

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: November 30, 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, November 30, 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.

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 16, 2009 be approved as read.

Second by Williams. 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. Revised and Reconstituted ADA Policy Including Grievance Procedure (2009) and Notification; appoint Bob Getz and Nate Bailly as ADA Co-Coordinates.
- b. Receive and file Summons and Complaint in the matter of Fred M. Hector, Jr. vs. the City of Fargo.
- c. Forgive the HOME funded housing rehab assistance in the amount of \$994.68 for improvements at 1527 2nd Avenue South due to a demonstrated hardship.
- d. Planning Department budget adjustment in the amount of \$2,000 and agreement with the UNC Highway Safety Research Center for a pedestrian safety guide for the Roosevelt Neighborhood Association.
- e. Acceptance of a Bureau of Justice Assistance Bulletproof Vest Partnership Grant in the amount of \$13,100 (CFDA #16.607).

- f. Health Department budget adjustments and grant agreement with the North Dakota Department of Health for H1N1 vaccination administration (CFDA #93.069).
- g. Health Department budget adjustments and contract with the North Dakota Department of Health for H1N1 vaccination planning (CFDA #93.069).
- h. Health Department budget adjustment and contract with the North Dakota Department of Health to cover contraceptives (CFDA #93.217 and #93.116).
- i. Contract with Clay County Public Health for provision of city readiness initiative grant activity.
- j. Applications for Games of Chance:
 - (1) Sigma Nu Fraternity for a raffle on 1/27/10.
 - (2) Fargo-Moorhead Curling Club for a sports pool and raffle on 2/28/10.
 - (3) Bennett Elementary PTA for bingo from 1/22/10 to 3/26/10.
 - (4) North Dakota Jaycees for a raffle on 12/12/09.
- k. Second Amendment to the Memorandum of Understanding between Tharaldson Ethanol/CRWUD/and the City of Fargo and First Amendment to the Joint Powers Agreement.
- l. Change Order #1 from Heyer Engineering for an increase of \$12,715 for costs of providing additional design work for the skyway replacement.
- m. Automated Arm Refuse truck purchases from Northern Truck Equipment in the amount of \$199,497 and Sanitation Products in the amount of \$205,047.
- n. Sole source procurement of a recycling truck from Sanitation Products in the amount of \$135,739.
- o. Purchase of Robotic Total Station from Frontier Precision, Inc. in the amount of \$29,495.
- p. Contract and bond for electrical construction for the skyway replacement project.
- q. Bills in the amount of \$4,115,658.02.

Second by Williams. 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.

P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 (45th Street from 19th Avenue South to 52nd Avenue South):

Commissioner Mahoney moved the following action be taken in connection with P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700:

Adopt Resolution Creating Improvement District No. 5700:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5700 in the City of Fargo, North Dakota, be created

On 45th Street from 19th Avenue South to 52nd Avenue South.

COMPRISING:

The following described land located in Township 139 N, Range 49 W, City of Fargo, Cass County, North Dakota:

All of the land in the east half of Section 21.

All of the land in the southwest quarter of Section 21 lying east of 51st Street South.

All of the land in Sections 22, 27, 28, 32 and 33.

The land in the northwest quarter of Section 34 bounded on the north by the north line of said Section 34, on the south by 44th Avenue South, on the east by 43rd Street South, and on the west by the west line of said Section 34.

The land in the west half of Section 34 bounded on the north by 44th Avenue South, on the south by 49th Avenue South, on the east by Woodhaven Drive South, and on the west by the west line of said Section 34.

Lots 1 through 7, inclusive, Block 1.
Lots 18 through 38, inclusive, Block 2.
All in Woodhaven 5th Addition.

All of the foregoing located in Township 139 N, Range 49 W, City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 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. 5700:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5700 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 \$31,589,000.00)

Order Plans and Specifications for Improvement District No. 5700:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5700 in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5700:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5700 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. 5700 in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring P.C. Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Necessary:

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

That it be and is hereby declared necessary to construct PC Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals Improvement District No. 5700 in the City of Fargo, North Dakota, according to the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection.

That a portion of said PC Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals improvement is to be paid from Street Sales Tax, and approximately 35% is to be assessed against the benefited property in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed PC Concrete Pavement, Grading, Storm Drains, Sanitary Sewer, Signals, Lighting and Incidentals must be in writing and must be filed with the City Auditor's Office within thirty days after the first publication of this Resolution.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5700:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5700 in the City of Fargo, North Dakota.

Second by Williams. 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.

Second Reading and Final Adoption of an Ordinance Relating to City Street Lighting System Utility Delayed Until December 14, 2009:

Finance Director Kent Costin stated the Finance Committee has discussed a street lighting utility for the last few years. The City has over 11,000 street lights and costs for providing the electricity this year, he said, is approximately \$900,000. He said the street lighting utility was brought up again this year and included in the 2010 preliminary budget. Public hearings were held for the preliminary 2010 budget, he said, and there was very little discussion. Mr. Costin said the Finance Committee has studied and developed monthly rate recommendations of \$4 for residential and \$10 for commercial. He said after adoption of the Ordinance, the rate structure would come before the Board. City staff has been receiving feedback on inequities from the street lighting utility Ordinance, he said.

In response to a question from Commissioner Williams regarding funding availability for street lighting maintenance and energy costs this year without approval of an Ordinance, Mr. Costin said the funds were not allocated through the general fund. He said the preliminary budget was approved by the Board with a potential plan for a street lighting utility structure to be adopted after development and approval of an Ordinance and a rate structure.

Commissioner Williams said the City needs to get a better handle on tracking energy consumption before adopting a street lighting utility Ordinance. He said one size does not fit all when it comes to the suggested rate structure and it is premature to pass an Ordinance without knowing expenses.

Mr. Costin stated the Finance Committee has tried to differentiate between residential and commercial fees. Comparisons of comparable utility structures have been studied, he said, and the suggested structure is a typical method used by other cities.

Commissioner Mahoney suggested the Board delay the adoption of the Ordinance and have the Finance Committee consider Commissioner Williams' comments.

Mr. Costin said ideally, the Ordinance should be completed by the end of the year in order to begin the levy of funds in January of 2010. He asked that the Board provide their input on the development of a rate structure.

Commissioner Mahoney moved second reading of the Ordinance Relating to City Street Lighting System Utility be delayed until the December 14, 2009 City Commission meeting.

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

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

Resolution Adopted Authorizing the Issuance of Revenue Bonds Under Chapter 40-57, NDCC (MeritCare):

Commissioner Wimmer moved the Resolution entitled "Resolution Authorizing the Issuance of Revenue Bonds Under Chapter 40-57, NDCC" and referred to as Attachment "A", be adopted and attached hereto.

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.

Parcels of Land in Lewis Addition Rezoned (1602 and 1616 South University Drive):

At a Hearing held on November 12, 2009 the Fargo Planning Commission recommended approval of a change in zoning from SR-3, Single-Dwelling and LC, Limited Commercial to GO, General Office on the west two hundred and ninety-two feet, Block 1, less the west ten feet thereof, Lewis 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.

Senior Planner Jim Hinderaker said Innovis Health is the petitioner for this project. Planning Commission, he said, received some opposition from the neighborhood. He said Innovis Health staff held an informational neighborhood meeting regarding the neighbors' concerns and the rezoning request was changed from Limited Commercial to General Office to meet the concerns of the neighborhood.

In response to a question from Commissioner Williams regarding the need for more parking and better use of existing resources, Bob Bakkum, Innovis Health, said Innovis is expanding services at the South University location so there is a need for more patient parking. He stated a ramp would be too expensive and Innovis provides a shuttle for offsite parking for employees, so it is a good use of resources.

Commissioner Wimmer 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 written protests to the request for rezoning representing 6.5% of the legal protest area.

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 Wimmer, Piepkorn and Walaker voted aye.

Commissioner Mahoney abstained from voting.

Commissioner Williams voted nay.

The Resolution was adopted.

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

Commissioner Wimmer 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 Lewis Addition to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

Commissioner Mahoney abstained from voting.

Commissioner Williams voted nay.

The Resolution was adopted.

Reimbursement Fund Established for Sunwood Addition Residents Affected by November 4, 2009 Sewer Backup:

The Board received a communication from Michael and Sue Joelson, 3133 9 1/2 Street North, stating a number of the residents of Sunwood Addition in North Fargo want to voice concerns at the November 30, 2009 City Commission meeting about resolution of damages caused by the sanitation sewer backup which took place on November 4, 2009.

Assistant City Attorney Butch McConn stated a meeting was held with representatives from the City of Fargo, North Dakota Insurance Reserve Fund, Dakota Underground and Advanced Engineering. An agreement was reached, he said, in which a reimbursement fund of \$260,000 will be established by the parties involved so homeowners' claims can be paid. He said the homeowners should receive letters by Wednesday, December 2, 2009 with contact information and details about the fund. Mr. McConn said the homeowners should contact their insurance companies and then the adjusters will work through the homeowners' insurance companies.

Mike Potts, 3129 9 1/2 Street North, said the people affected by the November 4th sewer backup have been frustrated by the damages and are concerned about the coverage so they can get their homes back to normal. One of the main concerns, he said, is whether they will receive replacement value or depreciated value for the damages incurred. Another issue, he said, is the possibility of increased insurance premiums after filing claims. He said they appreciate the creation of the fund to help them moved ahead with resolution caused by the backup.

Annette LaPalm, 3138 10th Street North, said sewer backup insurance has caps and she is afraid the coverage will not cover all the damage. She said the homeowners should not bear the burden of damages not covered by their own insurance which may also include increased premiums. She said she would like to see full coverage for replacement costs, not depreciated values.

Al Thompson, 3128 9 1/2 Street North, said most damage was to homes with full basements. He noted charges for repairs and replacement will be more than his insurance will cover and he is also concerned insurance premiums will go up.

At 6:00 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Request from Minn-Kota PAAWS Referred to Finance Committee:

The Board received a communication from Carol Sawicki, PAAWS Clinic Manager, stating Minn-Kota PAAWS would like to propose a joint effort between their

organization and the City of Fargo. Based on conversations with animal control officers and a survey of the five mobile home parks in the City, she said, the organization estimates the City of Fargo has between 300-500 feral, unsterilized cats living around trailer homes. Ms. Sawicki said this is an unhealthy situation and will result in an even bigger problem for animal control and the City's pound if the increasing numbers of homeless, unsterilized cats in these areas is not stopped. There is also a definite potential for serious public health and liability issues, she said, if one of these cats were to bite a child or a City employee. She said Minn-Kota PAAWS, the area's only provider of low-cost spay/neuter services for pets from low-income households and feral cats, requests that the Commission contribute \$20 per cat to the cost of feline leukemia testing and vaccinations for feral cats living in Fargo. PAAWS, she stated, will provide the surgical services for these cats using funds from grants and local fund raising. Although it is the mission of PAAWS to capture, test, vaccinate and sterilize these animals, she said, they cannot do it alone.

Ms. Sawicki said the City would assist with trapping the animals and PAAWS would do the testing and sterilization of the cats. She said grant money covers the sterilization but the funds requested from the City would help with leukemia testing. The goal is to start the program in January in order to prevent the influx of spring births, she said, with an estimate of treating 200 to 300 cats.

City Administrator Pat Zavoral said stray cats are the largest clientele for the local animal shelters.

Commissioner Wimmer moved the Finance Committee review the request from Minn-Kota PAAWS for \$20 per cat for feline leukemia testing and vaccinations for feral cats living in Fargo.

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.

Flood Mitigation Options Approved:

Commissioner Mahoney said the Metro Flood Work Group made a recommendation to the Metro Flood Management Committee at the November 24th, 2009 meeting regarding flood mitigation protection and the Committee approved the following recommendations:

500 year flood protection.

Removal of levee protection as primary flood mitigation.

The USACE study three flood mitigation options:

35K cfs diversion in Minnesota

30K cfs diversion in North Dakota

35K cfs diversion in North Dakota

Mr. Zavoral said the local elected bodies have been asked to approve the three flood mitigation recommendations made by the Metro Flood Management Committee as written above. He said the Corps will continue to study the approved options along with the 25K diversion in Minnesota in order to move along through the federal process which includes the Water Resource Development Act in 2010.

Commissioner Mahoney moved the Board approve the three recommendations from the Metro Flood Management Committee which include the 500 year flood protection, removal of levee protection as primary flood mitigation and the USACE study of the 35K cfs diversion in Minnesota and the 30K cfs and 35K cfs diversions in North Dakota.

Second by Williams. 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.

Kay Leclerc and Michelle Donarski Reappointed to the Board of Health:

The Board received a communication from Mayor Walaker recommending that Kay Leclerc and Michelle Donarski be reappointed to the Board of Health.

Commissioner Wimmer moved the reappointment of Kay Leclerc and Michelle Donarski to the Board of Health for terms ending December 31, 2012 be approved.

Second by Mahoney. On call of the roll Commissioners Wimmer, Mahoney, Piepkorn, Williams 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 matter to be discussed in Executive Session, specifically the Devils Lake Emergency Outlet, NDPDES Permit No. ND-0026247.

Commissioner Mahoney moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.2 to discuss said matter.

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

At 6:27 p.m. the Board moved to the River Room to discuss the matter regarding Devils Lake Emergency Outlet, NDPDES Permit No. ND-0026247 in Executive Session.

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

The Executive Session closed at 7:02 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 14, 2009.