flood event of spring 2009 and which cumulatively over the past 12 years is estimated to have had a financial impact in the hundreds of millions of dollars; and,

WHEREAS, There exists certain regulatory conflicts between urban and rural areas and between different states affected by the Red River and its contributing tributaries such that water quality and quantity concerns are not being consistently addressed, regulated and enforced; and,

WHEREAS, The states of Minnesota, North Dakota and South Dakota are affected by and therefore have an interest in the control of volume and flow of water and the retention of water in the Red River as well as the quality of water in the Red River; and,

WHEREAS, There are differences in the procedures and regulations of Minnesota, North Dakota and South Dakota pertaining to the governance and

procedures establishing rules for the control of water quality, water flow, water retention and the enforcement of those laws and rules; and

WHEREAS, The circumstances described in this resolution constitute a matter of interstate concern which the federal government is uniquely able to address;

BE IT NOW THEREFORE RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

That the Board of City Commissioners of the City of Fargo urges the Congress of the United States to establish the Red River Valley Authority as an agency or authorized board of the federal government for the purpose of the regulation and control of water quality of the Red River and regulation and control of the retention and flow of water, including retention by dams or retention ponds or other areas, and of drainage on the Red River.

BE IT FURTHER RESOLVED, That the Congressional Act establishing the Red River Valley Authority provide a process for the President of the United States to appoint the members of the board consisting of not more than nine members and with all but two members being residents of the area serviced by the Red River Valley Authority and with a provision that requires the President to consider recommendations from public officials such as the governors of the states of Minnesota, North Dakota and South Dakota; individual citizens; individuals representing business, industry, labor, electric power distribution, the environment, cities and service organizations; and the Congressional Delegations of the states of Minnesota, North Dakota, and South Dakota in selecting qualified members to serve on the board.

BE IT FURTHER RESOLVED, That the Fargo City Auditor forward copies of this resolution to the President of the United States; the governors of Minnesota, North Dakota, and South Dakota; and to each member of the Minnesota, North Dakota, and South Dakota Congressional Delegations.

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

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

#### Flood Update Received:

City Administrator Pat Zavoral gave an update on the flood outlook for the City of Fargo.

#### 2009 Legislative Issues Discussed:

City Administrator Pat Zavoral reviewed the matrix indicating the 2009 Legislative Bills that the City supports and opposes.

#### Board of Equalization to Meet at 7:30 a.m. on Tuesday, May 12, 2009:

Mayor Walaker stated the Board of Equalization was scheduled to meet April 28, 2009 but should be delayed due to recent flooding.

Commissioner Wimmer moved the Board meet as the Board of Equalization at 7:30 a.m. on Tuesday, May 12, 2009.

Second by Mahoney. On call of the roll Commissioners Wimmer, Mahoney, Piepkorn, 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 5:00 o'clock p.m., Monday, April 20, 2009.

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

The time at adjournment was 6:10 o'clock p.m.