

BOARD OF CITY COMMISSIONERS  
Fargo, North Dakota

Regular Meeting:    Monday:    December 28, 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 28, 2009.

The Commissioners present or absent were as shown following:

Present: Williams (via conference call), Wimmer, Walaker.

Absent: Mahoney, Piepkorn.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Wimmer moved the Order of the Agenda be approved.

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

Minutes Approved:

Commissioner Wimmer moved that the Minutes of the Regular Meeting of the Board held on December 14, 2009 be approved as read.

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

Consent Agenda Approved:

Commissioner Wimmer moved the Consent Agenda be approved as follows:

- a. Receive and file Ordinance Amending Section 25-3512 of Article 25-35 of Chapter 25 of the Fargo Municipal Code Relating to Secondhand Goods Dealers.
- b. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 8-1006 of Article 8-10 of Chapter 8 of the Fargo Municipal Code Relating to Parking Regulations; 1st reading 12/14/09 (clarifies present language regarding reparking).
- c. Expenditure of Neighborhood Stabilization Program funds to acquire 1205 2nd Avenue South for \$49,000.
- d. 2010 grant allocation from Cass County in the amount of \$9,000 for the Gladys Ray Shelter.
- e. Spirit of Fargo allocation of \$10,000 to address the needs at the Nokomis Childcare Centers as a result of the 2009 flood.

- f. 2010 City Social Service and Arts Fund recommendation.
- g. Aerial mosquito spraying agreement with Airborne Custom Spraying, Inc. for 2010-2014.
- h. Agreement with US Bank regarding the City's parking ramp and demolition thereof, a replacement skyway easement and related matters.
- i. Indigent defense services contracts with Joe Johnson and Stormy Vickers Law Firms for January 1, 2010 through December 31, 2012.
- j. NDDOT Amendments to Contracts to extend Job Access and Reverse Commute (JARC) and New Freedom (NF) funding for transit activities.
- k. Junk vehicle removal contract with Hazer's Auto and Truck Salvage, Inc. for 2010.
- l. Resolution Adopting the Fargo Safe Routes to School Study (Attachment "A").
- m. Agreement with Seven Day Clinic for H1N1 immunizations.
- n. Contracts with the North Dakota Department of Health for VFC/AFIX Immunization Program (CFDA #93.268) and Immunization Program (CFDA #93.268).
- o. Contract with the North Dakota Department of Health for the Protect ND Kids program (Contract #09-487).
- p. Applications for tax exemptions for improvements made to buildings:
  - (1) Frank and Jo Ann Heinbaugh, 3408 Bohnet Boulevard (3 year).
  - (2) Paulette Knutson and Raul Luna, 1209 48th Avenue South (5 year).
- q. Application filed by NDSU Health, Nutrition and Exercise Sciences for a raffle on 2/6/10.
- r. Bid awards for chemicals for the Sewage Department.
- s. Purchase of one Hook Lift Roll-Off from Olympic Sales for \$33,900.00.
- t. 3-year extension to consultant agreement with Wenck Associates, Inc. for engineering services at the Fargo landfill.
- u. Purchase Agreement with Dennis and Judy Hauschulz for permanent easement in connection with Project No. 5499-1.
- v. Addendum #2 to the Transportation Planning Agreement with the FM Metro COG for the University Drive Corridor Study.

- w. Engineering Services Agreement Amendment No. 3 in the amount of \$26,000 for the FM Metro Flood Control Feasibility Study (Project No. 5683-05).
- x. NDDOT Cost Participation and Maintenance Agreement for 45th Street Improvement District No. 5700.
- y. Plat of Osgood Townsite Ninth Addition (previously advertised as Osgood Townsite Tenth Addition).
- z. Change Orders for the following Projects: Balancing Change Order No. 2 for an increase of \$44,682.48 for No. 5846; Balancing Change Order No. 1 for an increase of \$2,931.56 for No. 5875; No. 1 for an increase of \$65,758.95 for No. 5895; No. 1 for an increase of \$418,441.00 and a contract time extension for No. 5899; Contract time extension for No. 5897-2.
- aa. Bid advertisement for Project No. 5657.
- bb. Contracts and bonds for Project Nos. 5747-22 and 5747-23.
- cc. Bills in the amount of \$7,405,229.43.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Balancing Change Order No. 2 for Improvement District No. 5384 Approved:

Commissioner Wimmer moved approval of Change Order No. 2 for an increase of \$32,208.78 for Improvement District No. 5384.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Balancing Change Order No. 1 for Improvement District No. 5385 Approved:

Commissioner Wimmer moved approval of Change Order No. 1 for an increase of \$9,783.84 for Improvement District No. 5385.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Balancing Change Order No. 1 for Improvement District No. 5601, Phase 4 Approved:

Commissioner Wimmer moved approval of Change Order No. 1 for an increase of \$1,791.00 for Improvement District No. 5601, Phase 4.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Balancing Change Order No. 1 for Improvement District No. 5777 Approved:

Commissioner Wimmer moved approval of Change Order No. 1 for an increase of \$271,150.92 for Improvement District No. 5777.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Balancing Change Order No. 1 for Improvement District No. 5818 Approved:

Commissioner Wimmer moved approval of Change Order No. 1 for an increase of \$67,086.64 for Improvement District No. 5818.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Resolution Adopted Prescribing Rates and Charges for the Forestry Utility Services for 2010:

The Board received a communication from City Auditor Steve Sprague submitting a resolution prescribing rates and charges for utility services for the Forest Utility Fund for the 2010 annual budget.

Finance Director Kent Costin said the increase of \$.40 on the base rate of \$2.60 is necessary because capital costs continue to go up as heavy equipment needs ongoing replacement and for tree replacement costs due to the Emerald Ash Borer issues. He said the last increase to Forestry utility rates was in 2008.

In response to a question from Commissioner Wimmer regarding the delay between the approval of the 2010 budget and the request for the rate increase, Mr. Costin said rate increases are normally approved at the end of the year in preparation for the new billing cycle in January. He said Forestry receives a \$480,000 subsidy from Solid Waste fees in order to prevent charging for brush pickup.

Commissioner Wimmer moved the Resolution Prescribing Forestry Rates and referred to as Attachment "B", be adopted and attached hereto.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Wally Lueck and Chuck Carney Reappointed to the City Hall-Auditorium Commission:

The Board received a communication from Mayor Walaker recommending that Wally Lueck and Chuck Carney be reappointed to the City Hall-Auditorium Commission.

Commissioner Wimmer moved Wally Lueck and Chuck Carney be reappointed to the City Hall-Auditorium Commission for terms ending January 1, 2013.

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

Absent and not voting: Commissioner Mahoney and Piepkorn.

The motion was declared carried.

Application to Transfer the Existing Payment in Lieu of Tax Exemption on Willow Crossing Apartments to the New Purchaser of the Project Approved:

The Board received a communication from Ben Hushka, City Assessor and Tax Exempt Review Committee member, submitting an application by Campbell Property Group, LLC for the transfer of the existing payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57-1 granted on September 4, 2007 to Willow Crossing, LLC. He said the transfer requested is for the purchase of property located at 1102 1st Avenue North which is an apartment project. The Tax Exempt Review Committee, he said, met to consider this application and they feel this project continues to meet the necessary criteria to be eligible for the transfer of the remaining PILOT due to the fact it is in the Downtown Area Plan boundary and there will be no change in project operation. He said the remaining PILOT payments are based on the equivalent of 100% building exemption for four years and 75% building exemption for five years. Mr. Hushka said under North Dakota statute, the project will pay full tax on the land.

Commissioner Wimmer moved the transfer of the existing payment in lieu of tax exemption on Willow Crossing apartments to the new purchaser of the project be approved.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Receive and File Ordinance Relating to Removal of Snow and Ice From Sidewalks:

Mayor Walaker said he would like to recommend delaying the implementation of the Ordinance until a more comprehensive plan can be researched. He said input from school district staff, emergency personnel and other groups will help to formulate a better system. A major snowstorm, he said, like the one the City just had, makes it difficult for homeowners and businesses to keep sidewalks cleared so some guidelines are needed.

Public Works Director Al Weigel said the 9 p.m. Ordinance is still in effect, but it is normally not enforced, especially after a major storm. He said City Attorney Erik Johnson is looking at reducing the width for clearing wider sidewalks so the Ordinance is not unfair to people with wide paths. Mr. Weigel said he will work with Mr. Johnson and Mr. Zavoral on the details.

City Administrator Pat Zavoral said the Board needs some direction to help with making better judgments on how to approach the guidelines for the Ordinance. He said implementing different tiers and timetables based on snow amounts and duration of snowfall would help determine guidelines.

Senior Planner Jim Hinderaker said Planning Department staff is working with the Parks Department staff and the City Attorney on this issue. It will be presented at the next Planning Commission meeting, he said, and then staff will bring it to the Board at a later date.

Commissioner Wimmer moved the Ordinance Relating to Removal of Snow and Ice from Sidewalks be received and filed.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.  
The motion was declared carried.

Application Filed by Fargo Automation, Inc. for a Five Year Property Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by Fargo Automation, Inc. for a five year property tax exemption for expansion to their operation at 969 34th Street North where the applicant is engaged in the manufacturing of packaging machinery for pharmaceutical products.

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

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

Absent and not voting: Commissioners Mahoney and Piepkorn.  
The motion was declared carried.

Amendment to the Growth Plan Approved (4102 19th Avenue North):

A Hearing had been set for this day and hour to consider approval of an amendment to the Growth Plan from commercial use to industrial use for part of Lot 13, Hector's Subdivision.

The Fargo Planning Commission recommended approval of the amendment to the Growth Plan at their December 9, 2009 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.

Senior Planner Jim Hinderaker said the amendment to the Growth Plan was requested to help with transition to residential zoning in the area.

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

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

Absent and not voting: Commissioners Mahoney and Piepkorn.  
The motion was declared carried.

Parcels of Land in Hector's Subdivision Rezoned (4102 19th Avenue North):

At a Hearing held on December 9, 2009 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to LI, Limited Industrial on Hector's Subdivision.

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 the zoning change will allow the Olaf Anderson Construction Company to build a building on the front of the lot with room in the back for equipment. He said the company is looking for a larger area for expansion, similar to their operation on 7th Avenue North.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Hector's Subdivision to the City of Fargo:

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 Hector's Subdivision to the City of Fargo, Cass County, North Dakota be placed on first reading.

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

Absent and not voting: Commissioners Mahoney and Piepkorn.

The motion was declared carried.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, January 11, 2010.

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

The time at adjournment was 5:40 o'clock p.m.