

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: August 18, 2014:

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, August 18, 2014.

The Commissioners present or absent were as shown following:

Present: Sobolik, Williams, Piepkorn, Mahoney.

Absent: Walaker.

Deputy Mayor Mahoney presiding.

Order of Agenda Approved:

Commissioner Sobolik moved the Order of the Agenda be approved.

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

Minutes Approved:

Commissioner Sobolik moved that the Minutes of the Regular Meeting of the Board held on August 4, 2014 be approved as read.

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

Consent Agenda Approved:

Commissioner Sobolik moved the Consent Agenda be approved as follows:

- a. 2nd reading, waive reading and final adoption of Ordinances Rezoning Certain Parcels of Land Lying in the following Additions; 1st reading, 8/4/14:
 - (1) Valley View Addition to the City of Fargo, Cass County, North Dakota.
 - (2) Asleson Farms Second Addition City of Fargo, Cass County, North Dakota.
 - (3) Timber Creek Third Addition City of Fargo, Cass County, North Dakota.
 - (4) Spiry Third Addition City of Fargo, Cass County, North Dakota.
 - (5) Edgewood Estates Addition City of Fargo, Cass County, North Dakota.
- b. Receive and file Year to Date – Budget to Actual Report for July 2014.
- c. 2015 City Commission meeting schedule.
- d. Amendment to the Joint Powers Agreement for Transit Support and an agreement for Transit Services for 2014-2015 with NDSU.
- e. Applications for Games of Chance:
 - (1) YWCA Cass Clay for a raffle on 9/4/14.
 - (2) Nativity Church of Fargo for a raffle on 11/2/14.

- (3) Fargo South High School for raffles from 12/5/14 to 2/28/15 at Scheels Arena.
- (4) Fargo South High School for raffles from 8/28/14 to 2/26/15 at Fargo South High School.
- (5) North Dakota Long Term Care Association for a raffle on 9/18/14.
- f. Resolutions Approving the following Plats:
 - (1) Lucken Second Addition (Attachment "A").
 - (2) Mercedes First Addition (Attachment "B").
- g. Authorize staff to issue Request for Qualifications for The Fargo Project.
- h. Three-year contract with Fargo Public Schools for garbage collection services.
- i. Contract Amendment #1 with AE2S/BV, in the amount of \$441,015.00, for the Water Treatment Plant Expansion Project.
- j. Engineering Task Order with AE2S, in the amount of \$437,500.00, for 60% final design of the Broadway Interceptor SSO Reduction Project.
- k. HMGP Subgrant Agreement with the NDDDES for the WWTP Flood Mitigation and Broadway Interceptor SSO Reduction Project.
- l. Purchase of camera system software from IT Pipes for \$28,690.00.
- m. Purchase of one snow plow, box and wing from Northern Truck Equipment for \$71,075.00.
- n. Professional Services Agreement Amendment No. 6, for an increase of \$36,100.00, for Project No. 5681-02.
- o. Payment of \$39,429.00 to Enventis for relocation of their utility line affected by Project No. FM-14-61.
- p. Reject bids for Project No. FM-14-41.
- q. Bid award for Project No. SW-14-01 to Industrial Builders, in the amount of \$555,780.00.
- r. Project No. FM-14-11: easement acquisition at 4042 Copperfield Court and payment of \$98,947.00; Change Order No. 1, for an increase of \$212,938.50 and time extension to June 15, 2015.
- s. Bid advertisement for Project No. TN-14-0.
- t. Contract and bond for Project No. HD-14-31 and HD-14-41.
- u. Bills in the amount of \$10,835,759.33.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Contract Time Extension for Improvement District No. 6249 Approved:

Commissioner Sobolik moved approval of a contract time extension to September 15, 2014 for Improvement District No. 6104.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Resolution Adopted Authorizing a Public Vote at the November Election on a Proposal for an Increase in E911 Fees:

The Board received a communication from Mayor Walaker stating local governments collect an emergency 911 fee that is assessed on customer phone bills. He said the fee was originally approved by Fargo voters in 1984 and \$1.00 per month has been collected on customer phone bills since that time. The funds are used for emergency communication services provided by the Red River Regional Dispatch Center and the Association of Counties enhanced E911 initiatives, he said. Over the past years, he said, traditional landline revenues have declined and cellular services are becoming saturated; therefore, revenues are flat at a time when public safety expenditures continue to climb. The fee increase is intended to close the current gap between revenues and expenditures for this life saving function, he said, and the Budget Team and Finance Committee reviewed the inadequacy of the current fee and are recommending that it be increased effective January 1, 2015. He said state law requires that any fee increase be approved by voters.

Director of Finance Kent Costin stated back in 2000 100% of the revenues came from landlines, currently only about 27% of the revenues are coming from landlines with the majority now coming from cellular services. He said due to the continuous gap there will be about a \$630,000.00 deficit for this year's operations. He said City Attorney Erik Johnson thought it best to take a hard look at the City's ordinance and make sure that it coincides with the definitions that are contained within the state laws, due to the fact that there may be some revenue opportunities from emerging technologies as well. He said he would also like to clarify that the voters did approve this fee in 1984 and it was increased in 1991 and in 2000.

In response to a question from Commissioner Sobolik regarding collection of fees from trac phones or pay as you go phones, Fire Chief Steve Dirksen said last legislative session there was a bill passed that revenue from any of the trac phones that were sold went into the State's STEPS Program. He said this is a group of emergency communication officers who use the funds to help fund infrastructure needs within dispatch centers around the state.

City Administrator Pat Zavoral said it had been discussed in the Finance Committee meeting that the City team, along with the County, participate in a county-wide vote; however, he said he has not heard back from the County on their decision and feels it best to move forward. He said if any changes need to be made in the ballot verbiage it can be done at the next City Commission meeting.

Commissioner Piepkorn offered the following Resolution and moved its adoption:

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

WHEREAS, The emergency services communication (9-1-1) system is critical to public safety in the City of Fargo; and

WHEREAS, The City imposes an excise tax that is imposed upon each telephone access line and wireless service as defined by City Ordinance, which tax was established by voters of the City of Fargo in the general national and statewide election held November 6, 1984; and

WHEREAS, The City's current excise tax is \$1.00 per month, or fraction thereof, and the revenue from the excise tax is insufficient to adequately fund the maintenance and operations of the City's share of the emergency services communications (9-1-1) system and it is proposed that, as authorized by North Dakota Century Code Chapter 57-40.6, said excise tax be adjusted and increased to a rate of \$1.50 per month per telephone access line and wireless service as defined by City Ordinance and that the City also be allowed, pursuant to state law to charge said \$1.50 fee per "assessed communication service" as described by said chapter 57-40.6; and

WHEREAS, North Dakota Century Code Section 57-40.6-02 establishes a process for submission of such rate adjustment to the voters by governing board approving a resolution submitting the question to the voters at a city wide election.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that an increase of the existing \$1.00 per month excise tax according to city ordinance is hereby proposed to be increased to \$1.50 per month, or fraction thereof, to be imposed upon each telephone access line and wireless service as defined by City Ordinance and imposed upon each "assessed communication service" as described by North Dakota Century Code Chapter 57-40.6 as has been, or may be, approved by City Ordinance; that the fee or tax must be applied equally upon all assessed communications services as defined in said chapter and that this measure be placed on the ballot for the citywide general election scheduled for November 4, 2014, to be held in conjunction with the national and statewide election the same day with said increase to become effective January 1, 2015.

BE IT FURTHER RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that this Resolution be published in the official newspaper for the City of Fargo (1) within thirty (30) days of the approval hereof or (2) prior to sixty (60) days prior to the next city election, whichever is earlier.

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

Absent and not voting: Mayor Walaker.

The Resolution was adopted.

Application Filed by Fargo Jet Center, Inc. for a Five-Year Property Tax Exemption Referred to the Tax Exempt Review Committee:

A Hearing had been set for this day and hour on an application filed by Fargo Jet Center, Inc. for a five-year property tax exemption for an expansion of their

operation at 3805 20th Street North which the applicant will use for storage of private and commercial aircrafts to include a new hangar.

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.

The Board received a communication from City Assessor Ben Hushka stating that the Tax Exempt Review Committee met to consider the application and feels that this request does not meet the necessary criteria to be eligible for this exemption due to the intended use of the new facility.

Jim Sweeney, President of the Fargo Jet Center, said they lease and own approximately 120,000 square feet of hangar space. He said this application is to build another 30,000 square foot hangar which is needed to continue to grow the business. He said he would like to amend the employee numbers on the application anticipating that in the first year an additional eight employees will be added, adding two additional employees each year with a total of sixteen employees by year five. He said he is confident with the numbers that they are still conservative in their growth.

Commissioner Piepkorn said the first time this application was presented to the Committee it was not conveyed very well and the Committee voted unanimously to deny the application. He said he thinks that the application needs to go back through the proper channels again with the amended information.

Commissioner Piepkorn moved that the application be referred back to the Tax Exempt Review Committee on Tuesday, August 26, 2014 at 1:30 p.m. and the item be brought back to the Commission on September 2, 2014 at 5:15 p.m.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Resolution Adopted Approving Calico Prairie 2nd Addition (4470 28th Avenue South, 4475 Calico Drive South, and 2600 and 2760 45th Street South):

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 "Calico Prairie 2nd Addition" containing 6 Lots, 1 Block, and 6.77 acres of land more or less, located at 4470 28th Avenue South, 4475 Calico Drive South, and 2600 and 2760 45th Street South; and

WHEREAS, A Hearing was held May 6, 2014 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 August 4 and 11, 2014 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., August 18, 2014 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 "Calico Prairie 2nd 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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Piepkorn, Williams and Mahoney voted aye.

Absent and not voting: Mayor Walaker.

The Resolution was adopted.

Parcels of Land in Valley View Third Addition Rezoned (5460 and 5640 36th Avenue South and 5476 38th Avenue South):

At a Hearing held on July 1, 2014 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to SR-4, Single-Dwelling and LC, Limited Commercial with a C-O, Conditional Overlay of the proposed Valley View 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.

Commissioner Sobolik 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 Sobolik, Piepkorn, Williams and Mahoney voted aye.

Absent and not voting: Mayor Walaker.

The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Valley View Third Addition to the City of Fargo, Cass County, North Dakota:

Commissioner Sobolik 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 Valley View Third Addition to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

Absent and not voting: Mayor Walaker.
The motion was declared carried.

Resolution Adopted Approving Valley View Third Addition:

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 "Valley View Third Addition" containing 23 Lots, 3 Blocks, and 12.47 acres of land more or less, located at 5460 and 5640 36th Avenue South, and 5476 38th Avenue South; and

WHEREAS, A Hearing was held July 1, 2014 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 August 4 and 11, 2014 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., August 18, 2014 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 "Valley View Third 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 Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Piepkorn, Williams and Mahoney voted aye.

Absent and not voting: Mayor Walaker.
The Resolution was adopted.

Amendment to the Growth Plan Approved (1405, 1409, 1415, 1417 and 1421 8th Avenue North, and 802 14th Street North):

A Hearing had been set for this day and hour to consider approval of an amendment to the Growth Plan consisting of a Growth Plan Amendment on Lots 2-7, Block 3, Kirkham's Addition.

The Fargo Planning Commission recommended approval of the amendment to the Growth Plan at their July 1, 2014 meeting.

No written protest or objection to the amendment to the Plan has been received or filed in the Planning and Development Department.

The Board determined that no person is present to protest or offer objection to the Growth Plan amendment.

Commissioner Sobolik moved the amendment to the Growth Plan be approved.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Parcels of Land in Kirkham's Addition Rezoned and Planned Unit Development Master Use Plan Approved (1405, 1409, 1415, 1417 and 1421 8th Avenue North and 802 14th Street North):

At a Hearing held on July 1, 2014 the Fargo Planning Commission recommended approval of a change in zoning from LI, Limited Industrial to UMU, University Mixed-Use with a PUD, Planned Unit Development Overlay on Lots 2-4, Block 3, Kirkham's Addition and a Planned Unit Development Master Land Use Plan for a Residential Land Use on Lots 2-4, Block 3, Kirkham's 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.

Planning Administrator Nicole Crutchfield said the main protest was from the immediate abutting neighbor over the intensity of the change and how that will affect the amount of traffic in this area. The applicant did meet with the property owners to discuss what improvements could be made; however, a compromise could not be made.

Commissioner Sobolik offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning, the PUD, Planned Unit Development Overlay and a Planned Unit Development Master Land Use Plan have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning, the PUD, Planned Unit Development Overlay and a Planned Unit Development Master Land Use Plan have been complied with and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings of staff be accepted and the rezoning, the PUD, Planned Unit Development Overlay and Planned Unit Development Master Land Use Plan 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 Sobolik, Piepkorn, Williams and Mahoney voted aye.

Absent and not voting: Mayor Walaker.

The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Kirkham's Addition to the City of Fargo, Cass County, North Dakota:

Commissioner Sobolik 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 Kirkham's Addition to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Appeal of the Board of Adjustment's Denial of a Request for a Variance at 2810 3rd Avenue North: Variance Granted:

A Hearing had been set for this day and hour on the appeal of a July 22, 2014 ruling of the Board of Adjustment denying a request at 2810 3rd Avenue North to allow a proposed building expansion to encroach 8 feet into the rear setback in the LI zoning district. Section 20-0502 of the Land Development Code requires structures to be set back at least 20 feet from the rear property line in the LI zoning district.

The City received an appeal of the denial of the Board of Adjustment decision on the Variance Request which requires that a Public Hearing be held by the City Commission.

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 staff report stating the applicant would like to construct an addition onto an existing structure which would be located within the required rear setback area at the site of an existing business. They said the property is located at 2810 3rd Avenue North and is within the LI, Limited Industrial zoning district. They said Section 20-0502 of the LDC requires that structures be set back at least 20 feet from the rear property line in the LI zoning district. The applicant, they said, would like to construct a new building addition 12 feet from the rear property line and is requesting a variance in order to allow the proposed building addition to encroach 8 feet into the required rear setback area.

Planning Administrator Nicole Crutchfield stated a letter of opposition was received from Eugene Sweeney, owner of the property at 2831 1st Avenue North, stating his opposition of the variance request due to the fact that there is a lot of standing water in the back of his lot already.

Richard Kloubec, owner of 2810 3rd Avenue North, said he has owned the property for forty years and was not aware of any water problems. Mr. Kloubec said he spoke with Mr. Sweeney about the water problem and the low spot he is concerned about is not on his property it is on the property next door. He said he indicated to Mr. Sweeney that when he has the foundation done for his building that he could fill in that low spot; however, he is a little reluctant to do that on property he does not own. He said that if working with Mr. Sweeney on his drainage problem is a condition of obtaining a variance he would be willing to do that.

Commissioner Piepkorn moved the variance be granted on the condition that the applicant works with the adjacent property owner on the drainage issues.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

2015 Preliminary Budget Received and Filed: Public Hearing Set for September 15, 2014:

The Board received a communication from Mayor Walaker stating the preliminary budget for 2015 is ready for review and discussion at upcoming City Commission meetings. He said this year's budget format has been amended to conform to the Governmental Finance Officers Association guidelines for best budgeting practices for governmental units and he encouraged the Board to review the entire document. He said the budget has been balanced with the collaborative work of the Budget Team, Department and Division Heads, and Liaison Commissioners. The next step, he said, is to discuss the budget in detail, approve a preliminary budget and then hold the formal budget hearing on September 15, 2014.

Commissioner Williams moved the 2015 preliminary budget be received and filed and the public hearing on the preliminary budget be set for September 15, 2014 at 6:00 p.m.

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

Absent and not voting: Mayor Walaker.

The motion was declared carried.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, September 2, 2014.

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

The time at adjournment was 5:52 o'clock p.m.