

The Mandan City Commission met in regular session at 5:30 p.m. on September 15, 2009 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Jackson, and Gangl. 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 Serhienko and City Assessor Barta.

MINUTES: *Consider approval of the minutes from the September 1, 2009 meeting of the Board of City Commission.* Commissioner Tibke moved to approve the minutes from the September 1, 2009 Board of City Commission meeting as presented. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *A public hearing to determine the sufficiency of protests for Street Improvement Project 2009-13 District #159. (Terra Vallee).* Engineering Project Manager Bechtel presented a request to determine the sufficiency of protests for Street Improvement Project 2009-13 District #159. (Terra Vallee). The protest period closed on September 10, 2009. Two protest letters were received, representing 21.75% of the properties that are eligible to be special assessed for benefits of the project, which is below the 50% required to protest out the district. Commissioner Gangl moved to approve the sufficiency of protests for Street Improvement Project 2009-13 District #159. (Terra Vallee). Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

2. *A public hearing to determine the sufficiency of protests for Storm Sewer Improvement Project 2009-04 District #30. (Terra Vallee).* Engineering Project Manager Bechtel presented a request to determine the sufficiency of protests for Storm Sewer Improvement Project 2009-04 District #30. (Terra Vallee). He stated that this is the storm sewer aspect of the street. The protest period closed on September 10, 2009. Bechtel stated there were numerous letters of protest received, representing 69.35% of the properties that are eligible to be special assessed for benefits of the project, which is above the 50% required to protest out the district.

Commissioner Jackson moved to deny the project at this time because of the sufficiency of protests received in opposition to the project. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

BIDS

1. *Consider award of bid for communications tower.* Fire Chief Nardello presented a request to award the bid for communications tower. Nardello presented information related to awarding bids for the Communication Towers for the new 180’ communications tower. Bids were opened on September 3rd and the low bid came in from Great Plains Towers in the amount of \$71,000. He stated that the engineer’s bid for

the project was at \$185,000. Kadrmas, Lee, and Jackson has verified that the bid from Great Plains Towers meets the plans and specifications for this project.

Commissioner Tibke moved to approve awarding the bid for the Communications Tower to Great Plains Towers, West Fargo, in the amount of \$71,000. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

CONSENT AGENDA:

1. *Consider approval of monthly bills.* The Board approved of the monthly bills.
2. *Consider Acceptance of Traffic Safety Contract.* The Board approved Acceptance of the Traffic Safety Contract.
3. *Consider Budget amendment for Forestry Dept. to remove Dutch Elm diseased trees.* The Board approved a Budget amendment for Forestry Dept. to remove Dutch Elm diseased trees.

Commissioner Jackson moved to approve the Consent Agenda as presented. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

OLD BUSINESS:

NEW BUSINESS:

1. *Discussion regarding noise issues.* Mayor Helbling commented that when discussing this matter that it is important to respect other people's views regarding the issues. He stated that he has had discussions with Police Chief Bullinger and City Administrator Neubauer and together they put together a talking points guideline for discussion purposes to get the matter off the ground, as follows:

Propose Ordinance Amendment to Chapter 12-02 MCO relating to outdoor entertainment from certain liquor license holders.

- A) Shall apply only to holders of Class A liquor licenses from the City of Mandan;
- B) Shall apply to Class A liquor licenses from the City of Mandan:
 - 1) Prior to the presentation of outdoor entertainment, as defined herein, the license holder shall apply to the City for a permit to do so at least 10 days prior to the outdoor entertainment. A license holder may present no more than _____ events of outdoor entertainment in any given month. Outdoor entertainment cannot commence prior to _____ p.m. and no later than _____ p.m.
 - 2) Sound emanating from the outdoor entertainment must not have a decibel reading not exceeding _____ decibels taken _____ feet from the presentation location.

- 3) “Outdoor Entertainment” means any live band, sound group, electronic sounds, disc jockey, or other presentation of music or sound held in an outdoor setting.
- 4) Violation of this Ordinance shall subject the license holder to the penalties contained in Section 12-02-12 MCO.

Mayor Helbling said that he would like to add to the list the following:

- Include a grace period for the 4th of July weekend
- Include a grace period for the McQuade weekend

Commissioner Tibke stated that she was involved when West Side Bar and Grill had similar concerns. She said that resolution in that matter actually warranted her and Commissioner Ulmer mediating between the parties by sitting in a homeowner’s home while in contact with the bar owner indicating “higher” or “lower” until the noise level was acceptable. She said that apparently that had resolved the issue and since that time, the bar has changed owners. However, the parties apparently have worked out an agreement because she stated she has not had complaints since. In addition, the bar owner does notify the homeowners before outdoor events. Tibke stated that the key in this situation is the decibel level. She explained that by setting decibel levels, that will serve as a definition to both the bar owner and the home owner so there would be no mis-interpretation problems with the noise level. She suggested that perhaps Captain Freddy’s be the responsible party to monitor the decibel level at the onset of the entertainment event wherein someone would sit at the edge of the property with a decibel meter and indicate to the entertainment organizer if it should be higher or lower. End of problem. In essence, the key to resolving this matter is to come to an agreement for the decibel measurement.

Commissioner Jackson commented after review of the talking points discussion guideline, that he has concerns about enforcing something of this nature when addressing the different license holders. He would like the “within 2,500 feet of the Missouri River” removed from the list. He suggested that with regard to the Sunday openings that there be a set decibel level. He suggested that a system be set up wherein a bar owner could request a “waiver” that would encompass a block period of time for “x” number of nights when they know they will be scheduling a band or DJ for a certain time period. Using that scenario, Jackson believes the enforceability will be easier. He indicated he would like to discuss the matter with the City Prosecutor’s office even though City Attorney Brown will be the one in charge, however he will not be prosecuting the matters at the court level. Commissioner Jackson would like the enforcement to include a fineable offense rather than a removal of a liquor license offense. He stated he has received a copy of a petition from Richard Haman that contains the support of several homeowners in favor of some kind of ordinance. He stated he is in support of the request. He commented that he does not believe there should be a number of limitation of events for a bar owner.

Mayor Helbling commented that in discussions with the Chief of Police, the chief is not in favor of a city-wide ordinance regarding this basically because this is the only area that

has received complaints. The rest of the city does not have this problem. Mayor Helbling agreed there should be a stepping-stone fine system as a suggestion to enforcement. Police Chief Bullinger indicated he has had 66 complaints regarding noise issues (RE: Captain Freddy's). Mayor Helbling added that many complaints also come from the Bismarck side of the river.

Mayor Helbling opened the floor for public comment. The following came forward to speak:

- (1) Dick Baer, a representative of the Broken Oar, commented as follows:
 - That he has reviewed the police report. He requested a copy of a petition from the City, of which he was told there was no petition. He would like to see a copy of the petition with the 100 plus names that the Bismarck Tribune referenced;
 - The police report shows there were 5 different calls regarding the Broken Oar – all last summer (2009), with the last one on 7/25. He stated they have worked with the City to accommodate the complaints. He said there was only 1 complaint in 2008. All complaints this year are from Bismarck, including the Bismarck Police Department.
 - He is not aware of any complaints from the Bay area; he has not seen the petition and he is not aware of where any of the complainants reside.
 - He stated that the Broken Oar is opposed to the decibel measurement suggestion and/or to carving a piece of the river out. He stated the Broken Oar was established before homes were built there. He also stated that he believes the complaints coming from Bismarck are related to noise on the “water”. It is his impression that the proposed “Ordinance” is being planned in order to penalize those people who have done nothing wrong.

Baer suggested as a resolution to the matter that it not be in the form of an ordinance but rather discussing it with the people that are involved. Further, he questioned how the economics would play out if such an ordinance was put into place out pointing out the impact on economic business vs. a minuscule of personal views if such an ordinance were put into place. On behalf of the Broken Oar, Baer stated he is opposed to the development of an ordinance or an additional application process, or a cost process, or an additional penalty or any governmental intervention to resolve this issue. He stated he would be willing to work with a city representative to resolve this matter.

Mayor Helbling clarified that this is only a proposed document entitled as an Ordinance in order to develop talking points in hopes of coming to a resolution between all parties involved. He stated that he requested the person who circulated the petition for the development of a noise ordinance to hold on it for now as he (Mayor Helbling) would not support a city-wide noise ordinance at this time. Mayor Helbling stated it would be in the best interests of all to come to a compromise rather than establishing a new ordinance addressing this matter.

- (2) Richard Haman, a Mandan resident, came forward to speak. He stated he has been involved with the residents who circulated the petition and they have received 126

signatures to date. He stated that Police Chief Bullinger and the Police Department have been very helpful in the (noise) complaint process. Some points Haman addressed:

- He does not believe people have been down in the area at the time the problems occur in order for them to understand how severe the problem is;
- He claims the noise is constant and is a problem every weekend and holidays. This limits the residents to entertaining in and outside their homes;
- The noise prohibits residents to sleep at night after 11 p.m.;
- Of the six largest cities in North Dakota, Mandan is the only city that does not have a noise ordinance. All those cities set the noise level the same: Fargo, Bismarck, Grand Forks, Dickinson, and Minot, all have ordinances that state that between 7 AM and 11 PM the decibel reading cannot exceed 65 DB and after 11 PM it cannot exceed 60 DB;
- Commissioner Tibke and Haman recently did a decibel reading at Captain Freddy's and it read at 77.4. He said this is 3.5 times higher than is allowed or is acceptable to the other cities in North Dakota;
- Within the petition there is a request for a noise ordinance; the request would be to follow what the other five cities have in place: 65 DB and 60 DB.
- He believes there is a need for a noise ordinance for new businesses coming into town who should be informed as to what they can or cannot do.
- In January 2008, this group came before the Commission asking that the city not permit another bar on the river. At that time, the City assured our group that if there comes a time there are issues with the bar(s), the City would assist with the problems;
- Two items came up within the Mandan Strategic Planning Commission when looking at the future of Mandan. The main reasons why people would like to reside in Mandan are: 1) A family-friendly, nice place to grow up and, 2) A community to belong to when one retires;
- He is in agreement there should be exemptions that are limited and he is not against exemptions;
- He has talked with the Police Chief who stated that many times the police department spends a lot of time on the complaints, which takes time away from the Police Department when they should be out doing other things.
- Strong enforcement penalties should be in place for violations: noise level decibels should be set; readings should be conducted at the property line of the offending party.

In summary, he is in favor of a noise ordinance, and he would like to turn in the petition.

Commissioner Tibke commented that when she went out to investigate the matter, the noise on the south side of the bar was very loud, probably due to the water. She commented that it was not an acceptable noise level by her standards. The north side of the bar was tolerable and probably less noisy because of the buildings blocking the noise and there is no water on the north side.

(3) Victoria Johnson, Mandan city resident who lives on the south side of the bar, came forward to speak and alluded to as follows:

- She stated the noise starts on Wednesday night and lasts 5 nights a week;
- She does not go out of her home past 9 pm because of the loud music;
- She is in support of a noise ordinance.

(4) Rick White, representing Captain Freddy's came forward to speak and commented:

- He has visited with several city officials in attempts to resolve this matter;
- He has visited with homeowners on the south side of the bar. He commented that everyone has been approachable;
- He purchased a decibel reader on his own to take his own decibel readings;
- He visited with a Bismarck Police Officer who stated that the City of Bismarck allows up to 80 DBs. Later, it was determined that 80 DBs references motorcycles, etc. He acknowledged that was interpreted wrong and that Captain Freddy's was too high and he immediately lowered his decibel reading levels;
- In comparing to other cities, he pointed out that no other city has the amenities that Mandan has with establishments being located on the rivers which is not quite a comparison because they cannot offer what we have here;
- He has approached residents and asked for input on their recommendation for decibel meter reading;
- He has cooperated with Mandan City Police Officers and they take readings side by side for gauge comparisons;
- Part of the attraction is to have the music outside on the decks of the facility which is important from a business standpoint to offer residents and prospective new homeowners to the city;
- He compared the bar readings of 60-65 DB with highway traffic at @ 70 DB;
- He believes that the complaints are limited to less than 10% of the residents who live in that area;
- He is willing to compromise a resolution with the residents and Police Department;
- He is not in favor of a noise ordinance.

(5) Jeff Wood, a representative of The Drink came forward to speak. He stated he is appreciative of the fact that this matter is in a discussion phase rather than at the point of establishing a new ordinance. He indicated he is willing to have discussions with the city officials as well as property owners within location of his business in order to come to some compromise that is considerate of all parties involved.

(8) David Horner, a resident of Lakeview, came forward to speak. He came forward to offer clarification of a statement published in the Bismarck Tribune (addressed by Jeff Wood) that "The Drink" is not a problem. Horner stated that it is a problem. He has been a neighbor to The Drink for 3 years and this year they could not sit out on their deck after 9 PM. He stated that he has no problems with the establishment, but he does not like the noise from the bands or DJs that play there in the evenings.

(9) Jack Gabriel, a resident from Bismarck came forward to comment. He stated that the “noise pollution” is in the form of either a DJ announcing on a PA system or a band playing. He stated there are several residents in his neighborhood that have the same complaints of which they have been told that “they (as in the bar)” were going to be talked to.

(10) Loren Galpin, a contractor who has been involved in the design of some of the homes within this area of the city came forward. He addressed similar circumstances of noise disturbances within other cities, in particular, the quiet rail system – trying to get the train noise down. He stated: trains never used to be a problem. His take on the scenarios presented is that over a period of time “The game changed around them”. It is his opinion that the City of Mandan should be looking out for the best interest of the homeowners who were in their locations before Captain Freddy’s existed. He stated that he believes that decibel level control is necessary in this situation and it also requires a monitoring system that is manageable. Some points Galpin addressed:

- There is a need to identify decibel levels that can be agreed upon;
- Look at options of having the music located within the establishment;
- Importance of allowing and holding special events within the community;
- He feels that the silent majority of those in opposition hardly ever step up to the plate. He believes there are many more residents in favor of a noise ordinance, however, those people usually do not come forward;
- He is in favor of an ordinance similar to what other communities have in place.

(11) Mr. Wachter, A representative of Riverplace Apartments, representing 90 units south of Captain Freddy’s came forward to speak. He alluded to the following:

- He concurs with previous testimony that he receives complaints starting on Thursday, extending into the weekend
- He has been in contact with the Police Department and Administrator Neubauer;
- He concurred that the bands are very loud;
- He has been involved in the petition process;
- He has had complaints from people who have moved out of the apartment complexes because of the noise;
- He does not think turning the volume down will affect Freddy’s patrons;
- He stated he has lost tenants due to the noise problems from Freddy’s.

(12) Rosemary Gerhardt came forward to speak. She stated that she has no objection to having a bar in the area but she opposes the noise at the bar from the music. She is in support of the development of a noise ordinance.

(13) Mr. Johnson, Victoria Johnson’s father, came forward to speak. He stated the importance of getting an ordinance would be fair to all bar owners. With a noise ordinance in place, it will put Mandan in par with other cities that have noise ordinances. It will make it a level playing field for all the businesses.

(14) Frances Herauf came forward to speak. He stated that if the Board passes a (noise) ordinance, they will have to stop the trucks on Main Street. Herauf inquired if the trucks could be told to go from the interstate to the truck stop and not use Main Street. Mayor Helbling replied that Main Street is a main highway.

(15) Dick Baer approached the podium again. He gave a brief history of the Broken Oar, having started as a pole barn, wherein there were no houses in the area when initially opened. In addressing the complaints that are now before this Board, the people came to the area, by their choice, after the Broken Oar was well established. On behalf of the Broken Oar Baer reiterated:

- The complaints come from the Bismarck side; the last complaint was on July 25th
- Operation months are limited to 3 months
- He is not aware of any neighbors that are dissatisfied with the Broken Oar
- The Oar operated before population moved into the area

Baer requested a copy of the petition including the names and addresses of the people who signed it and a copy of any police report against the Broken Oar. Baer is opposed to a noise ordinance. He would like to see a compromise reached between the city and the bar establishments on the river.

(16) Rick White approached the podium again. White invited all Board members to come to Captain Freddy's and sit through decibel readings. He stated he is willing to come to a compromise with the City and homeowners that would be fair to all.

Mayor Helbling closed this portion of the public hearing.

Commissioner Tibke pointed out that if there was a set decibel, both the bar owner and the homeowner would be protected. She views the disconnect as a discrepancy between an acceptable decibel reading being at different levels - bar owners have their own decibel interpretation level and a homeowner has its own decibel interpretation level.

Commissioner Gangl stated that he questioned the suggestion of limiting this issue to just the businesses on the rivers. He commented that he believes it should be a requirement of all bars and to out line any special events limited to 5 or 6 times per year rather than once or twice.

Commissioner Jackson suggested that the Mayor appoint a committee to review the matter and come back with recommendations to resolve the issues. He believes the best course of action at this point is to coordinate a discussion with the interested parties and task them with coming up with a compromise.

Mayor Helbling commented that Mr. Haman alluded to the Mandan Vision Plan. Mayor Helbling stated it will be necessary for the Commission to seriously look at that. He stated that one point within the plan is that Mandan is to look at expanding the events and activities within the community. He also pointed out that the Commission needs to proceed with caution in whatever action is taken in order to accommodate the different

age groups, events and activities for which Mandan has grown to be known for. Mayor Helbling agreed that a noise committee is necessary, chaired by Commissioner Jackson to discuss the proposed resolutions to correct the problems related to (bar) noise issues and to bring those recommendations back to the next meeting.

Commissioner Tibke moved to approve appointing Commissioner Jackson to Chair the Noise Committee and to provide recommendations of who will be included on the committee at the next meeting. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

It was suggested that the following individuals be asked to participate on the Noise Committee: Mr. White, Mr. Baer, Mr. Haman, Mr. Wachter, Victoria Johnson.

Commissioner Tibke moved to take a 5-minute break to coordinate the Noise Committee membership. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

2. *Consider Approval of Resolution Concerning Fees for Parking Violations.*
Police Chief Bullinger reviewed with the Board a request to increase the fee for parking violations from \$5 to \$10. This matter was presented by the Parking Authority Board at a previous meeting. Bullinger also requested a part time position for parking enforcement be added to the police department budget.

Commissioner Tibke moved to approve the increase in parking fine violations from \$5 to \$10 commencing January 1, 2010, excluding the handicap parking violation. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

RESOLUTION CONCERNING FEES FOR PARKING VIOLATIONS

BE IT RESOLVED, by the Board of City Commissioners of the City of Mandan, North Dakota;

Pursuant to § 20-14-30, Mandan Municipal Code, the fee for parking violations shall be the sum of \$10.00 per offense, effective January 1, 2010.

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

Attest:

/s/ James Neubauer
City Administrator

Date of Adoption: September 15th, 2009

Date of Publication: September 25, 2009

3. *Discussion on City sidewalk evaluation program.* Engineering Project Manager Bechtel stated he has been approached by Frances Herauf to replace the sidewalks in the City. Currently there is a complaint process available that is used several times this year. Herauf has filed 99 complaints this year alone regarding sidewalk repairs. 35 letters have not been sent because of trees causing the sidewalk problems. Usually, the few complaints received are handled within the department but when there is a group of 35 or more, this is burdensome.

Francis Herauf came forward and requested the City conduct an evaluation of the sidewalk situation and that the city should hire someone to come in and fix them.

Mayor Helbling stated that the Engineer's office has reviewed these matters on an individual basis. The Commission will have to look at the sidewalk problems caused by trees. The other sidewalks Bechtel is or will be addressing. The City Ordinance says that the homeowner is responsible for trees in the boulevard. The Engineering, Police and Street Department officials are taking care of the sidewalks when they determine repairs need to be done.

Commissioner Tibke moved to continue administering the current program that deals with sidewalk issues on a complaint basis and also instruct Engineering, Police and Fire Departments that if they do see a sidewalk in need of repairs to notify the Engineering Department. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

Administrator Neubauer was instructed to include on the next Agenda the matter concerning the sidewalks with tree problems.

4. *Consider Mandan Growth Fund recommendation regarding Thermal Line Windows.* City Administrator Neubauer presented a request from the Mandan Growth Fund to consider a request from Thermal Line Windows, Inc., (TLW) for a PACE interest buy down. The funding assistance would assist the principal owners in acquiring the property and entering into a 20 year lease with TLW. They are requesting \$125,000 from the PACE Program. This would be contingent upon the Bank of ND approving this project for a loan and also that of a qualifying lender. Thermal Line is here to speak concerning the expansion.

Brad Scott, Scott Financial, came forward in support of the expansion project. It would be within the confines of the building. The building will not be expanded; there will be a redesign that would enhance their employment positions by 35 people. The company has been here for 25 years and is expanding quickly. Scott recommended approval.

Dave Anderson, Thermal Line Windows, said the new windows will be well received within the industry. The salary range for the unskilled employees start in the upper \$9 range and the semi-skilled workers are paid in the \$14-\$15 dollar range.

Commissioner Jackson moved to approve the recommendation by the Mandan Growth Fund for funding of approximately \$125,000 for a PACE interest buy down to assist in the retention and expansion of jobs at Thermal Line Windows, contingent upon review of documents provided and participation of the Bank of North Dakota in this matter.

Commissioner Tibke seconded the motion. City Attorney Brown stated that he has reviewed the lease and the contract for deed and they are satisfactory. Mayor Helbling called for a roll call vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Absent; Commissioner Helbling: Yes. The motion passed.

5. *Consider appointment of Myra Olson to Morton Mandan Public Library Board of Trustees.* Kelly Steckler, Director Morton Mandan Public Library presented a request for an appointment to the Library Board as a result of a vacancy. The Board has conducted advertisements and interviews and is recommending the appointment of Myra Olson, Flasher, North Dakota to fill the vacancy.

Commissioner Tibke moved to approve the appointment of Myra Olson to the Morton Mandan Public Library Board of Trustees. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

6. *Consider request by a citizen to continue discussion regarding the Preliminary 2010 Budget.* Mayor Helbling stated that this is not the Public Hearing on this matter. Before the commission tonight is for the Commission to review the questions from Mr. Papke. The date set for the Public Hearing is September 29, 2009.

Wayne Papke, a Mandan citizen, addressed the Commission on the 2010 Budget. He stated he has been involved in the School budget, the City budget, the County budget, the Park Board budget. He stated that this is a “good budget”. The Park Board has increased by 6.6%, the county by 6%, the schools 6%, the City will only be 2.5%. He pointed out specific budget questions he would like reviewed:

- The city sales tax funds;
- The non-stimulus funds and funded thru the DOT have matched components;
- Community Center – how does that money get put back in the budget? An existing agreement is in place that will need to be honored;
- Sales Tax fund expenditures on other projects – do we need to continue with recommendations? Papke inquired if the Division Street is completed? Finance Director Welch stated that the street is completed and will be special assessed this fall.
- The litigation on the storm sewer debt – will the city be liable for the \$118,000? City Attorney Brown commented on the equalizer pipe stating that litigation is pending with the contractor and the engineering firm.
- Opposition to the water rate increases

RESOLUTIONS & ORDINANCES:

OTHER BUSINESS:

1. *Consider Site Authorization for Fort Abraham Lincoln Foundation at 501 Burlington St, Mandan, ND beginning September 28, 2009 through June 30, 2010.* City Administrator Neubauer reviewed a routine request for a Site Authorization for Fort Abraham Lincoln Foundation at 501 Burlington St, Mandan, ND beginning September 28, 2009 through June 30, 2010.

Commissioner Jackson moved to approve the Site Authorization for Fort Abraham Lincoln Foundation at 501 Burlington St, Mandan, ND beginning September 28, 2009, through June 30, 2010. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

2. *Consider moving into Executive Session (N.D.C.C. § 44-04-17.1 (4); § 44-04-19.2 (7), relative to consultation with legal counsel regarding negotiations for the Division Street right of way, east of Mandan Avenue.* Commissioner Tibke motioned to move into an Executive Session (N.D.C.C. § 44-04-17.1 (4); § 44-04-19.2 (7), relative to consultation with legal counsel regarding negotiations for the Division Street right of way, east of Mandan Avenue. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

The meeting was reconvened at 8:17 p.m. There is a recommendation to authorize City Attorney Brown and Administrator Neubauer to negotiate a reasonable settlement, regarding the negotiations on the Division Street right of way east of Mandan Avenue.

Commissioner Jackson moved to authorize City Attorney Brown and Administrator Neubauer to offer to negotiate a reasonable settlement, regarding the negotiations on the Division Street right of way east of Mandan Avenue. Commissioner Tibke seconded the motion. Upon roll call vote, Commissioners Gangl, Tibke, Jackson, Helbling voted yes and Commissioner Serhienko was absent.

There being no further actions to come before the Board, Commissioner Jackson moved to adjourn the meeting. Commissioner Tibke seconded the motion. Upon roll call vote, the motion received unanimous approval of the Board and the meeting adjourned at 8:18 p.m.

/s/ James Neubauer
James Neubauer,
City Administrator

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