

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: November 25, 2013:

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 4:30 o'clock p.m., Monday, November 25, 2013.

The Commissioners present or absent were as shown following:

Present: Williams, Wimmer, Sobolik, Walaker.

Absent: Mahoney.

Mayor Walaker presiding.

City Attorney Erik Johnson announced that the Board will meet in Executive Session pursuant to North Dakota Century Code, Section 44-04-19.1 subd 9 to discuss and provide negotiating instructions to a negotiator for the City on a contract discussion reasonably likely to occur in the immediate future.

Commissioner Wimmer moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.1 to discuss said matter.

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

At 4:32 p.m. the Board moved to the River Room to discuss said matter in Executive Session.

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

Absent: none.

The Executive Session closed at 4:52 o'clock p.m. and the Commission reconvened in public session at 5:00 o'clock p.m.

All Commissioners present. Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved.

Second by Sobolik. 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 November 12, 2013, be approved as read.

Second by Sobolik. 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. 1st reading of an Ordinance Amending Section 1-0305.A.1 and Section 1-0305.C.2 of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to the Traffic Code (amending the penalty for cancelled or revoked motor vehicle registration).
- b. 2nd reading, waive reading and final adoption of an Ordinance Amending Subsection O of Section 25-1506 and 25-1507 of Article 25-15, of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages; 1st reading, 11/12/13 (to increase the food component from 50% to 65% and decrease the initial issuance fee from \$25,000.00 to \$10,000.00).
- c. Meter Reader I contract renewals with Nolan Vanyo and Brandon Beaudry for 2014.
- d. Extension of FMLA leave for Fire Captain Jon Bolstad.
- e. Expenditure of Neighborhood Stabilization Program funds for acquisition of 1301 16 1/2 Street South.
- f. Appointment of Randy Lee Schmidt and Evan Michael Messer as special police officers for NDSU.
- g. Bid advertisement for Project No. 6172-03.
- h. Contract with the North Dakota Department of Health for Epidemiology and Laboratory Capacity Program – West Nile Virus (CFDA #93.283).
- i. Agreement with Richland County Health Department for Nurse Practitioner Services.
- j. Health Department budget adjustments and Grant Agreement with Dakota Medical Foundation, in the amount of \$12,000.00, for dietitian consulting services provided by Deb Haugen for a 2013/2014 Cass-Clay School Wellness Policy Project.
- k. Applications for five-year tax exemptions for improvements made to buildings:
 - (1) Robert and Michelle Edenborg, 48 North Woodcrest Drive.
 - (2) Samuel Jenkins and Erika Offerdahl, 1305 North Broadway.
 - (3) Conrad Klinkhammer, 1422 10th Avenue South.
 - (4) James and Beth Postema, 902 Seventh Street South.
 - (5) Katlyn Duval, 421 15th Avenue South.
 - (6) Renee Herbranson, 419 24th Street South – Unit 4.
- l. Applications for Games of Chance:
 - (1) El Zagal Temple Holding Company for a raffle on 2/8/14.
 - (2) North Dakota Long Term Care Foundation for a raffle on 12/13/13; Public Spirited Resolution.
 - (3) Nativity Elementary for a raffle on 1/31/14.
 - (4) NDSU Bison Dance Team for a raffle on 12/13/13.

- m. 2014 rates for MATBUS exterior and interior advertising.
- n. Purchase of three paratransit vehicles from North Central Bus Sales, in the total amount of \$183,522.00, pending Federal Transit Administration approval.
- o. Winter pruning project contract with Cougar Tree Care, Inc. in the amount of \$89,486.10.
- p. Three-year extensions to the General Engineering Services Agreements with Houston Engineering, Apex Engineering Group and AE2S/Black & Veatch for the Water and Wastewater Utility Departments.
- q. One-year extension to the Guaranteed Cost Contract with Aqua-Pure, Inc. for polymer chemicals at the Water Treatment Plant.
- r. Authorize submission of applications to Metro COG for 2018 Federal Aid projects and 2015 Transportation Alternative Program funding.
- s. Purchase Agreement – Permanent and Temporary Easements with Engkjer Financial, LLLP (Project #5949-3).
- t. Final Balancing Change Order No. 1, for an increase of \$4,954.28, for Project No. 6225-01.
- u. Bills in the amount of \$9,922,953.62.

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

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

Contract Time Extension for Improvement District No. 6183 Approved:

Commissioner Mahoney moved approval of a contract time extension to November 5, 2013 for Improvement District No. 6183.

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

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

Change Order No. 1 for Improvement District No. 5996 Approved:

Commissioner Mahoney moved approval of Change Order No. 1 for an increase of \$50,419.66 for Improvement District No. 5996.

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

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

Change Order No. 1 for Improvement District No. 6211 Approved:

Commissioner Mahoney moved approval of Change Order No. 1 for an increase of \$36,702.00 for Improvement District No. 6211.

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

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

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6247 Approved:

Commissioner Mahoney moved approval of the Contract between the City of Fargo and Ryan Development, Inc. for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6247 in the City of Fargo, North Dakota.

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

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

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6247 Approved:

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

Arch Insurance Company, in the amount of \$558,469.75, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6247 in the City of Fargo, North Dakota.

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

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

T.L. Stroh Architects and Interiors, and HDR Architecture Retained for Design Services for a New City Hall:

The Board received a communication from Mayor Walaker stating the City Hall Building Committee received nine submittals from architectural/engineering firms interested in providing design services for a new City Hall with five of the firms selected for interviews that were held on November 19th and 20th. All five of the firms had local connections, he said, with three of the firms also partnering with regional firms. He said the Committee's recommendation is to employ the design services of T.L. Stroh Architects and Interiors, and HDR Architecture. These firms bring both local and regional experience for design of public facilities, he stated, and the Building Committee and Staff Committee were unanimous in the recommendation to contract with them.

City Administrator Pat Zavoral said the proposal presented by T.L. Stroh and HDR integrated technology and security, both of which are concerns staff have and the direction the industry is heading. He said a series of decisions need to be made about what is needed for the new space and planning will be intense for the next six months.

Terry Stroh, T.L. Stroh Architects and Interiors, said he has partnered with HDR Architecture in other projects and they share the same values and approach to problem solving. He said new trends in civic and corporate architecture include flexible spaces, making use of natural light, and dimmable lighting technology. Many of the buildings his firm has done have implemented security in a way that it is screened, he said, and not overbearing.

Mike Rodriguez, HDR Architecture, said the industry has progressed from showing proposed buildings with flat elevations to having the technology to show every design detail enabling a better understanding of the design prior to building. He demonstrated computer software that enables repositioning of a drawing of a building to determine light and shadows at a specific time of year, down to the hour.

Commissioner Sobolik moved T.L. Stroh Architects and Interiors and HDR Architecture, Inc. be selected as the architectural/engineering firm for the design of the Fargo City Hall project, and that appropriate staff be directed to prepare a contract for these services.

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

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

Resolution Adopted Approving the Issuance of Bonds by the Cities of Harwood and Argusville, North Dakota, on Behalf of American Lutheran Homes, Inc. Under the Municipal Industrial Development Act and Authorizing the Execution of an Agreement:

City Attorney Erik Johnson said the City does not issue bonds; however, due to the fact that the building site is in Fargo's city limits it is an obligation of the City to hold a hearing to take comments from the public and consent to the issuance of the bonds.

Jim Stewart, representing American Lutheran Homes, Inc., said the reason the cities of Harwood and Argusville were asked to issue the Health Care Facilities Revenue bonds is that the purchaser is requiring the bonds be bank qualified. He said only a municipality expecting to issue less than \$10 million in bonds during the calendar year is able to designate bonds as bank qualified. The funds will be used for a project of about \$20 million for a small addition and renovation of the Bethany on University campus at 201 University Drive South, he said.

Commissioner Wimmer moved the Resolution entitled "Resolution Approving the Issuance of Bonds by the Cities of Harwood and Argusville, North Dakota, on Behalf of American Lutheran Homes, Inc. Under the Municipal Industrial Development Act and Authorizing the Execution of an Agreement" and referred to as Attachment "A", be adopted and attached hereto.

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

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

Application Filed by Fargo-Moorhead Curling Club d/b/a Fargo-Moorhead Curling Club for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Fargo-Moorhead Curling Club d/b/a Fargo-Moorhead Curling Club for a Class "AC" Alcoholic

Beverage License at 4300 23rd Avenue South, notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

City Auditor Steve Sprague said a club license designation requires that a club have 200 plus members and have been in existence for more than 20 years. He said the Fargo-Moorhead Curling Club is moving from the north side to a new building on the south end of town. The club did not have a liquor license at the old facility, he said.

Commissioner Wimmer said the nature of clubs has changed over the years and the Liquor Control Board discussion was about the public being allowed; however, in this case, it was felt that unless one is a participant or follower, the general public would not frequent the establishment.

Commissioner Wimmer moved the application be approved.

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

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

Application to Transfer the Alcoholic Beverage License from Oeluck, Inc. d/b/a Tips & Taps to Oeluck, Inc. d/b/a Blu-Sky Billiards on Broadway Approved:

A Hearing had been set for this day and hour on an application to transfer the Class "F" Alcoholic Beverage License from Oeluck, Inc. d/b/a Tips & Taps at 206-208 Broadway to Oeluck, Inc. d/b/a/ Blu-Sky Billiards on Broadway at 122 1/2 Broadway, notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

The Board received a communication from Chief of Police Keith Ternes recommending approval contingent on the applicant obtaining the required restaurant license or permit. He said the application does not clearly indicate the requirement has been met.

City Auditor Steve Sprague said this is the final step for the applicant who was housed in the Loretta Building until it was remodeled and they needed to find another place downtown. He said they had some issues with accessibility, which have been resolved.

Commissioner Wimmer moved the application be approved.

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

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

Resolution Adopted Approving 42nd Street Second Addition (3620, 3640, 3660, 3680 42nd Street South):

Planning Administrator Nicole Crutchfield said the applicant is seeking approval for a minor subdivision plat, which is a replat of part of 42nd Street Addition. She said the subdivision is being requested in order to vacate a portion of an existing negative access agreement along 42nd Street South. She said when 42nd Street Addition was platted, there was a negative access agreement established along portions of the eastern edge of 42nd Street to limit access to 42nd Street and required shared driveways. She said the applicant is developing this property into an apartment complex and would like to better align access points to the proposed parking lot locations. She said the negative access easement is being adjusted in order to allow vehicular access to and from 42nd Street at two locations more conducive to the applicant's proposed site layout. The plan was originally denied due to traffic safety concerns, she said; however, a compromise was negotiated to support one driveway access onto 42nd Street as a right in/right out only.

Commissioner Sobolik offered the following Resolution and moved its adoption:

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

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "42nd Street Second Addition" containing 1 Lot, 1 Block, and 7.17 acres of land more or less, located at 3620, 3640, 3660, and 3680 42nd Street South; and

WHEREAS, The plat includes the vacation of part of an existing negative access easement along 42nd Street South; and

WHEREAS, A Hearing was held October 1, 2013 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, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on October 23, 28, November 4, 11, and 18, 2013 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., November 25, 2013 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 "42nd Street Second Addition" 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 Recorder of Cass County, North Dakota.

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

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

Application Requesting a Sidewalk Waiver Adjacent to 35th Avenue North Denied (Lot 5, Block 1, Van Raden's Third Addition):

A Hearing had been held by the Fargo Planning Commission on November 5, 2013 for the purpose of considering a petition to grant a Sidewalk Waiver adjacent to 35th Avenue North, more specifically described as Lot 5, Block 1, Van Raden's Third 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.

The Board received a communication from Planning Administrator Nicole Crutchfield stating the City has received complaints about a sidewalk gap on the north side of 35th Avenue North between Broadway and Cherry Lane. She said the missing sidewalk stretches across approximately 1,000 lineal feet and is the only missing sidewalk on 35th Avenue North between Broadway and the Red River. In early 2013, she said, the City issued a notice to the property owner stating a sidewalk was needed and, pursuant to City code, the property owner could construct the sidewalk at his expense or the work could be completed by the City and the cost would be assessed. She said the property owner, Van Raden Properties, Inc., submitted a sidewalk waiver petition. The Planning Commission considered the petition at its regular meeting on November 5th, she said, and voted unanimously to recommend denial of the sidewalk waiver based on guidelines set forth in the Land Development Code and policy within the Comprehensive Plan. If the petition is denied, City staff would pursue a project in 2014 to coincide with the yearly city wide sidewalk construction project, she said, a project that typically completes sidewalks within new developments that are built-out and have missing sidewalks. She said Mr. Van Raden has presented her with a two page list of other properties in the City where there are gaps in the sidewalk system. She said the Land Development Code and Comprehensive Plan GO2030 require connectivity on both sides of the right-of-way. There was a time in the 70's and 80's when sidewalks were not necessarily put on both sides, she said. When complaints are received, she said, they are looked at on a case-by-case basis. In this case, she said, there is a worn path there where people have walked and staff feels there is a need for a sidewalk there.

Roger Van Raden, Van Raden Properties, Inc., stated all the residents in the mobile home park whose property abuts 35th Avenue oppose sidewalks that would cut down on their yard size. He said in his opinion there is no need for the sidewalk. He said this issue was dealt with in approximately 1987 between his father and Mark Bittner, and an agreement was made for the sidewalk to be only on the south side of 35th Avenue.

Director of Engineering Mark Bittner said there may have been an agreement such as Mr. Van Raden refers to; however, he has not found any supporting paperwork. This may be considered a rear yard sidewalk, he said, in which case it would be funded by the City.

City Engineer April Walker said each year staff looks at sidewalks needed and fills in a portion of sidewalks. She said staff would be happy to look at the list Mr. Van Raden furnished to prioritize needs. In this case, she said, the sidewalk had been part of an improvement district and was pulled when the waiver was requested. She

said this has been interpreted as being a front yard sidewalk for which the property owner would be special assessed.

Ms. Crutchfield said this is considered one platted parcel and everything internal is private drives. Once it is known whether there will be a sidewalk put in, she said, the Special Assessment Committee would decide on the funding.

Commissioner Sobolik moved the application requesting a Sidewalk Waiver adjacent to 35th Avenue North (Lot 5, Block 1, Van Raden's Third Addition) be denied.

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

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

Second Reading and Final Adoption of an Ordinance Amending Section 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages:

City Attorney Erik Johnson said at the last regular City Commission meeting the proposed Ordinance amending the Class "Z" liquor license was placed on first reading. He said once the amended Ordinance is enacted, the City Commission will be authorized to establish a current population using calculations from the US Census Bureau and by using a reasonable method of extrapolation. He said Planning Director Jim Gilmour estimates the City's population at 112,075 as of July 1, 2013 and this population would accommodate the three recent applications for the Class "Z" licenses.

Commissioner Wimmer moved that the proposed Ordinance amending Section 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages which was placed on its first reading November 12, 2013 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

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

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

There was unanimous consent to waive reading of the Ordinance in its entirety and no one was present to request that the Ordinance be read.

On the vote being taken on the question of the final passage and adoption of the Ordinance, Commissioners Wimmer, Williams, Mahoney, Sobolik and Walaker voted aye.

No Commissioner being absent and none voting nay, the Ordinance was duly passed and adopted.

112,075 Adopted as the City's Current Population for Purposes of Establishing Liquor Licenses:

Commissioner Wimmer moved 112,075 be adopted as the City's current population for purposes of establishing liquor licenses.

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

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

Applications Filed by Labby's, Inc. d/b/a Labby's Grill and Bar; JR Hospitality Group LLP d/b/a Catherine's; and The Pink Pussy Cat Lounge, LLC d/b/a The Pink Pussy Cat Lounge for Alcoholic Beverage Licenses Approved:

City Auditor Steve Sprague said at a Hearing held on October 28, 2013, three applicants were approved for liquor licenses; however, at that time only one Class "Z" Alcoholic Beverage License was available. He said now that the Ordinance has been amended and the population increase established, there are Class "Z" Alcoholic Beverages Licenses available for all three applicants.

Commissioner Wimmer moved the applications filed by Labby's, Inc. d/b/a Labby's Grill and Bar at 1180 19th Avenue North; JR Hospitality Group, LLP d/b/a Catherine's at 609 NP Avenue; and The Pink Pussy Cat Lounge, LLC d/b/a The Pink Pussy Cat Lounge at 2600 52nd Avenue South, Suite 110 be approved.

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

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

Rerouting Plan for Residential Garbage and Curbside Recyclable Collection Approved:

The Board received a communication from the Utility Committee stating Solid Waste Utility Director Terry Ludlum presented a memo and map related to a rerouting plan for residential garbage and curbside recyclables collection in Fargo. They said there is a need for the route changes due to the projected growth south of 40th Avenue South and with the implementation of the rerouting, the daily workload of the Solid Waste Division will be more evenly distributed. They said this will also help to absorb future projected growth by minimizing the need for additional trucks and personnel.

Enterprise Director Bruce Grubb said the plan will impact a large number of households and while he is aware residents do not like having their garbage day changed, the rerouting is necessary to evenly distribute workload and improve efficiencies.

Mr. Ludlum provided a power point presentation summarizing the changes. He stated the changes will begin January 6th and will be preceded with an aggressive outreach plan to inform homeowners how the changes will affect them. He said major thoroughfares have been used as cut-off points which will make it much easier to determine which day of the week garbage is collected at a specific address.

In response to a question from Commissioner Sobolik about how long this plan is expected to last before another adjustment would be needed, Mr. Ludlum said the existing plan has been in place for thirteen years. He said this plan allows for growth and he anticipates the plan to stay in place for five or six years.

Commissioner Williams moved the proposed rerouting of residential garbage and curbside recyclable collection be approved as presented.

Second by Mahoney. On call of the roll Commissioners Williams, Mahoney, Sobolik, Wimmer 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, December 9, 2013.

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

The time at adjournment was 6:13 o'clock p.m.