



**PRELIMINARY AGENDA
MANDAN CITY COMMISSION
NOVEMBER 4, 2014
ED "BOSH" FROEHLICH MEETING ROOM,
MANDAN CITY HALL
5:30 P.M.
www.cityofmandan.com**

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- A. ROLL CALL:
1. Roll call of all City Commissioners.
- B. APPROVAL OF AGENDA:
- C. PUBLIC COMMUNICATIONS:
- D. MINUTES:
1. Consider approval of the following minutes:
i. October 21, 2014 – Regular Board Meeting
ii. October 28, 2014 – Joint Meeting w/Planning & Zoning
- E. PUBLIC HEARING:
- F. BIDS
- G. CONSENT AGENDA:
1. Consider for approval replat of Lots 3 & 4, Block 2, Meadows 7th Addition
2. Consider for approval replat of Lot 11, Block 2, Meadow Ridge 3rd Addition
3. Consider for approval plat of Auditors Lots in S12 T139 R82
4. Consider closing Administrative offices day after Thanksgiving and day after Christmas.
5. Consider for approval of the loader lease option and adopt authorization resolution.
6. Consider change order for Street Improvement District 161, Project No. 2010-03 (Diane's).
- H. OLD BUSINESS:
- I. NEW BUSINESS:
- J. RESOLUTIONS AND ORDINANCES:
1. Second consideration for adopting Ordinance 1194 imposing a moratorium on approval of opioid treatment facility within the city.
2. Consider for approval Ordinance 1192 revising the language contained in city code relating to minor subdivision procedures.

*Preliminary Agenda
Mandan City Commission
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3. Consider adoption of ordinance 1193 amending the language contained in city code relating to terms of office for members of the Planning and Zoning Commission and clarifying who can be appointed to the Planning and Zoning Commission by the mayor.

K. OTHER BUSINESS:

L. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:

1. November 18, 2014 (4:00 p.m. Start Time)
2. December 2, 2014
3. December 16, 2014

M. ADJOURN

Public Communication

A scheduled time for public participation has been placed on the agenda at Mandan City Commission meetings. The Board desires to hear the viewpoints of citizens throughout the City. Individuals wishing to address the Board are encouraged to make arrangements with the Board President or the City Administrator prior to the meeting. Comments should be made to the Board and not to individuals in the audience and be related to City operations and programs. The Board will not hear personal complaints against any person connected with the City. If a citizen would like to add a topic to the agenda, arrangements must be made in advance with the City Administrator or Board President. The Board reserves the right to eliminate or restrict the time allowed for public participation. The Board requests that comments are limited to three (3) minutes or less. Groups of individuals addressing a common concern are asked to designate a spokesperson.

Departmental planning meeting will be held the Monday prior to the Commission meeting, all Commissioners are invited, noon, former Morton County Library Room. Please notify the city administrator by 8:30 a.m. that Monday if you plan on attending. If more than two commissioners plan on attending, proper public notice must be given.

The Mandan City Commission met in regular session at 5:30 p.m. on October 21, 2014 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Van Beek, Tibke, Rohr, Laber, and Braun. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Fire Chief Nardello, Business Development & Communications Director Huber, Planning & Engineering Director Froseth, Planner Decker, and Building Official Lalim, Absent: Director of Public Works Wright and Assessor Shaw.

B. APPROVAL OF AGENDA: Commissioner Tibke motioned to approve the Agenda as presented. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The motion passed.

C. PUBLIC COMMUNICATIONS: Mayor Van Beek invited anyone to come forward to address items on the Agenda excluding public hearings. A second announcement was made to come forward to speak for or against items on the Agenda. Hearing none, this portion of the Public Communications forum was closed.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission regular meeting held October 7, 2014.* Commissioner Braun moved to approve the minutes as presented. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present. The motion passed.

E. PUBLIC HEARING:

F. BIDS:

G. CONSENT AGENDA

1. *Consider approval of monthly bills.*

2. *Consider for approval the special assessments for Weed Cutting of 2014, Sidewalks of 2014 and, Health and Safety of 2014.*

3. *Consider for approval the assessment of delinquent accounts for 2014.*

4. *Consider the Acceptance of a Traffic Safety Contract from the North Dakota Department of Transportation (NDDOT), Traffic Safety Office.*

5. *Consider approval of change order for Lakewood 6th and 7th Addition street improvement project.*

6. *Consider proclaiming November 29, 2014 as Small Business Saturday in Mandan.*

7. *Consider NDDOT agreements and easements relative to Main Street ADA Project 9-999(304), PCN 20268.*

8. *Consider approval of the following Games of Chance: (i) Welcome House Inc. at Welcome House Inc. from Oct. 27, 2014 to Dec. 21, 2014; (ii) Kiwanis Club of Mandan at Mandan Eagles Club from December 6, 2014 to June 30, 2015.*

Commissioner Laber moved to approve the Consent Agenda as presented for No. 1-7 and amended her motion to include Consent Agenda Item No. 8. Commissioner Rohr seconded the motion and the amended motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

H. OLD BUSINESS:

I. NEW BUSINESS:

1. *Presentation regarding Law Enforcement Retirement Plan.* Peter Czapiewski, a Mandan Police Officer representing the police officers of the department requested the City switch to the ND Law Enforcement PERS defined benefit plan effective January 1, 2015. He explained the PERS Retirement Program is specific for law enforcement sworn officers and certified correctional officers. The contribution rates that are now in effect that will pertain include a mandatory 7.93% contribution by the employer (City of Mandan) in addition to a 1.14% health care contribution. The health care contribution will help with the purchase of health care coverage during retirement. The employee contribution level will be 5.5% which is the minimum the employee will contribute for this plan. A total of 9.07% is what the City of Mandan will have to contribute to this plan which is less than what the Commission had budgeted for 2015. He stressed the importance of going with this plan basically has to do with recruitment and retention of officers to the police force. He stated that the City of Mandan Police Department is the only agency in the area that does not have a defined benefit retirement plan. The Morton County Sheriff's Department participates in the ND Law Enforcement PERS plan and so does the Burleigh County Sheriff Department and Lincoln Police Department.

Sparb Collins, Executive Director NDPERS came forward to explain the PERS Plans. He stated that there are six defined benefit plans and defined contribution plans on behalf of the state and political subdivisions. The Law Enforcement plan is part of the Public Employees Retirement system but its costs are determined based upon that specific plan. It is not part of the main retirement system which has state and political subdivisions in it, of which there are about 18,000 actives. Each plan has a different contribution rate that is established for each plan based upon the actuary experience of the group. Outside the PERS trust there is one specific for the Highway Patrol and a separate one for Job Service of which all those are also actuary determined separate. The reason they are separate is because each have certain variances in the plan design. For example, this law enforcement system is very much like the main retirement system except it has an earlier retirement date so its benefits are slightly different than the other plans. The goal is to match the costs of the plan with the terms and benefits of the plan.

Commissioner Tibke stated that the legislature is going to discuss defined contribution and defined benefit plans in the upcoming legislative session. If the legislature moves forward and eliminates defined benefit and moves to defined contribution how would that affect this pool of money for law enforcement? Right now it affordable but that could be questionable in the future if that were to change. She questioned how changes may affect city budgets that have joined this program? Mr. Collins replied that there has been

discussion about changing the main retirement system for state employees that provides retirement for the employees of the state of North Dakota and participating political subdivisions. About half the clients in the main retirement system are political subdivisions and the remaining are state employees. The state is talking about changing it to include state employees only in that system. That is one of the reasons why the law enforcement plans are separate from the main state employee retirement system. There has been ongoing conversation at the state since 1999, at which time a defined contribution plan was put into place for non-classified state employees. At the last legislative session the decision was made to make a defined contribution plan optional for all state employees. 90% have moved toward the defined benefit plan.

Mayor Van Beek asked City Administrator Neubauer or Finance Director Welch if, in their opinion, are there any negatives or positives to the plan presented? Director Welch replied that within his conversations with Moody's, not knowing what the pension obligation or unfunded pension liability in this case would be for the City, he stated that he could not quantify what that impact would be. However, the question of if the City participates in a defined benefit plan is asked and the response is noted in the bond analysis for the City. Director Welch stated that other concerns he has with this plan include the long term plan stating that currently the City has a 100% funding level (in other words, we pay as we go) so the City would not be responsible for any long term unfunded benefits when it comes to pension. The question is whether the City can sustain any market adjustments that would cause significant losses to a defined benefit plan and who would be responsible for making up those losses? More than likely, it would be the City and that is of concern.

Commissioner Laber stated that according to the Agenda this matter was a presentation of a retirement plan, indicating that she feels she has not seen enough presented to make an adoption of a plan or not adopt a plan. City Attorney Brown replied that this is a presentation of a retirement plan pursuant to a request from the Mandan Police Department for a retirement proposal. He stated he did not believe action is necessary at this time to approve or not approve the retirement plan. He said that the Commission is open to do what they wish at this time. The presentation can be accepted and require additional information or study on it at a future time.

Commissioner Tibke asked Chief Bullinger about the costs incurred to train an officer? Chief Bullinger replied that cost is estimated by salaries and equipment for approximately 3 months, which is about \$25,000. There have been 5 or 6 new hires this year (2014). The typical number of new hires per year has averaged between 3 and 5 over the last 7 years. Officers generally stay about 3 years and then move on to other agencies. One of the main reasons for moving on are for better benefits that would include not only a retirement but health insurance too.

Commissioner Tibke stated she is comfortable with taking the information presented; however she is very interested in moving forward with addressing some of these issues discussed and balancing (the plan) with Finance (bond rating). The issues are much broader than what type of officers can we attract and also having a benefit plan available

so they can retire when they need to. She extended a thank-you to the police officers for their hard work in doing the research and pulling this presentation together and to Mr. Collins for the helpful information. She stated she would like to review the information and also provide the other commissioners with additional time to look through the information presented. She would like to see a decision made prior to 1/1/15. She encouraged the people on these plans to contact their local legislators and discuss the importance of these plans, not only for law enforcement but city employees too. Senator Cook and Representative Toman and Representative Porter represent the City of Mandan.

Commissioner Rohr stated this matter has been before this Board before. He indicated that he would like to review the information closer and make sure the City Commission is well versed as much as possible and to resolve the matter and not push it off much longer. Mayor Van Beek concurred with Commissioners Tibke and Rohr's comments but he stated he would like to wait until after the legislative session to address it. He agreed that speaking to legislative representatives now is important but that he does not want to put the cart before the horse and have the state not fund it or whatever is decided. He stated he would like to see what they decide before the City puts the citizens at risk with this.

Commissioner Tibke mentioned that she thinks the legislature is putting the matter at risk, not the Mandan City Commission. Commissioner Laber stated she is concerned about the structuring of the plan as a mandatory requirement in a defined benefit for every single employee. The mobility of today's work force is not I get a job as a recruit when I am 18 and I retire in the same department in the same city when I'm 55. That does not happen anymore in today's world and she stated she would like to see more research conducted on this matter and she would spend more time in looking at this in today's workforce. Commissioner Tibke stated that Mr. Collins has offered to meet with Commissioners individually so he can answer questions and then a session with Finance Director Welch should be held in order to determine the overall balancing of the plan with the finances of the City.

Mayor Van Beek extended a thank-you to the police officers for their presentation. This matter will be discussed at a later date in order to allow time for the commissioners to review the plans and data provided and additional time to discuss with Mr. Collins.

2. *Update and presentation by AE2S on Water Treatment Plant Intake study.*
Planning & Engineering Director Froseth stated that last year the City entered into an agreement with AE2S Engineering for the purpose of studying the needs, possible locations and costs associated with a proposed new intake for the Water Treatment Plant. AE2S has prepared a brief presentation on the findings of the work done since that time. The presentation follows a comprehensive Technical Memorandum Study that was submitted to the City staff.

Ken Weber, AE2S Engineering, came forward and provided a summary of the activities. He provided a brief history of the project and past studies of what has been done and what their current studies are and what is being done for current intake. He reviewed the next steps in the process stating that the project is in collaboration with Tesoro. There are

some concerns, such as the intake is getting old. The infrastructure is continuously upgraded and there is decay from over the years. The ventilation is one of the more critical problems causing damage to the electrical equipment and it should be addressed. The doors and windows are in poor shape and that's what you see on the surface. The real issue is the intake. In 1964, when the Grant Marsh Bridge was built and now 30-40 years later, the channel at the particular intake has shifted to the east side. The sand bar has shifted and when it gets in front of the intake, the water is diminished and that is a problem. Every time this happens, the City has to get a permit from the Army Corp of Engineers and they are wondering why it is not being corrected. There were 3 previous studies done. 2002 was a filtration study and it stated the river has moved from west to east. The 2006 study tried to identify what types of intakes would be conducive for the City of Mandan. The study was conducted and it was recommended to look at a conventional intake.

Work is in progress on site selection. At the north end of the Riverbend addition, the channel is well defined, stable and armored. This is the preferred site. Mr. Weber stated the initial estimated costs were \$10 million about 7-8 years ago. Costs have since increased and they have been submitted to State Water Commission approximately \$18 million. In 2013, a 50% grant was received by the City of Mandan for the preliminary study. A funding application was submitted to the State Water Commission and initial results back would indicate the project could be partially (80%) funded through a loan. With that in mind, we need to move down the path as to what does or not does not make sense. There are several steps yet to be taken, however, we will schedule public meetings to discuss the project with the affected neighbors. The timeline indicated 5 years from whatever the point of preliminary engineering begins until the project is done. Mayor Van Beek stated this is an informational item only with no action required at this time.

3. *Approval for advertisement of RFP for engineering services for downtown street improvement district for street reconstruction.* Planning & Engineering Director Froseth stated the Engineering Department has identified an area in downtown Mandan to conduct a street improvement district project located between 4th Avenue Northeast on the west and Mandan Avenue on the east and north of Main Street to approximately 4th Street, at the bottom of the hill. This is being addressed due to (1) The majority of the area streets are categorized as unsatisfactory on the 2012 pavement condition index assessment study; (2) Public Works Department has targeted this area for its annual water main replacements, indicating they will need to remove a fair amount of asphalt within this area in order to accomplish this. The Engineering Department recommends hiring an engineering consultant to put together plans and specifications for this project as well as help with project administration. Director Froseth stated that it would be helpful to bring a consultant on board with the project before creating the resolution of necessity and general scope/estimate which are all requirements before advertising to solicit protests. Director Froseth presented a timeline of key dates for the projects between 10/24/14 and 4/21/15 with plans to construct the project in 2015. He suggested approval of a consultant at the upcoming 12/2/14 meeting with an engineer's report being provided at the second meeting in January.

Commissioner Braun moved to approve the advertisement of RFP for engineering services for downtown street improvement district for street reconstruction.

Commissioner Rohr seconded the motion and the amended motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

4. *Consider agreement with JLG.* City Administrator Neubauer reviewed with the Board a request to enter into a contract with JLG Architects for a Facility Needs Assessment. He provided a summary of this project stating that the Mandan Sales Tax Committee held a Facility Focus Group meeting in August to gather input from a cross-section of community members and recreational stakeholders to discuss potential improvement projects. Of approximately 30 focus group participants, 65% were in support of a sales tax increase. The projects receiving most support were a new indoor hockey arena, a new or improved City Hall and a Fire Station on the north side of Mandan. In August, the Mandan City Commission approved the issuance of a Request for Qualifications to firm up cost estimates for a renovation, a tear down and possibly rebuild on the present site or a completely new City Hall located on another property. Three of five firm proposals were selected for interviews and the consensus was to enter into an agreement with JLG. He explained that moving forward the plan is for internal meetings to be scheduled bi-weekly to review findings and prepare for public input meetings. The timeline of details would be firmed up during the first couple meetings with an anticipated first public meeting in January 2015 and another one in February 2015 with a final report on or before April 15, 2015. The cost associated for this analysis is a flat fee of \$50,000 of which the funds will come from the General Fund. This is part of the joint facilities task force that the Park District, the City of Mandan, and the School District have put together. Stephanie Smith from KLG was present to answer any questions.

Commissioner Tibke suggested holding one of the meetings over a noon hour since some families are unable to attend meetings in the evening hours. Administrator Neubauer stated that if there is a good turnout for the first two public input meetings and there is a clear cut direction based on those meetings, a third meeting may not be needed. However, if there is a lot of discussion going on after the first two, a third meeting could be scheduled to firm up which direction the City chooses to go.

Commissioner Braun moved to approve entering into an agreement with JLG for a Facility Needs Assessment analysis for the Mandan City Hall and a new Fire Station with funding provided from the General Fund as outlined in the contract. Commissioner Laber seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

J. RESOLUTIONS AND ORDINANCES:

1. *Consider adopting Ordinance 1194 imposing a moratorium on approval of any new medical facility within the City.* Robert Decker, Principal Planner, stated this is a matter that came up recently; in particular, there are no specific rules in the code related

to opioid treatment facilities. He stated the legislature authorized the state to enter into agreements for this type of facility. The City of Mandan Ordinances do not address it and since there is a major rewrite of the Municode that will take several months to complete. The issues are complex and will require careful evaluation of whether or not there are changes to the zoning code needed. It is recommended that a 1 year moratorium be imposed on the review and approval of any request to locate a new opioid treatment facility in the City or its extraterritorial zone. Planner Decker stated that the City shares the extraterritorial zone with the County wherein the City does the 1st mile and the County does the 2nd mile. This is a request to hold on any requests.

Commissioner Laber moved to approve adopting Ordinance 1194 imposing a moratorium on approval of any new medical facility within the City and its extraterritorial zone. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

K. OTHER BUSINESS

There being no further actions to come before the Board of City Commissioners, Commissioner Tibke moved to adjourn the meeting at 6:56 p.m. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The motion passed.

James Neubauer,
City Administrator

Arlyn Van Beek,
President, Board of City
Commissioners

The Mandan City Commission and the Mandan Planning & Zoning Commission met in a Joint Special Meeting at 5:30 p.m. on October 28, 2014 at Mandan City Hall, 205 2nd Ave NW, in the Ed “Bosh” Froehlich Meeting Room. In attendance for the Mandan City Commission were Mayor Van Beek, Commissioners Tibke and Rohr. Absent were Commissioners Laber, and Braun. City Department Heads present were City Attorney Brown, City Administrator Neubauer, Finance Director Welch, Police Chief Bullinger, Director of Public Works Wright, Planning & Engineering Director Froseth, Planner Decker, and Building Official Lalim. In attendance for the Mandan Planning & Zoning Commission were Klein, Fleischer, Kelly, Robinson and Liepitz. Representing Stantec was Phil Carlson.

NEW BUSINESS:

Update on Mandan Comprehensive Land Use and Transportation Plan. Mr. Carlson provided an update on Mandan’s land use and transportation plan including growth projections, areas for growth along with new and existing roadways and developing a parks and trails plan. The draft is the culmination of an eighteen month process which is nearing completion. Drafts of the plan are available at the City of Mandan’s website.

ADJOURN

There being no further actions to come before the Commissions the meeting adjourned at 6:05 p.m.

/s/ James Neubauer
James Neubauer,
City Administrator

/s/ Arlyn Van Beek
Arlyn Van Beek
President, Board of City
Commissioners



Board of City Commissioners

Agenda Documentation

MEETING DATE: November 4, 2014
PREPARATION DATE: October 28, 2014
SUBMITTING DEPARTMENT: Engineering & Planning
DEPARTMENT DIRECTOR: Justin Froseth
PRESENTER: Robert Decker, P.E., Principal Planner
SUBJECT: Consider for approval replat of Lots 3 & 4, Block 2, Meadows 7th Addition

STATEMENT/PURPOSE:

Request is to adjust lot line to meet minimum setback requirement.

BACKGROUND/ALTERNATIVES:

Structure was placed too close to lot line. Builder owns both lots. Lot line will be moved 1 foot. Lots are substantially larger than minimum requirements. Planning and Zoning Commission acted at their October 27, 2014 meeting to recommend approval.

ATTACHMENTS:

1. Location Map
2. Plat Map
3. Planning and Zoning staff report

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

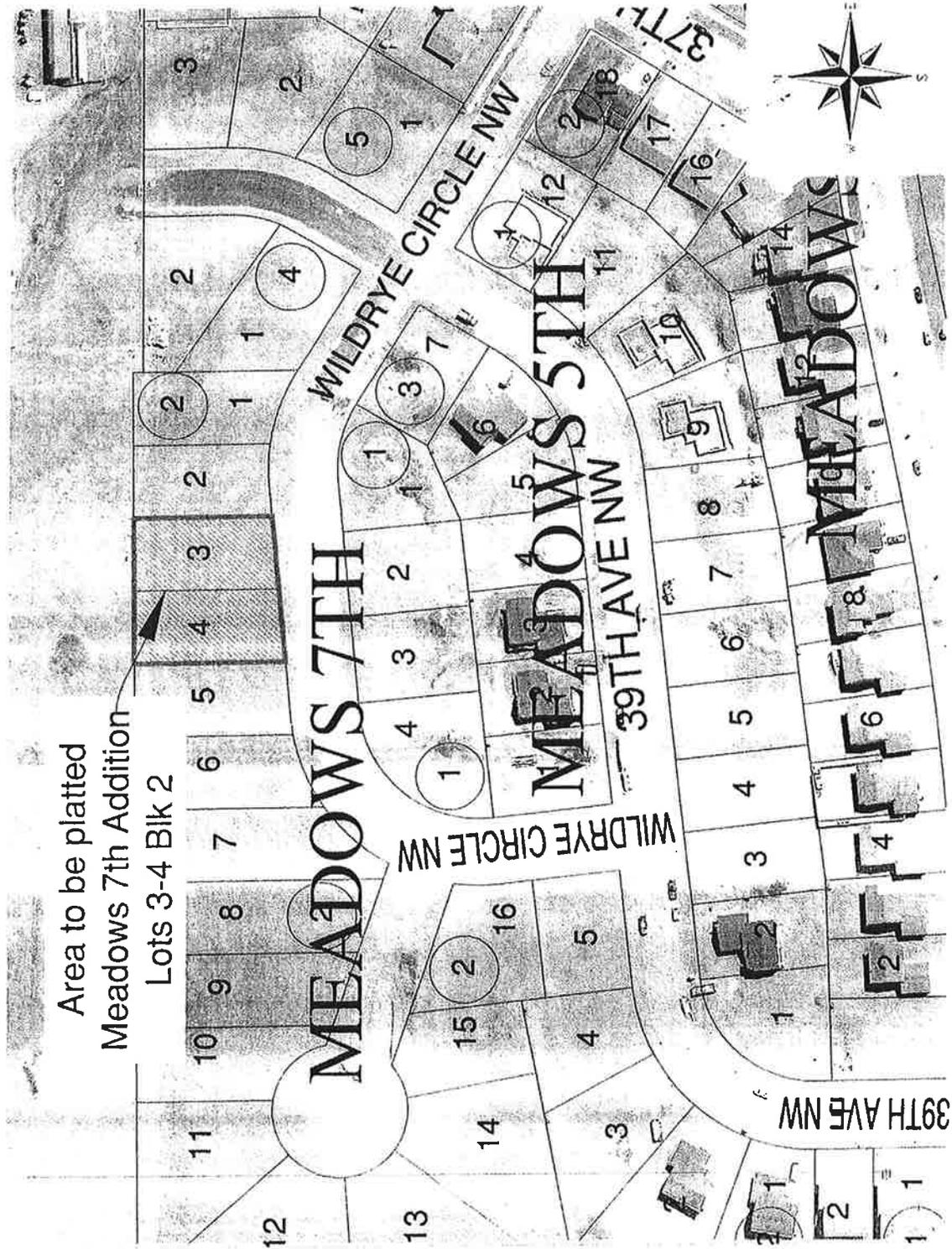
LEGAL REVIEW: All of my commission data has been forwarded to the City Attorney for his review.

RECOMMENDATION:

Recommend approval.

SUGGESTED ACTION:

Move to approve replat of Lots 3 & 4, Block 2, Meadows 7th Addition.



REPLAT OF LOT 3 AND LOT 4 OF BLOCK 2 MEADOWS SEVENTH ADDITION

LOCATED IN SECTION 8 TOWNSHIP 138 NORTH, RANGE 81 WEST OF THE FIFTH PRINCIPAL MERIDIAN
 CITY OF MANDAN
 MORTON COUNTY, NORTH DAKOTA



DESCRIPTION
 THIS IS A REPLAT OF MEADOWS SEVENTH ADDITION, TOWNSHIP 138 NORTH, RANGE 81 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MORTON COUNTY, NORTH DAKOTA.

OWNER'S CERTIFICATE AND DEDICATION
 I, the undersigned, being the owner and proprietor of the property shown on the attached plat, do hereby certify that the same is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota, and that the same is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota, and that the same is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota.

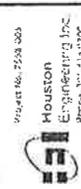
SURVEYOR'S CERTIFICATE
 I, the undersigned, being a duly licensed and sworn surveyor in the State of North Dakota, do hereby certify that the above is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota, and that the same is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota.

APPROVAL OF BOARD OF CITY COMMISSIONERS
 I, the undersigned, being a duly elected member of the Board of City Commissioners of the City of Mandan, North Dakota, do hereby approve and certify that the above is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota, and that the same is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota.

APPROVAL OF CITY ENGINEER
 I, the undersigned, being a duly licensed and sworn engineer in the State of North Dakota, do hereby approve and certify that the above is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota, and that the same is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota.

APPROVAL OF CITY PLANNING COMMISSION
 I, the undersigned, being a duly elected member of the City Planning Commission of the City of Mandan, North Dakota, do hereby approve and certify that the above is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota, and that the same is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota.

APPROVAL OF BOARD OF CITY COMMISSIONERS
 I, the undersigned, being a duly elected member of the Board of City Commissioners of the City of Mandan, North Dakota, do hereby approve and certify that the above is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota, and that the same is a true and correct copy of the original plat as recorded in the office of the Register of Deeds for Morton County, North Dakota.



Mandan Planning and Zoning Commission Agenda Item
 For Meeting on October 27, 2014
 Mandan Engineering and Planning Office Report
Replat of Lots 3 & 4, Block 2, Meadows 7th Addition
 Requested Action
**Adjust lot line to meet minimum setback
 requirement**

Application Details					
Applicant Houston	Owner Rusch Homes	Subdivision Meadows 7 th	Legal Description Lots 3 & 4, Block 2		
Location Wildrye Circle NW		Proposed Land Use Single-family	Parcel Size 9,500 +	Number of Lots 2	
Existing Land Use residential	Adjacent Land Uses Residential		Current Zoning R7	Proposed Zoning R7	Adjacent Zoning R7
Fees	Date Paid	Adjacent Property Notification Sent	Legal Notices Published		

Project Description
Request is to adjust lot line to meet minimum setback requirement. Structure was placed too close to lot line. Builder owns both lots. Lot line will be moved 1 foot.
Agency & Other Department Comments
Engineering & Planning Staff Comments Lots are substantially larger than minimum requirements.
Engineering & Planning Recommendation Recommend approval.
Proposed Motion Move to recommend approval of replat of Lots 3 & 4, Block 2, Meadows 7 th Addition.



Board of City Commissioners

Agenda Documentation

MEETING DATE: November 4, 2014
PREPARATION DATE: October 28, 2014
SUBMITTING DEPARTMENT: Engineering & Planning
DEPARTMENT DIRECTOR: Justin Froseth
PRESENTER: Robert Decker, P.E., Principal Planner
SUBJECT: Consider for approval replat of Lot 11, Block 2, Meadow Ridge 3rd Addition

STATEMENT/PURPOSE:

Request is to split lot to allow sale of both halves of duplex.

BACKGROUND/ALTERNATIVES:

Lot and setbacks are substantially larger than minimum requirements. Measurements match already constructed building. Planning and Zoning Commission acted at their October 27, 2014 meeting to recommend approval.

ATTACHMENTS:

1. Location Map
2. Plat Map
3. Planning and Zoning staff report

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

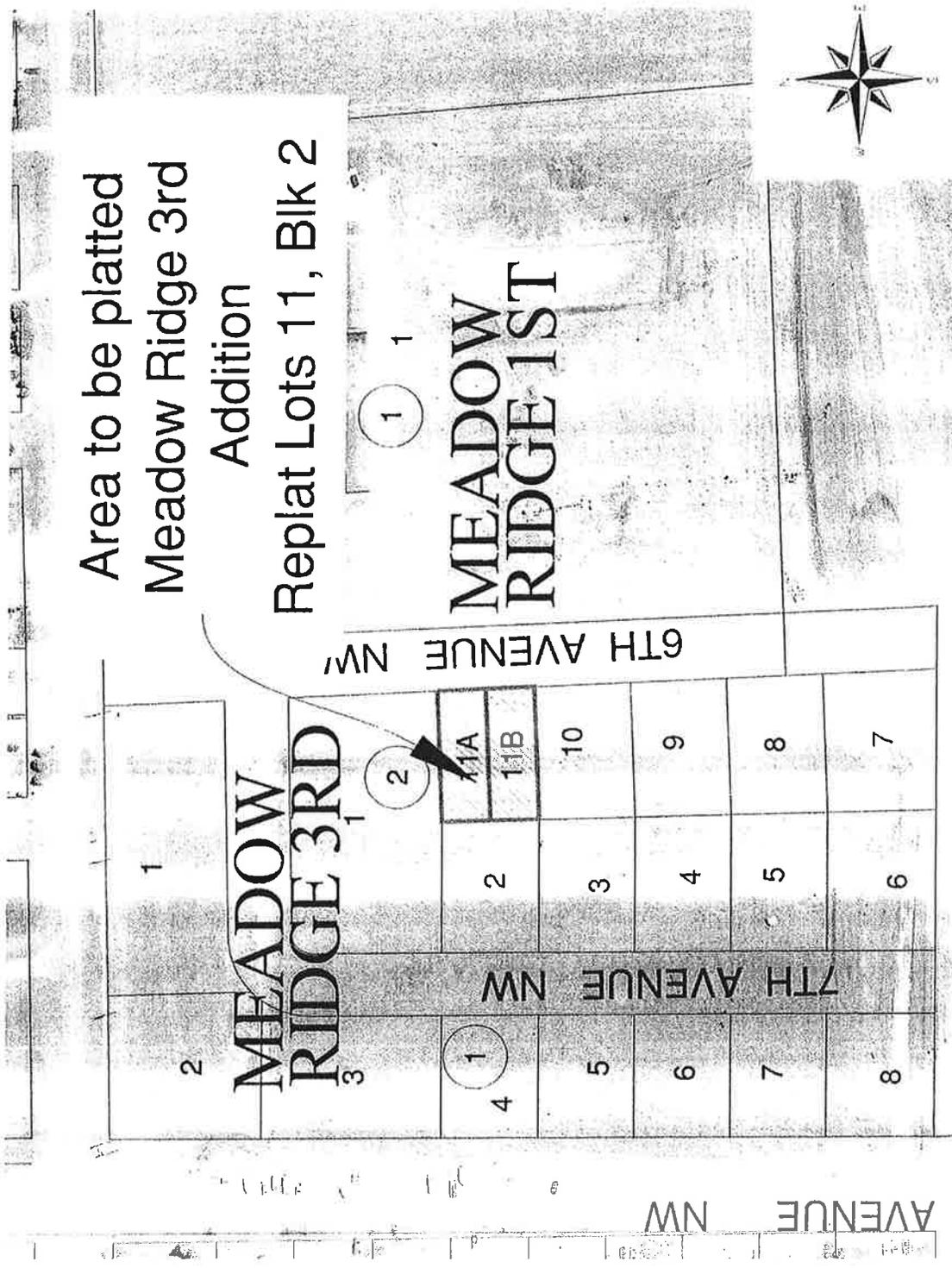
LEGAL REVIEW: All of my commission data has been forwarded to the City Attorney for his review.

RECOMMENDATION:

Recommend approval.

SUGGESTED ACTION:

Move to approve replat of Lots 3 & 4, Block 2, Meadows 7th Addition.



Mandan Planning and Zoning Commission Agenda Item
 For Meeting on October 27, 2014
 Mandan Engineering and Planning Office Report
**Replat of Lot 11, Block 2, Meadow Ridge 3rd
 Addition**
 Requested Action
Split lot for sale of each side of duplex

Application Details					
Applicant NLC Consulting	Owner Colleen & John Kullak	Subdivision Meadow Ridge 3rd	Legal Description Lot 11, Block 2		
Location 6 th Ave. NW		Proposed Land Use Duplex	Parcel Size 13,897 SF	Number of Lots 1 into 2	
Existing Land Use duplex	Adjacent Land Uses Residential		Current Zoning RM	Proposed Zoning RM	Adjacent Zoning RM
Fees	Date Paid	Adjacent Property Notification Sent	Legal Notices Published		

Project Description
Request is to split lot to allow sale of both halves of duplex and grant minor setback variances of less than 1 foot for construction related variations.
Agency & Other Department Comments
Engineering & Planning Staff Comments
Lot and setbacks are substantially larger than minimum requirements.
Engineering & Planning Recommendation
Recommend approval.
Proposed Motion
Move to approve replat of Lot 11, Block 2, Meadow Ridge 3 rd Addition and authorize variance to setback requirements of up to one foot.



Board of City Commissioners

Agenda Documentation

MEETING DATE: November 4, 2014
PREPARATION DATE: October 28, 2014
SUBMITTING DEPARTMENT: Engineering & Planning
DEPARTMENT DIRECTOR: Justin Froseth
PRESENTER: Robert Decker, P.E., Principal Planner
SUBJECT: Consider for approval plat of Auditors Lots in S12 T139 R82

STATEMENT/PURPOSE:

Request is to create a subdivision from auditor's lots. Purpose is to transfer land to son.

BACKGROUND/ALTERNATIVES:

This property is located west of Roughriders Subdivision. Subdivision is required if any new construction will require a building permit. Planning and Zoning Commission acted at their October 27, 2014 meeting to recommend approval with the requirement to add the standard utility easement that the county requires.

ATTACHMENTS:

1. Location Map
2. Plat Map
3. Planning and Zoning staff report

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

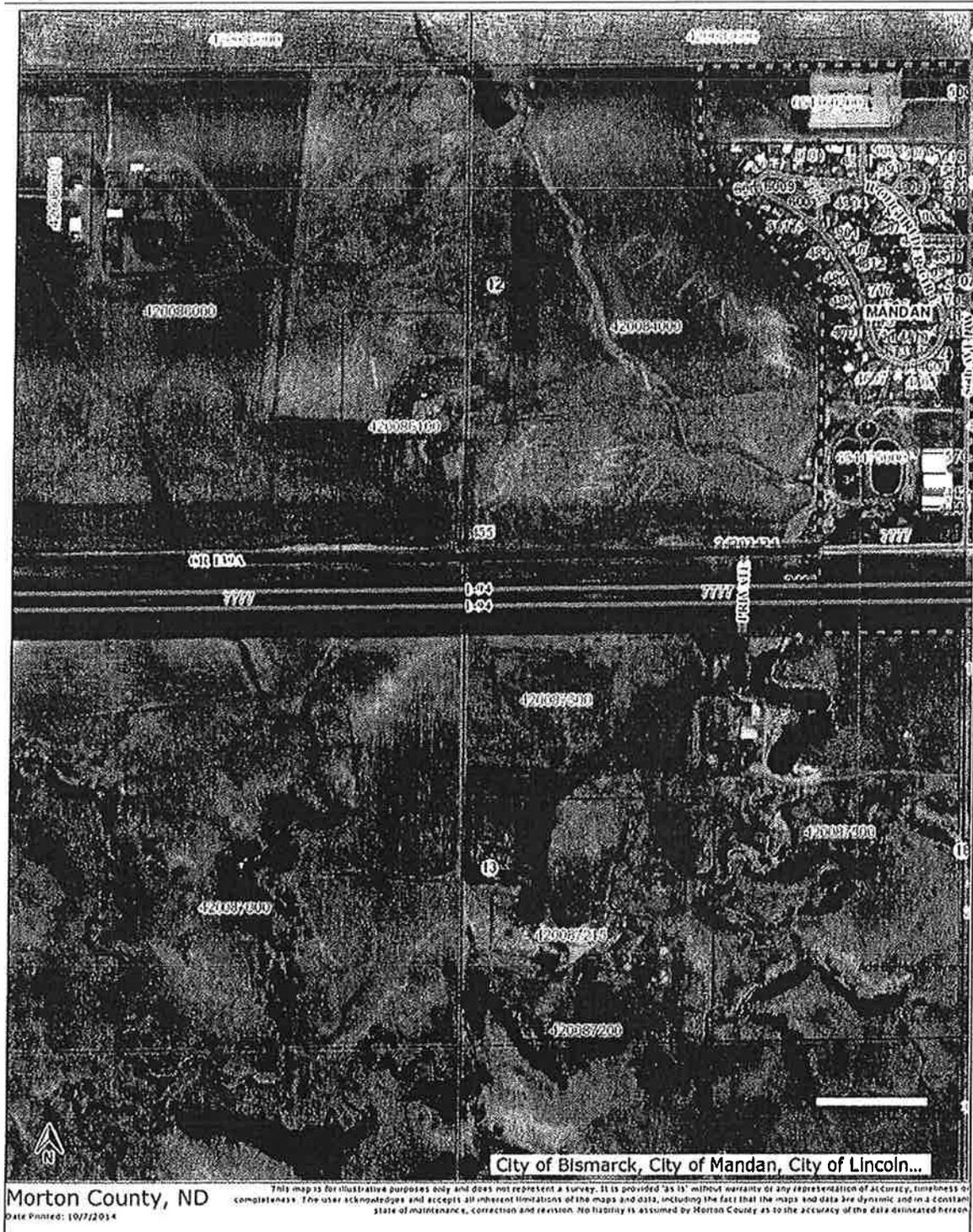
LEGAL REVIEW: All of my commission data has been forwarded to the City Attorney for his review.

RECOMMENDATION:

Recommend approval.

SUGGESTED ACTION:

Move to approve plat of Auditors Lots in S12 T139 R82 as recommended by Planning and Zoning Commission.



BRETT LANDEIS SUBDIVISION

A REPLAT OF OUTLOT "A" OF THE SE 1/4 SW 1/4 & OUTLOT "B" OF THE SW 1/4 SE 1/4 OF SECTION 12, T:139N-R:82W.
 LYING WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF MANDAN
 MORTON COUNTY, NORTH DAKOTA



SCALE 1 INCH = 50 FEET

DESCRIPTION

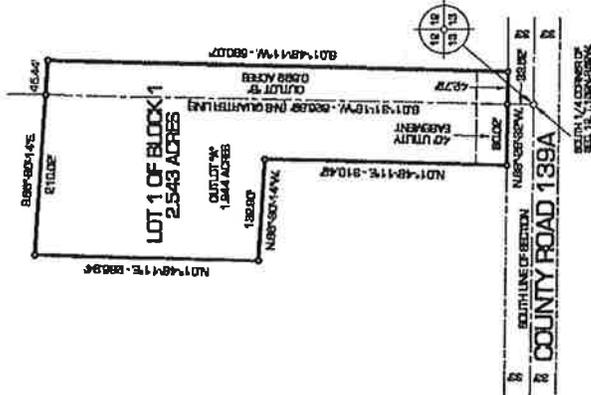
ALL OF OUTLOT "A" OF THE SE 1/4 SW 1/4 AND ALL OF OUTLOT "B" OF THE SW 1/4 SE 1/4 OF SECTION 12, T:139N-R:82W, MORTON COUNTY, NORTH DAKOTA, ARE HEREBY REPLATED AS TWO SEPARATE LOTS, TO-WIT: LOT 1 OF BLOCK 1 AND OUTLOT "A" OF LOT 1 OF BLOCK 1. THE TOTAL AREA OF THE REPLATED LOTS IS 1.844 ACRES. THE REPLATED LOTS ARE HEREBY DESIGNATED AS "LOT 1 OF BLOCK 1" AND "OUTLOT "A" OF LOT 1 OF BLOCK 1". THE REPLATED LOTS ARE HEREBY DESIGNATED AS "LOT 1 OF BLOCK 1" AND "OUTLOT "A" OF LOT 1 OF BLOCK 1". THE REPLATED LOTS ARE HEREBY DESIGNATED AS "LOT 1 OF BLOCK 1" AND "OUTLOT "A" OF LOT 1 OF BLOCK 1".

APPROVAL OF CITY PLANNING COMMISSION

THE BOARD OF CITY PLANNING COMMISSIONERS HAS REVIEWED THE PLAT AND HAS APPROVED THE REPLAT OF THE LOTS AS SHOWN ON THE PLAT. THE BOARD OF CITY PLANNING COMMISSIONERS HAS REVIEWED THE PLAT AND HAS APPROVED THE REPLAT OF THE LOTS AS SHOWN ON THE PLAT. THE BOARD OF CITY PLANNING COMMISSIONERS HAS REVIEWED THE PLAT AND HAS APPROVED THE REPLAT OF THE LOTS AS SHOWN ON THE PLAT.

APPROVAL OF BOARD OF CITY COMMISSIONERS

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OWNERS CERTIFICATE & DEDICATION

I, LANDER, DO HEREBY DEDICATE AND SET ASIDE THE FOREGOING LOTS AS SHOWN ON THE PLAT FOR THE USE OF THE PUBLIC. I, LANDER, DO HEREBY DEDICATE AND SET ASIDE THE FOREGOING LOTS AS SHOWN ON THE PLAT FOR THE USE OF THE PUBLIC. I, LANDER, DO HEREBY DEDICATE AND SET ASIDE THE FOREGOING LOTS AS SHOWN ON THE PLAT FOR THE USE OF THE PUBLIC.

STATE OF NORTH DAKOTA,)
 COUNTY OF MORTON,)
 I, LANDER,)
 DO HEREBY CERTIFY THAT THE FOREGOING LOTS ARE HEREBY DEDICATED AND SET ASIDE FOR THE USE OF THE PUBLIC.

SURVEYORS CERTIFICATE

I, NORMAN L. LANDEIS, A REGISTERED PROFESSIONAL SURVEYOR IN THE STATE OF NORTH DAKOTA, DO HEREBY CERTIFY THAT I HAVE PERSONALLY EXAMINED THE PLAT AND THAT ALL INFORMATION THEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I, NORMAN L. LANDEIS, A REGISTERED PROFESSIONAL SURVEYOR IN THE STATE OF NORTH DAKOTA, DO HEREBY CERTIFY THAT I HAVE PERSONALLY EXAMINED THE PLAT AND THAT ALL INFORMATION THEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

APPROVAL OF CITY ENGINEER

I, _____, CITY ENGINEER, DO HEREBY APPROVE THE PLAT AND THE REPLAT OF THE LOTS AS SHOWN ON THE PLAT.

NLC CONSULTING
 LAND SURVEYING AND PLANNING CONSULTANTS
 1028 LAKE AVE., SUITE 101, BISMARCK, ND 58102

Mandan Planning and Zoning Commission Agenda Item
 For Meeting on October 27, 2014
 Mandan Engineering and Planning Office Report
Plat of Auditors Lots
 Requested Action
Create subdivision Description

Application Details				
Applicant NLC Consulting	Owner Keith & Marlys Landeis	Subdivision none	Legal Description Auditors lots in S12 T139 R82	
Location Old Red Trail west of Roughriders		Proposed Land Use residential	Parcel Size	Number of Lots
Existing Land Use	Adjacent Land Uses		Current Zoning	Proposed Zoning
Fees	Date Paid	Adjacent Property Notification Sent	Legal Notices Published	

Project Description
Request is to create a subdivision from auditor's lots. Purpose is to transfer land to son.
Agency & Other Department Comments
Engineering & Planning Staff Comments
Subdivision is required if any new construction will need a building permit
Engineering & Planning Recommendation
Recommend approval.
Proposed Motion
Move to approve plat as presented.



Board of City Commissioners

Agenda Documentation

MEETING DATE: November 4, 2014
PREPARATION DATE: October 29, 2014
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Day after Thanksgiving & Day after Christmas

STATEMENT/PURPOSE: Allow the Administrative Offices to close the day after Thanksgiving and the day after Christmas.

BACKGROUND/ALTERNATIVES: Long standing tradition has been to have Administrative Offices closed to the public the day after Thanksgiving. Employees take vacation, personal leave or comp time if they wish to do so, otherwise, they must receive permission to work from their respective department head. This year the day after Christmas falls on a Friday. Several employees have inquired about taking that Friday off and thus we would be shorthanded. Therefore, we are also asking for the treatment of the day after Christmas similar to the day after Thanksgiving.

Department managers are supportive of this request, and it will also mirror Morton County actions.

ATTACHMENTS: N/A

FISCAL IMPACT: N/A

STAFF IMPACT: N/A

LEGAL REVIEW: N/A

RECOMMENDATION: - I recommend the Administrative Offices be closed the day after Thanksgiving and the day after Christmas.

SUGGESTED MOTION: - I move the Administrative Offices be closed the day after Thanksgiving and the day after Christmas.



Board of City Commissioners

Agenda Documentation

MEETING DATE: November 4, 2014
PREPARATION DATE: October 29, 2014
SUBMITTING DEPARTMENT: Public Works
DEPARTMENT DIRECTOR: Jeff Wright
PRESENTER: Jeff Wright, Public Works Director
SUBJECT: Consider for approval of the loader lease option and adopt authorization resolution.

STATEMENT/PURPOSE: Consider approval of loader lease option and adopt authorization resolution.

BACKGROUND/ALTERNATIVES: On the October 7th meeting the commission approved the budget amendment to proceed with the loader lease option in 2014. The proposed lease is through Butler Machinery (low bid) for two 924 CAT front end loaders. We also looked at John Deere and Volvo for the lease option. Also attached to the lease is a Lessee's Authorization Resolution for your consideration for adoption and approval.

ATTACHMENTS: Proposed lease and Resolution

FISCAL IMPACT: \$25,105.44, from the amended 2014 budget.

STAFF IMPACT: N/A

LEGAL REVIEW: Malcolm has reviewed all documents.

RECOMMENDATION: I recommend approval of the front end loader lease option for \$25,105.44 and the adoption and approval of the Lessee's Authorization Resolution.

SUGGESTED MOTION: I move to approve the front end loader lease option for \$25,105.44 and the adoption and approval of the Lessee's Authorization Resolution.

Board of City Commissioners

Agenda Documentation

Meeting Date: October 7, 2014

Subject: Consider budget amendment to the 2014 Street Department Capital Outlay budget for the lease of two wheel loaders.

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Lease-Purchase Agreement

Lessee: City of Mandan

Lease No.: 102650001

This Lease-Purchase Agreement dated the 5th day of November, 2014 (the "Lease"), by and between Merchants Capital Resources, Inc., whose address is 7600 Parklawn Avenue, Suite 384, Minneapolis, MN 55435, as agent for one or more persons (the "Lessor") and City of Mandan, located in Morton County, as Lessee (the "Lessee"), whose address is 205 2nd Ave. NW, Mandan, North Dakota 58554.

WITNESSETH

WHEREAS, Lessee is authorized by State statutes to acquire (2) New 2014 CAT 924K Wheel Loaders by entering into a lease-purchase agreement; and

WHEREAS, pursuant to a resolution duly adopted by the Lessee on see attached, the Lessee has determined that it is necessary to further the construction purposes of the Lessee that it acquire (2) New 2014 CAT 924K Wheel Loaders described herein as Equipment; and

WHEREAS, Lessor is willing to acquire the Equipment and to lease and sell it to Lessee pursuant to this Lease;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

**ARTICLE I
DEFINITIONS AND EXHIBITS**

Section 1.1 **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Authorized Representative: Shall mean (a) with respect to the Lessee, the officer of the Lessee or any other Person or Persons at any time designated by resolution of Lessee's governing body or written certificate conferring authority upon such person to act on behalf of the Lessee with respect to this Lease; and (b) with respect to the Lessor, any authorized signatory of the Lessor authorized by their bylaws to act or to execute documents on behalf of the Lessor.

Certificate of Acceptance: The Certificate of Acceptance of Lessee the form of which is attached hereto as Exhibit C.

Code: The Internal Revenue Code of 1986, as amended and any regulations promulgated thereunder by the United States Department of the Treasury.

Commencement Date: The date upon which Lessee's obligations to make Lease-Purchase Payments accrues as evidenced by the issuance to Lessor of the Certificate of Acceptance attached hereto as Exhibit C.

Contractor: Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

Cost or Costs: The costs of acquisition and installation of the Equipment and all other costs incidental and related thereto, including the costs of preparation, marketing and sale of this Lease.

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Equipment: The (2) New 2014 CAT 924K Wheel Loaders described in the attached Exhibit A which is being leased and purchased by Lessee pursuant to this Lease.

Fiscal Year: Each twelve (12) month fiscal period of Lessee commencing on 5th of November and ending on the 4th of November the following year.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

Interest: The portion of any Lease-Purchase Payment designated as and comprising interest as shown in the attached Exhibit B.

Lease: This Lease-Purchase Agreement dated as of 11/05/2014, whereby the Lessor has leased the Equipment to Lessee, as the same may from time to time be amended or modified.

Lease-Purchase Payment: The payment due from Lessee to Lessor on each Payment Date, as shown on Exhibit B.

Net Proceeds: Any insurance proceeds, paid with respect to the Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof.

Payment Date: The date upon which any Lease-Purchase Payment is due and payable as provided in Exhibit B.

Permitted Encumbrances: As of any particular time, (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborers, materialperson's supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

Person or Persons: An individual, partnership, corporation, trust or unincorporated organization.

Prepayment Price: With respect to the Equipment, as of any Payment Date, the amount so designated and set forth opposite such date in the attached Exhibit B.

Principal: The portion of any Lease-Purchase Payment designated as principal in the attached Exhibit B.

Request for Disbursement of Funds: The Request for Disbursement of Funds of Lessee, the form of which is attached hereto as Exhibit C-1.

Specifications: The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

State: The State of North Dakota.

State and Federal Law or Laws: The Constitution and any law of the State and any charter, ordinance, rule or regulation of any agency or political subdivision of the State, and any law of the United States, and any rule or regulation of any federal agency.

Term, Term of this Lease or Lease Term: The period commencing on the execution of this Lease and ending on the date the last Lease-Purchase Payment is due and payable, as shown on Exhibit B.

Section 1.2 **Exhibits.** The following Exhibits are attached to and by reference made part of this Lease:

Exhibit A: A description of the Equipment including the serial number thereof which shall be inserted when available.

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Exhibit B: A schedule to be completed by Lessor as provided in Section 4.1, indicating the date upon which the Term of this Lease shall end, the date and amount of each Lease-Purchase Payment coming due under the Lease Term and the amount of Principal and Interest comprising each Lease-Purchase Payment.

Exhibits C and C-1: A Certificate of Acceptance of Lessee with a Request for Disbursement of Funds attached indicating that the Equipment has been or will be delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Lease-Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

Exhibit D: An opinion of counsel to Lessee as to the organization, nature and powers of Lessee, the validity, execution and delivery of this Lease and various related documents; the absence of litigation; and related matters.

Exhibit E: A form of resolution of the governing body of Lessee, relating to this Lease and, if applicable, certain federal tax matters.

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of Lessee: Lessee represents, covenants and warrants as follows:

- (a) Lessee is a political subdivision and municipal corporation, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.
- (c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.
- (d) In authorizing and executing this Lease, Lessee has complied with all open meeting laws, public bidding and other State and Federal laws applicable to this Lease and the acquisition of the Equipment by Lessee.
- (e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other Person, firm or corporation, except as provided under the terms of this Lease.
- (f) Lessee will use the Equipment during the Lease Term only to perform its essential governmental functions.
- (g) Lessee will take no action that would cause the interest portion of the Lease-Purchase Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"); and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the Lease-Purchase Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.
- (h) Upon execution of this Lease-Purchase Agreement, and upon each request for a disbursement of funds hereunder, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.
- (i) Upon the execution of this Lease, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit D.
- (j) Lessee will submit to the Internal Revenue Service an information reporting statement at the time and in the form required by the Code.

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(k) Lessee will cause a resolution substantially in the form attached hereto as Exhibit E to be adopted by its governing body.

(l) Lessee does not reasonably anticipate that it will issue tax-exempt obligations (not including "private activity bonds" as defined in Section 141 of the Code) in an aggregate amount in excess of \$10,000,000 during the calendar year in which the Term commences, and this Lease is designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code relating to deductibility of interest by financial institutions.

Section 2.2 **Representations, Covenants and Warranties of Lessor** Lessor represents, covenants and warrants as follows:

(a) Lessor has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same.

(b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or agreement or instrument to which Lessor is now a party or by which Lessor is bound; constitutes a default under any of the foregoing; or results in the creation or imposition any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment, except Permitted Encumbrances.

ARTICLE III
AGREEMENT TO LEASE

Section 3.1 **Lease** Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon terms and conditions set forth in this Lease and subject to the option to purchase set forth in Section 4.3 hereof.

Section 3.2 **Possession and Enjoyment** Lessor hereby covenants to provide Lessee during the Term with the quiet use and enjoyment of the Equipment, and Lessee intends to during the Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in the Lease. Lessor will, at the request of Lessee and at Lessee's cost, join any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so. All warranties extended upon the Equipment by the Contractors shall inure to the benefit of the Lessee during the term of this Lease.

Section 3.3 **Lessor Access to Equipment** Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.

Section 3.4 **Tax and Ownership and Lessee** The Lessor warrants and represents that it shall not at any time during the term of the Lease claim depreciation, cost recovery deductions, or tax credit for federal income tax purposes with respect to the equipment, or portion thereof, and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

ARTICLE IV
TERM OF LEASE

Section 4.1 **Lease Term** This Lease shall be in effect for a Term commencing upon the execution hereof and ending as provided in Section 4.2.

Section 4.2 **Termination of Lease Term** The Term of this Lease will terminate upon the occurrence of the first of the following events:

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- (a) A default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII without payment of all Lease-Purchase Payments; or
- (b) The payment by Lessee of all Lease-Purchase Payments and all other amounts authorized or required to be paid by Lessee hereunder
- (c) Nonappropriation of funds by Lessee pursuant to Section 12.7 hereof.

Section 4.3 **Option to Purchase.** Lessee has the option to purchase the Equipment by paying the applicable prepayment price in accordance with Section 10.1 hereof.

ARTICLE V
LEASE-PURCHASE PAYMENTS

Section 5.1 **Lease-Purchase Payments.** Lessee agrees to pay Lease-Purchase Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Lease-Purchase Payments shall be paid to Lessor at its offices at the address specified in Section 1.1 of this Lease, or to such other Person or entity to which Lessor has assigned such Lease-Purchase Payments as specified in Article XI, at such place as such assignee may from time to time designate in lawful money of the United States of America to Lessor or, in the event of assignment of the right to receive Lease-Purchase Payments by Lessor, to its assignee. Interest shall accrue from the date of the Certificate of Acceptance.

Section 5.2 **Source of Payment.** All Lease-Purchase Payments required to be paid Lessor pursuant to this Lease shall be paid from moneys duly budgeted, appropriated, obligated and otherwise provided and made available therefor by Lessee.

Section 5.3 **Interest Component.** A portion of each Lease-Purchase Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Lease-Purchase Payment.

Section 5.4 **Lease-Purchase Payments to be Unconditional.** The obligation of Lessee to make Lease-Purchase Payments or any other payments required hereunder shall be absolute and unconditional in all events, except as expressly provided under this Lease. Notwithstanding any dispute between Lessee and Lessor or any other Person, Lessee shall make all Lease-Purchase Payments and other payments required hereunder when due and shall not withhold any Lease-Purchase Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Lease-Purchase Payments or other payments required under this Lease. Lessee's obligation to make Lease-Purchase Payments or other payments shall not be abated through accident or unforeseen circumstances. Except as provided in Section 12.7 hereof, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder, and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damage therefor.

Section 5.5 **Late Payments.** See Section 12.6

ARTICLE VI
INSURANCE AND NEGLIGENCE

Section 6.1 **Liability Insurance.** Upon receipt of possession of the Equipment, Lessee shall take measures as may be necessary to ensure that any liability for injuries to or death of any Person or damage to or loss of property arising out of or in any way relating to the condition or operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

Section 6.2 **Property Insurance.** Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary

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deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.

Section 6.3 Worker's Compensation Insurance. If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.

Section 6.4 Requirements for all Insurance. All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (or riders) evidencing any such insurance procedure by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is not obtainable in which event Lessee shall notify Lessor of this fact.

Section 6.5 Lessee's Negligence. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any Person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses and damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit, or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.

Section 6.6 Damage to or Destruction of Equipment. If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practical after such event, replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement, subject to the provisions of Section 12.7 hereof. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, exercise its remedies under Article XII hereof. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligations under this Section.

Section 6.7 Cooperation of Lessor. The Lessor shall cooperate fully with the Lessee at the sole expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in this Section. To the extent it may lawfully do so, the Lessor will permit the Lessee to litigate in any proceeding resulting therefrom and the ratify of it and on behalf of the Lessor, provided that the Lessor has been indemnified from all costs and expenses therefor, including without limitation, reasonable counsel fees incurred by the Lessor in connection with any such litigation in its name. In no event will the Lessor voluntarily settle or consent to the settlement of any proceeding, arising out of any insurance claim with respect to the Equipment or any part thereof, without the written consent of the Lessee.

ARTICLE VII
OTHER OBLIGATIONS OF LESSEE

Section 7.1 Use; Permits. Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State or Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary of the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, operation, possession and use of the Equipment, and if compliance with any such State or Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.

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Section 7.2 Maintenance of Equipment by Lessee. Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition. Lessor shall have no responsibility for any of these repairs or replacements.

Section 7.3 Taxes, Other Governmental Charges and Utility Charges. (a) Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind whatsoever which are at any time lawfully assessed or levied against or with respect to the Equipment, the Lease-Purchase Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien of the Equipment, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

(b) Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss for forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in the form satisfactory to Lessor.

Section 7.4 Advances. If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18.0 % per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

Section 7.5 Disbursements. (a) As payments are required for the Equipment under this Lease, the Lessee as the agent for the Lessor shall prepare and submit a Certificate of Acceptance of Lessee with a Request for Disbursement of Funds to the Lessor. (b) The Lessor shall permit the withdrawal of funds requested in the Request for Disbursement of Funds, and such funds shall be applied to the payment of the Cost of the Equipment.

**ARTICLE VIII
TITLE**

Section 8.1 Title. During the Term of this Lease, legal title to the Equipment and any all repairs, replacements, substitutions and modifications to it shall be in Lessee's name subject to Lessor's interest. Upon termination of this Lease for any of the reasons specified in Section 4.2 (b), Lessor's interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.

Section 8.2 Security Interest. Lessor shall have and retain a security interest under the Uniform Commercial Code, Certificate of Title or other applicable State or Federal Law in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof pursuant to Section 8.5, in order to secure Lessee's payment of all Lease-Purchase Payments due during the Term of this Lease and the performance of all other obligations herein to be performed by Lessee. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.

Section 8.3 **Liens.** During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 8.4 **Installation of Lessee's Equipment.** Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

Section 8.5 **Modification of Equipment.** Lessee shall at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any part of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of the Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State or Federal Law or those contemplated by this Lease, and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section, provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessee will cooperate fully with Lessee in any such contest.

Section 8.6 **Personal Property.** The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

ARTICLE IX WARRANTIES

Section 9.1 **Selection of Equipment.** The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorized Lessor to add the serial number of the Equipment to Exhibit A when available.

Section 9.2 **Installation and Maintenance of Equipment.** Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.

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Section 9.1 **Contractor's Warranties** Lessor hereby assigns to Lessee for and during the Term of the Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense

Section 9.4 **Patent Infringement** Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease

Section 9.5 **Disclaimer of Warranties** THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

ARTICLE X
PREPAYMENT

Section 10.1 **When Available** Lessee shall have the option to prepay its obligations under this Lease on any Payment Date at an amount equal to the applicable Prepayment Price.

Section 10.2 **Release of Lessor's Interest** Upon the prepayment of Lessee's obligations under this Lease in accordance with Section 10.1 hereof, Lessee shall have no further obligations under this Lease and this Lease shall terminate in accordance with Section 4.2(b). Thereupon the Lessor shall relinquish title to the Equipment in accordance with Section 8.1

ARTICLE XI
ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1 **Assignment by Lessor** Except as otherwise provided herein, Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Lease Purchase Payments or other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy of written notice thereof identifying the assignee. Lessee shall pay all Lease Purchase Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participation in its right, title and/or interest in and to this Lease, the Lease Purchase Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2 **Assignment and Subleasing by Lessee** Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

- (a) This Lease and the obligation of Lessee to make Lease Purchase Payments hereunder, shall remain obligations of Lessee
- (b) The sublease shall assume the obligation of Lessee hereunder to the extent of the interest subleased
- (c) Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease
- (d) No sublease by Lessee shall cause the Equipment to be used for a purpose other than an essential governmental function authorized under the provisions of the Constitution and the laws of the State.

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(c) No sublease shall cause the interest component of the Lease Purchase Payments due with respect to the Equipment to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3 **Restriction on Mortgage or Sale of Equipment by Lessee.** Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove the same from its boundaries, without the written consent of Lessor.

ARTICLE XII
EVENTS OF DEFAULT AND REMEDIES

Section 12.1 **Events of Default Defined.** (a) The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more the following events:

(i) Except as permitted by Section 12.7 hereof, failure by Lessee to pay any Lease-Purchase Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.

(ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar acts which may hereafter be enacted.

(b) The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of ~~force majeure~~ Lessee is unable in whole or in part to carry out its obligation under this Lease with respect to the Equipment, other than its obligation to pay Lease-Purchase Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "~~force majeure~~" as used herein shall mean, without limitation, the following: acts of god, strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

Section 12.2 **Remedies of Default.** Whenever any event of default referred to in Section 12.1, clauses (i) to (iii) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

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(i) With or without terminating this Lease, re-enter and take possession of such Equipment and exclude Lessee from using it; provided, however, that if this Lease has not been terminated, Lessor shall return possession of such Equipment to Lessee when the event of default is cured, and provided further that Lessee shall continue to be responsible for the Lease-Purchase Payments due with respect to such Equipment during the Fiscal Year then in effect; or

(ii) With or without terminating this Lease, re-enter and take possession of such Equipment, and sell, lease or sublease such Equipment or any part of it, holding Lessee liable for the difference between (a) the sales price, rent and other amounts paid by the purchaser, lessee or sublessee pursuant to such sales agreement, lease or sublease and (b) the balance of the Lease-Purchase Payments and other amounts owed by Lessee with respect to such Lease; provided, however, that nothing contained herein shall impose an obligation upon Lessor so to sell, lease or sublease such Equipment and provided that any excess proceeds from such disposition shall be retained by Lessor; or

(iii) With or without terminating this Lease, declare all Lease-Purchase Payments during the Fiscal Year then in effect due or to become due with respect to such Lease in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Lease-Purchase Payments shall be immediately due and payable; or

(iv) Take whatever action at law or in equity may appear necessary or desirable to collect the Lease-Purchase Payments then due and thereafter to become due during the then current Fiscal Year of Lessee with respect to such Lease or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease

Section 12.3 Return of Equipment. Upon termination of this Lease prior to the payment of all Lease-Purchase Payments, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (a) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (b) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

Section 12.4 No Remedies Exclusive. No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof by any such right and power. Each remedy may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

Section 12.5 Agreement to Pay Attorney's Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of moneys or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease are commenced in any court or before any other tribunal of competent jurisdiction, the reasonable legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

Section 12.6 Late Charges. Whenever any event of default referred to in Section 12.1, clause (i) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge equal one and one-half percent (1.5%) per month of the delinquent Rental Payment, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

Section 12.7 Non-Appropriation of Funds. (a) Notwithstanding any provision in the Lease to the contrary, in the event that no funds or insufficient funds are appropriated by Lessee's governing body for the next fiscal year for Lease-

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Purchase Payments due under this Lease, this Lease shall terminate the end of such fiscal year on the last day of the fiscal year for which appropriations were received and Lessee shall return the Equipment to Lessor (at Lessee's expense, to a destination Lessor directs, in good working condition less normal wear and tear), and cancel this Lease by notice to such effect served not less than thirty (30) days prior to the end of the Lessee's fiscal year. Lessee shall notify Lessor of nonappropriation within thirty (30) days of its occurrence.

(b) Lessee and Lessor acknowledge and agree that the Lease-Purchase Payments hereunder shall constitute currently budgeting expenditures of Lessee from its capital expenditure fund or successor fund thereto. Lessee's obligations under this Lease shall be subject to Lessee's annual right to terminate this Lease, and shall not constitute a mandatory charge of requirement in any ensuing fiscal year beyond the then current fiscal year. No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of Lessee within the meaning of any constitutional or statutory debt limitation. This Lease shall not directly or indirectly obligate Lessee to make any payments beyond those budgeted and appropriated from its general fund for Lessee's then current fiscal year. Lessee shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or create a lien on any class or source of Lessee monies.

Section 12.8 Non-Substitution Notwithstanding the foregoing and to the extent permitted by law, Lessee agrees that during the term of this Agreement and in the event of the termination of this Agreement as a result of nonappropriation of funds pursuant to Section 12.7 above, during the one hundred eighty (180) days immediately following such termination, Lessee shall not expend any monies or agree to do so in order to obtain by lease or purchase equipment functionally similar to the Equipment, or to obtain the right to the use of such functionally similar equipment owned and operated by any other Person, if the purpose of Lessee in doing so is not the elimination of demonstrable defects or deficiencies in the Equipment, but rather the achievement of cost reductions; provided, however, that such agreement on the part of the Lessee shall not be construed or applied in a manner that would result in Lessee's being prohibited from obtaining such use of facilities or services as its requires in order to fulfill duties and public functions imposed on it by law or from achieving cost reductions as a secondary benefit from its elimination of demonstrable defects or deficiencies in the Equipment.

ARTICLE XIII
ADMINISTRATIVE PROVISIONS

Section 13.1 Notices All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified below; provided, that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificate, legal opinion or other communication will be sent.

Lessor: Merchants Capital Resources, Inc.
7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435

Lessee: City of Mandan
205 2nd Ave. NW
Mandan, North Dakota 58554

Section 13.2 Financial Information During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue to pay Lease-Purchase Payments required under this Lease as may be requested by Lessor or its assignee.

Section 13.3 Binding Effect This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.4 Severability In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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Section 13.5 Amendments, Changes and Modification This Lease may be amended or any of its terms modified only by written document duly authorized, executed, and delivered by Lessor and Lessee.

Section 13.6 Captions The captions or headings in this Lease are for convenience only and in no way defend, limit or describe the scope or intent of any provisions, articles, sections or clauses of this Lease.

Section 13.7 Further Assurances and Corrective Instruments Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, for carrying out the expressed intention of this Lease.

Section 13.8 Execution in Counterparts This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9 Applicable Law This Lease shall be governed by and construed in accordance with the laws of the State

Section 13.10 Anti-Discrimination Lessor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, sexual orientation or physical defect or disability with regard to but not limited to employment, upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination or selection for training

Section 13.11 Lessor and Lessee Representatives Whenever under the provisions of this Lease, the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor, for the Lessor, and by an Authorized Representative of the Lessee, for the Lessee. Any party hereto shall be authorized to rely on such approval of request.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officers; and Lessee has caused this Lease to be executed in its name by duly authorized officers, as of the date first above written

MERCHANTS CAPITAL RESOURCES, INC. as agent for one or more persons, as Lessor

Print or type full name

By _____

Signature

Its _____

CITY OF MANDAN as Lessee

Print or type full name

By _____

Signature

Its _____

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EXHIBIT B
PAYMENT SCHEDULE

Commencement Date 11/05/2014

	Date	Payment	Interest	Principal	*Purchase Option Price
Loan	11/05/2014				295,300.00
1	11/05/2014	25,105.44	0.00	25,105.44	270,194.56
2014 Totals		25,105.44	0.00	25,105.44	
2	11/05/2015	25,105.44	7,663.30	17,442.14	252,752.42
2015 Totals		25,105.44	7,663.30	17,442.14	
3	11/05/2016	25,105.44	7,168.60	17,936.84	234,815.58
2016 Totals		25,105.44	7,168.60	17,936.84	
4	11/05/2017	25,105.44	6,659.87	18,445.57	216,370.01
2017 Totals		25,105.44	6,659.87	18,445.57	
5	11/05/2018	25,105.44	6,136.72	18,968.72	197,401.29
2018 Totals		25,105.44	6,136.72	18,968.72	
6	11/05/2019	203,000.00	5,598.71	197,401.29	0.00
2019 Totals		203,000.00	5,598.71	197,401.29	
Grand Totals		328,527.20	33,227.20	295,300.00	

TOTAL: \$295,300.00
INTEREST RATE: 2.80%

*Amount due after payment of Lease-Purchase Payment due on the same day.

All amounts received by Lessor shall be applied first to late payment charges and expenses, then to accrued interest, and then to principal payments in inverse order, as determined by lessor, as permitted by law.

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REMIT TO Merchants Capital Resources, Inc
PO Box 248
Wimona, MN 55987

City of Mandan
205 2nd Ave NW
Mandan, North Dakota 58554

Contract #: 102650001

INVOICE

Invoice Date: 10/24/2014

Amount Due: \$25,105.44

Payment:	\$25,105.44
Sales Tax:	\$0
Total Amount Due:	<u>\$25,105.44</u>

First advance lease payment and applicable documentation fee must be made by check and accompany original signed documents. Please refer to lease document for payment due date.

If participating in ACH program, ACH will not apply to the first payment and documentation fee due.

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Lessee's Authorization Resolution

Whereas, City of Mandan, (the "Governmental Entity"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of North Dakota (the "State"), is authorized by the laws of the State to purchase, acquire and lease personal property for the benefit of the Governmental Entity and its inhabitants and to enter into contracts with respect thereto, and

Whereas, in order to acquire such equipment, the Governmental Entity proposes to enter into a lease-purchase transaction pursuant to that certain governmental Equipment Lease-Purchase Agreement (the "Lease") with Merchants Capital Resources, Inc., the form of which has been presented to the governing body of the Governmental Entity at this meeting;

Section 1. Approval of Documents. The form, terms and provisions of the Lease and all other schedules and exhibits attached thereto are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by counsel of the Governmental Entity or other members of the governing body of the Governmental Entity executing the same, the execution of such documents being conclusive evidence of such approval; and the persons holding the titles listed below or any other officer of the Governmental Entity who shall have the power to execute contracts on its behalf are hereby authorized and directed to execute, acknowledge, countersign and deliver the Lease and all exhibits attached thereto, and the Secretary/Clerk of the Governmental Entity is hereby authorized to attest to the foregoing and affix the seal of the Governmental Entity to such documents

Section 2. Other Actions Authorized. The officers and employees of the Governmental Entity shall take all action necessary as reasonably required by the parties to the Lease to carry out, give effect to and consummate the transactions contemplated thereby and to take all action necessary to conform therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Lease.

Section 3. No General Liability. Nothing contained in this Resolution, the Lease, or any other instrument shall be construed with respect to the Governmental Entity as incurring a pecuniary liability or charge upon the general credit of the Governmental Entity or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Lease, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Governmental Entity or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Lease are special limited obligations of the Governmental Entity as provided in the Lease.

Section 4. Authorized Signatories. Following are the true names, correct titles and specimen signatures of the incumbent officers referred to in the foregoing resolution

Name (Print or Type)	Title (Print or Type)	Signature

Section 5. Effective Date. This Resolution shall be effective immediately upon its approval and adoption. This Resolution was adapted and approved on _____

Signature: _____
Secretary/Clerk

Name Printed: _____

Date 11/05/2014



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MEETING DATE: November 4, 2014
PREPARATION DATE: October 30, 2014
SUBMITTING DEPARTMENT: Engineering & Planning
DEPARTMENT DIRECTOR: Justin Froseth, Planning and Engineering Director
PRESENTER: Justin Froseth, Planning and Engineering Director
SUBJECT: Consider authorizing a work change order on Street Improvement District No. 161, Project No. 2010-03(Dianes).

STATEMENT/PURPOSE: To authorize a change order for a time extension for Seal Coat Completion Date to June 30th, 2015 for the following streets: Area 6 4th Avenue NE from 3rd Street to dead end, Area 5 – 5th Avenue NE, 6th Avenue NE, and part of 15th St. NE.

BACKGROUND/ALTERNATIVES: The waterline replacement that the city completed and reconstruction of 4th Avenue NE took longer than anticipated which in turn delayed the chip seal to take place with warmer temperature than we are having now.

ATTACHMENTS:

1. Change Order No. 10
2. District Map

FISCAL IMPACT: None

STAFF IMPACT: Minimal

LEGAL REVIEW: All of my commission data has been forwarded to the City Attorney for his review.

RECOMMENDATION: This office supports the change order for the project.

SUGGESTED MOTION: I move to authorize a change order on Street Improvement District No. 161, Project No. 2010-03 for completion date for seal coat to June 30th, 2015.

CHANGE ORDER NO. 10

PROJECT: Mandan Street Improvement Dist. #161 City Project # 2010-03

BRIEF DESCRIPTION OF CHANGE ORDER # TEN

AREA 6 - Cut Down Sanitary Sewer Manhole & replace with Type 2 cover at the intersection of 4th Ave NE & 3rd Street NE
Time extension for Seal Coat Completion Date for the following streets.
Area 6- 4th Ave NE from 3rd Street to dead end. Area 5, 5th Ave NE, 6th Ave NE, and part of 15th St. NE. Extend completion date to June 30th, 2015.

ENGINEER: Toman Engineering Company
 501 1st Street NW
 Mandan, North Dakota 58554

OWNER: City of Mandan DATE: 9-18-2014

CONTRACTOR: Northern Improvement Co.

CONTRACT DATE: 6-20-2012

TO THE CONTRACTOR: You are hereby authorized, conforming to Contract provisions, to make the Changes described on the reverse side of this sheet.

WORK OR DOCUMENT	NET (DEDUCT)	NET ADD±
		\$ 4,410.00
NET ADD +		
ORIGINAL CONTRACT AMOUNT:	\$ 8,978,372.48	
PRIOR CHANGE ORDERS (+,-):	\$ 229,414.68	
REVISED CONTRACT AMOUNT:	\$ 9,207,787.16	
THIS CHANGE ORDER (+,-):	\$ 4,410.00	
CONTRACT ADJUSTED AMOUNT:	\$ 9,212,197.16	

TIME EXTENSION/REDUCTION See Attached DAYS

OTHER CONTRACTS AFFECTED N/A

Board of City Commissioners

Agenda Documentation

Meeting Date: October 30, 2014

Subject: Consider authorizing a change order on Street Improvement District No. 161,
Project No. 2010-03.

Page 3 of 4

PROJECT: Mandan Street Improvement Dist. #161 CHANGE ORDER NO. TEN
City Project # 2010-03 TECo. # 2181

Description of Change Order Work

AREA 6 - Cut Down Sanitary Sewer Manhole & replace with Type 2 cover at the intersection
of 4th Ave NE & 3rd Street NE **TOTAL = \$ 4,410.00**

Seal Coat Completion Date time extension for the following streets.
Area 6- 4th Ave NE from 3rd Street to dead end,
Area 5, 5th Ave NE, 6th Ave NE, and part of 15th St. NE.
Extend completion date to June 30th, 2015.

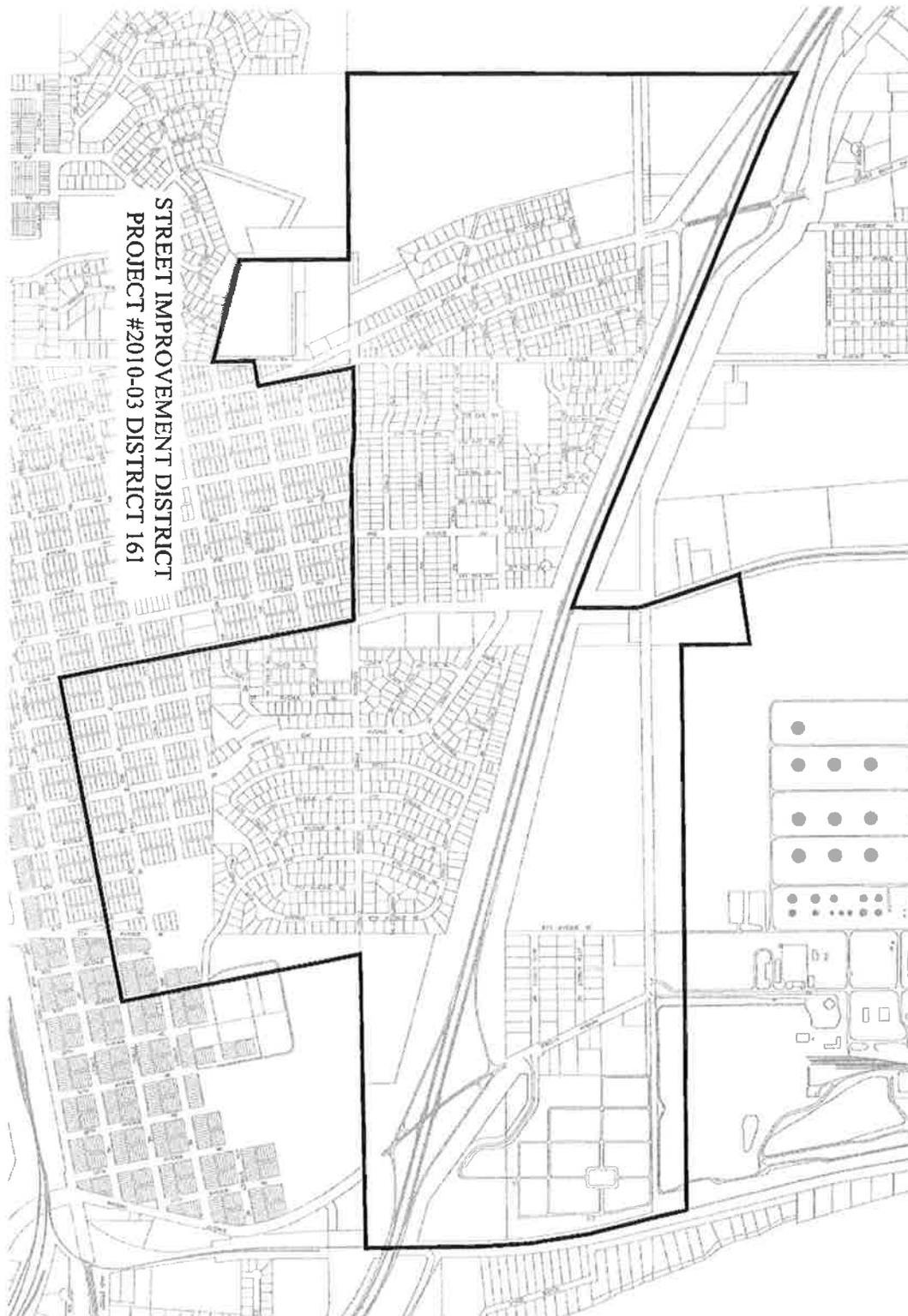
SUBMITTED BY:  DATE: 10-29-14
(Engineer's Signature)

APPROVED BY: _____ DATE: _____
(Owner's Signature)

ACCEPTED BY: Bruce Thompson DATE: 9-23-14
(Contractor's Signature)

RECOMMENDED BY: _____ DATE: _____

DISTRIBUTION: Owner, Contractor, Engineer, Field Representative;





Board of City Commissioners

Agenda Documentation

MEETING DATE: November 4, 2014
PREPARATION DATE: October 28, 2014
SUBMITTING DEPARTMENT: Engineering & Planning
DEPARTMENT DIRECTOR: Justin Froseth
PRESENTER: Robert Decker, P.E., Principal Planner
SUBJECT: Consider for approval second reading of Ordinance 1194 establishing a moratorium on approval of new opioid treatment facilities within the city and its extraterritorial zone

STATEMENT/PURPOSE:

The delivery of medical services has been changing rapidly in recent years. The city code has not been updated to reflect these changes.

BACKGROUND/ALTERNATIVES:

Zoning rules that apply to medical facilities do not reflect the specialization of medical services that has evolved recently. Medical issues that were only prevalent in larger metropolitan areas have become an issue in smaller municipal areas such as Mandan. Hours of operation and number of patients utilizing a facility on a regular basis have changed or are different for a specific service. There are no specific rules in the code related to opioid treatment facilities.

After action was taken at the 2013 legislative session, the North Dakota Administrative Code was amended to authorize the North Dakota Department of Human Services to regulate Opioid Treatment Programs.

The comprehensive update of the city code by Municode will take several more months to complete. Substantive changes to the rules and procedures should wait until this recodification effort is finished.

Because the issues are complex and will require careful evaluation of whether or if changes to the zoning code are needed, it is recommended that a one (1) year moratorium be imposed on the review and approval of any request to locate a new opioid treatment facility in the city or its extraterritorial zone.

RECOMMENDATION:

Approve a One (1) year moratorium on the review and approval of any new opioid treatment facility. This includes any request to issue a building permit or occupancy permit.

Board of City Commissioners
Agenda Documentation
Meeting Date: November 4, 2014
Subject: Approval of medical facility moratorium
Page 2 of 5

SUGGESTED ACTION:

Move to approve Ordinance 1194.

ORDINANCE NO. 1194

AN ORDINANCE ADOPTING A ONE YEAR MORATORIUM IN THE CITY AND ITS EXTRATERRITORIAL ZONE RELATING TO OPIOID TREATMENT PROGRAMS, INCLUDING PROGRAMS LICENSED PURSUANT TO CHAPTER 75-09.1-10 OF THE NORTH DAKOTA ADMINISTRATIVE CODE.

WHEREAS, the City of Mandan is authorized to regulate, restrict or prohibit any use, development or subdivision within its jurisdiction or a portion thereof by adopting a Moratorium while the city is studying, has authorized a study or has scheduled a hearing to consider adoption of an amendment to the Comprehensive Plan or city code related to zoning requirements; and

WHEREAS, the City Commission finds that an interim ordinance adopting a Moratorium of one (1) year on the issuance of a building permit for the construction of a new structure, expansion of an existing structure or remodeling of an existing structure or the issuance of an occupancy permit for an existing structure for the purpose of using the structure for an opioid treatment facility is necessary to protect the health, safety and general welfare of the citizens of the City of Mandan; and

WHEREAS, the City Commission finds that an interim ordinance adopting a Moratorium of one (1) year relating to opioid treatment programs is necessary in order to allow City Staff, the Planning and Zoning Commission and the City Commission to study where these types of treatment programs and facilities are best located, whether such programs should be considered a permitted use or conditional use and, if deemed a conditional use, what conditions should be imposed.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA:

SECTION 1. OPIOID TREATMENT PROGRAM MORATORIUM

A moratorium is hereby adopted for the entire City of Mandan and its Extraterritorial Zoning Jurisdiction as follows:

A. **City's Obligation.** Whenever the city is confronted with a new proposed use that is not addressed in the city's Comprehensive Plan or zoning code, it is in the public interest and the obligation of the City to protect the public health, safety and welfare by carefully studying the impact of the new proposed use and developing appropriate rules and procedures for the new proposed use.

B. **Purpose.** At the 2013 North Dakota Legislative Session, the North Dakota Legislature for the first time allowed the North Dakota Department of Human Services to regulate opioid treatment programs within the State of North Dakota. The

North Dakota Administrative Code was recently amended to enact Chapter 75-09.1-10 relating to Opioid Treatment Programs. As a result of the recent actions by the state, the City must now identify and evaluate a myriad of issues related to the imposition of zoning regulations specific to Opioid Treatment Programs. It is critical that the City's planning and evaluation process be protected and given the opportunity to study this type of use in a timely yet thorough manner in order to decide what, if any, new ordinances or regulations are warranted.

C. **Effect of Moratorium.** The City shall not accept, permit, allow, issue or process any new development, land use application, building permit or occupancy permit related to any Opioid Treatment Program, including those authorized to be licensed pursuant to North Dakota Administrative Code Chapter 75-09.1-10, for the duration stated herein. This Moratorium applies to a Comprehensive Land Use Plan amendment, rezoning, preliminary development plan, final development plan, site plan, building plan, conditional use permit, special use permit, lot split, plat or variance.

SECTION 2. OPIOID TREATMENT PROGRAM MORATORIUM

The City Commission hereby directs City staff to study, and if necessary, develop proposed zoning ordinances regulating the location, use and conditions to be imposed on Opioid Treatment Programs and to present same to the Planning and Zoning Commission for consideration and recommendation to the City Commission. The City Commission further directs City staff and the Planning and Zoning Commission to complete their work and present their findings and recommendations to the City Commission in sufficient time to allow the city Commission to review the findings and recommendations and take action within one (1) year of the effective date of this ordinance.

SECTION 3. DURATION

This Moratorium shall expire, without any further action by the City Commission, one (1) year from its effective date unless repealed earlier by the City Commission. The City Commission may act to repeal this Moratorium early if it determines that all appropriate measures have been taken to insure that the City has the appropriate regulations and ordinance in place to properly regulate Opioid Treatment Programs.

SECTION 4. VIOLATION

The city may enforce any provision of this ordinance by seeking an injunction or other appropriate civil remedy in any court of competent jurisdiction.

SECTION 5. SEVERABILITY

Every section, provision or part of this ordinance is severable from every other section, provision or part thereof to the extent that if any section, provision or part of this ordinance shall be held invalid by a court of competent jurisdiction, it shall not invalidate any other section, provision or part thereof.

SECTION 6. EFFECTIVE DATE

This ordinance shall be in full force and effect from and after the date of its second reading and final passage.

President, Board of City Commissioners

Attest:

City Administrator

Public Hearing:

First Consideration:

Second Consideration and Final Reading:

Publication Date:

Recording Date:



Board of City Commissioners Agenda Documentation

MEETING DATE: November 4, 2014
PREPARATION DATE: October 28, 2014
SUBMITTING DEPARTMENT: Engineering & Planning
DEPARTMENT DIRECTOR: Justin Froseth
PRESENTER: Robert Decker, P.E., Principal Planner
SUBJECT: Consider for approval Ordinance 1192 revising the language contained in city code relating to minor subdivision procedures

STATEMENT/PURPOSE:

Adjustments to the current language are warranted in order to simplify requirements for minor platting including such things as lot splits and lot consolidations.

BACKGROUND/ALTERNATIVES:

The current language is basically the same for small subdivisions and large subdivisions. There is no need to make things this complicated. Smaller changes do not need to go before the Planning and Zoning Commission if they involve lots splits or lot consolidations. These smaller actions can be handled by staff.

RECOMMENDATION:

Approve ordinance 1192.

SUGGESTED ACTION:

Move to approve Ordinance 1192.

ORDINANCE NO. 1192

An Ordinance Amending Sections 21-09-03 and 21-09-05
of the Mandan Code of Ordinances Relating to Minor
Subdivisions

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS THAT:

Sections 21-09-03 and 21-09-05 of the Mandan Code of ordinances are hereby amended and re-enacted to read as follows:

Section 21-09-03 Definitions.

~~"Minor subdivision" means either a subdivision containing not more than five acres which abuts an existing platted street, creates no new additional public street rights of way, and creates no new public easements; or a resubdivision which abuts existing platted developed streets and utilities, creates no new public street rights of way and creates no new public easements. In order to qualify as a minor subdivision the proposed subdivision or resubdivision may not adversely affect the remainder of the parcels or adjoining property, nor be in conflict with any provision or portion, of the city comprehensive plan, zoning ordinances or subdivision regulation.~~

Section 21-09-05 Minor subdivision procedures.

1. Minor subdivision criteria.
 - a. Four acres or less.
 - b. No new public rights-of-way.
 - c. No revisions to existing water and sanitary sewer service connections.
 - d. Creation of no more than two additional lots.
2. Submittal requirements.
 - a. Three paper and a pdf of the proposed plat.
 - b. Completed application form.
 - c. Processing and review fees.
3. Review.
 - a. City staff will review the submittal and respond in writing to the applicant. The applicant will make any required corrections and resubmit as necessary.
 - b. Once city staff is satisfied with the submittal, the plat will be scheduled for action by the City Commission.
 - c. Should city staff determine that there is an issue with the proposed plat that should be reviewed and acted on by the Planning and Zoning Commission, the request shall be submitted to the Planning and Zoning Commission before being forwarded to the City Commission.
4. Recording.

←----- Forma
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- a. City staff will notify the applicant when favorable action has been taken by the City Commission.
- c. The applicant shall prepare and submit a mylar for signatures.
- d. Once all signatures have been obtained, the applicant shall record the plat along with any required documents with Morton County.
- e. Once the plat and documents have been recorded at the county, the applicant shall deliver evidence of same to the city.
- f. Should the applicant fail to record the plat within six months of city commission action, the action of the city commission is void and a new application will need to be filed.

Forma

5. If the proposed subdivision has been classified as a minor subdivision, the subdivider shall present a proposed plan to the planning director and the city engineer for review and comment.

Forma

2. The subdivider shall apply in writing to the secretary of the planning commission for final plat approval at least twenty one days prior to the meeting of the planning commission at which the item is to be considered and pay the required fee as established by the board.

Forma

3. Eight prints of the final plat and any other documents required under Section 21-09-11 shall be filed with the secretary at the time of application filing.

4. The secretary of the planning commission shall give notice of a public hearing in the official city newspaper for two consecutive weeks prior to the meeting of the planning commission at which the item is to be considered and shall send a certified notice to the owner informing said owner of the time and date of the public hearing.

5. The planning commission shall approve, approve conditionally, or deny said final plat within thirty days from date of application unless an extension is agreed to by the subdivider. Failure by the planning commission to act within such period shall be deemed as approval of the subdivision and the secretary shall issue a certificate to that effect upon demand. If approved conditionally, such conditions shall be recorded in the official minutes. The planning commission may require a revised final plat before granting final approval. If disapproved, such reasons shall be reported in the minutes and on the final plat and a copy returned to the subdivider. Planning commission disapprovals are final, unless appealed to the board.

6. Within fifteen days of final approval of a minor subdivision plat by the planning commission, the plat, as approved, shall be automatically forwarded to the board for review. The board shall approve or deny the final plat.

7. Prior to the board's final plat hearing, one paper copy of the plat containing the signatures of the surveyor, owner and notary public shall be provided to the planning office. Upon approval of the final plat by the board, the surveyor shall submit the original plat with all amendments as approved by the board, on a sheet of good quality reproducible mylar or linen no larger than twenty five inches by thirty one and one half inches. The subdivider shall then have 5 reproduced two mylar copies, one for planning office files and one to be returned to the surveyor and shall record the original final plat, plat ratifications and required related documents with the county register of deeds. No

excavating, grading or building permits shall be issued until all fees are paid and the plat is recorded.

President, Board of City Commissioners

Attest:

City Administrator

Publication Dates:

First Consideration:

Second Consideration and Final Passage:

Publication Date:

Recording Date:



Board of City Commissioners Agenda Documentation

MEETING DATE: November 4, 2014
PREPARATION DATE: October 28, 2014
SUBMITTING DEPARTMENT: Engineering & Planning
DEPARTMENT DIRECTOR: Justin Froseth
PRESENTER: Robert Decker, P.E., Principal Planner
SUBJECT: Consider adoption of ordinance 1193 amending the language contained in city code relating to terms of office for members of the Planning and Zoning Commission and clarifying who can be appointed to the Planning and Zoning Commission by the mayor

STATEMENT/PURPOSE. Adjustments to the current language are warranted in order to clarify requirements.

BACKGROUND/ALTERNATIVES. The current language related to the term of office for members of the Planning and Zoning Commission does not specify a beginning date. The proposed language adds a beginning date of January 1. Proposed language specifies that the mayor is not to serve as president of the Planning and Zoning Commission and may appoint a member of the city commission to the Planning and Zoning Commission. The language is also changed to make it clear that the city attorney and city engineer are ex-officio non-voting members of the Planning and Zoning Commission.

PROPOSED REVISIONS.

ORDINANCE NO. 1193

An Ordinance to Amend Title 21 of the Mandan Code of Ordinances Related to
Appointments and Terms of Office for Planning and Zoning Commission
members

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS THAT:

Title 21 of the Mandan Code of ordinances is hereby amended and re-enacted to read as follows:

SECTION 1. AMENDMENT. The Mandan Code of Ordinances is hereby amended to revise Sections 21-01-02 and 21-01-03.

Plain font text remains

~~*Strike through text deleted*~~

Underlined text added

Section 21-01-02 Membership.

The Commission shall be composed of up to ten members appointed by the mayor and approved by the Board. The mayor shall appoint one member recommended by the Mandan Park District and one member recommended by the Mandan Public School District. The mayor shall be an ex-officio voting member of the Commission but may not serve as president of the Commission. Two members residing outside the corporate limits of Mandan within the extraterritorial area of the city's zoning authority will be appointed by the Morton County Board of Commissioners, if available and willing to serve. The city engineer and city attorney are ex-officio non-voting members of the Commission. Each member will execute the oath of office requisite to such appointment. The mayor shall endeavor to select individuals that represent other boards, interest groups, professional associations and civic organizations, as well as unaffiliated city residents willing to serve, when recommending appointments. Once there are at least 7 members of the Commission, either current members or newly appointed, the mayor may appoint a member of the Board to serve as a voting member of the Commission.

Section 21-01-03 Terms of Office—Unexcused Absences Cause for Removal.

~~All Commission members' terms of office shall be for a period of five years, except in the following cases:~~

1. ~~Members Newly Appointed~~ Term of office.
 - a. ~~Of m~~ Members newly appointed at the time of the creation or expansion of the Commission, the first member appointed by the city or the county who are not elected officials will hold office for one year, the second member for two years, the third member for three years, the fourth member for four years, and the fifth member and all others thereafter will serve for five years or until a replacement is appointed with terms beginning on January 1.
 - b. ~~If m~~ Members are appointed by the city or county who are elected officials shall serve until their elected term expires, the first member appointed will hold office for three years and the second member appointed will hold office for one year, and thereafter members appointed by the county will serve for five years.
2. ~~Present Members. Present members of the Commission shall hold office for the balance of their five-year term.~~
3. ~~Ex-Officio Members. Terms of the ex-officio members will correspond to their respective tenures of office.~~
43. Unexcused Absences. Any member of the Commission who has three unexcused absences within a twelve month period shall be deemed to have resigned and the vacancy shall be filled as provided in Section 21-01-04. Unexcused absence shall be any absence not related to illness, out of town trips, or business related scheduling conflicts. A replacement shall be appointed to serve the remainder of the term.

SECTION 2. RE-ENACTMENT. The Mandan Code of Ordinances is hereby re-enacted as amended.

President, Board of City Commissioners

Attest:

City Administrator

First Consideration:

Second Consideration and Final Passage:

Publication Date:

Suggested Motion. Move to recommend adoption of ordinance 1193.