



MEETING OF THE BOARD OF CITY COMMISSIONERS

8/23/2022 - Minutes

Call to Order

The Board of City Commissioners met in regular session on August 23, 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:

- September 13, 2022 & September 27, 2022
- October 11, 2022 & October 25, 2022
- November 8, 2022 & November 22, 2022

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

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

No comment was received.

1. CONSENT AGENDA

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

- A. Consider approval of minutes
- B. Consider approval of personnel actions
- C. Consider approval of expenditures

Vouchers: 1106076-1106383.

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

1. Introduction of and call for a public hearing on a request for a new Class F-1 Restaurant Full Alcohol Liquor License for Tavern Bismarck, LLC. (dba) The Tavern Grill Restaurant & Bar at 1802 North 12th Street.

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

1. Amendment 4 to the Bismarck Aero Center Fixed Base Operator (FBO) Lease and Operating Agreement dated May 22, 2008.
2. Actions related to Snow Removal Equipment (SRE) Building project.

<https://bismarcknd.gov/DocumentCenter/View/41093/Snow-Removal-Equipment-Building>

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

1. 2022 Annual Action Plan (CDBG application)
2. Corrected Ordinance 6515, the annexation of Paradise Valley Addition, to correct a typographical error in the lot numbers included in the annexation of all of the property.
3. A request of Boulder Homes, LLC and Copper Leaf Homes, LLC to release a sanitary sewer, water, and utility easement over lots 17-20, Block 4, Silver Ranch First Addition. Staff recommends approval.
4. Appointment of Josh Keller to the Parking Authority.

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

1. North Dakota Department of Transportation (NDDOT) Cost Participation and Maintenance Agreement for 9th Street mill and overlay (Bismarck Expressway to Front Ave), NHU-1-083(140)900, PCN 23202, HC 152.
2. North Dakota Department of Transportation (NDDOT) Cost Participation and Maintenance Agreement for Bismarck Expressway Concrete Pavement Repair (Rosser Avenue to Miriam Drive), NHU-1-083(140)900, PCN 23202, HC 152.
3. Change Order No. 3 for Street Improvement District SI 550.
4. Request for resolution receiving bids and ordering the preparation of the engineer's statement and resolution awarding the contract for Street Improvement District SI 568.
5. A development agreement with J&A Properties, LLP.
6. Acceptance of stormwater and drainage easements for the development of Trenton Addition.

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

1. Introduction and call for a public hearing on Ordinance 6521 for the 2023 Budget.
2. Applications for Abatement where the Assessing Division recommends approval.
3. Resolution directing special assessments to be levied.

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

1. Permission for the Fire and Police Departments to participate in a fundraising event.

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

1. Change Order 4 to the agreement with Northern Improvement Company for the solid waste management facility cell 1 expansion project.
2. Permission to enter into the first option year of the recyclable metals materials contract with Gerdau Ameristeel US, INC.
3. Permission to apply for a grant from the North Dakota Forest Service to fund the purchase of plant material for the Sesquicentennial Tree Planting.
4. Permission to purchase vehicles at the State of North Dakota bid price from Nelson Auto.

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

1. Permission to accept Task Order #5 to the agreement with Apex Engineering Group for the preliminary and final designs of the new Hay Creek Lift Station and Forcemain.

2. REGULAR AGENDA

3. Public hearing on a new Class C2 Hotel/Motel Liquor License for Wingate by Wyndham Bismarck at 1421 Skyline Boulevard.

No member of the public appeared for comment.

Commissioner Marquardt motioned to approve the new Class C2 Hotel/Motel liquor license as presented, and Commissioner Zenker seconded the motion.

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

4. Continued public hearing on Ordinance 6510, a 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.

Kim Lee, Planning Manager, introduced Ordinance 6510. Mayor Schmitz opened the public hearing.

Bill Dean, representative of Bismarck Property Rentals, LLC. spoke on behalf of the sellers.

He reported that the parks are for sale, and there is high demand for rental properties. The owner is hesitant to remove existing homes as newer models cannot be brought in with the current zoning regulations. He is also reluctant to fix existing homes because the cost to repair them exceeds their value.

Commissioner Marquardt expressed concerns with the appearance of the homes in the park and wanted to know what guarantees the owner can provide that the park would be cleaned up if the zoning change is approved.

Mr. Dean responded that multiple parties are interested in purchasing both parks, and any improvements would be up to the purchaser.

Blair Engberg, a real estate agent representing a potential buyer, noted that 55% of the housing stock would need to be replaced. Ms. Engberg stated that her client hopes to move quickly with additional upgrades, including security lighting, landscaping, and the potential for onsite security.

Commissioner Cleary motioned to approve Ordinance 6510 as presented, and Commissioner Zenker seconded the motion, noting that he has hopes the sale of the parcels move quickly and that multiple units are replaced sooner rather than later.

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

5. Continued public hearing on on Ordinance 6511, a zoning change from the CG-Commercial zoning district to the RMH-Residential zoning district for Block 45, Governor Pierce Addition, requested by Bismarck Rental Properties, LLC.

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

Commissioner Marquardt motioned to approve Ordinance 6511 as presented, and Commissioner Splonskowski seconded the motion. Commissioner Zenker noted that he would agree with the stipulations noted in the motion for regular agenda item number 4.

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

6. Continued public hearing on Ordinance 6516, 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 for Paradise Valley Addition, requested by MBR Properties, LLC.

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

Commissioner Zenker motioned to approve Ordinance 6516 as presented, and Commissioner Marquardt seconded the motion.

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

7. Public hearing on 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.

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

Commissioner Zenker motioned to approve Ordinance 6519 as presented, and Commissioner Splonskowski seconded the motion.

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

8. Public Hearing for Approval of Waste Collection Franchise for Eco Sanitation, LLC.

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

Commissioner Marquardt motioned to approve the franchise agreement for Eco Sanitation, LLC. as presented, and Commissioner Splonskowski seconded the motion.

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

9. Public Hearing on Ordinance 6520 to Amend the 2022 Budget.

Mayor Schmitz opened the public hearing.

Jena Gullo, Executive Director of the Missouri Slope Areawide United Way, provided information on the United Way's efforts in the community relating to homelessness and closed by requesting the Commission honor their commitment from 2021 to spend the budgeted 2022 allocated funds of \$250,000.

Commissioner Marquardt noted there are Community Development Block Grant (CBDG) funds that the United Way would have access to through an application process.

Mayor Schmitz opposes the request because there were COVID-related funds to offset COVID-related expenses allocated.

Ms. Gullo reported that \$1.5 million was spent on the shelter facility to date and was unaware that there was a deadline for the request of City funds that were budgeted for 2022.

Sister Kathleen Atkinson, with Ministry on the Margins, noted that there are food pantries with limited hours in the community, BisMan transit is discussing reducing hours of operation, and Ministry on the Margins has a vacant position. Sister Kathleen noted these examples of agencies in the community that is also struggling. She does not support the request because the money previously granted by the City was intended for the construction of the homeless facility and not for operations. Sister Kathleen closed by suggesting a process to allocate funds to human service non-profit organizations and recommends an application and evaluation of services provided in the community.

Rena Moch, Public Health Director, noted that the most significant need is the single point of contact for the Bismarck Police Department to have a facility where they can take someone experiencing homelessness. Director Moch noted many of the individuals the Bismarck Police Officers encounter are taken to the Ministry on the Margins overnight coffeehouse because they are under the influence of drugs or alcohol and would be turned away from the United Way homeless shelter.

Commissioner Zenker noted that more discussion is necessary between Bismarck non-profit organizations. He went on to say that he believes the funds should be taken from the reserves as they were initially allocated for this use, and there is a need to have the United

Way facility open 24 hours a day.

Commissioner Zenker motioned to amend the 2022 budget to provide \$250,000 to the United Way with funds that were not expended that are now in reserves. The motion was withdrawn.

Commissioner Zenker motioned to use funds approved but not expended from the 2022 general fund to allocate to the 2021 budget for United Way, and Commissioner Marquardt seconded the motion.

Commissioner Splonskowski stated that he believes if the funds do not go to the United Way, they should be redistributed to the taxpayers.

Commissioner Cleary stated that she believes the needs have changed throughout the community and remarked considering one organization's needs may be shortsighted when many other organizations may need help.

Mayor Schmitz noted that he is struggling with the request to amend the budget, sighting concerns with an audit and the fact that the United Way did not provide an invoice requesting payment.

Upon a roll call vote, Commissioner Zenker voted aye, and Commissioners Cleary, Marquardt, Splonskowski, and Mayor Schmitz voted nay. Motion failed.

10. Request for resolution receiving bids and ordering preparation of the Engineer's Statement and resolution awarding contract for Street Improvement District SI 569.

Gabe Schell, City Engineer, presented the low bid from Northern Improvement Company in the amount of \$921,815.10 for SI 569.

Commissioner Zenker motioned to approve the bid as presented and ordered the preparation of the Engineer's Statement and resolution awarding contract for Street Improvement District SI 569, and Commissioner Splonskowski seconded.

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

<https://bismarcknd.gov/DocumentCenter/View/41092/SI569>

11. Continued discussion regarding the 2023 Bismarck- Burleigh Public Health budget.

Item 11 was pulled at the request of Burleigh County Commissioner Becky Mathews; the item was not discussed.

12. Federal Emergency Management Agency (FEMA) Risk Map Update.

Brady Blaskowski, Building Official, provided a review from the FEMA open house held on August 16, 2022. Detailed study areas included the Missouri River, Apple Creek, Hay Creek, Burnt Creek, the City of Wing, the McKenzie Slough, and Long Lake Creek. Brady noted that FEMA no longer recognizes the south Bismarck drainage ditch structure as adequate flood protection. He also stated that a 90-day appeal process must include technical data supported by a licensed engineer and a registered land surveyor to refute any of the data provided by FEMA. Mr. Blaskowski closed by stating that the North Dakota Department of Water Resources requested the City of Bismarck participate in the study as part of a state-

wide effort to collect the best available data.

Commissioner Zenker noted that the North Dakota State Constitution requires that municipalities abide by FEMA regulations. The best hope is to work on accepting the South Washington Street flood control gate structure.

Commissioner Marquardt noted that changes may be necessary with local ordinances addressing construction in the flood plain.

Commissioner Cleary made a motion directing staff to receive the most recent floodway information and to move forward with the necessary steps to regulate development in the floodway and to regulate other areas using the 2014 FEMA map, and Commissioner Marquardt seconded.

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

13. Consider discussion of Street Utility Fee.

Gabe Schell, City Engineer, presented the various rates for the Street Utility Fee structure using 1, 3, 4, and 6-tiers noting that the fees would range from \$7 to \$56 per residential parcel. The commission noted the next steps will be working with local legislators to draft a bill that will help other political subdivisions address street utility fee payments to the current special assessment model. Mayor Schmitz closed by stating there is insufficient time to draft ballot language or provide educational materials for the citizens before the November election. This project will continue in January 2023, when the legislature meets for its regular session.

<https://bismarcknd.gov/DocumentCenter/View/41094/Street-Utility-Fee-Presentation>

14. Other Business

Adjourn

There being no other business, the meeting adjourned at 7:49 PM.

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