

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: October 4, 2010:

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 4:00 o'clock p.m., Monday, October 4, 2010.

The Commissioners present or absent were as shown following:

Present: Piepkorn, Williams, Wimmer, Walaker.

Absent: Mahoney.

Mayor Walaker presiding.

City Attorney Erik Johnson announced that there is a matter to be discussed in Executive Session, specifically, to discuss the proposed sign code which is the subject of reasonably anticipated or threatened litigation.

Commissioner Piepkorn moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.2 to discuss the proposed sign code.

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

At 4:05 p.m. the Board moved to the River Room to discuss the litigation matter in Executive Session.

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

The Executive Session closed at 4:50 o'clock p.m. and the Commission reconvened in public session at 5:00 o'clock p.m.

Order of Agenda Approved:

Commissioner Mahoney moved the Order of the Agenda be approved moving Item "I" from the Consent Agenda to the Regular Agenda after Item No. 3 and delaying Item No. 3 in the Regular Agenda until October 18, 2010.

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

Minutes Approved:

Commissioner Mahoney moved the Minutes of the Regular Meeting of the Board held on September 20, 2010 be approved as read.

Second by Piepkorn. 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. Proposal to establish a housing rehab loan fund with CommunityWorks ND.
- b. Purchase of property at 616 23rd Street North for \$85,000.00.
- c. Acceptance of proposal from First Transit, Inc. for mass transit operational services to provide management, driver and fixed route dispatch services for three years, plus two additional one-year extension options.
- d. Receive and file Fargo-Moorhead Metro Area Transit Marketing Research Report prepared by Results Unlimited of Fargo and Minot.
- e. Grant Agreement with Dakota Medical Foundation in the amount of \$4,000.00 for Baby Steps/Nurse Family Partnership.
- f. Police Department budget adjustment in the amount of \$25,500.00 and NDDOT grant funding for Impaired Driving Enforcement (CFDA #20.601) and Safety Belt Education and Enforcement (CFDA #20.600).
- g. Justice Assistance (JAG) Grant for the Rape and Abuse Crisis Center in the amount of \$29,288.00.
- h. Wildlife Hazard Mitigation Plan for Hector International Airport.
- i. Business licensing software agreement with Mitchell Humphrey & Co.
- j. Applications for Games of Chance:
 - (1) FM Walleyes Unlimited, Inc. for a raffle on 1/22/11.
 - (2) The Village Family Service Center for a raffle on 11/12/10.
 - (3) Troy Hebert Benefit for a raffle on 10/21/10; Public Spirited Resolution.
 - (4) Davies High Eagle Elite Dance Team for a raffle on 1/15/11; Public Spirited Resolution.
 - (5) National Association of Home Builders for a raffle on 10/14/10.
 - (6) Hospice of the Red River Valley for a raffle on 11/4/10; Public Spirited Resolution.
- k. Purchase Agreements for Permanent Easements in connection with Improvement District No. 5178:
 - (1) Monte Jerstad.
 - (2) Roadway Services, Inc.
- l. Application for Early Building Permit for Dakota Boys & Girls Ranch South Campus at 7045 15th Street South (moved to the Regular Agenda after Item No. 3).
- m. Right of Entry and Access Agreement with Barr Engineering at 4145 and 6469 University Drive South.
- n. Otter Tail Power Company Utility Relocation Agreement for Project No. 5949.

- o. Engineering Services Contract Amendment in the amount of \$9,000.00 for Improvement District No. 5732.
- p. Approve project to raise Belmont Park levee to river stage 44' and authorize negotiation with property owner at 1525 South River Road to construct levee raise with preference for voluntary acquisition and removal (Project No. 5948).
- q. Modification No. 2 to Cooperative Agreement No. 301817J252 with US-FWLS for Project No. 5153-3.
- r. Denial of request to transfer ownership and maintenance of two storm sewer retention basins along 47th Street South in the Urban Plains area to the City; authorize staff to work with local developers and builders to establish criteria for regional storm water retention basins.
- s. Advertise for bids for Project No. 5948.
- t. Bid awards for Project Nos. 5944 to Master Construction Company Inc. in the amount of \$1,693,144.85; 5949 to Master Construction Company, Inc in the amount of \$1,235,161.60; 5949-01 to Paul Bunyan Tree Service in the amount of \$15,434.00; and 5944-02 to Paul Bunyan Tree Service in the amount of \$48,005.00.
- u. Contracts and bonds for ADA seating renovations for Newman Outdoor Field and Project Nos. 5906 and 5947.
- v. Bills in the amount of \$7,836,760.97.

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.

Bids Received for Shared Use Path Improvement District No. 5838-4:

The bids for Shared Use Path Improvement District No. 5838-4 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 29, 2010 and the bids were found to be as follows:

Adelman Concrete and Excavating Bid:	Fargo, ND \$185,415.12
Dakota Underground Company Bid:	Fargo, ND \$213,070.50
Northern Improvement Company Bid:	Fargo, ND \$223,354.00

Paras Contracting, Inc. Fargo, ND
Bid: \$234,767.95

A J Construction West Fargo, ND
Bid: \$251,233.05

Opp Construction Company Fargo, ND
Bid: \$267,735.55

Contract for Shared Use Path Improvement District No. 5838-4 Awarded to Adelman Concrete and Excavating in the Amount of \$185,415.12:

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Shared Use Path Improvement District No. 5838-4; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received September 29, 2010 for Shared Use Path Improvement District No. 5838-4 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Shared Use Path Improvement District No. 5838-4 shows the bid of Adelman Concrete and Excavating of Fargo, North Dakota, in the sum of \$185,415.12 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 Adelman Concrete and Excavating in the sum of \$185,415.12 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Shared Use Path Improvement District No. 5838-4 in the City of Fargo, North Dakota, be and the same is hereby awarded to Adelman Concrete and Excavating for the sum of \$185,415.12, 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 Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Williams, Piepkorn, Wimmer and Walaker voted aye.

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

Bids Received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5945-01:

The bids for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5945-01 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., September 29, 2010 and the bids were found to be as follows:

Master Construction Company, Inc. Fargo, ND
Bid: \$1,191,552.50

Tom's Backhoe Service Brainerd, MN
Bid: \$1,520,886.75

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

Contract Bond for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-1 Approved:

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

United Fire and Casualty Company, in the amount of \$1,331,868.50, for P.C. Concrete Pavement, Concrete Curb and Gutter, Asphalt Pavement and Incidentals Improvement District No. 5969-1 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.

Steven Stremick, 1155 13th Avenue South, said he feels the Commission violated NDCC, Section 44-04-19.2 by meeting in Executive Session on a threat of a possible litigation regarding the proposed sign code. He said only if there is an ordinance could an Executive Session be held based on a threat of litigation. He said Commissioner Mahoney was not present at the convened public meeting; therefore, he should not have participated in the Executive Session. He said there should be a vote to open the minutes from the Executive Session to the public, since it was not a required session.

City Attorney Erik Johnson said Mr. Stremick's objections have been noted. He said any City has the prerogative to hold confidential meetings with the purpose of having private discussions and to receive legal counsel. He said to open the minutes up later would defeat the purpose. A quorum was present when the Executive Session was called, he stated, and Commissioner Mahoney joining the meeting in progress did not violate any laws.

Vote Taken at the September 20, 2010 Regular Meeting to Deny a Plat of Deer Creek Addition and Petition Requesting the Rezoning of Parcels of Land in Deer Creek Addition Reconsidered: Parcels of Land in Deer Creek Addition Rezoned (6242 County Road 17; 5870 and 5654 63rd Street South; and 5637, 5851 and 6257 Veterans Boulevard South):

Commissioner Piepkorn said in the weeks following the meeting there have been discussions between the petitioner and the City to consider moving forward with the portion of the plat and zone change that was unrelated to the trail issue.

Commissioner Piepkorn moved the Board reconsider the motion made at the September 20, 2010 Regular Meeting to "accept the findings of staff and hereby deny the Deer Creek Addition plat and request for rezoning as the proposal does not comply with the Comprehensive Plan, Standards of Article 20-06 and Section 20-0906 F(1-4) of the Land Development Code".

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

Senior Planner Jim Hinderaker said the petitioner is proposing a slight reconfiguration of the subdivision. He said the proposed plat now has a western boundary at the Smylie property with 772 lots, not 813 as previously proposed. He

said staff recommends the Smylie property be included. Due to issues with the trail and the bike path and the petitioner not formally owning the Smylie property, he said, the proposed plat shows that portion excluded.

Commissioner Williams said he appreciates the developer coming back with the revised plan and while it does back away from the river for the most part, he personally feels there should be a standard 450 foot setback; therefore, he will not be supporting the motion.

Commissioner Piepkorn offered a substitute motion to approve the request for a zoning change from AG, Agricultural to SR-2, Single-Dwelling on Blocks 1-10 (except Lot 24, Block 4; Lot 8, Block 9; and Lot 13, Block 10); to SR-4, Single-Dwelling on Blocks 11-24 (except Lots 14, 43, 60, 85, 86 and 103, Block 11); and to P/I, Public Institutional on Lot 24, Block 4; Lot 8, Block 9; Lot 13, Block 10; Lots 14, 43, 60, 85, 86 and 103, Block 11 all in Deer Creek Addition.

Second by Wimmer.

In response to a question from Andy Noah, attorney for the developer, on whether the motion included the Smylie property, City Attorney Erik Johnson said the motion was to approve the plat as presented and the Smylie property was not included.

Rich Slagle, 4238 66th Street South, said the Commission should be aware the owner could come back with action toward the City of Fargo if this land is split out, as it would require a unique sale due to the zoning.

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

Commissioner Williams voted nay.

The motion was declared carried.

Resolution Adopted Approving Deer Creek Addition:

Commissioner Piepkorn 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 "Deer Creek Addition" containing 772 Lots, 24 Blocks and 207.41 acres of land more or less, located at 6242 County Road 17; 5870 and 5654 63rd Street South; and 5637, 5851, and 6257 Veterans Boulevard South; and

WHEREAS, A Hearing was held June 9, 2010 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 August 23 and 30, 2010 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., September 7, 2010 at which time said Plat would be considered and all interested persons would be heard. At the September 7, 2010 City Commission meeting, the Hearing was continued to September 20, 2010. Action was taken on September 20, 2010 to deny said petition; however, upon request from the City Commission, the Plat was reconsidered by the City Commission at the October 4, 2010 meeting.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission be accepted and the Plat entitled "Deer Creek Addition" 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 Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Piepkorn, Wimmer, Mahoney and Walaker voted aye.

Commissioner Williams voted nay.

The Resolution was adopted.

Application Filed by Alsop Enterprises for Payment in Lieu of Tax Exemption Approved:

A Hearing had been set for this day and hour on an application filed by Alsop Enterprises for payment in lieu of property tax exemption for the construction of a new apartment project at 21 8th Street North.

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 Alsop Enterprises for a ten year payment in lieu of tax exemption pursuant to Chapter 40-57.1, NDCC be approved as follows:

Year 1 through 5 - \$0

Year 6 through 10 - \$11,904.00

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 the Special Assessment List for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lighting, Bridge Construction and Incidentals Improvement District No. 5547 Approved:

A Hearing had been set for this day and hour on the special assessment list for the construction of Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lighting, Bridge Construction and Incidentals Improvement District No. 5547 in the City of Fargo, North Dakota, on which special assessment list a Hearing had been held by the Special Assessment Commission after which it had been confirmed and filed with the Board of City Commissioners.

City Auditor Steve Sprague said there have been delays in the process; however, the proper procedure has been followed.

Attorney Jonathan Garaas, Garaas Law Firm, stated objections to any assessment on behalf of his clients Potter Enterprise, D&P Terminal and William F. Rakowski. He said inappropriate actions were taken by the City Commission, the

Special Assessment Commission and City staff. He said the project was partially funded with state monies and the City of Fargo is trying to make money off special assessments, which is not legitimate. He said there is not a finding of benefit, merely an assessment disregarding actual costs and the 15 percent assessment guideline was not followed. He said figures for certification of costs kept changing and hearings were continued and costs for the bridge continued to be included even though the bridge portion was removed. Mr. Garaas requested an audit by a qualified disinterested authority/individual and suspension of any further action pending such results.

City Attorney Erik Johnson said costs varied, which is acceptable as projects mature. He said the actual assessment amount is lower than the proposed assessment amount and the bridge has been part of the project the entire time. He said he disagrees with Mr. Garaas's opinion on what the State contract says and the City Engineers did some of the work and outsourced the rest with those costs reflected in the assessments.

Commissioner Piepkorn moved that the special assessment list for the construction of Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lighting, Bridge Construction and Incidentals Improvement District No. 5547 be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

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

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

Item No. 3 Delayed Until October 18, 2010:

Item No. 3 (Request from Jon Vannett regarding operation of a business named "Bar Hopper" asking that his passengers be allowed to drink alcoholic beverages while on his vehicle) was delayed until October 18, 2010.

At 5:55 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Application for Early Building Permit for Dakota Boys and Girls Ranch South Campus at 7045 15th Street South Approved:

The Board received a communication from Attorney Jonathan Garaas, on behalf of Stanley Township, stating the City Commission does not have the authority to issue an early building permit. He said the City's ordinances give authority to the Building Official who cannot act unless zoning laws are followed. He said zoning for this property does not allow the use Dakota Boys and Girls Ranch is proposing.

City Attorney Erik Johnson stated Mr. Garaas has his own interpretation of the zoning law. He said zoning is set up on this property to allow proposed development to move forward.

City Engineer Mark Bittner said the purpose of an early building permit agreement is so the applicant understands they do not have functional utilities until a future date.

Mr. Johnson said a building permit will be issued by the Building Inspection Office; the early permit is addressing the issue of infrastructure getting there while construction is in progress.

Commissioner Piepkorn said the Dakota Boys and Girls Ranch offers excellent programs and the new location by the high school is fantastic.

Richard Buresh, Superintendent of Fargo Public Schools, said the Public Schools have had a long relationship with Dakota Boys and Girls Ranch, which serves many of the same clients. He said the School District is supportive of plans to build adjacent to the new Davies High School.

Commissioner Williams said he would not support the application. He said Dakota Boys and Girls Ranch is a worthy organization and his opposition is based strictly on land use and building in low lying areas.

Commissioner Piepkorn moved the application for an early building permit for Dakota Boys and Girls Ranch at 7045 15th Street South be approved.

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.

Presentation by Williston Representatives Regarding the Impact on the Western Part of the State as a Result of the Current Oil Boom:

Commissioner Wimmer said he and Commissioner Williams visited the Williston area last week and found it to be a real eye-opener. He said representatives from that area were planning a visit in Grand Forks and are including Fargo in their relationship building trip.

Tom Rolfstad, Williston Economic Development Executive Director, shared statistics and maps on oil impact including production, increased traffic, employment, housing and infrastructure needs. He said he feels this heightened production could continue for many years since the technology for extracting oil, such as horizontal drilling, has greatly increased since the last boom and bust, and the Bakken formation is huge. He said this heightened activity requires the support of industry from the entire state.

Steve Oyloe introduced himself and the members of the visiting group: Steve Slocum, Ken Callahan and Deanette Piesik. Mr. Oyloe said the technology now compared to the boom in the 80's has greatly enhanced the drilling success rate and production.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, October 18, 2010.

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

The time at adjournment was 6:48 o'clock p.m.