

The Mandan City Commission met in regular session at 5:30 p.m. on January 5, 2010 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Gangl, Serhienko, 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, and Business Development Director Huber. Absent: City Assessor Barta and Engineering Project Manager Bechtel.

MINUTES: Consider approval of the minutes for December 15, 2009 meeting of the Board of City Commissioners. Commissioner Serhienko moved to approve the minutes as presented. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

BIDS:

CONSENT AGENDA:

1. Consider action of Fire Department Homeland Security Grant. The Board approved of the request of the Fire Department Homeland Security Grant.
2. Consider the approval of the following abatements:
 - i. Walter & Jane Bruggeman – Homestead Credit
 - ii. Frank & Margaret Sturn – Homestead Credit
 - iii. Removed from Agenda: ~~Scott Arndt – Wheelchair Exemption~~

The Board approved of the abatement requests listed above.

3. Consider Special Sunday opening for Mandan Eagles on Sunday, January 17, 2010. The Board approved of the Special Sunday opening for Mandan Eagles on Sunday, January 27, 2010.

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

OLD BUSINESS:

NEW BUSINESS:

1. Consider the selection of Advanced Engineering and enter into a contract for the Comprehensive Sanitary Sewer Collection System Master Plan. Director of Public Works Wright presented a request to consider awarding the Comprehensive Sanitary Sewer Collection System Master Plan project to Advanced Engineering. Wright reviewed briefly the events that have taken place in this matter. In summary, upon discovering that Ulteig Engineering’s proposed price escalated to \$216,400, the Selection Committee decided to review the top two other bids for the project. Subsequently, Advanced Engineering was selected by the Committee for a contract price of \$198,985 to complete the tasks that make up the comprehensive plan. Wright stated that the \$198,950 would be eligible for SRF Loan funding which the rate structure is intended to support.

Mayor Helbling commented that he had a request from a citizen who recommended that the City give more weight to the firms located within the City of Mandan (when awarding bids). Commissioner Tibke inquired of Wright how many points are awarded for a Mandan firm within the process of selection. Wright replied that the points go from 1 to 5. He indicated that the committee members do give higher points to the local firms. Wright stated that he is confident that Advanced Engineering will complete the tasks expectations of the project that have been outlined in a timely and efficient manner.

Commissioner Jackson moved to approve the bid award to Advanced Engineering and enter into a contract for the Comprehensive Sanitary Sewer Collection System Master Plan. Commissioner Tibke seconded the motion. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: No; Commissioner Helbling: Yes. The motion passed.

2. *Discussion regarding Noise Committee decision and status.* Commissioner Jackson reported on his role as the Chairperson assigned to the Noise Committee. He stated that the Committee met three times. He stated that at the last meeting, there was a vote taken indicating a 4 to 3 vote in favor of not passing a noise ordinance. He indicated that it was a split vote between the homeowners and bar owners with his deciding vote being cast in favor of not passing a noise ordinance. He requested at this point to have input from the Commission as to what direction to go. Jackson stated that he requested both sides draft a proposal of what they would like the Commission to consider. However, Jackson was clear with the Noise Committee members that whatever was presented would not be a request to be passed by the City Commission. The bar owners submitted a five page document. The homeowners submitted a ½ page document. Jackson requested a motion from the City Commission as to what they would like the Committee to come up with in order for the two sides to once again reconvene and attempt to agree on a resolution to the matter.

Commissioner Tibke stated that she had attended the last meeting in hopes of solving the matter over the winter months; however it is apparent that it is not going to happen.

Commissioner Gangl recommended that the City Commission give guidelines to the Noise Committee such as decibel levels, etc. in order to get the matter off the ground.

Jackson stated that it would be beneficial to send it back to the committee to reach an agreement before resorting to the passing of a Noise Ordinance. He said that if the City Commission decides a Noise Ordinance is necessary, that parameters be reviewed and recommended by the Committee. An agreement between the parties will benefit everyone more so than the passing of an ordinance. Jackson stated that the difference between the two parties is if there should or should not be a Noise Ordinance. Commissioner Serhienko stated that in the best interests of the homeowners and bar owners Commissioner Jackson should advise them that it would be to their advantage to work together to come to a compromised solution. In the alternative, if the City Commission is forced to resolve the matter, they would have to look at the big picture and come up with restrictions that would affect the community city-wide.

Commissioner Jackson clarified that the homeowners want protection that if something goes wrong in June of next year, that they can call the Chief and the Chief can send someone down to write a ticket. They want some thing that is hard and fast in writing. Jackson stated that he would like a motion that if the Commission decides to do nothing, then that would reflect what the committee decided. But if the Commission decides to send it back to committee with it in mind that there are three options: 1) Do nothing; 2) Send it back to the Noise Committee with instructions to draft a City-wide Ordinance or; 3) Send it back to the Noise Committee to draft with instructions that the Ordinance be tied to a liquor license.

Commissioner Tibke clarified that the recommendations of the committee was to work together and mediate the noise level for the immediate months and then bring it to the Commission level. That portion did not work out. She stated that some of the members indicated they were not interested in an ordinance but rather a restriction of some kind attached to the liquor license. Mayor Helbling commented that he agreed with what Commissioner Tibke outlined. He stated that “doing nothing” is not an option. He stated that he does not believe a city-wide ordinance is an option at this time. He indicated that it should be tied to the liquor license and that there may have to be another classification created to resolve this matter. City Attorney Brown commented that he believes that Mayor Helbling’s recommendation of creating a separate classification is worth considering. He explained that obtaining a liquor license is a privilege and not a right and based on that, there is a greater significance of authority granted for enforcement purposes when granting a liquor license. Brown indicated he would be willing to look into that suggestion.

Commissioner Jackson stated that he does not believe a noise ordinance is necessary at this time and he would like to see the home owners work something out with the bar owners. However, if the City Commission is leaning in the direction of an ordinance, Jackson stated that a city ordinance would be best so that all issues are addressed regarding noise regulations and/or exemptions that may at some point in the future be addressed anyway. Mayor Helbling stated that he would support the idea of a restriction on a liquor license and believes that would be the fairest way to resolve the matter without imposing a city-wide ordinance. Commissioner Serhienko agreed with Mayor Helbling stating that restrictions on a liquor license would be an acceptable resolution. Serhienko commented that he believes the best way to resolve the matter would be for the homeowners and bar owners to come up with an agreement. Absent that, the City Commission will have to come up with a resolution. Mayor Helbling encouraged interested parties provide input at this time.

Todd Kranda, an attorney speaking on behalf of Captain Freddy’s, came forward to speak. He stated that he was a member of the Noise Committee, on the bar owner’s side of the entities involved. He clarified that the bar owners were in support of dealing with this problem outside of an ordinance. They did not give an indication to “do nothing” regarding this matter. He stated that the bar owners were disappointed that the home owner backed out in participating in the decibel reading level approach. He commented that this matter could be resolved in a similar way as was the West Side Bar & Grill noise

problems when they were addressed. He stated that Captain Freddy's has taken measures to monitor the noise sound levels. They have contacted an acoustics expert and rearranged their sound systems. They are also working on insulation to absorb the noise in hopes of reducing the noise level. He stated that the bar owners have not been given the opportunity to resolve the sound level (referring to the way the West Side issues were resolved). The bar owners have submitted a document to Commissioner Jackson per his request as to how the bar owners would like to resolve the matter. Kranda stated, on behalf of the bar owners, that they are willing to resolve the matter in a fashion that would not create the necessity of a Noise Ordinance.

Bruce Johnson, Victoria Johnson's father, came forward to speak. Victoria's home is located close to the bar. He reiterated as previously stated, that when the bar was built in its current location, that Victoria and other homeowners in that area were promised by the City Commission that if there were issues with the bar, the City Commission would deal with them. He stated that the home owners were in agreement to resolve the matter via their request to implement a Noise Ordinance that would protect both the home owners and the bar owners. In particular, "That the bar would know how much noise it would be allowed and the home owners would know how much noise to expect." He stated that the home owners believe that the only way to protect both parties is to implement an Ordinance.

Mayor Helbling stated that he does not believe this matter should be allowed to drag out and that this matter should be resolved in the near future. He stated that there should be more of an understanding between the parties before any direction should be taken towards resolving the matter. Commissioner Tibke stated she would recommend measuring decibel levels to get this off the ground. She would prefer the bar owner's property line, not the home owner's. She did not think it would be productive to send the matter back to the Noise Committee. Commissioner Jackson stated that he has the decibel levels for 5 other cities – which he shared with the other commissioners.

City Attorney Brown stated that one guideline to review would be the City of Bismarck Ordinance. A copy of that Ordinance was in the packets given to the Commissioners. Commissioner Jackson recommended starting with the proposals that have been submitted by the two sides. He stated that some of the data within the proposal could be once again discussed with anticipation of agreeing on decibel levels, fines and exemptions. He proposed starting with that Ordinance and some of those specific things that have a great disparity between the two Ordinances should be discussed and compromised between the parties. If the City is looking at tying it to a liquor license - that would be the place to start. Commissioner Jackson said that he would be in favor of a motion for City Attorney Brown to draft an ordinance to take back to the Noise Committee for consideration. Mayor Helbling commented that he would like to have Attorney Brown do research on creating a new liquor license classification and outline what pros and cons there would be for the City and the liquor establishments. Once that is drafted, that should be sent back to the Committee with some more stipulations and some more guidelines for resolution. He also recommended keeping the stipulation to

four exemptions, and further, that the City Commission should have control of those exemption dates.

Commissioner Serhienko motioned to instruct City Attorney Brown to look at the liquor license classifications and try to come up with another liquor license classification. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

RESOLUTIONS AND ORDINANCES:

1. *Consider Resolution authorizing filing of application with the North Dakota Department of Health for a Loan under the Safe Drinking Water Act.* Gary Zander, Water Treatment Plant Superintendent, presented a request to consider a Resolution authorizing the filing of an application for a loan under the Safe Drinking Water Act.

He stated that in March 2009, the Commission approved an agreement with Advanced Engineering for engineering services for the Residuals Management facility. He stated that the next step in the process is to apply for the financing. Finance Director Welch stated that with regard to the Missouri West Water Systems, he is somewhat familiar with the contract. The original agreement was executed in 1992, for a 30-year period of time. In 1997, that contract was re-worked into a 40-year agreement. However, since he was not a part of the 1997 re-write agreement, he was not certain what specific capital improvements Missouri West Water Systems would participate in and which ones they would not. As a result, Welch stated he is hesitant to obligate the City in determining what the rate impact would be to the citizens of Mandan until the City has a chance to go through the contract and determine what Missouri West's responsibility is. He stated this is not limited to the current project being proposed but other capital improvement projects since 1997. On behalf of the Finance Department, Welch recommended that the City request City Attorney Brown to go through the administrative file and look at the contract to determine what the City's options are and determine, from his opinion, what the responsibility of Missouri West Water Systems would be towards cost participation for this project and also for the other capital improvements since 1997.

Mayor Helbling agreed with Finance Director Welch's recommendations stating that there is time to approve this resolution. Welch stated that the Resolution is before the Commission at this time because it is a requirement of the loan application package with the State. Upon approval and execution of the resolution, this isn't obligating the City for the full amount of the funding request. The City would only be indebted for the portions that they would draw from the State as it is needed to refund the City for the costs incurred up to a certain point.

Commissioner Jackson motioned to approve the resolution authorizing filing of the application with the North Dakota Department of Health for a Loan under the Safe Drinking Water Act. Commissioner Gangl seconded the motion.

RESOLUTION AUTHORIZING FILING OF APPLICATION WITH THE NORTH DAKOTA DEPARTMENT OF HEALTH FOR A LOAN UNDER THE SAFE DRINKING WATER ACT

WHEREAS, under the terms of the Safe Drinking Water Act, the United States of America has authorized the making of Loans to authorized applicants to aid in the construction of specific public projects:

Now, Therefore, Be It Resolved by the Board of City Commissioners of the City of Mandan, North Dakota:

1. That Tim Helbling, President, be and is hereby authorized to execute and file an application on behalf of the City of Mandan with the North Dakota Department of Health for a Loan to aid in the construction of a new Water Treatment Plant Residuals Management Facility.
2. That Jim Neubauer, City Administrator, be and is hereby authorized and directed to furnish such information as the North Dakota Department of Health may reasonably request in connection with the application which is herein authorized to be filed, to sign all necessary documents, and, on behalf of city, to accept Loan offer and receive payment of Loan funds.

This resolution shall become effective upon the date of its adoption.

Dated and adopted this 5th day of January, 2010.

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

Attest:

/s/ Jim Neubauer
City Administrator

CERTIFICATE OF RECORDING OFFICER

The undersigned duly qualified and acting City Administrator of the City of Mandan does hereby certify: That the attached resolution is a true and correct copy of the resolution, authorizing the filing of application with the North Dakota Department of Health, as regularly adopted at a legally convened meeting of the Board of City Commissioners duly held on the 5th day of January, 2010; and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In Witness Whereof, I have hereunto set my hand this 5th day of January, 2010.

/s/Jim Neubauer
City Administrator

Mayor Helbling reminded the Commission that this is a \$7 million dollar project and if the City continues to add these projects there is a reason to be concerned about the debt level of the City. He stated that it is important to prioritize the projects the City is taking

on. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes;
Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling:
Yes. The motion passed.

OTHER BUSINESS:

1. *Consider two vacancies for the Mandan Architectural Review Commission*
Fire Chief Nardello stated that the President of MARC was unable to be present tonight so he is representing the MARC in presenting this matter. He stated that six letters of interest were received for the two open positions. He stated that all nine members were present at the time of the selection of the candidates for the open positions. The two candidates that MARC is recommending to be appointed to the open positions are Joe Lukach and Robert Vayda. Both candidates are residents of Mandan.

Commissioner Serhienko moved to approve Joe Lukach and Robert Vayda to the two open positions on the Mandan Architectural Review Commission. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

2. January 19, 2010 meeting: Administrator Neubauer advised the Commission members that the meeting scheduled for January 19, 2010, will commence one-half hour earlier, at 5:00 rather than 5:30, on that date, due to the School Board Meeting scheduled to start at 7:00 p.m. in the Ed “Bosh” Froehlich Room.

3. Mayor Helbling reminded everyone to keep former Mayor Ken LaMont in their prayers due to illness.

There being no further actions to come before the Board, Commissioner Serhienko moved to adjourn the meeting at 6:37 p.m. Commissioner Jackson seconded the motion. Upon roll call vote, the motion received unanimous approval of the Board and the meeting adjourned.

/s/ James Neubauer
James Neubauer,
City Administrator

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