

The Mandan City Commission met in regular session at 5:30 p.m. on March 2, 2010 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Gangl, Serhienko, and Jackson. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Engineering Project Manager Bechtel, and City Assessor Barta. Absent: Business Development Director Huber.

MINUTES: Consider approval of the minutes for February 16, 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:

BIDS:

CONSENT AGENDA:

1. Consider approval of the following abatements:
 - i. Paulette Hague – Blind Exemption
 - ii. Glen & Shirley Upham – Homestead Credit
 - iii. Cheryl Nelson – Disabled Veteran Exemption

The Board approved of the exemptions listed.

2. Consider approval of Kochs Lakewood Villas final plat. The Board approved of Kochs Lakewood Villas final plat.

3. 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 Mandan Avenue Interchange 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 Mandan Avenue Interchange Shared-Use Path Project.

4. Consider approval of the following site authorizations:
 - i. ND Drivers Education Association at the Seven Seas from March 25-27, 2010.
 - ii. Bismarck Doll Friends at the Seven Seas from March 2, 2010 to June 6, 2010.

The Board approved of the site authorizations for the ND Drivers Education Association at the Seven Seas from March 25-27, 2010 and the Bismarck Doll Friends at the Seven Seas from March 2, 2010 to June 6, 2010.

5. Consider calling for bids for demolition of the 1 million gallon steel reservoir at Collins and Division Street. The Board approved of the calling for bids for demolition of the 1 million gallon steel reservoir at Collins and Division Street.

6. Consider for approval Sunday openings for Mandan Eagles (March 14 & April 18, 2010). The Board approved of the Sunday openings for Mandan Eagles (March 14 & April 18, 2010).

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

OLD BUSINESS:

1. Discussion related to noise issues.

Commissioner Jackson presented information to further discuss the issues regarding the noise issues. He stated that some of the Commissioners, along with Police Chief Bullinger, visited the bar last week to determine noise decibel levels. He said that the bar owners do not want a noise ordinance although it may be inevitable at this time. The four talking points regarding this matter were outlined by Commissioner Jackson:

1. Where to measure the noise levels to and from;
2. What type of exemptions and the number of exemptions;
3. The decibel levels;
4. The amount of fines;

(1) Where to measure the noise levels to and from:

Commissioner Jackson reviewed his notes from the night the decibel readings were taken at Captain Freddy's. At that time, it was about 60 decibels near the Johnson home and 80 decibels at Captain Freddy's. Chief Bullinger stated that he took readings from Marina Road and McKenzie Avenue and explained those readings. In addition, Bullinger went into Captain Freddy's and stood by the speakers where the decibel reading was in the mid 90's – stating this is what it was when the readings were taken across the bay.

Jackson stated that 60 decibels seems appropriate and that is in conjunction with what other cities have in place. The key is to determine where the decibel level is being measured from. He stated that from a law enforcement standpoint, it would be easiest to determine a certain distance in feet, rather than a property line and to leave as little as possible open for debate. Mayor Helbling pointed out that if a “feet distance” is put into effect that may not be the same situation for a downtown establishment. He said that whatever is established may affect the entire city so he cautioned the members to consider that aspect as well.

Rick White, Captain Freddy's owner, came forward and stated that the bar owners would like to see the guidelines established for a commercially zoned area instead of a residential area, which is what other cities have done. His recommendation would be to take the reading from the nearest residential property residence with the Johnson residence being the nearest. Next to that would be the commercially zoned land and then Captain Freddy's. Commissioner Tibke commented that the noise level is different in the winter than it is in the summer so that should be taken into consideration as well. White stated that he has researched the possibility of erecting a 60x90 ft. tent on the (outside) southwest area of the bar property. This will basically insulate the noise from the nearby residences, and it would basically function as a band shell.

At this point, Mayor Helbling asked the Commissioners their thoughts on pursuing the establishment of a noise ordinance: Commissioner Serhienko stated he is not in favor of

a noise ordinance. Commissioner Gangl stated that he is not in favor of a noise ordinance; however, he does not feel the matter will be resolved without a noise ordinance. Commissioner Tibke concurred with Commissioner Gangl, stating that she feels if there are no guidelines in place, this summer will be basically the same as last summer as far as calls coming in. Commissioner Jackson concurred with Commissioners Gangl and Tibke in that if there are no guidelines in place, there will be issues. For consideration, Mayor Helbling pointed out that any measurement outlined in an ordinance would have to be defensible in a court action.

Chief Bullinger commented that it would be better to set a decibel level on the property line of the offending party. He would like to see the responsibility placed on the licensee. That way the establishment can walk out to the property line and take a decibel reading.

2. What type of exemptions and the number of exemptions:

Mayor Helbling outlined the following events as to when the exemptions should apply: (i) the 4th of July holiday, (ii) the annual McQuade Softball Tournament event, and (iii) the Buggies-n-Blues annual festivities. Further, the exemptions should be reviewed every year when the dates of the events are known, even though some don't feel it is necessary. (The liquor licenses are also reviewed in this method and that way they are spelled out each year.) Commissioner Jackson commented that he believes that both sides to this issue are in favor of setting definite times. He agreed with: (a) 2 nights for Buggies-n-Blues, 2 nights for McQuade's and (b) the bar owners pointed out that sometimes the 4th of July does not fall on a Friday and Saturday night and their preference would be to float with the nearest weekend. He suggested there be an additional 3 more singular days that are not weekends. Commissioner Gangl said he agreed that six weekends total would be appropriate. Commissioner Tibke stated that she agrees with the 6 (days) mentioned with an additional 3 more singular days. Commissioner Serhienko stated that he would agree with the 3 weekends; however, individual things will come up and he suggested having one additional day to allow for those times. Mayor Helbling stated that he agrees with the 3 event dates and 3 floating singular days as a starting point.

3. The decibel levels:

Commissioner Jackson recommended somewhere between 65 and 70 decibels. Commissioner Gangl recommended a setting of 60 decibels and a certain distance as outlined by Chief Bullinger. Commissioner Tibke recommended 70 decibels from the property line. For the time frame of 7 AM to 11 PM they would be set at 70 decibels and then reduced to 65 decibels from 11 PM to 7 AM in a commercial district. Commissioner Serhienko concurred with Commissioner Tibke.

4. The amount of fines:

City Attorney Brown stated that most city fines are infractions – which is defined as a violation that would result in fines up to \$500. He stated that if this action should result in an ordinance, the fine would be referred to as an “infraction”. However, violations against a liquor license would be handled differently.

In summary, Mayor Helbling outlined the following recommendations as a starting point clarifying that this is not what has been agreed upon but that these are some of the main points that will be fine-tuned at a later time:

- Decibel measurement level – suggest taking the measurement from the property line of the offending property;
- The exemptions would be spelled out annually with the liquor license renewal and the dates could fluctuate depending on where the dates fall: Buggies-n-Blues event – 2 days; McQuade Softball Tournament – 2 days; 4th of July holiday – 2 days; and an additional floating 3 days approved by the Commission;
- Limit the sound level to 70 decibels between the hours of 7 AM and 11 PM and reduce the sound level to 65 decibels between the hours of 11 PM and 7 AM in commercial areas. Comparisons will be made with other cities;
- Define violations as infractions that would result in fines up to \$500.

Mayor Helbling invited members from the audience to come forward to comment:

(1) Rick White, owner of Captain Freddy’s, came forward. He stated that the only concern he has is with the decibel reading being taken at his property line. He commented that for at least one side of his establishment the property line is at about 3 feet. He said that he is in agreement with the rest of the recommendations as outlined by Mayor Helbling.

(2) Richard Haman, Mandan resident, came forward and stated that he is one of the residents who lives in the area. He said that there has not been a single house built in that area in over a year. He also stated that he has discussed the (noise issue) concern with a real estate agent, who told him that no one will be building in that area until the noise problem is resolved. Regarding commercial buildings in the area, he believes that if an office goes into any of the commercial buildings, they will also have problems with the noise, similar to the homeowners. He said that he agrees with the recommendations outlined by Mayor Helbling, with the exception of the exemptions. He stated he is opposed to the “six” weekends with exemptions, because that would leave them only 6 weekends left in the summer. He encouraged the Board to consider a broader view and take into consideration the property values.

(3) Richard Baer, owner of the Broken Oar, stated he is opposed to any noise ordinance pointing out that there have been no previous ordinances that have singled out bars or music. He pointed out that tonight’s discussions have surfaced around “Captain Freddy’s” and it appears to him that all the 23-24 bars in the City will be penalized because of the noise issue complaints (at that bar). He stated that the “tent” idea as presented by Rick White, could be a possible solution and that it should be considered. He believes that the matter could be resolved with a compromise if the matter was approached by the right people. He suggested that the whole ordinance be scrapped and that the process start over to remedy the problem. He believes that, as stated by Commissioner Ulmer years ago, “We will deal with the problem as it occurs.” In summary, he feels that a new group of people should be appointed to review the noise issues who would be willing to negotiate terms in order to resolve the matter.

Mayor Helbling replied to Mr. Baer's comments, stating that he agrees with him about defining the property line and the decibel reading concern. The other communities should be contacted in respect to how they determined the decibel reading. These are just starting points.

Commissioner Jackson motioned to table the discussion related to the noise issue until the next meeting. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

Mayor Helbling instructed City Attorney Brown and City Administrator Neubauer to bring the four talking points back to the next meeting. Police Chief Bullinger was instructed to contact other communities and get information regarding how they determined decibel levels and from what point the readings are taken. Attorney Brown commented that the other community ordinances are city-wide ordinances – which this commission is not interested in doing – and that these readings are taken within certain distances, whether it be commercial or residential. For example, in Bismarck the reading is taken within the commercial zone district and it cannot exceed whatever the next zoning district is. This will be addressed and made a part of the draft that he will put together for consideration.

NEW BUSINESS:

1. *Update on City projects for the 2010 construction season.* Engineering Project Manager Bechtel presented information related to upcoming projects for the 2010 construction season. He reviewed the water projects near the high school stating that it is where the projects will most likely begin this season. Mayor Helbling commented on the recent water line breaks. He inquired whether those issues are addressed in these projects and if all the projects are being prioritized? Bechtel stated that he has met with the Public Works Department and they have prioritized the projects in relation to urgency and money available for the projects. Bechtel stated that following the water projects will be the sanitary sewer line and storm sewer drains. Following those projects will be the street repairs, finishing up from last year's projects and new ones for this year. He said that there probably will be a second round of stimulus money coming so the City is preparing to facilitate projects if those funds come in.

2. *Consider the approval of plans and specifications, Engineers Report, and authorize the call for bids for the 2010 Municipal Sidewalk Improvement Project # 2010-08.* Engineering Project Manager Bechtel reviewed the request for the approval of the plans and specifications authorization to call for bids for the sidewalk improvement project. Commissioner Jackson moved to approve the request for the approval of plans and specifications, Engineers Report, and authorize the call for bids for the 2010 Municipal Sidewalk Improvement Project # 2010-08. Commissioner Serhienko seconded the motion. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

3. *Consider entering into a Cost Participation and Maintenance Agreement with the NDDOT for the construction of the shared use path at the Mandan Avenue Interchange.* Engineering Project Manager Bechtel reviewed the request for entering into the Cost Participation and Maintenance Agreement with the NDDOT of which the Mandan Avenue Interchange project will link the two existing paths together. He stated that this is part of the Trails Master Plan and that the project qualifies for federal funding. The total cost of the path is \$229,851 of which the City of Mandan and the Parks Department are responsible for approximately \$43,832.00. The Board has already approved this amount. Finance Director Welch commented that this matter is related to No. 3 listed on the Consent Agenda.

Commissioner Serhienko moved to approve entering into a Cost Participation and Maintenance Agreement with the NDDOT for the construction of the shared use path at the Mandan Avenue Interchange. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

4. *Consider a Joint Powers Agreement between the City of Mandan and the Mandan School District related to the former Jr. High facility.* City Administrator Neubauer presented a request to consider a Joint Powers Agreement between the City of Mandan and the Mandan School District. The terms of the agreement could allow the renovation and transfer of the property using the City's Urban Renewal powers. If approved, the document will be good through the year 2010. The document refers to the "Great Plains Academy". It has been recommended to change that wording to the "Former Junior High Facility". He pointed out that this is truly a Joint Powers Agreement. It is not transferring ownership, but is an agreement to provide for the preparation, adoption and implementation of a development and renewal plan of the property. Neubauer reviewed the timeline of events for the actions involved. He stated that it is recommended that a Selection Committee be appointed that would include representatives from both the City Commission and the School Board to assist in the process. He stated that the intent of the whole process is to open up and allow for any interested party to submit a proposal through this process. Neubauer stated that before the Board is the Joint Powers Agreement for consideration to move forward with this project. The Attorney General's office has provided an opinion regarding this matter.

Commissioner Gangl moved to approve the Joint Powers Agreement between the City of Mandan and the Mandan School District related to the former Junior High facility. Commissioner Tibke seconded the motion.

Wayne Papke, Mandan Resident, came forward to comment. He inquired as to what health, safety or financial benefit the city has in entering into the Joint Powers Agreement as the City in the next five years?

Mayor Helbling commented that it could provide a fiscal benefit to the City of Mandan if the property were placed on the tax rolls. This could possibly produce taxable income in the future. At this point, that is unknown. At this time it is of concern to the City as to what may happen to that area. Mayor Helbling recommended that if a committee is

appointed, Mr. Papke be invited to serve on that committee in order to have representation of various community members input and participation in the matter.

After discussion, Mayor Helbling asked for a roll call vote on the motion and second on the floor: Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

5. *Consider authorizing the call for a public hearing related to amending the boundaries of the Urban Renewal area.* City Administrator Neubauer stated that in order to facilitate the best outcome available regarding the old Junior High Building, consideration has been given to expanding the Urban Renewal Zone area to include not only the specific property at the junior high site; but also expanding the boundaries to the north going from Collins Avenue to 6th Avenue and below the hill to 5th Street.

Commissioner Tibke moved to approve the authorization to call for a public hearing related to amending the boundaries of the Urban Renewal area. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

Wayne Papke, Mandan Resident came forward to speak. He stated that in reference to the timeline, as a point of interest for City Attorney Brown, he cited NDCC Urban Renewal Law NDCC 40-58-06 *Preparation, adoption and revision of the development or renewal plan: Municipality may not approve a development or renewal plan for a development renewal area unless the governing body by resolution determines that the area is a slum or blighted area (blighted defined as run down).* He pointed out that the City probably does not want that type of classification included on that property (in regard to the homes in that area). Attorney Brown commented that the definition in the Century Code is much broader than just slum and blighted. It references areas that might need improvement including industrial and commercial areas, of which there might be some commercially zoned properties in that area. Brown stated this is a call to have a public hearing and that at this time. This is to accommodate the Joint Powers Agreement.

After discussion, Mayor Helbling asked for a roll call vote on the motion and second on the floor: Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

RESOLUTIONS AND ORDINANCES:

1. *Consider second and final reading of Ordinance No. 1071 – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map.* Commissioner Tibke moved to approve the second and final reading of Ordinance No. 1071 – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map. Commissioner Serhienko seconded the motion. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

Western Edge Developments, LLP regarding property located at the corner of Collins Ave. & Main Street to March 17, 2010. 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 introduction and first reading of Ordinance No. 1075 – An ordinance to amend and re-enact Section 20-14-31 of the Mandan Code of Ordinances relating to Parking Citations.* City Attorney Brown stated that this Ordinance has been conflicting for quite some time and when the new parking enforcement was started it was questioned. The City Attorney and City Prosecutor felt that it was contradictory. We cannot enforce the parking ordinance until we finish this. Attorney Brown reviewed the proposed revisions with the Board.

Commissioner Jackson moved to approve the introduction and first reading of Ordinance No. 1075 – An ordinance to amend and re-enact Section 20-14-31 of the Mandan Code of Ordinances relating to Parking Citations. Commissioner Serhienko seconded the motion. Roll Call Vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. The motion passed.

3. Mayor Helbling reminded everyone that there is an election coming up this year and he encouraged interested parties to consider a position on one of the several openings within the city, school, park and county boards.

There being no further actions to come before the Board, Commissioner Jackson moved to adjourn the meeting at 7:23 p.m. Commissioner Serhienko 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