
The Mandan City Commission met in regular session at 5:30 p.m. on December 7, 2010 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Rohr, Frank, and Jackson. Department Heads present were Finance Director Welch, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development Director Huber, Engineering Project Manager Bechtel, City Assessor Barta and Deputy Police Chief Leingang. Police Chief Bullinger was absent.

MINUTES: *Consider approval of the minutes for October 27, 2010 Special Meeting – Working Session and November 16, 2010 Regular Meeting – meetings of the Board of City Commissioners.* Commissioner Tibke moved to approve the minutes as presented. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *Public Hearing to consider a 5-Year Ad Valorem tax exemption for Windriver Properties.* Mayor Helbling stated that this was a previous Agenda item that was discussed. However, due to the meeting time change at that time, it was recommended that this matter be placed back on the Agenda so that parties could be heard if they want to come forward to comment. Richard Barta, City Assessor, stated that this is a request for a 5-Year Ad Valorem tax exemption at the location of 4518 Memorial Highway belonging to Windriver Properties. He stated there has been one letter of opposition received on November 1, 2010 and it was re-submitted on December 7, 2010 from Deborah Holter. The basis for the opposition was based on competition of similar merchandise. The proposal states that as many as 28 jobs could be created. Pat Wachter, Windriver Properties, was available for questions.

Mayor Helbling opened the public hearing for comments. A second request was provided for comments from the public. Seeing and hearing none, this portion of the public hearing was closed. Mayor Helbling commented that he is in favor of the project and that it is in the best interests of the City of Mandan that it moves forward.

Commissioner Tibke moved to approve the request of the 5-Year Ad Valorem tax exemption for Windriver Properties (Pat Wachter) for a newly constructed commercial building due to meeting all criteria under NDCC 40-57.1. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

BIDS:

CONSENT AGENDA:

1. *Consider appointment to Civil Service Commission.* The Board approved of the appointment of Ms. Kathy Wagner to the Civil Service Commission as presented.
2. *Consider approval of Lakewood 6th Addition.* The Board approved of the Lakewood 6th Addition.

3. *Consider approval of abatement for Stacey Geiger – New construction.* The Board approved of the abatement for Stacey Geiger – New construction.
5. *Consider amending the Water Treatment Plant (WTP) 2010 Budget.* The Board approved of the amendment to the Water Treatment Plant (WTP) 2010 Budget.
6. *Consider amendment to the Indigent Defense Services contract.* The Board approved of the amendment to the Indigent Defense Services contract.
7. *Consider for approval Sunday opening for Mandan Eagles on December 12, 2010.* The Board approved of the request for approval Sunday opening for Mandan Eagles on December 12, 2010.

Commissioner Jackson moved to approve Consent Agenda Items 1, 2, 3, 5, 6, 7.

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

Commissioner Jackson requested removal of Item No. 4 for discussion: Consider personnel actions pertaining to Robert King. Commissioner Jackson stated that Mr. King approached him regarding problems with the process, in particular the grievance process concerning termination. He stated he is looking into that and will write a Memo as to his findings (to be reviewed by City Attorney Brown). He stated that he has reviewed the procedures thus far and did not find any problems with what has transpired prior to the termination. That issue was not raised during his Civil Service Appeal hearing. City Administrator Neubauer stated that he is not aware of any concerns brought forward by Mr. King regarding the grievance process.

Commissioner Jackson moved to approve the personnel action pertaining to Robert King's termination and the request from Gary Zander on his resignation/ retirement. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

OLD BUSINESS:

NEW BUSINESS:

1. *Consider an extension of the Joint Powers Agreement between Mandan Public School District and the City of Mandan related to the future of the former Mandan Jr. High building.* City Administrator Neubauer presented a request for a 2-year extension of the Joint Powers Agreement with the Mandan Public School District. He stated that the only change is the request for the extension period until December 31, 2012. This Agreement allows the School District to have control over the distribution of that property. The agreement allows the School District flexibility to use the building, sell or dispose of it as needed. The agreement allows the School District to be more selective about who buys the building and how it is used rather than selling to the highest bidder. The School District approved the extension last night. As previously required, timelines would be submitted to the City Commission – the same process as set out before. Mr. Volesky from the School District was present for questions.

Mayor Helbling commented that he is in favor of extending the agreement stating that it is important that the community handle the disposition of the sale of the building in a favorable manner that would benefit that particular neighborhood. City Attorney Brown noted that Wayne Papke sent an email to members of the Commission as well as others, and within the context of the email Mr. Papke referred to the extending of the Joint Powers Agreement as an “abuse of the power”. A paper copy of the email was provided to the Commissioners. Attorney Brown reminded the Commission that an opinion was obtained from the Attorney General’s office prior to entering into the agreement and the School District had the authority to extend it. Commissioner Frank commented that by extending the agreement this only hastens the process. She encouraged having a defined timeframe stating she is not opposed to the extension but has concerns as stated. Administrator Neubauer stated that the facility may have to be used as a “bridge facility” if the school enrollment continues to grow.

Commissioner Jackson moved to approve the extension of the Joint Powers Agreement between Mandan Public School District and the City of Mandan related to the future of the former Mandan Jr. High building to December 31, 2012. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: No; Mayor Helbling: Yes. The motion carried.

2. *Introduction of a new police officer – Jonathen Lahr.* Deputy Chief Paul Leingang introduced Jonathen Lahr - a new police officer with the City of Mandan. Officer Lahr is a 2010 graduate of the Lake Region Law Enforcement Academy. He is also a member of the US Marine Reserve Military Police Unit. He has been with the Mandan Police Department for about 2 months and is currently in the Field Training Program. On behalf of the City of Mandan, Mayor Helbling extended a welcome to Officer Lahr to the Mandan Police Department.

3. *Consider Growth Fund Committee recommendation for Storefront Improvement application — 118 E Main — Julie Haibeck (The Golden Comb).* Business Development Director Huber presented a request from the Mandan Growth Fund to approve the Storefront Improvement application received from Julie Haibeck, Golden Comb, 118 East Main Street, Mandan. The total cost of the façade project is estimated at \$22,725 to reface the front and rear of the building. Improvements will include removal and replacement of a new awning made of gold metal roofing material. There will be new signs on the front and back of the building and the lavender-colored paint will be removed. An electronic door will be installed at the rear of the building. The east side of the building will remain intact. The Mandan Architectural Review Commission (MARC) has given preliminary approval for the project with contingencies – that the front sign being above and behind the awning but not on the roof of the awning as originally proposed. The mural on the east side of the building will remain at this time, however, if it deteriorates, it is to be removed. The applicant is requesting \$10,000 in matching funds. The source of funding would be sales tax dollars as budgeted through the Growth Fund in 2010. If this project is approved, there would be a balance of \$67,896 remaining in the storefront improvement fund. There are three other requests for Storefront Improvement

projects, each of them requesting \$10,000 and if they would be approved there will be a balance of \$37,896 going into 2011. Julie Haibeck was present for questions. Regarding the mural on the building, Huber stated that the City Ordinance addresses building and site standards for the downtown core – murals are not permitted without MARC permission.

Commissioner Jackson moved to approve the Growth Fund Committee recommendation for a Storefront Improvement application for the building located at 118 E Main, Golden Comb, as presented. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

4. *Consider Growth Fund Committee recommendation for appointment to membership.* City Administrator Neubauer presented a request for consideration and final approval of the potential vacancy of one committee assignment with a term end date of December 31, 2010. Neubauer stated that Todd Steinwand is currently occupying that position and that he has expressed interest in continuing his service if so appointed. The MGF was informed that Wayne Papke, a Mandan resident has also expressed interest in serving on this committee. The MGF recommended the reappointment of Todd Steinwand to another 3-year term. Neubauer stated that the next vacancy to open on this committee will be December 31, 2011, at which time there are potentially four positions that will have terms expire. The members reviewed the Committee Membership listing. The MGF does not have term limits as they were previously removed. The selection of members to the committee has been via word-of-mouth while attempting to retain members in geographical locations throughout the City of Mandan along with attempting to retain a variety of skill levels of its members.

Commissioner Rohr moved to approve the recommendation received from the MGF Committee to reappoint Todd Steinwand for another 3-year term. Commissioner Frank seconded the motion. Commissioner Jackson commented that he would welcome some “new blood” on the committee and that such interest has been presented, however, it would have been conducive for Mr. Papke to be present to resubmit his name for the position and voice his interest to the Commission for consideration. Commissioner Frank commented that she shares the same concern; however, in reviewing the term assignments, 4 of the 9 positions will expire in 2011. Mayor Helbling commented that he believes the MGF has done a nice job in member selection in the past as far as location and by having a variety of disciplines allowing them to work together successfully. The motion received unanimous approval of the members present. The motion passed.

5. *Consider approval of Liquor License from Individual Partnership to a Corporation for The Rice Bowl (Lynco Enterprises Co., Ltd.).* City Administrator Neubauer presented a request for a name change for the liquor license holder which is to take place on January 1, 2011. It was noted that this building is a public building and that the liquor license is attached to the location which is addressed in the leasing contract of the property. The current lease would be amended to reflect the name change accordingly.

Commissioner Tibke moved to approve the liquor license from Individual Partnership to a Corporation for The Rice Bowl (Lynco Enterprises Co., Ltd.). Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

6. *Consider the creation of a Municipal Court portfolio and commissioner assignment.* City Administrator Neubauer presented a request for the creation of a Municipal Court portfolio and commissioner assignment. He stated that there has not been a Municipal Court portfolio in the past and there has never been a commissioner assigned to such a portfolio. He said that there are circumstances that warrant such a portfolio and having a commissioner appointed to overlook it would be advantageous. City Attorney Brown and Municipal Court Judge Kautzmann were part of the discussions in this matter. It was recommended that Commissioner Jackson be appointed to the Municipal Court portfolio.

Commissioner Rohr moved to approve the creation of a Municipal Court portfolio and that Commissioner Jackson be appointed as the portfolio holder. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

RESOLUTIONS & ORDINANCES:

1. *Consider second and final reading of Ordinance No. 1087 Zone Change for TSM Investments Addition – 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. 1087 Zone Change for TSM Investments Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes, Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Frank: Yes; Mayor Helbling: Yes. The motion carried.

ORDINANCE NO. 1087

**AN ORDINANCE TO AMEND AND REENACT SECTION 21-03-02 OF THE
MANDAN MUNICIPAL CODE RELATING TO DISTRICT
BOUNDARIES AND ZONING MAP.**

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

SECTION 1. AMENDMENT. Section 21-03-02 of the Mandan Municipal Code is amended to read as follows:

The following described property located within the City of Mandan shall be excluded from the RM (Multi-Family Residential) zoning and shall be included in the MA (Light Non-Nuisance Industrial/Heavy Commercial) namely,

Lots 1 & 2, Block 1 of TSM Investments Addition in Section 26,
Township 139N, Range 81W. Located on 1st Street SE

and as so amended said section is hereby reenacted. The purpose of the zone change is to match the current use of Lot 1 and build a storage building on Lot 2. The city administrator is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this section.

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

Attest:

/s/ Jim Neubauer
City Administrator

Publication Dates: November 5th & 12th, 2010
Public Hearing: November 16th, 2010
First Reading: November 16th, 2010
Second Reading: December 7th, 2010
Publication Date: December 17th, 2010
Recording Date: _____

OTHER BUSINESS:

1. *Survey on a ban on texting while driving:* Mayor Helbling stated that on the City’s website - there is a survey regarding texting while driving and as to whether the City of Mandan should consider a ban on texting. He encouraged everyone to review the survey and voice their concern.

2. *Mandan’s Noise Ordinance:* Mayor Helbling commented on a recent action regarding Mandan’s Noise Ordinance: Judge Donald Jorgenson has dismissed the November 2, 2010 vote on the “Noise Ordinance”. His opinion was based on the petitioners failing to meet proper affidavit procedures.

There being no further actions to come before the Board, Commissioner Jackson moved to adjourn the meeting at 6:10 p.m. Commissioner Tibke seconded the motion. The motion received unanimous approval of the Board members present and the meeting adjourned.

/s/ James Neubauer
James Neubauer,
City Administrator

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