

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:                                      Monday:                                      December 14, 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, December 14, 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 "a" 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 Mahoney moved that the Minutes of the Regular Meeting of the Board held on November 30, 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. 2nd reading, waive reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Lewis Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 11/30/09 (moved to the end of the Regular Agenda).
- b. Receive and file Year to Date – Budget to Actual Report for November 2009.
- c. Resolutions Prescribing Rates and Charges for Utility Services for 2010 (Attachment "A").
- d. Professional Service Agreement with Communication Service for the Deaf, Inc.
- e. Renewal of health self insurance plan third party administrator contract with Noridian Benefit Plan Administrators and stop loss insurance coverage with HCC Benefits, Inc. for 2010.
- f. Spirit of Fargo Fund allocation in the amount of \$70,500.

- g. Mass Transit Agreement with the City of West Fargo for 2010.
- h. Bid award for Laserfiche software licenses to Cities Digital.
- i. Appoint Jodi Sauer as a special police officer for NDSU.
- j. Application filed by Stuart and Michelle Swandal for a 5-year tax exemption for improvements made to a building at 1746 15th Street South.
- k. Agreement for services for the Carl Ben Eielson Middle School for tobacco education.
- l. Retrofit Ramp-Up Grant concept and application for American Recovery and Reinvestment Act funds for construction of a materials recovery facility at the landfill.
- m. Bid awards for chemicals for the Water Treatment Plant for 2010.
- n. Applications for Games of Chance:
  - (1) Hospitality Student Association for a raffle on 2/4/10.
  - (2) Nativity School PTO for a raffle on 2/5/10.
  - (3) Washington (Elementary) School PTA for a raffle on 2/19/10.
- o. Agreement for Special Improvements with Matrix Properties for Autumn Fields Addition (Improvement District No. 5907).
- p. Easement Agreements with Moorhead Public Service for property along 32nd Avenue South (Improvement District No. 5803).
- q. Declaration Concerning Dedication Agreement (Improvement District No. 5700).
- r. Declaration Concerning Dedication Agreement (Improvement District No. 5803).
- s. Contract amendment in the amount of \$429,000 for the FM Metro Flood Study (Project No. 5683-05).
- t. Engineering Services Contract Amendment with Houston Engineering in the amount of \$84,360.71 for Project No. 5902.
- u. First Amendment to Track Agreement for extension of the spur rail tracks on the west edge of Fayland Industrial First Addition (Improvement District No. 5827).
- v. Bid awards to Project Nos. 5747-22 to Industrial Builders, Inc. in the amount of \$125,566.00 and 5747-23 to Industrial Builders, Inc. in the amount of \$89,980.00.
- w. Change Order No. CO 004 for an increase of \$8,946.20 for the GTC deck repair work.

- x. Change Order No. 1 for an increase of \$156,431.62 for Project No. 5799.
- y. Final Balancing Change Orders for the following Projects: No. 2 for an increase of \$62,740.18 for No. 5221; No. 1 for an increase of \$83,321.59 for No. 5870 and No. 1 for an increase of \$2,612.96 for No. 5874.
- z. Time extensions for Project Nos. SW09-02 and 5728.
- aa. One-year extensions of farm lease agreements with Larry Richard, Terry and Kay Compson and Claude Richard for 2010.
- bb. Contracts and bonds for mechanical construction of the Skyway Replacement Project and for Project No. 5701.
- cc. Bills in the amount of \$6,744,419.71.

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.

Final Balancing Change Order No. 1 for Improvement District No. 5703 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of \$25,836.66 for Improvement District No. 5703.

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.

Final Balancing Change Order No. 1 for Improvement District No. 5770 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of \$40,962.00 for Improvement District No. 5770.

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.

Final Balancing Change Order No. 1 for Improvement District No. 5817 Approved:

Commissioner Mahoney moved approval of Final Balancing Change Order No. 1 for an increase of \$15,374.14 for Improvement District No. 5817.

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.

Contract and Contract Bond for Project No. 5574 Approved:

Commissioner Mahoney moved the Contract and Contract Bond for Project No. 5574 be approved.

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 Approved:

Finance Director Kent Costin stated second reading and final adoption of the Street Lighting Utility Ordinance was delayed at the last City Commission meeting based upon feedback received to date on this issue. The Ordinance, he said, was referred back to the Finance Committee for further evaluation of the recommended rate structure. The Finance Committee met and discussed alternative street lighting utility rate concepts for the proposed rate resolution, he said. He stated, the overall impact of the analysis was to broaden the customer base so that rates could be lowered as much as possible and spread across the customer base in a more equitable manner and also provide some rate relief to the low income customers. He said the Finance Committee confirmed the belief that all citizens and businesses benefit from City-owned street lights and the network of infrastructure should be funded by a user fee applied as broadly as possible. He stated the following rate structure is being recommended:

Residential customers - \$2.50 per month

Multi-family apartments - \$2.00 per month per unit

Commercial customers - \$8.00 per month

Customers eligible for property tax homestead credit exemption - \$1.25 per month (Reduced fee logic as currently granted in the Solid Waste fee resolution.)

Mr. Costin said the Finance Committee also agreed to review the utility rate structures in the future for consistency of how the homestead credit eligibility fee reduction is applied in current rate resolutions for other utility services provided by the City of Fargo.

At 5:15 p.m., the time advertised for public hearings, the Board deferred additional discussion on this item until after the hearings.

Resolution Adopted Approving a Vacation Plat, a Portion of 6th Avenue of the Chapin Johnson & Barrett Addition (604 and 608 Broadway):

Senior Planner Jim Hinderaker stated the proposed expansion of St. Mary's Catholic Church is for a new entrance, elevator and vehicle drop-off/pick-up area.

Commissioner Wimmer 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 Vacation Plat, A Portion of 6th Avenue of the Chapin Johnson & Barrett Addition, Section 6, Township 139 North, Range 48 West to the City of Fargo, Cass County, North Dakota; and

WHEREAS, A Hearing was held October 14, 2009 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 November 9, 16, 23, and 30, 2009 that a Hearing would be held in the City Commission Room at the City Hall, Fargo, North Dakota at 5:15 o'clock p.m., December 14, 2009 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 "Vacation Plat, A Portion of 6th Avenue of the Chapin Johnson & Barrett Addition, Section 6, Township 139 North, Range 48 West to the City of Fargo, Cass County, North Dakota" 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 Register of Deeds of Cass County, North Dakota.

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

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

Future Land Use Plan for the Roosevelt Neighborhood and an Amendment to the 2004 Roosevelt-NDSU Neighborhood Plan Approved:

A Hearing had been set for this day and hour to receive comments on a future land use plan for Roosevelt Neighborhood and an amendment to the 2004 Roosevelt-NDSU Neighborhood Plan.

Senior Planner Jim Hinderaker stated Roosevelt Neighborhood is one of the older neighborhoods in the City and that is why NDSU felt the need to generate a future land use plan with the property owners of this neighborhood. He said the plan does not address all of the concerns of the neighborhood, but it is the best plan that came out of the meetings between NDSU and the Roosevelt Neighborhood.

Commissioner Wimmer moved the future land use plan for Roosevelt Neighborhood and an amendment to the 2004 Roosevelt-NDSU Neighborhood Plan 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.

Modification of Route 25 Approved:

A hearing had been set for this day and hour for the purpose of eliminating a portion of Route 25 traveling south of 32nd Avenue effective January 1, 2010.

The Board received a communication from Transit Administrator Julie Bommelman stating the Transit Department is proposing a change to Route 25. She said due to timing concerns, staff is proposing the loop south of 32nd Avenue be

eliminated. The new alignment, she said, would have Route 25 follow its existing route configuration but eliminate the loop past Fleet Farm south to 40th Avenue. She said the return trip out of West Acres would remain on 32nd Avenue between 42nd and 33rd Streets. Improving the timing issues on Route 25, she said, will enable better transfers with routes at West Acres and K-Mart and enhance service to the riding public. She said Route 25 transports an average of 4,000 riders per month and makes up approximately 2-3% of the overall Fargo ridership and the proposed change would potentially impact 5-10% of riders on Route 25. She said the MAT Coordinating Board approved the recommended change at the November 18, 2009 meeting. She said public notices were published in The Forum on November 30, 2009, posted in all Fargo fixed route vehicles, published on the MAT website and in the latest edition of the MAT Times and posted at the Ground Transportation Center and West Acres Transit Hub. Comments regarding the proposed change were received from three interested parties, she said.

Planning Director Jim Gilmour stated with the increasing number of riders on this route in the past couple years and more frequent stops, it has made it difficult for this route to be on time.

James Timian, 69 North 4th Street, #18, said he understands the need to eliminate a portion of this route, especially as transit is getting more and more popular.

Commissioner Williams moved elimination of a portion of Route 25 travelling south of 32nd Avenue be approved as recommended effective January 1, 2010.

Second by Piepkorn. On call of the roll Commissioners Williams, Piepkorn, Wimmer, Mahoney 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 Approved (Continued):

In response to a question from Commissioner Wimmer on how some streets have more lighting than others, Finance Director Kent Costin responded that it would go back to when the neighborhood was established and what was special assessed to the property owner at that time. Mr. Costin stated residents can petition the Engineering Department to have street lights installed on their streets and pay for them through special assessments like other property owners have done. The issue, he said, is not about the amount of street lights that are in the City it is about the networking of lighting and how to pay to operate those lights.

Commissioner Williams stated his issue is not with the formation of a utility like this, but with the timing. This should have been addressed prior to the setting of the 2010 budget, he said. His suggestion, he said, would be to hold off until the next budget and give the citizens a break.

Commissioner Wimmer asked how the City would come up with the money if the Commission does not pass this at this time. He said the timing is not right and it should have been discussed in July or August. He said the Commission could look at it again in mid-2010 to make sure this is what the City wants to continue with.

Commissioner Piepkorn stated the concept of the Street Lighting Utility is great so the City can break it out of the general fund and track for efficiencies in the system; however, it is the people's perception of the Commission trying to shove this through at the end of the year that is troubling.

Commissioner Mahoney moved the proposed Ordinance Enacting Article 38-01 of Chapter 38 of the Fargo Municipal Code Relating to City Street Lighting System Utility which was placed on its first reading November 16, 2009 be now placed on its second reading and a vote taken on the question of its final passage and adoption.

Second by Wimmer.

Bob Brummond, Fargo-Moorhead Astronomy Club, presented information about light pollution which affects a person's ability to see the Milky Way and other celestial objects.

Lois Altenburg, Vice President of the Fargo-Moorhead Astronomy Club, stated she would like to see the City of Fargo be an energy leader.

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

Commissioners Piepkorn and Williams voted 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 Mahoney, Wimmer and Walaker voted aye.

Commissioners Piepkorn and Williams voted nay.

The Ordinance was duly passed and adopted.

At 6:12 the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

#### \$40,000 Appropriated to the Growth Initiative Fund:

The Board received a communication from Finance Director Kent Costin stating Brian Walters, Executive Director of the Greater Fargo Moorhead Economic Development Corporation (GFMEDC), requested funding in the amount of \$80,000 for the Growth Initiative Loan Fund. Mr. Costin said, as a public trust, GFMEDC is required to maintain adequate levels of public funding annually to preserve tax free status with the Internal Revenue Service. He said GFMEDC has been advised that historical contribution levels are putting them in jeopardy of losing existing tax status with the IRS. He said the Finance Committee discussed the request and recommended that the City of Fargo fund \$40,000 of the amount requested and that the GFMEDC solicit the remaining funding needed from either Cass County or West Fargo by year end. The Growth Initiative Fund was started years ago and is being operated as a revolving loan fund under the custody of the GFMEDC, he said. He stated funds could be made available from resources programmed mid-year 2009 if the Board desires to fund the request.

Brian Walters, President of the GFMEDC, stated the Growth Initiative Fund was set up as a revolving loan fund in the mid 90's for a community partnership program between the Bank of North Dakota and communities in the State of North Dakota. It is an interest rate buy down loan program for primary sector businesses, he said, and was a very popular program during the high interest rate period of the 1990's. He said the GFMEDC has managed and completed about 100 loans for businesses since the fund's establishment in 1995. The businesses' promise to the GFMEDC was to create over 2,700 jobs, he said, and the companies have achieved and even doubled that amount. His hope, he said, is that this will spark some conversations with the City and the GFMEDC about repurposing the loan funds for other uses.

Commissioner Williams stated he agrees that the GFMEDC works well with the City, but there are things beyond the cash that the City does for businesses as well. He said this is something that the City does not need to play a roll in.

Commissioner Piepkorn moved \$40,000 be appropriated to the Growth Initiative Loan Fund from the 2009 budget.

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

Commissioner Williams voted nay.

The motion was declared carried.

\$3,000 Appropriated to Assist in Funding a Minn-Kota PAAWS Feral Cat Program:

The Board received a communication from Finance Director Kent Costin stating a proposal was presented to the City Commission on November 30, 2009 that the City assist in the development of a feral cat program in association with the Minn-Kota PAAWS organization. The Finance Committee, he said, is recommending a funding source of up to \$3000 per year from funds already appropriated for emergency animal care.

Commissioner Mahoney moved the recommendation from the Finance Committee to use funds currently budgeted for the emergency animal care program to assist in funding a proposed feral cat program be approved, specifically utilizing it for the capture, testing, vaccination and sterilization of feral cats up to \$20 per cat and capping total assistance at \$3,000 per year.

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

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

Recommendation from the Parking Commission for Adjustments to the Parking Rates Approved:

The Board received a communication from Senior Planner Robert Stein stating the Parking Commission is recommending changes be made to the parking rates for the City-owned parking facilities and to designate a cab stand in downtown Fargo. Rate increases were recommended in all but one of the facilities, he said and a rate reduction was recommended for the Island Park Ramp because of the consistently low occupancy during the past few years and it was felt that a rate decrease would offer a lower cost alternative for downtown employees and students. Parking rates were last changed in 2007, he said.

In response to a question from Commissioner Piepkorn as to whether or not the City staff is marketing the parking ramps to NDSU students, Mr. Stein stated there is a student rate for parking, but occupancy is low among the student population. Only about 15 students are currently participating, he said.

Commissioner Williams moved the parking rate adjustments recommended by the Parking Commission be approved effective February 1, 2010.

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.



Designation of a Cab Stand at NP Avenue and the Old Broadway Alley Approved:

The Board received a communication from Senior Planner Robert Stein stating James Peinovich, Doyle's Yellow Checker Cab, Inc., attended a previous meeting and requested that the City identify a location for a cab stand in the vicinity of Broadway and NP Avenue. He said this is a high-demand location for cab service, especially late in the evenings. Staff conferred with Randy Thorson and Warren Ackley, owners of the Old Broadway, he said, and a site was identified on NP Avenue near the Old Broadway alley. He said Traffic Engineer Jeremy Gorden also agreed this was a good location for safe and orderly access to taxi cabs.

Commissioner Wimmer moved designation of a cab stand at NP Avenue and the Old Broadway alley.

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.

First Reading of an Ordinance Relating to Parking Regulations:

The Board received a communication from Senior Planner Robert Stein stating one of the most misinterpreted and least understood provisions of the Municipal Code relating to parking is the short move or re-parking violation (Section 8-1006). This violation, he said, occurs if someone parks in a time zone and (at a later time in the same day) returns to that "block face" and "re-parks" on the same block which would constitute a time zone violation. He said in an effort to clarify these issues, the Parking Commission has recommended changing the time zone signs to include a more detailed explanation of re-parking which will hopefully eliminate some of the confusion.

Commissioner Williams moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Amending Section 8-1006 of Article 8-10 of Chapter 8 of the Fargo Municipal Code Relating to Parking Regulations be placed on first reading.

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

Commissioner Mahoney voted nay.

The motion was declared carried.

Discussion Regarding Ordinance Relating to Removal of Snow and Ice from Sidewalks:

The Board received a communication from Public Works Director Al Weigel stating he is in the process of revising Fargo Municipal Code 18-0301 which pertains to snow and ice removal from sidewalks throughout the City. He said the Public Works Department has been enforcing the current Ordinance for the last couple of years on a complaint driven basis. The current Ordinance states snow and ice must be cleared by nine o'clock p.m. each day after a snow fall, he said, but enforcement has not come into play until 24 hours after a snow fall. He asked for discussions and input on the appropriate time frame to allow before enforcement activities commence.

In response to a question from Commissioner Piepkorn on the cost to a resident for not complying with the Ordinance, Mr. Weigel stated average cost is \$75.

Mr. Weigel stated once a call is received about a property, his staff goes to the property and places a warning tag in the door. The next step, he said, would be to take a

picture of the property and finally to schedule the property to be cleaned.

Justin Kristan, 1204 10th Street South, said he supports the 24 hours after a snowfall Ordinance. He said he does not want to see all this back and forth stuff, just 24 hours and the property owner would be responsible.

Greg Johnson, U.S. Postal Service, said he has some safety concerns for Postal employees with the suggested wait time of 48 to 72 hours, but feels the proposed 24 hours after a snowfall is workable.

Mr. Weigel stated residents will be made aware of the new system before it is enforced by utilizing the Code Red System.

Second Reading and Final Adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Lewis Addition:

This item was moved from the consent agenda to allow neighbors input.

Senior Planner Jim Hinderaker said Innovis Health is currently using the old church on the property as a limited storage facility. He said Innovis Health's intentions with the property are to level the church and make it into a parking lot.

In response to a question from Commissioner Piepkorn regarding whether or not the existing trees can be left as is and the retention pond be located by the trees, Mr. Hinderaker said Innovis Health is willing to work with the residents to address those concerns.

Bonnie Hansen, 1105 16th Avenue South, said the residents' major concern is the rezoning and their belief that any rezoning change will severely affect the environment and property values. She said she does not think Innovis Health needs more parking at the expense of the residents.

Bob Bakkum, Innovis Health, said there has been no hidden agenda with the rezoning. He said Innovis Health is more than willing to work with the residents and their concerns.

Kevin Pitzer, Innovis Health, said he would agree that at any given time there are parking spaces empty in their current lots, however, Innovis Health is in the process of re-commissioning some services back to the site so it will be necessary to make full use of the sites potential.

Commissioner Wimmer moved that the proposed Ordinance Rezoning Certain Parcels of Land Lying in Lewis Addition which was placed on its first reading November 30, 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 and Walaker voted aye.

Commissioner Williams voted nay.

Commissioner Mahoney abstained from voting.

The motion was declared carried.

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

Commissioner Williams voted nay.

Commissioner Mahoney abstained from voting.

The Ordinance was duly passed and adopted.

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

Monday, December 28, 2009.

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

The time at adjournment was 7:34 o'clock p.m.