



## MEETING OF THE BOARD OF CITY COMMISSIONERS

8/9/2022 - Minutes

### Call to Order

The Board of City Commissioners met in regular session on August 9, 2022, at the hour of 5:15 PM in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota. Commissioners present included: Commissioner Cleary, Commissioner Marquardt, Commissioner Splonskowski, Commissioner Zenker, and Mayor Schmitz.

### FUTURE COMMISSION MEETINGS:

- August 9, 2022 & August 23, 2022
- September 13, 2022 & September 27, 2022
- October 11, 2022 & October 25, 2022

### MISSION STATEMENT

### MEETING OF THE BOARD OF CITY COMMISSION

Public comment (restricted to items on the Consent Agenda and Regular Agenda, excluding public hearing items)

#### 1. Regular Agenda Item 4

1. Chris Nyhus a resident of Highland Acres addressed the Commission regarding Bismarck State College's (BSC's) request for a land donation adjacent to the south side of their campus. Mr. Nyhus requested a portion of the area be preserved as a public park and open space.

2. Beth Nodland a resident of Highland Acres addressed the Commission regarding BSC's request for a land donation adjacent to the south side of their campus. Ms. Nodland said she fully supports the Polytechnic facility proposed by BSC. Ms. Nodland raised concerns about the disposal of City property and the requirements of the NDCC 55-02-07. Ms. Nodland suggested tasking the City's Historic Preservation Commission to further understand the heritage and archeological significance of the historic site within the City-owned property.

3. Erin Reidman a resident of Highland Acres addressed the Commission regarding BSC's request for a land donation adjacent to the south side of their campus. Ms. Reidman supports BSC but requested the open space and trails be preserved for public recreational use.

4. Ian Easton a resident of Highland Acres addressed the Commission regarding BSC's request for a land donation adjacent to the south side of their campus. Mr. Easton spoke in support of the bicycle trails and noted the connection these trails make with existing trails to the north.

5. Brent Levinson shared pictures and viewpoints from the trail network south of the

BSC campus. Mr. Levinson urged the City to work together with BSC and the Bismarck Parks and Recreation District (BPRD) to preserve the trail system that has been established over the years.

6. Tom Gross echoed some of the previous comments from the trail supporters and was in favor of supporting the greenspace.

2. Regular Agenda Item 10

1. Kate Herzog addressed the Commission regarding creating a better contract with Burleigh County for City residents.

3. Regular Agenda Item 12

1. Kent French with the North Dakota Manufactured Housing Association expressed concerns with the proposed changes to FEMA's flood plain and floodway mapping system. Mr. French noted that the proposed changes impact a high percentage of mobile homes between the Missouri River and South 12th Street.

1. CONSENT AGENDA

Commissioner Marquardt motioned to approve as presented, and Commissioner Zenker seconded.

Upon a roll call vote, all voted aye.

M/C.

A. Consider approval of minutes

B. Consider approval of personnel actions

C. Consider approval of expenditures

Vouchers: 1105834-1106075.

D. Consider the request for approval from the Administration Department for the following:

1. Gaming site authorization for Furry Friends Rockin' Rescue at Buckstop Junction, 3805 East Bismarck Expressway.

2. Liquor license renewal, Pilot Travel Centers, LLC. Store #1224, 3936 Miriam Avenue.

3. Introduction of and call for a public hearing on a request for a new class C2 Hotel/Motel liquor license for Peterson Hospitality, LLC. (dba) Wingate by Wyndham Bismarck at 1421 Skyline Boulevard.

4. Dakota Concepts, LLC. letter of support.

E. Consider the request for approval from the Airport for the following:

1. Lease of Canon Copier/Printer using North Dakota State Bid.

**F. Consider the request for approval from the Bismarck-Burleigh Public Health Department for the following:**

1. Permission to apply for Prevention Grant Funding from the ND Department of Health and Human Services.

G. Consider the request for approval from the Community Development Department for the following:

1. Introduction of and call for public hearing on Ordinance 6519, a zoning change from the RM30 – Residential and CG – Commercial zoning districts to the RMH – Residential zoning district for Lots 1-18, Block 10 and the S½ of the vacated Ingals Avenue adjacent to Lot 1, Block 10; Lots 1-24, Block 19; all of the vacated Indiana Avenue adjacent to Blocks 10 and 19; and Lots 1-5 and 13-24, Block 1, and the N½ of the vacated Michigan Avenue adjacent to Block 18, Coffin Addition. The Bismarck Planning and Zoning Commission recommends approval.

2. Major subdivision final plat of George Subdivision, requested by George Land Company. The Bismarck Planning and Zoning Commission recommends approval.

3. Jacks First Addition, requested by KC Land Holdings, LLC. The Bismarck Planning and Zoning Commission recommends approval.

- Minor subdivision final plat of Jacks First Addition
- Development Agreement

4. Consider delaying the continued public hearing on Ordinance 6510 and Ordinance 6511 to the August 23, 2022, Board of City Commissioners meeting.

H. Consider the request for approval from the Engineering Department for the following:

1. Memorandum of Understanding (MOU) with Bismarck Public Schools concerning the dedication of rights of way and securing of temporary construction easements associated with the upcoming Ash Coulee Drive reconstruction project in the vicinity of Horizon Middle School.

2. Curb ramp agreements with the North Dakota Department of Transportation as part of upcoming pavement rehabilitation projects on East Bismarck Expressway (ND 810) and University Drive (ND 1804).

I. Consider the request for approval from the Finance Department for the following:

1. Applications for Abatement where the Assessing Division recommends approval.

2. Introduction and call for a public hearing on Ordinance 6520 to amend the 2022 budget ordinance.

3. Resolution Directing Special Assessments to be Levied.

J. Consider the request for approval from the Human Resources Department for the following:

1. Permission for the Police Department to offer two experienced officer candidates up to 40 hours of incentive time upon hire.

K. Consider the request for approval from the Police Department for the following:

1. Sell decommissioned police vehicles through Mid States Auto Auction.

L. Consider the request for approval from the Public Works - Service Operations Department for the following:

1. Change Order 1, a time extension with Western Edge Electric, Inc. for the Fire Station 1 Generator Replacement contract.

2. Permission to award the bid for the natural gas contract for 2022 - 2023.

3. Permission to sell a Public Works Utility Operations Department vehicle at auction.

4. Permission to award the 2023 - 2025 Single Sort Curbside Recycling contract with Waste Management.

M. Consider the request for approval from the Public Works - Utility Operations Department for the following:

1. Permission to accept Task order 17 to the agreement with AE2S for 2022 Bismarck Water Treatment Plant Filter 1-6 Upgrade Instrumentation and Controls Commissioning.

2. REGULAR AGENDA

### 3. Commissioner Portfolio Report - Commissioner Marquardt

Commissioner Marquardt presented his portfolio report to the Commission. He asked CENCOM Director Mike Dannenfelzer, Fire Chief Joel Boespflug, Police Chief Dave Draovitch, and Finance Director Dmitriy Chernyak to address the Commission regarding their departments.

<https://bismarcknd.gov/DocumentCenter/View/41000/Commissioner-Marquardt-Portfolio-Presentation-892022-PDF>

4. Consider the request for approval of a Memorandum of Understanding with Bismarck State College to convey a parcel of land near their campus.

Janelle Combs, City Attorney, addressed the Commission about the MOU with BSC and asked for direction as to how to proceed. Attorney Combs remarked that the City received a letter on August 9, 2022, from the North Dakota State Historic Preservation Officer identifying an archeological site within the property owned by the City. Attorney Combs noted that there is a 60-day notice to allow comment to protect the historical assets, and it is the City's responsibility to provide this comment period. Attorney Combs asked for direction from the board.

Commissioner Marquardt asked who would be responsible for accidents or fires on the property. Attorney Combs noted as the Chief Risk Officer for the City, and the Commission has now been made aware of the recreational activities on City-owned property. Attorney Combs informed the Commission that the City does not have insurance for recreational uses on its property which now causes a liability for the City.

Commissioners discussed potential ownership of this property be split between BSC and the BPRD.

Commissioner Marquardt asked about the feasibility of trading the City-owned parcel south of the BSC campus for State-owned land in Section 36 along the north side of East Main Avenue and the East side of Bismarck Expressway.

Commissioner Zenker made a motion directing staff to have staff proceed with contacting the North Dakota State Historic Preservation Office regarding the letter received about the archeological site on City-owned property, to contact the BPRD about placement on the August 18th park board agenda, and to task staff with contacting the North Dakota State Department of Trust Lands regarding a potential trade of land for the City-owned property and State-owned land in Section 36 in east Bismarck, and Commissioner Marquardt seconded.

Upon a roll call vote, all voted aye.

M/C.

<https://bismarcknd.gov/DocumentCenter/View/41012/Bismarck-Parks-and-Rec-Letter-PDF>

<https://bismarcknd.gov/DocumentCenter/View/41013/Brent-Levinson-Letter-PDF>

<https://bismarcknd.gov/DocumentCenter/View/41014/State-Historical-Society-Letter-PDF>

5. Public hearing on a new Class 11 Restaurant Full Alcohol Liquor License for Ja Bomb Inc., located at 706 Kirkwood Mall.

No member of the public appeared for comment.

Commissioner Marquardt motioned to approve the license transfer as presented, and Commissioner Splonskowski seconded the motion.

Upon a roll call vote, all voted aye. M/C

6. Public hearing on Ordinance 6518 to amend the shoplifting ordinance for clarity.

Mayor Schmitz opened the public hearing. No comment was received.

Commissioner Zenker motioned to approve Ordinance 6518 as presented, and Commissioner Splonskowski seconded the motion.

Upon a roll call vote, all voted aye. M/C.

7. Consider the request from the Community Development Department for the Paradise Valley Addition Addition submitted by MBR Properties, LLC.

1. Public hearing on Ordinance 6515, a request for the annexation of Paradise Valley Addition.

2. Public hearing on Ordinance 6516, a request for a zoning change from the RR – Rural Residential zoning district to the R5 – Residential, R10 – Residential, RM15 – Residential, Conditional CG – Commercial and P – Public zoning districts.

3. Public hearing on a Future Land Use Plan amendment to increase the size of the area designated as Commercial/Mixed Use from approximately 12 acres to approximately 19 acres.

4. Fringe Area Road Master Plan amendment to move the north-south collector for this section approximately 735 feet to the west to align with Boston Drive to the north across East Burleigh Avenue.
5. Major subdivision final plat of Paradise Valley Addition.
6. Development Agreement.
7. Private Drive and Private Utility Agreement.

Ben Ehreth, Community Development Director, presented information on Ordinance 6510, the zoning change from the CG-Commercial zoning district to the RMH-Residential zoning district for Block 49 and part of Block 56, Governor Pierce Addition, requested by Bismarck Rental Properties, LLC, noting that there was an error in the legal description of select lots and blocks in the subdivision resulting in the need to continue the public hearing on the zoning change.

Mayor Schmitz opened the public hearing. No comment was received.

Commissioner Splonskowski motioned to approve as presented, and Commissioner Zenker seconded the motion.

Upon a roll call vote, all voted aye. M/C.

8. Consider the request from the Community Development Department for Meadow Village Addition First Replat, requested by REI Holdings, LLC

1. Public hearing on Ordinance 6517, a request for a zoning change from the R10 – Residential and RM30 – Residential zoning districts to the PUD – Planned Unit Development zoning district, as outlined in the attached draft ordinance, for Meadow Village Addition First Replat.
2. Minor subdivision final plat of Meadow Village Addition First Replat.
3. Private Drive and Private Utility Agreement.
4. Development Agreement.

Ben Ehreth, Community Development Director, presented information on Ordinance 6517, the zoning change from the R10 – Residential and RM30 – Residential zoning districts to the PUD – Planned Unit Development zoning district for Meadow Village Addition First Replat.

Mayor Schmitz opened the public hearing. No comment was received.

Commissioner Splonskowski motioned to approve as presented, and Commissioner Marquardt seconded the motion.

Upon a roll call vote, all voted aye. M/C.

9. Request of DPH Investments, LLC to release a sanitary sewer, watermain, and access easement described as all that part of Lot 2, Block 1, Kilber North Addition First Replat.

Ben Ehreth, Community Development Director, presented information on the request from DPH Investments, LLC. for approval of a sanitary sewer, watermain, and access easement release over Lot 2, Block 1, Kilber North Addition First Replat.

Commissioner Zenker motioned to approve as presented, and Commissioner Splonskowski seconded the motion.

Upon a roll call vote, all voted aye.

M/C.

10. Update on the 2023 Bismarck-Burleigh Public Health Department's discussions with the Burleigh County Budget Committee and the Burleigh County Commission.

Rena Moch, Bismarck-Burleigh Public Health Director addressed the Commission regarding the service agreement between Bismarck-Burleigh Public Health and Burleigh County Commission, Burleigh County Budget Committee, and the 2023 Burleigh County Budget. Director Moch provided a recap of the Burleigh County budget process and noted an increase in requested funds from Burleigh County for the 2023 budget. Director Moch reported that NDCC requires that all land be within a public health unit, and if Burleigh County was to consider leaving the current public health unit, it would require a vote of the residents of Burleigh County. Director Moch closed by saying Burleigh County would like to negotiate a reduction of the proposed fees for 2023.

The commissioners discussed options, including requesting American Rescue Plan (ARPA) funds from Burleigh County to help cover the construction costs of the new Public Health facility noting that 25% of Burleigh County's population resides outside of City limits. It was also noted that Burleigh County received \$18 million in ARPA funds during 2021. This amount was based on the population of Burleigh County; Bismarck received \$9 million. It was further noted Burleigh County's project list for the use of ARPA funds were all projects outside of Bismarck City limits.

Commissioner Cleary noted that there is a disservice to City residents with the current arrangement because City residents are subsidizing Burleigh County's public health budget through higher tax collection than non City residents.

City Administrator Keith Hunke stated the City requested support from Burleigh County for additional cost related to the service agreement and additional funds for the new public health facility through the County's budgeting process. Administrator Hunke noted that the County denied these requests and approved their preliminary budget, which indicates additional expenses cannot be added for 2023 at this time.

Commissioner Zenker made a motion to proceed as directed for the initial ask of \$332,049 from Burleigh County in support of the 2023 public health budget, and Commissioner Marquardt seconded.

Upon a roll call vote, all voted aye.

M/C.

The Commission discussed requesting ARPA funds for the construction of the new public health facility and to provide options for the County's consideration, including a facility fee to cover the costs associated with providing services to Burleigh County. It was noted that the fee would need to be calculated on the use of the facility and the public health staff time to provide the services to Burleigh County.

Commissioner Cleary made a motion to request \$2.1 million from Burleigh County's ARPA distribution to cover 20% of the cost of the public health facility construction and to include additional options for funding a separate facility fee, and Commissioner Marquardt Seconded.

Upon a roll call vote, all voted aye.

M/C.

**11. Receive and review Mayor Schmitz's guiding principles for leading the City of Bismarck.**

Mayor Schmitz presented his guiding principles for leading the City to best serve the citizens to the Commission. Commissioner Zenker noted that he agreed with the document's purpose but had concerns with acknowledging all calls and emails within 24 hours as the Commissioners have to be cautious of open meeting regulations. The Commissioners discussed ways to ensure that they are acknowledging requests without creating open meetings.

**12. Request by Commissioner Zenker to Rescind July 12, 2022, Action**

Commissioner Zenker addressed the Commission with a request to rescind the action regarding the Federal Emergency Management Agency (FEMA) Risk Map that was made at the July 12, 2022, City Commission Meeting.

Commissioner Zenker made a motion to rescind the motion made at the July 12, 2022, FEMA discussion, and Commissioner Splonskowski seconded.

The Commission discussed the elevation of a current manufactured home that has been elevated to the new standard established by FEMA. The Commission expressed concerns about existing homes being grandfathered in at their current elevations. Existing homes would not be required to change; however, any new homes moving into the new mobile home park would be subject to new regulations if adopted.

Upon a roll call vote, all voted aye.

M/C.

Commissioner Zenker asked City Engineer Gabe Schell to address the Commission. Engineer Schell noted that the City, at a minimum, should regulate development within the floodway because it poses a greater risk to property owners.

Community Development Director Ben Ehreth address the Commission's concerns about existing manufactured homes being grandfathered into areas where the flood plain would be applied. Director Ehreth confirmed that existing homes would not be required to meet the new regulations; however, any new homes moved into the park would be subject to the current regulations at that time. Director Ehreth informed the Commission that the Community Development Department mailed approximately 1,000 notices of the proposed flood plain changes and of the meeting hosted by FEMA on August 16, 2022. Director Ehreth closed by saying that a significant change in the draft documents notes that FEMA will not certify the flood control structure along South Washington Street and the drainage ditch. Because the flood control structure was not originally built to FEMA standards, FEMA does not recognize it as an official means of mitigation to prevent flooding.

Director Ehreth informed the Commission that FEMA is the only agency providing flood insurance for property owners. If the City of Bismarck chooses not to participate in FEMA's mapping, the end result would likely be the inability of property owners to obtain flood insurance. All federally-backed mortgages require flood insurance. Without flood insurance in a community, the City would not be eligible for flood recovery funds such as the millions of



dollars received after the 2011 Missouri River Flood.

Commissioner Zenker requested a report of the August 16, 2022, FEMA meeting be presented at the August 23, 2022 City Commission meeting.

Other Business

Adjourn

There being no further business the meeting adjourned at 9:17 PM.

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