

The Mandan City Commission met in regular session at 5:30 p.m. on April 20, 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, Business Development Director Huber, Engineering Project Manager Bechtel, and City Assessor Barta. Absent: Fire Chief Nardello.

MINUTES: *Consider approval of the minutes for April 6, 2010 meeting of the Board of City Commissioners.* Commissioner Tibke moved to approve the minutes as presented. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *Consider 5-Year Ad Valorem Tax Exemption for Lakewood Ventures, LLC*
Richard Barta, City Assessor presented a request from Lakewood Ventures, for consideration for a 5-year tax exemption for an apartment complex building for the construction of two new commercial structures. Barta said that the Mandan Growth Fund has reviewed the project and they recommend approval for a tax exemption for the first two years at 100%. Barta said he has received some opposition to the request. Barta recommended the City consider an exemption.

Mayor Helbling stated that this is a public hearing and asked for comments.

Mark Payne with Lakewood Ventures came forward to speak. He stated he built the property next to this, Lakewood Crossing, a 45-unit apartment building and has been in operation for two plus years and is at a break-even point. He stated he is requesting this tax exemption to offset the costs of the Lakewood Crossing project. He outlined the estimated market value of the newly constructed buildings and structures when completed to be in the amount of \$3,100,000. He stated that when lending institutions consider projects such as these, they would like to see at least a 3-year stabilization. In the alternative Payne proposed the Board consider a decreasing tax exemption such as 75% for the 3rd year, 50% for the 4th year and 25% for the 5th year.

Charles Schaeffbauer, a Mandan resident, came forward to speak. He stated he owns apartments in Mandan and that he is opposed to the tax break for the Lakewood Ventures project. He stated that he has requested tax exemptions in the past and had been told by the City that tax breaks were for commercial buildings and for apartments in the downtown area to stimulate developing that area. He stated that previous mayors have told him that tax breaks would be unfair to all the existing apartment owners. He also mentioned that a lot of the existing apartments were built when the economy was strong and building materials were higher than they are now. He stated that you can charge an additional \$50 or \$75 more for new apartments. In summary, he does not feel that the taxpayers should subsidize the developer for the Lakewood Ventures project.

Mike Wachter, Riverplace Apartments, came forward to speak. He stated that in the past he has asked the City for a tax abatement and was told that tax abatements were for commercial only. He said that he would agree with a 2-year abatement, not a 5-year abatement for the Lakewood Ventures project. In all fairness, he stated that the abatement should be given to those with existing apartment properties, not just the new people coming in.

Mr. Payne clarified that the complex is a 25-unit building in the first phase and another 25-unit building in the second phase for a total of 50 apartment units, but he does not plan on doing all 50 at one time. Regarding the question on commercial vs. residential multi-family – he stated that people are the driving factor that he builds the commercial structures (strip malls) and housing brings in people, hence the residential. He said that local subcontractors will be employed to do the projects.

Mayor Helbling commented that Mr. Payne has one property that would be affected if this tax break were to occur. His other properties would be affected just like everyone else and he was told “no” on the exemption but he was given the opportunity to bring it to the Mandan Growth Fund and then to this Board for approval. He has brought this to the next step, which is why he is here requesting this tax abatement. Mr. Barta commented that the MGF recommended two years at 100% for this project.

Mr. Payne clarified that he was told “no” to a tax break request on the previous building that he built.

Mayor Helbling asked for further comments. Hearing none, this portion of the public hearing was closed.

BIDS:

1. *Consider award of bids for Water & Sewer Improvement Project #2010-09 District #57 (HIT Inc.).* Engineering Project Manager Bechtel reviewed with the Board the bids received for the Water & Sewer Improvement Project #2010-09 District #57 (HIT Inc.). He stated that six bids have been received with the low bid coming in at \$74,030 from Basaraba Excavating. The engineer’s bid was at \$108,295. Bechtel recommended approving the bid from Basaraba Excavating. He said that 80% of the cost is special assessed to the property owners (HIT Inc).

Commissioner Serhienko moved to approve awarding the bid to Basaraba Excavating in the amount of \$74,030. Commissioner Jackson seconded the motion. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

2. *Consider awarding bid for a used Truck and Hooklift System to Sanitation Products.* Director of Public Works Wright stated that bids were opened April 16, 2010, and were received from Sanitation Products for a 2002 Peterbilt with a Galbreath hooklift system for \$64,000. Trucks, Trailers and More submitted 5 separate bids of which two were qualifying bids – and a 2000 Mack with hooklift system for \$69,000 and a 2005

International with hooklift system for \$91,000. Wright provided photos of the Sanitation Products truck and stated that they have checked with previous owners and mechanics who serviced the truck and satisfactory reports have been received. Wright recommended approval of the bid for the 2002 Peterbilt truck.

Commissioner Tibke moved to approve awarding the bid for to Sanitation Products for a 2002 Peterbilt with a Galbreath hooklift system for \$64,000. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

CONSENT AGENDA:

1. *Consider approval of monthly bills.* The Board approved of the monthly bills.
2. *Consider a proclamation designating the month of April, 2010 as “Fair Housing Month” in the City of Mandan.* The Board approved a proclamation designating the month of April, 2010 as “Fair Housing Month” in the City of Mandan.
3. *Consider approval of specifications and advertisement for bids 30 firefighter coats and pants.* The Board approved of specifications and advertisement for bids 30 firefighter coats and pants.
4. *Consider amendment to the site plan for Captain Freddy’s.* The Board approved an amendment to the site plan for Captain Freddy’s.
5. *Consider approval of the Fire Hydrant Painting agreement with HIT Inc.* The Board approved of the Fire Hydrant Painting agreement with HIT Inc.
6. *Consider approval of annual Liquor License, Special B Liquor Permit and Special Sunday Permit for Dacotah Speedway.* The Board approved of the annual Liquor License, Special B Liquor Permit and Special Sunday Permit for Dacotah Speedway.
7. *Consider approval of the following abatements:*
 - i. *Sharon Kirschmann - Homestead Credit Exemption*
 - ii. *Florentine Hatzenbuehler – Homestead Credit Exemption*

The Board approved of the abatements for Sharon Kirschmann and Florentine Hatzenbuehler - Homestead Credit Exemptions.

8. *Consider approval of Seat Belt Enforcement Traffic Safety Contract from the ND DOT.* The Board approved of the Seat Belt Enforcement Traffic Safety Contract from the ND DOT.
9. *Consider approval of beer garden and street dance applications.* The Board approved of beer garden and street dance applications as presented.
10. *Consider Basin Electric request for tax exemption status.* Mayor Helbling requested this item be removed for discussion.
11. *Consider out of state travel authorization and expenditure to attend GOSCMA Conference.* The Board approved out of state travel authorization and expenditure to attend GOSCMA Conference.

Commissioner Jackson moved to approve the Consent Agenda items No. 1 through No. 9 and item No. 11 as presented. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

Consent Agenda Item No. 10: *Consider Basin Electric request for tax exemption status:* City Assessor Richard Barta reviewed with the Board a request from Basin Electric Power Cooperative to be considered for a tax exempt entity commencing in the year 2010. He explained that recent legislation passed Senate Bill 2287 effective January 1, 2010; Basin Electric falls under the guidelines to be exempt according to NDCC 57-32-2 which will reduce the taxation amount to the City of Mandan. Barta said he reviewed the requirements with City Attorney Brown and it was decided that it should be exempt.

City Attorney Brown said the legislature passed a Transmission Line Tax that transmission lines based on their kv capacity are taxed at so much per mile. That tax presumably is to be in lieu of property taxes that a locality might assess against their buildings used in the operation of their transmission facility. Basin Electric has a building and administrative offices in Mandan that are used as part of their transmission maintenance facility. He stated that when he read the law, he agreed that the City is not taxing their transmission lines but is taxing that portion of their buildings that are being used for administrative purposes. The State disagreed and said that “no” the transmission line tax is in lieu of any property taxes of any kind on the building of a transmission operation facility. The transmission line taxes are then collected by the State and are remitted to the County and its taxing district in proportion to its miles of transmission line in the taxing district. There are no Basin Electric transmission lines in the City of Mandan. There is a Mor-Gran-Sou Electric Coop transmission line within the City of Mandan and there is an MDU transmission line within City limits. So, there would be some reimbursement. But the State was unable to tell what the reimbursement would be compared to the property taxes that we are losing. The legislative delegation have advised us that “That is not what we intended”. The Board does not have to grant the exemption. If you do not, the County could overrule your decision or the State could overrule you.

Mayor Helbling confirmed that Mr. Barta checked with the State and the City of Mandan would not receive any of the new taxes. He commented that Mandan Senator Cook, who is constantly opposing property tax exemption and the tax rate in our community, is the one that sponsored this bill. He recommended that the request be denied and that Basin Electric can appeal the matter to the County.

Commissioner Tibke commented that considering the profits Basin Electric earns per year, the request for exemption was surprising to her – it would take them from \$18,480 to \$2,847.

Commissioner Jackson inquired of Attorney Brown: The State told you that this is not what was really intended so if we denied it, it could go all the way up and it would still exist and there is no guarantee that it will be overruled because of the interpretation of the existing law?

Brown responded that in his opinion, in reading the section of the law that deals with the exemption of administration offices used by a transmission facility, it is ambiguous. But the State has told Mr. Barta that they believe the exemption applies. So obviously when

it gets to the State level they will overrule the Board's denial. Mayor Helbling commented that it does not cost the City of Mandan anything to allow this matter to take its course.

Don Boehm, Supervisor of the Multi-State Tax Division at Basin Electric came forward to speak. He clarified that Senate Bill 2297 was passed by the 2009 legislative committee to have that provision in there that exempted all administrative buildings from property tax exempt purposes - that provision is the same provision that has been included in the statute for over 20 years. The statute that exempts personal property on transmission buildings existed before this bill was passed. Basin had voluntarily paid that all along to Bismarck and Mandan. Boehm explained that what Bill 2297 did is as follows: it eliminated the existing gross receipt taxes and the transmission line taxes for electric utilities. The existing transmission line taxes were \$225 per mile of line and cooperatives were subject to gross receipt tax on their profits. They then increased the transmission line tax from \$225 per mile of line to a sliding scale of \$50 for a 41.6 kv up to \$600 for a 345 kv. That raised Basin Electric's transmission line taxes from \$164,000 to over \$413,000 statewide. The bill also changed the way distribution cooperatives were taxed. With that, they put in a 2-part process – put a tax on each kilowatt hour of electricity that they sold so the distribution of that tax is two-fold, and distributed to the political subdivisions where the lines are located. MDU is not part of this. It also made a distribution of 50% of the tax to where the retail sales are made. Because transmission lines went up from 164,000 to \$413,00 Basin is now exercising the exemption. Mercer County has granted the exemption. None of the other cooperatives selling electricity in the State of ND are subject to property taxes on the administrative buildings.

Boehm stated that the City of Mandan, because there are no high voltage transmission lines (which are the transmission lines 42.6 or higher) within the City limits, it will not get any transmission line taxes allocated to them.

Commissioner Serhienko inquired what happens if we do not grant the exemption. Barta said it would go to the County and then the State.

Boehm clarified that only the buildings are exempt and taxes will be paid on the real estate in the amount of \$6,000. Commissioner Tibke stated she talked with Senator Cook when this came out. What was the profit of Basin Electric last year? Boehm said he did not know off hand, but when they make a margin and if there is a profit, that goes back to the members which goes back to lowering the rates. Mayor Helbling stated that this is nothing against Basin Electric, but rather a message the Commission is sending.

Commissioner Jackson moved to approve the tax exemption request from Basin Electric. Commissioner Gangl seconded the motion. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: No; Commissioner Jackson: Yes; Commissioner Serhienko: No; Commissioner Helbling: No. The motion failed.

OLD BUSINESS:

1. *Discussion regarding proposed noise ordinance.*

Commissioner Jackson reported that the Noise Committee has not met recently. He stated that Commissioner Serhienko has provided information to all the commissioners regarding this matter. Commissioner Jackson requested Commissioner Serhienko provide a status update report. Commissioner Serhienko reported that he met with Bismarck City personnel and the Bismarck City attorney to discuss the problems Bismarck had with Southport, which is the very same problem Mandan is having. He stated that they had a 2-part solution. The first was to pass some type of a noise ordinance basically as a line that set a boundary that everything could be measured against. Secondly they began to review the liquor licenses that were issued and added addendums to the approval of the license of certain things that needed to come into compliance for the liquor license to be approved. The information has been distributed to the city administrators and the commission members. Serhienko pointed out that if there is a problem with one establishment that by placing restrictions on a liquor license - that would provide resolution. Serhienko stated that this would pertain to any bar or liquor establishment that may be in violation within the City of Mandan. Commissioner Jackson said that he would defer any comments back to the rest of Noise Committee members on the proposed agreement. The agreement between the City of Bismarck and Southport was discussed. Mayor Helbling summarized the recommendation in that an agreement would designate certain compliance issues. It would be signed by both the City and the liquor establishment and if the agreement is violated, the liquor establishment would lose its liquor license.

Commissioner Serhienko directed the Board's attention to Consent Agenda Item No. 4 that outlines an amendment submitted by Captain Freddy's Site Plan (installation of a band shell tent to diffuse the noise) which has been conceded to by Rick White, owner.

Mayor Helbling deferred to City Attorney Brown to review the draft Ordinance No. 1080 regarding this matter. Attorney Brown stated this was drafted after the March 2, 2010 City Commission meeting regarding the regulations for outdoor noise settings. He reviewed the proposed draft.

Mayor Helbling invited members of the audience to comment.

Todd Kranda, Attorney for Captain Freddy's, came forward to speak. He stated that the information has been received from Commissioner Serhienko. He also noted that the parties were unable to come up with a mutual agreement to resolve the matter. He confirmed that a band shell tent will be installed this week at the location. He also indicated that he has reviewed the Agreement between the City of Bismarck and Southport. Regarding Ordinance 1080, it appears to state what has been addressed before. He has a concern with Paragraph 5, in that where the reading is taken from is critical. He said that if what is presented is implemented, the requirement would be much more restricted than any other city in the state. He recommended adjusting the "70 db (A) taken at the exterior property line of the presentation location" and allow a couple different options – to something similar to "taken from the commercially zoned area"

which is the way other cities are doing it. They set up decibels for industrial, commercial and residential and when you are in that zoned area that's where your decibel is. This should be looked at per the zoned areas rather than certain property lines. A second possibility is to go to the site of the complaining party line and take a decibel reading there. Or a combination could be developed for a commercially zoned area. Another item of concern is the exemptions outlined under No. 6. Three restrictions are agreed to, but the July ones are of concern because they are floating dates. In closing, he commented that the reason for looking at this unique special arrangement is to allow businesses to thrive and develop in Mandan and to capture the uniqueness of what Mandan has to offer.

Mike Wachter, Riverplace Apartments, came forward to speak. He stated that he owns apartments on the south of Captain Freddy's. He commented on the decibel readings and that he contacted Mr. Turnbow who was involved in the Southport problems. He stated that other cities were at 60 or 65 and that a 5 decibel difference is significant. He mentioned that he has had people threatening to leave the area which would hurt his apartment complex business. He recommended that the decibel readings be set at what other cities have implemented as a fair alternative to the property owners in the area. He commented that a Noise Ordinance would protect those parties concerned.

Richard Haman came forward to speak. He agreed that the decibel levels are higher than other cities and he questioned why the residents of Mandan have to accept decibel levels higher than other cities within the state. He also questioned the number of exemptions and why they have to be outlined as they are. He questioned the penalties, in that they are vague, and there are no conditions listed as to when the license would be revoked. He requested that the penalties be defined if the noise levels are over and above those that are set.

Mayor Helbling stated that the Board has options in front of them and that a determination should be made as to whether the City is to come up with an Agreement with the bar establishment or if a Noise Ordinance is to be implemented.

Commissioner Jackson commented that as far as the property line noise level, his notes indicate that Commissioner Tibke suggested that we go ahead and leave it at the property line so there is a common point but then we would raise the actual DB level. That is what the Board did the last time. Whether an ordinance or an agreement is agreed upon, it appears that an agreement is warranted. If this is going to be a Noise Ordinance, it should be a city-wide noise ordinance to deal with all kinds of noises. The Agreement should be explored and the homeowners should be informed of the enforcement actions and he would be in favor of the Agreement option to resolve this matter.

Mayor Helbling suggested reviewing Ordinance No. 1080 and to use that information towards the development of an Agreement and to keep the DB levels and measuring points (taken at the complainant's address) as outlined by other cities in the state.

Commissioner Jackson pointed out that an Agreement would probably be more enforceable than a policy.

Commissioner Tibke stated that the higher levels were because the noise was measured from the property line of the actual business and not from the complainant's line or at the edge of the commercial district. That's why it was higher and it was comparable to Bismarck's. Mr. Baer had pointed out that the measurement should be taken from the complainant's property line or the edge of the commercial line and copy Bismarck for the 50 and 55 decibels. In Bismarck, they take the decibel reading from the complainant's line. She would be interested in changing that part of the agreement to include those provisions.

Mayor Helbling stated that direction will have to be given to staff to prepare the proper documentation. He stated that he does favor the agreement and the liquor license penalty that would suspend or revoke the establishment's license and taking the measurement from the complainant's property line and implement decibel readings similar to other cities within the State. Regarding the exemptions, Mayor Helbling recommended the bar do a trial run on an upcoming weekend before granting any exemptions.

City Administrator Neubauer recommended going to the commercial decibel levels and increase the decibel level to 65 for commercial if there is going to be some leeway given in those three events so there is an established level where it cannot go up to 80 or 100 on those days which would be unreasonable but at least a level is set in the residential area.

Rick White, Captain Freddy's owner, came forward to speak. He suggested that the first outdoor event is set for Memorial Day weekend and recommended using that weekend as a trial. He also stated that Bismarck's switch is at 11 PM (not 10 PM). Commissioner Tibke said that Southport is different. White said he spoke with Mr. Turnbow, who stated that he signed the Agreement as it stands because he was selling the property and didn't care. White said he would be interested in discussing an Agreement to resolve this matter rather than drafting an Ordinance.

Commissioner Jackson said that he will work with the city staff, City Attorney Brown, and with the homeowners to get their input and then put together a draft of an Agreement to be presented to Mr. Kranda before bringing this matter to the next meeting. The Commissioners were in agreement with the proposed action as revised and outlined by Commissioner Jackson.

2. *Reassessment Update:* City Assessor Barta reviewed with the Board the reassessment plan. He stated that he would like to implement it in 2012. In order to complete it within that time limit, he said he will need two additional appraisers and one sketcher. He noted different items that he will need to complete the job within that timeframe.

Mayor Helbling commented that the plan as outlined is acceptable. Barta estimates that about 1,000 reviews are done now and he is hopeful to find staff with prior experience.

Commissioner Jackson stated he would like to implement as we go along and the law states that it is to be implemented as it is done. Barta stated that the values of 2012 will be looked at by February 1, 2012. Mayor Helbling commented that City Attorney Brown had looked at it and that an implementation date of 2012 is acceptable. Commissioner Serhienko commented that he agrees with the recommendation of Mr. Barta.

Mayor Helbling commented that no motion is needed on this matter and stressed to Mr. Barta that this project needs to be completed in 2012.

Finance Director Welch asked that the Board consider the budgetary authority regarding the request because of additional costs. The budget will have to be amended so that the amounts are established.

Commissioner Serhienko motioned to authorize the adjustment in the Assessors Department to move up the reassessment project updates and come up with a completion date of 2012. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

NEW BUSINESS:

1. *Removed from Agenda: ~~Update on the Bismarck Mandan Homeless Coalition.~~*
2. *Consider recommendation from the Mandan Growth Fund regarding an Application for Property Tax Incentives for New or Expanding Business, Lakewood Ventures, LLC. Mayor Helbling commented that he attended the MGF meeting where this matter was discussed. He summarized that it passed on a 4-3 vote and the three members that voted against it voted that way because they did not think it was long enough for the developer. He did not think anyone on the MGF Board was against the project or the City starting to allow this type of development. Another reason they voted for the project had to do with retail development in the future. It was debated heavily.*

Commissioner Serhienko stated that he previously met with department heads and discussed the possibility of a 2-tier type of exemption plan such as a 5-year plan that would create a noticeable employment for the City of Mandan. He commented that some of the bigger projects may warrant a 5-year plan, and it could be a graduated plan wherein the 1st year would be at 100%, the 2nd year at 75%, the 3rd year at 50%, the 4th year at 25% and the 5th year it would go on the tax rolls. He stated he believes it is time to address a plan such as this and that this type of plan would work well for the request from Lakewood Ventures.

Commissioner Gangl commented that even though there is no provision in place right now, it is different than a business that will create jobs and revenue. He does not feel that granting a tax exemption is appropriate for an apartment building.

Commissioner Tibke stated that part of the plan for growth involves car counts which are a basis for bringing in retail. Commissioner Gangl clarified his point that the apartment complex will not create future jobs in the community.

Commissioner Jackson commented that this matter was reviewed several months ago. Originally he was not in favor of the project and the tax exemption unless there was a commercial property attached to it, which would have been beneficial. He stated that this is looking at the creation of one job and when reviewing tax exemptions and Renaissance Zones, those are areas that help out with receding or stagnant growth. There has been a lot of development in that area and that by adding a tax exemption for a property in that area will not affect the development in that area. In reality, this is not like the Renaissance Zone credit. This is competing against his existing project and the other existing units in that area. Jackson is not sure how much that will increase the car count and isn't sure that it should be given as much weight in this particular situation as in others. Jackson stated he is not in favor of this type of tax exemption.

Mayor Helbling said the MGF discussed the number of units allowed for a tax exemption. This property has a high dollar of specials on it and is a transition property from heavy commercial to residential. He thinks something is warranted in this area as it has been stagnant for a number of years and this will attract a different clientele into Mandan. He is in support of the MGF recommendation.

Commissioner Jackson inquired if discussion centered around whether some of the MGF members who voted for it did so to see what the City Commission would do in this regard. Mayor Helbling stated that within the MGF recommendation, as the first of this kind, they were looking for some kind of direction from the City Commission.

Commissioner Tibke inquired of Business Development Director Huber as to what properties are available for purchase on the east end of Memorial Highway. Director Huber stated that there are commercial properties for sale such as the Open Road Honda, a strip mall concept by Wachter, the River Tree Inn, there is some under developed land along 46th to the north of the water park, and across the street on 46th there is more property owned by Mitzel and Otto and throughout 46th and 40th there are a number of parcels available. There are also properties for redevelopment all pertinent to the demand and the market.

Commissioner Serhienko stated there are three options to resolve this matter: do nothing, allow a 2-year exemption, or allow a 5-year exemption. The 2-year exemption has been proposed by the MGF and based on testimony from the builder, the 2-year exemption will not allow him to break even and he has requested a 3-year minimum exemption. Serhienko recommended an alternative of a 5-year exemption at 100% and at the end of 5 year the property would go on the tax rolls.

Mayor Helbling added that the MGF recommended a 24- or 25-unit and a stipulation that if any of the property were sold to a nonprofit; the exemption would be paid back to the City.

Commissioner Serhienko motioned to approve a 5-year property tax exemption on a sliding scale as follows: 1st year would be at 100%, the 2nd year at 75%, the 3rd year at 50%, the 4th year at 25% and no exemption in the 5th year. It must be at least 24 units and

if this property is sold to a nonprofit company the exemption would be paid back to the City.

Mayor Helbling asked for clarification on the motion: 100%, 75%, 50%, 25% does not add up to 300%. Commissioner Serhienko corrected it to be 250% not 300%. Commissioner Tibke seconded the motion for purposes of discussion.

Commissioner Gangl inquired on possible clawbacks if the property is sold. Could we do a clawback that after five years the City would be reimbursed for the tax break they were given for the first 4 or 5 years? Is that possible? That way we would help them with the cash flow for the first few years.

City Attorney Brown inquired if this is a motion to create a policy or is this motion specific to this request?

Commissioner Serhienko replied that it is a motion to create a new policy that will encompass this request and others coming down the road. It's another tax exempt tool.

Attorney Brown said that you can create a policy to that extent but there should be a separate motion on this project which can come after the policy. We can create a clawback as part of the policy that if the property were sold to a nonprofit entity that might be tax exempt, that after a certain period of time whatever exemption they might have received in the past has to be paid back. So, yes, that can be done.

Commissioner Gangl inquired if the property did not get sold could the City get reimbursed for the tax break they received the first 4 or 5 years if the same people retained ownership? Attorney Brown replied that he is not sure about that but thought that theoretically it could be done. He stated that there may be some State property tax legislation that this may involve but was not sure about that.

Commissioner Jackson inquired if we are setting a policy or trying to do both?

Serhienko would like to see that there be a policy that includes a 2-year exemption and 5-year exemption policy with a sliding scale to use as a tool and that it would apply to the project here. Mayor Helbling stated that as it is presented, it could be considered a policy and that each project is handled separately and on its own merits.

Commissioner Serhienko clarified the motion: To create a new category for tax exemptions for a 5-year tax exemption sliding scale as an alternative to the standard 5-year tax exemption. This is being proposed as both: The alternative to the two that we have and also as a solution to assist the developer with the project.

Mayor Helbling repeated Commissioner Serhienko's motion: To grant Mr. Payne's request with a sliding scale on the terms as outlined and also directing the staff to use this as policy going forward. Commissioner Serhienko confirmed this is what he meant as his motion.

Mayor Helbling stated there is a motion and a second on the table. Roll Call Vote: Commissioner Gangl: No; Commissioner Tibke: No; Commissioner Jackson: No; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion failed.

Commissioner Jackson suggested that the attempt to come up with a policy be tabled so the Commission can further explore the possibilities for a policy. He stated that the Growth Fund Committee spoke about how much per unit. This is a \$62,000 quality per unit structure in comparison to a \$10,000 quality per unit. He suggested separating the policy from the project. City Attorney Brown suggested that since the Growth Fund Committee is comprised of a broad group of people that it might be wise to refer the creation of a policy to that Committee as they would have the ability to have public hearings, invite people within the industry, etc. for input and incorporate the suggestions as presented by Commissioner Serhienko and Commissioner Jackson. They could then bring the policy to this Board for review.

Commissioner Tibke commented that she would like to see the suggestions for a policy go back to the Growth Fund for development and subsequently brought back here. She stated that the project discussed should be treated as a separate vote and circumstance.

Mayor Helbling stated that he is in agreement and that if there is to be a policy drafted that the proper steps be taken and that all interested parties should have input.

Commissioner Jackson moved to table the request until the next meeting. Commissioner Tibke seconded the motion. Mayor Helbling commented that the Growth Fund Committee will not meet before the next commission meeting, so what is the intent?

Commissioner Jackson commented that he feels there is additional fact finding to be conducted by the commissioners. He volunteered to discuss this with developers and the Growth Fund. Mayor Helbling inquired as to what information will be given to staff before the next meeting as far as direction to go in this matter. Jackson commented that if we develop a policy on this, staff should have input that will serve as a guide for commissioners as to the feasibility to the 2-year exemption or a step down or whatever tax exemption program is developed. Mayor Helbling provided a reminder that City Administrator Neubauer, Business Development Director Huber and Assessor Barta are members of the Growth Fund Committee and part of the discussion. Mayor Helbling commented that city staff should be advised with directives of the City Commission.

Commissioner Gangl commented he is still opposed to a tax break for residential property unless they pay it back within the 5 years. He is concerned about the subsidizing.

Mayor Helbling stated that the motion before the Board is to table this matter until the next commission meeting while City Attorney Brown suggested resolving this matter tonight. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: No; Commissioner Jackson: Yes; Commissioner Serhienko: No; Commissioner Helbling: No. The motion failed.

Commissioner Tibke motioned to approve the MGF recommendation of allowing a 2-year 100% property tax exemption on each of the buildings with the provision of a minimum of 24 units and if the property is sold to a nonprofit organization that the City recoup the costs. Commissioner Serhienko seconded the motion.

City Attorney Brown commented that when discussion was held at the MGF Committee meeting, it was discussed that if a clawback would occur in an event like a sale to a nonprofit that it would have to occur within a certain period of time – when would the exemption period be over? That needs to be clarified. This will assist both the City and developer as to when something like that would occur.

Commissioner Tibke amended the motion: The clawback would include that if the property is sold to a nonprofit organization, 5 years after their exemption ends, so it would be after the 7th year, the property would become the developers and they would be allowed to do with it as they wish. Commissioner Gangl seconded the motion. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

Mayor Helbling returned to the original motion for vote: A motion and a second is on the table to approve the Growth Fund Committee's request for a 24 unit minimum if sold to a nonprofit organization within 5 years after the property is tax exempt the developer does not have to reimburse the City after the 7th year. Roll Call Vote: Commissioner Gangl: No; Commissioner Tibke: Yes; Commissioner Jackson: No; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

3. *Removed from Agenda: ~~Consider disposition of property near Richard Longfellow Park~~*

4. *Consider for approval, a number of requests submitted by the Mandan Progress Organization for the Mandan Sports & Recreation Show.* Del Wetsch, Executive Director of the Mandan Progress Organization presented a number of requests for authorization to utilize City owned and administered property in downtown Mandan for the Mandan Sports and Recreation Show events on May 22nd from 6:30 am until 9 pm that evening. Mr. Wetsch provided a summary of the events scheduled and who has teamed up with the MPO to sponsor the eventful weekend of activities.

Commissioner Serhienko moved to approve the requests submitted by the Mandan Progress Organization for the Mandan Sports & Recreation Show for May 22nd from 6:30 am until 9 pm. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

5. *Consider for approval, a number of requests submitted by the Musicians Association for activities of June 12 & 13 (Buggies-N-Blues).* Vern Cermak, of the Musician's Association and the Mandan Progress Organization and the Buggies-N-Blues Committee, requested authorization to utilize City owned and administered property in

downtown Mandan for the Buggies-N-Blues activities scheduled for June 12 and 13, 2010. He stated this is the 17th appearance before this Board requesting this event.

Commissioner Serhienko moved to approve the requests submitted by the Musicians Association for activities on June 12 & 13, 2010 for the Buggies-N-Blues events. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

6. *Consider appointment to the Morton Mandan Law Enforcement Center Advisory Committee.* Commissioner Serhienko moved to approve the appointment of Commissioner Thomas Jackson to the Morton Mandan Law Enforcement Center Advisory Committee. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

7. *Consider approval of calling for bids for construction of the Residuals Management facility.* Gary Zander, WTP Superintendent, presented a request to call for the approval of calling for bids for construction of the Residuals Management facility. He stated that background alternatives were approved on March 7, 2009, and an agreement was entered into with AE2S and in staying within the timeframe, we are requesting a call for bids. This is a project under the Master Plan and the rate structure is in place to pay off the debt. Finance Director Welch stated the engineer's fees are not included in this project – they would go into effect into the 2011 budget.

Commissioner Jackson moved to approve for the calling of bids for construction of the Residuals Management facility. Commissioner Tibke seconded the motion.

Commissioner Gangl commented that this is one of the projects that should be reviewed once again and determine if costs should be passed on to Missouri West. City Attorney Brown stated that he has looked at the file and he is looking for a “needle in a haystack” commenting that those contracts were well drafted to serve their purpose at the time without consideration for the future. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

8. *Consider approval of Utility work at the Water Treatment Plant regarding relocation of Tesoro's 16 inch raw water line and electric power pole to the intake building.* Gary Zander, WTP Superintendent, reviewed with the Board a request to waive the City of Mandan's bidding policy for the relocation of Tesoro's 16 inch raw water line and electric power pole to the intake building. Zander explained that the water treatment plant shares a common intake with Tersoro Refinery. As a result the Tersoro raw water line and power utilities for the intake are in conflict with the proposed addition of the Residuals Management facility and need to be relocated. Tesoro is currently in a shut down phase and this is an ideal opportunity to move the water line. Quotes were requested from contractors with only one bid coming in. The cost of the relocation will be approximately \$59,600. Mayor Helbling inquired as to why the water line relocation cannot wait until the Residuals Management facility project is scheduled? Zander replied

that due to the good working relationship the City of Mandan has with Tesoro, he would not like to see that jeopardized because of this. Mayor Helbling inquired as to whether there is a cost savings to the City if we have another contractor on sight anyway? It could be cheaper for materials and mobilization but the detriment is that they will want us to give them a minimum water rate so there will have to be temporary facilities possibly off of their finished water line and right now the intake is off and will be off. The City will have the luxury of getting the line in place and do the connections and the power overhead line has to be relocated as opposed to overnight working and more labor costs. The \$60,000 could double or triple the cost depending on the project. We have had meetings with Tesoro and we have talked about cost sharing and those options may still be open.

Mayor Helbling stated that some kind of cost share would be beneficial and he stated he would contact Tesoro to discuss the matter.

Commissioner Serhienko moved to approve the utility work at the Water Treatment Plant regarding relocation of Tesoro's 16 inch raw water line and electric power pole to the intake building with the exception that the Mayor is allowed to contact Tesoro to ask if they will participate with cost sharing. If not, we move ahead. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

9. *Consider an amendment to Chapter 9-03.1 of Title 9 of the Mandan Municipal Code related to an Enforcement Response Plan. (See Ordinance No. 3).* Steve Himmelspach, Waste Water Treatment Plant Superintendent, presented a request to consider an amendment to Chapter 9-03.1 of Title 9 of the Mandan Municipal Code related to an Enforcement Response Plan. He stated the plan contains detailed procedures indicating how the City will investigate and respond to instances of industrial user noncompliance to all entities discharging waste water to the City's waste water treatment plant. A copy of the plan was sent to Cloverdale Foods and Dakota Country Cheese for comments and no comments were received. An enforcement guide is included in the plan. Also included are proposed fines for non-compliance.

10. *Mandan Memorial Highway Corridor Study update by Kadrmas, Lee & Jackson.* Bob Shannon, of Kadrmas, Lee and Jackson, presented information related to a public meeting held on March 11, 2010. He provided a PowerPoint presentation of the highlights of the project thus far. The report is also available on line at: www.MandanMemorialHighway.com. Three major points are being reviewed:

1. Streetscape Landscape Improvements
2. Future Land Use
3. Roadway Improvement Alternatives

Shannon provided highlights regarding the following:

- Surveys that were conducted with 118 responses returned regarding what the four most important actions or projects that should be completed
- Captain's Landing Township which addresses emergency management access

- Reviewed the underdeveloped area on the north side of the road in the area of Open Road Honda and a potential development of that area
- Master Plan for the Expressway interchange on 46th and the strip per the DOT plans
- Twin City Estates and 40th Street – alternative access into that area
- Intersection of 40th Avenue and Memorial Highway Plan to revise the intersections in order to reduce the number of accidents in those areas
- Estimates 6-7 years yet before funds are available to revise the street plan
- Project Schedule:
 - i. April 20th – Mandan City Commission
 - ii. April 26th – Mandan Planning and Zoning Commission
 - iii. July 30th – Submit Draft Report
 - iv. Late August – Public input Meeting #3
 - v. November – Final Adoption

11. *Public Forum on Retail Development - May 4, 7 p.m., City Hall.* Business Development Director Huber stated that the City of Mandan will host a *Conversation with the Community* on the topic of retail development at City Hall on May 4, 2010, from 7:00 pm to 8:00 pm following the City Commission meeting.

RESOLUTIONS & ORDINANCES:

1. *Consider second and final reading of Ordinance No. 1078 – An ordinance to amend Section 16-03-02 of the Mandan Code of Ordinances relating to Dog and Cat Control.* Commissioner Jackson moved to approve the second and final reading of Ordinance No. 1078 – An ordinance to amend Section 16-03-02 of the Mandan Code of Ordinances relating to Dog and Cat Control. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

ORDINANCE NO. 1078

An Ordinance to Amend
Section 16-03-02 of the Mandan Code of Ordinances
Relating to Dog and Cat Control

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

Section 16-03-02 of the Mandan Code of Ordinances is hereby amended to add an additional section as follows:

3. A supervised dog may be at large in any enclosed area that the Board of Park Commissioners has designated for off leash activities.

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

Attest:
/s/ James Neubauer
City Administrator

First Reading: April 6, 2010
Second Reading and Final Passage: April 20, 2010

2. *Consider introduction and first reading of Ordinance No. 1079 – An ordinance to repeal Section 2-01-11 of the Mandan Code of Ordinances relating to reading of Resolutions.* City Attorney Brown stated that this came up when there was an adoption and passage of a resolution that was on an agenda and handed out and a citizen complained that it was not read. It is required to be read at Section 2-01-11. There is nothing in State law that requires the reading of resolutions and in discussions with Mayor Helbling and Administrator Neubauer, it was determined that as long as it is part of the meeting Agenda and part of the Board information packet and the information is available to the public, it serves no particular purpose to read the Ordinance at a meeting.

Commissioner Jackson moved to approve the introduction and first reading of Ordinance No. 1079 – An ordinance to repeal Section 2-01-11 of the Mandan Code of Ordinances relating to reading of Resolutions. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

3. *Consider introduction and first reading of Ordinance 1077 – An ordinance to create and enact section 9-03.1-36 of the Mandan Municipal Code, relating to the Enforcement Response Plan of the City of Mandan Wastewater Treatment Plant Industrial Pretreatment Program and providing for a penalty and effective date. (See New Business No. 9)* Commissioner Jackson moved to approve the introduction and first reading of Ordinance 1077 – An ordinance to create and enact section 9-03.1-36 of the Mandan Municipal Code, relating to the Enforcement Response Plan of the City of Mandan Wastewater Treatment Plant Industrial Pretreatment Program and providing for a penalty and effective date. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

4. *Consider first reading of Ordinance No. 1080 – An Ordinance to Enact a New Section 12-01-20, Mandan Code of Ordinances and to Amend Section 12-01-20 of the Mandan Code of Ordinances Relating to Outdoor Entertainment by Certain Alcoholic Beverage License Holders.* Mayor Helbling indicated that Ordinance 1080 was reviewed by City Attorney Brown and previously discussed. No motion was needed since the ordinance was not brought before the Commission for a first reading.

OTHER BUSINESS:

1. *Consider request to allow two-way traffic in front of the old Jr. High on 4th Street NW from 3rd Ave. to 4th Ave.* Public Works Director Wright presented a request to allow two-way traffic in front of the former Junior High Building on 4th Street NW from 3rd Avenue to 4th Avenue. This would entail removing the existing one-way and Do Not Enter signage on 4th Street Northwest in front of the building. The purpose of the signage was to load and unload students at the junior high. There is no longer any use for this signage. Mayor Helbling recommended that the School District be consulted.

Commissioner Serhienko moved to allow the removal of the one-way and Do Not Enter signage on 4th Street Northwest in front of the former Junior High Building to allow two-way traffic, contingent upon approval from the School District. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

2. *Public Forum on Retail Development - May 4, 2010, 7:00 p.m. at the City Hall:* Commissioner Tibke encouraged the public to attend this event. She stated that two of the most heard complaints are property taxes and concerns for more retail and the two work hand in hand. This forum will bring forth information from previous years regarding this matter.

3. Mayor Helbling reminded everyone to complete and mail in their 2010 Census Forms.

There being no further actions to come before the Board, Commissioner Jackson moved to adjourn the meeting at 8:31 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/ Timothy A. Helbling

Timothy A. Helbling,
President, Board of City
Commissioners