

The Mandan City Commission met in regular session at 5:30 p.m. on March 3, 2009 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Tibke, Gangl, Jackson and Serhienko. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Fire Chief Nardello, Planner Baehurst, Business Development Director Huber, Engineering Project Manager Bechtel, and City Assessor Barta. Absent were Mayor Helbling and Director of Public Works Wright. Commissioner Tibke called the meeting to order in the absence of Mayor Helbling.

Commissioner Tibke noted that there was a recent Letter to the Editor published in the Mandan News and the Bismarck Tribune that inaccurately indicated that the City Commission would be considering a Letter of Understanding at tonight’s meeting regarding the Event Center and retail attraction criteria that would need to be met before the potential project can be acted on or put to a vote of citizens. The criteria are still being negotiated between the committee and the developer. The committee intends to meet again to further discuss the criteria before forwarding the matter to the City Commission. It may be later in March or April before the details can be worked out.

MINUTES:

PUBLIC HEARING:

1. *Public Hearing and consideration for approval the resolution to vacate the right-of-way behind Lot 3, Sunview Heights. (see resolution No. 2).* Planner Baehurst presented a request for approval of a Resolution to vacate the right-of-way behind Lot 3, Sunview Heights. Baehurst stated that Sunview Heights was created before I-94 was constructed. As the area developed over the years the section line was no longer being reserved for right-of-way. Subsequently plats on the west side of the section line were created to disallow a right-of-way in that area. The request to vacate the right-of-way behind Lot 3, Sunview Heights will allow for a larger area of the lot to be constructed on. The area is between the NISC Building and Pepsi. Baehurst stated there have been no protests received on this matter.

Commissioner Tibke asked for comments from the Commission or the public. Hearing none, this portion of the public hearing was closed. (See: Resolution No. 2).

BIDS:

1. *Consider award of Project 2008-18 (20” Water Transmission Main).* Project Engineer Bechtel reviewed with the Commission the bids received for Project 2008-18 (20” Water Transmission Main). Bechtel stated that the bids were received on February 17, 2009. That pipeline will feed from the new reservoir on the south side of Mandan down to the current 16 inch main that was installed last summer along Hwy 1806 in the flood plane area. This pipe will be the connection for that. There were 9 bids received. Weisz and Sons, Bismarck, ND came in as the low bidder at \$1,117,273.50. The engineer’s estimate was at \$2,000,000 so the bid is well under estimated costs.

Commissioner Serhienko moved to approve the bid award of Project 2008-18 (20” Water Transmission Main) to Weisz and Sons, Bismarck, ND, in the amount of \$1,117,273.50.

Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

2. *Consider award of bid for the Project 2009-01 District #154 (Traffic Signals at Old Red Trail & Sunset Drive NW).* Project Engineer Bechtel reviewed with the Commission the bids received for the Project 2009-01 District #154 (Traffic Signals at Old Red Trail & Sunset Drive NW). Bechtel stated that the bids were received on February 20, 2009. This project is at the intersection of Old Red Trail and Sunset Drive just to the south of the new junior high school. The project will reconstruct the intersection and put in traffic signals. The low bidder was Knife River Corporation in the amount of \$681,732.53. The engineer's estimate was at \$840,597.40.

Commissioner Serhienko inquired as to the configuration plans for that intersection. Bechtel stated that the intersection will be similar to the way it is right now. Bechtel stated that the entire intersection is going to be pulled out, which is asphalt, and will be replaced with concrete. The only real significant changes will be the traffic signals that will be installed. There will be two left turn lanes that will go towards the west, as you head north towards the junior high. The DOT will also be doing off ramp improvement at the same time, but that is not a part of this project. They are going to be constructing extra lanes in order to get traffic off the interstate onto that road which will create better traffic flow. The turn lanes will be addressed at the same time, which is part of the initial design phase of the project.

Commissioner Serhienko moved to approve the bid award of Project 2009-01 District #154 (Traffic Signals at Old Red Trail & Sunset Drive NW) to Knife River Corporation in the amount of \$681,732.53. Commissioner Gangl seconded the motion.

Discussion: Commissioner Jackson inquired if the DOT is picking up the portion of the cost? Bechtel replied that yes, this is an 80/20 federally funded job. A previous request to this Board when financing was discussed, the original estimate put the City in a place where we did not think we would get the full 80% federally funding. With this lower bid we will receive the full 80% and will have room under that cap for that type of financing. This has substantially brought down the cost that the City was looking at. Commissioner Jackson inquired if the \$681,732.53 is the City's portion or the full amount? Bechtel stated that is the full amount minus administration costs.

Commissioner Tibke asked if there is further discussion. Hearing none, the vote was taken with all members voting in favor of the motion. The motion received unanimous approval of the members present.

#### CONSENT AGENDA:

1. *Change Order #1 for Projects 2008-19 (16" water transmission line) & 2008-20 (10" sanitary sewer force main).* The Board approved of the Change Order #1 for Projects 2008-19 (16" water transmission line) & 2008-20 (10" sanitary sewer force main).
2. *Consider transferring funds from the 2008 to the 2009 Mandan IT Department budget.* The Board approved transferring funds from the 2008 to the 2009 Mandan IT Department budget.

3. *Consider a 2-Year Exemption for new construction for Chris Binstock.* The Board approved a 2-Year Exemption for new construction for Chris Binstock.
4. *Consider Appointments to the Mayors Committee on the Employment of People with Disabilities Committee.* The Board approved the appointments of Jim Neubauer, Joan Ternes, Ron Beck and Kelly Steckler to the Mayors Committee on the Employment of People with Disabilities Committee from 2009 through December 31, 2011.
5. *Consider for approval the Final Plat of the Replat of Lots 3-10, Block 4, Big Sky 3<sup>rd</sup> Addition.* The Board approved the Final Plat of the Replat of Lots 3-10, Block 4, Big Sky 3<sup>rd</sup> Addition.

Commissioner Jackson 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 creation of, approve the feasibility report for, and approve the plans and specifications for Street Improvement District #154 Project #2009-01(traffic signals at Old Red Trail & Sunset Drive NW.* Project Engineer Bechtel presented discussion on this matter that relates to the bid award approval of Project 2009-01 District #154 (Traffic Signals at Old Red Trail & Sunset Drive NW) to Knife River Corporation in the amount of \$681,732.53. Bechtel stated that upon receiving the bid and looking at how much federal funding will be received, the City was looking at putting its share into this which originally was 50/50 in sales tax and city-wide property tax money. Bechtel stated that after receiving the bids and after the federal portion that pays for that, there is about \$330,483.48 left that the City has to finance that includes administration, engineering, and those types of costs. At this time the City is willing to kick in one-third in sales tax, one-third in city-wide property tax and the other one-third would be special assessed. That special assessment would be to the school district. Bechtel stated that discussions have been had with the school district stating that they will be the only contributors, other than the city, as far as funding. As part of this project, it is requested that the Board approve the district and the paperwork for the project.

Bechtel replied that it will be a city-wide tax increase in the amount of .27 mills. Finance Director Welch commented that past projects that have been assessed city-wide property taxes have resulted by a reduction in the general fund mill levy to absorb these additional mill levies for projects such as this. The citizens will not see an increase in the mill levy, per se, because we will just lower the general fund mill levy to absorb this. Bechtel stated that the waiver was sent to the School District earlier this week; no response has been received as yet.

Commissioner Jackson moved to approve the creation of, approve the feasibility report for, and approve the plans and specifications for Street Improvement District #154 Project #2009-01(traffic signals at Old Red Trail & Sunset Drive NW. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

2. *Approval and adoption of new construction specifications.*

Project Engineer Bechtel presented a request to adopt new construction specifications. Bechtel stated that the current specifications are quite old having been developed in the 1980's. He stated that this has been work in progress for approximately two years and is now ready to be presented for approval. Commissioner Jackson inquired if the change in the specifications will require changes to the municipal code? Bechtel replied that it would not.

Commissioner Jackson moved to approve the adoption of new construction specifications. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

3. *Consider Parking Authority recommendation to contract with Rich & Associates Consulting, Inc. for downtown parking study.* Business Development Director Ellen Huber presented a request for the granting of approval to contract with a consulting firm for a downtown parking study. It was noted that previously the City Commission approved at a meeting on December 16, 2008, a request for proposals for a downtown parking study. The deadline for bid responses was set for January 28, 2009. Huber stated that the purpose of the study is to assess the current parking situation in the downtown area to include the usage, turnover rates and to project what future parking needs might be. Part of the study will include whether or not to include the construction of a parking garage in the downtown area. Huber stated that ten bid proposals have been received ranging between \$23,000 to \$67,000; up to \$50,000 was approved for this study within the 2009 budget. Huber stated that the following steps have taken place in the bid proposal selection process:

- An internal staff review committee and a 5-member parking authority group have met and ranked the proposals from 1 to 10 on the basis of cost, comprehensiveness and experience;
- The Park Authority met on 2/12/09 to review the proposal rankings and selected two of the ten firms to interview by telephone (Walker Parking Consultants, Minneapolis, MN and Rich & Associates Consulting, Southfield, MI);
- Parking Authority Chairman Lee Fleischer and member Monte Chase, and Neubauer, Bechtel, BaeHurst, Huber and Bullinger, participated in telephone interviews with the two firms on 2/18/09;
- Reference checks were conducted;
- The Parking Authority met on 2/20/09 to review all information and voted to recommend contracting with Rich & Associates Consulting, Southfield, MI.

Huber reviewed a proposed timeline for this project. She stated that Rich & Associates Consulting will be coming on 3/23/09 and will be recommending the formation of an Ad hoc Parking Authority Committee to include stakeholders of about 12 people.

Based on the above, Huber stated that the Parking Authority recommended awarding the contract to Rich & Associates Consulting, Southfield, MI in the amount of \$40,540. In addition, Huber requested that she and the Parking Authority be allowed to coordinate the formation of the Parking Study Advisory Committee so potential participants can be contacted and in place before the firm arrives; the Advisory Committee is tentatively scheduled to meet 3/23/09 with public informational session set on 3/25/09.

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Commissioner Gangl stated that it was determined after the telephone contacts were made, this firm was recommended due to their ability to get the project done on time. Chairman Fleischer commented that Ms. Huber presented the information accordingly. He stated that Rich and Associates were unanimously voted on by the Ad hoc committee.

A (unidentified male) Mandan resident voiced concern in opposition of this project. Business Development Director responded as follows: I will address that question from the Parking Authority perspective. I mentioned the proposals were ranked on price as well as what they were going to do for that price. The \$23,000 study didn't address all of the factors that the Parking Authority had asked to have considered within the study. They didn't have and they were not providing for the time to evaluate the number of parking spaces that we have within the community; the use of those spaces; the turnover of spaces where a number of factors were missing; so the comprehensiveness of the study was of consideration and then also the experience and qualifications that those firms had. We were pleased to have so much interest in the process but there certainly was a range within those proposals for what they were willing to do for the various prices offered. In fact, some of the studies that were more expensive were doing less than some of the lesser studies so the two that rose to the top were very similar in price. The other proposal came from Walker and Associates and their price tag was \$43,000 plus some additional expenses for travel. So again, there was a range but a difference in those for what they would do for that amount of money.

Commissioner Tibke: We have a motion and a second. Is there any further discussion?

Public comment – Margie Stradinger: Yes, I have something to say. I had moved here in 1997. I have had no problem parking in the downtown area whatsoever. The only cars that are around downtown are around the bars all day and all night. They have been using your spaces where you tore down buildings. Why not charge them and make parking lots out of the buildings that are not in existence anymore? This town cannot keep supporting all of your big projects and us people getting slapped with special assessments because you got big dreams for something that's never going to happen.

Commissioner Tibke: Commissioners, is there any further discussion?

Commissioner Serhienko commented that he is not in favor of raising taxes just like everyone else. He stated that parking in Mandan, depending on the time, can be easy or difficult. To address the lots in question, they are designated for construction projects that will include apartments and commercial properties. When those buildings are up, there will be additional parking space concerns to address in order to accommodate the tenants of those apartments and businesses. Serhienko stated that Mandan needs to quit pretending that there is not a parking problem downtown, because there are problems. Stradinger replied that those people will never be assessed taxes like the homeowners are taxed.

Commissioner Tibke clarified that it will be a private developer building this project. That developer will be paying the property taxes on the property project. In addition, there will be retail space where businesses will come in and the people in the apartments will be

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spending money at those businesses thereby bringing in new revenue and sales taxes to support the businesses downtown.

Commissioner Jackson stated that this Commission, in particular, his campaign was run on trying to bring businesses into this community. That is exactly what the Commission is trying to accomplish on behalf of the Mandan Community and its citizens. The apartment complexes will bring people to the downtown. The businesses will bring commercial property that will bring in sales and commercial tax revenue. As those revenues go up, the residential property taxes will go down. That is the goal is to bring those things come in. The short term investments such as parking studies need to happen in order to move forward. The commission is trying to take action now to provide for the future.

Stradinger voiced concern that Mandan has went backwards since the 1980s.

Male Concerned Citizen: Came to the podium to state that he has not received any tax break, why should anybody else? In five years those people will be gone. It's about time to cut this tax break off to people. If they want to build here, they will build.

Commissioner Serhienko commented that no one likes tax increases. He reminded the audience that about 15 years ago there was a rain storm that dumped 15-20 inches of rain and as a result downtown Mandan flooded. It flooded primarily because the Commission at that time ignored the sanitary drains. Subsequently, Main Street was completely torn up and all drains and sewers were replaced. Then they took 6<sup>th</sup> Avenue and did the same thing. Because the drains and sewer lines were ignored by previous Commissioners for a 15-20 year period of time because they didn't want to raise the taxes to fix the problem, bigger problems developed and the Mandan citizens ended up paying for the problems through taxes anyway. That is just one example that the downtown area businesses have been hit hard over the years. Now the oil remediation project has been going on in which they have been cleaning up from the oil spill and it goes on. The study that has been proposed here should show exactly what we are trying to prove or disprove. If the study says that yes, this has to happen, that's the answer. We look, analyze and study the information. If we have a question, we approach the proper entities to give us the correct answer. That's what this is all about. The bottom line is – that's how progress takes place.

Commissioner Tibke stated that there has been a motion and a second previously entered. The roll call vote polled that the motion received unanimous approval of the members present.

4. *Consider the creation of a new portfolio for Dakota Media Access and appointment of a commissioner as the liaison.* City Administrator Neubauer presented a request for consideration to create a commissioner portfolio for Dakota Media Access. Neubauer stated that the City of Mandan is funding @ 20% of the Dakota Media Access Budget. Now would be an appropriate time to assign a City Commissioner as a liaison between the City Commission and the Board of Directors of Dakota Media. Commissioner Serhienko has volunteered to serve as the liaison on behalf of the Mandan City Commission.

Commissioner Gangl moved to create a new portfolio for Dakota Media Access and to approve the appointment of Commissioner Serhienko as the Mandan City Commission liaison. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

5. *Consider for approval a new change order policy.*

Project Engineer Bechtel reviewed with the Commission a request for the approval of a new change order policy. Bechtel stated that this was one of the goals listed as a result of the Retreat process that was held previously. The new policy was drafted after a review of the Bismarck change order policy and has been reviewed by City Administrator Neubauer, Finance Director Welch and the City Engineer's office including Bechtel. A copy was sent out to the engineering firms for feedback and input. In summary, the new change order policy process will be established to provide approval authority for the various types of change orders and monetary amounts for capital improvement projects:

(A) The Department Head has final change order authority if the following amounts are not exceeded:

1. A single change order whether cost or credit up to \$25,000.
2. A single contract pay item with a cost or credit up to \$25,000.
3. An extension of time up to 15 working days.

(B) The City Administrator has final change order authority if the following amounts are not exceeded:

1. A single change order whether cost or credit up to \$50,000.
2. A single contract pay item with a cost or credit up to \$50,000.
3. An extension of time up to 15 working days.

(C) Change orders authorized by the City Administrator will be placed on the City Commission Consent Agenda subsequent to approval.

(D) NDDOT contracts are subject to Section B items 1 and 2 only for the City's share of the funding. Extensions of time are addressed in the contract provision for liquidated damages.

(E) Change orders that exceed Section B items 1, 2, 3, the scope of the project or authorized project funding must be submitted to the City Commission for approval.

Bechtel reviewed the two contract change order forms:

- (1) Contract Change Order Form
- (2) Professional Services Contract Change Form

Commissioner Serhienko inquired if this form would be signed with the contractor? Bechtel stated one of these forms would be required of every project.

Commissioner Jackson moved to approve the new change order policy. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

6. *Approval of priority list regarding stimulus funding on urban roads.*

Project Engineer Bechtel reviewed with the Commission the priority list for stimulus funding on urban roads. Bechtel stated that this matter comes as a result of President

Obama's signing of the Stimulus Package Funds project. Bechtel stated that in January 2008, 10 projects were identified by the DOT. The City of Mandan will be getting \$1,342,311, which is 100% federal money, of which no funding is needed to match this money for projects. Bechtel stated that on the list of 10 projects, the three selected as top priority are: 1) The Old Red Trail/27<sup>th</sup> Street NW; 2) Division Street NE/14<sup>th</sup> Street NE/3<sup>rd</sup> Avenue NE; and 3) Main Street. Bechtel stated that although these projects will exceed the funding allotment, bids may come back at a lower rate that will allow the projects to be completed. These projects have been turned in to the DOT and they have given a May 1, 2009, bid opening. To make this list, the project has to be an urban road. Bechtel stated that "turning dirt" is not part of the criteria to meet the list, stating that mill and overlay defines the project type. The average life of mill and overlay is approximately 15 years.

Pat Mangen, Mandan resident came forward to speak. He stated that his review of this – he inquired if Division Street will go east and go into Mandan Avenue? Commissioner Jackson replied that "No for now" stating that that was taken off the urban roads project three or four meetings ago.

Commissioner Gangl moved to approve the priority list regarding stimulus funding on urban roads as presented. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

7. *Update on the bio-solids removal project at Waste Water Treatment Plant.*  
Steve Himmelspach, Superintendent WWTP stated that Mike Berg, Ulteig Engineers is present to provide an update on the Biosolids Project Schedule. Himmelspach stated that as soon as the weather permits, staff training on the application rates and soil sampling will be conducted. The plan is to start applying when the grain crops come off in July.

Mike Berg, Ulteig Engineers reviewed the Wastewater Treatment Facility Solids Improvements Project Timeline/Schedule. In summary:

- Bid openings were held 6/10/08;
- Bids reopened due to not enough sufficient bids received on 7/11/08;
- Commission approved contracts on 7/15/08;
- Building erection is scheduled to start on 3/2/09;
- Electricals and Mechanical works completed between 4/12/09-5/4/09;
- Project complete with clean up scheduled by 6/1/09.

Commissioner Tibke inquired if it appears there may be a delay in getting the project completed on time. Attorney Brown stated that a meeting has been held with Administrator Neubauer, Mr. Himmelspach, and himself wherein the City's consulting engineers will notify the contractor that the City is not satisfied with the delay and that the City is reserving its rights to invoke the liquidated damages if the City feels it has been damaged by the delay. That will not be known until the project is done. The City is letting the contractor know that the City is not waiving any rights due to the delay in the completion.

8. ***Removed from the Agenda:*** Consider engineering agreements for water treatment plant sludge expansion.

**RESOLUTIONS AND ORDINANCES:**

1. Consider second & final reading of Ordinance No. 1048 An Ordinance to Repeal an Initiated Ordinance to the Mandan City Code Relating to Electric Handicap Accessible Doors As Adopted by the Electorate on November 4, 2008, and To Enact a New Ordinance Relating to Handicap Accessibility for Buildings that Accept Public Funds.

Commissioner Gangl motioned to approve the second & final reading of Ordinance No. 1048 An Ordinance to Repeal an Initiated Ordinance to the Mandan City Code Relating to Electric Handicap Accessible Doors as Adopted by the Electorate on November 4, 2008, and To Enact a New Ordinance Relating to Handicap Accessibility for Buildings that Accept Public Funds. Commissioner Jackson seconded the motion.

Attorney Brown read Ordinance No. 1048.

**ORDINANCE NO. 1048**

An Ordinance to Repeal an Initiated Ordinance to the Mandan Municipal Code  
Relating to Electric Handicap Accessible Doors As Adopted by the Electorate  
on November 4, 2008, and To Enact a New Ordinance Relating to  
Handicap Accessibility for Buildings that Accept Public Funds

Be it Ordained by the Board of City Commissioners as follows:

SECTION 1. The initiated Ordinance as adopted on November 4, 2008, and stated below is hereby repealed:

~~Installation of electric handicap accessible entrance doors are required on every building open to the public that has received public funds in any form whatsoever; failure to do so may result in denial of public funding and declare it an emergency.~~

SECTION 2. A new Section 14-02-12 of the Mandan Municipal Code is hereby enacted as follows:

A. **Restatement:** Every building open to public use that has received the benefit of public funds from the City of Mandan shall provide for the installation of an automatic door for at least one main entrance to the building.

**B. Definitions:**

“Automatic door” means a door equipped with a power-operated mechanism and controls that open and close the door automatically, upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch.

“Public use” means interior or exterior rooms or spaces that are regularly made available to the general public.

“Public funds” means as defined in § 21-04-01(5), N.D.C.C.

**C. Use Groups:** This Ordinance shall only apply to buildings or businesses that are used for the purposes described in the following sections of 21-03-07 of the Mandan Municipal Code: Retail Group A; Retail Group B; Service Group A; Office Bank Group; Commercial Recreation Group; Health Medical Group and Education Group.

**D. Waiver:** Automatic doors are not required if the installation of an automatic door would be technically infeasible, if there exists other pre-existing accessibility barriers that cannot be reasonably remedied or readily achievable at reasonable cost, or if the installation of an automatic door would create an undue burden on the applicant as defined in 28 CFR § 36.104.

**E. Noncompliance:** In the event it is determined by the City that a business or building has received public funds, as defined herein, and has not complied with this Ordinance, the City may revoke or rescind the granting of or receipt of the public funds or take such further action as may be necessary to insure compliance with this Ordinance.

**F. Application:** This Ordinance shall apply to building projects or renovations that have applied for and received public funds subsequent to November 14, 2008.

Section 3. The provisions of this Ordinance shall be in full force and effect from and after the second reading and final passage.

By: /s/ Sandra Tibke  
Vice President,  
Board of City Commissioners

Attest:

/s/ James Neubauer  
City Administrator

First Reading: February 17, 2009  
Second Reading and Final Passage: March 3, 2009  
Publication Date:

The motion received unanimous approval of the members present.

2. *Consider resolution to vacate the right-of-way behind Lot 3, Sunview Heights*  
Commissioner Jackson moved to approve the resolution to vacate the right-of-way behind Lot 3, Sunview Heights. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

**RESOLUTION OF VACATION  
Board of City Commissioners  
City of Mandan, North Dakota**

WHEREAS, Insulation-N-Coatings, Inc and Central Bottling Company have submitted to the Board of City Commissioners of the City of Mandan a verified petition asking that the right-of-way lying behind Lot 3 of Sunview Heights in the SW 3, Section 16, T139N, R81W of the 5<sup>th</sup> Principal Meridian, City of Mandan, Morton County, North Dakota be vacated. Said tract of land having a nominal width of 40 feet and a length of 213.4 feet, more fully described as follows:

Beginning at the northwest corner of Lot 3, Sunview Heights; thence south a distance of 213.4 feet along the west boundary of said Lot 3 to the southwest corner of Lot 3; thence southwesterly along the extended south line of Lot 3 approximately 42.7 feet to a point on the west boundary of Section 16, T139N, R81W, the point also lying on the east boundary of Lot 1, Block 1, Mandan Industrial Park 3<sup>rd</sup> Addition; thence north along the west boundary of said Section 16 a distance of 213.4 feet to a point of meeting with the extended north boundary of said Lot 3; thence northeasterly along said extension approximately 42.7 feet to the point of beginning.

WHEREAS, The Board having deemed it expedient to consider such petition and having ordered that said petition be heard by the Board at its regular meeting held at City Hall in the City of Mandan, North Dakota, on March 3, 2009, at 5:30 o'clock p.m., CT, and the City Administrator having published notice of the filing of the petition and the object therein in the official newspaper once each week for four (4) consecutive weeks, as required by law, which notice stated that the petition would be heard and considered on the date and time aforesaid, at which time any persons interested might appear and be heard, and proof of such publication of the notice having been made and filed; and

WHEREAS, on the 3<sup>rd</sup> day of March, 2009, at 5:30 o'clock p.m., CT, being not less than thirty days after the first publication of the notice aforesaid, the Board of City Commissioners proceeded to hear the testimony and evidence of persons interested and no one having appeared against said petition of vacation, and it appearing to the satisfaction of the Board of City Commissioners that said petitioners are the owners in fee simple of the

property adjoining the right-of-way to be vacated; that no objections by the immediately adjoining landowner to the requested vacation were raised at the public hearing, that said petition was accompanied by a map of the area proposed to be vacated; which map is on file in the office of the City Administrator of Mandan; and the facts and reason for the vacation of such area as established by the petition and the testimony and evidence are good and sufficient to justify the vacation of such area;

NOW, THEREFORE, BE IT RESOLVED By the Board of City Commissioners of the City of Mandan, North Dakota, that the above described right-of-way lying behind Lot 3, Sunview Heights in Morton County, North Dakota be and the same are hereby vacated.

BE IT FURTHER RESOLVED, That the within and foregoing Resolution shall become effective from the time of its passage and publication; That ownership of the newly vacated property will be divided along the centerline of the vacated right-of-way and distributed on either side to the adjacent property owners; That any utility or access easements shall remain in place; That an easement for any existing utilities is hereby created and shall be 20 feet in width and centered over said utility, or be as centered as possible while remaining in the vacated right-of-way.

Approved and passed March 3, 2009, by at least two-thirds vote of all the members of the Board of City Commissioners.

/s/ Sandra Tibke  
Vice President,  
Board of City Commissioners  
City of Mandan, North Dakota

ATTEST:

/s/ James Neubauer  
City Administrator

Public Notice Dates: February 6, 13, 20, & 27, 2009  
Public Hearing: March 3, 2009  
Final Passage: March 3, 2009  
Publication Date:

OTHER BUSINESS:

1. *Update on remediation project by Leggette, Brashears & Graham.*  
Ken Kytta, Leggette, Brashears and Graham provided the Commission with a status update to the remediation project. Kytta reviewed a color-coded map depicting the progress of the diesel remediation clean up project. Kytta stated that since the beginning of the project, almost 200,000 gallons of contaminant have been removed. He stated that they are going to be using the directional drilling method to access the diesel because that will prevent disruption to Main Street. Kytta said that the bids for the directional wells are due by the middle of March with construction being scheduled for April and May. Kytta explained the difference between horizontal and directional drilling: "With horizontal wells you are basically set at one elevation or one depth. This is a directional

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well so it is coming in at an angle and so we can still move our remediation collection tubes up and down with the fluctuating product levels. The cost for directional drilling may be a little bit more and that will depend on what comes back from the contractors.” Kytta further commented that there were concerns with checking and testing the wells in the middle of the street – that would be an issue if there were wells in the middle of main street, not just the installation of those wells causing disruption to main street but they need to be periodically monitored and the MRT has expressed concern safety wise for the installation and the long term maintenance of them.

2. Leo Volk, Mandan City resident came forward, stating that he lives on 8<sup>th</sup> and 2<sup>nd</sup>. He stated that last year there was construction done on his street that broke up his sidewalks. Volk stated that over the last couple weeks the concrete has started to break up where there were big machines parked in front of his house. Volk requested that the cracks be sealed and patched. He inquired where the extra money will come from to fix the street. He requested that someone take a look at the problem.

City Administrator Neubauer stated that he will obtain the name and address of the concerned citizen and at the appropriate time when the snow is melted, the engineering department will take a look at the matter.

There being no further actions to come before the Board, Commissioner Serhienko moved to adjourn the meeting at 6:45 p.m. Commissioner Gangl 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/ Sandra Tibke

Sandra Tibke  
Vice President, Board of City  
Commissioners