

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:    Tuesday:    September 8, 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., Tuesday, September 8, 2009.

The Commissioners present or absent were as shown following:

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

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved moving Item "c" from the Consent Agenda to the end of the Regular Agenda.

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

Minutes Approved:

Commissioner Piepkorn moved that the Minutes of the Regular Meeting of the Board held on August 24, 2009 be approved as read.

Second by Wimmer. 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. Resolution Prescribing Rates and Charges for Solid Waste Services effective 9/14/09 (Attachment "A").
- b. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Amending Section 13-0504 and Section 13-0525 of Article 13-05 of Chapter 13 of the Fargo Municipal Code Relating to Waste, Yardwaste, Ashes, and Other Waste – Removal and Disposal Of.
- c. Settlement Agreement between the United States of America and Fargo, North Dakota under the Americans with Disabilities Act (moved to the Regular Agenda).
- d. Analytics Claims Administration Agreement for third party administration of the class action settlement of the traffic fines case (Sauby and Burns v. City of Fargo).

- e. Fire Department budget adjustment in the amount of \$3,480 and 2009 Hazardous Materials Emergency Preparedness (HMEP) training grant (CFDA #20.703).
- f. Police Department budget adjustment in the amount of \$6,000 and NDDOT Safety Belt Education and Enforcement Grant (CFDA #20.600).
- g. Police Department budget adjustment in the amount of \$9,200 and ND Highway Patrol grant agreement to provide funding for alcohol compliance checks, server training and enforcement of underage drinking laws (CFDA #16.727).
- h. Recommendation to revise Ordinance 25-1509C to be consistent with State Law allowing persons under 18 years of age to serve alcohol in a restaurant.
- i. Application filed by Ekrem and Amela Sabanovic for a 4-year tax exemption for improvements made to a building at 1830 5th Avenue South.
- j. Applications for Games of Chance:
  - (1) Fargo South High School for raffles from 9/3/09 to 2/25/10 at the Fargo South High Ice Arena, the Fargo Coliseum, the Fargo South High School, the Fargodome, the Civic Memorial Auditorium, the SW Youth Arena and the Urban Plains Center.
  - (2) Nativity Church of Fargo for a raffle on 10/4/09.
  - (3) North Dakota Dental Foundation for a raffle on 9/18/09; Public Spirited Resolution.
  - (4) Riverview Place for a raffle on 10/11/09.
- k. Amended Site Authorization for The ARC Upper Valley, Inc. at JT Cigarros.
- l. Use of the Fannie Mae line of credit to provide the Fargo Housing and Redevelopment Authority with financing to purchase property at 4955 28th Avenue South.
- m. Receive and file the 2008 Consolidated Annual Performance Evaluation Report for the Community Development program.
- n. Cancel Transit Driver Services Request for Proposal and authorize staff to negotiate a one-year extension with First Transit, Inc., contingent upon the Moorhead City Council's approval.
- o. Agreement with RouteMatch Software, Inc. to provide the paratransit software system.
- p. Agreement with GFI Genfare to provide the transit electronic fare collection system.
- q. Contract with Heyer Engineering, PC for professional engineering services relating to demolition of the US Bank Ramp.

- r. Purchase of one portable asphalt recycler from Pavement Technologies International Corp. in the amount of \$123,500.
- s. Sole source procurement and purchase of a curbside recycling truck from Sanitation Products.
- t. Direct sale of a Landfill used dozer to Hough Construction Company in the amount of \$28,500.
- u. Change Order No. 1 for an increase of \$55,487.58 for Project SW 08-03.
- v. Agreement for Entry and Construction, Permanent Sanitary Sewer Easement and Temporary Construction Easement with the University of North Dakota (Project No. 5656).
- w. Agreement for Entry and Construction with LaVerne Montplaisir and Perry Montplaisir (Project No. 5728).
- x. Permanent Utility Easement for Cass County Electric Cooperative along 45th Street South.
- y. NDDOT Agreements for Improvement District No. 5202 and Project Nos. 5574 and 5701.
- z. Engineering services Contract Amendment No. 2 with Ulteig Engineers, Inc. for Improvement District No. 5838.
- aa. Request for Proposals for engineering services procurement for Improvement District No. 5905.
- bb. Bid awards for Project Nos. 5874 to Northern Improvement Company in the amount of \$72,416.68 and 5901 to Moorhead Electric in the amount of \$96,175.96.
- cc. Bid advertisement for Project No. 5875.
- dd. Contracts and bonds for Project SW 09-02 and No. 5879.
- ee. Bills in the amount of \$10,808,291.72.

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.

Change Order No. 1 for Improvement District No. 5858 Approved:

Commissioner Wimmer moved approval of Change Order No. 1 for an increase of \$40,986 for Improvement District No. 5858.

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.

No Protests Received for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889:

The Statutory Resolution of Necessity for the construction of Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on August 3 and 10, 2009 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Wimmer moved that the Board declare that no protests have been filed to the construction of Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889.

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.

Bids Received for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889:

The bids for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 2, 2009 and the bids were found to be as follows:

|   |                              |
|---|------------------------------|
| Master Construction Company, Inc.<br>Bid: | Fargo, ND<br>\$214,387.70    |
| Aggregate Industries<br>Bid:              | Moorhead, MN<br>\$266,501.40 |
| Northern Improvement Company<br>Bid:      | Fargo, ND<br>\$276,535.26    |
| Dakota Underground<br>Bid:                | Fargo, ND<br>\$281,527.15    |

Contract for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 Awarded to Master Construction Company, Inc. in the Amount of \$214,387.70:

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 2, 2009 for Water Main Replacement,

Asphalt Paving and Incidentals Improvement District No. 5889 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 shows the bid of Master Construction Company, Inc. of Fargo, North Dakota, in the sum of \$214,387.70 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Master Construction Company, Inc. in the sum of \$214,387.70 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Water Main Replacement, Asphalt Paving and Incidentals Improvement District No. 5889 in the City of Fargo, North Dakota, be and the same is hereby awarded to Master Construction Company, Inc. for the sum of \$214,387.70, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

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

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

Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880 (53rd Avenue South from 52nd Avenue to 63rd Street):

Commissioner Wimmer moved the following action be taken in connection with Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880:

Adopt Resolution Creating Improvement District No. 5880:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5880, in the City of Fargo, North Dakota, be created

On 53rd Avenue South from 52nd Avenue to 63rd Street.

COMPRISING:

Lots 1 through 3, inclusive, Block 1.  
All in Dittmer Subdivision.

Lot 1, inclusive, Block 2.  
All in Richard 2nd Subdivision.

Lots 1 through 4, inclusive, Block 1.  
Lots 1 through 4, inclusive, Block 2.  
All in Richard 3rd Subdivision.  
Lots 1 through 4, inclusive, Block 1.  
All in Ken's Subdivision.

Lots 1 through 2, inclusive, Block 1.  
Currier Trust Subdivision.

All of the unplatted land in the northeast quarter of Section 5 bound on the west by 63rd Street South, bound on the east by Veterans Boulevard, bound on the south by the City of Fargo 50' permanent Easement for the emergency water drain in Township 138 North, Range 49 West.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Sanitary Sewer, Water Main and Incidentals Improvement District No. 5880, in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5880:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5880, in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$320,000.00)

Order Plans and Specifications for Improvement District No. 5880:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5880, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5880:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5880, in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5880, in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5880:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5880, in the City of Fargo, North Dakota.

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.

Presentation to Mayor Walaker by the Fargo Moorhead Vietnam Veterans of America:

Wayne Wermager, 1892 6th Street West, West Fargo, presented Mayor Walaker a one year membership to the North Dakota Chapter of the Vietnam Veterans of America.

Second Reading and Final Adoption of an Ordinance Enacting and Establishing a Moratorium on the Issuance of Sign Permits for Certain Electronic Message Centers:

Commissioner Wimmer moved that the proposed Ordinance Enacting and Establishing a Moratorium on the Issuance of Sign Permits for Certain Electronic Message Centers which was placed on its first reading August 24, 2009 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

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

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

Development Plan for the Southwest Fire Station at 3957 Village Lane South Approved:

A Hearing had been set for this day and hour to receive comments on a Development Plan which consists of a plan to finance the construction of the Southwest Fire Station at 3957 Village Lane South and the purchase of a fire truck.

In response to a question from Commissioner Williams regarding the financing of City building projects, Finance Director Kent Costin said the City uses a mix and match of various ways to finance projects.

Commissioner Williams said the City does not have to use bonds for all projects plus it is better to pay ahead of time if possible like the City did with the new library. With the need for updated City office space, he said, City offices could be relocated in the vicinity instead of doing a major renovation to existing space. He said relocation would be more cost effective plus it would fit into the 2000 Downtown Framework Plan for the Second Avenue Corridor.

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.

Commissioner Piepkorn moved a Resolution approving the Development Plan for the Southwest Fire Station at 3957 Village Lane South be adopted and attached hereto (Attachment "B") and the purchase of a fire truck be approved.

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

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

Resolution Adopted Approving the Issuance of \$2,890,000 City of Fargo General Obligation Development Bonds for Constructing a Southwest Fire Station and Purchase of a Fire Truck:

A Hearing had been set for this day and hour to receive comments on the issuance of \$2,890,000 of City of Fargo General Obligation Development Bonds, Series 2009B, for the purpose of financing the construction of the Southwest Fire Station at 3957 Village Lane South and the purchase of a fire truck.

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.

Commissioner Piepkorn moved the Resolution entitled "Resolution Approving the Issuance of \$2,890,000 City of Fargo General Obligation Development Bonds, Series 2009B" and referred to as Attachment "C", be adopted and attached hereto.

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

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

2010 Preliminary Budget Adopted: Public Hearing Set for September 21, 2009:

The Board received a communication from Mayor Walaker stating the 2010 preliminary budget has been completed and must be approved by September 10, 2009. He recommended the City Commission approve the preliminary budget as presented and set the required hearing date for September 21, 2009, at which time any citizen or other interested individuals can comment or make inquiries about the proposed budget. He stated the budget document will also be posted on the City's web site for easy access for those interested in participating in the budget hearing. Final budget adoption, he said, is required by October 7, 2009.

Mayor Walaker said he is disappointed there is no cost of living adjustment in the preliminary budget. He said the public needs to understand the problems that have put the City in this position - the traffic fine case, worker's comp and the economy. But the positives are that no staff reductions or increases to the health insurance participation, taxes or the mill levy have been made, he said.

In response to a question from Commissioner Piepkorn regarding consideration of a small employee raise, Finance Director Kent Costin said a 1% cost of living adjustment would use approximately \$470,000 and the 2010 budget only has a proposed surplus of \$300,000.

Commissioner Mahoney said the idea of reconsidering a wage increase at mid-year would be appropriate in order to see how potential growth may affect the budget.

Commissioner Mahoney moved the 2010 preliminary budget be adopted and the public hearing on the preliminary budget be set for September 21, 2009 at 5:15 p.m.

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

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



Settlement Agreement Between United States of America and Fargo, North Dakota Under the Americans with Disabilities Act:

The Board received a communication from City Attorney Erik Johnson stating the Department of Justice (DOJ) has been engaged in a program of working with political subdivisions throughout the country to identify compliance with the Americans with Disabilities Act (ADA). The DOJ and the City of Fargo have been working through the process of inventory and assessment of buildings owned by the City of Fargo, he said, with the goal of bringing City-owned buildings and programs into conformance with ADA requirements. He said DOJ representatives visited various City-owned buildings for the purpose of identifying the alterations needed to obtain compliance and, after working with City staff, a proposed agreement was sent this past February by the DOJ. Since that time, he said, the City has been working with and negotiating with the Department of Justice to discuss the needs and requirements of the ADA as it relates to specific items on the inventory list. Mr. Johnson submitted the draft agreement for the Board's consideration and approval.

City Administrator Pat Zavoral said the Department of Justice made some modifications to the agreement because of misinformation regarding entities that are not completely under the City's jurisdiction - such as the Park District, Fargo Dome and Red River Regional Dispatch. He said areas found to be non-compliant will be addressed.

Sherry McMahan, 717 7th Avenue North, said she is concerned there is no formal grievance process in place. She said ADA is not intended to address only building issues. She said the ADA also includes employment and access to government services. After looking at the City web site, she said, she did not find any mention of ADA notification procedures or anything that directed people to the ADA guidelines.

Commissioner Mahoney said the City will address all areas that are non-compliant.

Commissioner Wimmer moved the agreement for ADA compliance with the Department of Justice be approved.

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.

Commissioner Williams moved that the Board adjourn to 5:00 o'clock p.m., Monday, September 21, 2009.

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

The time at adjournment was 6:05 o'clock p.m.