



MEETING OF THE BOARD OF CITY COMMISSIONERS

2/14/2023 - Minutes

Call to Order

The Board of City Commissioners met in regular session on February 14, 2023, 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 Zenker, and Mayor Schmitz.

Commissioner Splonskowski attended the meeting via Teams.

FUTURE COMMISSION MEETINGS:

- February 28, 2023
- March 14, 2023 & March 28, 2023
- April 11, 2023 & April 25, 2023

MISSION STATEMENT

To provide high-quality public services in partnership with our community to enhance our quality of life.

MEETING OF THE BOARD OF CITY COMMISSION

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

No public comment was received.

2. CONSENT AGENDA

Commissioner Marquardt motioned to approve the consent agenda with the removal of items D2 and D3 as presented, and Commissioner Cleary 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: #1109205-1109617.

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

1. Introduction and call for a public hearing on Ordinance 6535, a request for a zoning change from the A – Agricultural zoning district to the RR –Residential zoning district and major subdivision final plat of TNK Ranch Subdivision requested by Thomas and Kim Fettig, where the Bismarck Planning and Zoning Commission recommends approval.
2. ~~Introduction and call for a public hearing on Ordinance 6536, a request for annexation of parts of Silver Ranch Third Addition and Silver Ranch Fourth Addition, requested by Investcore, Inc. and Silver Ranch 18 LLLP, where the Bismarck Planning and Zoning Commission recommends approval.~~
3. ~~Introduction and call for a public hearing on Ordinance 6537, a request for a zoning change from the A – Agricultural zoning district to the R10 –Residential, RM20 – Residential, CA – Commercial, and P – Public zoning districts for Silver Ranch Fourth Addition, requested by Investcore, Inc. and Silver Ranch 19 LLLP, where the Bismarck Planning and Zoning Commission recommends approval.~~
4. Introduction and call for a public hearing on Ordinance 6538, a zoning change from the RT – Residential zoning district to the R10 – Residential zoning districts for Lots 9, 10 and the South 25.4 feet of Lot 11, Block 7, Replat of Homan Acres, requested by Gwen and Timothy Beckler (Lot 9) and John and Angela Glaser (Lot 10 and the South 25.4 feet of Lot 11), where the Bismarck Planning and Zoning Commission recommends approval.
5. Introduction and call for a public hearing on Ordinance 6539, a zoning change from the RT – Residential zoning district to the Conditional CA – Commercial zoning district for Lots 1 and 2, Block 1, Kilber North Addition First Replat, requested by The Ridge LLC, where the Bismarck Planning and Zoning Commission recommends approval.
6. Introduction and call for a public hearing on Ordinance 6540, a zoning change from the RM15 – Residential zoning district to the RM30 – Residential zoning district for Lot 1, Block 2, Paradise Valley Addition, requested by MBR Properties, LLC, where the Bismarck Planning and Zoning Commission recommends approval.
7. Introduction and call for a public hearing on Ordinance 6541, a zoning change from the RM15 – Residential zoning district to the RM20 – Residential zoning district for Lot 1, Block 3, Cottonwood Parkview Addition First Replat, requested by EWR Bismarck Land South, LLC, where the Bismarck Planning and Zoning Commission recommends approval.
8. Request of the Bismarck-Mandan Metropolitan Planning Organization, on behalf of Bis-Man Transit, for approval of the Bis-Man Transit Authorizing Resolution.
9. Request of the Bismarck-Mandan Metropolitan Planning Organization, on behalf of Bis-Man Transit, for approval to revise the project scope for Fiscal Year 2022 Section 5339 grant funding.
10. Request of the Bismarck-Mandan Metropolitan Planning Organization for approval to submit an application for Fiscal Year 2024 Section 5310 Grant Funding.
11. Request of the Historic Preservation Commission to apply for a 2023 Historic Preservation Fund Grant.

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

1. Consider approval of the award of Rectangular Rapid Flashing Beacon project HEU-1-981(130), PCN 23372, HC 149.
2. Consider approval of a North Dakota Department of Transportation (NDDOT) Cost Participation and Maintenance Agreement for Hay Creek Trail Retaining Wall Repairs (IM-1-094(217)159, HC 163).
3. Request for a resolution approving plans and specifications and a request for a resolution directing the advertisement of bids and receiving bids for Street Improvement District SI 571.
4. Request for a resolution creating a district and ordering the preparation of the preliminary report and a request for a resolution approving the preliminary report and directing the preparation of plans and specifications for Street Improvement District SI 572.
5. Request to receive bids and award contract for Streetlight and Traffic Signal Project SV - 65, Feedpoint Replacement Project.
6. Request to receive bids and award contract for Streetlight and Traffic Signal Project SV – 66, Conductor Replacement Project.
7. Request for encroachment and waiver agreement with CFT NV Development, LLC dba Panda Express for a railing, retaining wall, and wall appurtenances in the public right of way of Brookside Lane.
8. Consider approval and acceptance of offsite Utility and Temporary Access easements associated with the Paradise Valley Addition.
9. Consider approval of a street closure for BisMarket.
10. Consider approval of a street closure for Heroes Home Advantage

F. Consider the request for approval from the Event Center for the following:

1. Permission to approve the contract for Construction Manager At Risk with Kraus-Anderson.

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

1. Applications for Abatement.

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

1. Permission to trade in outdated extrication equipment.

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

1. Permission to offer Bismarck residents free disposal for the 2023 Spring and Fall clean-up weeks by presenting their most recent City of Bismarck utility bill.
2. Permission to award the Boiler Replacement Project at the Veterans Memorial Library.
3. Approve Change Order 4 to contract with HA Thomson & Sons, Inc. for Fire Station 1 Boiler Upgrade for a time extension.
4. Permission for the Public Works Service Operations Director to negotiate with the NDDOT for the excavation and sale of borrow from the Bismarck Landfill for the construction of the Exit 161 project, which is currently planned to be bid in 2025.
5. Permission to retire and sell vehicles and equipment via online auction.

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

1. Approval of Task Order 23 between the City of Bismarck and Advanced Engineering and Environmental Services, LLC (AE2S) to update the stormwater master plan for the Ash-Ward Coulee.
2. Permission for signing authority be delegated to the Director of Utility Operations for change orders 3, 4, 5, and 7 submitted on the Public Works Expansion project.

3. REGULAR AGENDA

4. Receive Update on Bismarck's Status in the AARP Network of Age-Friendly Communities.

Josh Askvig, a representative with AARP addressed the Commission with an update on Bismarck's Status in the AARP Network of Age-Friendly Communities.

The Commission received the report.

<https://www.bismarcknd.gov/DocumentCenter/View/41855/Item-4-PDF>

5. Receive SitelogIQ briefing on the Comprehensive Facility Plan for the building condition assessment services project.

Gavin Benson, a representative of SitelogIQ, addressed the Commission regarding the results of the building condition assessment services project.

Commissioner Marquardt motioned to accept the report and move to the next phase, which includes design and construction oversight of select improvement alternatives. Additionally, authorize the Request For Proposal process required for a Guaranteed Energy Savings Program, per N.D.C.C. 48.05.09-13, to select a qualified provider. Commissioner Zender seconded.

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

<https://www.bismarcknd.gov/DocumentCenter/View/41856/Item-5-PDF>

6. Public Hearing on Ordinance 6533, a request for the annexation of a portion of Clear Sky Addition, requested by FRM Investments, LLP.

Kim Lee, Senior Planner with the Community Development Department, addressed the commission regarding Ordinance 6533, a request for the annexation of a portion of Clear Sky Addition, requested by FRM Investments, LLP.

Mayor Schmitz opened the public hearing.

Commissioner Zenker motioned to approve the partial annexation as outlined in Ordinance 6533, and Commissioner Cleary seconded.

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

7. Consider the request for approval for Boulder Ridge First Addition First Replat, requested by Wilment Development, LLC.

Kim Lee, Senior Planner with the Community Development Department, addressed the commission regarding Ordinance 6534, a request for annexation and major subdivision final plat of Boulder Ridge First Addition First Replat.

Mayor Schmitz opened the public hearing. Landon Niemiller, with Swenson Hagen & Company, appeared on behalf of the owner.

Commissioner Zenker motioned to approve the partial annexation as outlined in Ordinance 6534, and Commissioner Marquardt seconded.

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

Commissioner Zenker motioned to approve the major subdivision final plat of Boulder Ridge First Addition First Replat, and Commissioner Cleary seconded.

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

8. Request to receive an update on the status of the FEMA Risk MAP Project for Burleigh County.

Brady Blaskowski, Building Official/Floodplain Administrator, updated the Commission on the status of the FEMA Risk MAP Project for Burleigh County. Mr. Blaskowski noted the 90-day public comment and appeal period will begin Feb 17, 2023, and run through May 18, 2023.

Commissioner Zenker expressed concerns with the proposed FEMA mapping project. He indicated a need to communicate directly with affected property owners to encourage their feedback and engagement with this project.

Commissioner Marquardt echoed Commissioner Zenker's remarks and supported a communications effort through the City's website, social media, and direct mailings to property owners.

Mr. Blaskowski responded that the City of Bismarck sent letters and participated in FEMA's informational meeting in 2022. He noted that there was good attendance and information shared.

Commissioner Splonskowski agreed that letters need to be sent to affected property owners and requested regular updates at Commission meetings during the 90-day comment period.

9. Application for abatement where the Assessing Division recommends denial.

City Assessor, Allison Jensen, addressed the Commission regarding the application for abatement for 2022 submitted by property owner Weishan Jin, at 800 South 3rd Street.

Mr. Jin addressed the Commission regarding his reasoning for submitting the application for abatement.

Commissioner Splonskowski motioned to table the item to the February 28, 2023, meeting allowing the owner time to provide the purchase agreement to demonstrate the allocation of personal property for the commission to review. Commissioner Marquardt seconded.

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

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

Gabe Schell, City Engineer, addressed the Commission regarding the request for a resolution creating district CC23 - Parts A-1, A-2, and B, a resolution approving plans and specifications and authorization to advertise and receive bids for CC23 - Parts A-1, A-2, and B for3 construction of 2023 Sidewalk, Curb, and Gutter, and Driveways.

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

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

11. Receive, consider, and award the Request for Proposals for Body Worn Cameras.

Dave Draovitch, Police Chief, addressed the Commission regarding the request for proposals for body-worn cameras. Chief Draovitch noted that the project will promote safety for our citizens and the officers and promote transparency within the department. Chief Draovitch closed by saying that in addition to the body cameras, improvements will be made to in-car video, interview rooms, and software for evidence management.

Commissioner Marquardt motioned to approve the request as presented and initiate contract negotiations with Axon, and Commissioner Cleary seconded the motion.

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

12. Receive an update on the utility rates study.

Commissioner Zenker provided an overview of the two public information meetings, including the external communications efforts encouraging the public to participate and attend. Commissioner Zenker remarked he was satisfied with the turnout at both meetings and thanked staff for the work and preparation efforts that went into hosting two successful meetings. Michelle Klose, Public Works Utility Operations Director, provided an overview of the survey results and data collected from the nearly 400 responses from the Water Utility Rate Survey. Director Klose indicated that staff will continue to review and analyze the survey data and will return to the February 28, 2023, Commission meeting with a comprehensive review of the data collected. Commissioner Zenker closed by encouraging the other Commissioners to read all of the comments by citizens in the survey results prior to the next meeting.

<https://www.bismarcknd.gov/DocumentCenter/View/41857/Item-12-PDF>

13. Consider receiving and discussing the City Attorney's opinion regarding conflict of interests.

Jannelle Combs, City Attorney, addressed the Commission to answer any question they had regarding her opinion on the question of a potential conflict of interest once City Commissioner Mark Splonskowski is sworn in as the Auditor of Burleigh County.

Commissioner Zenker noted that there could be issues, but it would be Commissioner Splonskowski's responsibility to declare a potential conflict and recuse himself from the table.

Commissioner Marquardt expressed concerns with the annual budget process where the potential conflict of interest could result in a deadlocked two-to-two vote tie at the

Commission table, which could result from Commissioner Splonskowski recusing himself.

Commissioner Cleary asked if Burleigh County will be considering a potential conflict of interest once Commissioner Splonskowski becomes the Burleigh County Auditor. Attorney Combs noted that she provided her legal opinion to Burleigh County Chair Matthews and Burleigh County States Attorney Lawyer for their review at the direction of Mayor Schmitz.

Commissioner Splonskowski stated that he spoke with States Attorney Lawyer in February 2022. At that time, he was under the impression the Auditor position and City Commissioner position would be compatible and without conflict.

Mayor Schmitz inquired with Attorney Combs what she could do to notify the City Commission of possible conflicts on future City Commission Agendas. Attorney Combs indicated she would review each agenda prior to its publication and make the Commissioners aware of possible conflicts.

The consensus of the Commission was to have Attorney Combs review all future City Commission agendas for possible conflicts of interest with the understanding that she would then work with Commissioner Splonskowski to alert the other Commissioners during future city meetings.

14. Consider the request to review and approve the issuance of request for proposals for economic development support consulting services.

Keith Hunke, City Administrator, addressed the Commission regarding issuing a request for proposals for economic support consulting services. The purpose of acquiring economic development consulting services is to provide technical expertise for facilitating projects initiated by the City of Bismarck, with a particular focus on the City's use of existing business incentives and economic development resources provided by the federal government, State of North Dakota, North Dakota Century Code, and City of Bismarck Ordinances. The successful firm will demonstrate experience in writing economic development action plans, attracting private investment, drafting and analyzing financial pro forms for development, providing incentive analysis, negotiating development agreements, and facilitating public-private partnerships that have a positive effect on the level of business activity and employment.

Commissioner Marquardt motioned to approve the request to issue a request for proposals seeking economic development consulting services, and Commissioner Cleary seconded.

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

15. Consider review and discussion of the 2023 Legislative Report #2.

Keith Hunke, City Administrator, provided a second Legislative Report to the Commission. He noted that two House Bills (HB) that were being monitored, HB 1328 and HB 1330, both addressing special assessments, failed in the House and will not proceed. He will continue to monitor and testify as needed throughout the remainder of the session. He went on to highlight two additional bills, SB 2275 and SB 2239. Administrator Hunke recommended supporting SB 2275, which removes strategic investments and improvement funds from the state share of oil and gas tax revenue which will allow certain Prairie Dog buckets to fill sooner. Administrator Hunke recommended monitoring SB 2239, which provides funding for counties and townships for roads and bridges but does not include funding for cities.

Commissioner Zenker motioned to take a position of support of SB 2275 and directed

Administrator Hunke to monitor SB 2239, and Commissioner Marquardt seconded the motion.

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

<https://www.bismarcknd.gov/DocumentCenter/View/41858/Item-15-PDF>

16. Other Business

Adjourn

There being no further business the meeting adjourned at 7:23 PM.

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