

The Mandan City Commission met in regular session at 5:30 p.m. on February 3, 2009 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Gangl 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, Planner Baehurst, Business Development Director Huber, Engineering Project Manager Bechtel, and City Assessor Barta. Absent: Commissioner Jackson.

MINUTES:

1. Consider approval of the minutes of January 20, 2009 meeting of the Board of City Commissioners. Commissioner Tibke moved to approve the minutes of the January 20, 2009 meeting of the Board of City Commissioners. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

BIDS:

CONSENT AGENDA:

1. Consider approval for the following Abatements:
 - i. Randall Frohlich – Re-assessment of property
 - ii. James Johnson – Disabled Veteran

The Board approved of the abatements for Randall Frohlich for the re-assessment of property and for James Johnson, a Disabled Veteran.

2. Consider for review and approval the pledge of securities reports as of December 31, 2008. The Board approved of the pledge of securities reports as of December 31, 2008.
3. Consider request from Water Treatment Plant to transfer funds from 2008 budget to 2009 budget. The Board approved the request from Water Treatment Plant to transfer funds from 2008 budget to 2009 budget.

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

OLD BUSINSS:

NEW BUSINESS:

1. ***This item removed from the Agenda:*** Update by North Dakota Department of Transportation on plans for Longfellow Park.
2. Reports by Bismarck-Mandan Development Association

i. Retail Development Sites

Richard Mower, Bismarck/Mandan Development Association (BMDA) presented information regarding possible retail development sites for the City of Mandan pursuant to a previously approved work plan by the City Commission. Mower indicated that two

potential site locations for consideration are the Memorial Highway/Southeast Mandan and parcels along the I-94 corridor. He stated that the sites being considered will map out to be at least 30 acres of land. Mower explained that the purpose of the study is to identify potential big box retail locations in and around the Bismarck/Mandan areas and to identify opportunities and develop strategies for attracting new businesses or expand existing businesses. Mower reviewed the following:

- Population growth for Bismarck/Mandan since 2000
- The increased taxable sales and purchases
- Retail Gap Analysis
- The April 2008 Resident Survey conducted related to improving Mandan
- Retailers considering North Dakota expansion
- Mandan Area Demographics
- BMDA site review process that included key criteria:
 - > Traffic counts
 - > Residential growth patterns
 - > Demographics
 - > Traffic patterns
 - > Household income
 - > Retail targets

Mower indicated that pursuant to review of potential retail sites in Mandan, the BMDA recommended that if the community determines that an approach to attract retail is the highest priority for the community, then Mandan should consider the next step which is selecting a proposed location for retail development.

ii. Industrial Sites

Brian Ritter, Bismarck/Mandan Development Association presented information regarding possible industrial development sites for the City of Mandan. Ritter gave a short background history of the BMDA annual reviews of business retention and expansion programs where approximately 100 area businesses are surveyed on different aspects of the community. He stated that one area of concern was the perceived lack of industrial sites in the Bismarck/Mandan area. The BMDA formed an Infrastructure Committee that developed an inventory of possible industrial sites with a minimum size of 50 acres. Ritter reviewed the selection criteria of site selection:

- Current zoning state of A, MA, MB, MC, or MD, or
- Identification in Bismarck/Mandan Regional future land use plan as potential industrial or mixed use industrial/heavy commercial site
- Access to major roadway

Ritter reviewed potential industrial sites – some that will work and some that are not currently available but are considered a part of this report:

- Kist/Mitzel
- Truck Stop property Highway 25
- Old Red Trail
- Laubner Property
- Twin City Industrial Sites

- North Mandan
- Wetzstein Property
- McCormick's Property
- Highway 10
- Interstate

Ritter reviewed the Federal Economic Development Administration (EDA) grants available for moving forward. Ritter reviewed the three options that are available: (1) Short Term Planning Grant (2) Design Only Public Works (3) Cost Share Constructional Grant.

Ritter summarized his report with recommendations as follows:

- Select a site from a "willing" seller
- Determine size and scope of potential conceptual site design
- Bid out the project to local firms
- If applicable, apply for an EDA Grant

In conclusion, Ritter advised the commission that this information is available for their use as they deem appropriate. If no action is taken at this time, Ritter stated that the information will remain on file with the BMDA for future reference.

3. *Approve the plans and specifications, and authorize the call for bids for the "2009 Municipal Sidewalk Improvement Project 2009-03 District Number N/A."*

Project Engineer Bechtel presented a request to approve the plans and specifications, and authorize the call for bids for the "2009 Municipal Sidewalk Improvement Project 2009-03 District Number N/A." Bechtel stated that this project is an annual sidewalk construction that has been ongoing for several years. The participants requested the work to be done by a low bidder and have that work assessed to their property. The work includes any concrete item within the public right of way that needs to be completed. He stated that this year the cost estimate is @ \$280,000. Costs from last year's project were @ \$350,000.

Commissioner Serhienko moved to approve the plans and specifications, and authorize the call for bids for the "2009 Municipal Sidewalk Improvement Project 2009-03 District Number N/A." Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

4. *Consider reimbursement to the Mandan Remediation Trust for the South Side Reconstruction Project.* City Administrator Jim Neubauer presented a request for reimbursement to the Mandan Remediation Trust (MRT) for the South Side Reconstruction Project. He stated that on 12/31/08 the MRT and the Mandan Supplemental Environmental Projects Trust determined that the City of Mandan's cost share of the projected amount to @ \$425,000 which resulted in a \$49,967 balance due the MRT. Based on that, the City is requesting the Board to approve refunding the BNSF Settlement Fund to the MRT for the balance due on the project.

Commissioner Tibke moved to approve the reimbursement to the Mandan Remediation Trust for the South Side Reconstruction Project in the amount of \$49,967.00 from the BNSF Settlement Fund. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

5. *Discussion regarding Legislative Issues, Senate Bill 2193 and House Bill 1278.*
City Administrator Neubauer provided information to the Commission regarding pending State Legislation on:

- (a) Senate Bill 2193 – Extends the one mill through 2010
- (b) House Bill 1278 – Carves out the City of Mandan from the levy

Neubauer explained that Mandan residents pay one mill to the SW Water Authority (SWA). This one mill is to be utilized for administrative purposes for the southwest water pipeline project. The original levy was to expire in 2006. It was extended to 2010, and now representatives for the SWA are proposing it to be extended to 2020. Neubauer stated “We are supportive of the development of water issues across the state, but we do have our own water treatment facility. We have our own water storage system and our own water distribution system that the citizens of Mandan have to pay for. We think that it’s time the users of the Southwest Water Authority pay for their water system instead of the City of Mandan.” Neubauer pointed out in comparison – there are 35,000 members of the SWA. If Mandan were carved out of the mill levy, each of those users would only have to pay \$1 per year more. Mandan residents pay \$5.68 per year to the SWA for water it does not receive. Mayor Helbling has testified against SB 2193. HB 1278 will be heard later this week.

Duane Bueligen, one of the representatives of Oliver County SWA came forward to speak. He stated that they are still waiting to receive water from the SWA. Bueligen stated they are disappointed that Mandan wants to pull out. Bueligen stated that during the time that the southwest pipeline spent \$12 million in Morton County, Mandan was in the SWA and paid its mill levy like everyone else. Now that Mandan has its own water resources, Mandan is seeking to remove itself from the authority. Bueligen stated that they are seeking to ask Mandan to help finish this project. It is expected that the pipeline will be complete in ten (10) years.

After Bueligen’s testimony, Mayor Helbling clarified the following: That the City of Mandan is asking that they be removed, not Morton County, from Southwest Water Authority. The Mandan City Commission is of the opinion that the citizens of Mandan should only have to pay one water server. There is a \$13 million project going on right now to upgrade Mandan’s water system. It is not fair to have the citizens pay for two water systems.

Mary Massad, Manager and CEO of Southwest Water Authority came forward to speak. She stated that SWA provides water to 280 rural customers serving Glen Ullin and Hebron and they tie into the Missouri West System. SWA buys water from Mandan indirectly. She stated that approximately 60 million gallons is served to Morton County. It is viewed as a local cost share. She stated that SWA feels that the tax policy is not a

good one for the county. In addition to the \$12 million spent in Morton County, the Missouri West System total project costs are roughly \$15.5 million and out of that \$10 million are received as grant monies for the two phases from federal money. Of that amount \$1,418,600 was paid directly to the City of Mandan for capacity within the Mandan system.

Loren Myran, a rancher from Taylor, North Dakota, and the Chairman of the Southwest Water Authority, came forward to speak. He stated he has worked with the water project since 1981. Myran clarified, when Mayor Helbling stated that “supporting the water users” - what is being supported through the mill levy is the process of signing up people, and conducting preliminary engineering development for the development of water. He stated that the mill levy is not being used for operations as the Commission is led to believe. In response, Mayor Helbling commented that the Morton County Representative on the SWA did make a motion to have Southwest Water help fund a project in Mandan and it was turned down.

Massad stated that SWA does not have the funding authority but would support Mandan in trying to obtain funding. She stated that SWA does not have the money to support their own projects let alone anyone else's.

George Zaskowski, a representative from Morton County SWA came forward to speak. He stated that he was the person that made the motion (Mayor Helbling referenced above). Further, after the motion was made he was told by Administrator Neubauer along with other members of SWA – that SWA cannot, by state legislative rules *just write a check out to the City of Mandan*. There are hurdles to cross in order to meet the legislative guidelines. He commented that he was out of line to make that motion; however, he believes that the City of Mandan can benefit from assistance from SWA, but it is not as easy as writing out a check.

Commissioner Serhienko commented that he has mixed thoughts about this matter. He stated that it is important that we get a distribution system throughout the state. City Administrator Neubauer clarified that the City of Mandan has never indicated that the mill levy money that is collected from Mandan or Morton County has ever gone to the operation and maintenance of Southwest Water Authority. Further, it is unclear where Ms. Massad obtained her figure for the number of gallons that were delivered to Morton County unless the SWA Annual report is incorrect in reporting the 6 million gallons coming to Morton County out of the 1.5 billion or unless we have increased that number ten times in order to get to 60 million gallons. It is unclear where Ms. Massad's number comes from. In any way, the \$71,000 coming to Morton County still does not compare to the amount of water coming in.

Susan Beehler, City of Mandan, came forward and inquired if this mill levy is dropped, what does the Commission intend to do with the money? Where would that money go and what would the City do with it? Helbling responded to Ms. Beehler that has not been addressed. This could be an area of cutting back one mill or it could be used for another project.

Jim Lunington with Barton West Engineers came forward to clarify the Annual Report. He stated that Mr. Neubauer is looking at the line of the water purchased from Missouri West for distribution by the SWA.

Administrator Neubauer stated that SB 2193 has not come out of committee yet. Mayor Helbling commented that the Commission has an obligation to the taxpayers to move forward and oppose this bill.

Commissioner Gangl motioned to oppose SB 2193 and if that fails to support HB 1278 and that Mayor Helbling and Administrator Neubauer provide testimony to the legislative committee regarding these matters. Commissioner Tibke seconded the motion. The Commission voted 3-1 to support the motion. Commissioner Serhienko voted nay. The motion passed.

6. *Consider a calling a Special Meeting of the Board of City Commissioners with the County Commission for February 10, 2009, 6:30 p.m. Morton County Courthouse.* City Administrator Neubauer stated that at the request of Mayor Helbling, that the Commission attend a Special Meeting of the Board of City Commissioners with the County Commission for February 10, 2009, 6:30 p.m. Morton County Courthouse.

Commissioner Tibke moved to approve a Special Meeting of the Board of City Commissioners with the County Commission for February 10, 2009, 6:30 p.m. Morton County Courthouse. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present. Mayor Helbling stated that the County Commission is going to meet in regards to the LEC and some of the repairs that are going to be made in the basement. LBG will be there on that date to give updates. Neubauer stated he is not aware that LBD will be there. He stated that the County Commission has asked the City Commission and members of the Mandan Remediation Trust to be in attendance. The topic will be "A proposal from LBG to do some exploration on a ground water control system for the Law Enforcement Center."

7. *Consider waiving a parking study request for proposal irregularity.* Administrator Neubauer stated that on January 28, 2009 at 3:00 pm, several parking study proposals were delivered by Federal Express. At 4:30 p.m. that day, Federal Express contacted the City Administrator's Office stating that there was a package that mistakenly was not delivered that day. The package contained a parking study proposal from Rich and Associates. The proposals were due by 3:00 p.m.; however, the driver would not be able to deliver the package prior to the 5:00 pm closing time. It would be delivered the following business day. Neubauer asked that the Commission consider waiving the package delivery due date due to an irregularity based on no fault on the firm that submitted the proposal.

Commissioner Serhienko moved to approve waiving a parking study request for proposal irregularity. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present. (Note: Mayor Helbling indicated that the package is available, on the table, for inspection should anyone desire to do so.)

RESOLUTIONS AND ORDINANCES:

1. *Consider second and final reading of Ordinance 1050 an Ordinance to Amend and Re-enact Section 4-06-10(7) of the Mandan City Code relating to administration of salary plan.*

Commissioner Tibke moved to approve the second and final reading of Ordinance 1050 an Ordinance to amend and Re-enact Section 4-06-10(7) of the Mandan City Code relating to administration of salary plan. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

ORDINANCE NO. 1050

An Ordinance to Amend and Re-enact Section 4-06-10(7)
of the Mandan City Code Relating to
Administration of Salary Plan

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

Section 4-06-10(7) of the Mandan City Code is hereby repealed, and a new Section 4-06-10 (7) is enacted as follows:

7. Overtime - Holiday - Call Out - Emergency Pay Rates.

a. All personnel may be required to work by the appointing authority at other than usual working hours, in excess of the standard workweek or regularly scheduled weekly shift, whenever it is necessary to carry out the work of the department or to facilitate the efficient use of equipment or personnel. Work performed by employees in excess of the standard workweek or regularly scheduled weekly shift within the department will be compensated as provided in this subsection. The salaries of employees which are classified as "exempt" from the overtime provisions of the Fair Labor Standards Act contemplate and include all anticipated overtime work, and additional pay for overtime will not be made to these employees.

b. Additional hours over the standard workweek or period for the department shall be paid at a rate of one and one-half of the regular hourly salary. To determine the number of hours worked by an employee within a week or work period, time spent on vacation, personal days, sick and holiday leave will not be counted as time worked in calculating overtime. Compensatory leave and funeral leave will not be counted as time worked in the calculation of overtime. Authorized leave must be included in straight time pay for employees but is not included in calculating overtime pay.

c. Holiday pay will be paid to all employees required to work on a holiday at the rate of one and one-half of the regularly hourly salary. The holidays are on the dates specified in Section 4-07-02 and not when actually observed.

d. A nonexempt employee called to work, with supervisor approval during non-scheduled hours, will be paid as overtime with a minimum two hours paid.

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

Attest:

/s/ James Neubauer
City Administrator

First Reading: January 20, 2009
Second Reading and Final Passage: February 3, 2009

Ordinance No. 1050
4-06-10(7) Administration of Salary Plan

2. Due to the absence of Commissioner Jackson who was called to a medical emergency within his family, this item was tabled until the February 17, 2009 Meeting: *Consider first reading of Ordinance No. 1048 An Ordinance to Repeal an Initiated Ordinance to the Mandan City Code Relating to Electric Handicap Accessible Doors As Adopted by the Electorate on November 4, 2008, and To Enact a New Ordinance Relating to Handicap Accessibility for Buildings that Accept Public Funds.*

Mayor Helbling referred the Commission to a copy of a revised version of Ordinance No. 1048 drafted by Attorney Brown with proposed changes. The changes on No. 1048 are to add Paragraph C to Section 2 which would state certain use groups that this ordinance would apply. That amendment was drafted at the request of Commissioner Gangl. The second change is at Paragraph E under Section 2, which would add a penalty to the Ordinance. Those are the two changes considered by this Board at a previous meeting.

Commissioner Gangl stated that he approves of the redrafted version and would support it. He motioned to discuss the Ordinance.

Attorney Brown stated that at this time the options before the Board are:

- To make a motion to adopt this as the First Ordinance No. 1048. If there is a second to the motion, then the Commission can discuss it;
- If the Commission wishes to defer the matter to a later time, there can be a motion to table the matter, which would make the matter not discussable at this time.

Commissioner Serhienko motioned to table the matter until the next Commission meeting. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

Mayor Helbling apologized for the delay in this matter, due to unforeseen circumstances in the absence of Commissioner Jackson.

Susan Beehler, a Mandan City resident came forward and stated that she has information relative to Ordinance No. 1048 to be disseminated to the Board members. Mayor Helbling directed the information be given to Administrator Neubauer. Ms. Beehler inquired if this was considered as a first reading of Ordinance No. 1048? Mayor Helbling responded that the next meeting would be the first reading.

OTHER BUSINESS:

1. City Administrator Neubauer reminded the Board that Market Street, the group in conjunction with the Bismarck/Mandan Chamber of Commerce is doing a Strategic Vision Planning with the City of Mandan on Thursday, February 5, 2009, 5:00 pm at the middle school Cafetorium. There will be an opportunity for public input. There is a survey on www.mandanvisionplan.com. It is a survey that covers the wants and needs for the City of Mandan. The website is up and operating and everyone is encouraged to fill out the survey.

There being no further actions to come before the Board, Commissioner Tibke moved to adjourn the meeting at 6:57 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