

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: July 13, 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, July 13, 2009.

The Commissioners present or absent were as shown following:

Present: Piepkorn, Williams, Wimmer, Walaker.

Absent: Mahoney.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Piepkorn moved the Order of the Agenda be approved.

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

Minutes Approved:

Commissioner Williams moved that the Minutes of the Regular Meeting of the Board held on June 29, 2009 and the Adjourned Regular Meeting of the Board held on July 6, 2009 be approved as read.

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

Consent Agenda Approved:

Commissioner Piepkorn moved the Consent Agenda be approved as follows:

- a. Receive and file 2009 Second Quarter Financial Status Report.
- b. Receive and file Year to Date – Budget to Actual report for June 2009.
- c. Pledged securities as of June 30, 2009.
- d. Appointment of Greg Stone as a special police officer for NDSU.
- e. Noise Ordinance Extension requests:
 - (1) July 16th until 11:00 p.m. for a street dance on the OB parking lot.
 - (2) August 14th until midnight for the Hotel Donaldson 2nd Annual Dalefest.
 - (3) August 6th until 11:00 p.m. for an outdoor event at Borrowed Bucks Roadhouse.
- f. Acceptance of the Neighborhood Stabilization Program grant allocation in the amount of \$5.01 million.

- g. Applications for tax exemptions for improvements made to the following buildings:
 - (1) Steven Stremick, 1155 13th Avenue South (3 years).
 - (2) Gary and Amie Haugo, 808 8th Street South (5 years).
 - (3) Neil and Mary Jo Horsager, 1315 6th Street South (5 years).
- h. Change Order M-6 for an increase of \$4,015.00 for the Main Library.
- i. PEC recommendation to set the annual salary for the Municipal Court Judge at \$75,000 and increase the FTE to .75 effective July 1, 2009.
- j. Traffic Safety Contract Amendment from the NDDOT for the Safe Communities Program (Contract # E09-521-1008).
- k. Grant Awards from the North Dakota Department of Health:
 - (1) State Aid to Local Public Health Units (Contract # 09-081).
 - (2) \$3,000 to support a Balancing Intake and Expenditure (BITE) project for physical activity and nutrition (Contract # 09-047).
 - (3) Title X Family Planning program for pharmaceuticals (Contract # 08-700B).
 - (4) Title X Family Planning program (Contract # 09-054).
 - (5) Title V Maternal and Child Health Block Grant activities (Contract # 09-008).
- l. Agreement with the Fargo Park District/Fargo Senior Services for the purchase of new vans for the Metro Senior Ride Service.
- m. Bid award to Industrial Builders, Inc. in the amount of \$365,890 for deck repair work at the Ground Transportation Center.
- n. Authorize Request for Proposals to obtain management, driver and fixed route dispatch services.
- o. Temporary Agreement with the City of Grand Forks for temporary use of Fargo's landfill.
- p. Applications for Games of Chance:
 - (1) Knights of Columbus 4th Degree Assembly 788 for a calendar raffle from 1/1/10 to 1/31/10.
 - (2) Freedom Resource Center for a raffle on 9/24/09.
- q. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Rezoning Certain Parcels of Land Lying in the North Half of Section 1, T139N, R49W.
- r. Purchase Agreement with Long Field Woods SPE, LLC for a permanent sanitary sewer easement and a temporary construction easement (Improvement District No. 5729).

- s. Purchase Agreement with Jon Treitline for a permanent sanitary sewer easement and a temporary construction easement (Improvement District No. 5656).
- t. Bid awards for Project Nos. 5897 to Key Contracting in the amount of \$47,777.50 and 5899 to Master Construction Company, Inc. in the amount of \$681,559.
- u. Bid advertisements for Project Nos. 5871 and 5873.
- v. Bills in the amount of \$8,455,403.60.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract for Recreational/Bike Trail and Incidentals Improvement District No. 5817 Approved:

Commissioner Piepkorn moved approval of the Contract between the City of Fargo and Specialized Contracting for Recreational/Bike Trail and Incidentals Improvement District No. 5817 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract Bond for Recreational/Bike Trail and Incidentals Improvement District No. 5817 Approved:

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

The Cincinnati Insurance Company, in the amount of \$129,731.45, for Recreational/Bike Trail and Incidentals Improvement District No. 5817 in the City of Fargo, North Dakota.

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

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

(Commissioner Mahoney present)

Commissioners Mahoney and Wimmer Appointed to Flood Management Work Group:

The Board received a communication from City Administrator Pat Zavoral stating discussions were held with Cass, Clay and Moorhead about flood management and it has been suggested that a working group of elected officials and staff work with each entity and the Watershed Districts to come up with recommendations for the larger group to consider. He said each board is to appoint

two elected members to the working group. Commissioners Mahoney and Wimmer have expressed interest in representing Fargo on the committee, he said.

Commissioner Williams moved Commissioners Mahoney and Wimmer be designated to represent Fargo on a Flood Management Work Group to make recommendations to the Cass/Clay/Moorhead/Fargo Metro Study Committee.

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

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

Moratorium Placed on the Issuance of All Building Permits for Platted River Lots:

The Board received a communication from City Administrator Pat Zavoral stating since the flood waters have subsided for the second time on the Red River, a number of City departments (Codes, Planning, and Engineering) have been approached by developers, landowners and residents seeking permits to build on river lots both in the City and in the extraterritorial zoned areas. The staff, he said, has been hesitant to comply with these requests given the recent history of how difficult it is to protect these lots during high water. They also recognize, he said, that these lots were platted prior to the current federal remapping effort and there is little that can be done without City Commission action. He submitted a list of lots along the river and legal drains. He said the following 3 options are available to the City with regard to platted river lots:

“Option 1 is to allow construction to take place on platted lots. If this option is chosen a stipulation could be adopted by the Commission to require siting of a structure further than 100 feet from the soon to be adopted FEMA floodway and elevate the structure to the soon to be approved FEMA flood plain base elevation.

Option 2 is to suspend issuance of permits until the Corps of Engineers have narrowed their options for the metro study flood protection plan. The Corps’ plan, which should be available at the end of September, should provide the City with feasible solutions and at that time should have a good sense of what river lots are vulnerable to flooding and would need to be purchased.

Option 3 is to aggressively acquire river lots. This option would best be followed after the Corps has presented their options in September.”

Mr. Zavoral stated in his communication that after the 1997 flood the City Commission issued a moratorium for building permits on river lots for one year, a lawsuit followed from a landowner with river lots and the City prevailed with the moratorium all the way to the North Dakota Supreme Court. Thus, he said, the precedent for a moratorium has been established.

Mr. Zavoral stated there could be a combination of actions at this point - a moratorium on building permits with a select acquisition program or Option 1 with a selected acquisition of lots for those that are clearly vulnerable according to the engineering staff's analysis could be undertaken.

City Engineer Mark Bittner said City staff should proceed cautiously in issuing

permits in vulnerable areas and he suggested staff have the authority to evaluate lots on a case-by-case basis. He said staff has received the preliminary layout of the proposed Corps of Engineers flood alignment and would like to include property owners in the discussion.

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

Petition Requesting Modification of an Existing Conditional Overlay in Erskine's Addition Denied (1117 and 1155 13th Avenue South):

At a Hearing held on June 10, 2009 the Fargo Planning Commission recommended approval of a portion of the proposed modification of a Conditional Overlay on the south 51 feet of Lots 1, 2, 3, 4 and 5; the south 51 feet of the south 101 feet of the west 8.4 feet of Lot 6; the southern 70 feet of the east 16.6 feet of Lot 6; all of Lot 7; and the west 8.4 feet of Lot 8, Block SS of Erskine's Addition.

Senior Planner Jim Hinderaker stated Mr. Stremick requested a modification on the dimensions of the sign face from 8 feet to 10 feet. At the June 10, 2009 Planning Commission meeting, he said, an amendment was made to decrease the request from 10 feet to 9.5 feet. Planning staff, he said, recommends the amended request but much of the neighborhood is still opposed.

Commissioner Piepkorn said he has two concerns - safety and sign proportion. He said he would like to see a rendering of the sign in relation to the house.

In response to a question from Commission Mahoney regarding the possibility of the request failing, Mr. Hinderaker said the existing Conditional Overlay would remain in effect.

Jonathan Garaas, Attorney representing Steven Stremick, said Mr. Stremick is being singled out because he is the only sign applicant in the City having width restrictions placed on his application. Mr. Garaas also said the sign is not a safety hazard because a determination had been made that the site triangle had been met. He said the traffic signal on the corner poses more of a safety hazard than the sign. He said Mr. Stremick is asking for a correction to an error that was not his own.

Commissioner Mahoney moved to accept the findings and recommendations of staff, as amended by the Planning Commission, and approve the modification of the Conditional Overlay to increase the maximum width of monument signage such that the face of the sign does not exceed 8.0 feet with an allotment for trim up to 9.5 feet on the basis that review criteria of Section 20-0906.F (1-4) and all other applicable requirements of the LDC have been met.

Mayor Walaker relinquished the Chair to second the motion. (Deputy Mayor Mahoney presiding)

Commissioners Mahoney, Walaker, Williams, Wimmer and Piepkorn voted nay.

The motion was declared lost for the lack of a majority.

Deputy Mayor Mahoney returned the Chair. (Mayor Walaker presiding)

Commissioner Piepkorn moved the proposed modification of the Conditional Overlay be denied based on lack of compatibility with the neighborhood and safety concerns.

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

Commissioners Williams and Walaker voted nay.
The motion was declared carried.

Hearing on a Plat of Dakota Boys and Girls Ranch Addition and a Petition for a Zoning Change on Certain Parcels of Land in Dakota Boys and Girls Ranch Addition Continued to August 24, 2009 (2038 76th Avenue South):

This was the time and date set for a Hearing on a petition for a zoning change from AG, Agricultural to MR-3, Multi-Dwelling on Lots 1 and 2, Block 1 and Lot 2; SR 4, Single-Dwelling on Lot 3, Block 2; and P/I, Public and Institutional on Lot 1, Block 2 and a Plat of the Dakota Boys and Girls Ranch Addition, however, the petitioner has requested that the Hearing be continued to August 24, 2009.

Tim Eissinger, Dakota Boys and Girls Ranch Vice President of Programming, said the request for the delay is due to the fact that the person that recently signed the protest changed from being neutral to opposing the rezoning request. He said she lives out of town and will be returning to the area in August to review the situation so the Boys Ranch is asking for a continuance.

Jim Carlson, 1649 Round Hill Drive, said the Round Hill Association visited with the out-of-state landowner and after she signed the petition, Planning Department staff contacted her. He said it was inappropriate for the Dakota Boys Ranch to contact her and said he has serious concerns regarding how this was handled by Planning and Boys Ranch staff. He said this issue has gone on too long and he maintained the request for rezoning is in violation of zoning criteria.

Planning Director Jim Gilmour said Mr. Hinderaker contacted the woman to verify the signature on the protest.

Dave Ekman, 1615 Round Hill Drive, said he would like to encourage the Board to vote tonight on the rezoning request.

Charles Poynter, 3618 River Drive South, said he owns two lots close to the Dakota Boys and Girls Ranch property and if the rezoning goes through he will sell the lots and take a loss. He said it is the wrong location for the Dakota Boys Ranch facility.

Commissioner Wimmer moved the Hearing be continued to 5:15 p.m., Monday, August 24, 2009.

Second by Piepkorn.

Commissioner Williams said the Board denied a similar request one and a half years ago and nothing has changed.

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

Commissioners Williams and Walaker voted nay.

The motion was declared carried.

At 6:10 the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Renaissance Zone Project for Kennelly & O'Keefe, Ltd. Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Kennelly & O'Keefe, Ltd. for a business leasing property as part of a zone project at 313 NP Avenue.

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 Law states "a business that purchases or leases property as part of a zone project is exempt from income tax for five taxable years beginning in the year of the investment or lease for income derived from the business locations within the zone". He said the Fargo Renaissance Zone Development Plan further states "Tenant must be leasing space in a building that has been approved as a zone project to be eligible for consideration". He stated the Renaissance Zone Authority felt that lease projects such as the application from Kennelly & O'Keefe, Ltd. would generally be straightforward and could be advanced to the City Commission following staff review and would generally not require direct Authority action. He said staff review found the applicant has met the aforementioned requirements. He said the project addresses the business retention and expansion goals stated in the Renaissance Zone Development Plan.

Commissioner Piepkorn moved the Renaissance Zone application filed by Kennelly & O'Keefe, Ltd. for a project located at 313 NP Avenue be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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.

Renaissance Zone Project for Arthur Ventures, LLC Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Arthur Ventures, LLC for a business leasing property as part of a zone project at 102 Broadway, Suite 203.

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 Law states "a business that purchases or leases property as part of a zone project is exempt from income tax for five taxable years beginning in the year of the investment or lease for income derived from the business locations within the zone". He said the Fargo Renaissance Zone Development Plan further states "Tenant must be leasing space in a building that has been approved as a zone project to be eligible for consideration". He stated the Renaissance Zone Authority felt that lease projects such as the application from Arthur Ventures, LLC would generally be straightforward and could be advanced to the City Commission following staff review and would generally not require direct Authority action. He said staff review found the applicant has met the aforementioned requirements. He said the project addresses the business retention and expansion goals stated in the Renaissance Zone Development Plan.

Commissioner Piepkorn moved the Renaissance Zone application filed by Arthur Ventures, LLC for a project located at 102 Broadway, Suite 203 be approved

and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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.

Moratorium Placed on the Issuance of All Building Permits for Platted River Lots (Continued):

City Administrator Pat Zavoral said the Board should consider a moratorium on building permits but also allow staff to evaluate each request because some lots will be able to have construction while other lots should be purchased.

Commissioner Piepkorn moved a moratorium be placed on all building permits on platted river lots and allow Engineering, Planning and Inspection staff to evaluate each request on a case-by-case basis.

Second by Mahoney.

In response to a question by Commissioner Williams regarding the original owner having first right to purchase back their property if it is bought by the City, Mr. Zavoral said they would.

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

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

Appropriate Staff Directed to Purchase Equipment and Services for Audio Conferencing for the Commission Room: Ordinance Relating to Prohibiting Commissioners from Appearing at Regular Meetings by Telephone or Other Electronic Media Tabled:

The Board received a communication from City Attorney Erik Johnson stating he was asked to report back to the Board with a draft ordinance that prohibits a Commissioner from participating in City Commission meetings by telephone. He said technology may improve so that a Commissioner who is not able to be present in the meeting room may better be able to listen, talk and participate in Commission meetings. State law, he said, does allow a City Commission to determine its rules of procedure (N.D.C.C. § 40-06-05) and allows a governing body to fine or expel a member for neglect of duty or for unnecessary absence from meeting sessions. Fargo City Ordinances, he said, do not specifically address the issue of whether, or how, a commissioner may participate in a meeting when he or she is not physically present at the meeting. Mr. Johnson submitted a draft ordinance for the Board's consideration and noted the rule only applies to "regular meetings", to be distinguished from "special meetings". He said there may be emergency circumstances where a special meeting needs to be called and it becomes necessary for one or more Commissioners to be able to appear by telephone in order to obtain a quorum or in order to weigh in on an urgent issue that cannot wait until one of the bi-weekly regular meetings.

The Board received a communication from Chief Information Officer Ron Gronneberg stating at the June 15, 2009 meeting, he was asked to research options for better functionality for conference calls during Commission meetings. He said he

contacted AVI, the company that installed and has supported the current Commission Room audio-visual equipment and also has the North Dakota state contract for audio-visual equipment. The pricing provided by AVI is based on the State Contract Rates, he said. He stated the suggested equipment will integrate directly with the current sound system (Crestron), so the caller will hear everything that is spoken into the microphones and anything the caller says will come across the speaker system in the Commission Room. He said the equipment will provide the following functions:

Allow the Camera Operator to call out.

Allow callers to call-in for meetings (up to 12 callers).

Clean up the audio (balance & level).

Integrate directly with the audio system for better audio and broadcast sound.

He said the cost will be approximately \$6,500 for the equipment, installation and re-programming.

Mayor Walaker said he is disappointed with the call-in option. He said it is different in rural areas where members may have difficulty attending.

Commissioner Wimmer said he is out of town two to four times a year for work, boards and vacations.

Commissioner Mahoney said he would like the option to call in when necessary.

Commissioner Piepkorn said it is important to attend meetings in person in order to get the feel for the issue.

Commissioner Mahoney moved appropriate staff be authorized to purchase the necessary equipment and services to implement the audio conferencing equipment for the Commission Room and that the Ordinance Relating to Prohibiting Commissioners from Appearing at the Regular Meetings by Telephone or Other Electronic Media be tabled.

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

Mayor Walaker voted nay.

The motion was declared carried.

Appointments to Various Boards and Commissions Approved:

The Board received a communication from Mayor Walaker recommending the following appointments to several Boards and Commissions of the City for the terms listed:

Parking Commission

Mike Williams (reappointment)

Term Expires

June 30, 2012

Board of Appeals

Randy Buth (reappointment)

June 30, 2014

Board of Adjustment

Lisa Wheeler (reappointment)

June 30, 2012

Chad Peterson (reappointment)

June 30, 2012

Special Assessment Commission

Dan Dunn (reappointment)

June 30, 2012

Commissioner Wimmer moved the appointments be approved as outlined above.

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

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

City Attorney Erik Johnson announced that there is a pending litigation matter to be discussed in Executive Session.

Commissioner Piepkorn 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 matter.

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

At 6:35 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

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

The Executive Session closed at 7:12 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, July 27, 2009.