

## MEETING OF THE BOARD OF CITY COMMISSIONERS

NOVEMBER 8, 2011

The Board of City Commissioners met in regular session on November 8, 2011 at the hour of 5:15 p.m. in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota. There were present: Commissioners Smith, Askvig, Grossman, and Vice President Seminary. President Warford was absent.

A Chaplain of the Bismarck Police Department presented the invocation.

### **1. The Board of City Commissioners considered approval of the minutes of the meeting on October 25, 2011, including the correction sent out to the Board.**

**Commissioner Askvig made a motion to approve the minutes as corrected. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman, and Vice President Seminary. Nays: None, the motion carried. President Warford was absent and not voting.**

### **2. CONSENT AGENDA**

A. The Board of City Commissioners considered and approved voucher numbers 1021769 to 1022241.

B. The Board of City Commissioners reviewed the personnel actions.

C. The Board of City Commissioners considered application for tax abatement for:

- 2317 Santa Barbara Dr - Senior Citizen Homestead Credit - 2011: James & Isabel Schmidt qualified for the abatement.
- 4908 Souris St - Wheelchair Exemption - 2011: Erwin & Mary Jo Lang qualified for the abatement.

D. The Board of City Commissioners considered approval of Site Authorization for Knights of Columbus State Council for a raffle at the St. Mary's High School gymnasium.

E. The Board of City Commissioners considered request from Finance Department for 2011 Budget Adjustments.

The 2011 budget includes a \$100,000 pool in one-time funds to cover excess fuel expenditures in the General Fund Departments. Once the budgeted funds are depleted, the departments may be eligible to use the fund. Police and Fire started using the pool in June and with the September expenditures, the one-time funds have now been expended. The increase is attributed to the cost of fuel and utilization of vehicles, some of which is associated with the flood event activities. The additional expenditures projected from this fund for the balance of the year are \$100,000. The recommendation

is to authorize the additional \$100,000 with funding from the original source, the General Fund cash balance.

F. The Board of City Commissioners considered request from Police Department for permission to apply for a State Homeland Security Grant.

Staff requests permission from the Board to apply for a State Homeland Security grant through the North Dakota Department of Emergency Services in the amount of \$17,420.70. This grant is for reprogramming of all of the police department two-way radios in order to implement the required transition to narrow band frequency programming required in 2012 to comply with federal regulations. There is a match requirement of 7 percent for this grant, which totals \$1,219.45. The match is available in the approved 2012 Police budget. There are no personnel or ongoing costs associated with this grant.

G. The Board of City Commissioners considered the letter of intent from Fire Department for permission to apply for North Dakota Department of Emergency Services grant for radio reprogramming.

Staff requests permission from the Board to apply for a North Dakota Department of Emergency Services grant for the purpose of radio reprogramming. The grant is being made available to local emergency response agencies to implement the required transition to narrow band frequencies in conjunction with the state interoperability project. The estimated grant amount is approximately \$20,000 with a 7 percent local in-kind match. There are no FTE's or ongoing costs associated with this project.

H. The Board of City Commissioners considered the Contract Change Order with Basaraba Excavating to upsize the water main from eight inches to 16 inches for the water main construction on Water Utility Project 69. The amount of the change order is \$27,420.00 which will be reimbursed by the developer.

I. The Board of City Commissioners considered the following from Community Development Department:

- Consider request from Steve Saunders, Metropolitan Planning Organization, on behalf of Bis-Man Transit for permission to sell Para-Transit Bus 52.

Bus 52 is a 2002 Ford E450 Super Duty. It has 304,000 miles on it. It needs a new engine. The estimate for the engine and installation is between \$13,000 and \$14,000. Robin Werre, Transit Director for Bis-Man Transit, has a buyer that would give them \$1,000 for the van to use it for parts. Transit believes selling this bus is in the best interest of Bis-Man Transit and the city.

- **Consider introduction of and call for public hearing on Ordinance 5851 for zoning change from R10-Residential zoning district to CG-Commercial zoning district, Lots 4-5, Block 6, Stonecrest Second Addition, requested by Liechty Homes, Inc. Bismarck Planning & Zoning Commission recommends approval.**

ORDINANCE NO. 5851

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE 1986 CODE OF ORDINANCES, OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the R10-Residential zoning district and included in the CG-Commercial zoning district:

Lots 4-5, Block 6, Stonecrest Second Addition.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

- **Consider introduction of and call for public hearing on Ordinance 5852 for zoning ordinance text amendment relating to Off-Street Parking Requirements, initiated by the City of Bismarck. Bismarck Planning & Zoning Commission recommends approval.**
- **Consider introduction of and call for public hearing on Ordinance 5853 for zoning ordinance text amendment relating to Stormwater Management (Title 14.1), initiated by the City of Bismarck. Bismarck Planning & Zoning Commission recommends approval.**

ORDINANCE NO. 5853

AN ORDINANCE TO AMEND AND RE-ENACT TITLE 14.1 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO STORMWATER MANAGEMENT.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Title 14.1 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Stormwater Management is hereby amended and re-enacted to read as follows:

**CHAPTER 14.1-01 - GENERAL PROVISIONS**

14.1-01-01. Purpose and Policy. This ~~€~~Title sets forth uniform requirements for stormwater management systems within the City and its extraterritorial jurisdiction. It is the intent of the Board of City Commissioners that the requirements and standards contained in this ~~ordinance~~ Title comply with all applicable state and federal laws. In the event of any conflict between the provisions of this ~~ordinance~~ Title and the provisions of an erosion control, shoreland protection, or floodplain ordinance, or other regulations adopted by the City, County, State or Federal authorities, the more restrictive standard prevails.

The objectives of this ~~€~~Title are:

1. To promote, preserve, and enhance the natural resources within the City of Bismarck and its extraterritorial jurisdiction;

2. To protect and promote the health, safety, and welfare of the people and property through effective stormwater management practices;

3. To protect the City's and surrounding area's natural resources from adverse impacts ~~occasioned~~ caused by development or other activities;

4. To regulate land development, land disturbing, or other activities that may have an adverse and potentially irreversible impact on water quality and environmentally sensitive lands;

5. To minimize conflicts and encourage compatibility between land disturbing and development activities and environmentally sensitive issues (i.e. land, water, habitat, etc.);

6. To require detailed review standards and procedures for land development activities proposed throughout the City, and its extraterritorial jurisdiction, thereby achieving a balance between ~~urban~~ growth and development, and the protection of water quality; ~~and~~

7. To provide for the protection of surrounding or adjacent properties from water and wind erosion through the use of best management practices that meet the intended use; and

~~7~~8. To provide for adequate stormwater system analysis and appropriate stormwater system design as necessary to protect public and private property, water quality, and existing natural resources. This ~~€~~Title establishes and provides for the following stormwater management criteria:

a). The regulation of development through the issuance of stormwater permits and through the enforcement of general stormwater drainage requirements throughout the City and its extraterritorial jurisdiction. It also authorizes monitoring and enforcement activities, and provides for the setting of applicable fees for the equitable distribution of costs associated with the administration of the stormwater management

program established herein.

b). The regulation of, and the establishment of criteria for, public underground storm sewers, artificial and natural open channel drainage systems, stormwater detention and retention ponds, and private stormwater drainage systems ultimately discharging into the public system.

c). The regulation of development activities as they relate to managing stormwater volumes, rates of runoff, flow duration, and their subsequent impacts to downstream property, water quality, and stormwater management facilities.

d). Provides for a stormwater management system user charge and the method for calculating charges for each user classification. Procedures for rate adjustments and annual review criteria are established.

e). Penalties for violating the provisions of this ordinance Title, and the orders, rules, regulations and permits issued hereunder.

f). Applies in the City of Bismarck, North Dakota, and its extraterritorial jurisdiction, and to persons outside the City who are, by contract or agreement with the City, users of the City stormwater management system. Except as otherwise provided herein, the City Engineer shall administer, implement, and enforce the provisions of this ordinance Title.

(Ord. 4817, 02-25-97)

14.1-01-02. Transfer of Authority. The City may, through the use of a joint powers agreement, transfer the authority for the administration and/or enforcement of this title in the City's extraterritorial area to another entity.

14.1-01-023. Definitions. For the purpose of this ordinance and Title, the following terms, phrases, and words, and their derivatives, shall have the meaning as stated in this section. When inconsistent with the context, words used in the present tense include the future tense. Words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and the word "may" is always permissive.

Agricultural Land Use: The use of land for planting, growing, cultivating and harvesting crops for human or livestock consumption and pasturing or yarding of livestock.

Applicant: Any person wishing to obtain a building permit, special use permit, zoning change, or subdivision approval, or stormwater permit.

Base Flood or 100-year Flood: The flood having a one percent (1%)

chance of being equaled or exceeded in any given year (i.e. 100-year flood). It is also referred to as the regional flood.

Base Flood Elevation (BFE): The height of the base flood or 100-year flood, usually in feet above mean sea level, as designated on a FEMA published digital flood insurance rate map (DFIRM) or as determined by the stormwater management plan prepared for the area in which the property is located.

Board of City Commissioners: The Board of City Commissioners of the City of Bismarck.

City: The City of Bismarck or the Board of City Commissioners of the City of Bismarck.

City Engineer: The City Engineer of the City of Bismarck or a duly authorized representative of the City Engineer.

Control Measure: A practice or combination of practices to control erosion and attendant pollution.

Conveyance Structure: A pipe, open channel, or other facility that transports runoff from one location to another.

County: The County of Burleigh.

County Engineer: The County Engineer of Burleigh County or a duly authorized representative of the County Engineer.

Design Standards Manual: The Stormwater Design Standards Manual, as originally adopted by the Board of City Commissioners and as subsequently amended by technical amendments by the City Engineer, which contains the principal standards and design criteria for developing an effective and acceptable stormwater management plan.

Detention Facility: A natural or manmade structure, including wetlands, ponds, parking lots, depressed grassy areas, roof tops, buried underground tanks, or other structures, used for the temporary storage and controlled release of runoff. Such facilities are used to delay or attenuate flow, which may contain a pool of water during times of storage, or and may be dry during times of no runoff.

Development: Any man-made change to improved or unimproved property, including any land disturbing activity, construction or the subdivision of land.

Development Properties: Lands and properties located within an approved stormwater management permit boundary.

Developer: A person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in a land disturbance and/or land development activity.

E.P.A.: The United States Environmental Protection Agency.

Engineer: ~~The City Engineer of the City of Bismarck or authorized agent.~~

Erosion: Any process that wears away at the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.

Erosion and Sediment Control Plan: A written description of the number, locations, sizes, and other pertinent information about best management practice methods designed to meet the requirements of this ~~ordinance~~ Title.

Extraterritorial Jurisdiction: The territorial zoning and subdivision authority of the City which extends to all unincorporated land located within four (4) miles of the corporate limits of the City, or amended by agreement, as authorized by Section 40-47-01.1 of the North Dakota Century Code.

Final Stabilization: Activities following rough grading of the site to permanently make the site steadfast or firm, minimizing soil movement by establishing a perennial vegetative grass cover by mulching and seeding, sodding, landscaping, concrete, gravel, or other permanent best management practices. The density of the vegetative cover shall be as required in the Design Standards Manual.

Flood Fringe: ~~That portion of the flood plain outside of the floodway.~~

Floodplain or Flood-prone Area: The areas adjoining a water course or water basin that have been or may be covered by a regional or base flood. Any land area susceptible to partial or complete inundation by water from any source.

Floodplain Administrator: The person designated by the City of Bismarck to administer the City's floodplain regulations.

Floodplain Management: The regulation of the nature and location of construction on (or other occupancy of) lands subject to inundation by flood waters, so that foreseeable (probable) flooding damages will have an average annual risk smaller than some preselected amount. Floodplain management consists of technical and nontechnical studies, policies, management strategies, statutes and ordinances that collectively manage floodplains along rivers, streams, major drainageways, outfalls, or other conveyances. The federal government normally plays a major role in floodplain planning and management, whereas in urban stormwater management and design, local governments dominate the decision-making process.

Floodway or Regulatory Floodway: The channel of the water course, the bed of water basins, and those portions of the adjoining flood plains that are reasonably required to carry and discharge floodwater and provide water storage during a regional or base flood. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Hydric Soils: Soils that are saturated, flooded, or covered by water long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.

Hydrophytic Vegetation: Macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Impervious Area: Impermeable surfaces, such as pavement or rooftops, which prevent the infiltration of water into the soil.

Land Development Activity: The construction or demolition of buildings, roads, parking lots, paved storage areas, and similar facilities.

Land Disturbing Activity: Any manmade change of the land surface including removing vegetative cover, excavating, filling and grading, but not including agricultural land uses such as planting, growing, cultivating and harvesting of crops; growing and tending of gardens; and harvesting trees.

Landowner: Any person holding title to or having an interest in land.

Land User: Any person operating, leasing, renting, or having made other arrangements with a landowner by which the landowner authorizes use of their land.

Local Detention: Detention provided to serve only the developing area in question and no areas outside of the development boundaries. This is also known as on-site detention.

Local Drainage System: The storm drainage system which transports the minor and major stormwater runoff to the major stormwater system serving only the property within the development boundaries. This is also known as the on-site drainage system.

Major Stormwater System: The portion of the total stormwater system that collects, stores, and conveys runoff that exceeds the capacity of the minor system. The major drainageways are readily recognizable as natural or improved channels that conveys runoff that exceeds the capacity of the minor drainage system, including emergency overflow facilities. It transports the minor and major stormwater runoff and serves more than the area within the

development boundaries. The major system is usually less controlled than the minor system, and will function regardless of whether or not it has been deliberately designed and/or protected from encroachment, including when the minor system is blocked or otherwise inoperable. The major stormwater system is usually evaluated for the one hundred (100) year runoff event.

**Management Practice:** A practice or combination of practices to control erosion and water quality degradation.

**Minor Stormwater System:** The portion of the total drainage system that collects, stores and conveys frequently occurring runoff, and provides a relief from nuisance and inconvenience. This system has traditionally been carefully planned and constructed, and normally represents the major portion of the urban drainage infrastructure investment. The degree of inconvenience the public is willing to accept, balanced against the price it is willing to pay, typically establishes the drainage capacity or design recurrence frequency of a minor system. Minor systems include roof gutters and on-site drainage swales, curbed or side-swaled streets, stormwater inlets, underground storm sewers, open channels and street culverts. Generally, the minor stormwater system is designed to accommodate the minor (or ordinary) storm recurring at regular intervals, generally from two (2) to ten (10) years.

**Multiple-Purpose Facility:** An urban stormwater facility that fulfills multiple functions, such as enhancement of runoff quality, erosion control, wildlife habitat, or public recreation, in addition to its primary purpose of conveying or controlling runoff.

**National Pollution Discharge Elimination System (NPDES) Permit:** Any permit or requirement enforced by the North Dakota State Department of Health pursuant to the Clean Water Act as amended for the purposes of regulating stormwater discharge.

Notice of Transfer (NOT): Documentation indicating that the responsibilities of the stormwater permit have been transferred along with the transfer of a parcel of land.

**On-Site Detention:** Detention provided to serve only the developing area in question and no significant areas outside of the development boundaries. This is also referred to as local detention.

**Outfall Facility:** Any channel, storm sewer, or other conveyance receiving water into which a storm drain or storm drainage system discharges.

**Outlet:** Any outlet including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or groundwater.

**Owner or Occupant:** Any person owning or using a lot, parcel of land, or premises connected to and discharging stormwater into the City's stormwater

system of the City, and who pays for and is legally responsible for the payment of stormwater rates, special assessments or charges made against the lot, parcel of land, building or premises, if connected to the stormwater system or who would pay or be legally responsible for such payment.

**Permanent Development:** Any buildings, structures, landscaping and related features constructed as part of a development project approved under a stormwater permit.

**Permanent Facilities:** Those features of a stormwater management plan which are part of any natural or constructed stormwater system that require periodic or minimal maintenance to retain their operational capabilities. This includes but is not limited to storm sewers, infiltration areas, detention areas, channels, streets, etc.

**Permittee:** Any person who applies for and receives a stormwater or other permit from the City under this Title.

**Person:** Any developer, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency - public or private.

**Private Drainage Channel:** A drainage channel on privately-owned land or easements which eventually discharges into a public drainage channel or public storm sewer.

**Private Storm Sewer:** A storm sewer on privately-owned land or easements which eventually discharges into a public drainage channel or public storm sewer.

**Public Drainage Channel:** A drainage channel located entirely within a naturally occurring or constructed watercourse located on public lands or within a dedicated public easement.

**Public Storm Sewer:** A storm sewer located entirely within publicly owned land or easements.

**Regional Detention:** Detention facilities provided to serve an area outside the development of boundaries. A regional detention site generally receives runoff from multiple stormwater sources.

**Regional Drainage System:** The storm drainage system which transports the minor and major stormwater runoff to the major stormwater system generally serving multiple sources or developments.

**Regional Flood:** A flood that is representative of large floods known to have occurred generally in the state and recently characteristic of what can be expected to occur on an average frequency in the magnitude of a one hundred (100)-year recurrence interval. ~~It is also referred to as the base flood.~~

Retention Facility: A natural or manmade structure that provides for the storage of stormwater runoff by means of a pool of stored water. Such facilities are designed to eliminate subsequent surface discharge and, where applicable, provide for the treatment of stormwater runoff. Wet ponds are the most common type of retention facility (although a wet pond may also be used as a detention facility).

Runoff: The rainfall, snowmelt, dewatering or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.

Sediment: Solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice, and deposited at another location.

Site: The entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed in the permit application.

Stabilize: To make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, concrete, gravel, or other measures.

State: The State of North Dakota.

Storm Sewer: A pipe or conduit for carrying storm waters, surface runoff, street and wash waters, and drainage, excluding sewage and industrial wastes.

Stormwater: The flow of water which results from precipitation and which occurs during or immediately following rainfall or a snowmelt.

Stormwater Detention: Temporary storage of stormwater runoff in ponds, parking lots, depressed grassy areas, roof tops, buried underground tanks, etc., for future or controlled release. Used to delay and attenuate flow.

Stormwater Easement: An easement dedicated for the purpose of conveying, detaining or retaining stormwater. This may be accommodated by installing storm sewer, or for conveying surface water by means of utilizing natural topography or constructing a drainage channel. Certain uses within this easement are prohibited, including but not limited to, structures, trees, fences, any other elements or uses that may result in any obstruction to flows within this easement, or other incompatible uses, such as any portion of a private sewage disposal system.

Stormwater Management: The planned set of public policies and activities undertaken to regulate runoff under various specified conditions within various portions of the drainage system. It may establish criteria for controlling peak

flows or runoff volumes, for runoff detention and retention, or for pollution control, and may specify criteria for the relative elevations among various elements of the drainage system. Stormwater management is primarily concerned with limiting future flood damages and environmental impacts due to development, whereas flood control aims at reducing the extent of flooding that occurs under current conditions.

**Stormwater Management Criteria:** Specific guidance provided to the engineer/designer in the Design Standards Manual to carry out drainage and stormwater management policies. An example might be the specification of local design hydrology - the design storm.

**Stormwater Management Plan (SWMP):** A written document detailing stormwater runoff characteristics for a defined area and the management of that runoff.

**Stormwater Management System:** Physical facilities that collect, store, convey, and treat stormwater runoff in urban areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.

**Stormwater Permit:** A permit allowing land development and land disturbing activities so as to protect the public stormwater system.

**Stormwater Program Coordinator:** The person designated by the City of Bismarck to administer the NDPDES (MS4) permit and oversee the compliance and regulation of stormwater permits issued by the City, or a duly authorized representative of the Stormwater Program Coordinator.

**Stormwater Retention:** Storage designed to eliminate subsequent surface discharge. ~~Wet ponds are the most common type of retention storage (though wet ponds may also be used for detention storage).~~

**Structure:** Anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

**Unpolluted Water:** ~~Any water of quality equal to or better than the effluent criteria in effect, or water that would not cause a violation of receiving water quality standards and would not benefit by discharge into a sanitary sewer and wastewater treatment facilities is considered unpolluted.~~

**Urban Area:** Land associated with, or part of, a defined city or town municipality. This title of the Code of Ordinances applies to urban or urbanizing, rather than rural, areas.

**User:** Any person who discharges, causes or permits the discharge of

stormwater into the City's public stormwater management system.

User Fee: A fee levied on users of a stormwater management system for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works.

Watershed Master Plan: The plan that an engineer/designer formulates to manage urban and/or rural stormwater runoff for a particular development project or drainage area. It typically addresses such subjects as the characterization of the site development and grading plan; existing and projected conditions; peak rates of runoff, flow duration, runoff volumes for various return frequencies; locations, criteria and sizes of detention or retention ponds and conveyances; runoff control features; land parcels, easement locations, opinions of probable costs, measures to enhance runoff quality, salient regulations, and how the plan addresses them, and consistency with secondary objectives such as public recreation, aesthetics, public safety, and groundwater recharge. It is usually submitted to regulatory officials the Board of City Commissioners for their review for and acceptance or adoption.

Wetlands: Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes.

- a. A predominance of hydric soils;
- b. Are inundated or saturated by the surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- c. Under normal circumstances support the prevalence of such vegetation.

(Ord. 4817, 02-25-97; Ord. 5278, 09-23-03)

14.1-01-034. Scope. Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities for an approved development must submit a Stormwater Management Plan including an erosion and sediment control plan to the City Engineer. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until approval of the Stormwater Management Plan or a waiver of the approval requirement has been obtained in strict conformance with the provisions of this Title. In addition, no land disturbing activities shall occur until all initial best management practices (BMPs) have been implemented. A waiver of the stormwater management plan does not relieve the applicant from the stormwater permit requirements, including permit fees and an approved erosion and sediment control plan.

Exemptions to the requirements of this section Title include:

1. Any part of a subdivision if a plat of the subdivision has been

approved by the Board of City Commissioners and recorded with the Register of Deeds County Recorder on or before the effective date of this ~~€Title~~ (January 1, 1998). A stormwater permit for land disturbing activities on such properties may still be required, ~~however,~~ in accordance with this ~~€Title~~;

2. Land disturbing activity involving the construction of a single-family or a two-family dwelling;

3. A parcel for which a building permit has been approved on or before the effective date of this ~~€Title~~;

4. Installation of a fence, sign, telephone, and electric poles and other kinds of posts or poles; or

5. Emergency work to protect life, limb, or property.

The City Engineer may waive any requirement of this title upon making a finding that compliance with the requirement will involve an unnecessary hardship, and the waiver of such requirement will not adversely affect the standards and requirements put forth in Chapter 14.1-05. The City Engineer may require as a condition of the waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements. At the City Engineer's discretion, a waiver request may, or at the request of a City Commissioner a waiver request shall, be brought before the Board of City Commissioners for consideration, and approval or denial.  
(Ord. 4817, 02-25-97)

## CHAPTER 14.1-02 - STORMWATER MANAGEMENT PLAN - ~~APPLICATION~~

### 14.1-02-01. Application.

#### 14-1-02-01. Application Procedure.

a. Written Application. A written application for ~~S~~stormwater - ~~M~~management ~~P~~plan approval, along with the proposed ~~S~~stormwater ~~M~~management ~~P~~plan, shall be filed with the City Engineer. The application shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is permitted in the underlying zoning district, and adequate evidence showing the proposed use will conform to the standards set forth in this ~~€Title~~. Prior to applying for approval of a ~~S~~ stormwater ~~M~~management ~~P~~plan, it is recommended that the applicant have the ~~S~~stormwater ~~M~~management ~~P~~plan reviewed by an all affected public agencies.

b. Copies. ~~Two~~ The number of sets of legible copies of the drawings as indicated by the City Engineer and required information shall be submitted to the City Engineer and shall be accompanied by a receipt from the City to document the payment of all required fees for processing

and approval as set forth in Section 14.1-02-03 herein. Plans shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed.

c. Waiver. The City Engineer may waive any requirement of this Title upon making a finding that compliance with the requirement will involve an unnecessary non-economic hardship, and the waiver of such requirement will not adversely affect the standards and requirements put forth in Chapter 14.1-05. The City Engineer may require as a condition of the waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements. At the City Engineer's discretion, a waiver request may, or at the request of a City Commissioner a waiver request shall, be brought before the Board of City Commissioners for consideration, and approval or denial.

(Ord. 4817, 02-25-97)

14.1-02-02. Contents of Stormwater Management Plan. At a minimum, the Stormwater Management Plan shall contain the following information:

a. Written Report. A written report discussing pre- and post-development hydrology and hydraulic analysis, erosion and sedimentation control during and after construction, protective measures for proposed and existing structures, and water quality concerns. The contents of the report shall be in accordance with the recommended format in the City's Design Standards Manual and shall contain the following additional information:

i. The name and address of the applicant;

ii. The section, township and range;

iii. The acreage of the development and the acreage of the disturbed area;

iv. A description of the existing soils on the site, if necessary, including a map indicating soil types of the areas to be disturbed, information on the suitability of the soils for the type of development proposed, potential for erosion, the type of stormwater management system proposed, and any remedial steps to be taken by the developer to render the soils suitable; and

v. The current land use of the area in which the site is located.

b. Maps. The following maps shall be included with the written report. Each map shall contain a north point indicator, date, scale of drawing, and the datum.

i. Location Map. The location of the tract at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, towns, districts or other defining landmarks, and a watershed boundary map illustrating the project site location as a subwatershed within the watershed of the larger or major drainage basin.

4ii. Existing sSite Conditions mMap. A map of existing site conditions showing the site and immediately adjacent areas, including:

a. The name and address of the applicant, the section, township and range, and the north point, date and scale of drawing, and number of sheets;

b. The location of the tract by an insert map at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, towns, and districts or other defining landmarks;

e1. Existing topography with a contour interval appropriate to the topography of the land, but in no case having a contour interval greater than two (2) feet;

d2. A watershed boundary map illustrating the project site location as a subwatershed(s) within the watershed of the larger or major drainage basin site or development;

e3. A delineation of streams, rivers, public waters and the presence or absence of wetlands located on and immediately adjacent to the site, including depth of water, a general description of vegetative cover found within the site, a statement of general water quality, and any classification given to the water body by state or federal agencies;

f4. Location and dimensions of existing stormwater drain systems and natural drainage patterns on and immediately adjacent to the site delineating in which direction and at what rate stormwater is conveyed from the site, identifying the receiving stream, river, public ditch, or wetland, and setting forth those areas of the unaltered site where stormwater collects or passes;

g. A description of the soils on the site, including

a map indicating soil types of the areas to be disturbed, containing information on the suitability of the soils for the type of development proposed, potential for erosion, the type of stormwater management system proposed, and any remedial steps to be taken by the developer to render the soils suitable.

h5. Current extent of vegetative cover and a clear delineation of any vegetation proposed for removal; and

i. The current land use of the area in which the site is located; and

j6. The 100-year flood plains, flood fringes, and floodways: as designated on a FEMA published digital flood insurance rate map (DFIRM) or as determined by a site specific analysis.

2. Site Construction Plan. A Site Construction Plan shall be provided, including:

a. Locations and dimensions of all proposed land disturbing activities and any phasing or scheduling of those activities;

b. Approximate locations of all temporary soil or dirt stockpile areas;

c. Location and description of all construction site erosion control measures necessary to meet the requirements of this ordinance;

d. A schedule of anticipated starting and completion dates for each land disturbing activity, including the installation of construction site erosion control measures needed to meet the requirements of this ordinance; and

e. Provisions for maintaining the construction site erosion control measures prior to, during, and after construction.

3iii. Plans of Final Site Conditions Map. A Plan of Final Site Conditions on the same scale as the existing site conditions map showing the proposed site changes shall be provided, including:

a1. The proposed final grading plan shown at contours at the same interval as provided above or as required to clearly indicate the relationship of the proposed

changes to existing topography and remaining features. This grading plan should also indicate areas of cut and fill activity greater than three (3) feet;

b. A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size and description of proposed landscape materials which will be added to the site as part of the development;

2. A watershed boundary map illustrating the proposed subwatershed(s) within the site or development;

€3. A drainage plan of the developed site delineating the direction and at what rate of stormwater runoff and how it will be conveyed from the site and setting forth the areas of the site where stormwater will be collected along with the method of collection including ponds, storm sewer or channels;

D4. The proposed size, alignment, and intended use of any structures to be erected on the site;

€5. A clear delineation and tabulation of all areas which shall be paved or surfaced, including a description of the surfacing material to be used; and

F6. Any other information pertinent to the particular project which, in the opinion of the applicant, is necessary for the review of the project.

c. Erosion and Sediment Control Plan. The erosion and sediment control plan shall include a report and map containing information as outlined in the Design Standards Manual and the following information:

i. The locations and dimensions of all proposed land disturbing activities as they relate to the specified phases detailed in the Design Standards Manual.

ii. Approximate locations of all stockpile areas;

iii. Location and detailed description of all construction site best management practices (BMPs) necessary to meet the requirements of this Title;

iv. A schedule of anticipated starting and completion dates for each phase of activity, including the installation of construction site best management practices (BMPs) needed to meet the

requirements of this Title; and

v. Provisions for maintaining the construction site best management practices (BMPs) throughout all phases of construction including prior to, during, and after construction. This shall include the installation of permanent control measures and the removal of temporary BMPs.

4. Stormwater Management Plan Report. A written report discussing pre and post development hydrology and hydraulic analysis, erosion and sedimentation control during and after construction, protective measures for proposed and existing structures, and water quality concerns. The contents of the report shall be in accordance with the recommended format in the City's Stormwater Design Standards Manual (Manual).

3. Certification. All stormwater management plans, drawings, specifications, and computations for stormwater management facilities submitted for review shall contain a validated seal and be signed by a Professional Engineer registered in the State of North Dakota. This requirement will be met as part of the properly completed stormwater management plan, as described in the Design Standards Manual.  
(Ord. 4817, 02-25-97)

14.1-02-034. Fees. All applications for Sstormwater Mmanagement Pplan approval shall be accompanied by a processing and approval fee established by the City Engineer. In the case of complex applications or regional stormwater facilities, a secondary fee schedule will be used as established by the City Engineer. All fees under this tTitle shall be reviewed and approved by the Board of City Commissioners.  
(Ord. 4817, 02-25-97)

## ~~CHAPTER 14.1-03 – STORMWATER MANAGEMENT PLAN – REVIEW~~

### 14.1-02-02. Review.

14-1-03-01. Process. Stormwater Mmanagement Pplans meeting the requirements of Chapter Section 14.1-02-01 shall be submitted to the City Engineer for reviewed by the City Engineer for and compliance with the standards of Chapter Section 14.1-042-03. For plans within the City's extraterritorial area, the City Engineer will provide copies of the stormwater management plan to the County Engineer and the Burleigh County Water Resource District for review and comment. After evaluation of the stormwater management plan, tThe City Engineer shall approve, approve with conditions, or deny the Sstormwater Mmanagement Pplan. For plans within the City's extraterritorial area, the City Engineer will not approve a stormwater management plan without written concurrence of the County Engineer. If a particular stormwater management plan involves a complex application or has

the potential for significant controversy, the City Engineer or the applicant may bring the proposed stormwater management plan before the Board of City Commissioners for consideration and public comment.

~~14.1-03-02. Duration. Approval of any plan submitted under the provisions of this ordinance shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of approval, the applicant makes a written request to the City Engineer for an extension of time to commence construction setting forth the reasons for the requested extension, the City Engineer may grant one extension of not greater than one single year. Receipt of any request for an extension shall be acknowledged by the City Engineer within fifteen (15) days. The City Engineer shall make a decision on the extension within thirty (30) days of receipt. Any plan may be revised in the same manner as originally approved. Any denied application may be resubmitted with additional information addressing the concerns contained within the denial. The resubmittal is subject to all applicable fees and shall be considered as a new application.~~

~~14.1-03-032. Conditions. A Sstormwater Mmanagement Pplan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this ordinance Title are met. Such conditions may, among other matters, limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to insure buffering, require the acquisition of certain lands or easements, and require the conveyance to the City of Bismarck or other public entity of certain lands or interests therein. The City Engineer may specify special requirements for specific watersheds within the City and its extraterritorial jurisdiction. The nature of these requirements will be subject to the unique environmental and natural resource environment of each subwatershed. Approval of a plan shall bind the applicant to perform all of the conditions and requirements of the plan prior to any land disturbing activities.~~

## ~~CHAPTER 14.1-04 - STORMWATER MANAGEMENT PLAN - APPROVAL STANDARDS~~

### ~~14.1-02-03. Approval Standards.~~

~~14.1-04-01. General. This section describes approval standards against which proposed Sstormwater Mmanagement Pplans will be measured. A S stormwater Mmanagement Pplan which fails to meet the standards contained in this section shall not be approved by the City Engineer or the Board of City Commissioners. Other standards, such as state and federal standards, shall also apply. If two standards of different agencies conflict, the more restrictive standards shall apply.~~

It shall be the responsibility of the applicant to obtain any required permits

from other governmental agencies having jurisdiction over the work to be performed. Typically, such agencies ~~would~~ could include the Burleigh County Water Resource District, the Burleigh County Engineer's Office, the State Water Commission and State Engineer's Office, the State Department of Transportation, the State Health Department, the State Historical Preservation Officer, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and possibly others.

In addition to this Stormwater Management Ordinance, the applicant is responsible for adhering to the requirements of other ordinances contained within the Code of Ordinances for the City of Bismarck, including:

4a. Zoning ordinance regulations contained under Title 14 which are of special interest to new development projects.

2b. Conformance with the requirements of the FP-Floodplain District, Title 14, Section 14-04-19.

3c. Regulations governing the subdivision of land, Title 14, Chapter 14-09.

d. Conformance with the Landscaping and Screening requirements in Title 14, Section 14-03-11.

The following sections describe routine approval standards to be used in evaluating a proposed Sstormwater Mmanagement Pplan.  
(Ord. 4817, 02-25-97)

14.1-04-02. Stormwater Design Standards Manual. The Stormwater Design Standards Manual (~~Manual~~), as adopted and amended by the City of Bismarck, contains the principal standards and design criteria for developing an effective and acceptable Sstormwater Mmanagement Pplan. The Manual contains an overview of the City's Stormwater Management Policy and design objectives as well as a detailed discussion of the contents of Sstormwater Mmanagement Pplans submitted to the City Engineer for approval. The Manual contains detailed criteria for hydrologic evaluations, the design of stormwater management system facility components, water quality protection standards, instructions for the development of an erosion and sedimentation control plan, and requirements for easements and rights-of-way. The Manual also contains a discussion of operation and maintenance requirements, standard forms to be used, and standard construction details adopted by the City.  
(Ord. 4817, 02-25-97)

14.1-04-03. Models/Methodologies/Computations. Hydrologic models and design methodologies used to determine runoff conditions and to analyze stormwater management structures and facilities shall be approved in advance by the City Engineer. All Sstormwater Mmanagement Pplans, drawings, specifications, and computations for stormwater management facilities submitted

for review shall contain a validated seal and be signed by a Professional Engineer registered in the State of North Dakota. This requirement will be met as part of the properly completed Stormwater Management Plan Report, as described in the Stormwater Design Standards Manual.  
(Ord. 4817, 02-25-97)

14.1-04-04. Construction Plans and Specifications.

a. Construction Plans and Specifications for Public Facilities within the Corporate Limits. The construction plans and specifications prepared for the construction of the public stormwater management facilities within the corporate limits or on land that will be annexed prior to development must:

1. Be consistent with the Stormwater Management Plan approved by the City Engineer.
2. Be in conformance with the requirements of the City of Bismarck Municipal Construction Specifications for Municipal Public Works Improvements, current special provisions, and any other necessary permits issued by other governmental agencies.
3. Be sealed and signed by a Professional Engineer registered in the State of North Dakota.
4. Be submitted to the City Engineer for approval.
5. Contain a drawing or drawings delineating the erosion and sediment control plan, including details of silt fences, storm drain inlet protection, and other best management practices (BMPs). The construction specifications shall contain technical specifications describing erosion, sedimentation and water control requirements during and after construction operations.
5. No construction may commence until approval of the construction plans and specifications has been received.

The set of construction plans, in a format acceptable to the City Engineer, shall contain a drawing or drawings delineating the erosion and sedimentation management plan, including details of silt fences, storm drain inlet protection, and other construction erosion control facilities. The construction specifications shall contain technical specifications describing erosion, sedimentation, and water control requirements during and after construction operations.

No construction may commence until the construction plans and specifications have been approved by the City Engineer and all other applicable permits and approvals are received from outside agencies.

(Ord. 4817, 02-25-97)

5b. Construction Plans and Specifications for Private Facilities within the Corporate Limits. The construction plans and specifications prepared for the construction of private stormwater management facilities within the corporate limits or on land that will be annexed prior to development must:

a1. Be consistent with the stormwater management plan approved by the City Engineer.

b2. Be sealed and signed by a Professional Engineer registered in the State of North Dakota.

e3. Be submitted to the City Engineer for approval.

d4. Contain a drawing or drawings delineating the erosion and sediment control plan, including details of silt fences, storm drain inlet protection, and other best management practices (BMPs). The construction specifications shall contain technical specifications describing erosion, sedimentation and water control requirements during and after construction operations.

No construction may commence until all applicable permits and approvals are received from the City and outside agencies.

c. Construction Plans and Specifications for Public Facilities within the Extraterritorial Area. The construction plans and specifications prepared for the construction of public stormwater management facilities within the extraterritorial areas must:

1. Be consistent with the stormwater management plan approved by the City Engineer.

2. Be in conformance with the requirements of Burleigh County any other necessary permits issued by other governmental agencies.

3. Be sealed and signed by a Professional Engineer registered in the State of North Dakota.

4. Be submitted to the County Engineer for approval.

5. Contain a drawing or drawings delineating the erosion and sediment control plan, including details of silt fences, storm drain inlet protection, and other best management practices (BMPs). The construction specifications shall contain technical specifications describing erosion, sedimentation and water control requirements during and after construction operations.

No construction may commence until the construction plans and specifications have been approved by the County Engineer and all other applicable permits and approvals are received from outside agencies.

14.1-04-05. Construction Activities. Construction operations must at a minimum comply with the following requirements;:

1a. Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, soil concentrators or other appropriate controls as deemed necessary. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site; the receiving channels; or any wetland.

2b. Waste and Material Disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff or wind into a receiving channel, storm sewer system, or wetland.

3c. Tracking Management. Each site shall have roads, access drives and parking areas of sufficient width, length and surfacing to prevent sediment from being tracked onto public or private roadways prior to any land disturbing activities. Any material reaching or placed on a public or private road shall be removed (not by flushing) before the end of each work day or more frequently as needed.

4d. Water Quality Protection Chemical Contamination. The construction contractor shall be required to control oil and fuel spills, and the discharge of any chemicals to prevent such spills or discharges from entering any water course, sump, sewer system, water body, or wetland.

5e. Site Erosion and Sedimentation Control. Construction operations must include erosion and sedimentation control measures meeting accepted design criteria for wind and water erosion, standards and specifications contained in the Stormwater Design Standards Manual.

f. Concrete Wash Out Area. The developer or his construction contractor shall identify and construct a concrete wash out area to standards and specifications contained in the Design Standards Manual. The party responsible for the installation of the concrete wash out area is responsible for maintenance and removal.

(Ord. 4817, 02-25-97)

14.1-04-06. Stormwater Management Criteria for Permanent Facilities. Stormwater control facilities included as part of the final design for a permanent development shall be addressed in the Stormwater Management Plan and

shall meet the following criteria:

4a. Pre-versus Post Hydrological Response of Site. An applicant shall install or construct, on or for the proposed land disturbing or development activity, all stormwater management facilities necessary to manage increased runoff so that the two (2) year, ten (10) year and one hundred (100) year storm peak discharge rates existing before the proposed development shall not be increased and accelerated channel erosion will not occur as a result of the proposed land disturbing or development activity. ~~In lieu of the installation or construction of stormwater management facilities,~~ an applicant may make an in-kind or monetary contribution for the development and maintenance of regional stormwater management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons, including the applicant. The City Engineer shall establish this fee based upon an approved master plan and an analysis of drainage and flood protection benefits provided to property directly impacted by the regional stormwater management facilities.

2b. Natural Features of the Site. The applicant shall give consideration to ~~reducing~~ reduce the need for stormwater management facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity or quality of these natural features.

3c. Stormwater Management Strategies. The following stormwater management practices shall be investigated in developing a ~~S~~stormwater ~~M~~management ~~P~~plan:

ai. Natural infiltration of precipitation and runoff on-site, if suitable soil and geological conditions are available. The purpose of this strategy is to encourage the development of a ~~S~~stormwater-~~M~~management ~~P~~plan that encourages natural infiltration. This includes providing as much natural or vegetated area on the site as possible, minimizing impervious surfaces, and directing runoff to vegetated areas rather than to adjoining streets, storm sewers and ditches. This shall include the identification of areas with known high water tables, natural springs and other areas with ground water implications.

bij. The flow attenuation by use of open vegetated swales and natural depressions.

eiii. Stormwater detention facilities.

d~~i~~v. Stormwater retention facilities (on a case by case

basis).

v. Storm sewer facilities.

A combination of successive practices may be used to achieve the applicable minimum control requirements specified in the above four strategies. Justification shall be provided by the applicant for the method selected.

4d. Adequacy of Outlets. The adequacy of any outlet used as a discharge point for proposed stormwater management facilities must be assessed and documented to the satisfaction of the City Engineer. The hydraulic capacities of downstream natural channels, reaches, storm sewer systems, or streets shall be sufficient to receive post-development runoff discharges and volumes without causing increased property damages, or any increase in the established base floodplain elevation (BFE), or a change in the conveyance of the base flood. If a floodplain or floodway has not been established by the Federal Emergency Management Agency, then the applicant shall provide a documented analysis and estimate of the base flood elevation as certified by a Professional Engineer registered in the State of North Dakota. In addition, projected velocities in downstream natural or manmade channels shall not exceed that which is reasonably anticipated to cause erosion unless protective measures acceptable to the City Engineer are approved and installed as part of the Stormwater Management Plan. The assessment of outlet adequacy shall be included in the Stormwater Management Plan and shall be certified by a Professional Engineer registered in the State of North Dakota.

5e. Stormwater Detention/Retention Facilities. Stormwater detention or retention facilities proposed to be constructed in the Stormwater Management Plan shall be designed according to the most current technology as reflected in the Stormwater Design Standards Manual.

(Ord. 4817, 02-25-97)

14.1-04-07. Operation, Maintenance and Inspection. All stormwater management facilities shall be designed to minimize the need for maintenance, to provide access for maintenance purposes, and to be structurally sound. All stormwater management facilities shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in stormwater runoff. The City Engineer or Stormwater Program Coordinator may inspect all stormwater management facilities at any time. Inspection records will be kept on file at the City Engineering Department with the Stormwater Program Coordinator. It shall be the responsibility of the applicant to obtain any necessary public easements or other property interests to allow access to the stormwater management facilities for inspection and maintenance purposes. The City Engineer shall retain enforcement powers for assuring adequate operation and

maintenance activities through permit conditions and penalties for noncompliance orders.  
(Ord. 4817, 02-25-97)

14.1-04-08. Easements and Bonds. Easements or bonds may be required as conditions to the issuance of a permit.  
(Ord. 4817, 02-25-97)

14.1-04-09. Management of Site Vegetation. The applicant shall provide for the installation and maintenance of vegetation on development property in accordance with the following criteria:

4a. Use of Impervious Surfaces. No person shall apply fertilizer to or deposit grass clippings, leaves, or other vegetative materials on impervious surfaces, or within stormwater drainage systems with impervious liners or conduits including streets and gutters.

2b. Unimproved Land Areas. Except for driveways, sidewalks, patios, areas occupied by structures or areas which have been improved, all areas shall be covered by plants, or an approved vegetative growth cover or non-erosive pervious surface.

3c. Use of Pervious Surfaces. No person shall deposit grass clippings, leaves, or other vegetative materials, with the exception of normal mowing or weed control, within natural or manmade drainageways, wetlands, or within wetland buffer areas.

(Ord. 4817, 02-25-97)

14.1-04-10. Plan Applicability. A plan issued under this Title runs with the land and is a condition of plat approval. Any owner or subsequent owner of any parcel within the plat must comply with the plan or any approval, revision or modification of the plan. Any owner or subsequent owner shall be aware of and responsible for continued implementation of this plan.

(Ord. 4817, 02-25-97)

11. Duration. Approval of any plan submitted under the provisions of this Title shall expire one (1) year after the date of approval unless a stormwater permit is issued and construction has commenced in accordance with the plan. However, if prior to the expiration of approval, the applicant makes a written request to the City Engineer for an extension of time to commence construction setting forth the reasons for the requested extension, the City Engineer may grant one extension of not greater than one (1) year. Receipt of any request for an extension shall be acknowledged by the City Engineer within fifteen (15) days. The City Engineer shall make a decision on the extension within thirty (30) days of receipt.

12. Revisions and Resubmittals. Any plan may be revised in the same manner as originally approved and resubmitted. Any denied application may be

resubmitted with additional information addressing the concerns contained within the denial. The resubmittal is subject to all applicable fees and shall be considered as a new application.

## ~~CHAPTER 14.1-05 – STORMWATER MANAGEMENT PERMITS~~

### 14.1-02-04. Stormwater Management Permits.

~~14-01-05-01. Stormwater Management.~~ It is unlawful to initiate land development, land disturbing, or other activities which result in an increase in stormwater quantities, degradation of stormwater quality, or restriction of flow in any storm sewer system, open ditch or natural channel, stormwater easement, water body, or wetland outlet within the jurisdiction of the City, without having first complied with the terms of this ~~¶~~Title.

*(Ord. 4817, 02-25-97)*

### 14.1-05-02. Stormwater Management Permits.

4a. Mandatory Permits. Any person proposing a development or project which involves land development, land disturbing, or other activities as defined in this ~~¶~~Title, shall obtain a stormwater management permit before initiating those activities. If the stormwater management plan submittal requirement is waived or deemed exempt by the City Engineer, a stormwater permit must be obtained in accordance with this section.

2b. Permit Application. All persons subject to meeting the requirements for a mandatory stormwater permit shall complete and file with the City Engineer an application in the form prescribed by the City Engineering Department and accompanied by a fee established by the City Engineer and adopted by the Board of City Commissioners. The permit application shall be accompanied by a the following:

- i. A phased erosion and sediment control plan;
- ii. A final grading plan;
- iii. An approved, or revised Sstormwater Mmanagement Pplan as prescribed under Chapter Section 14.1-02-01 of this ~~¶~~Title - or a waiver of this requirement;
- iv. Verification that all best management practices (BMPs) have been installed; and
- v. The applicable fee.

The City Engineer will evaluate the data furnished as part of the ~~S~~ stormwater Mmanagement Pplan and may require additional information.~~F~~ or permit applications within the City's extraterritorial area, the City Engineer will provide copies of the permit application to the County Engineer for review and comment. After evaluation and acceptance of the ~~S~~stormwater Mmanagement Pplan, the City Engineer may issue a stormwater management permit subject to any terms and conditions

deemed necessary. For permit applications within the City's extraterritorial area, the City Engineer will not approve a stormwater permit without written concurrence of the County Engineer.

3c. Permit Conditions. Stormwater management permits are issued subject to all provisions of this ~~¶~~Title and all other applicable regulations, user charges and fees established by the City. Permits may contain any of the following conditions:

aj. The user fee for a stormwater outlet utilizing a ~~regional stormwater management facility.~~

bj. Limits on the maximum rate of stormwater discharge;

ciii. Limits on water quality degradation of stormwater discharge;

dii. Requirements for the installation, operation and maintenance of stormwater detention/retention facilities;

ey. Compliance schedule;

fyi. Requirements for notification to and acceptance by the City Engineer of any land disturbing activities which have the potential for increasing the rate of stormwater discharge resulting in degradation of stormwater quality; and

gvii. Other conditions as deemed appropriate by the City Engineer to insure compliance with this ~~¶~~Title.

4d. Permit Duration. Permits must be issued for a time period specified by the City Engineer. The applicant shall apply for permit renewal a minimum of ~~ninety (90)~~ thirty (30) days prior to the expiration of the applicant's existing permit. The terms and conditions of a permit are subject to modification by the City Engineer during the term of the permit as set forth in ~~paragraph five (5)~~ herein. Failure to renew the permit prior to the expiration date will require the permittee to pay a late fee as prescribed by the City Engineer. While the permit may have expired, the permittee remains responsible for the activities and site governed under the permit until the permit is terminated.

5e. Permit Modification. Permits may be modified by the City Engineer for just cause upon thirty (30) calendar days' notice. Just cause shall include but not be limited to:

aj. Promulgation of a new applicable nationwide and or statewide permit standards;

bii. Changes in the requirements of this ordinance Title;

eiii. Changes in the process used by the permittee or changes in discharge rate, volume, or character; and

div. Changes in the design or capability of receiving stormwater facilities.

The applicant must be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of the change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

6f. Permit Amendments. Stormwater permits may be amended only by a written request submitted by the Permittee to the City Engineer. This request shall contain the reason for the change, and documentation related to any additional impacts which may result from amendment approval, and shall include an amendment to the approved stormwater management plan. Amendment requests submitted prior to issuance of a stormwater permit shall be considered part of the original submittal. Amendment requests filed after permit approval shall be considered and reviewed under the same procedures and guidelines as used for the a new stormwater permit applications under this ¶Title.

7g. Permit Transfer. A permit runs with the property it covers and is transferable to new owners in its entirety or by parcel, with each parcel being subject to the permit and any conditions which apply to that parcel. A Notice of Transfer is required in conjunction with the transfer of a parcel of land. The current permittee is responsible for submitting the required Notice of Transfer to the Stormwater Program Coordinator within ten (10) business days of the transfer of a parcel of land.

8h. Monitoring Facilities. The City Engineer may require the applicant to provide and operate at the applicant's expense a monitoring facility to allow inspection, sampling, and flow measurements of each stormwater facility component. Where at all possible, the monitoring facility shall be located on the property of the applicant as opposed to on public rights-of-way. Ample room must be allowed for accurate flow measuring and sampling and the facility shall be kept in a safe and proper operating condition.

9j. Inspection. The City Engineer or Stormwater Program Coordinator may inspect the stormwater management facilities of any permittee to determine compliance with the requirements of this ¶Title. A permittee shall allow the City Engineer or Stormwater Program Coordinator to enter upon the premises at all reasonable hours for the purposes of inspection, sampling or record examination. The City Engineer or Stormwater Program Coordinator shall be allowed to set up

equipment on the permittee's premises as required for the purpose of collecting samples and flow recording.

j. Termination. A stormwater permit shall be terminated after a review by the City Engineer has determined that a development site has been fully constructed and is reasonably protected from erosion based on constructed conditions. A termination review shall be requested by the permittee or may be initiated by the City Engineer after the expiration date of the permit.

Prior to termination of the stormwater permit an amended stormwater management plan must be submitted to the City Engineer documenting any changes to the original stormwater management plan. The amended stormwater management plan shall be certified by a Professional Engineer registered in the State of North Dakota.

*(Ord. 4817, 02-25-97)*

14.1-05-03. Final Stormwater Management Plan. Upon completion of all required construction activities, the permit applicant shall submit to the City Engineer the final Stormwater Management Plan to document any change to the original Stormwater Management concept. The final Stormwater Management Plan shall contain Record Drawings showing the final configuration for all improvements as constructed. The final Stormwater Management Plan and Record Drawings shall be certified by a Professional Engineer registered in the State of North Dakota.

*(Ord. 4817, 02-25-97)*

## **CHAPTER 14.1-063 - ENFORCEMENT**

14.1-063-01. Remedies and Enforcement Powers. The City shall have the following remedies and enforcement powers:

1. Withhold Permits. The City may deny or withhold all permits, certificates or other forms of authorization as to any applicant for a stormwater permit. Instead of withholding or denying an authorization, the City may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The City may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, develops or otherwise causes an uncorrected violation of a provision of this Title or of a condition or qualification of a permit, certificate, approved stormwater management plan or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the stormwater permit or other approval is sought is the property in violation.

2. Revocation of Stormwater Permits. A stormwater permit may be revoked when the City Engineer determines that:

a. There is departure from the plans, specifications, or conditions as required under terms of a stormwater permit or approved stormwater management plan;

b. The plans, specifications, or conditions were obtained by false representation or the stormwater permit was issued by mistake; or

c. Any of the provisions of this Title are being violated as to the project under the stormwater permit.

3. Revocation of Stormwater Management Plan or Other Approval. When a violation of this Title involves a failure to comply with an approved stormwater management plan or conditions to which the approval of such plan was made subject, the City Engineer may, upon giving proper notice, revoke the plan approval or other approval, allow work to continue on condition of strict compliance with all applicable rules and regulations, or impose such other conditions as the City Engineer deems appropriate and necessary.

4. Suspension of Stormwater Management Plan or Stormwater Permit. The City Engineer shall have authority to suspend a stormwater management plan or a stormwater permit upon finding that an actual or threatened discharge exists or when such conditions present an imminent or substantial danger to the health or welfare of persons downstream, environment, natural resources, stormwater quantity, water quality, and/or environmentally sensitive lands. Upon issuance of suspension notice and order, all work in the area covered by the plan and/or permit, shall cease immediately. If any person fails to comply with the suspension order, the City shall commence whatever steps are necessary to obtain compliance. The City Engineer may lift the suspension order upon proof of compliance with all stormwater management plan or stormwater permit conditions.

Whenever the City Engineer orders the suspension of a stormwater management plan or stormwater permit and declares the situation to be an emergency, the City Engineer shall serve a notice and order on the permittee personally, or by registered or certified mail. The permittee has the right to an informal hearing before the City Engineer by making an appointment with the City Engineer. The informal hearing must be held within five (5) days of service of the notice and order. Following the hearing, the City Engineer may affirm, modify or rescind the stop work order.

5. Stop Work Order. The City Engineer shall have authority to issue a stop work order, ordering suspension of all work and activity at the site, upon finding that an actual or threatened discharge exists or when such conditions present an imminent or substantial danger to the health or welfare of persons downstream, the environment, natural resources, stormwater quantity, water quality, and/or environmentally sensitive lands. Upon issuance of a stop work order, all work in the area covered by the stormwater permit, if a permit has been

issued, shall cease immediately. If any person notified of such stop work order fails to comply, the City shall commence whatever steps are necessary to obtain compliance. The City Engineer may lift the stop work order upon proof of compliance with all plan or permit requirements and conditions.

Whenever the City Engineer issues a stop work order and declares the situation to be an emergency, the City Engineer shall serve a notice and order on the person performing the work personally, or by registered or certified mail. The person performing the work, owner or permittee has the right to an informal hearing before the City Engineer by making an appointment with the City Engineer. The informal hearing must be held within five (5) days of service of the notice and order. Following the hearing, the City Engineer may affirm, modify or rescind the stop work order.

6. Injunctive Relief. The City may seek an injunction or other equitable relief in court to stop any violation of this Title or of a stormwater permit, stormwater management plan, certificate or other form of authorization granted hereunder.

7. Abatement. The City may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

8. Restitution. The City may seek an order requiring restitution as a condition to be met by a person before the person's stormwater permit is restored, before the person is allowed to lawfully discharge into the sewer system, or before other action may be taken by the person as determined by an appropriate order.

9. Costs of Damage. Any person violating any of the provisions of this Title or who initiates an activity that causes a deposit, obstruction, or damage or other impairment to the City's stormwater management system is liable to the City for any expense, loss, or damage caused by the violation or the discharge. The City may bill the person violating this Title the costs of any cleaning, repair or replacement work caused by the violation of stormwater discharge, and if unpaid within ninety (90) days may result in assessment of such costs against the violator's property.

10. City Attorney's Fees and Costs. In addition to the fees and penalties provided herein, the City may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this Title or the orders, rules, regulations and permits issued hereunder.

11. Other Remedies. The City shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this Chapter or related provisions.

12. Remedies Cumulative. The remedies and enforcement powers established in this Chapter are cumulative.

14.1-06-01. Emergency Suspension of Permits. The City Engineer may for cause order the suspension of the stormwater management permit of a person or parcel owner when it appears to the City Engineer that an actual or threatened discharge presents or may present an imminent or substantial danger to the health or welfare of persons downstream, substantial danger to the environment, or a violation of any permit conditions imposed by this title. If any person is notified of the suspension of a stormwater management permit and/or a person fails to comply voluntarily with the suspension order, the City Engineer shall commence whatever steps are necessary to obtain compliance, including judicial proceedings. The City Engineer may reinstate the stormwater management permit upon proof of compliance with all permit conditions.

Whenever the City Engineer orders the suspension of a stormwater management permit pursuant to the emergency provisions of this section, the City Engineer shall serve notice on the permittee personally, or by registered or certified mail. The permittee has the right to an informal hearing before the City Engineer upon request made in writing and filed with the City Engineer. The informal hearing must be held within five (5) days of the request. Following the hearing, the City Engineer may affirm, modify or rescind the order.

Any applicant dissatisfied with an order the City Engineer issued pursuant to this section may request a hearing before the Board of City Commissioners by filing a written request for a hearing with the City Engineer, within fifteen (15) days of receipt of the order, who shall inform City Administration. The hearing must be held within thirty (30) days of receipt of the request, or as subject to the current meeting schedule, whereupon the Board of City Commissioners may affirm, modify or rescind the order. A request for a hearing filed pursuant to this section does not stay the order while the hearing is pending.  
(Ord. 4817, 02-25-97)

14.1-03-02. Administrative Search Warrant. Whenever the City Engineer is denied access to a property to inspect for compliance with this Title, he/she may secure an administrative search warrant from the municipal judge in accordance with Chapter 29-29.1, N.D.C.C.

14.1-06-02. Revocation of a Permit. A stormwater management permit may be revoked following notice and an opportunity for a hearing in accordance with Sections 14.1-06-03 and 14.1-06-04. The Board of City Commissioners may revoke a stormwater management permit for cause, including but not limited to:

- a. Violation of any terms or conditions of the stormwater management permit;
- b. False statements on any required reports;

e. ~~Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or~~

d. ~~Any other violation of this title or related ordinance.~~

The Board of City Commissioners may suspend a stormwater management permit and order a temporary work stoppage to bring a project into compliance. Notice of such an order shall be given and a hearing provided in accordance with Sections 14.1-06-03 and 14.1-06-04.  
(~~Ord. 4817, 02-25-97~~)

14.1-063-03. Notification Notice and Order. ~~Except for emergency orders under Section 14.1-064-01(4) and (5), whenever the City Engineer finds that any person has violated or is violating this Title, a stormwater discharge permit and/or its conditions, an approved stormwater management plan, or any prohibition, limitation or requirement contained herein, the City Engineer shall serve upon such person a written notice and order stating the nature of the violation. Within thirty (30) days of the date of the notice, unless a shorter different time frame is set by the City Engineer due to the nature of the violation, a plan for the satisfactory correction thereof must be submitted to completed to the satisfaction of the City Engineer.~~  
(~~Ord. 4817, 02-25-97~~)

14.1-063-04. Appeal. ~~All decisions of the City Engineer dealing with violations of a stormwater permit or this Title or the issuance or non-issuance of the permits required by this Title are subject to appeal to the Board of City Commissioners upon written notice of appeal filed within fifteen (15) days of issuance of the decision. If no appeal is filed within the time period specified, the decision of the City Engineer is final. An appeal stays the City Engineer's decision unless the City Engineer declares the order to be an emergency and certifies to the board that a stay would cause imminent danger to life and property in which case the decision may be stayed only by a restraining order from the Board of City Commissioners or a court of record.~~

14.1-063-05. Hearing. ~~Upon receiving the notice of appeal the Board of City Commissioners shall set a date for a hearing within thirty (30) days of receipt of the notice of appeal. Notice of the time and place for the hearing must be served upon the appellee by certified mail or in person not less than five (5) days prior to the hearing.~~

14.1-06-04. Hearing. ~~If the violation if not corrected by timely compliance, the City Engineer may order any permittee who causes or allows a violation to a stormwater permit to show cause before the Board of City Commissioners why the order of the City Engineer should not be upheld. A notice of hearing must be served on the permittee specifying the time and place of a hearing to be held by the Board regarding the order of the City Engineer, and directing the permittee to show cause before the Board why the order of the City Engineer should not be upheld. The notice must be served personally or by registered or certified mail at least ten (10) days before the hearing. The evidence submitted at the hearing shall be considered by the Board which shall then either uphold, modify or rescind the order of the City Engineer. An appeal of the Board's decision may be taken according to law.~~

~~(Ord. 4817, 02-25-97)~~

~~14.1-06-05. Legal Action. The discharge of deposited or eroded materials onto public rights-of-way or public storm sewer systems within the City of Bismarck shall be considered an offense and may result in an order to remove such materials. Removal of such materials shall be at the owners expense based on the properties from which they originated. The owner shall have three (3) days after receiving the notice to remove these materials. If such materials are not removed they may be removed under the City Engineer's direction and any associated costs shall be the responsibility of the owner.~~

~~If any person commences any land disturbing activities which result in increased stormwater quantity or stormwater quality degradation into the City stormwater management system contrary to the provisions of this title, federal or state requirements or any order of the City, the City Attorney may, following the authorization of such action by the Board of City Commissioners, commence action for appropriate legal and/or equitable relief.~~

~~(Ord. 4817, 02-25-97)~~

#### CHAPTER 14.1-074 - PENALTIES

~~14.1-074-01. Penalty. Any person who is found to have violated an order of the Board of City Commissioners made in accordance with this title, or who has failed to comply with any provision of this title and the orders, rules, regulations and permits issued hereunder, is guilty of an offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. Any person who fails to comply with a final or un-stayed decision of City Engineer or a decision of the Board of City Commissioners after a hearing or who has failed to comply with any provision of this Title and the orders, rules, regulations and permits issued hereunder, is guilty of an ordinance violation and subject to the provisions of Chapter 1-02 of the City Code (Penalties). Each day the violation continues constitutes a separate offense.~~

~~(Ord. 4817, 02-25-97)~~

~~14.1-04-02. Abatement. The imposition of a penalty provided by the provisions of this Title shall not preclude the City from instituting proceedings to restrain, correct or abate a continuing violation of this Title. If any person violates any of the provisions of this Title or initiates an activity which causes a deposit, obstruction, or damage or other impairment to the City's stormwater management system and within ten days of a final order issued under this Chapter, fails to obey that order, the City Engineer is hereby authorized to restrain, correct or abate the violation and have the costs incurred assessed against the property.~~

~~14.1-07-02. Costs of Damage. Any person violating any of the provisions of this title or who initiates an activity which causes a deposit, obstruction, or damage or other impairment to the City's stormwater management system is liable to the City for any expense, loss, or damage caused by the violation or the discharge. The City may bill the person violating this title the costs for any cleaning, repair or replacement work caused by the violation of stormwater discharge.~~

*(Ord. 4817, 02-25-97)*

14.1-07-03. City Attorney's Fees and Costs. In addition to the civil penalties provided herein, the City may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this title or the orders, rules, regulations and permits issued hereunder.

*(Ord. 4817, 02-25-97)*

14.1-074-043. Falsifying Information. Any person who knowingly makes any false statements, representations, or certification in any applicable record, report, plan, or other document filed or required to be maintained pursuant to this Title, or storm-water management permit, or who knowingly falsifies, tampers with, or knowingly renders inaccurate any monitoring devices or method required under this Chapter, shall be guilty of an offense.

*(Ord. 4817, 02-25-97)*

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect following final passage and adoption.

**Commissioner Askvig asked to remove item I, third bullet, from consent agenda. Commissioner Grossman made a motion to approve the remaining items on the consent agenda. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman, and Vice President Seminary. Nays: None, the motion carried. President Warford was absent and not voting.**

**Item I, Third Bullet - The Board of City Commissioners considered the introduction of and called for public hearing on Ordinance 5852 for zoning ordinance text amendment relating to Off-Street Parking Requirements, initiated by the City of Bismarck. Bismarck Planning & Zoning Commission recommends approval.**

**Commissioner Askvig asked about page two where it talks about vehicle stacking spaces. He didn't see a definition of it in the materials he was provided so he asked for one. Kim Lee, Planning Manager, said there may be something in the definition section of the ordinance. She said vehicle stacking applies to drive-thru facilities (restaurant, coffee shop, car wash, etc) and it refers to the number of parking spaces that are required prior to the entrance of that facility or the window of a drive-thru restaurant for example. She said the city has always required 12 stacking spaces for a restaurant and has always applied that to other types of drive-thru facilities. The department felt now was a good time to take a look at the ordinance to see if a change needs to be made.**

Commissioner Askvig then asked about page four where it says for uses not specified above (relating to the chart in the ordinance), the Planning and Zoning Commission shall determine the appropriate number of spaces required based on the requirements for a similar use. He asked if that's how things are handled for items not currently covered in our ordinances. Ms. Lee said currently anything that has a vehicle stacking space is a special use permit so it goes before the Planning Commission. For example, if someone wanted to open a drive-thru smoothie shop, they would reference the drive-thru coffee shop. There are some other provisions in the ordinance that would allow the Planning Commission to make that determination based on other similar uses. There are also other provisions in the ordinance that would allow Ray Ziegler, Zoning Administrator, to make those determinations.

ORDINANCE NO.5852

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 14-03-10 AND 14-04-21 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO SPECIAL USES, OFF-STREET PARKING AND LOADING, DOWNTOWN DISTRICT STANDARDS AND VEHICLE STACKING.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Special Uses is hereby amended and re-enacted to read as follows:

14-03-08. Special Uses.

\* \* \* \* \*

4. Permanent uses (planning commission approval).

\* \* \* \* \*

g. Drive-in retail or service establishments. An establishment dispensing goods at retail or providing services through a drive-in facility, including, but not limited to drive-in restaurants, banks or other drive-in facilities exclusive of theatres may be permitted in a CG, CR, MA or HM district (drive-in banks only may also be permitted in a CA district) as a special use provided:

\* \* \* \* \*

3. Adequate off-street parking shall be provided in conformance with section 14-03-10 of this ordinance. In addition, an

ingress automobile parking reservoir vehicle stacking spaces shall be provided on the premises in ~~conformance~~ accordance with section 14-03-10 of this ordinance, in addition to all common ingress and egress areas provided.

\* \* \* \* \*

m. Auto laundry-car wash. An auto laundry or car wash may be permitted in a CG, CR, MA or MB district as a special use, provided:

\* \* \* \* \*

~~Reservoir~~

\* \* \* \* \*

Section 2. Amendment. Section 14-03-10 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Off-street Parking and Loading is hereby amended and re-enacted to read as follows:

14-03-10. Off-Street Parking and Loading.

1. Off-street parking. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street parking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. Each required parking space shall be of an area at least nine (9) feet wide and eighteen (18) feet in length, in addition to the ingress and egress driveways required. All off-street parking spaces required and all driveways on private property leading to such parking areas shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material. All parking areas containing four (4) or more spaces or containing angled parking shall have the parking spaces and aisles clearly marked on the pavement. The number of off-street parking spaces shall be provided on the basis of the following minimum requirements:

\* \* \* \* \*

e. Restaurants, including bars, taverns, night-clubs, lunch counters, diners, drive-ins and all other similar dining or drinking establishments: One space for each sixty (60) square feet of gross floor area. Patio area shall be included when calculating gross floor area. ~~When a drive-up take out window is included,~~ an ingress automobile stacking reservoir of not less than twelve (12) spaces serving each take out window

shall be provided.

\* \* \* \* \*

2. Off-street vehicle stacking. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy for a commercial or industrial use shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street vehicle stacking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. Each required vehicle stacking space shall be of an area at least ten (10) feet wide and twenty (20) feet in length. Vehicle stacking lanes shall be located completely upon the parcel of land that includes the structure they are intended to serve and shall be so designed as to not impede on- or off-site traffic movements. All vehicle stacking spaces shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material. The number of off-street vehicle stacking spaces shall be provided on the basis of the following minimum requirements:

<u>Type of use</u>	<u>Minimum number of stacking spaces</u>	<u>Measured from</u>
<u>Financial institution - ATM</u>	<u>3 spaces per lane</u>	<u>Kiosk</u>
<u>Financial institution - teller</u>	<u>4 spaces for first lane, 3 spaces for each additional lane</u>	<u>Window or pneumatic tube kiosk</u>
<u>Drive-through restaurant</u>	<u>12 spaces</u>	<u>Pick-up window</u>
<u>Drive-through coffee shop</u>	<u>10 spaces</u>	<u>Pick-up window</u>
<u>Car wash, automatic</u>	<u>6 spaces per bay</u>	<u>Entrance</u>
<u>Car wash, self-service</u>	<u>3 spaces per bay</u>	<u>Entrance</u>
<u>Drive-through car service (oil change and similar)</u>	<u>3 spaces per bay</u>	<u>Entrance</u>
<u>Drive-through pharmacy</u>	<u>3 spaces</u>	<u>Window</u>
<u>Drive-through cleaners</u>	<u>3 spaces</u>	<u>Window</u>
<u>Drive-through photo lab</u>	<u>3 spaces</u>	<u>Window</u>
<u>Self-service fueling station</u>	<u>2 spaces per fueling island</u>	<u>Each end of the fueling island</u>
<u>Gated parking lots and entrances</u>	<u>2 spaces</u>	<u>Gate</u>

For uses not specified above, the Planning and Zoning Commission shall determine the appropriate number of spaces required based on the requirements for a similar use.

A drive-through facility with vehicle stacking spaces based on one type of use may not be converted to another type of use without the submittal and approval of a new site plan. A new special use permit shall be required for any change to a use with greater vehicle stacking space requirements. A drive-through facility which has been discontinued cannot be re-established unless a new special use permit has been approved.

23. Off-street loading. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy for a commercial or industrial use shall be approved unless there is included with the plan for such building improvement or use, a ~~plot~~ site plan showing the required space or structural design for off-street loading purposes to be provided in connection with such building, improvement or use, in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided in accordance with those shown on the approved plan. Such off-street loading space shall be provided in accordance with the following minimum requirements:

\* \* \* \* \*

34. Uses not specifically mentioned or unique situations.

\* \* \* \* \*

45. Continuing character of obligation.

\* \* \* \* \*

56. Fractional measurements.

\* \* \* \* \*

67. Off-street parking and loading requirements in certain zoning districts.

\* \* \* \* \*

78. Location of required parking and loading facilities.

\* \* \* \* \*

89. Plan of required off-street parking or loading areas.

\* \* \* \* \*

910. Use of required off-street parking by another building.

\* \* \* \* \*

4011. Maintenance of public off-street parking places provided.

\* \* \* \* \*

4112. Collective action relative to off-street parking and loading.

\* \* \* \* \*

4213. Mixed uses.

\* \* \* \* \*

4314. Nonconforming uses.

\* \* \* \* \*

4415. Vacant lots.

\* \* \* \* \*

Section 2. Amendment. Section 14-04-21.4 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to the CA Commercial District is hereby amended and enacted to read as follows:

14-04-21. Downtown Districts.

\* \* \* \* \*

14-04-21.1 DC Downtown Core District.

\* \* \* \* \*

5. Off-street Parking and Loading. Off-street parking and loading shall be provided in accordance with the provisions of Section 14-04-2103-10. Off-street parking shall not be required for properties within the Downtown Parking District.

\* \* \* \* \*

14-04-21.4 Use Standards.

\* \* \* \* \*

2. Drive-through Facilities.

\* \* \* \* \*

b. Adequate off-street parking shall be provided in

conformance with Section 14-03-10 of this ordinance. In addition, an ingress automobile parking reservoir of no less than 12 spaces per window vehicle stacking spaces shall be provided on the premises in conformance with Section 14-03-10 of this ordinance, in addition to all common ingress and egress areas provided.

\* \* \* \* \*

10. Retail Sales and Service - Convenience Store/Gas Station.

\* \* \* \* \*

e. Adequate off-street parking shall be provided in conformance with Section 14-03-10 of this ordinance. In addition, for car wash facilities, an ingress automobile parking reservoir of no less than three (3) spaces per wash bay vehicle stacking spaces shall be provided on the premises in accordance with Section 14-03-10 of this ordinance, in addition to all common ingress and egress areas provided.

\* \* \* \* \*

17. Vehicle Service, Limited.

\* \* \* \* \*

c. Adequate off-street parking shall be provided in conformance with Section 14-03-10 of this ordinance. In addition, for car wash facilities, an ingress automobile parking reservoir of no less than three (3) spaces per wash bay vehicle stacking spaces shall be provided on the premises in accordance with Section 14-03-10 of this ordinance, in addition to all common ingress and egress areas provided.

\* \* \* \* \*

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance shall take effect following final passage and adoption.

**Commissioner Askvig made a motion to approve the request to introduce and call for a public hearing on Ordinance 5852. Commissioner Grossman seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman, and Vice President Seminary. Nays: None, the motion carried. President Warford was absent and not voting.**

## REGULAR AGENDA

3. The Board of City Commissioners considered the request from the Engineering Department for the 2013-2016 Urban Roads, Safety, and Bridge Replacement Requests for the North Dakota Department of Transportation (NDDOT).

Mark Berg, Traffic Engineer, appeared before the Board. Annually the North Dakota Department of Transportation requires each of the cities included in the Urban Roads Program to prepare and submit a listing of the projects the city desires to have included under the urban roads, bridge replacement, and safety programs for the next four years. The letter written on September 23, 2011 by Ben Ehreth, Metropolitan Planning Organization was provided to the Board.

The current Federal Highway bill expired on September 30, 2009. From the previous SAFETEAU-LU legislation, the city of Bismarck's Urban Roads Program funding will be approximately \$2.95 million annually. Based on the assumption of no change in federal funding, the listing provided to the Board reflects the attempt by city staff to incorporate proposed improvement projects to utilize those federal funds during the period of 2013-2016. A copy of the Streets and Highway segment of the approved Capital Improvement Program (2012-2016) was also provided to the Board.

In order for the city of Bismarck to meet NDDOT's imposed December 11, 2011, submittal deadline, it will be necessary to receive Board consideration of the proposed listing at this time. It is also a requirement that the city of Bismarck Urban Roads, Safety, and Bridge Replacement Program submittal must be coordinated through the Bismarck-Mandan MPO prior to the deadline. With the Board's approval, Mr. Berg will submit the list to the MPO for consideration at the November 15, 2011 MPO Policy Board meeting.

Commissioner Seminary asked about prioritizing these projects at a local level in the event that there are federal budget cuts. Mr. Berg said there have been no federal budget cuts to this program to his knowledge. Staff has been carrying on since September 2009 with money that's been reappropriated by the federal government. Staff priorities are based on the needs for improvements. At any time, the Board could move a project in front of another on the list. He said in the Capital Improvement Program, staff prioritizes the projects that will be done next spring.

Commissioner Askvig asked about the projects listed on the CIP, is it possible to make adjustments with the funding source, for example, sales tax, if those funds are no longer available? How are we able to make adjustments like this if we are submitting this schedule at this time? Mr. Berg said when the submittal has moved through the MPO to the NDDOT, the first year to 18 months is solidified. If there was a project who's need was greater than another project, it could most likely be inserted since the money is being budgeted ahead of time for that project. Commissioner Askvig said if there is a project in the pipeline in the next 18 months and if there is a local match required, what is our flexibility if we can't come up with the match for that project; could we substitute a project? Mr. Berg said there is some flexibility. However, by submitting this CIP listing,

we are making a commitment that those matching funds are or will be available for those projects. He said a project switch is a different proposition.

Commissioner Grossman asked about a traffic signal at Washington and 43<sup>rd</sup> Avenue. He asked if there's anything in the plan to preclude the city from proceeding with putting a light there in the near future. Mr. Berg asked in regards to the CIP. Commissioner Grossman said yes; can it be amended? Mr. Berg said yes, the CIP can be amended. Only one specific traffic signal project was named for 2012; Washington and Turnpike. One could be named for 2013. If the signal warrants were met, an amendment could be made. Commissioner Grossman asked if the Washington/43<sup>rd</sup> location doesn't meet the warrants, then it would have to be funded entirely by the city. Mr. Berg said yes. Commissioner Seminary asked what Mr. Berg would recommend to the Board if it decides that the signal at that location needs to be done sooner. Mr. Berg said he would probably do a traffic count just to be sure we don't qualify for federal funds, then proceed from there with design plans. Commissioner Smith asked when the last time a traffic count was done at Washington Street and 43<sup>rd</sup> Avenue intersection. Mr. Berg said last spring but another one will be done in later November or beginning of December when staff is available.

**Commissioner Askvig made a motion to approve the request. Commissioner Grossman seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman, and Vice President Seminary. Nays: None, the motion carried. President Warford was absent and not voting.**

4. The Board of City Commissioners considered the following from the Public Works Utility Operations Department:

- Approval of contract with the U.S. Geological Survey (USGS) for Hay Creek Streamflow Monitoring

Keith Demke, Utility Operations Director, appeared before the Board. For the past ten years, the city has been working with the United States Geological Survey (USGS) to develop historic streamflow information for Hay Creek within the city of Bismarck. The USGS has provided a proposal to continue the streamflow monitoring program for an additional year. The city funded portion of the proposal includes monitoring at two locations along Hay Creek (Divide Avenue and Main Avenue) plus the water level monitoring station at the south Bismarck storm water channel at Wachter Avenue. The city share of this program for the next year is estimated to be \$11,440.

The Burleigh County Water Resource District will be providing the funding for two other crest-stage monitoring stations along Hay Creek at 43<sup>rd</sup> Avenue and at 71<sup>st</sup> Avenue.

A crest-stage monitor records the peak flow at the monitoring station for a given time period, rather than providing a continuous record of the flow. On Hay Creek where the flow is often very low, or zero, a crest-stage monitor provides sufficient information on peak flows associated with precipitation events when used in conjunction with the data from the continuous flow monitor at Main Avenue. With the everchanging development conditions within this watershed, staff believes it is prudent for both the city and county

to continue monitoring streamflows to help determine future needs within the watershed.

Staff requested permission from the Board to allow the city of Bismarck to enter into a one year contract with the USGS for streamflow monitoring along Haycreek at a cost of \$11,440. Mr. Demke provided a copy of the letter from the USGS and the contract for the Board's consideration. This project will be funded by the Storm Water Utility fund.

**Commissioner Grossman made a motion to approve the request. CommissionerSmith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman, and Vice President Seminary. Nays: None, the motion carried. President Warford was absent and not voting.**

- Receive and consider disposition of bids for Horizontal Collector Well Phase 3 Electrical Contract.

Keith Demke, Public Works Utility Operations Director, appeared before the Board and presented the bid received:

<b>BIDDER</b>	<b>BID AMOUNT*</b>
Edling Electric	\$1,696,400
* Engineer's Estimate = \$1,500,000	

**Mr. Demke said the bid is good and he recommends approval. CommissionerAskvig made a motion to award the bid to Edling Electric for \$1,696,400. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman, and Vice President Seminary. Nays: None, the motion carried. President Warford was absent and not voting.**

5. The Board of City Commissioners considered the request from the Public Works Service Operations Department for permission accept change order with Tom's Backhoe to haul additional material to fill in the borrow area at Solheim school.

Jeff Heintz, Public Works Service Operations Director, appeared before the Board. The volume of material removed from Levee D did not fill the borrow pit at Solheim school. Staff would like to complete this project this fall by using the existing contractor, Tom's Backhoe Service, to haul additional fill material from levee A and top soil from stockpiles at the Northern Plains Commerce Centre (NPCC) to finish this site.

The original agreement with the school district requires the city to return this site to its original condition. Staff has coordinated the irrigation and turf seeding with Bismarck Public Schools Building and Grounds division head Darin Scheer to occur next spring. Staff would like to have the dirt work finished this fall before winter so the site is ready for the work next spring. Parks and Recreation have requested the additional material from levee A to be removed to allow them to open their trail in this area this winter.

The costs for this work are FEMA eligible. The change order amount is for removal and hauling and placing of 4,500 cubic yards of clay from Sertoma Park levee A and 800 cubic yards of topsoil hauled from the NPCC location and shaped. The costs for this work are \$20 per cubic yard for 5,300 cubic yards for a total cost of \$106,000.

**Commissioner Smith made a motion to approve the request. Commissioner Askvig seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, Grossman, and Vice President Seminary. Nays: None, the motion carried. President Warford was absent and not voting.**

Addendum:

Vice President Seminary removed himself from table for the following item and asked Commissioner Grossman to preside over this item in his absence.

The Board of City Commissioners considered the rail switch design quote for the Northern Plains Commerce Centre (NPCC).

Charlie Whitman, City Attorney, appeared before the Board. He said at the previous meeting the Board had authorized him to request quotes for the switch work at the NPCC which is necessary due to the influx of tenants. He did send out a request for quotes to five firms and he received one back. He did speak with a couple of those not responding. Some had issues being able to do work in the state in regards to licensing and one firm just decided not to bid. The lone bidder was Kadrmas Lee and Jackson (KLJ). They did the initial rail design at the NPCC as well as doing a master plan. The ballpark estimate on the work to be done is \$17,000.

Mr. Whitman said what he would like to do, with the Board's permission, is to negotiate a scope of work with KLJ not to exceed \$17,000, then enter into a contract and have the Board authorize President Warford to sign the contract. He said that he has contracts developed with the local engineering firms that the city works with and these contracts are agreeable to both parties. He had a completion deadline for the design of December 31, 2011. In order to meet that deadline, he needs to move forward. Commissioner Askvig asked if the \$17,000 is coming from the NPCC budget. Mr. Whitman said since the city has cancelled the marketing agreement five months early, there may be enough funds left in the NPCC budget. If not, he would defer to Commissioner Grossman or Sheila Hillman, Finance Director. Commissioner Grossman said he will be meeting with Ms. Hillman and Mr. Whitman next week to discuss this item, but he anticipates there would be enough to cover the \$17,000 expense.

**Commissioner Askvig made a motion to approve the request with the funds not to exceed \$17,000 and the funding come from the existing NPCC budget. Commissioner Smith seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Smith, Askvig, and Grossman. Nays: None, the motion carried. President Warford and Vice President Seminary were absent and not voting.**

Commissioner Seminary rejoined the table.

The Board of City Commissioners considered support of SB 2371.

Bill Wocken, City Administrator, appeared before the Board and said it's customary to appear before the Board to ask for legislative positions on bills. The special session of the legislature is currently in session and SB 2371 had a hearing Monday evening. Mr. Wocken did not testify at that hearing since it is customary to ask the Board for legislative positions. SB 2371 is a lengthy bill and incorporates a number of factors and programs into a well thought out funding mechanism. The area of the bill that Mr. Wocken will be discussing deals with the flood relief sections.

Mr. Wocken said that sections one and seven talk about a rebuilders loan program which is an opportunity for people who need to rebuild or restore a home. This program would be operated by the Bank of North Dakota. Sections three and four talk about increasing the number of credits that are available for the housing incentive fund to incentivize investment in residential structures. Sections eight, nine and 10 talk about infrastructure development grants which are grants made available for refurbishing or replacement of infrastructure that was lost in flood events. This is a matching program. Section 13 of the bill makes provision for the availability of Community Development Block Grants from the federal government if that resource is realized. Section 16 puts aside some money for a 2012 disaster, if that should happen. Section 18 talks about the State Water Commission and future acquisition of floodway properties.

Mr. Wocken suggests a resolution of support for SB 2371.

WHEREAS, the North Dakota Legislative Assembly will meet in special session the week of November 7-11, 2011 to discuss important issues in our state; and

WHEREAS, one of the most pressing items of consideration before the Assembly will be recovery from the devastating floods of 2011; and

WHEREAS, the Legislative Assembly will consider legislation that seeks to utilize available state resources to accomplish flood relief; and

WHEREAS, the Legislative Assembly has before it for consideration Senate Bill 2371 which provides a variety of flood relief measures and deals with other critical needs of this state;

THEN, THEREFORE be it resolved by the City of Bismarck City Commission that it does express its support for the flood relief offered by Senate Bill 2371 as introduced in legislative draft 11.0826.0400; and

Be it further resolved that a copy of this resolution be furnished to the combined House and Senate Appropriations Committee to be included in the record for the hearing of Senate Bill 2371.

Commissioner Askvig offered a couple of suggestions to the resolution. He felt the resolution needed another whereas clause something to the effect that Whereas the city of Bismarck faced historic flooding from the high Missouri River flows during the summer of 2011 that impacted our residents. He also asked that where it says THEN, THEREFORE be it resolved by the City of Bismarck City Commission that it does express its support for the flood relief offered by Senate Bill 2371, remove the remaining portion of that statement (as introduced in legislative draft 11.0826.0400); and. The reason he's asking for this is he knows there is one amendment being proposed by a representative from Mandan that would pay for the full cost of local match for FEMA reimbursement. He did not want to limit the city so it could be able to support that amendment. He said the state has some additional resources right now if they can help the city and its citizens, the city should take advantage of the offer and take the pressure off the property tax.

Commissioner Askvig made a motion to approve the request with the changes suggested and include a cover letter with the resolution of support. Commissioner Grossman seconded the motion. Upon roll call, the commissioners voted as follows: Ayes: Commissioners Seminary, Smith, Askvig, and Grossman. Nays: None, the motion carried. President Warford was absent and not voting.

#### **6. The Board of City Commissioners considered the ongoing project agenda.**

Commissioner Seminary brought up the joint cooperative efforts with the county and the city. He asked Bill Wocken, City Administrator, how we are moving forward in a cooperative manner. Mr. Wocken said there are three separate approaches. The first is a committee under Major General Murray Sagsveen which will be an area wide multi-jurisdictional committee. It likely won't meet until summer 2012 when funding is expected to be made available. President Warford has appointed Commissioner Smith and Mr. Wocken to this committee.

The second is a proactive approach taken by this Board to look at the spring/summer 2012 flooding potential and what kinds of measures could be taken if the river floods again. The city has issued an RFQ/RFP for this study and those are due November 18, 2011. Staff hopes to have a contractor selected and under contract by December 13, 2011. The deadline for the plan is March 1, 2012. Staff has invited the county and water management district to participate in that contract if they wish.

The third is a request from Burleigh County Commission to appoint a city commissioner to serve with two Burleigh County Commissioners and the water management district on a cooperative flood management task force. This Board chose to appoint three staff members (Mr. Bullinger, Mr. Heintz and Mr. Wocken) in place of the one city commissioner. Those individuals have notified the water management district that they are ready to meet whenever the meetings are scheduled.

Commissioner Seminary stated that regardless whether three city department

heads or one commissioner sat on the joint group with Burleigh County, they would still have to come back before this Board to make a full report and if there are any policy actions required, then the Board would make a decision on how to act accordingly. Mr. Wocken said that is correct. This Board decided that they didn't want to send a single commissioner to have a flood discussion; all five board members wanted to be involved in. A majority vote of the elected members is needed in order to adopt a policy resolution.

Commissioner Seminary said at last night's County Commission meeting, the Commission did approve the contract for the consultant for the Jail Study to Kimme and Associates of Fargo. Commissioner Askvig asked if the city is going to have a match as part of that study. Seminary said it was decided long ago that there would be shared funding from the four entities (two counties and two cities). Commissioner Askvig asked if that needs to be approved now. Mr. Wocken said the expenditure is authorized and at the next meeting, staff will suggest a funding source.

Having completed the items on the agenda, Vice President Seminary asked if there was any further business for this meeting. There being none, the meeting was declared adjourned at 5:57 p.m.