

## MEETING OF THE BOARD OF CITY COMMISSIONERS

JANUARY 12, 2010

The Board of City Commissioners met in regular session on January 12, 2010 at the hour of 5:15 p.m. in the Tom Baker Meeting Room, City and County Office Building, 221 North Fifth Street, Bismarck, North Dakota. There were present: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford.

A Chaplain of the Bismarck Police Department presented the invocation.

The Board of City Commissioners considered approval of the minutes of the meeting on December 22, 2009.

Commissioner Grossman made a motion to approve the minutes. Commissioner Sprynczynatyk seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford. Nays: None, the motion carried.

### CONSENT AGENDA

The Board of City Commissioners considered and approved voucher numbers 906574 to 906590 and 1000001 to 1000250, and payroll voucher numbers 249853 to 250143 and 250206 to 250479.

The Board of City Commissioners reviewed the personnel actions.

The Board of City Commissioners considered updates regarding the following policies:

- Travel Policy.
- Solicitation and Acceptance of Donations.

The Board of City Commissioners considered application for tax abatement for: The City Assessor recommended approval

- 1130 N 33<sup>rd</sup> St – Disabled Veteran Credit – 2009: Keith Bitner qualified for the abatement.
- 2520 Seneca Dr – Disabled Veteran Credit – 2009: Dwight & Rita Dirk qualified for the abatement.
- 1203 Michigan Ave – Disabled Veteran Credit – 2009: Lloyd & Brenda Dosch qualified for the abatement.
- 1925 N 4<sup>th</sup> St – Disabled Veteran Credit – 2009: Dennis & Verna McCallum qualified for the abatement.
- 409 N 20<sup>th</sup> St – Senior Citizen Homestead Credit – 2009: Lillian Klein Vogel qualified for the abatement.
- 3113 East Ave C – Senior Citizen Homestead Credit – 2009: Ellen Klinger qualified for the abatement.
- 3000 N 4<sup>th</sup> St – Wheelchair Exemption – 2008 & 2009: Howard & Hilda Keeler

qualified for the abatement.

The Board of City Commissioners considered the following from the Police Department:

- Request for permission to apply for and receive a Buffer Zone Projection program grant through the U.S. Dept of Homeland Security. This grant would be in the amount of \$137,444.00 and would provide funding for specialized SWAT and Bomb Squad equipment.
- Request for approval of continuation of the Animal Control/Impound Facility Agreement with the City of Mandan. The term of this agreement is until July 1, 2015 as long as Bismarck and Mandan agree on the daily animal impound fee charged and reimbursement of 25% of the monthly utility expenses for the Animal Control facility.

The Board of City Commissioners considered approval of payment procedures for Civic Center event settlements. These procedures cover the following: promoters, third person buyers, bands, stagehands/riggers, sound and lighting companies, video company, catering, and novelties

The Board of City Commissioners considered the following from the Public Works Utility Operations Department:

- Request to purchase one (1) pickup truck at State Bid. This is for a one (1)  $\frac{3}{4}$  ton, 4 wheel drive pickup truck.
- Approval of Contract Change Order with S.J. Louis Construction Inc. for the West End Transmission Main Project. This extends the final completion date to June 11, 2010 from September 30, 2009.

The Board of City Commissioners considered the following from the Finance Department:

- Cell phone contract extension with Alltel for two years.
- Destruction of Old Financial Records. This pertains to financial records dating from 1997 to 1999 to be destroyed.

The Board of City Commissioners considered request from Engineering for approval of storm water agreements with the NDDOT for the LaQuinta Inn Site located at 2240 North 12<sup>th</sup> Street (State Street and I-94).

The Board of City Commissioners considered the following from the Bismarck Airport:

- To approve Modification P00006 to TSA Law Enforcement Officer (LEO) Reimbursement Agreement.
- To consider approval of Supplemental Agreement #4 (time extension) to the April 10, 2007 Agreement with Ulteig Engineers for a drainage project environmental assessment.
- To consider approval of a mortgage rider to the Simson Investment Ground Lease Agreement.

The Board of City Commissioners considered approval of a quit claim deed for a residential lot in Lincoln Addition (approved in the 1950s) to resolve title defect for private sale of real property (the City is not involved in the ownership or sale).

The Board of City Commissioners considered request from Community Development Department for modification to the final plat of the Municipal Fourth Addition.

Commissioner Schwab requested clarification for Item H, second bullet - Destruction of Old Financial Records. Sheila Hillman, Finance Director, indicated that these are paper records. She continued that anything in the system would remain but we are not required to keep the paper documents beyond this time and so we have ten years worth.

Commissioner Grossman made a motion to approve the consent agenda. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford. Nays: None, the motion carried.

## REGULAR AGENDA

The Board of City Commissioners received progress report on 6<sup>th</sup> Street Parking Ramp.

Bill Wocken, City Administrator, appeared before the Board to give an update on the 6<sup>th</sup> Street Parking Ramp. We are now moving from the schematic design stage to full plans and specifications. The following has been done: soil tests, asbestos and environmental testing, taken a look at cost estimates, and chosen the Carnegie Library design for the ramp based on public input. Our next step is to come back with a financing plan and plans/specifications. In the packet is a complete report as well as drawings of the all of the proposed designs. Alan Traeholt, Ulteig Engineers, is the Engineer in charge of the project and was present but did not appear before the board.

President Warford asked Mr. Wocken what are the next steps: what can we expect to hear as a Commission and what information will be brought forward? Mr. Wocken indicated the next step is a full scale set of plans and specifications and request that we consider to going out to bid on the project. Before that time, we would have a financial plan to you and suggested ways that the ramp might be financed.

Commissioner Grossman commented that he is part of the Parking Ramp Committee and they have done a diligent job and spent a lot of time looking at schematics, costs, ways to save money, ways to best blend with the surrounding buildings, size.

Commissioner Schwab asked Mr. Wocken if they've done any research regarding having this ramp next to another ramp and he's skeptical as to how this will help the parking situation. Mr. Wocken indicated one of the next steps is sizing ramp is a consideration. Approximately 350 of the 400 or 500 spaces (depending on the size alternate chosen) we have folks that are interested in renting those spaces at market

rate. As urban development occurs, typically a ramp will spur other people to develop their properties and then typically end up with more people wanting spaces than the spaces that we build. We do expect that having a few extra spaces available, those spaces will go quite quickly but they do need to do a little more work on that. Schwab then asked Mr. Wocken to bring back the utilization rate of existing ramp.

No action taken.

The President of the Board of City Commissioners announced the hour had arrived for the public hearing and second reading on Ordinance 5764 relating to Special Use Permits/Small Wind Energy Systems.

#### ORDINANCE NO. 5764

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 14-02-03 AND 14-03-08 OF THE BISMARCK CODE OF ORDINANCES (1986 Rev.) RELATING TO SPECIAL USES.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Gregg Greenquist, Community Development, appeared before the Board and explained that this ordinance was developed in response to citizen requests for wind turbines. Due to the fact that the zoning ordinance didn't cover turbines, they developed standards and criteria, and created a provision that would allow people to apply for a special use permit.

This ordinance addresses small, household size turbines up to 25 kw, not the big industrial sized wind farm turbines. The two main concerns with these turbines are appearance and sound. Within the City, turbines must be mounted on a monopole and the color has to be a neutral white or light gray and non-reflective in finish. As far as sound, we have established sound threshold and also related to sound, we require that these turbines be up in the air, the higher they are in the air, the less noise you hear. Also, relating to sound, the height of the turbine is proportional to the lot size. The minimum setback distance shall be 150% of the height of the structure and the bottom of the rotor blade sweep shall be no closer than 35-feet above the ground surface. Turbines wouldn't be allowed in the higher density areas of the City due to lot size, but there are larger lots in the fringe areas and in the industrial parks where they would be allowed.

Mr. Greenquist indicated the objective was to establish standards that would assure compatibility. We heard concerns from both sides: there are some industry people that think that the ordinance is too restrictive and some citizens think that it's not restrictive enough. The Planning Commission did hold a public hearing and they recommend approval of this ordinance. Commissioner Schwab asked Mr. Greenquist since they are so many restrictions on this, why don't we just say they aren't going to be allowed? He

said he can't see anyone other than in the industrial areas qualifying on this. What are you going to limit the height? Mr. Greenquist said there is no maximum height limit. Schwab doesn't agree with that; he said that some guy could put one on a bigger lot and it could be an eyesore. Mr. Greenquist indicated that economics will restrict the height issue. He said he heard from industry people that our minimum height requirement causes them to increase their prices. Most of these kits don't even allow for the bottom of rotor blade sweep at 35 feet. Schwab said normally the height suggestion is 20 feet above any wind interference which puts them up there. Mr. Greenquist agreed but stated that height is proportional to lot size. He also said prior to the meeting, he got a phone call from a local industry representative. This representative said he sent a copy of this ordinance to their people in South Dakota and after review, they felt this was reasonable and that they could work with it.

Commissioner Seminary stated that Mr. Greenquist has done a great job. However, he has a couple of questions and one is more of a concern. First is the sound threshold. His concern is that while we have a decibel graph, the concern is that he is your neighbor and he put a wind tower, and the neighbor heard it, don't like it but it's within the threshold of the graph, that's a problem for him. Is it possible to get rid of the graph and just say if your neighbor hears it, a complaint can be lodged. If we have a complaint, then we will visit the site with a sound meter to register the decibels. If it's within the parameters, then it's not a problem. But if you hear it, then it's a problem for you. Is that possible?

Mr. Greenquist said the reason for the numbers on graph is to establish a uniform standard that can be applied evenly through the jurisdiction. If we were to go to responding on a complaint basis, some people may have different idea of what too loud is. The only times these would make any noise is when the wind is blowing because it creates ambient background noise. The wind alone is loud. Industry people say they can meet these sound threshold numbers easily especially with height requirement and lot size mechanism. The ordinance can be amended either way in the future. Commissioner Seminary is concerned with the graph; we may be ignoring someone's sensitivity to hearing something new in their environment. His second question is what about the funnel type turbines. Mr. Greenquist indicated this ordinance addresses the standard conventional rotor-blade style turbine which is well over 95% of the market. There are new innovations coming out every day and they discussed opening up the ordinance to other types of turbines but decided to stay with the standard type since it is such a large part of the market.

President Warford asked Mr. Greenquist for examples of that a daytime 55 decibel sound and 45 decibels at night. Mr. Greenquist said he didn't bring his table with him but said a conversation in a whisper is about 45 decibels. In a rural area with no background noise and no wind, that would be around 30 decibels. 45 decibels is reasonable; I think in this room right now we are exceeding that. Commissioner Grossman is also concerned about the sound. He indicated Mr. Greenquist said they are only noisy when the wind blows and since the wind blows all the time, if you get a few of these there could be quite a hum going on. He doesn't know what the demand

will be and how many property owners will qualify with these restrictions but it could constitute some serious noise if you get a lot of them.

Mr. Greenquist said they worked with City Attorney on developing these standards and the City has a separate noise ordinance for nuisance type noises. We looked at other communities and this is more restrictive on the decibels than other cities. The only times the threshold are be exceeded is if after several years of operation and the turbine isn't maintained, that would need to be fixed. Commissioner Seminary had another question regarding changing technology; the turbine he is asking about is a funnel on a stand by itself and thinks it is manufactured in Canada, how long would it take us to modify this ordinance or create a new one? Are we slow to act or embrace technology since this is restrictive in regards to one type of turbine? Mr. Greenquist said if there's a good performance history on new technology and see what other communities are doing. How long would it take? From the time ordinance language is ready, it would first go to Planning Commission at a consideration meeting, the following month it would go to the Planning Commission for a public hearing. If they took action right away, it would then come to the City Commission for consideration and then a public hearing. So he'd say within three or four months, it could be all wrapped up.

President Warford then asked about the ordinance being amended. Let say a number of these small turbines up and we decide they are too loud for example, then we amend it, it's pretty hard to go back and ask people to take them down. It is important that we get this ordinance right. President Warford then asked Mr. Greenquist since they've been working on this for a year now, how comfortable is he and the rest of the staff with the decibel rating and the height restriction? Mr. Greenquist is comfortable that the sound limits that they've put on these turbines are restrictive, they are not going to bother people, they do have to be up off of the ground, the breeze will carry the sound – there is ambient background noise when the wind is blowing. The combination of all of those factors along with the lot size makes Mr. Greenquist comfortable with this.

The following written comment was received:

<u>NAME OF PERSON</u>	<u>REMARKS</u>
Gene Kosel, 1745 Lilac Ln	Doesn't want noise generating turbine located near his backyard or home; enough "noise pollution" from street traffic, barking dogs, lawn mowers, etc.

Commissioner Seminary made a motion to approve the ordinance. Commissioner Sprynczynatyk seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford. Nayes: None, the motion carried.

The Board of City Commissioners considered approval of agreement with Apple Creek Township regarding extraterritorial zoning authority.

Carl Hokenstad, Community Development, appeared before the Board and indicated this project has been in the works for about two years with Apple Creek Township. The agreement is signed and it is here for your consideration. The agreement has been reviewed and we recommend approval of the agreement. Commissioner Sprynczynatyk commended the staff and township officials on the resolution. President Warford agreed and commended Apple Creek Township that they understand good planning is important.

Commissioner Grossman made a motion to approve the request. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford. Nays: None, the motion carried.

The Board of City Commissioners considered the ongoing project agenda.

Keith Witt, Police Chief, appeared before the Board to give an update on the Patterson parking zone status. He recommends the following:

- Improve signage – make clear it is a loading zone 24 hours a day 7 days a week
- Fee increase – city attorney is working on establishing new fee
- What if someone needs to park longer – special permission with Traffic Engineer's office
- Educate public – specifically adjacent businesses/properties, then general public

Commissioner Sprynczynatyk brought up a past issue: folks who work downtown and are moving their vehicles every ninety minutes. She recently got a letter from someone regarding it and maybe it's time to revisit it.

Commissioner Schwab asked for an update on Commerce Center either at the January 26<sup>th</sup> meeting or first meeting in February.

The Board took no action.

#### EXECUTIVE SESSION:

Commissioner Seminary made a motion to go into executive session. Commissioner Sprynczynatyk seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford. Nays: None, the motion carried.

The Board of City Commissioners considered the request from the Civic Center to go into executive session under NDCC Section 44-04-19.2 to discuss contract negotiation for prospective Civic Center entertainment pursuant to NDCC Section 44-04-19.1(9).

Commissioner Seminary made a motion to come out of executive session. Commissioner Grossman seconded the motion. Upon roll call, the commissioners voted

as follows: Ayes: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford. Nays: None, the motion carried.

The Board reconvened.

Commissioner Grossman made a motion to approve the Civic Center first request to negotiate for prospective Civic Center entertainment. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Schwab, Grossman and President Warford. Nays: Commissioners Sprynczynatyk and Seminary, the motion carried.

Commissioner Seminary made a motion to approve the Civic Center second request to negotiate for prospective Civic Center entertainment. Commissioner Grossman seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford. Nays: None, the motion carried.

Commissioner Sprynczynatyk made a motion instructing staff to develop procedures and draft policy which would allow the Civic Center Manager to negotiate contracts for prospective events to be held on dark days 30 to 45 days out on the calendar. Commissioner Seminary seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Schwab, Seminary, Grossman and President Warford. Nays: None, the motion carried.

Having completed the items on the agenda, President Warford asked if there was any further business for this meeting. There being none, the meeting was declared adjourned at 6:35p.m.