



MEETING OF THE BOARD OF CITY COMMISSIONERS

3/14/2023 - Minutes

Call to Order

The Board of City Commissioners met in regular session on March 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 Splonskowski, Commissioner Zenker, and Mayor Schmitz.

Mayor Schmitz called the meeting to order at 5:15 PM.

FUTURE COMMISSION MEETINGS:

- March 28, 2023
- April 11, 2023 & April 25, 2023
- May 9, 2023 & May 23, 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).
 - John Ward wanted to thank Commissioner Splonskowski for his service on the Commission.
 - Chris Ebertz spoke regarding the Uater Utility Rate Study and expressed support for a tiered usage and billing system for all users.

2. CONSENT AGENDA - 1

Commissioner Zenker motioned to approve 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: #1109847 – 1110092.

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

1. Consider applications for gaming.
2. Introduction of and call for a public hearing on a request for a new Class D Full Alcohol license for The Domain, LLC. (dba) The Domain at 307 North 3rd Street.

E. Consider the request for approval from the City Attorney for the following:

1. Consider the introduction and call for a public hearing on Ordinance 6546 to amend the motorized scooter portion of the traffic code.

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

1. Introduction of and call for a public hearing on Ordinance 6545, a zoning map amendment from the P – Public zoning district to the R5 – Residential zoning district for Lots 1-8, Block 1, Hay Creek Park Addition, requested by Bismarck Parks and Recreation District, where the Planning & Zoning Commission unanimously recommended approval.

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

1. Request use of budgeted Commission Special Roads Funds to improve pedestrian crossing at 43rd Avenue NE and Centennial Road.
2. Consider approval of award concurrence of the North Dakota Department of Transportation (NDDOT) Hay Creek Trail Retaining Wall Repairs (IM-1-094(217) 159, HC 163).
3. Consider Request to Hear Insufficiency of Protests on Resolution of Necessity for Street Improvement District SI 571. <https://bismarcknd.gov/DocumentCenter/View/42003/Item-G3-PDF>
4. Consider Request for Resolution Approving Plans and Specifications and Resolution Directing the Advertisement of Bids and Receive Bids.

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

1. 2022 budget adjustments and carryovers into the 2023 budget.
2. Consider the introduction and call for a public hearing on Ordinance 6547 to amend the 2022 budget ordinance due to the implementation of the GASB 87 accounting pronouncement for financial reporting purposes only.

I. Consider the request from the Fire Department for the following:

1. Accept the information regarding the results of the Community Rating System 5-Year Renewal application and general information regarding the CRS Program to promote public awareness.

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

1. Permission to award the bid for tree injections for Forestry operations.
2. Permission to award the bid for LED luminaires for Public Works Service Operations Electrical Division.

3. CONSENT AGENDA - 2

The Commission discussed the conflict of interest between Commissioner Splonskowski's role as a City Commissioner and the Burleigh County Auditor-Elect. General consensus amongst the Commissioners was the perception that a conflict of interest exists, and therefore Commissioner Splonskowski should abstain from voting on this item.

Commissioner Marquardt motioned to identify the applications for abatement as potential conflicts of interest for Commissioner Splonskowski, and Commissioner Cleary seconded. Upon a roll call vote Commissioners Cleary, Marquardt, and Mayor Schmitz voted aye. Commissioner Zenker voted nay. Commissioner Splonskowski abstained. M/C.

Commissioner Marquardt motioned to approve as presented, and Commissioner Cleary seconded. Upon a roll call vote Commissioners Cleary, Marquardt, Commissioner Zenker, and Mayor Schmitz voted aye. Commissioner Splonskowski abstained. M/C.

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

1. Applications for abatement.

4. REGULAR AGENDA

5. Consider the resignation of Commissioner Mark Splonskowski.

The general consensus of the Commission was to move Item 5 to the final agenda item to prevent a potentially tied vote on Items 6 through 13.

After completing Regular Agenda Items 6 through 13, Commissioner Marquardt motioned to accept Commissioner Splonskowski's resignation, and Commissioner Cleary seconded. Upon a roll call vote, all voted, aye. M/C.

<https://www.bismarcknd.gov/DocumentCenter/View/41999/Item-5>

6. Public hearing on the request from Old 10 Bar & Grill, LLC (dba) Old 10 Bar & Grill, LLC for a Class F1 Restaurant Full Alcohol license at 4100 North Washington Street.

Mayor Schmitz opened the public hearing. 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.

7. Public hearing on the request from The Jousting Lemur, LLC (dba) The Jousting Lemur for a class F2 Restaurant Beer and Wine license at 514 East Main Avenue.

Mayor Schmitz opened the public hearing. No member of the public appeared for comment.

Commissioner Zenker remarked that he had been contacted by citizens who expressed concern with the public behavior of one of the applicants about compliance and respect for law enforcement. The main concern was that law enforcement might not be welcome if problems arose at the establishment. Chief Draovitch and City Attorney Combs remarked that law enforcement has been fortunate to work with local establishments when problems occur. If necessary, law enforcement could obtain a warrant for information if an owner is uncooperative.

Commissioner Marquardt asked if there had been applications denied or licenses revoked in the past. Jason Tomanek, Assistant City Administrator, remarked that to the best of his knowledge, no licenses had been denied or revoked in the past ten years. Tomanek noted that City Ordinance 5-01-05 License Qualifications states any other offense determined by the Board of City Commissioners to have a direct bearing on the applicant's or manager's ability to serve the public as an alcoholic beverage retailer.

Commissioner Splonskowski motioned to approve the license transfer as presented, and Commissioner Cleary seconded the motion. Upon a roll call vote, all voted, aye. M/C.

8. Public hearing on Ordinance 6544, Bismarck Building Code and Fire Prevention Code Update.

Brady Blaskowski, Building Official, presented information on Ordinance 6544, the Bismarck Building Code, and the Fire Prevention Code update.

Mayor Schmitz opened the public hearing. No member of the public appeared for comment.

Commissioner Zenker motioned to approve as presented, and Commissioner Splonskowski seconded the motion. Upon a roll call vote, all voted, aye. M/C.

9. Continuation of consideration of a major subdivision final plat of Norbs Subdivision, requested by GKNG Properties, LLC.

Ben Ehreth, Community Development Director, addressed the Commission regarding GKNG Properties, LLC's request for approval of a major subdivision final plat for Norbs Subdivision. A gated secondary access point would be constructed at the intersection of Southview Lane and 52nd Street, with a Knox box being installed and maintained by the property owner(s) within Norbs Subdivision. The request is located east of Bismarck, east of 52nd street SE, and south of East Main Avenue/County Highway 10, along the west side of Mulberry Lane.

The Commission discussed the conflict of interest between Commissioner Splonskowski's role as a City Commissioner and the Burleigh County Auditor-Elect. General consensus amongst the Commissioners was the perception that a conflict of interest exists, and therefore Commissioner Splonskowski should abstain from voting on this item.

Commissioner Marquardt motioned to identify the item as a potential conflict of interest for

Commissioner Splonskowski, and Commissioner Cleary seconded. Upon a roll call vote Commissioners Cleary, Marquardt, and Mayor Schmitz voted aye. Commissioner Zenker voted nay. Commissioner Splonskowski abstained. M/C.

Commissioner Splonskowski left the table at 6:01 PM.

Commissioner Zenker motioned to approve as presented, and Commissioner Marquardt seconded the motion. Upon a roll call vote, all voted, aye. M/C.

Commissioner Splonskowski joined the table at 6:08 PM.

10. Receive an update on the application status for a south Bismarck flood control project.

Gabe Schell, City Engineer, provided an update on the application status for a south Bismarck flood control project. The Federal Emergency Management Agency (FEMA) sponsors a Building Resilient Infrastructure and Communities (BRIC) grant program which supports communities as they undertake hazard mitigation projects, reducing the risks they face from disasters and natural hazards.

The Commission received the report.

<https://bismarcknd.gov/DocumentCenter/View/42000/Item-10-PDF>

11. Consider the request to receive bids and award contract for Street Light and Traffic Signal Utility Project SV 67.

Gabe Schell, City Engineer, addressed the Commission regarding bids received for Street Light and Traffic Signal Utility Project SV 67. The low bidder was Strata Corporation for \$294,860.00.

Commission Zenker motioned to approve awarding the bid and contract to Strata Corporation for \$294,860.00, and Commissioner Splonskowski seconded the motion. Upon a roll call vote, all voted, aye. M/C.

<https://bismarcknd.gov/DocumentCenter/View/42001/Item-11-PDF>

12. Consider request to receive bids and award contract for Street Light and Traffic Signal Utility Project SV 71.

Gabe Schell, City Engineer, addressed the Commission regarding bids received for Street Light and Traffic Signal Utility Project SV 67. The low bidder was Denny's Electric for \$308,000.34.

Commission Marquardt motioned to approve awarding the bid and contract to Denny's Electric for \$308,000.34, and Commissioner Cleary seconded the motion. Upon a roll call vote, all voted, aye. M/C.

<https://bismarcknd.gov/DocumentCenter/View/42002/Item-12-PDF>

13. Continue the discussion on the Utility Rate approach and Survey results.

Michelle Klose, Utility Operations Director, provided information on the ongoing utility rate project. Director Klose noted there are opportunities for the City to provide educational

materials for residents and consumers of water.

The Commission continued to discuss various rate structures and potential outcomes resulting from changes. The general consensus is to remove options and simplify the data that will not be considered in the final outcome. The Commission requested a breakdown showing the percentages of customers in each tier and to narrow the options to Option A, including all alternatives in Option A.

The general consensus at the table was that more discussion and information are necessary before any changes can be considered.

<https://bismarcknd.gov/DocumentCenter/View/42009/Item-13-PDF>

14. Other Business

Mayor Schmitz discussed moving forward to fill the vacancy resulting from Commissioner Sphonskowski's resignation; options include calling for a special election or accepting applications to appoint someone to fulfill the unexpired term, which will end in June 2024.

Commissioner Zenker stated that he contacted the two unsuccessful candidates that sought election in 2022 and indicated one person was interested in fulfilling the vacancy and the other was not.

The Mayor noted that he thought receiving applications from interested citizens was appropriate, and Commissioner Cleary agreed.

Commissioner Cleary motioned to direct staff to advertise for applicants in fulfilling the unexpired term resulting from Commissioner Splonskowski's resignation, and Commissioner Marquardt seconded. Upon a roll call vote, Commissioners Cleary and Marquardt and Mayor Schmitz voted aye. Commissioner Zenker voted nay. M/C.

Staff was directed to accept applications until 11:59 PM on March 22, 2023; distribute the applications to the City Commission on March 23, 2023, and schedule a Special City Commission meeting for March 24, 2023.

Adjourn

There being no further business, the meeting adjourned at 7:15 PM.

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