

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:

Monday:

November 17, 2008:

The Regular Meeting of the Board of City Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 5:00 o'clock p.m., Monday, November 17, 2008.

The Commissioners present or absent were as shown following:

Present: Mahoney, Piepkorn, Williams, Wimmer, Walaker.

Absent: None.

Mayor Walaker presiding.

Commissioner Williams requested a moment of silence in honor of Firefighter Dan Stetz, who recently passed away.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved adding an extra item at the end of the Regular Agenda to approve an amendment to an agreement with New Flyer for the purchase of a fifth bus at a cost of approximately \$357,000 and adding an Executive Session after adjournment of the meeting.

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

Minutes Approved:

Commissioner Mahoney moved that the Minutes of the Regular Meeting of the Board held on November 3, 2008 be approved as read.

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

Consent Agenda Approved:

Commissioner Wimmer moved the Consent Agenda be approved as follows:

- a. 2nd reading, waive reading and final adoption of the following rezoning Ordinances; 1st reading, 11/3/08:
  - (1) Certain Parcels of Land Lying in West Park Addition to the City of Fargo.
  - (2) Certain Parcels of Land Lying in Town Square Village Addition to the City of Fargo.
  - (3) Certain Parcels of Land Lying in Section 3, Township 138 North, Range 49 West, Cass County, North Dakota.
- b. Computer surplus equipment donation recommendation.

- c. Receive and file Summons and Complaint in the matter of Joshua Oscar Calloway vs. the City of Fargo.
- d. Receive and file Notice of Appeal from Decision of Local Governing Body filed by Fred Hector vs. the City of Fargo.
- e. Resolution Authorizing the Issuance and Sale of \$1,640,000 Sales Tax Revenue Bonds, Series 2008C and Resolution Authorizing the Amendment thereof.
- f. Receive and file Year to Date – Budget to Actual Report for October 2008.
- g. Letter of engagement with AON Consulting for implementation of a Wellness Program.
- h. Contract amendment with the North Dakota Department of Human Services for the Refugee Program (Contract #600-07012, Amendment “A”).
- i. Health Department budget adjustment and contract with the North Dakota Department of Health for the Women’s Way Program (CFDA #93.919).
- j. Certification of Award for the Juvenile Accountability Block Grant Award (JAIBG).
- k. Application filed by Michael and Marcia Polczinski for a 5-year property tax exemption for improvements made to a building at 920 4th Avenue South.
- l. Application filed by Muskies, Inc. F-M Chapter for a raffle on 2/5/09.
- m. Change Orders for the Main Library: M-5 for an increase of \$3,581 and G-7 for an increase of \$6,325.
- n. Contracts with the following companies for furniture, fixtures and equipment for the Main Library: Brown & Saenger; Embury, Ltd.; Hannaher’s, Inc.; Jones Library Sales, Inc.; Function Furniture; Christianson’s Business Furniture, Inc.; and MBA Development Company d/b/a InterOffice.
- o. Junked vehicle removal contract with Hazer’s Auto and Truck Salvage, Inc. for 2009.
- p. Contract with the Metropolitan Council of Governments to place one traffic counting and detective device at University Drive and 18th Avenue South.
- q. Contract amendment with Kadrmas, Lee & Jackson in the amount of \$12,500 for services in connection with Project No. 5798.

- r. Contract amendment with Advanced Engineering and Environmental Engineering Services in the amount of \$16,000 for services in connection with Project No. 5799.
- s. Contract Amendment No. 1 with Advanced Engineering and Environmental Engineering Services in the amount of \$164,600 for services in connection with Project No. 5725.
- t. Bid award for the Shanley recycling drop site to Aggregate Industries in the amount of \$92,958 and Lease Agreement with the Diocese of Fargo.
- u. Agreement Regarding Storm Sewer Easement with Fred M. Hector, Jr. for property along 42nd Street South.
- v. Land Use Permit with Northern States Power Company in connection with a public bike path along 45th Street South (Improvement District No. 5765).
- w. Purchase Agreement with Prairie Grove, Inc. in connection with the reconstruction of 52nd Avenue South (Improvement District No. 5314).
- x. Encroachment Agreement with Prairie Grove, Inc. for property on Prairie Grove Avenue South at 25th Street.
- y. Advertise for bids for Project No. 5726.
- z. Contract and bond for Project No. 5799.
- aa. Bills in the amount of \$6,185,529.49

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.

Contract for Street Lighting Improvement District No. 5773 Approved:

Commissioner Wimmer moved approval of the Contract between the City of Fargo and Fritz Electric for Street Lighting Improvement District No. 5773 in the City of Fargo, North Dakota.

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.

Contract Bond for Street Lighting Improvement District No. 5773 Approved:

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

United Fire and Casualty Company, in the amount of \$17,898.80, for Street Lighting Improvement District No. 5773 in the City of Fargo, North Dakota.

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 Appeal from a Board of Adjustment Decision to Approve Construction of a Building at 12<sup>th</sup> Avenue North to be held on December 1, 2008:

The Board received a communication from Planning Director Jim Gilmour stating William Rakowski has appealed the decision to approve the construction of a building at 12th Avenue North. He said Mr. Rakowski claims that the developer of the building, FM City Development, has not complied with the Land Development Code parking requirements. Mr. Gilmour stated the Planning and Development Department brought the appeal to the Planning Commission because the Zoning Administrator reviews the parking as part of the Site Plan Review process, and decisions of the Zoning Administrator are appealable to the Planning Commission. He stated Mr. Rakowski argues that the Building Official should have disregarded the Planning Commission approval of an Alternative Access Plan that reduced the parking requirements and should have rejected the building permit because of the number of required parking spaces. As background information, Mr. Gilmour said, an Alternative Access Plan which reduced the number of required parking spaces was approved by the Planning Commission. This approval, he said, could have been appealed to the City Commission within 10 days of the Planning Commission action and Mr. Rakowski did not file an appeal within that 10 day period. He said both the Planning Commission and Board of Adjustment have reviewed the issue of jurisdiction of this matter. He said the Planning Commission determined they have jurisdiction over the appeal and the Board of Adjustment also determined the Planning Commission has jurisdiction. Mr. Rakowski, he said, has now appealed the Board of Adjustment decision on jurisdiction to the City Commission.

In response to a question from Commissioner Wimmer, Mr. Gilmour said a notice of hearing needs to be published in order for the public hearing to be held in two weeks. He said the City Commission will hear public input at that time and make a decision on the appeal of jurisdiction.

Commissioner Wimmer moved a public hearing on the appeal of the Board of Adjustment decision of jurisdiction be held at 5:15 p.m. on December 1, 2008.

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.

Application Filed by Clinical Supplies Management, Inc. for a Five Year Property Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by Clinical Supplies Management, Inc. for a five year property tax exemption for an expansion to their operation at 342 42nd Street South where the applicant is engaged in clinical trial supply services for biotechnology and pharmaceutical companies.

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 Clinical Supplies Management, Inc. for a five year 100% property tax exemption pursuant to Chapter 40-57.1, NDCC be approved.

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

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

Hearing on a Petition for a Zoning Change on Certain Parcels of Land in Erskines Addition Continued to December 1, 2008 (1117 and 1155 13th Avenue South):

At a Hearing held on November 12, 2008 the Fargo Planning Commission recommended approval of a change in zoning from NC, Neighborhood Commercial to LC, Limited Commercial 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 south 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 Erskines Addition with the following Conditional Overlay:

The uses and standards of this "LC", Limited Commercial District shall be limited to uses, standards and additional standards of a "NC", Neighborhood Commercial, District as set forth in Section 20-0209 of the Land Development Code, except subparagraphs D.5 and D.6 thereof, and further subject to the following:

1. Freestanding signs shall be limited to monument signs of a height no greater than 8.5 feet, measured from the ground level. A monument sign is defined as a sign in which the lowest portion of the sign itself, not including any pole or support, has its base at ground level, said ground level being at grade with the rest of the property.
2. The provisions of the Fargo Sign Code (as authorized pursuant to Section 25-0307 of the Fargo Municipal Code) for a "LC" Limited Commercial zoning district shall apply.

The City Auditor's Office published a Notice of Hearing stating October 20, 2008 was the time and date set for said Hearing at which time all interested persons could appear and would be heard and at that meeting, the Hearing was continued to this date and hour.

Senior Planner Jim Hinderaker said the Conditional Overlay addresses setback and signage issues for the property and complies with the Comprehensive Plan for the Hawthorne Neighborhood area. Mr. Hinderaker said the Planning Commission determined the height of 8.5 feet was appropriate for the location.

Steven Stremick, 1155 13th Avenue South, said the Planning Commission agreed to the 8.5 foot height because of two obstructions in front of the business - a 6 foot traffic control box and the overhead street signage on University Drive. He said the sign he has designed would be 12 feet wide with the electronic portion of the sign being 4 feet by 8 feet. He said the value of the property is based on location and as a taxpayer, he should be allowed to enhance the business with approved signage.

In response to a question from Commissioner Williams, Mr. Hinderaker said the zoning condition for signs is about size - not whether it is electronic or static. However, he said, staff does have the ability to set conditions.

Commissioner Wimmer said a flashing sign is not appropriate adjacent to a residential neighborhood. He said this request may open the door for additional signage requests.

Mr. Hinderaker said Mr. Stremick would be willing to have a smaller sign that would be allowed as well as the capability to limit hours for the lighted portion of the sign.

Commissioner Mahoney moved the Hearing be continued to 5:15 pm on December 1, 2008.

Second by Williams.

Commissioner Wimmer said he would like to see a rendition of the sign on December 1, 2008.

Mayor Walaker said this area is encroaching on a residential neighborhood and he has concerns with the increased popularity of electronic flashing signs.

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

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

Amendment to an Agreement with New Flyer for the Purchase of a Fifth Bus Approved:

The Board received a communication from Planning Director Jim Gilmour stating NDSU contacted him recently to request an additional on-campus bus route which would provide service between the core of the campus and NDSU offices at the Stop-N-Go Center and the Skills & Technology Training Center. He said an agreement for the operation of the additional route will be on the agenda for approval at a Commission meeting in the near future. In order to provide this added route, he said, an additional bus can be purchased by adding to an existing contract with New Flyer and increasing the order from four to five buses with delivery scheduled for May 2009. Mr. Gilmour said a fifth bus on this order would require advance funding. With the cost of the additional bus being about \$357,000, he said, FTA would provide \$296,000 and NDSU \$61,000. Federal funding is available, he said, and Fargo has a pending request for \$2.3 million in FY 2009 capital funds as part of a ND DOT request for \$4 million. It is estimated Fargo will receive \$1 million to \$2 million in FY 2009 funds, he said, and this level of funding would be sufficient to provide FTA funding for all 2009 purchases and provide money for other future transit capital needs.

Commissioner Williams moved the agreement with New Flyer be amended to purchase a fifth bus at a cost of approximately \$357,000.

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

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

Assistant City Attorney Robert L. McConn, Jr. announced that there is a pending litigation matter to be discussed in Executive Session, specifically the Sauby case.

Commissioner Wimmer 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 Piepkorn. All the Commissioners voted aye and the motion was declared carried.

At 6:00 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

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

The Executive Session closed at 7:03 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, December 1, 2008.