



## MEETING OF THE BOARD OF CITY COMMISSIONERS

2/13/2024 - Minutes

### Call to Order

The Board of City Commissioners met on February 13, 2024, at 5:15 PM in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota. Commissioner Cleary, Commissioner Connelly, Commissioner Marquardt, Commissioner Zenker, and Mayor Schmitz were present.

### FUTURE COMMISSION MEETINGS

- February 27, 2024
- March 12, 2024 & March 26, 2024
- April 9, 2024 & April 23, 2024

### 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)

No public comment was received.

### 2. CONSENT AGENDA

Commissioner Zenker motioned to approve the Consent Agenda as presented without item E1 being pulled and item I1 being pulled for discussion as presented, and Commissioner Connelly seconded. Upon a roll call vote, all voted, aye. M/C.

Commissioner Connelly motioned to approve item I1 as presented, and Commissioner Cleary seconded. Upon a roll call vote, all voted aye. M/C.

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

Vouchers: # 1115849 to 1116256.

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

1. Request by the Bismarck-Mandan Convention & Visitors Bureau to conduct gaming at Blarney Stone Pub, 408 East Main Avenue.
2. Application to transfer the Class F-1 - Restaurant alcohol license, located at 512 East Main Avenue, from Jimmy V's, Inc. to The Mob Menu, LLC.

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

1. Sole Source Purchase of Airport Exit Doors.
2. Receive bids and award bid to Northern Improvement Company, approve additional future FAA BIL grant funds, and approve project budget for Hangar 5 Demolition and GA Apron Phase 5 Project.
3. Incentive package recommendation for Allegiant Air's new route between Bismarck Airport and St. Petersburg/Clearwater Airport.
4. Change Order #1 to the Interiors by Design Contract to replace carpet in the terminal.
5. Replacement of utility tractors using Sourcewell Cooperative Purchasing.

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

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

G. Consider the request for approval from the Bismarck Event Center for the following:

1. Permission to sell goalposts to the Bismarck Bucks.

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

1. Approval of a major subdivision final plat titled First Responders Third Addition, where the Planning and Zoning Commission recommends approval.
2. Introduction of and call for a public hearing on Ordinance 6571, a request for zoning map amendment from the RM30 – Residential zoning district to the planned unit development (PUD) zoning district on Lot 6, Block 1, Sonnet Heights Subdivision Sixth Replat where the Planning and Zoning Commission recommends approval.
3. Selection of Clarion Associates, SRF, and Madden Planning to assist Bismarck with the creation of a new Land Development Code.

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

1. Street closure for 51st Annual Downtowners Street Fair.
2. Use of online bid openings.
3. ND Department of Transportation Cost Participation and Maintenance Agreement for South Washington Street reconstruction project AC-NHU-1-981 (137) PCN 23859 and CPU-1-981(140) PCN 24022, HC 158.
4. Request to Hear Insufficiency of Protest on Resolution of Necessity for Street Improvement District 577.
5. Request for resolution approving plans and specifications, resolution directing the advertisement for bids and receiving bids for SI 578.

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

1. Applications for Abatement.

K. Consider the request for approval from the Police Department for the following:

1. Permission to purchase replacement special threat ballistic plates through Balco Uniform Inc.
2. Permission to sell two decommissioned Police vehicles.
3. Permission to sell a decommissioned police vehicle.
4. Permission to transfer ownership of damaged Police vehicles.

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

1. Permission to request donations for the Forestry Division's 2024 Partners In Planting and Arbor Day Fund.
2. Permission to appoint members to the Forestry Advisory Board.
3. Permission to offer Bismarck residents free disposal at the landfill, excluding tires, for the 2024 Spring and Fall clean-up weeks by presenting their most recent City of Bismarck utility bill or current driver's license, and to offer free curbside pickup during the Spring clean-up week.
4. Permission to sell the assets from Solid Waste Disposal and Roads and Streets divisions.
5. Permission to award the bid for Diesel Fuel and Gasoline Supplies to Farstad Oil, Inc.
6. Extension to the Master Short Form Agreement to February 16, 2026, with HDR Engineering, Inc. for Solid Waste Collections and Landfill Operations.
7. Change Order 2 to Task Order 2 to the 2018 Agreement with HDR Engineering for Solid Waste operations.
8. Task Order 21-01 to extend the Master Services Agreement with Houston Engineering, Inc. for an additional period of two years, or until February 11,

2026, for solid waste operations which provides support services for the NDDEQ permit.

9. Task Order 24-01 from Houston Engineering for the Solid Waste operations to provide 2024 BMWF Groundwater Sampling, Analysis, and Reporting.

10. Time Extension to Task Order 22-03 with Houston Engineering for Landfill Final Cover Closure Phase I-III to December 31, 2024.

M. Consider the request for approval from the Public Works Utility Operations Development Department for the following:

1. Task Order 24-01 from Houston Engineering for the Solid Waste operations to provide 2024 BMWF Groundwater Sampling, Analysis, and Reporting.

2. Amendment No. 1 to HDR Engineering Inc's contract for the WTP Expansion Project.

3. Letter of Support for ND Diversification Research Collaboration with Energy and Minerals Innovation Center.

### 3. REGULAR AGENDA

A. Public hearing on the application to transfer the Class E - Sale At Retail of Beer Only alcohol license, located at 619 Memorial Hwy, from 3 Fat Boys, LLC. to BHB, LLC

Mayor Schmitz opened the public hearing. Ian MacDonald noted that the address listed on the agenda was not accurate. City staff received the updated application and the correct address was included with the file. Due to the address error, and legal publication requirements, the public hearing was continued to the February 27, 2024 meeting.

Commissioner Connelly motioned to continue the public hearing to the February 27, 2024 meeting to allow the legal notice to be published, and Commissioner Cleary seconded. Upon a roll call vote, all voted aye. M/C.

B. Request of Gusaas Signs to appeal the January 4, 2024, decision of the Bismarck Board of Adjustment to uphold the Planning Manager / Zoning Administrator's interpretation of the zoning ordinance relating to a proposed off-premise advertising sign on Lot 1, Block 1, Basin Electric Fourth Addition.

Jenny Wollmuth, Senior Planner, presented information regarding an appeal of the January 4, 2024 Board of Adjustment's decision to uphold the zoning ordinance relating to a proposed off-premise advertising sign on Lot 1, Block 1, Basin Electric Fourth Addition.

Joe Gusaas is appealing the January 4, 2024, decision of the Bismarck Board of Adjustment to affirm a zoning determination made by the Planning Manager / Zoning Administrator that the dimensional requirements outlined in Section 14-03-3.1-08(4)i would prohibit the installation of an off-premise advertising sign. Mr. Gusaas presented examples of previous application exhibits he had submitted along with those of other companies' digital billboard applications.

The Commission members and City staff discussed the practice of measuring

distances for proposed billboards from intersection locations as described by ordinance. The group discussed that the interpretation does not apply to the intersection spacing as that is listed as the distance from the intersection. As such, the linear distance from the intersection in a linear direction would allow the sign. The general consensus of the group is to clarify the language in the ordinance relating to signs.

Commissioner Cleary motioned to reverse the determination of the Board of Adjustment and grant that the billboard conforms to the ordinances, and Commissioner Connelly seconded. Upon a roll call vote, all voted aye. M/C.

[https://bismarcknd.gov/DocumentCenter/View/44878/Item-3B\\_February-13-2024](https://bismarcknd.gov/DocumentCenter/View/44878/Item-3B_February-13-2024)

- C. Consider the request by the Community Development Department for the creation of the Neighborhood Reinvestment Initiative.

Daniel Nairn, Planning Manager, presented information regarding the requests for the creation of a new initiative to achieve several goals of our Comprehensive Plan related to housing. The City of Bismarck would partner with interested financial institutions to offer low-interest loans for eligible residential remodeling projects.

Kate Herzog, Chief Operating Officer of the Downtown Community Foundation/ Downtowners, spoke briefly about the benefits of the program for property residents and possibly commercial businesses in the future.

Commissioner Zenker motioned to approve the Neighborhood Reinvestment Initiative as presented, and Commissioner Cleary seconded. Upon a roll call vote, all voted aye. M/C.

- D. Consider the request for direction relating to curbside waste collection for all residential and collection of extra items.

Steve Salwei, Public Works Service Operations Director, presented information regarding the request to move all residential trash collection to curbside pickup and requested direction on the options for the collection of extra items.

The Commission discussed the various options, and based on the timing and future delivery of the refuse-hauling trucks in 2025, the Commission agreed to continue discussing options with a decision to be made at a future meeting.

[https://www.bismarcknd.gov/DocumentCenter/View/44869/Item-3D\\_February-13-2024](https://www.bismarcknd.gov/DocumentCenter/View/44869/Item-3D_February-13-2024)

- E. Continued discussion and approval of department director employment and performance processes.

The Commission discussed the draft of the Department Director Employment and Performance Processes, in particular, item 3, in regard to the documentation of communication attempts with portfolio holders by the Administrator. Attorney Combs recommended using the term "reasonable attempt" in item 3 to define what is considered a reasonable attempt.

Commissioner Cleary motioned to approve as amended by Attorney Combs, and Mayor Schmitz seconded for discussion.

Commissioner Zenker stated that he regrets the decision to give the appointing authority

to the City Administrator and will not support the proposed document. Commissioner Zenker then suggested he believes the Home Rule Charter may have been violated and recommended the Commission do their due diligence before finalizing the document.

Commissioner Cleary rescinded her motion, and Mayor Schmitz rescinded his second.

Mayor Schmitz suggested a legal opinion on this matter may be necessary to resolve any uncertainties.

F. Update on the status of Burleigh County and the Provident Building.

Mayor Schmitz provided a report that he received at the Bismarck Burleigh Commissions Committee regarding the status of the Provident Building and the Extraterritorial Area.

The Commission received the report.

G. Discussion regarding the request from Bismarck Event Center to change the insurance limits for contracts.

Jannelle Combs, City Attorney, addressed the Commission regarding a request from the Bismarck Event Center to change the insurance limits. The Event Center is requesting that the liability limits be lowered to \$1 Million per occurrence if the event has less than 1,000 people attending. Lowering the limit would make the City responsible for any negligent actions for potential damages up to the \$2 Million tort cap.

Commissioner Zenker motioned to approve the \$1 Million limit on contracts where there are less than 1,000 people attending at a time, and Commissioner Marquardt seconded. Upon a roll call vote, Commissioners Marquardt, Zenker, Connelly, and Mayor Schmitz voted aye. Commissioner Cleary voted nay. M/C.

4. Other Business

Adjourn

There being no further business to discuss, the meeting adjourned at 8:22 PM.

Phone: 701-355-1300 | 221 North 5th Street | P.O. Box 5503 | Bismarck, ND 58501  
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