



MEETING OF THE BOARD OF CITY COMMISSIONERS

2/23/2021 - Minutes

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).

Claudia Berg, a member of Friends of the Rail Bridge spoke in favor of the Commission supporting item #15 on the agenda.

Mike Connelly, a Bismarck resident, also spoke in support of #15, and against item #13 the Condrey & Associates' proposal to update the City's Classification and Compensation Plan. Mr. Connelly requested if the Commission decided to move forward with the proposal to include the City's full compensation package, including sick leave, vacation, healthcare benefits and salary.

2. Consider the approval of the minutes.

Commissioner Marquardt moved to approve the minutes as presented. Commissioner Splonskowski seconded the motion.

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

3. CONSENT AGENDA

Commissioner Guy moved to approve the Consent Agenda as presented. Commissioner Marquardt seconded the motion.

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

- A. Consider approval of expenditures.

Vouchers: 1097232-1097410.

- B. Consider approval of personnel actions.
- C. Consider the request for approval from the Administration Department for the following:
 - 1. Approve a new gaming site authorization for NoDak Sportsmen's Club, A&B Pizza, located at 656 Kirkwood Mall.
- D. Consider the request for approval from the Attorney for the following:
 - 1. Introduction of and call for a public hearing on Ordinance 6450 to amend Ordinance 7-01-03, regarding Competitive Bidding Required.
 - 2. Ratify the January 5, 2021, State of Emergency Declaration relating to COVID-19 by the President of City Commission and extend its effect to March 21, 2021.
- E. Consider the request for approval from the Community Development Department for the following:
 - 1. Accept the MOA regarding the metropolitan planning activities within the Bis-Man MPO Area.
 - 2. Affirm the North Dakota Department of Commerce Partners in Planning grant application.
 - 3. Appoint Cole Johnson to the City of Bismarck Planning and Zoning Commission.
 - 4. Approve a request from Bis-Man Transit for an amended contract with North Dakota Department of Transportation for SFY2020 5339 funding.
 - 5. Approve Bismarck Park Avenue Properties, LLP to release the south 3 feet of the 10-foot utility easement adjacent to the north side of Lot 5, Block 1, Shamrock Industrial Park. Staff recommends approval.
- F. Consider the request for approval from the Engineering Department for the following:
 - 1. Approve the North Dakota Department of Transportation cost participation, construction and maintenance agreement for 26th St. and Interstate Ave. pavement marking Safety Improvement HEU-1-981 (126), HC 125.
 - 2. Approve a street closure for the 9th annual BisMarket.
 - 3. Street Improvement District No. 542 - Request for approving plans and specifications. Request for resolution directing the advertisement of bids and receive bids.
 - 4. Street Improvement District No. 543 - Request for resolution of necessity.
 - 5. Sewer Utility Project SU 78 - Request to receive bids and award contract.
 - 6. Sewer Utility Project SU 80 - Request to receive bids and award contract.
 - 7. Sewer Utility Project SU 83 - Request to receive bids and award contract.
- G. Consider the request for approval from the Finance Department for the following:
 - 1. Application for abatement, 2020, at 2011 Pacific Pl., Market Value Reduction, for Michelle & John Alstad.
 - 2. Application for abatement, 2020, at 3806 Silver Blvd., Disabled Veteran, for Claude Jr. & Carissa O' Berry.
- H. Consider the request for approval from the Public Works - Service Operations Department for the following:

1. Approve Change Order 2 to agreement with Western Edge Electric, Inc. for the City/County Building Backup Generator Project.
2. Award bid for HPS & LED Luminaires to Dakota Supply Group.
3. Grant permission to advertise and select an engineering firm to provide a facility air quality upgrade analysis/recommendation for the Bismarck Events Center and Belle Mehus, as it relates to COVID-19 transmission.
4. Grant permission to purchase a mower for Roads & Streets operations.
5. Grant permission to purchase a traffic attenuator for Roads & Streets operations.
6. Grant permission to purchase a zero turn commercial mower for Storm Water operations.

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

1. Approve utility account phased corrections.

4. REGULAR AGENDA

5. Consider the request from the Community Development Department for Steve and Mary Selzler to appeal the Feb. 4, 2021 decision of the Board of Adjustment to deny a variance from Section 14-04-19 (6)(b)(5)(a) of the City Code of Ordinances (FP-Floodplain District) to allow the construction of an addition to an existing family home, to be constructed below the Base Flood Elevation (BFE), located on Lot 4, Block 7, Fox Island Subdivision (3221 Deer Lodge Drive).

Commissioner Guy stated she did not find a hardship in this particular case, but asked if there was a way to amend the flood plain ordinance requirements, which is currently being reevaluated by our Community Development Department and a stakeholder group. The amendments to the ordinance was scheduled to come before the Commission in July. Community Development Department Director Ben Ehreth stated he felt this request for variance would be appropriate to be assessed alongside their reevaluation of another appeal.

Steve Selzler stated that they are creating the addition to make their home ADA compliant for a family member who is impaired. Jordan Anderson with Big River Builders, the contractor for the Selzler's remodel, further explained the building logistics to the Commission. FEMA does not recognize a personal hardship, being a remodel made to accommodate a family member.

Commissioner Guy asked if there is a way for the City to change the ordinance before July, and later go back to the stakeholder group and bring the ordinance up to consistency with the County. Director Ehreth stated the earliest the ordinance could change would be in three months, given the ordinance process.

Mayor Bakken requested Building Official Brady Blaskowski reach out to the Burleigh County Water Resource District to see what it would take to certify the structure from the county and deem it flood proof.

Commissioner Zenker made a motion to grant the variance to allow the addition to the existing family home to be constructed below the base-flood elevation, based on the exceptional physical elevations of the property, that being that the house is already built, and the addition is less than 2 percent of the home, the changes to the elevation to the home, based on the exceptional conditions of the property, changes to the floodplain elevation, only

72 percent of the square feet can change and you should not have a three-foot elevation change of your current conditions and the addition not increasing flood levels, and it being the minimum variance needed for the owner to receive relief. This addition would not change any water flow if something would come across, since it is only 18 ft.

Commissioner Splonskowski seconded the motion.

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

6. Public hearing on Ordinance 6448, a request for the annexation of the remainder of Sattler's Sunrise Tenth Addition.

No member of the public appeared for comment.

Commissioner Marquardt moved to approve the request as presented. Commissioner Zenker seconded the motion.

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

7. Public hearing on Ordinance 6449, a request for the annexation of parts of Promontory Point VI Addition and Promontory Point VII Addition.

No member of the public appeared for comment.

Commissioner Marquardt moved to approve the request as presented. 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 consideration of a moratorium for floodplain development permits associated with LOMR-F (Letter of Map Revision with Fill) applications for single, two-family and multi-family lots adjacent to Misty Waters Bay within Misty Waters subdivision.

Commissioner Zenker moved to deny the request. Commissioner Splonskowski seconded the motion.

After further discussion, Commissioner Zenker withdrew his motion and moved to table the item for two weeks. He requested staff bring the plat history, information on the requests for the LOMR-Fs including who applied for them, and why they applied for them and the information staff used to make the adjustment for the individuals who requested a LOMR-F for their property.

Commissioner Splonskowski seconded the motion.

Upon a roll call vote, all voted aye.

9. Consider the request from the Engineering Department to receive the presentation and recommendations for 43rd Ave. NE reconstruction from State St. to 26th St.

Carl Jackson of KLJ gave a short presentation on the 43rd Ave. NE Reconstruction project from State St. and 26th St. Please use the link to the full presentation:

<https://www.bismarcknd.gov/AgendaCenter/ViewFile/Item/5836?fileID=13860>

Mr. Jackson also provided additional information on this project in KLJ's executive summary: <https://www.bismarcknd.gov/AgendaCenter/ViewFile/Item/5836?fileID=13859>.

The Board went through each option presented to them. The following options were chosen to move forward with this project: Alternative B, Option B-1b, Option B-2a, Option B-3c, Option B-3c-2, Option 1.1 and Option 2.2. All options were recommendations made by the City Engineer Gabe Schell.

Commissioner Zenker motioned to move forward with all options selected. Commissioner Marquardt seconded it.

Upon a roll call vote, Commissioners Marquardt, Zenker, Guy and Splonskowski aye. Mayor Bakken nay. M/C.

Commissioner Zenker then moved to advance construction in 2022, with the approval of the 2022 budget. Commissioner Splonskowski seconded it.

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

10. Consider the request from the Engineering Department for an update on the upcoming load restrictions and discuss potential impact to roadways and the building community.

Commissioner Zenker moved to uphold the load restrictions and cover the entire \$50,000 cost of repairs if needed.

Upon a roll call vote, Commissioners Marquardt, Zenker, Guy and Splonskowski aye. Mayor Bakken nay. M/C.

11. Consider the request from the Engineering Department for approval of Creating District CC21 - Parts A-1, A-2, B-1 and B-2. Approving plans and specifications (Sidewalk Gaps and Hazardous Sidewalks). Authorization to advertise and receive bids for District CC21 - Parts A-1, A-2, B-1 and B-2.

Commissioner Guy moved to approve the City Concrete projects. Commissioner Zenker seconded the motion.

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

12. Consider the request from the Finance Department to deny an application for abatement for 2019 as presented for 1859 Bonn Blvd. and approve an adjustment to the 2020 application for abatement for 1859 Bonn Blvd.

Commissioner Splonskowski moved to approve both the 2019 and 2020 abatements. Commissioner Zenker seconded.

Upon a roll call vote, Commissioners Zenker, Splonskowski and Mayor Bakken aye. Commissioners Guy and Marquardt nay. M/C.

13. Consider the request from the Human Resources Department to accept Condrey & Associates' proposal to update the City's Classification and Compensation Plan.

At the February 8, 2021 City Commission Meeting this item was tabled. The board requested staff reach out to Condrey & Associates to include the City's benefit package into their study moving forward. Human Resource Director Robert Mconnell informed the Commission, Condrey & Associates' would charge an additional \$15,000 for the healthcare assessment to the original cost of \$32,500 for the Compensation Plan update.

Commissioner Zenker moved to approve the proposal as presented. Commissioner Marquardt seconded it.

Upon a roll call vote, Commissioner Marquardt, Zenker, Guy and Mayor Bakken aye. Commissioner Splonskowski nay. M/C.

14. Consider the request from the Community Development Department for the U.S. Coast Guard to prioritize mitigation elements for possible inclusion within Memorandum of Agreement associated with BNSF Bismarck Rail Bridge Replacement Programmatic Agreement.

Commissioner Zenker moved to approve with the MOA with the contingencies set forth by the Commission and moving those contingencies to the top of the priority list. These include preserving the City's infrastructure - water intake and water treatment plant and the surrounding environment, bank stabilization and ensuring the City is not held financially responsible for anything moving forward with the rail bridge. Commissioner Marquardt seconded it.

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

Staff will bring these MOA amendments back to the U.S. Coast Guard for changes.

15. Consider the request from the Community Development Department for the Historic Preservation Commission to participate in a Public Private Partnership associated with the preservation of the Bismarck BNSF Rail Bridge to provide any assistance allowed within the power's and duties outlined in Title 2 (Administration and Government Organizations) Chapter 2-12 Section 8 of the Bismarck Code of Ordinances.

Commissioner Zenker moved to deny the request. Commissioner Splonskowski seconded the motion.

Upon a roll call vote, Commissioners Zenker, Splonskowski and Mayor Bakken aye. Commissioners Marquardt and Guy nay. M/C.

~~16. Consider the request from the Attorney for direction on the request from the City of Lincoln to expand their extraterritorial area and re-negotiate the ETA Agreement.~~

This item was pulled from the agenda at the Mayor's request.

17. Review and discuss the 2021 Legislative Report #3.

This is the eighth week of the Legislature, and the House should be done reviewing bills by the end of the week. The bills passed will move to the Senate. City Administrator Keith Hunke presented the report. Here are the highlights from his presentation:

HB 1165: Did not pass committee, but did pass the house. This Bill was one the

Commission took a position of opposition on, it relates to residents of the extraterritorial area being allowed to vote in City election.

HB 1183: Commission took position to monitor it. The Bill was passed by the House.

HB 1212: Did not pass committee, but did pass the House. The Bill may reduce State revenue used by the Police Department, City Administrator and the Attorney Department to administer local gaming permits.

HB 1324: A Bill that was related to the exercise of eminent domain was defeated.

HB 1419 - The City of Bismarck's Street Utility Bill, was passed in committee and is currently being reviewed by the House. While being reviewed by committee, the Bill was amended to clarify revenue collected for the infrastructure fee can only be used for the infrastructure it is requested for.

Other Business

Mayor Bakken congratulated the Century High School Hockey team for hosting their first State Hockey tournament game in Bismarck.

Adjourn

The meeting was adjourned at 10:04 p.m.

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