

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: December 3, 2007:

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 3, 2007.

The Commissioners present or absent were as shown following:

Present: Coates, Wimmer, Walaker.

Absent: Mahoney, Williams.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Coates moved the Order of the Agenda be approved moving Item "c" to the beginning of the Regular Agenda.

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

Minutes Approved:

Commissioner Coates moved that the Minutes of the Regular Meeting of the Board held on November 19, 2007 be approved as read.

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

Consent Agenda Approved:

Commissioner Coates 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 Maple Valley Addition to the City of Fargo; 1st reading, 11/19/07.
- b. Prescription benefit management services contract with Supervalu for one year beginning December 14, 2007.
- c. Resolutions authorizing the sale of Refunding Improvement Bonds, Series 2007B in the amount of \$13,045,000 (moved to the beginning of the Regular Agenda).
- d. Receive and file amendment to the limited franchise agreement with Cass County Electric adding the area annexed by the City on 10/22/07.
- e. Applications for property tax exemptions for improvements made to buildings:

- (1) Donald and Cathy McCracken, 1426 10th Avenue South (5-year).
 - (2) Brad Gray, 1517 7th Street North (5-year).
 - (3) Tracey Wenthin, 709 9th Avenue South (5-year).
 - (4) Jo Jensen, 1622 16 1/2 Street South (5-year).
 - (5) Roxane Meidinger, 1233 8th Street North (5-year).
 - (6) Marilyn Hiltner, 921 5th Avenue South (5-year).
 - (7) Deborah Tight, 3213 Par Street NE (3-year).
- f. Health Department budget adjustment and contract with the North Dakota Department of Health for purchase of contraceptives (CFDA # FP93.217).
- g. Budget amendment for an increase of \$45,000 to allow the purchase of one additional paratransit bus.
- h. Acquisition of a mini van for the Senior Ride Program with the Fargo Senior Commission being responsible for the 20% local share of the cost.
- i. Amendment to the Joint Powers Agreement with the City of Moorhead for the Metro Transit Garage.
- j. Joint Powers Agreement with the City of Moorhead for the continuation of the Metro Area Transit Coordinating Board.
- k. Mass Transit Agreement with the City of West Fargo for 2008.
- l. Agreement with Professional Account Management, LLC for processing parking citations.
- m. Applications for Games of Chance:
 - (1) Fargo South Club Baseball for a raffle on 5/31/08.
 - (2) NDSU Hospitality Student Association for a raffle on 2/5/08.
- n. Contract for bailiff services for 2008.
- o. Junked vehicle removal contract with Hazer's Auto and Truck Salvage, Inc. for 2008.
- p. Relinquishment of Easement documents with the Park District for Lots 47 and 48, Block 1, Meadow Creek Addition in connection with the 52nd Avenue South improvement project.
- q. Agreement for Entry and Construction with the Park District in connection with the 52nd Avenue South improvement project.
- r. Contract amendment with Houston Engineering in the amount of \$106,500 for Project No. 5031-2.

- s. Change Orders in the total amount of \$166,675.03 to finish Phase One of the Central Garage remodeling project.
- t. Receive and file Ordinance to Create and Enact Article 25-36 of Chapter 25 of the Fargo Municipal Code Relating to Tanning Facilities.
- u. Bills in the amount of \$4,482,556.79.

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

Absent and not voting: Commissioners Mahoney and Williams.

The motion was declared carried.

(Commissioner Mahoney present)

Resolution Adopted Authorizing the Issuance of \$13,045,000 Refunding Improvement Bonds, Series 2007B Prescribing the Terms and Covenants Thereof, and Creating a Fund for the Payment Thereof:

Commissioner Wimmer moved the Resolution entitled "Resolution Authorizing the Issuance of \$13,045,000 Refunding Improvement Bonds, Series 2007B Prescribing the Terms and Covenants Thereof, and Creating a Fund for the Payment Thereof" and referred to as Attachment "A", be adopted and attached hereto.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Resolution Adopted Approving Certain Actions and Awarding Sale of \$13,045,000 Refunding Improvement Bonds, Series 2007B:

Commissioner Wimmer moved the Resolution entitled "Resolution Approving Certain Actions and Awarding Sale of \$13,045,000 Refunding Improvement Bonds, Series 2007B" and referred to as Attachment "B", be adopted and attached hereto.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Resolution Adopted Creating the Funds of Improvement Districts, Providing for and Appropriating Special Assessments for the Support and Maintenance of Said Funds, and Authorizing the Issuance of Improvement Warrants Thereon:

Commissioner Wimmer moved the Resolution entitled "Resolution Creating the Funds of Improvement Districts, Providing for and Appropriating Special Assessments for the Support and Maintenance of Said Funds, and Authorizing the Issuance of Improvement Warrants Thereon" and referred to as Attachment "C", be adopted and attached hereto.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Resolutions Adopted Prescribing Rates and Charges for Utility Services for 2008:

The Board received a communication from City Auditor Steve Sprague submitting resolutions prescribing rates and charges for utility services for the Water, Sewer and Forestry Utility Funds for the 2008 annual budget.

Mr. Sprague said the purpose of the increases is to cover additional costs of operation. Forestry rates, he said, have not been adjusted since 2003.

City Administrator Pat Zavoral said forestry is a popular service to the community. The chipping program, he said, not only brings in fees but also saves space in the landfill. He said the City of Fargo participates in a regional survey to keep sewer and water rates within 50 to 60% of North and South Dakota rates.

Commissioner Wimmer moved the Resolution Prescribing Rates and Charges for Water Utility Service and referred to as Attachment "D", the Resolution Prescribing Rates and Charges for Sewage Utility Service and referred to as Attachment "E", and the Resolution Prescribing Forestry Rates and referred to as Attachment "F", be adopted and attached hereto.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Application Filed by Acapulco Mexican Restaurant d/b/a Acapulco Mexican Restaurant to Transfer the Alcoholic Beverage License at 1303 34th Street Southwest to 1150 36th Street South Approved:

A Hearing had been set for this day and hour on an application filed by Acapulco Restaurant d/b/a Acapulco Mexican Restaurant to transfer the Class "F" Alcoholic Beverage License at 1303 34th Street Southwest to 1150 36th Street South, notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Mahoney moved the application be approved.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Resolution Adopted Vacating 22nd Street North, Between 5th and 7th Avenues to the City of Fargo, Cass County, North Dakota (2123 5th Avenue North):

Commissioner Coates 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 of the Remaining 35' of 22nd Street North, between 5th and 7th Avenues to the City of Fargo, Cass County, North Dakota".

WHEREAS, Said Plat had been approved by the City Engineer, and a Hearing had been held on said Plat by the Fargo Planning Commission on August 8, 2007, and Notice of such Hearing had been published on July 30 and August 6, 2007, as required by law, and said Plat had been approved by the Fargo Planning Commission; and

WHEREAS, The City Auditor published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on October 22, 29, and November 5, 12, 2007, that a Hearing would be held in the City Commissioner's Room at the City Hall, Fargo, North Dakota, at 5:15 o'clock PM, on Monday, December 3, 2007, at which time said Plat would be considered and all interested persons would be heard; and

WHEREAS, The City Auditor reports that no protest or objections have been received or filed in the office of the City Auditor, either written or verbal, objecting to the vacation petitioned for and the Board of City Commissioners finds and declares that no written protests have been filed for the attention of the Board and no person is present at this Hearing to protest or offer objection thereto; and

WHEREAS, The Board of City Commissioners hereby declares that it is in the best interest of the adjoining property owners and for the public that 22nd Street North, between 5th and 7th Avenues be vacated.

NOW THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff be accepted and a portion of 22nd Street North, Between 5th and 7th Avenues be vacated within the City of Fargo, North Dakota and that the Plat entitled "Vacation Plat of the Remaining 35' of 22nd Street North, Between 5th and 7th Avenues to the City of Fargo, Cass County, North Dakota" be and the same is hereby in all things affirmed and approved, 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 Coates, Wimmer, Mahoney and Walaker voted aye.

Absent and not voting: Commissioner Williams.

The Resolution was adopted.

Renaissance Zone Project Application for Nicole Thein Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Nicole Thein at 319 Broadway, #304.

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.

The Board received a communication from Senior Planner Robert Stein stating the Renaissance Zone Project application presented by Nicole Thein meets all of the minimum criteria set forth in the Renaissance Zone Plan and is consistent with the established goals and objectives. Mr. Stein recommended that the project be approved.

Commissioner Wimmer moved the Renaissance Zone application filed by Nicole Thein for a project located at 319 Broadway, #304 be approved and the income tax and property tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Renaissance Zone Project Application for Thomas K. Persson Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Thomas K. Persson at 319 Broadway, #306.

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.

The Board received a communication from Senior Planner Robert Stein stating the Renaissance Zone Project application presented by Thomas K. Persson meets all of the minimum criteria set forth in the Renaissance Zone Plan and is consistent with the established goals and objectives. Mr. Stein recommended that the project be approved.

Commissioner Wimmer moved the Renaissance Zone application filed by Thomas K. Persson for a project located at 319 Broadway, #306 be approved and the income tax and property tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Discussion Regarding Appointment of a Commissioner to the "Waking the Sleeping Giant" Group:

Mayor Walaker stated at the November 19, 2007 City Commission meeting, a request was received from the "Waking the Sleeping Giant" group to appoint a City Commissioner to work with their group and action on that request was delayed until this meeting.

Commissioner Wimmer said it is not common practice to appoint Commissioners to non-profit organizations. He questioned whether an appointment would set precedence since several of the Commissioners already serve on various boards.

Commissioner Mahoney said Planning Department staff has experience with non-profit organizations and suggested they communicate with the group.

Commissioner Coates said it would be premature for the City Commission to endorse this position. She said any of the Commissioners could work with the group on a voluntary basis and she agreed Planning Department staff would be an asset as well.

Duke Schempp, member of People Escaping Poverty and the "Waking the Sleeping Giant" group, said a Commissioner would only be a delegate to meet with the group over a short period of time and then would report back to the City Commission. He said it was not the intent for the Commissioner to serve long term.

The Board determined any City Commissioner can volunteer to meet with the "Waking the Sleeping Giant" group if they choose to do so.

Petitions for the Referral of an Ordinance Adopted by the Board in Regard to Smoking in Public Places Referred to the City Auditor:

The Board received a communication from Randy Thorson, 4204 Timberline Drive, requesting an item be placed on the December 3, 2007 City Commission agenda for the purpose of presenting signed petitions for the referral of an Ordinance enacted by the City Commissioners which amends and re-enacts Article 10-11 of the Fargo Municipal Code in regard to smoking in public places. He also requested this Ordinance, which is the subject of the referral, be suspended until there is a vote of the people on the referred Ordinance.

Mr. Thorson stated he has 4000 signatures to refer the smoking Ordinance that the City Commissioners adopted two weeks ago. He said he is determined to bring this issue to a vote of the people so the people can exercise their right. He said the Commission can repeal the Ordinance recently adopted or do nothing and let it go to a vote.

Commissioner Wimmer moved the petitions be received and filed and referred to the City Auditor to validate.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

At 6:02 the Board took a five-minute recess.

After recess: All Commissioners present except Commissioner Williams. Mayor Walaker presiding.

Resolution Adopted Setting Fee Schedules for Residential Building, Commercial Building, Plumbing, Sewer and Sign Permits Effective January 1, 2008:

The Board received a communication from Inspections Administrator Ron Strand submitting proposed fee schedule changes for residential and commercial building permits, plumbing and sewer permits and permanent and portable sign permits effective January 1, 2008. He stated the proposed increase to residential building permit fees is 15 cents per \$1,000 of value up to and including \$100,000 and 20 cents per \$1,000 thereafter. He said the fee increase proposed to the building permit fee schedule is a \$1 per \$1,000 increase through \$25,000 in value and a flat \$24 for each permit with a value of more than \$25,000. The commercial building permit fee increase, he said, would be a fixed amount but the residential fee would be an increase of 5.6 to 8.3%, representing an annualized increase of 2.8 to 4.2%.

Mr. Strand said permit fees have not been raised since 2005. He said the increases are minimal and are needed to offset increased expenses. Annual adjustments, he said, will help keep increases smaller.

Dan Lindquist, Home Builders Association Board President, said the requested permit fee increases are unfair to builders and home owners wanting to remodel. He said if fees were tied to increased benefits, it would be more equitable.

Mayor Walaker said Fargo's inspection fees are lower than Bismarck, St. Cloud and Grand Forks.

Planning Director Jim Gilmour said there have been two incredible construction years. The Inspections Department staff, he said, will hire a replacement to fill the

retiring inspector's position in 2008 and they feel there will be a need for an additional inspector as well. He said the fees are figured to cover the costs plus an extra percentage to cover unexpected expenses. He said residential permits are kept as low as possible to encourage building.

Mr. Lindquist said the HBA has no complaints with the Inspections Department, in fact, the staff is great. The major concern, he said, is the fact that fees have increased 125% in eleven years. He said builders do not mind paying their share but the increase is an arbitrary figure and the HBA Board has a responsibility to its members.

Commissioner Coates said builders need to consider additional inspection costs that include vehicles, insurance, fuel, IT support and accounting support.

Mike Nepl, owner of Design-A-Sign, said a 100% increase from \$10 to \$20 is unfair when compared with the 5 to 8% increase requested for building permits. He suggested an increase to \$15 and then a 5% increase each year which would make it more affordable for the business owner.

Commissioner Mahoney said it makes sense to do a small increase this year and then review the fees annually.

Commissioner Mahoney moved to amend the submitted residential building permit fees with a 3% increase, to amend the submitted sign permit fees from \$10 to \$15 and to review the permits in one year.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Commissioner Mahoney offered the following Resolution and moved its adoption:

BE IT RESOLVED, By the Board of City Commissioners that the Residential Building, Commercial Building, Plumbing, Sewer and Sign Permit Fees submitted by the Inspections Administrator reflect the changes made by the City Commission be adopted effective January 1, 2008 and be placed on file in the City Auditor's Office and Inspections Department.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Mitch Marr Appointed to the Human Relations Commission:

The Board received a communication from Mayor Walaker recommending that Mitch Marr be appointed to the Human Relations Commission to fill the unexpired term of Amy Phillips who resigned.

Commissioner Wimmer moved the appointment of Mitch Marr to the Human Relations Commission for the term ending July 1, 2008 be approved.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Kevin Hanson Reappointed to the Metro Area Transit Coordinating Board:

The Board received a communication from Mayor Walaker recommending that Kevin Hanson be reappointed to the Metro Area Transit Coordinating Board.

Commissioner Mahoney moved the reappointment of Kevin Hanson to the Metro Area Transit Coordinating Board for the term ending December 31, 2008 be approved.

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

Absent and not voting: Commissioner Williams.

The motion was declared carried.

Commissioner Coates moved that the Board adjourn to 5:00 o'clock p.m., Monday, December 17, 2007.

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

The time at adjournment was 6:47 o'clock p.m.