
The Mandan City Commission met in regular session at 5:30 p.m. on May 18, 2010 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Jackson, and Serhienko. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development Director Huber, Engineering Project Manager Bechtel, and City Assessor Barta. Absent: Commissioners Tibke and Gangl.

MINUTES: *Consider approval of the minutes for May 4, 2010 meeting of the Board of City Commissioners.* Commissioner Serhienko moved to approve the minutes as presented. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *A public hearing to determine the sufficiency of protests for Street Improvement District No. 162, Project No. 2010-10 (HIT Addition).* Engineering Project Manager Bechtel reviewed with the Board the request for public hearing to determine the sufficiency of protests for Street Improvement District No. 162, Project No. 2010-10 (HIT Addition). Bechtel stated that the protest period ended on May 11, 2010 and that there were 7 letters of oppositions received representing 22.59% of the district that is eligible to be assessed for benefits of the project, which is below the 50% required to protest the district. Bechtel indicated that there were no other objections received after the deadline. Bechtel stated that if there are any comments from the audience present, they could be heard at this time.

Mayor Helbling announced that this is a public hearing and asked for comments from the audience. Hearing none, this portion of the public hearing was closed.

2. *A public hearing to determine the sufficiency of protests for Storm Sewer Improvement District No. 31, Project No. 2009-05 (Diane’s Drainage Storm Sewer).* Engineering Project Manager Bechtel reviewed with the Board the request for public hearing to determine the sufficiency of protests for Storm Sewer Improvement District No. 31, Project No. 2009-05 (Diane’s Drainage Storm Sewer). Bechtel mentioned that the protest period ended on May 11, 2010. There are 119 parcels in this project and there were 20 letters of oppositions received representing 17.17% of the district that is eligible to be assessed for benefits of the project, which is below the 50% required to protest the district. Bechtel stated that there were no other objections received after the deadline. There will be minor improvements on 6th Street that will require digging up the street.

Mayor Helbling announced that this is a public hearing and asked for comments from the audience. Hearing none, this portion of the public hearing was closed.

3. *A public hearing to determine the sufficiency of protests for Street Improvement District No. 158 Areas Project # 2010-01. (3rd Street SE).* Engineering Project Manager Bechtel reviewed with the Board the request for public hearing to determine the sufficiency of protests for Street Improvement District No. 158 Areas Project # 2010-01.

(3rd Street SE). The protest period for the subject project was closed on May 11, 2010. There are 464 parcels in this project and there was only 1 letter which is less than 1% of the district that is eligible to be assessed for benefits of the project, which is below the 50% requirement. Bechtel stated that because of the low assessment cost to the property owners, receiving only 1 letter was appropriate.

Mayor Helbling announced that this is a public hearing and asked for comments from the audience. Hearing none, this portion of the public hearing was closed.

BIDS:

CONSENT AGENDA:

1. *Consider for approval the beer garden and street dance applications.* The Board approved of the beer garden and street dance applications as presented.
2. *Consider approval of monthly bills.* The Board approved of the monthly bills.
4. *Consider approval of the following Site Authorizations:*
 - i. *Cystic Fibrosis Association of ND – annual (July 1, 2010 to June 30, 2011); located at the Colonial Lounge, Roundup Bar & Grill, Stage Stop, and Sportsman Lounge.* The Board approved of the site authorization for Cystic Fibrosis Association of ND for July 1, 2010 to June 30, 2011.
 - ii. *Mandan Hockey Club – annual (July 1, 2010 to June 30, 2011); located at The Silver Dollar, Vicky’s Bar, The Ridge Motel Corp., and The Old Town Tavern.* The Board approved of the site authorization for Mandan Hockey Club for July 1, 2010, to June 30, 2011 as requested.
 - iii. *Prairie Public Broadcasting – annual (July 1, 2010 to June 30, 2011); located at Captain Freddy’s.* The Board approved of the site authorization for Prairie Public Broadcasting for July 1, 2010 to June 30, 2011.
 - iv. *MedCenter One Foundation – one time (July 4, 2011) at the Mandan Rodeo Grounds.* The Board approved of the site authorization for MedCenter One Foundation – one time for July 4, 2011.
5. *Consider the request from the Mandan Parks and Recreation District for the City of Mandan to special assess the Park District for the City’s cost share of the Riverwood Area Shared-Use Path Project.* The Board approved of the request from the Mandan Parks and Recreation District for the City of Mandan to special assess the Park District for the City’s cost share of the Riverwood Area Shared-Use Path Project.
6. *Consider Approval of The Police Department Jointly Giving Notice To Archonix Public Safety Software, Termination Notice of Agreement For System Purchase, dated October 29, 2007.* The Board approved of the Police Department Jointly Giving Notice to Archonix Public Safety Software, Termination Notice of Agreement for System Purchase, dated October 29, 2007.

Commissioner Jackson moved to approve the Consent Agenda items 1, 2, 4, 5, and 6 as presented. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

Consent Agenda Item No. 3 – removed for discussion: Consider the authorization for the advertisement of bids for, Storm Sewer Improvement District No. 31, Project No. 2009-05 (Diane’s Drainage Storm Sewer). Mayor Helbling requested this item be removed and voted on separately. He commented that he does not think this is a benefit to the residents of Mandan, even though they did not protest it out. Engineering Project Manager Bechtel stated that Director of Public Works Wright provided additional information that FEMA contributed through mitigation funds project 1½ years ago in which this was identified as one of those projects. At that time there were no funds to do the project. The City has just received notice that because Morton County was part of the emergency declaration, they put some funds into the mitigation projects now. Since this one was identified as a project, we can still go forward and advertise but it would be prudent to pull this off and submit this to FEMA and see what kind of funds can be obtained through them. If we receive funds, a lot of the special assessments will go away, and we should know by September, 2010. It is a qualifying project FEMA would have to approve. Wright said that the funding is approximately 75% federal and we should know by June 30th if it would be accepted. There is an expense cost ratio that will have to be met and where the project would stand with the rest of the projects with FEMA. Bechtel recommended authorizing the call for bids, but they would not be advertised until word is received from FEMA. This will not hold up the Diane’s Drainage Storm Sewer project.

Commissioner Serhienko moved to approve the authorization for the advertisement of bids for, Storm Sewer Improvement District No. 31, Project No. 2009-05 (Diane’s Drainage Storm Sewer). Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

OLD BUSINESS:

1. Consider agreement between Captain Freddy’s and City of Mandan.

Commissioner Jackson referenced the “Agreement” between Captain Freddy’s Inc. and the City of Mandan that has been provided to all board members. He stated that he has talked with Attorney Kranda, representative of Captain Freddy’s, who stated he has not had an opportunity to review the Agreement with the owner of Captain Freddy’s. Commissioner Jackson commented that he is of the opinion that this Agreement incorporates all of the perimeters of a proposed agreement that the City has been considering. The difference between this one and previous editions are in Subsection 4 – “an event” – what constitutes an event is attempted to be defined and there is a penalty clause that allows for a step up in the penalties for each violation of the Agreement up to and including a suspension of a license for the remainder of the calendar year.

City Attorney Brown commented that the idea of having a penalty outlined somewhat ties your hands in the sense that in the first violation could be quite egregious but under the agreement you are only allowed to give a written warning. Overall, if the City and Captain Freddy’s is able to come to an Agreement, it is better than having to go through with an Ordinance. Attorney Brown stated that he would like to remove the penalty options and if there is a violation, Captain Freddy’s would come before the Board. At that time the Board could determine if there should be a written violation, a fine, or a

revocation, etc. The way the Agreement is written commits the city to what stage the violation is in.

Commissioner Jackson commented that Captain Freddy's would like to know exactly what the penalty may be as opposed to an open-ended penalty clause. As far as the homeowners, (who have removed themselves from the process), are concerned they were consistent that there be something hard and fast. The way this Agreement is written, it is definite what the penalty will be, but the homeowners don't know if it's acceptable or not.

Mayor Helbling agreed that it is helpful to have the penalty outlined and everyone knows where we are at. He would like to see the first violation to include "and/or a fine up to \$1,000".

Commissioner Jackson asked City Attorney Brown as to what would be the City's ability to amend or do an addendum to the Agreement? Brown stated that he is of the opinion that the Agreement is probably at 90% of what it will eventually be agreed upon. However, until Mr. Kranda meets with his client and the City Commission has agreed on the terms, it can't be presented to the Commission for final action. Commissioner Jackson clarified that Commissioner Gangl inquired as to "once the agreement is signed". Attorney Brown stated that the Agreement is a "contract" and will be treated like any other contract, which can be amended if all the parties agree; and if not, that's the deal you make. The "Agreement" today is for review purposes by the Commission. Commissioner Jackson can now go meet with Captain Freddy's and come back with a final draft at the next Commission meeting.

NEW BUSINESS:

- I. *Consider Morton County & City of Mandan Law Enforcement Center Operating Agreement.* City Administrator Neubauer reviewed with the Board a "Law Enforcement Agreement" between the City of Mandan and Morton County that was drafted in 1985 when the law enforcement center was constructed. Neubauer stated that since the initiation of the operating agreement, some matters have come up that need to be included into the operating agreement, those being:
 - i. Section 4: to add the Police Chief and County Sheriff on the Advisory Board along with existing members which include two city commissioners, two county commissioners and the city administrator.
 - ii. Section 4.4.4: authorizes the LEC Advisory Board to spend capital improvements up to \$5,000 without going to the city or county commissions for approval, provided funds are available.
 - iii. Section 9.1: Commencing in 2010, establish a Capital Improvement Fund of 50,000 of which the County will contribute 30% or 15% and the City will contribute 30% or 15% and the jail will contribute \$20,000 or 40% , which is based on square footage use of the facility. The contributions will be on an annual basis.

Administrator Neubauer said that the Agreement was approved by the Morton County Commission. Commissioner Jackson stated that he and Mayor Helbling are members of

the LEC Advisory Board.

Commissioner Jackson moved to approve the Morton County & City of Mandan Law Enforcement Center Operating Agreement. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

2. *Consider request to have debris removed from 507½ 3rd St NE.*

Richard Barta, City Assessor, stated that the individual who owns this property requested a permit to construct a house on the property and he requested a 2-week extension to remove debris from the property. Barta stated that he has been attempting to resolve this matter for approximately a year. Mayor Helbling recommended allowing a 30-day extension to allow the owner time to remove the debris. Commissioner Serhienko stated that he drove by the property and that it appeared as if someone was constructing a basement. Barta clarified that a house had burned down 15-20 years ago and it was special assessed and he bought it for back taxes. Serhienko requested Barta to review the area as there may be further action required.

Commissioner Serhienko moved to approve a 30-day extension allowing the property owner time to clear the debris from the property. Once that is done, the property owner can then request a permit to build on the property. Commissioner Jackson seconded the motion.

Barta stated that it is his understanding that the property owner is allowed 30 days to clean the debris. If he fails to do so, the City will call for bids to have the debris removed.

Commissioner Serhienko amended the motion to include: the property owner will have 30 days to remove the debris. If the debris is not removed in the 30-day timeframe, the City will call for bids to remove the debris and the costs will be special assessed to the property. Commissioner Jackson seconded the motion. The amended motion received unanimous approval of the members present.

Mayor Helbling asked for any additional discussion on the original motion. There was no further discussion. The motion received unanimous approval of the members present.

RESOLUTIONS & ORDINANCES:

1. *Consider second and final reading of Ordinance 1081 – an ordinance to amend section 3-01-07 of the Mandan Code of Ordinances relating to bidding procedure.*

Commissioner Jackson moved to approve the second and final reading of Ordinance 1081 – an ordinance to amend section 3-01-07 of the Mandan Code of Ordinances relating to bidding procedure. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

ORDINANCE NO. 1081

An Ordinance to Amend

Section 3-01-07 of the Mandan Code of Ordinances

Relating to Bidding Procedure

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

1. Section 3-01-07 of the Mandan Code of Ordinances is hereby amended to add the following language:

Section 03-01-07 Bidding procedure

Whenever bids are called for, bids and the bidding procedure must be in accordance with applicable requirements of state and federal law.

Bid notices shall comply in all respects with applicable state statutes and shall include, at a minimum, a general description of the property or services to be purchased or sold, where bid documents may be obtained, the time and place for opening bids, the deadline for receipt of bids, if different from the time for opening bids, and whether a bid bond is required. Unless otherwise directed by the commission, or otherwise provided by law, all bids must be advertised in the local newspaper once each week for two consecutive weeks with the bid opening at least 10 days after the last advertisement.

The city shall reserve the right to reject any and all bids, and to waive irregularities. However, bids which do not comply with mandatory requirements imposed by law or late bids must be rejected.

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

Attest:
/s/ Jim Neubauer
City Administrator

First Reading: May 4, 2010
Second Reading and Final Passage: May 18, 2010

OTHER BUSINESS:

There being no further actions to come before the Board, Commissioner Serhienko moved to adjourn the meeting at 6:03 p.m. Commissioner Jackson seconded the motion. Upon roll call vote, the motion received unanimous approval of the Board and the meeting adjourned.

/s/ James Neubauer
James Neubauer,
City Administrator

/s/ Jerome Gangl
Jerome Gangl,
Acting President, Board of City
Commissioners