
The Mandan City Commission met in regular session at 5:30 p.m. on October 19, 2010 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Rohr, Frank, and Jackson. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development Director Huber, and Engineering Project Manager Bechtel. Absent: Commissioner Tibke and City Assessor Barta.

MINUTES: *Consider approval of the minutes for the October 5, 2010 meeting of the Board of City Commissioners.* Commissioner Jackson moved to approve the minutes as presented. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *Public Hearing to consider for approval the resolution to vacate the western 10’ of the east 20’ utility easement located along the east property line as plat in Lot 2, of the replat of Lot 1, Block 1, of Midway 2nd Addition. The property is located at 3930 Memorial Highway.* Engineering Project Manager Bechtel reviewed with board members a request from Scott Berger, owner of B & K Enterprises, for approval for the vacation of 10’ of the utility easement to add to the building on the east side. Letters have been distributed to all the utility companies and they have all responded with approval to move forward with the project. Mayor Helbling asked for comments from the Commissioners. Hearing none, the public hearing was opened to the public for comment. Hearing no comments from the public, this portion of the hearing was closed.

Commissioner Jackson moved to approve the vacation of the utility easement on the western 10’ of the east 20’ utility easement located along the east property line as platted in Lot 2, of the replat of Lot 1, Block 1, of Midway 2nd Addition. The property is located at 3930 Memorial Highway. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Jackson: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes. The motion passed.

BIDS:

1. *Consider award of bids for Dykshoorn Park parking lot improvements.* Engineering Project Manager Bechtel reviewed the information related to the award of bids for the Dykshoorn Park parking lot improvements. He stated that the bids were opened on May 15, 2010, and three bids have been received from Alliance Concrete, Knife River and Glass Concrete. The engineer’s estimate was \$110,079.75. The low bid was \$134,081 from Alliance Concrete. A bid alternate in the amount of \$6,000 for coloring the concrete and stamping for a pattern, which was included in the \$134,081, could be removed. There is a difference of \$25,000 between the bid and the engineer’s estimate. Funds for this are available through the BNSF remediation funds and funds contributed from the MPO totaling \$5,500. Bechtel requested the Board consider the proposal as presented and allow the bid to be awarded to Alliance Concrete as the low bidder. Bechtel reviewed the project bids submitted. The project completion date would be November 19th. Mayor Helbling commented that this is a project that has been pushed

back several times in the past. He suggested approval and to move forward and get the project completed so it is ready to go in the spring when events will be scheduled.

Commissioner Rohr moved to approve the bid award for the Dykshoorn Park parking lot improvements to Alliance Concrete as the low bidder in the amount of \$134,081 (which includes the costs for coloring and stamping of the concrete). Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Jackson: No; Commissioner Frank: Yes; Commissioner Helbling: Yes. The motion passed.

CONSENT AGENDA:

1. *Consider approval of monthly bills.* The Board approved of the monthly bills. Commissioner Jackson moved to approve Consent Agenda Item No. 1 as presented. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present.

The following Item #2 was removed for discussion as requested by Commissioner Frank:

2. *Consider approval of Highland 3rd Addition Zone Change. (First reading of ordinance 1086).* Commissioner Frank requested Business Development Director Huber address the potential uses for that area since the proposal is a change to light commercial. Development Director Huber stated that this is the first time she has been aware that the Baptist Church wanted to make this property available for sale. The property would be between a church, a daycare and the Eagles Club to the north; the Unistop gas station and residential to the east and west of the property. Huber stated that the property has not been listed with a realtor. Huber stated she is not aware of any potential use of the property. Commissioner Frank inquired as to what incentives would be available to any one inquiring about the property? Huber stated that it would be comparable to almost any commercial property outside of the downtown area. It could be subject to a property tax exemption due to a new and expanding business with a maximum of 5 years @ 100%. The other incentive available would be participation for a portion of financing on the business project to the Lewis and Clark Regional Development Council with the \$2M loan pools that have been set up specifically for the City of Mandan. These are slightly lower interest rates and are lender specific. But the lender terms are slightly more favorable and it can help reduce risk in the early wrap up period.

Commissioner Frank moved to approve the request for the zone change for Lot 2 of Block 1, of Highland Third Addition from RM (Multi-family Residential) to CA (Light Commercial/Services). Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Jackson: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes. The motion passed.

OLD BUSINESS:

1. *Discussion regarding garbage totes.* City Administrator Neubauer stated that a request was before this Board on September 21, 2010, with an option to have Armstrong Sanitation provide garbage totes for residents of Mandan. In addition to that, there would be a cost increase for garbage pickup from \$10 per month to \$13 per month to cover the

costs. In researching cities in North Dakota who have totes, Neubauer stated that there are various plans available depending on the size of tote. He stated that at this time there have not been many positive comments from residents about wanting the totes and/or wanting the additional cost to pay for the totes. If residents would like to have a tote, they have the option of contacting Peggy Becker at Armstrong Sanitation and they will provide them with a tote. There are approximately 400 totes being used in the community at the present time that are now being directly rented from the company. Neubauer commented that as tote usage increases, this matter will be re-visited again in 2012 when the residential trash collection agreement comes up for renewal again. He stated that Armstrong Sanitation is in agreement with the above. Mayor Helbling commented that he has had calls about the totes indicating that no one was really pushing for them. Commissioner Rohr stated he also has received calls with no one in particular in favor. One of the callers was in favor of having more recycle containers for glass and cans available. Peggy Becker from Armstrong Sanitation came forward to speak and stated that she is in agreement in waiting until a later time to provide the totes for the whole community. Mayor Helbling suggested noting this topic in upcoming publications of the Mandan Messenger. No further action is required on the matter at this time.

NEW BUSINESS:

1. *Consider the creation of, approve the feasibility report for, and consider a change order for Street Improvement District No.164 Project # 2010-14. (Mandan Municipal Golf Course and adjacent alleys).* Engineering Project Manager Bechtel stated that this matter was brought to the attention of the City of Mandan from the Park District. Bechtel stated that when the city was considering the Diane's project, the Park District wanted to piggy back on this project which would be the paving of the Mandan Municipal Parking lot. The residents and Park District were in favor of this project. Bechtel stated that Mariner Construction has been contacted as they currently are completing a project in this area and they indicated they may possibly be in a position to complete the project this year. The quote received from Mariner Construction for this project was considerably lower than the engineer's estimate, thus the price quote from Mariner Construction is favorable.

Bechtel stated that this portion of the project is being brought back before the Commission in the form of a change order in order to try to get the project completed in 2010. The district was created as part of the Diane's project. The change order of \$65,520 is part of the request to get the project done. All residents have signed the petition to have this project completed as well as the Park District.

Mayor Helbling inquired if the projects on 19th Street have been resolved. Bechtel stated that those projects will be completed within 2-3 weeks.

City Attorney Brown commented that the original plan was to create a separate improvement district for this project - which cannot be done at this time because creating a new district would entail starting from scratch. He said that if the commission wants to go ahead with this project the appropriate motion would be a change order to the existing Third Street Southwest District and the addition of the lots to be assessed under that

district. Finance Director Welch requested clarification as to whether the change order that is before the Commission has 100% consent of those property owners? Welch stated that according to state law that in order to approve a change order you would need 100% consent of the benefiting property owners. City Attorney Brown stated that all the property owners previously agreed to the part of the Diane's District. He inquired whether the assessments under this change order are significantly different than those estimated under the Diane's project. Bechtel stated they are less. Attorney Brown stated that he agrees with Finance Director Welch that it would be appropriate to try to get those approvals before going ahead with the project. It would be appropriate to attach those to the motion if anyone questions the project in the future regarding the change order.

Mayor Helbling stated that this action would be a change order and the cost would be spread only to those people within this parcel and would also be contingent upon getting 100% approval signatures of the property owners in this district.

Commissioner Frank motioned to approve the feasibility report for, approve a change order for Street Improvement District No. 164 Project No. 2010-14 pending 100% agreement based on the affected parties in that district. Clarification: Commissioner Frank motioned to approve the feasibility report for, approve a change order for Street Improvement District No. 158 Project No. 2010-14 pending 100% approval based on the affected parties in that district. Commissioner Jackson seconded the motion. Discussion: Engineering Project Manager Bechtel stated that the total project cost is approximately \$81,900 with engineering. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Jackson: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes. The motion passed.

2. *Consider "Release, Reservation of Rights, Assignment and Indemnification Agreement between the City of Mandan, Liberty Mutual Fire Insurance Company and Strata Corporation.* City Attorney Brown stated that this matter relates to the Collins Avenue project. During the construction there was a rainstorm and people had sewer backups that resulted in litigation against Strata Corporation. Their insurance company was Liberty Mutual. The City believed that we were additionally insured under Strata's policy, however the insurance company disagreed. The ND Insurance Fund, the carrier for the City of Mandan, placed a defense on the City's behalf in that litigation. All the litigation for damages has been resolved by the various insurance companies. The insurance reserve fund on behalf of the City sued Liberty Mutual for reimbursement for attorney's fees and they have now agreed to settle that with Liberty Mutual paying the City approximately \$102,000 which we will then transfer to the ND Insurance Fund to reimburse them for their attorney's fees. This is requesting the Board's approval of that settlement.

Commissioner Jackson moved to approve the *"Release, Reservation of Rights, Assignment and Indemnification Agreement between the City of Mandan, Liberty Mutual Fire Insurance Company and Strata Corporation."* Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent;

Commissioner Jackson: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes.
The motion passed.

RESOLUTIONS & ORDINANCES:

1. *Consider first reading of Ordinance No. 1086 Zone Change for Highland 3rd Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map.* Commissioner Jackson moved to approve the first reading of Ordinance No. 1086 Zone Change for Highland 3rd Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Jackson: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes. The motion passed.

2. *Consider resolution providing the City Administrator authority to advertise lots that may come back to the City for various reasons for sale.* City Administrator Neubauer stated that there are times when lots do come back to the city for various reasons and this is an action requesting the board grant approval so that the City Administrator can advertise those lots for sale. He stated that this happens infrequently and that this is a request to have a blanket approval to have a plan in place to put the properties up for sale at a reasonable price without coming to the Commission every time there is one to be dealt with. The final approval would then be brought before the Commission for final action. Commissioner Rohr moved to approve the resolution providing the City Administrator authority to advertise lots that may come back to the City for various reasons for sale. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Jackson: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes. The motion passed.

RESOLUTION

BE IT RESOLVED, by the City Commission of the City of Mandan that the following described real property owned by the City of Mandan shall, pursuant to the provisions of Section 40-11-04.2, N.D.C.C., and the Mandan Municipal Code, the City sell the following described real property:

The West 50' of Lot 6, Block 86, Northern Pacific First Addition to the City of Mandan, Morton County, North Dakota

and engage a licensed real estate broker to sell the above described property by way of a non-exclusive listing agreement with a maximum commission of ____% of the gross selling price.

Dated this 5th day of October, 2010.

/s/ Timothy Helbling
Timothy Helbling, President of the
Board of City Commissioners

Attest:

/s/ James Neubauer
James Neubauer, City Administrator

OTHER BUSINESS:

There being no further actions to come before the Board, Commissioner Jackson moved to adjourn the meeting at 6:06 p.m. Commissioner Rohr seconded the motion. The motion received unanimous approval of the Board members present and the meeting adjourned.

/s/ James Neubauer
James Neubauer,
City Administrator

/s/ Timothy A. Helbling
Timothy A. Helbling,
President, Board of City
Commissioners