
The Mandan City Commission met in regular session at 5:30 p.m. on February 15, 2011 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, 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 and Communications Director Huber, Engineering Project Manager Bechtel and City Assessor Barta.

MINUTES: *Consider approval of the minutes for February 1, 2011, meeting of the Board of City Commissioners.* Commissioner Tibke moved to approve the minutes as presented. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

BIDS:

1. *Consider for approval the award of the Concrete and Asphalt crushing project at the Landfill to Sundre Sand and Gravel, Inc., Minot.* Jeff Wright, Director of Public Works, reviewed with the Board the bids received for the concrete and asphalt crushing project. He stated that of the two bids received, Sundre Sand and Gravel Inc., Minot, North Dakota was the low bidder at \$60,000. Wright stated that \$60,000 has been approved for the 2011 Budget for crushing. Wright explained that the material is taken at the landfill at no charge for recycling and saving space purposes. The material can be sold once it is crushed and the cost for the crushed material is approximately half of what the product is that can be used by contractors. The City will be able to use this recycled product for water main break repairs and temporary road repairs until normal asphalt is available. The intent is to recycle the material and use it for city projects and any overage can be sold to general contractors for similar use.

Commissioner Jackson moved to approve the bid award for the Concrete and Asphalt crushing project at the Landfill to Sundre Sand and Gravel, Inc., Minot, North Dakota, not to exceed \$60,000. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

2. *Consider for approval the purchase of 2011 Kubota mower for Utility Department from Northern Plains Equip., Mandan.* Jeff Wright, Director of Public Works, reviewed with the Board the bids received for the mower for Utility Department from Northern Plains Equipment, Mandan. There were two bids received and the low bidder was Northern Plains Equip. in the amount of \$29,680. Wright stated that there was an older mower used in the Utility Department and that mower will be transferred to the Cemetery for their use.

Commissioner Rohr moved to approve the purchase of 2011 Kubota mower for Utility Department from Northern Plains Equipment, Mandan in the amount of \$29,680. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes,

Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

It was noted that one of the reasons for purchasing a mower of this size is to accommodate the mowing of the right-of-ways. Wright stated that there is a cooperative arrangement with the Park Board to do the mowing in the downtown parks during the summer in exchange for their clearing the downtown sidewalks and walkways with the equipment they have that is needed for those types of services.

CONSENT AGENDA:

1. *Consider approval of the monthly bills.* The Board approved of the monthly bills as presented.
2. *New member appointment for the Special Assessment Commission.* The Board approved of the appointment of Deborah Holter to the Special Assessment Commission.
3. *Consider approval of the Mandan Police Department in Purchasing Office Furniture for the Patrol Offices.* This matter was tabled until a future meeting.
4. *This item was moved to Resolutions #3.*

Commissioner Jackson moved to approve Consent Agenda items No. 1 and No. 2 as presented. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

Commissioner Jackson requested Item No. 3 be removed for discussion at a later time until he has had an opportunity to review what options are available. He stated that there is no urgency to approve this request at this meeting:

3. *Consider approval of the Mandan Police Department in Purchasing Office Furniture for the Patrol Office.* Commissioner Jackson moved to table this item until the next meeting. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present.

OLD BUSINESS:

NEW BUSINESS:

1. *Consider Renaissance Zone Committee recommendation on Capital Credit Union application for new construction at 600 E Main Street.* Business Development and Communications Director Huber reviewed with the Board the recommendation from the Mandan Renaissance Zone Committee, which met February 11, 2011, regarding the application from Capital Credit Union. Huber explained that Capital Credit Union had recently acquired two properties to the east of its existing building and had the structures on those properties demolished. The credit union is now prepared to construct a two-story building of 9,300 sf in total with 3,680 sf on the main floor and second story and a partial basement of 1,940 sf. The upper floor will include some lease space.

The estimated cost of construction is \$1.625 million including some site work. Huber noted that the investment will be well in excess of the minimum \$55 per square foot local requirement for Renaissance Zone project qualification.

The project will retain Capital Credit Union's current 8 employees while allowing for expansion in the future and lease space on the second floor for other businesses.

The Assessing Department estimates the value upon completion at \$1.5 million. Estimated taxes on the new building are \$30,675 annually, for a five-year exemption value of \$153,375.

The existing building will be demolished upon completion of the new credit union with the space to be used for off-street parking. The existing building's value is \$117,800. The payback for the new project, once it is on the tax rolls beginning in year 6, will be approximately 2.5 times the tax revenue that would be generated by the current building over the course of five years. The credit union is not subject to state income or financial institution tax.

Huber noted that Capital Credit Union has signed a business incentive agreement as required by state law whenever incentives exceed \$25,000, and they will be installing an automatic door for the convenience of their customers.

Huber reported that the Renaissance Zone Committee voted to unanimously recommend approval of the Capital Credit Union application for new construction at 600 E Main Street with the 100% five-year local property tax exemption, contingent upon Architectural Review Commission approval of the site plan and building design. She noted that Capital Credit Union Vice President Loni Bienek is in attendance at the meeting in case there are questions.

There was a question regarding potential employment growth. Bienek explained that the credit union does plan to hire a mortgage loan officer for Mandan in about one year. The leased space would be made available for five years and then would provide room for credit union growth in future years.

Commissioner Jackson moved to approve the Capital Credit Union application for new construction at 600 E Main as a Renaissance Zone Project with the 100% five-year state income tax exemption, contingent upon Architectural Review Commission approval of the site plan and building design. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

2. *Introduction of new Police and Fire Department employees:*

Police Chief Bullinger will introduce Officer Troy Mealey at the next scheduled meeting. Introductions by Fire Chief Nardello: Firefighter: Matt Hennessy has been with the Fire Department on a part-time basis for the last two years. He is from Bismarck and graduated from the Northland Technical College. Firefighter: Clayton Schaff has been with the Fire Department on a part time basis for the last three years. He is from the Mandan area and attended Wyoming Technical Institute.

3. *Presentation by Mike Manstrom, Dougherty & Company LLC, regarding the sale of \$960,000 Refunding Improvement Bonds of 2011, Series A. (See Resolutions #2).*

Mr. Manstrom provided the following information: The Bonds are issued pursuant to the terms and provisions of the NDCC 40-22 and 40-27. The purpose of the Refunding Improvement Bonds of 2011 Series A is to current refund the 2012-2020 maturities (\$960,000) of the Refunding Improvement Bonds of 2005 for the City of Mandan. The refinancing of the old bonds is necessary to take advantage of the lower interest rates with the sale of the new bonds. In summary, the interest rates have been reduced and the effect will be a savings to the City of Mandan. An original principal and interest payment schedule was provided and a copy of the Moody's report was available. Manstrom indicated that the bonds are again rated "A1" by Moody's Investors Services. Moody's reaffirmed Mandan's A-1 bond rating – rating rationale summary – the bonds are secured by the city's general obligation unlimited tax pledge. The A1 rating reflects the region's diverse and steadily growing economy, sound financial operations and above average but rapidly retired debt. Proceeds of the bonds will refund various outstanding obligations of the city for net present value savings. Finance Director Welch said that the savings on the bond sales are passed on to the respective parcels within the districts that are being financed. Effective on the date of the bond sale the city will go into the various parcels within the special assessment program and adjust the interest rates accordingly. There is no benefit to those people who have paid their special assessments as a result of the bonds that are being refinanced.

4. *Consider proposal to advertise city-owned properties for sale (100 Collins, 104 E Main, 106 E Main, 108 E Main and 116 E Main).* Business Development and Communications Director Huber reviewed a proposal for advertising the sale of city owned property for redevelopment at 100 Collins Avenue, 104 East Main, 106 East Main, 108 East Main and 116 East Main. In 2008 the city sought redevelopment of these properties through a request for qualifications and proposals. At that time, three proposals were received of which Hopfauf Custom Builders aka Western Edge Developments was selected. Timelines for the purchase agreement and closure on the sale of the properties were extended through December 31, 2010 at which time the agreements expired. Huber stated that the fairest way to re-offer the properties to the public is to determine the fair market value of the property and/or scope of projects proposed, level of reinvestment in development and benefits to the City of Mandan. Huber recommended using the services of Oaktree Realty, the only real estate agency with an office in Mandan. Huber reviewed features of the property information and recommendations from the realtor for minimum requirements of the land at Collins and Main recommending an asking price of \$10 per sf for \$162,500. This has been reviewed by Assessor Barta as well. A request for deposit in addition to a purchase price would be required and a recommended amount for the parcels is \$25,000. The minimum investment amount would be at least \$750,000 and a timeline for the project to be extended if warranted as applicable with the understanding that something would be constructed on that site rather than sitting vacant. The recommended start of construction date would be July, 2012 and if that date would not be met the property would revert back to the City of Mandan unless an extension was requested and granted by the City Commission. Secondly, that the project be substantially completed by July 1, 2013.

When the project would be substantially completed the deposit would be returned to the buyer. That would be the stipulations for the properties at Collins and Main. There would be similar stipulations for the 116 East Main property. The recommended asking price is \$50,000 with a \$5,000 deposit and the time line on this would have a starting date of the building renovation by October 1, 2011, with the renovations being substantially complete by March 1, 2012. In both instances, it would be recommended that the City Commission indicate that all offers are subject to review and consideration by the Mandan City Commission and that the city would reserve the right to conduct interviews with some or all parties who submit offers, to reject any portions thereof, waive any irregularities.

Huber recommended that the listing would be posted until at least April 18th before any offers would be considered to allow for adequate time for publications and allow anyone who may be interested to submit an offer. Huber reviewed the listing agreement terms as outlined. She recommended that the Commission accept the proposal as presented. Huber stated that the realtor will come before the Commission with any offers received with the option of also having the proposed buyer present information to the Commission as well.

Commissioner Frank inquired as to what marketing outreach the realtor will be using. Huber stated that the real estate agency has committed to advertising and promotions that would include the multiple listing service with the Bismarck/Mandan Board of Realtors, signage on the properties, various advertising in magazines, etc. Local and regional outreach will provide for marketing throughout the state. Both Oaktree realtors have commercial property experience. Commissioner Frank expressed concern with the tight timelines of the projects and inquired if there would be flexibility for the purchasers if need be. Huber replied that the granting of any extensions would be at the discretion of the City Commission if they feel there would be a legitimate reason for doing so.

Commissioner Tibke moved to approve offering the city-owned properties for sale at 100 Collins, 104 E Main, 106 E Main, 108 E Main as well as the building at 116 E Main available for sale to the public via a listing with Oaktree Realty with the terms defined in the listing contract and the property information sheets provided. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

5. *Consider commercial property tax exemption policy.* Commissioner Frank stated that this policy was drafted in order to provide criteria and guidance for this Board for future decisions regarding applications for commercial property tax exemptions. The Board has discussed this matter on previous occasions and this policy outlines those discussions. It is a really good step as far as trying to come up that consistency that we've heard of today and also that certainty that we want to provide residents and also entrepreneurs. There are general guidelines that serve as criteria when making decisions.

She noted some of the highlights of the policy:

- A new or expanded business in the community must not gain unfair advantage with existing competitors through use of exemption
- The amount of the exemption will be according to a 5-year schedule with Year 1 @ 100% ; Year 2 @ 100%; Year 3 @ 75%; Year 4 @ 50%; Year 5 @ 25%
- Multi-Family Residential tax incentives

Commissioner Tibke inquired if there have been discussions with area businesses as far as what is attractive or something where they would take notice? Director Huber replied that during discussions with applicants before the Mandan Growth Fund Committee they have cited for justification for the property tax exemption the need to offer a slightly lower rent to attract tenants to fill a building in Mandan as compared to Bismarck. She noted that we are aware that Bismarck's current property tax exemption policy for new and expanding businesses is to provide exemption for primary sector businesses being those that create new wealth through processing, manufacturing, information technology, etc. are those that can be certified by the state as primary sector businesses but not for the service sector or retail sector. Mandan has been providing that and will continue to do so under this policy as a means of providing it to those businesses that want to be in the community. This is a policy tool for the Commission as to how restrictive or how generous they want to be with the incentives that are allowed under state law. Further input could be gathered if the Commission wishes to do so as there is no urgency at this time to implement this policy. Commissioner Tibke stated that this is a good start to the development of a policy and she would like to have an outline available of what businesses have to work with.

Commissioner Frank stated that she has had the opportunity to talk with several developers in the community and throughout the state and they provided feedback. She reviewed some of the comments received in support of the city taking this direction. She then noted that some of the information that might be missing is infrastructure costs. Commissioner Tibke noted that the community has repeatedly been asking for more retail options and services and that is something the Commission needs to consider. She recommended that a discussion on infrastructure should be had by the Commission in order to address one community vs. another community's location for infrastructure costs for a primary sector business.

Commissioner Jackson stated that during discussions regarding this policy, it was his impression that this was to be more of a guideline than an actual *you have to have this*. So if this is merely a guideline we can deviate from it as necessary.

Commissioner Rohr stated that a decade ago there was no such thing as these tax exemptions. It would be interesting to know the percentages of those who receive this tax exemption if they are still in business after a 5-year period and then contribute to the tax base after that 5-year period of time.

Mayor Helbling commented that the policy is a good guideline for the Commission and can be utilized when needed. He inquired if the Commission would like to adopt it as a

policy. City Attorney Brown stated that it could be adopted as a policy, however, it should be in the form of a resolution. He explained that if it is something that will be used by city personnel, it should be adopted by the Commission.

Commissioner Frank moved to approve the adoption of the Commercial Property Tax Exemption Policy with two changes: (1) Increasing the \$75,000 value to \$100,000; (2) Multi-Family Residential changing the 25 units to 24 units. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

6. *Consider legislative activities.* City Administrator Neubauer stated that with the legislative session in full swing there are matters that require attention that pertain to the interests of the City of Mandan. He requested that the Board adopt a format to address general legislative positions and provided nine items for a general position on the concepts listed. Neubauer stated that information would be provided to the Board if there would be testimony given at any particular session. Commissioner Rohr indicated that there are times when the presence of a representative is available to testify in support or against an action and suggested that if possible, that if a commissioner is able to attend at any given time that would be beneficial on behalf of the City. Neubauer stated that if there is an issue that is department specific, that department manager would let the commissioner holding the portfolio for that department know about the bill and the commissioner would have the opportunity to testify. However, in the absence of the commissioner, the department manager would go as would be outlined in the guidelines of this policy. Commissioner Jackson commented that the League of Cities does the primary lobbying for the City of Mandan. In essence, they hold a conference call every Friday afternoon going over the bills and the positions the League is going to take on those bills. He stated that he and Neubauer have been sitting in on those calls and generally do not take a position on anything, but the concern is that this Commission has not taken a position as a commission and the concern is that a single commissioner or member of city staff could potentially take a position that was adverse to what other commissioners believed or that hadn't come before the Commission. Commissioner Jackson's position is that this guides the action of the staff and guides the staff in working with the ND League of Cities to do those lobbying efforts.

Mayor Helbling stated that it is important to bring these up every time the legislature is in session because of the varying view points in support or not in support of certain issues. Guidance should be available to city staff when these issues come up.

Commissioner Jackson stated that if there are controversial items that one of the department heads or one of the commissioners is going to testify – that can come before the City Commission and it can be voted on before the entire city is committed to taking a particular position on a bill.

Commissioner Jackson moved to approve the aforementioned general legislative positions for the City of Mandan. Commissioner Tibke seconded the motion. Roll call

vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

7. *Consider Change order for Residual Management Facility – Bearings.* Mayor Helbling welcomed Duane Friesz, as the newly appointed WTP Superintendent. Friesz provided a recap of activities at the Residual Management Facility. He presented a request for a change order in the amount of a little over \$30,000 to replace three bearings on the 38 ft. Solid Contact Basin for preventative maintenance. The bearings life expectancy is about 20 years. The original budget for the Residual Management Facility was \$7,000,000 the total current project costs including bearing replacement cost are \$6,847,603.41 which is within budget. Commissioner Rohr recommended approval of the Change order for Residual Management Facility for Bearings. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present.

RESOLUTIONS & ORDINANCES:

1. *Consider second and final reading of Ordinance No. 1090 relating to the making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual or unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.* Mayor Helbling stated that this is not a public hearing item but due to the discussions held on this matter in the past, that if somebody does want to make a comment, they will be allowed to do so in two minutes or less.

Pamela Schmidt, 3208 46th Avenue SE, Mandan, came forward to comment. She stated as follows: “We built there 22 years ago when the only noise problems came from the cows in the pasture across the street. We are coming late to the noise ordinance comments due to travel commitments but we have been able to gather a lot of info on what has transpired in the past and we think that we understand the arguments on both sides of the discussion. We ourselves do have, on occasion, noise problems from watercraft on the bay after the bars close. In the last legislative session, Representative Todd Porter was instrumental in getting additional funding for increased river patrol which is wonderful. We have also been told that off duty officers actually volunteered to work extra duty hours to help reduce the number of complaints on the water. That’s both rare and remarkable. Only in a community like Mandan could you expect to see this happen. And it did reduce complaints but that kind of volunteerism has proven to not be sustainable nor should it be. It seems that we need something more. In many respects this conversation is really about being friendly and courteous, isn’t it? We’re very good at that in North Dakota. It’s only a few people who create the problems. Gene’s hobby, for example, of restoring high performance late 60’s cars requires that he start up noisy engines from time to time but he has been mindful and respectful of our neighbors and they in turn have been wonderfully supportive for all of those 22 years – they gather around to watch. That’s ‘neighborliness at its finest’. But what you all have heard in testimony over an excruciating long period of time is different. You’ve really heard that it’s friends and neighbors that are being hurt right now by noise. Their property values are decreasing and they are being hurt and that’s not right. Many would argue that this is a sign of the times.

Mandan is on the move. It has been heartwarming to hear all the action going on here tonight. Mandan is on the move because people like you have been making a lot of really good decisions lately and that is remarkable. Those good decisions are propelling us forward. We can see progress all around us. With progress we all know come issues like noise. That's exactly what happened in Fargo, Grand Forks, Minot and Bismarck so they put this Noise Ordinance in place. It may not be perfect but what we have right now does not appear to be enough. Progress always has to start somewhere. Let's get this addressed so Mandan can move forward and thank you all for the considerable time and energy that you have put into this discussion."

Dave Tschider came forward and stated that he represents a group that is in favor of the ordinance as it stands. He noted that he also is an attorney. He commented as follows: "I agree that Mandan is moving forward and as you move forward problems arise and I think it is necessary that the City stay ahead of the problems instead of falling behind and then try to catch up. One of the potential issues again would be the noise issue. I don't think it's a time to fall back; it's a time to stay ahead of the game. One of the issues that would arise would be the certainty and as far as people buying and selling properties, a developing Mandan they would like to have certainties and at this point in time with a Noise Ordinance being in flux, we don't have certainty. We're not sure where people stand. For example, if an individual bought a piece of commercial property and wanted to construct a building on it, it sure would be nice to know that and six months after he buys his property somebody next door starts up a business that creates a large amount of noise devaluing his business. Again we are talking about certainty so that you know what you are getting into from the get-go. There has been some discussion I understand about watering down the Noise Ordinance and it was suggested that that would be imprudent and improper. When people are making decisions they like to plan on the toughest case scenario. If you are coming to Mandan to build a house or start a business you plan for the toughest case scenario - the toughest ordinances. You can always scale back. But I can tell you right now that if I were to commence a business in Mandan based upon certain standard and find out six months later I have to raise my standards and incur more costs and expenses or I was not allowed to do something six months prior I would not be a very happy camper. I do not think that people coming to Mandan to develop businesses or residences would be very happy about that either. If the ordinance is put in place as is, there is nothing that prevents this commission from revisiting this down the road say in a year or so. If there are problems it can be tweaked. You can always scale back and it would not be that big of a deal. I do not think it would be appropriate to try to increase the provisions of the ordinance down the road – scaling back is a lot more palatable to the people of Mandan. We have also heard stories of, for lack of a better word, horror stories. This will happen and that will happen and we can't prevent neighbors from discussing late at night, etc. I disagree with that 100% and the fact that, for example, I drove over to Mandan today, I was going 27 mph on Main Street and the speed limit on Main Street is 25. Technically I should have been pulled over. The City Attorney and the police of Mandan have the discretion and I don't believe they are storm troopers. I contacted the City Attorney for the City of Bismarck, Charlie Whitman, to find out if they have had an enforcement problems and how this was going in Bismarck. His position was that it is not an enforcement problem because when a complaint comes in

two things happen: either the neighbors work it out or if the police show up the police have a tool, in this case an ordinance, and if you don't knock it off we're going to fine you. They talk to the offending party and say let's work this out. Ninety-nine percent of the time it is worked out. If the police did not have the tool, i.e. the Ordinance to fall back on, what's to prevent the neighbor or the offending party from just saying I don't care – get out of my face. There is nothing to encourage resolution of the problem. This ordinance will allow for that. And again the city police and the city attorney are not required to prosecute but if they have somebody that is obnoxious and will not cooperate, yes they can enforce the statute. Again it's a matter of motivating people to sit down and talk their problems out. Another issue that came about is that this will interfere with my business so I will just shut down my business. As was indicated, a similar ordinance has been in effect in five cities in North Dakota: Fargo, Bismarck, Grand Forks, Minot and Dickinson. I have not heard of one business or one entity having to shut down because of the noise ordinance. If there are, I have not heard of them. So any scare tactic that this is going to shut down my business or this is going to cause me to lose money, there is no evidence to support that - at this point in time anyway. Another issue that came up was... an issue about, again, I think this came up, was what if someone is outside your house and your neighbors are talking. Again, as indicated by Mrs. Schmidt, we have to be able to talk to each other. If there are neighborhood problems, hopefully, we can resolve them between the neighbors. If not, if we have an ordinance, the police can come in and try to cause resolution. There are also discussions about watering down the ordinance by raising the decibel levels. And it sounds like, for example, you raise the decibel reading from 55 to 60 it would not be that big of a deal. Not true. A US Department of the Interior definition or glossary section indicates that in general sound doubles in loudness with every increase of 10 decibels. In this case, therefore, if you increase the decibel level by 5 which might not be exact but you are increasing the sound level by 50%. That is huge. So if there is a suggestion that this ordinance be watered down by increasing decibel levels I would suggest that that would be improper. The people of the City of Mandan voted on this ordinance as is. I think it would be improper for the Commission to suggest that they know better than the people of Mandan or that the people of Mandan did not understand what they were voting for. The people said this is what we want and it's our recommendation or request that the Commission accept the ordinance as proposed."

Mayor Helbling asked for further comments. Hearing none, the comment period was closed. He commented that this matter has been lingering for quite some time. The Ordinance as drafted is not perfect, but it is intended to benefit the community as a whole. A supporting factor is that Mandan has a great police force and it will take common sense and courtesy to make this work. He stated that he is very confident that the police department will use their better judgment in the handling of this.

Commissioner Frank stated: "I appreciate the testimony that everybody provided and it was good to hear their interpretations and I guess their hopes for this particular ordinance. A few things that I wanted to bring up that I had gotten from residents who are not able to be here tonight but I think are worth discussing and sharing with the Commission. Including the fact that the way that the Ordinance is currently written is the way that we

not only are measuring the noise but also the level at which the noise is measured at may conflict with some federal regulations that are currently in place. I am including those that are directly related to motorcycles. I think that is a concern. We have an ordinance that, as written, could more than likely be challenged that does not meet the federal standards and when it comes to providing certainty I agree with Mr. Tschider in that residences and also business owners like certainty but I think if we go into this ordinance we are entering into it with some uncertainty because we recognize that there are some faults in the way that it is written and how are you certain when you pass something that you know that. I guess my mentality is that you do it right the first time. I do not think it is right, right now. My recommendation would be that we consider the way that it is written, take a look at the federal regulations in particular those that are related to the Noise Control Act of 1972 to make sure that our ordinance is in compliance with theirs and then we move forward. I do agree that it is a discussion that has taken a lot of time. I think we have a really great commission in front of us who is progressive and is willing to tackle this. I would hope that we would give it that opportunity and then move forward with it.”

Commissioner Jackson moved to approve the second and final reading of Ordinance No. 1090 relating to the making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual or unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city. Commissioner Tibke seconded the motion.

Mayor Helbling commented that this ordinance will probably need to be tweaked in order to address some of the activities held within the city that will be exempt and to look into the federal regulations that Commissioner Frank has outlined in order for this ordinance to be in compliance. It is what the people voted on and it is where we are at.

Commissioner Frank made note that it appears that Mandan’s Municipal Code also includes some ordinances that pertain specifically to offenses against the public order including disorderly conduct under which unreasonable noise is specifically mentioned. I believe that there are some ramifications that we currently have including some time in jail and fines attached to disorderly conduct. In addition there are some nuisance laws in the Mandan ordinances that include annoyances which I heard people refer to loud music and loud base.

Roll call vote: Commissioner Rohr: No; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: No; Mayor Helbling: Yes. The motion carried.

Mayor Helbling extended a thank you to everyone for their patience throughout this matter over the last several months.

ORDINANCE NO. 1090

BE IT ORDAINED by the Board of City Commissioners of the City of Mandan, North Dakota, as follows:

Declaration of Purpose and Intent.

1. The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual or unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

2. The provisions and prohibitions of this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

Definitions. For the purpose of this chapter, certain words and phrases are defined as follows:

1. “dB(A)” means the A-weighted sound level in decibels, as measured with a sound level meter that meets the requirements for a type 1, 2, SIA, or S2A in American National Standard Specification for Sound Level Meters ANSI S1.4.

2. “Noise” means any sound.

3. “Person” means any person, partnership, association, joint venture, corporation or any other entity.

Unlawful Noise.

1. It is unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city. Loud, unnecessary or unusual noises or noises which annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others are defined with reference to subsection 2 of this section.

2. The standards which shall be considered in determining whether a violation exists include, but are not limited to, the following:

a. The volume of the noise.

b. The intensity of the noise.

c. Whether the nature of the noise is usual or unusual.

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- d. Whether the origin of the noise is natural or unnatural.
 - e. The volume and intensity of the background noise, if any.
 - f. The proximity of the noise to residential sleeping facilities.
 - g. The nature and zoning of the area within which the noise emanates.
 - h. The density of inhabitation of the area within which the noise emanates.
 - i. The time of the day or night the noise occurs.
 - j. The duration of the noise.
 - k. Whether the noise is recurrent, intermittent or constant.
3. A noise need not exceed the decibel levels in Table I be in violation of this section.

Tables; Exceptions.

1. It is unlawful to project a sound or noise excluding noise emanating from a motor vehicle from one property into another, within the boundary of a use district which exceeds the limiting noise criteria set forth in Table I below as measured at the property line of the property from which the noise is emanating.
- a. Sound or noise projecting from one use district into another use district with a different noise level limit may not exceed the limits of the district into which the noise is projected.
 - b. The permissible levels in decibels set forth in Table I are modified so that any noise occurring on property deemed to be nonconforming use property is determined upon the conforming zoning designation of the property.

TABLE I. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

Zoning District

| | Residential | Commercial | Industrial |
|----------------------------------------------------------------------------------------|-------------|------------|------------|
| Maximum number of dB(A) permitted from 7:00 a.m. until 11:00 p.m. daily | 55 | 65 | 80 |
| Maximum number of dB(A) permitted from 11:00 p.m. until 7:00 a.m. of the following day | 50 | 60 | 75 |

2. Motorized vehicles. It is unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table II as follows:

TABLE II. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

a. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of ten thousand (10,000) pounds or more:

Maximum allowable limit: 88 dB(A) measured at 25 feet.

b. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than ten thousand (10,000) pounds:

Maximum allowable limit: 80 dB(A) measured at 25 feet.

3. Exceptions. The following uses and activities are exempt from noise level regulations under this section:

a. Noises of safety signals, warning devices, and emergency relief valves.

- b. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of any emergency.
 - c. Noises resulting from work of an emergency nature.
 - d. Any construction or reasonable and necessary maintenance activities except in residentially-zoned areas between the hours of 11:00 p.m. to 7:00 a.m.
 - e. Any other noise resulting from activities of a temporary duration permitted by law and for which a special permit therefore has been granted under this section by the city.
 - f. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations are exempt. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations are also exempt.
 - g. All railroad locomotives and railroad operations and motor carriers engaged in interstate commerce.
 - h. The use of snow removal equipment, including but not limited to tractors, plows and snow blowers in the aftermath of a snowfall.
 - i. The following events will be exempt:
 - a. Buggies-n-Blues Sponsored Events
 - b. 4th of July City Events
 - c. Mandan Racetrack
 - d. Mandan Shell Concerts in the Park
 - e. Use of Fireworks As Currently Set by the City of Mandan
4. Application for special permit. Application for relief from the noise level designated in this section on the basis of undue hardship may be made to the chief of police for the City of Mandan. Any permit granted by the chief of police shall contain all conditions under which the permit has been granted and shall specify a reasonable time that a permit is effective. The chief of police may grant the relief as applied upon a finding:
- a. That additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or

- b. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other subsections of this section; and
- c. That no other reasonable alternative is available to the applicant; and
- d. The chief of police may prescribe any conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Guests on Premises. It is unlawful for any person to permit or allow guests on his or her premises to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.

Noisy Party or Gathering Prohibited. No persons shall participate in any party or gathering consisting of two or more people when the party or gathering occurs in a residentially zoned or used area or building between the hours of 11:00 p.m. and 7:00 a.m. and when the party or gathering gives rise to unreasonable noise likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area, considering the time of day and the residential character of the area or building.

Order to Disperse - Refusal Prohibited. When a police officer determines that a party or other gathering of people is creating unreasonable noise, disturbing the peace, or is disturbing the quiet or repose of another person, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disburse immediately. No person ordered to leave the premises by a police officer shall refuse to do so.

Tenant or Owner - Cooperation Required. Every owner of a premises, or tenant in charge of a premises, who has knowledge of a disturbance shall cooperate with police and make reasonable effort to stop the disturbance.

Violations - Prima Facie Evidence. The following shall be prima facie evidence of a violation in any prosecutions under this Chapter:

1. As to tenants, and owner if owner resides on the premises, if twice or more on the same day or if on successive days, the police department is called upon to enforce the terms of this ordinance either by citizen complaint or by personal investigation of a police officer.

2. As to the owner if the owner does not reside at the premises, if the police department gives the owner written notices of three violations of this ordinance by his tenants at any single location within a six month period.

3. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of unreasonable noise in violation of this Chapter.

Classification; Penalty. A violation of any provision of this ordinance is an infraction, for which the maximum penalty is a fine in the amount of \$500.00.

/s/ Timothy A. Helbling

President of City Commission

ATTEST:

/s/ James Neubauer

City Administrator

First Reading:

January 18, 2011

Second Reading and Final Passage:

February 15, 2011

Publication Date:

February 25, 2011 March 11, 2011

2. *Consider Resolution Awarding Sale of \$960,000 Refunding Improvement Bonds of 2011, Series A.* Commissioner Jackson moved to approve the Resolution Awarding Sale of \$960,000 Refunding Improvement Bonds of 2011, Series A. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

3. *Consider introduction and first reading of Ordinance ~~1901~~ 1091 to implement changes to Ordinance 1013 relating to the Establishment of Downtown Core and Fringe Districts and establishment of zoning regulations for the DC Downtown Core District and DF Downtown Fringe District; and providing for Severability and an Effective Date.* Mr. Bullinger, President of the Mandan Architectural Review Board requested doing some changing on the ordinance. He stated that one reason to change the ordinance is to provide financing for some of the homes if they were destroyed in a fire or something in the downtown core area. The way the ordinance was written, they would not qualify if it was in that footprint. With the ordinance - the setbacks, if a single family it will be 40% of the lot coverage and also with the duplex, the same as 40% and the setback the same. Before that can be done, it has to come before the Architectural Board for approval. There was a change on the core on 5th and 6th Street and some of that was taken out of the core and put in to the fringe. Whatever was there will have to come before the committee and we want to have the architecture the same - not just a plain building that would not fit into the area.

Commissioner Jackson moved to approve the introduction and first reading of Ordinance 1091 to implement changes to Ordinance 1013 relating to the Establishment of Downtown Core and Fringe Districts and establishment of zoning regulations for the DC Downtown Core District and DF Downtown Fringe District; and providing for Severability and an Effective Date. Commissioner Rohr seconded the motion.

Commissioner Frank inquired of Development Director Huber the changes and downtown core that initiated this. Huber stated that what is being referenced is the 2003 downtown redevelopment study conducted by the URS organization and within that it did recommend a residential component be maintained to downtown Mandan but in a generally density fashion. The trick is in balancing where those boundary lines are for the downtown core district in combination with what uses are permitted within those districts. The changes being proposed – does not know if it stipulates for single family and duplexes to be rebuilt or if it is new construction if it meets the approval of the Architectural committee. The recommendations from the URS Downtown Re-development Study were for those types of properties to transition into a higher and better use within those kinds of prime commercial areas and to see the commercial area expand to the north as well. Commissioner Frank commented that the commission may want to consider other ways of pursuing this such as grandfather clause to protect the people that currently have residential homes in awkward situations so they would be able to re-build in the case of a fire. Richard Barta, City Assessor, stated that he agrees with a grandfather clause but does not think that is sufficient enough and that the change will provide guidelines if something does happen to a building. Barta stated this is probably the safest way for those people to get financing or building permits if needed.

Mayor Helbling stated that there is a motion and second on the floor. A roll call vote was taken: Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: No; Mayor Helbling: Yes. The motion carried.

OTHER BUSINESS:

There being no further actions to come before the Board Commissioner Rohr moved to adjourn the meeting at 7:09 p.m. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present.

/s/ James Neubauer

James Neubauer,
City Administrator

/s/ Timothy A. Helbling

Timothy A. Helbling,
President, Board of City
Commissioners