



## MEETING OF THE BOARD OF CITY COMMISSIONERS

2/28/2023 - Minutes

Pledge of Allegiance by Boy Scout Troop 6

The Pledge of Allegiance was led by Chaplain Les Wolfgram.

Presentation by Mark Zimmerman of the History on Boy Scout Troop 6

Due to scheduling conflicts, the Boy Scouts were unable to attend.

Call to Order

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

### FUTURE COMMISSION MEETINGS:

- March 14, 2023 & March 28, 2023
- April 11, 2023 & April 25, 2023
- May 9, 2023 & May 23, 2023

### MISSION STATEMENT

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

### MEETING OF THE BOARD OF CITY COMMISSION

1. Public comment (restricted to items on the Consent Agenda and Regular Agenda, excluding public hearing items)
  - Chris Ebertz spoke with questions regarding Item 15 relating to Utility Rates.
  - Casey McRae with Ignite Dispensary introduced himself to the Commission and indicated that he is available to answer questions relating to item 14.
2. CONSENT AGENDA - 1

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

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

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

Vouchers: 1109618-1109846.

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

- 1. Introduction of and call for a public hearing on a request for a new Class F1 Restaurant Full Alcohol license for Old 10 Bar & Grill, LLC (dba) Old 10 Bar & Grill, LLC at 4100 North Washington Street.
- 2. Introduction of and call for a public hearing on a request for a new Class F2 Restaurant Beer and Wine alcohol license for The Jousting Lemur, LLC (dba) The Jousting Lemur at 514 East Main Avenue.

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

- 1. A temporary work proposal for Weisz & Sons for the Wetland Phase 5/6 Project.

- F. Consider the request for approval from the City Attorney for the following:

- 1. Permission to participate in the pharmacy opioid multi-district litigation settlement.
- 2. Consider approval of an engagement letter and retaining of Jeffrey Cairns, Esq. of Stinson, LLP, as the City of Bismarck pension attorney.

- G. Consider the request for approval from Bismarck Burleigh Public Health for the following:

- 1. Permission to apply for grant funding from AARP's Community Challenge Grant.

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

- 1. Recommended appointment for the Board of Adjustment.
- 2. A request from Ron and Ruth Knutson for approval of a revised major subdivision final plat for Boden Addition located at located in north Bismarck, on the east side of North Washington Street and the south side of East Lasalle Drive (part of the W1/2 of Section 16, T139NR80W/City Lands and a replat of Lots 2 and 3, Block 1 and Lot 4, Block 2, Boulder Ridge Fifth Addition), where staff recommends approval.
- 3. A request from Bismarck Parks and Recreation District to release a franchise utility easement over Lot 10, Block 1, Hay Creek Park Addition, where staff

recommends approval.

4. A request from Heritage Development, Inc. to release a portion of a non-access line adjacent to Lot 11, Block 3, Heritage Park Second Addition, where staff recommends approval.

5. Introduction of and call for a public hearing on Ordinance 6544, Bismarck Building Code, and Fire Prevention Code Update, where staff recommends approval.

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

1. Consider approval and acceptance of utility easements and stormwater and drainage easements associated with Burleigh County Housing Addition First Replat.

2. Consider approval and acceptance of a sidewalk easement granted by Kirkwood Mall Acquisition, LLC.

3. Consider the request for a resolution creating districts and ordering the preparation of preliminary reports, the request for a resolution approving the preliminary reports and directing the preparation of plans and specifications, the request for a resolution approving plans and specifications, and the request for a resolution directing the advertisement of bids and receive bids for Sewer Improvement District SE 583.

4. Consider the request to hear insufficiency of protests on a resolution of necessity, the request for a resolution approving plans and specifications, and consider the request for a resolution directing the advertisement of bids and receive bids for street improvement district SI 570.

5. Consider approval of the resolution of necessity for Street Improvement District SI 572.

6. Consider the request to hear insufficiency of protests on the resolution of necessity for the street improvement district and request for resolution receiving bids and ordering the preparation of the engineer's statement for Street Improvement District SI 574.

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

1. Permission to sell off/dispose of Roads and Streets Sweeper via online auction.

### 3. CONSENT AGENDA - 2

The Commission held a discussion relating to the conflict of interest between Commissioner Splonskowski's role as a City Commissioner and the Burleigh County Auditor-Elect. General consensus amongst the Commissioners was the perception of a conflict of interest exists, and therefore Commissioner Splonskowski should abstain from voting on such items.

The Commission agreed that there would be no conflict for Commissioner Splonskowski to vote on the 2024 Budget Calendar, but he should abstain from voting on the abatements because they require action by the Burleigh County Commission and the Burleigh County Auditor.

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

Commissioner Marquardt motioned to approve the 2024 Budget Calendar as presented, and Commissioner Zenker seconded. Upon a roll call vote, Commissioners Splonskowski, Marquardt, Zenker, Cleary, and Mayor Schmitz all voted aye. M/C.

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

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

1. Tentative 2024 Budget Calendar.
2. Applications for abatement.

#### 4. REGULAR AGENDA

5. Commissioner Mark Splonskowski correcting the record on the February 14, 2023, Bismarck City Commission Meeting.

Commissioner Splonskowski read a statement correcting the record from the February 14, 2023, Commission meeting stating, "I would like to correct the record for the February 14, 2023, meeting. When I said I had spoken with States Attorney Lawyer, I meant to say I spoke with Burleigh County HR. I never spoke directly with Mrs. Lawyer. However, I did speak with Burleigh County HR on the subject of the potentiality of conflicts of interest."

Commissioner Marquardt asked Commissioner Splonskowski about remarks made during the February 23, 2023, Burleigh County Commission meeting, at which time Burleigh County HR indicated that Commissioner Splonskowski did not have a conversation about potential conflicts between a City Commission position and a County Auditor position but rather a conflict between a Burleigh County employee position and a State Legislature position.

Commissioner Splonskowski responded that he is unaware why Burleigh County Human Resources does not recall the conversation but will stand by his recollection of the events as he stated.

6. Receive a report from the Bismarck Riverfront Planning Partners and provide a letter of support to pursue State, Federal, and Non-Profit grants for publicly spirited components of the project.

Dr. Aaron Barth and Jake Axtman, representing Bismarck Riverfront Planning Partners, addressed the Commission regarding a conceptual riverfront master plan and a request for the Commission to provide a letter of support to pursue grants for publically spirited components of the project. The conceptual plan includes research, stakeholder input,

objectives including public river access and enhances art displays along the river, and three "game changer" concepts designed to enhance and encourage tourism and community events along the riverfront.

Commissioner Zenker motioned to receive the report, approve the release of the project website to stakeholders and the community, and provide a letter of support to Bismarck Riverfront Planning Partners to pursue State, Federal, and non-profit grants for publicly spirited components of the project and Commissioner Marquardt seconded. Upon a roll call vote Commissioners Marquardt, Zenker, Cleary, Spolonskowski, and Mayor Schmitz voted aye. M/C.

<https://bismarcknd.gov/DocumentCenter/View/41935/Item-6-PDF>

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

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

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

Commissioner Splonskowski left the table at 6:28 PM.

Allison Jensen, City Assessor, addressed the Commission regarding Mr. Jin's request for a reduction in property valuation for 2022. Ms. Jensen informed the Commission the purchase date for the hotel occurred after February 1, 2022, which is the annual cutoff for property valuation information as set by state law. Ms. Jensen closed by saying the recommendation to uphold the current valuation does not change considering the additional information provided by Mr. Jin.

Commissioner Zenker motioned to deny the request as recommended by staff, and Commissioner Cleary seconded. Upon a roll call vote Commissioners Cleary, Marquardt, Zenker, and Mayor Schmitz voted aye. Commissioner Splonskowski abstained. M/C.

8. Public hearing on the zoning change as outlined in Ordinance 6535 for TNK Ranch Subdivision, requested by Thomas and Kim Fettig, and consider approval of the major subdivision final plat.

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

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

Ben Ehreth, Community Development Director, addressed the Commission regarding the zoning change as outlined in Ordinance 6535 for TNK Ranch Subdivision, requested by

Thomas and Kim Fettig, and consider approval of the major subdivision final plat.

Mayor Schmitz opened the public hearing. Dave Tschider, an attorney representing the Fettigs, addressed the Commission and asked for their support in their consideration of the zoning change and final plat for TNK Ranch Subdivision.

Commissioner Marquardt motioned to approve the zoning change as outlined in Ordinance 6535 and major subdivision final plat as presented, and Commissioner Zenker seconded. Upon a roll call vote Commissioners Cleary, Marquardt, Zenker, and Mayor Schmitz voted aye. Commissioner Splonskowski abstained. M/C.

Commissioner Splonskowski rejoined the meeting at 6:51 PM.

9. Public hearing on Ordinance 6538, a zoning change from the RT – Residential zoning district to the R10 – Residential zoning districts for Lots 9, 10 and the South 25.4 feet of Lot 11, Block 7, Replat of Homan Acres, requested by Gwen and Timothy Beckler (Lot 9) and John and Angela Glaser (Lot 10 and the South 25.4 feet of Lot 11).

Ben Ehreth, Community Development Director, addressed the Commission regarding the zoning change as outlined in Ordinance 6538, a zoning change from the RT – Residential zoning district to the R10 – Residential zoning districts for Lots 9, 10, and the South 25.4 feet of Lot 11, Block 7, Replat of Homan Acres, requested by Gwen and Timothy Beckler and John and Angela Glaser.

Mayor Schmitz opened the public hearing. No members of the public addressed the Commission.

Commissioner Zenker motioned to approve the zoning change as outlined in Ordinance 6538 as presented, and Commissioner Splonskowski seconded. Upon a roll call vote Commissioners Cleary, Marquardt, Zenker, Splonskowski, and Mayor Schmitz voted aye. M/C.

10. Public hearing on Ordinance 6539, a zoning change from the RT – Residential zoning district to the Conditional CA – Commercial zoning district for Lots 1 and 2, Block 1, Kilber North Addition First Replat, requested by The Ridge LLC.

Ben Ehreth, Community Development Director, addressed the Commission regarding Ordinance 6539, a zoning change from the RT – Residential zoning district to the Conditional CA – Commercial zoning district for Lots 1 and 2, Block 1, Kilber North Addition First Replat, requested by The Ridge LLC.

Mayor Schmitz opened the public hearing. No members of the public addressed the Commission.

Commissioner Marquardt motioned to approve the zoning change as outlined in Ordinance 6539 as presented, and Commissioner Zenker seconded. Upon a roll call vote Commissioners Cleary, Marquardt, Zenker, Splonskowski, and Mayor Schmitz voted aye. M/C.

11. Public hearing on Ordinance 6540, a zoning change from the RM15 – Residential zoning district to the RM30 – Residential zoning district for Lot 1, Block 2, Paradise Valley Addition, requested by MBR Properties, LLC.

Ben Ehreth, Community Development Director, addressed the Commission regarding

Ordinance 6540, a zoning change from the RM15 – Residential zoning district to the RM30 – Residential zoning district for Lot 1, Block 2, Paradise Valley Addition, requested by MBR Properties, LLC.

Mayor Schmitz opened the public hearing. No members of the public addressed the Commission.

Commissioner Zenker motioned to approve the zoning change as outlined in Ordinance 6540 as presented, and Commissioner Cleary seconded. Upon a roll call vote Commissioners Zenker, Cleary, Splonskowski, Marquardt, and Mayor Schmitz voted aye. M/C.

12. Public hearing on Ordinance 6541, a zoning change from the RM15 – Residential zoning district to the RM20 – Residential zoning district for Lot 1, Block 3, Cottonwood Parkview Addition First Replat, requested by EWR Bismarck Land South, LLC.

Ben Ehreth, Community Development Director, addressed the Commission regarding Ordinance 6541, a zoning change from the RM15 – Residential zoning district to the RM20 – Residential zoning district for Lot 1, Block 3, Cottonwood Parkview Addition First Replat, requested by EWR Bismarck Land South, LLC.

Mayor Schmitz opened the public hearing. No members of the public addressed the Commission.

Commissioner Marquardt motioned to approve the zoning change as outlined in Ordinance 6541 as presented, and Commissioner Cleary seconded. Upon a roll call vote Commissioners Cleary, Splonskowski, Marquardt, Zenker, and Mayor Schmitz voted aye. M/C.

13. Consider approval of a request to modify the NDDOT Urban Road project request to pavement rehabilitation improvements such as mill and overlay are an appropriate pavement treatment, and the adjacent property ownership make the improvement an outlier for our typical special assessment policy.

Gabe Schell, City Engineer, addressed the Commission regarding the request to modify the original North Dakota Department of Transportation's (NDDOT) Urban Road project request to pavement rehabilitation improvements such as mill and overlay are an appropriate pavement treatment, and the adjacent property owners make the improvement an outlier for our typical special assessment policy.

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

14. Consider the request by Ignite Dispensary and Cigar to temporarily close a portion of Bowen Avenue for a block party on April 20, 2023.

Dave Draovitch, Police Chief, addressed the Commission regarding a street closure. He indicated the Police Department is comfortable with the request, given alternative routes in the area. The Chief closed by saying, given the proximity to 7th and 9th Streets, he wanted to be sure there were no concerns from others before approving the request.

Commissioner Splonskowski motioned to approve the request as presented, and Commissioner Zenker seconded. Upon a roll call vote Commissioners Marquardt, Zenker,

Cleary, Splonskowski, and Mayor Schmitz voted aye. M/C.

15. Receive an update on the utility rates study.

Commissioner Zenker and Michelle Klose, Utility Operations Director, provided information on the ongoing utility rate project. Director Klose noted there are opportunities for the City to provide educational materials for residents and consumers of water.

The Commissioners agreed on the need to provide educational materials and further discussions before making any final decisions.

Commissioner Zenker provided statistics from other cities and expressed a desire for Stantec to consider the development of a tiered system that would recognize general household consumption in addition to general irrigation.

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

16. Consider review and discussion of the 2023 Legislative Report #3.

Keith Hunke, City Administrator, provided a brief report to the Commission regarding cross-over week in the Legislature, where bills that originated in the House are passed to the Senate and vice versa. Mr. Hunke noted limited activity due to a break in the Legislative schedule.

<https://bismarcknd.gov/DocumentCenter/View/41936/Item-16-PDF>

17. Other Business

Commissioner Marquardt addressed the Commission regarding an invitation to Burlington Northern Santa Fe (BNSF) Railroad to present safety information relating to railroad traffic through Bismarck. He closed by saying a representative of BNSF will present at a future Commission meeting.

Adjourn

There being no further business, the meeting adjourned at 7:34 PM.

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