



AGENDA
MANDAN CITY COMMISSION
JULY 5, 2011
ED "BOSH" FROEHLICH MEETING ROOM
***5:00 P.M. (SPECIAL TIME)**
www.cityofmandan.com

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- A. ROLL CALL:
1. Roll call of all City Commissioners and Department Heads.
- B. MINUTES:
1. Consider approval of the minutes from the June 21, 2011 Board of City Commission meeting.
- C. PUBLIC HEARING:
- D. BIDS:
- E. CONSENT AGENDA:
1. Consider Special Sunday opening for Bismarck-Mandan Stock Car Association, Inc. for July 10, 2011
- F. OLD BUSINESS:
- G. NEW BUSINESS:
1. Consider the creation of Water & Sewer Improvement District No. 58, Project 2011-07 (Shoal Loop Extension).
2. Consider the advertisement of the Resolution of Necessity for Flood Improvement District No. 1, Project No. 2011-06.
3. Consider a proclamation to extend the State of Emergency within the City of Mandan pursuant to Section 06-03-07 of Mandan Code of Ordinances.
4. Consider a Class G liquor license for the Missouri Riverboat, Inc. a subsidiary of the Fort Abraham Lincoln foundation, to prorate the license fee, and to operate charitable gaming from the site.
- H. RESOLUTIONS & ORDINANCES:
1. Consider first consideration of Ordinance No. 1098 an ordinance to create a new Chapter to Title 17, Public Nuisances, of the Mandan Code of Ordinances.
- I. OTHER BUSINESS:
- J. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:
1. July 19, 2011
2. August 2, 2011
3. August 16, 2011

*Agenda
Mandan City Commission
July 5, 2011
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K. ADJOURN

The Mandan City Commission met in regular session at 5:30 p.m. on June 21, 2011 in the Ed “Bosh” Froehlich Room at City Hall. The City Commission Vice-President Sandra Tibke chaired the meeting in the absence of Mayor Timothy Helbling. Commissioners present were Tibke, Rohr, Frank, and Jackson. Department Heads present were Finance Director Welch, Deputy Police Chief Leingang, City Attorney Brown, City Administrator Neubauer, Fire Chief Nardello, Business Development and Communications Director Huber, Engineering Project Manager Bechtel, and City Assessor Barta. Absent: Commissioner Helbling, Police Chief Bullinger, and Director of Public Works Wright.

MINUTES: *Consider approval of the minutes for June 7, 2011, regular meeting.*

Commissioner Jackson moved to approve the minutes of June 7, 2011, Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *A Public Hearing to consider for approval the resolution to vacate the public right-of-way along 4th Street NE, as platted on the north boundary of Block 30, Helmsworth-McLean Addition.* Engineering Project Manager Bechtel reviewed a request discussed at the June 7, 2011 meeting regarding a matter to vacate a public right-of-way brought by the City of Mandan and Glenn Keuther. Bechtel provided a mapped version of the property indicating the requirements that would have to be met if Mr. Keuther would build on the property. Bechtel stated that he believed that Deputy Chief Leingang had visited with the citizen who voiced concern about safety issues if the vacation was to be granted. Leingang stated that he has attempted to contact the citizen and is waiting for a return call to discuss the proposed set-backs on the property. Leingang provided data gathered regarding the intersection of 9th Avenue and 4th Street: There was one reportable accident within the last five (5) years. A reportable accident is an incident that would be \$1,000 of combined damage. In the last two (2) years, there have not been any non-reportable accidents and that would include everything under \$1,000. Leingang stated that speed surveys have been conducted there and obtained two samplings, one on Saturday and one on Sunday and there were no significant concerns noted. Leingang provided photos depicting the area from different angles when traveling from all angles of the road. Leingang stated he does not have any safety concerns at this intersection as long as it is within the ordinance of the required setbacks. He stated that the officer who conducted the radar speed testing commented that people really slowed down anticipating making the sharp turn at the intersection. Commissioner Frank questioned the City’s policies and procedures regarding shrubbery and trees and who is ultimately responsible for making sure any of those turns are visible? Leingang replied that the City Shop is contacted for concerns such as that to correct the problem.

Commissioner Tibke announced that this is a public hearing and invited citizens to come forward to comment. A second invitation was extended to anyone wishing to speak on this matter. Hearing none, Commissioner Tibke closed this portion of the public hearing.

Commissioner Rohr motioned to approve the resolution to vacate the public right-of-way along 4th Street NE, as platted on the north boundary of Block 30, Helmsworth-McLean Addition. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

2. *Public Hearing to consider a 5-year Ad Valorem tax exemption for Spence Koenig.* City Assessor Barta presented a request to consider a 5-year Ad Valorem tax exemption for Spence Koenig. The property is located at 4100 21st Street Southeast, south of Kist Livestock. The structure will house a retail and repair site for agricultural irrigation equipment. The county and school have been notified; however because of the flooding situation going on, the Mandan Growth Fund has not been made aware of the request yet. Barta recommends approval of the request pending approval of the Mandan Growth Fund's approval. Commissioner Frank pointed out that the tier-system is now in place for tax exemption requests. The 5-year tax exemption has been replaced by a tier system: 100% the first 2 years; Year 3 would be 75%; Year 4 at 50% and Year 5 at 25%. However, there is an exemption to be able to get to the 100% for Years 3-5 if there is some job creation after Year 2. Barta stated he is not aware of any plans in the future to address that.

Commissioner Tibke stated this is a public hearing and invited anyone to come forward to speak.

Spence Koenig came forward to speak and stated that the plan is to construct a 12,000 square foot building to house a retail and repair site for agricultural irrigation equipment. He stated that he has lived in Mandan for several years and the business is currently located in a rental building in Bismarck. He wishes to extend the business in Mandan and there are plans to increase the number of employees. He estimates that the business should have up to ten employees by the end of 5 years.

Commissioner Tibke announced that this is a public hearing and invited citizens to come forward to comment. A second invitation was extended to anyone wishing to speak on this matter. Hearing none, Commissioner Tibke closed this portion of the public hearing.

City Attorney Brown commented that between the City Assessor's office and the Business Development Office there is a system in place after the first two years to inquire and verify if there have been any increases in employment to determine if they would or would not get the additional exemption.

Commissioner Frank motioned to approve the request for a 5-year Ad Valorem tax exemption for Spence Koenig for a newly construction commercial building due to meeting all criteria under the N.D.C.C. Section 40-57.1 contingent upon approval from the Mandan Growth Fund Committee. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

BIDS:

CONSENT AGENDA:

1. *Consider approval of the monthly bills.* The Board approved of the monthly bills.
2. *Consider approval of annual liquor licenses for July 1, 2011 through June 30, 2012.* The Board approved of the annual liquor licenses for July 1, 2011 through June 30, 2012.
3. *Consider approval of annual Special Sunday openings.* The Board approved of the annual Special Sunday openings.
4. *Consider approval of Sales & Use Tax Collection Agreement with the ND Office of State Tax Commissioner for 2011-2012.* The Board approved of the Sales & Use Tax Collection Agreement with the ND Office of State Tax Commissioner for 2011-2012.
5. *Consider the approval of a Traffic Safety Grant Application for Oct. 1, 2011 through Sept. 30, 2012, from the ND DOT Traffic Safety Office.* The Board approved of the Traffic Safety Grant Application for Oct. 1, 2011 through Sept. 30, 2012, from the ND DOT Traffic Safety Office.
6. *Consider acceptance of a Memorandum of Understanding with the United States Marshals Service for Enforcement of the Adam Walsh Act.* The Board approved of the acceptance of a Memorandum of Understanding with the United States Marshals Service for Enforcement of the Adam Walsh Act.
8. *Consider personnel actions.* The Board approved of the personnel actions.
10. *Consider approval of the site authorization for Mandan Baseball Club and waive fee.* The Board approved of the site authorization for Mandan Baseball Club and waive fee.

Commissioner Frank moved to approve Consent Agenda items 1, 2, 3, 4, 5, 6, 8, 10 as presented. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

The following Consent Agenda items were removed for discussion:

Consent Agenda Item No. 7. Consider approval for Heart Ridge Addition Zone Change. (First consideration of Ordinance 1097). Commissioner Tibke stated that she received an email from a city resident and his concerns were about changing the zone to and have multi-units adjacent to single family. Commissioner Frank stated that she also received an email of similar concern from Mandan City resident Jim Davis who resides in that area. Mr. Davis provided recommendations for changes that he feels the neighborhood would be more comfortable with.

Engineering Project Manager Bechtel stated that this matter was brought before the Planning and Zoning Committee on May 23rd and it was approved. Bechtel stated that the lot that Mr. Davis is referring to is a large lot which is impacted by a fair amount of height. There is also drainage at the back of the lot which creates challenges. He stated that it is a five acre lot; however only 1 or 2 of the acres are buildable. There was discussion about how the RM zoning may add to increased traffic in the area at 8th Avenue Southeast. The P & Z Committee did approve the zone change with a restriction of five (5) units to one acre. The total on those five acres would be twenty-five (25)

units. Bechtel stated there was not much opposition to the RM itself, but rather the impact it would have with the streets around it. Bechtel stated that there was no opposition to the limit of five (5) units per acre from any of the residents.

Commissioner Frank provided a map of the area sent to her from Mr. Davis in which Bechtel outlined the area in question. Commissioner Frank recited the areas of concern from Mr. Davis and subsequently, Bechtel will provide a response to Davis. Bechtel commented that it would be possible to develop that area into single family lots. However, the developer has concerns that if you pay for a lot, based on 5 acres; it would not develop monetarily to develop that land. Bechtel stated that there is a need for multi-family units in this area of the city.

Jake Axtman from Swenson, Hagen & Company Engineering, representing Chad Wachter came forward to speak. He stated that the plan is to construct duplexes or fourplexes and not apartments on the property as the area is not set up for single family housing.

Commissioner Frank moved to approve the request for Heart Ridge Addition Zone Change from A (Agricultural) to RM (Multi-Family) Residential, R3.2 (Two-Family Residential), R7 (Single-Family Residential) with RM zoning restricted to five (5) units per acre. Commissioner Jackson seconded the motion. Mr. Axtman stated that the developer would be considering a density of 10 units per acre because of the size of the parcels. City Attorney Brown stated that in order to accommodate that request, a request to re-zone the property would be the proper approach to accomplish that. Axtman pointed out that there is only about 250' x 400' of the 5 acres of property that is developable. Bechtel stated that the initial request was to construct a building with ten (10) units or more per acre. There were concerns with Lot 31 being in excess of units, thus, the Planning and Zoning placed the restriction of five (5) units to one acre to the whole area in general. Commissioner Tibke recommended that this matter be returned to the Planning and Zoning Committee to allow them to have the discussion of allowing ten (10) units per acre rather than the five (5) units per acre.

City Attorney Brown clarified that procedurally the options would be to vote on the motion or the commissioner who made the motion could withdraw it. If you want Planning and Zoning to reconsider it without a new application, the Commission could refer it back which would be simpler from the developer's standpoint.

Chad Wachter came forward to speak. He stated that he would like to get this project moving as soon as possible, indicating that there has been a lot of interest in this area and a lot of contractors are interested in the single-family portion of this area. He stated that he is willing to assure the residents of Mandan that there is no intention of having large apartment complexes constructed in this area. He stated that they do need the higher density in order for those areas to work out financially. Commissioner Frank asked Mr. Wachter if the restriction that was on Lot 31 would be acceptable. Wachter replied that it could work with an approval for a higher density on the remaining lots.

Commissioner Jackson commented that the Zoning and Planning Commission recommended a limit of five (5) units per acre and if there were other residents in attendance at that meeting who spoke against a higher density, their voice would not be heard here today if this commission went against what the Planning and Zoning Commission recommended as far as five (5) units per acre. He stated that in particular Lots 31 and 32 might create a concern if more than five (5) units per acre were constructed in that area. Commissioner Frank clarified that Lot 32 is across the street from a school and not opposing any single family home. Whereas Lot 31 is partially across from the school but a majority of it is frontage-facing single family homes hence the limit of five (5) units per acre.

Commissioner Frank requested withdrawing the motion to approve the request for Heart Ridge Addition Zone Change from A (Agricultural) to RM (Multi-Family) Residential, R3.2 (Two-Family Residential), R7 (Single-Family Residential) with RM zoning restricted to 5 units per acre.

Chad Wachter stated that Lot 32 is directly across from the school and not directly across from a residential area. Regarding the lots that are plotted as residential, when the lots are sold the individuals will be aware of the development that is being constructed adjacent to it. There would be a fair opportunity to evaluate that before they would purchase property in that area. Commissioner Jackson commented that Lots 31 and 32 are in a similar situation as opposed to Lots 29, 28, 27, 1, 2, 3. Commissioner Jackson withdrew his second to the motion.

Vice-President Tibke opened the floor for discussion. Commissioner Jackson asked Bechtel if changing Lots 1, 2, 3, 27, 28, and 29 to be up to 10 units per acre, (based on the discussion at the Planning and Zoning Meeting), would that be what the residents would have agreed to? Or probably not?

Bechtel replied that the discussion at the Planning and Zoning meeting was not so much as to the density, but rather the increased traffic on those streets. He said the residents were there in a pretty good number to represent their point on this.

Commissioner Tibke suggested the possibility of approving the lots in which the five (5) units per acre were agreeable to the developer and subsequently the developer could go back to the Planning & Zoning Committee for negotiations of the Lots 31 and 32 at a later time. City Attorney Brown suggested that if further input is requested from the Planning & Zoning Committee that the best alternative is to refer the matter back to them. However, that will delay development of the subdivision. This is the first reading and the second reading is scheduled for July 5th.

Chad Wachter approached the Commission and requested that the terms as stated under the original motion be re-instated and subsequently he would go back to the Planning & Zoning Committee for reconsideration of increasing the density on the remaining lots. That will allow him to get started on the single-family aspect of this project.

Commissioner Frank moved to approve the request for Heart Ridge Addition Zone Change from A (Agricultural) to RM (Multi-Family) Residential, R3.2 (Two-Family Residential), R7 (Single-Family Residential) with RM zoning restricted to 5 units per acre. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

Consent Agenda Item No. 9. Consider Change Order for the Residual Management Facility – regarding Truck / Truck box and tags. Commissioner Frank commented that there have been other change orders within this project. This request is for the purchase of a Truck/Truck box with tags for a cost of \$140,000. She asked whether this vehicle would be shared with other departments. Duane Friesz, Water Treatment Plant Superintendent, replied that the vehicle would be used within the WTP facility. He stated this is a tandem-axle truck with two tags (wheels that lift off the ground). The current trucks carry 7-8 tons and the new truck could carry 12 tons which would reduce the number of loads taken to the landfill which currently is about a one-hour round trip. The number of loads and time involved would be reduced. The current truck would be given to Public Works for their use. He requested the Commission approve the use of state bids.

Commissioner Rohr moved to approve the Change Order for the Residual Management Facility, regarding Truck / Truck box and tags and to waive the bidding policy for the truck purchase. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

OLD BUSINESS:

NEW BUSINESS:

1. *Consider agreements with MM Restaurant Group for sale of building at 116 E Main:* Business Development and Communications Director Huber presented a request for consideration of a Purchase Agreement with MM Restaurant Group for sale of building at 116 E Main. She stated that at the meeting on June 7th, this Board voted to authorize negotiations and pursuit of a proposal submitted by MM Restaurant Group for the \$1.00 purchase of the 116 East Main property. This is in return for an estimated \$250,000 investment in the property for physical improvements to include a new roof, fire service water line, fire suppression system and potential building expansion for Mama Maria's Italian Restaurant. The (i) Business Incentive Agreement and (ii) Purchase Agreement are before the Board for consideration along with accountability provisions. The key provisions to the Agreement:

- The purchase agreement must be closed by 7/29/11;
- A \$5,000 deposit due at the time of closing the purchase which will be refundable when there is substantial completion of the building;
- Proof of financing for the upgrade of a minimum of \$150,000;
- Renovations must begin by 10/1/11;
- Renovations must be substantially completed by 3/1/12;

- The MM Restaurant Group will waive the right to participate in Mandan’s Retail / Restaurant Incentive Program;
- The creation of at least five new jobs by 12/31/12 or lease the commercial space to an active retail restaurant business that would be required to employ the same;

In addition, the City would assist the company with Renaissance Zone incentives, tax benefits, store front improvement incentives and matching funds. In the event the business does not begin renovations by 10/1/11, the property would revert back to the City; and if not substantially completed by 3/1/12, the company will reimburse the City the \$25,000 market value of the property unless caused by an act of God or terrorism event.

Huber stated that the Purchase Agreement is the standard-type Agreement changing the closing date to 7/29/11 and referencing the Business Agreement within it.

City Attorney Brown clarified that “substantial completion” would be determined upon the issuance of a Certificate of Occupancy for the main level and second story of the building in accordance with standards used by the Building Inspection Department.

Commissioner Frank moved to approve the Business and Purchase Agreements with MM Restaurant Group for the sale of the building at 116 E Main, Mandan, ND, as proposed. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

2. *Consider recommendation from Renaissance Zone Committee on Leingang Chiropractic & Wellness application for leasehold improvements at 301 First Street NE.* Business Development Director Huber reviewed with the Board the recommendation from the Mandan Renaissance Zone Committee, which met June 14, 2011, to review the application. The application is for an approximate \$36,000 investment in improvements to a 1,800 square foot lease space. The improvements include build-out for five treatment rooms and offices and a restroom to include plumbing, electrical, a new ceiling, flooring, and an automatic door.

The space is on the main level of a two-story building with total square footage of 13,700, thus accounting for 13 percent of the building’s total space. This building’s current value is \$141,700. A minimum project qualification is an investment in improvements equal to at least 50% of the lease space’s pro-rata share of the building’s value. The value of the space would be \$18,421 with the minimum investment being \$9,210. The applicant’s proposed investment far exceeds this amount.

Leingang Chiropractic is currently leasing 3 small treatment rooms at the location of Spinecare Chiropractic, 408 First Street Northwest. This will be an expansion in terms of square footage as well as from an employment standpoint and scope of services. Leingang plans to employ or subcontract with 2-3 people.

The Assessing Department estimates the improvements will add \$20,000 to the value of the 1,800 sf lease space. Property taxes on the space with the improvements are estimated at \$790 annually for a five-year exemption total of \$3,950. A copy of the draft lease agreement has been provided indicating the lessee will be responsible for the taxes and thus will benefit from the exemption. The state income tax exemption is estimated at \$500 annually for a five-year total of \$2,500.

Commissioner Frank moved to approve the leasehold improvements proposed for 301 First Street NE by Leingang Chiropractic and Wellness as a Renaissance Zone project with the five-year 100% property and state income tax exemptions. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

3. *Update from Bismarck Mandan Development Association on inventory of potential industrial sites and recommendations for prioritization.* Brian Ritter, Bismarck Mandan Development Association (BMDA) provided an update on inventory available and/or potential industrial sites in and around the City of Mandan. Ritter stated that the BMDA annually conducts a Business Retention and Expansion Program wherein about 100 businesses are surveyed on various aspects of the business community. One particular area of concern was the perceived lack of industrial sites in the Bismarck/Mandan community. The BMDA formed a committee with the intent of identifying various parcels of land in the area that could be potential industrial sites. Using the criteria identified by that committee, 12 sites in the Mandan area have been identified as potential industrial sites. Those 12 sites are: (1) Kist Livestock Property (2) Magilke Property (3) Laubner Property (4) Old Red Trail Commercial Park (5) Old Red Trail & 1806 (6) Highway 10 (7) Mandan Industrial Park 7th Addition (8) McCormick's Property (9) Vogel Property – Section 14 (10) Ed Boehm Property (11) Boehm and Landeis Properties (12) Kotke Property.

Ritter explained that each site was ranked on five (5) criteria: size, access, utilities, zoning / surrounding uses, availability of property. The site that was judged to be the best in each criteria was given a "1", the second best a "2", etc. until the lowest ranked site in that criteria was given a "12". The scores were then compiled and rated accordingly. SEE: Industrial Site Report dated June 21, 2011". The Top 3 based on the criteria: 1st = Old Red Trail; 2nd = Ed Boehm; 3rd = Kist Livestock. Ritter explained that under the 2011 BMDA and Mandan Work Plan the BMDA has completed what they said they would do with this project research. Ritter stated that they are at an impasse as to the next step in this process and now looks to the Commission for direction as to what the City of Mandan would like to do next.

Commissioner Tibke indicated that the City is looking for primary sector growth in the community which eventually will bring wealth to the community. Ritter stated that in order to attract businesses to a community a variety of ways are attempted, but the final decision is up to the city and/or county as to how they want to approach it. There are circumstances where the city/county purchase the property and sell it off or it can be done

by the private sector. Ritter stated that the main reason for the properties not moving or being developed right now simply has to do with the market. Commissioner Tibke inquired as to what suggestions the BMDA would have for our communities to connect with the western part of the state (oil and gas developments) in order to develop what we have here locally. Ritter stated that the inquiries they are getting related to the oil and gas industry are not for blue collar workers but for professional services such as attorneys, accounting services and engineering. Commissioner Frank stated that it would be appropriate to instruct the BMDA to investigate available office space as a consideration in ranking. Ritter indicated the BMDA will move forward with its research into possible office solutions for future developments.

RESOLUTIONS & ORDINANCES:

1. *Consider first consideration of Ordinance No. 1097 Zone Change for Heart Ridge First Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map to include Lots 1, 2, 3 of Block 4 to be zoned RM.* Commissioner Jackson moved to approve the first consideration of Ordinance No. 1097 Zone Change for Heart Ridge First Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map. Commissioner Frank seconded the motion.

Commissioner Jackson amended the motion to include Lots 1, 2, 3 of Block 4 to be zoned RM. Commissioner Frank amended the second to the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed

Original Motion: Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

OTHER BUSINESS:

1. *Fireworks burn-ban for the City of Mandan:* City Administrator Neubauer reviewed with the Board a recommendation to implement a plan to ban fireworks in flood-affected areas of the city under the Emergency Ordinance. The areas prohibited would be River Bend Addition up north, (excluding Eastwood Acres behind Bonanza), the line would in essence follow along Memorial Highway, include the Bridgeview Bay, Lakewood, and Marina Bay areas. We've included a large area around 19th Street where the dike is. He stated that fireworks could damage plastic on the flood control dikes that are in place. He clarified that City Attorney Brown suggested that the best process to use in this situation would be for the mayor to declare a ban under Ordinance No. 1096 "Emergency Ordinance" to address this matter. If this Commission is interested in a fireworks burn-ban, it would be appropriate to request the mayor to so designate under Ordinance No. 1096.

Commissioner Rohr moved to make a recommendation to Mayor Helbling that fireworks

be banned as outlined under the City Emergency Ordinance No. 1096 in the designated flood areas for the 4th of July celebration and that fireworks would be allowed in non-flood areas only during regular hours set by the city between 12 noon and midnight on July 2nd and July 3rd, and also from 12 noon until 2 a.m. on July 4th. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

There being no further actions to come before the Board, Commissioner Frank moved to adjourn the meeting at 7:15 p.m. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

James Neubauer,
City Administrator

Sandra Tibke
Vice President, Board of City
Commissioners

CITY OF MANDAN

SUNDAY ALCOHOLIC BEVERAGE PERMIT

Date of Application: June 23, 2011

Name of Licensee: Bismarck-Mandan Stock Car Assoc. Inc.

Address of Licensee: Box 6272 Bismarck ND 58504

Address of public facility if used: 2500 Longspur Trail

State the purpose of organization: Promote Auto Racing

Date(s) of requested Sunday(s): July 10, 2011

Time of day which the applicant desires the permit to be in effect: 12:00 Noon To 12:00 Midnight

Description of the rooms on the premises, which have been specifically reserved, for the dispensing of alcoholic beverages and dancing during the term of the permit: Main Concession Area & Pit Area

State whether the applicant requests permission to open to the general public, and if so an explanation of the reasons for the request: yes

If applicable, estimated number of police officers necessary to provide security at the dance to be open to the public: None

I the applicant will abide to the following conditions:

- a. Alcoholic beverages may be distributed for consumption on the premises and Dancing may be permitted only in those rooms specifically reserved for event activities;
- b. Dancing and the dispensing of alcoholic beverages shall be permitted only between the hours of twelve noon on the date specified in the permit and one a.m. on the following Monday;
- c. Any conditions or circumstances delineated by the Board relating to the conduct of the event or to the admission of the general public to the event.



New Business No. 1

Board of City Commissioners

Agenda Documentation

MEETING DATE: July 5, 2011
PREPARATION DATE: June 29, 2011
SUBMITTING DEPARTMENT: Engineering
DEPARTMENT DIRECTOR:
PRESENTER: Dave Bechtel
SUBJECT: Consider the creation of Water & Sewer Improvement District No. 58, Project 2011-07 (Shoal Loop Extension).

STATEMENT/PURPOSE: To create a special assessment district for the requested work.

BACKGROUND/ALTERNATIVES: : A request was received from Shannon Schlosser and Mike Wachter for the costs of water and sanitary sewer to be special assessed to their benefitting properties. The enclosed map, shows the location of the properties. The property to the west of their properties are also benefitting from this extension of the water and sewer. The City of Mandan, in the past, has typically created a district to include all the benefitting properties and special assessed them for the work done. This request would be that type of request. As part of this request and per the City of Mandan ordinances, the City would pick the costs for over sized and over depth installation of water and sewer mains. In this case the main is not over sized, but is over depth installation. With the ground water in the Lakewood area being very high right now, part of the over depth cost would come from any dewatering that would need to be done to do the installation. Dewatering of over depth installations are fairly common in this area, based on past projects.

This project district would include the Mitzel's land to the west as it benefits from the over depth installation of the mains, as well as the developers asking for the improvements to take place. One question to ask yourself is... should this be assessed for the over depth installation, as this property will still have to bear its own cost at some point in the future for utilities to be installed? You will see that even though they are not participating and cannot protest the improvement, that they will receive more assessments than the two parcels that are requesting the improvement (see fiscal impact). Size wise, the Mitzel property is larger therefore it seems fair and adequate, but the City will not have the same situation when that parcel decides to develop and the utilities need to be installed. They will likely be over depth to some portion and the City will be obligated to cover those costs, but they will only benefit that parcel and the City will not have an adjacent benefitting parcel to assess for those costs.

Board of City Commissioners

Agenda Documentation

Meeting Date: July 5, 2011

Subject: Consider the creation of Water & Sewer Improvement District No. 58, Project 2011-07 (Shoal Loop Extension).

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Now as the City of Mandan explores the reducing assessments and trying to mirror Bismarck in its policies, I will include what would be typical for Bismarck in this situation. As Bismarck requires all basic water and sanitary sewer to be paid by the developer, typical being 8" water and sewer in residential areas and 12" water and 10" sewer in other zones like industrial and commercial areas. This request would not include any over sizing but over depth installation. Bismarck does not pay for any over depth installation. So by Bismarck's policy, the developers would be responsible to prepay for the improvements, as they do not meet their criteria for trunk mains in which the City would participate in the cost for the over sizing. When there are multiple owners, the City may discourage development if at least 50% of the owners do not join in the petition and agree to make any prepayments. Those not agreeing to prepay would then be assessed the costs if the Board of City Commissioners approve the establishment of a special assessment district.

So if the City of Mandan was to mirror Bismarck for this request, Mandan would ask for prepayment from both petitioners. If both chose to not prepay, the City would have the option to not do the improvement. If one owner was willing to prepay, then the City would have the option to set the district and special assess the other petitioner for their share of the costs. In this option the City would have to elect to forego the ordinance stating we would pay for over depth installation also. Those costs would then be part of the costs to be prepaid by the developers. The City of Bismarck does not include Engineering fees in the assessment of the projects, the developer is responsible for those costs. The City of Mandan typically has assessed the Engineering fees associated with the project.

ATTACHMENTS:

1. District Map
2. Engineering Estimate
3. Bismarck development policy

FISCAL IMPACT: The Engineers estimate for the construction portion of the project would be \$63,445.00. Of this, the estimate provides for the over depth items of dewatering and over depth installation which total \$29,750.00, which would be City costs, \$33,695.00 to the developer. When you add Engineering fees, administration and 10% contingency to the total, the grand total becomes \$79,306.25.

The City would typically pick up the over depth items and assess the remaining with Engineering to the benefitting lots. Based on this typical scenario the 3 benefitting parcels would see a breakout of..

- 2 adjacent parcels (north and south) – approximately \$22,000 each
- 1 adjacent parcel (west) – approximately \$35,000

STAFF IMPACT: Minimal

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

RECOMMENDATION: This item should be given much consideration as it could be used to set some policy based on this situation being a typical request we would usually see. My recommendation would be to mirror Bismarck's policy. I do not necessarily recommend moving forward with the project following Bismarck's policy as we should adopt it in its entirety if we wish to follow it. I would recommend continuing our policy but consider aspects of Bismarck's in the discussion of this item, allow for the district but remove the Mitzel parcel.

SUGGESTED MOTION: I move for the creation of the Water & Sewer Improvement District without the Mitzel property.

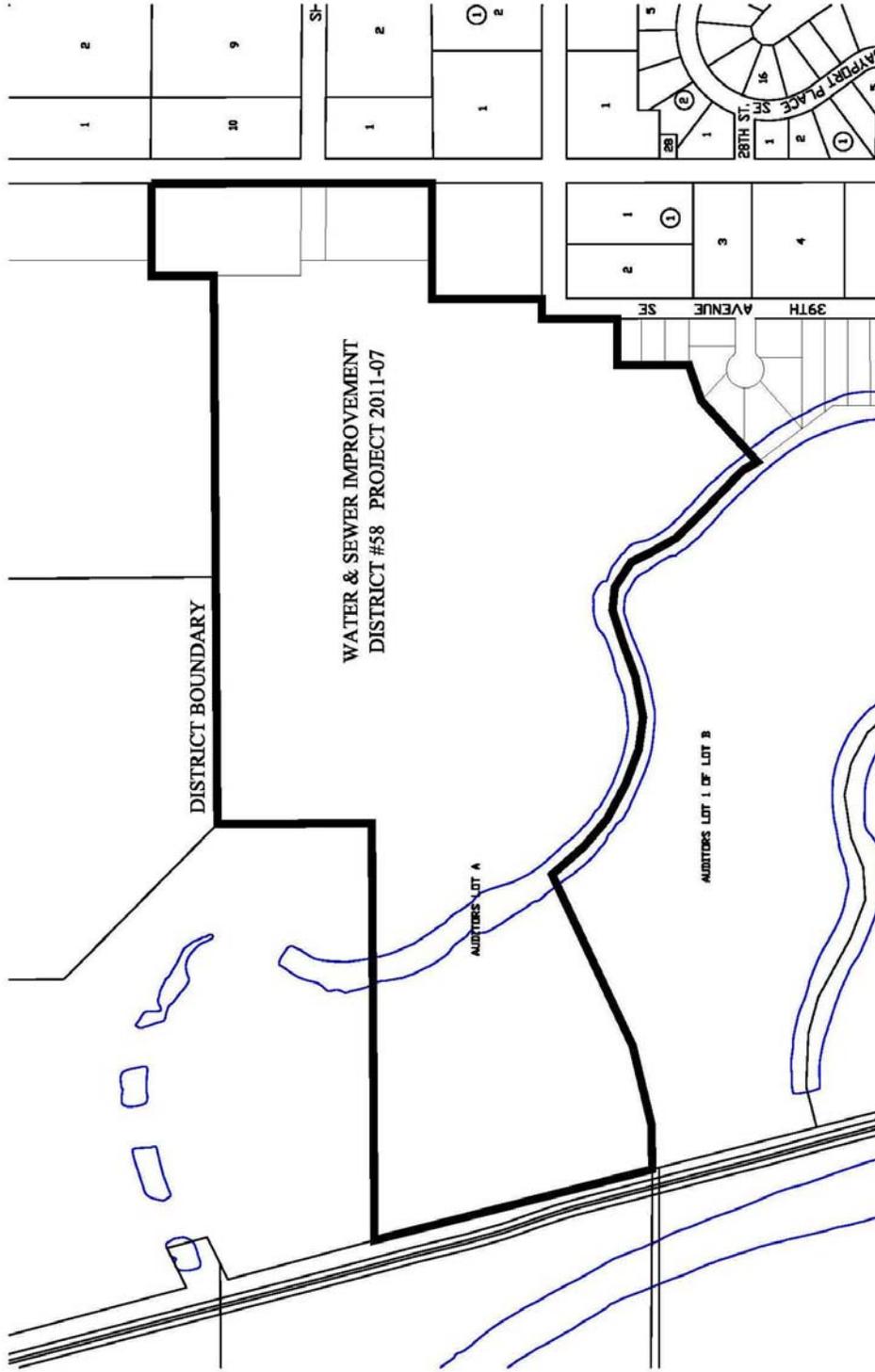
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**PRELIMINARY ESTIMATE FOR WATER & SEWER
FOR
SHOAL LOOP FROM WEST RIGHT-OF-WAY LINE
OF 40TH AVE. SE TO 250 LF WEST ON SHOAL LOOP
June 28, 2011
TECO #7692**

STANDARD ITEMS

1	Furnish & Install 48" manhole with casting, rings, integral base and boots	1	Each	\$ 4,000.00	\$ 4,000.00
2	Furnish & Install 8" PVC Sewermain SDR-35	250	LF	\$ 33.00	\$ 8,250.00
3	Furnish & Install 6" PVC Sewermain SDR-35	90	LF	\$ 27.50	\$ 2,475.00
4	Furnish & Install 8" C 900 PVC watermain including all fittings	250	LF	\$ 35.00	\$ 8,750.00
5	Furnish & Install 8" gate valve/valve boxes, extension rods, and mudd plugs	1	Each	\$ 1,420.00	\$ 1,420.00
6	Furnish & Install 6" fire hydrant 8"6" bury, 6" C900 PVC hydrant lead and reducer	1	Each	\$ 4,200.00	\$ 4,200.00
7	Furnish & Install 6" gate valve/valve boxes, extension rods, and mudd plugs	2	Each	\$ 1,100.00	\$ 2,200.00
8	Furnish & Install 6" C 900 PVC watermain including all fittings	80	LF	\$ 30.00	\$ 2,400.00

\$ 33,695.00

OVER DEPTH ITEMS

1-A	Dewatering	1	LOT	\$21,000.00	\$ 21,000.00
2-B	Over Depth 10'	250	LF	\$ 35.00	\$ 8,750.00

\$ 29,750.00

Estimated Construction Cost =	\$ 63,445.00
Engineering, Legal, Administrative, Contingency	<u>\$ 15,861.25</u>
Grand Total	<u>\$ 79,306.25</u>

POLICIES & PROCEDURES TO DEVELOP SUBDIVISIONS

April 2007

Timelines

A petition for public improvements will not be approved prior to the recording of the plat and annexation of the parcel. Applications for platting, annexation, zoning, and recording are available in the Planning Department, and meetings regarding applications are scheduled by the Planning Department. Petitions for public improvements are made with the Engineering Department.

Petitions for public improvements must be received by July 1, or there will be a greater likelihood that the pavement may not be constructed that fall. If the site requires public bids for water or sanitary sewer (trunk lines or multiple owners) or storm sewer, the petitions for public improvements should be received before June 1. (Street grades with water and sewer plans and specifications must be submitted and approved to allow time for water and sewer to be constructed by early September so the curb and gutter and pavement construction may be completed before inclement weather in the fall prevents further work.) Should oversized mains or drainage facilities be publicly bid, that work must be coordinated with the Engineering Department, and such work will require receipt of prepayments and will likely require developers water and sewer to be constructed by mid August. Prior to the advertisement for the improvements by the CITY, CITY funding must be allocated, easements or rights-of-way acquired, and permits from federal, state, county, township, or railroad must be received. Shop drawings for precast concrete manholes and inlets or other products as needed must be submitted after the 3-Way Agreement plans are accepted by the CITY. Allow several days for shop drawing review by the CITY and whatever additional time is needed for the production and delivery of the products.

Petition for Public Improvements

The Landowner or Agent (Developer) must submit a signed and dated petition for water, sanitary sewer, and street improvements (includes curb and gutter, paving, and street lighting) showing all lots or parcels to be serviced and all rights-of-way or easements necessary to contain those improvements. At intersecting streets, each side of a corner lot shall be petitioned for all public improvements. Drainage improvements do not require a petition; however, the Developer must inform the CITY if intending to do all or portions of the work via the 3-Way Agreement process.

- A Developer may have any qualified improvement done by petitioning for a 3-Way Agreement. See petition forms on www.bismarck.org/engineering/documents.
- A Developer may petition the CITY to hold a public bid for any improvement provided they agree to make appropriate prepayment (see Development Costs Policy below). When there are multiple owners, the CITY may discourage

development if at least 50% of the owners do not join in the petition and agree to make any prepayments. Those not agreeing to prepay would then be assessed the costs if the Board of City Commissioners approve the establishment of a special assessment district. Water, sanitary sewer, drainage, curb and gutter, driveways, sidewalks, paving, street lighting, trunk mains, or oversized mains must be publicly bid before the CITY is allowed by ND Century Code to make payment to a contractor. Therefore, the Developer may not receive a bid via 3-Way Agreement and ask for the CITY to pay oversized costs. See petition forms at www.bismarck.org/engineering/documents.

- When a special request for improvements more costly than the standard design is made and subsequently approved by the CITY, the increased cost shall be the Developer's sole responsibility and shall be prepaid.

Development Costs Policy

Prepaid by Developer

Grading
Basic sewer and water *
Curb and gutter ***
Trunk line utility charges ****
Regional storm water charge *****
Local storm water design, plans

Specially Assessed by CITY

Street **
Sidewalk
Driveway
Street lights
Storm sewer
Trunk line utility charges ****

- * Basic sewer and water includes the lateral mains and the service line stubouts. Lateral mains are defined as 8" water and sewer in residential zones and 12" water and 10" sewer in other zones such as commercial. Mains larger than these are called trunk or oversize.
- ** 40% of cost must be prepaid for lots not zoned R5, R10, RM, or RT Residential.
- *** Curb and gutter may be 3-way contracted with a bonded contractor approved by the City Engineer.
- **** Based on each R5 zoned parcel, and in increments of 10,000 SF for other zoned parcels, the first \$300.00 of trunk line utility charges are to be prepaid, and the remainder are to be assessed.
- ***** For new development the developer will be required to prepay a regional storm water charge of \$0.005/SF for residential lots and \$0.01/SF for commercial property. These charges will be held by the CITY and used to offset special assessments for regional storm water facilities to serve these properties.

Note: Prepaid curb and gutter or utility charges may be met with a bank Certificate of Deposit (CD) in the CITY's name and possession for 100% of the prepayment. The security will be held until the lots are built on by the Developer, sold to other builders

and private individuals, or cashed for nonpayment of yearly special assessment installments. A portion of the CDs may be returned to the owner upon partial completion of a subdivision or sold.

3-Way Agreement Procedures

The Developer must hire a professional engineer to prepare plans and specifications for improvements based on approved plat, grading, drainage, and sewer and water master plan. Plans and specifications with master plan must be submitted for City Engineering Department review at least three (3) weeks prior to the date an agreement is desired to be executed. If the street grades are complex, they should be submitted an additional one (1) week earlier for approval. Grade design shall follow CITY policy for shelf and slope needs at intersections. Computer Aided Drafting plans shall be based on National Geodetic Vertical Datum of 1929. The CITY will bill the Developer for actual labor plus 75% overhead and expense costs to review plans and observe construction. The plan review fee will be charged at 2% of the anticipated construction cost, or \$200.00 per plan sheet (not including cover sheet), whichever is less. This fee shall be submitted with the plans and it will be deducted from our final engineering services billing. CITY review is expected to be completed within (two) 2 weeks of submittal.

The CITY review of plans and specifications is intended for the benefit of the CITY only and not for the benefit of any other person or entity. Review and approval of plans or specifications by the CITY does not act to approve any mistakes or deviations from CITY specifications or relieve the engineer or developer from responsibility for errors or omissions in plans or specifications.

The Developer must provide digital CAD files in dwg format and NAD83 State plane coordinates with 1986 adjustments when submitting professional engineer stamped Mylars for City Engineer signature and must be the complete file for use by the City Engineering Department to do as-constructed drawings later.

The City Engineering Department requires five (5) days to review a 3-Way Agreement after all of the documents listed below have been received. See 3-Way Agreement form in www.bismarck.org/engineering/documents.

- Mylar Plans and Specifications with City Engineer stamp (and digital plans).

- Contractor Bid showing unit prices.

- Change Orders between contractor and developer, if any.

- Payment and Performance Bonds - naming developer and CITY.

- Certificate of Insurance - naming developer and CITY as additional insured, showing project number in description of operations.

- Letter of Credit or Escrow Account from a financial institution indicating the developer has set aside the amount of contract plus 5%. Examples are available and can be provided upon request.

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Small contracts (less than \$10,000.00) in lieu of escrow provide certified check for contract plus 5% to be held by CITY as security. This is not to pay contractor and will be returned when contractor and City Engineer services are paid.

Any other document required.

Any reviews requested prior to plat recordation and annexation will be considered on a case-by-case basis. Reviews of improvements for lands already annexed are a priority.

Once a 3-Way Agreement is approved, construction of improvements may begin, provided that:

- a) Streets are graded to CITY standards, certified by a RLS or PE. See attached standard detail 200-1. If an underground contractor begins and the grading is incomplete, work will be suspended until grading is completed.
- b) Rural approaches with culverts as needed are installed or are a requirement of the 3-Way Agreement.
- c) Erosion control measures are in place for any disturbed lands or are a requirement of the 3-Way Agreement.
- d) ND State Department of Health has approved water and sewer plans.
- e) Shop drawings are approved by the CITY OF BISMARCK Engineering Department.
- f) Developer's land surveyor has staked an appropriate mainline segment and any service lines requested by the contractor and submitted grade (cut/fill) sheets to the CITY to review and mark.

The CITY OF BISMARCK will observe the construction of the improvements for the benefit of the CITY and not for the benefit of the developer or the contractor. The CITY will not instruct or supervise the contractor or the work. The developer is responsible to assure the contractor is in compliance with contract documents. The CITY will inform the developer when partial and final payments are due the contractor based on written requests for payment from the contractor either directly to us or via developer's consultant. The CITY does not measure or keep record of quantities or costs including change orders, therefore does not guarantee their accuracy.

When the improvements constructed under a 3-Way Agreement and the conditions of the 3-Way Agreement are complete and accepted by the CITY OF BISMARCK, the CITY will assume operation and maintenance of the improvement, subject to warranties and unknown deficiencies.

Public Bid Procedures

For City Engineering designed improvements requiring a public bid, the petitioner should allow about three (3) months from petition acceptance to award of bids. The special assessment district will not be created for a minimum of two (2) weeks after the plat or parcels are recorded and annexed. The special assessment district generally takes six (6) weeks from advertisement to public hearing at a Board of City Commissioners meeting. The CITY will not create an assessment district for a small project; however, the CITY may bundle with other areas to have a combined district. The CITY may advertise the first street improvement district in late March for award of bids in early May if several areas are ready with platting and water and sewer. The next advertisement may be a month later depending on petitions and other submittals received. The CITY requires about one (1) month to schedule the designers and produce the bid documents. It may take more time for sewer and water improvements and less for street improvements. Should an area require storm sewer improvements, the street improvements could be delayed approximately a month. Where the street grades are designed and the plan and profile base sheets are produced digitally by the developer's engineer, the time frame can be minimized.

If the CITY workload is such that designs cannot be accomplished in a reasonable time, the developer may hire a consulting engineer, whose costs would not be a part of the assessment, or the CITY could hire a consulting engineer in accordance with our approved engineering selection policy. Large projects require oral interviews and a selection committee. For smaller projects, engineers can be selected by interest and practicality. For example, the same consultant who developed the water and sewer plans for the developer may be the practical choice to design the street improvement. Whether a large or small project, the selected consultant must submit a scope of work and agreement for approval by the City Commission based on negotiated prices and time of completion.

For developments that require drainage facilities which have been requested to be a public bid, any design information necessary for the CITY to complete the design of inlet and inlet lead, pipe sizing, channel, rip-rap, and pond design must be submitted one (1) month prior to advertisement date.

Erosion Control

Storm water management reports must be submitted with a plat. Should the developer be different from the plat submitter, it does not relieve the developer from providing all of the storm water management needs and erosion control measures specified in the approved storm water management report.

Wind erosion can impact neighboring properties. When dust blows to an extent to impact others, measures shall be taken to mitigate the dust from blowing and depositing and to clean up any area impacted.

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Should the developer fail to correct any erosion impacts immediately, the CITY reserves the right to make corrections and bill the developer and/or to not allow any more aggravating construction activities such as grading, water and sewer excavation, etc. to continue.

Late Season Construction

When the curb and gutter are placed under public or private bid but weather or other circumstances prevent pavement construction until the following year, the developer must agree by letter to one of the following:

1. The developer will protect the curb and gutter with gravel.
2. If the developer chooses to not place gravel to protect the curb and gutter and plans to use the unimproved roadway, then the developer shall be responsible for any damages to curb and gutter and/or dirt tracking, and will install or keep the street district installed road closed signs up so the general public does not enter until the pavement is constructed.

In either situation, the CITY will not maintain the unimproved street. All snow plowing or other maintenance will be the sole responsibility of the developer.



New Business No. 2

Board of City Commissioners

Agenda Documentation

MEETING DATE: August 4, 2009
PREPARATION DATE: July 29, 2009
SUBMITTING DEPARTMENT: Engineering
DEPARTMENT DIRECTOR:
PRESENTER: Dave Bechtel
SUBJECT: Consider the advertisement of the Resolution of Necessity for Flood Improvement District No. 1, Project No. 2011-06.

STATEMENT/PURPOSE: To authorize advertisement of the Resolution of Necessity for Flood Improvement District No. 1, Project No. 2011-06, which will start the protest period for the district.

BACKGROUND/ALTERNATIVES: At the special meeting of the commission on June 28th, the district for this project was adopted and it was suggested that we run a protest period per typical projects for this project district.

ATTACHMENTS:

1. District map
2. resolution of necessity

FISCAL IMPACT: This district will be used to spread flood costs and possible dewatering costs.

STAFF IMPACT: Minimal

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

RECOMMENDATION: allow for advertisement

SUGGESTED MOTION: I move to allow for the advertisement of the Resolution of Necessity for Flood Improvement District No. 1, Project No. 2011-06.

RESOLUTION DECLARING THE NECESSITY OF AN

**IMPROVEMENT PROJECT IN AND FOR FLOOD IMPROVEMENT
DISTRICT NO. 1 OF THE CITY OF MANDAN**

BE IT RESOLVED By the Board of City Commissioners of the City of Mandan, North Dakota (the "City") as follows:

1. It is hereby found, determined and declared that it is necessary for the City to construct make Flood Control Improvement District No. 1 (Project No. 2011-06) of the City of Mandan for the purpose of making an improvement project of the type specified in Section 40-22-01.1, NDCC, (the "District") of said City. Said improvement shall include, but not be limited the removal of material used in the construction of temporary emergency flood control devices and works, and to repair the damages caused to public and private property by the construction and removal of said emergency flood control devices or works as well as all other work and materials which are necessary or reasonably incidental to the completion of the project; all in accordance with and as described in the resolution creating said district adopted June 28, 2011.

2. The cost of said improvement project shall be paid for by special assessments to be levied against the respective lots, tracts and parcels of land within said improvement district benefitted by the improvement in amounts proportionate to and not exceeding such benefits and the Board of City Commissioners reserves the right to provide for the payment of a portion of the costs of such improvement from such other funds as may be properly available for such purpose.

3. The City Administrator is authorized and directed to cause this resolution, together with a map of the City showing the improvement district, which is attached hereto, to be published once each week for two (2) consecutive weeks in the official newspaper of the City.

4. The owners of property within said improvement District and liable to be specially assessed for said improvement shall be afforded the opportunity to file with the City Administrator within thirty (30) days after the first publication of this resolution, written protests against the adoption of this resolution, which written protests must describe the property which is the subject of the protest. The Board of City Commissioners shall, at its next meeting after the expiration of said period, to wit August 18th, 2011 at 5:30 o'clock p.m., meet at the City Hall, 205 2nd Avenue N.W., Mandan, ND, to hear and determine the sufficiency of any of the protests so filed and to take such other and further action with reference to said improvement District as may then be deemed necessary and expedient.

Board of City Commissioners

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Subject: Consider the advertisement of the Resolution of Necessity for Flood Improvement District No. 1, Project No. 2011-06

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5. This resolution shall be in full force and effect from and after its passage.

Dated this 5th day of July, 2011.

President, Board of City Commissioners

ATTEST:

City Administrator

Publication Dates: July 8th & 15th
Map of District Must also be Published

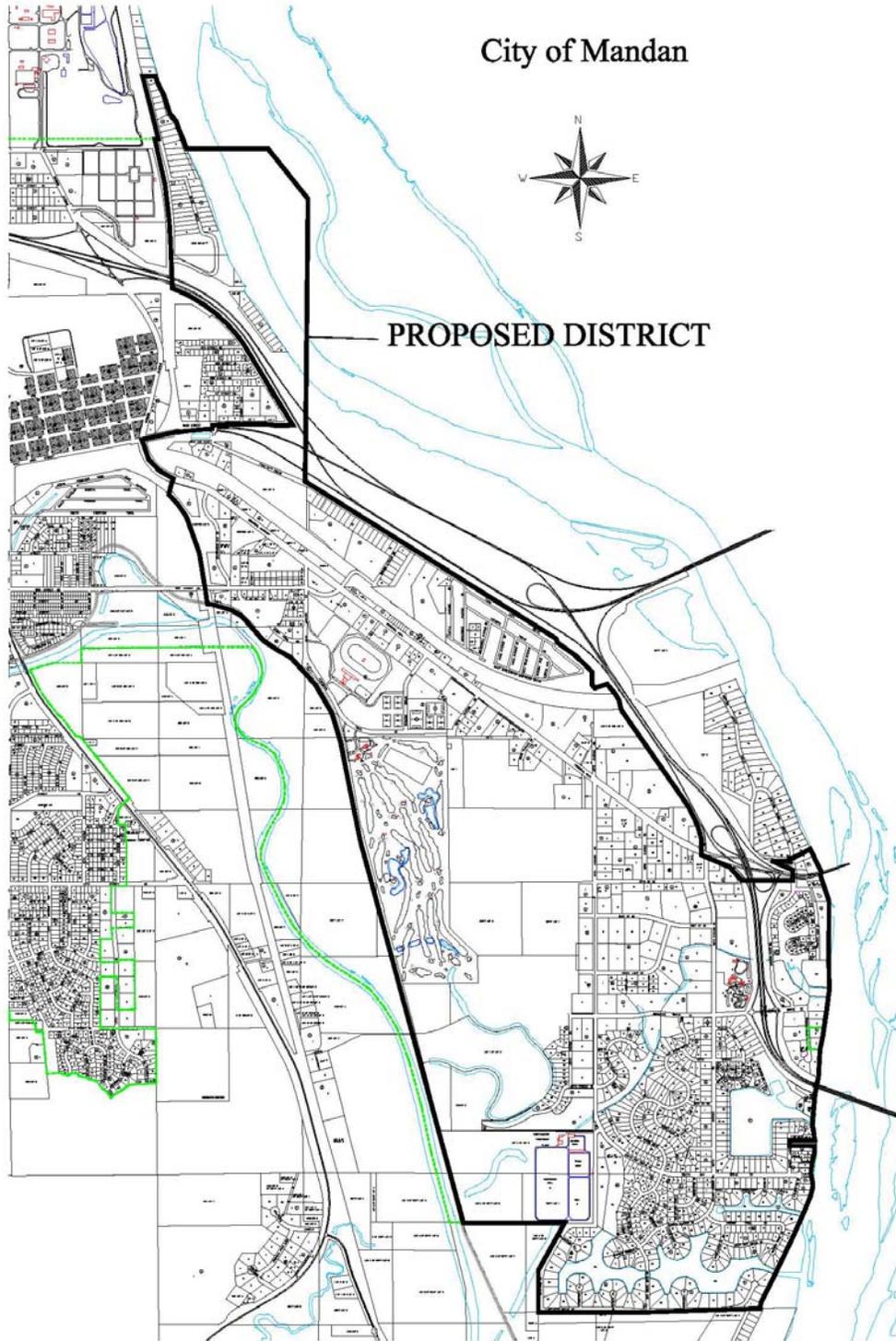
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Subject: Consider the advertisement of the Resolution of Necessity for Flood Improvement District No. 1, Project No. 2011-06

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PROCLAMATION

The undersigned, President of the City of Mandan Commission, pursuant to Sec. 6-03-07 of the Mandan Code of Ordinances, hereby proclaims:

That a State of Emergency exists within the corporate city limits of the City of Mandan, ND, considering the danger of flooding with said City which may seriously and substantially endanger the health, safety and property of the citizens of Mandan, and all of the provisions of said Sec. 6-03-07 relating to said State of Emergency are hereby in full force and effect.

The State of Emergency shall continue for a period of 30 days unless further extended by action of the Board of City Commissioners.

Dated this 5th day of July, 2011.

President, Board of City Commissioners



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 5, 2011
PREPARATION DATE: June 30, 2011
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Class G Liquor License Application, prororation of fees, and operate charitable gaming at that site

STATEMENT/PURPOSE: To consider a Class G Liquor License Application and prororation of the annual fee and operate charitable gaming at that site.

BACKGROUND/ALTERNATIVES: the Fort Abraham Lincoln Foundation along with its subsidiary the Missouri Riverboat, Inc, have requested a Class G Liquor License to operate at the Moritz Marina, 2540 Marina Rd. SE, Mandan, ND.

From: Tracy Potter [mailto:tracy@fortlincoln.org]
Sent: Wednesday, June 29, 2011 3:56 PM
To: Jim Neubauer
Subject: Class G license.

Hi Jim,

We're investigating a number of issues about electricity, cost of installing a dock, parking, etc. ... but, assuming those go well, the Fort Abraham Lincoln Foundation would like to apply for a two-month license from July 15 – September 15 to operate the Lewis and Clark Riverboat in Moritz Marina as a bar. We'd ask for a pro-rated fee of 2/7ths of the established fee for a Class G, which would be \$428.

We will likely also apply for a special event permit to conduct charitable gaming several times during that period. We would not be operating more than five sites in Mandan at any time.

If things don't work out, we'll inform you asap so that you could remove the item from the agenda.

Thank you for your consideration.

Tracy Potter

The Class G License:

Class G. Food and beverage license for alcoholic beverage sales for commercial passenger vessels on the Missouri River subject to the following restrictions and conditions:

- a. The vessel docks and boards passengers at a location within the jurisdictional limits of the city.

- b. The vessel has a minimum seating capacity for fifty persons.
- c. Sale and service of on-sale alcoholic beverages may only be made to passengers on the vessel who shall not be permitted to remove alcoholic beverages from the vessel. The sale of off-sale beer is permitted only when made from within an enclosed structure situated on the shore adjacent to the vessel's dock, but may not be taken aboard the vessel nor consumed on the vessel.
- d. The vessel and its operation shall be in compliance with all applicable laws and regulations concerning health, fire and safety.
- e. Gross sales of food are at least equal to gross sales of alcoholic beverages.
- f. Persons under the age of twenty-one may be permitted on the vessel in accordance with Section 5-02-06 of the North Dakota Century Code, provided the area where persons under the age of twenty-one are permitted is separate from the room where alcoholic beverages are opened or mixed.
- g. Temporary bars may be set up and sale or service of alcoholic beverages permitted to passengers anywhere on the vessel at times when persons under the age of twenty-one are not permitted on the vessel.
- h. The license fee shall be one thousand five hundred dollars for any seven consecutive monthly period in the year.

ATTACHMENTS:

FISCAL IMPACT: the license fee if prorated is \$428, otherwise \$1,500.

STAFF IMPACT: minimal

LEGAL REVIEW: n/a

RECOMMENDATION: I recommend approval of the Class G license and also the proration of the license fee to 2/7^{ths} of the total and to conduct charitable gaming operations several times during that period, as long as they are not operating more than five sites in Mandan at any time.

SUGGESTED MOTION: I move to approve the Class G license for the Ft. Abraham Lincoln Foundation and the Missouri Riverboat Inc., and also the proration of the license fee to 2/7^{ths} of the total and to conduct charitable gaming operations several times during that period, as long as they are not operating more than five sites in Mandan at any time.

Corporation Liquor License Application

1. Type of License:
- | | | | |
|--------|---|-----------------------------------|---|
| Liquor | On-Sale <input checked="" type="checkbox"/> | Off-Sale <input type="checkbox"/> | Class: <u>A B C D E F</u> <u>WB MP</u>
(Circle One) <u>G</u> |
| Beer | On-Sale <input checked="" type="checkbox"/> | Off-Sale <input type="checkbox"/> | Class: <u>A B C D E F</u> <u>WB MP</u>
(Circle One) <u>G</u> |
2. Duration of License: Annual: (July 1, _____ to June 30, _____)
Part of Year from: 7-15, 2011 To 9-15, 2011.
3. Name of Business Establishment at which license will be used: LEWIS + CLARK RIVER BOAT
4. Corporate Identification Information: Please complete all of the following:
- a. Name of Corporation: MISSOURI RIVERBOAT, INC.
 - b. Date of Incorporation: MARCH 20, 1990
 - c. State of Incorporation: N.D.
 - d. Amount of Authorized Capital Stock: 66 SHARES
 - e. Amount of Paid Capital: _____
 - f. If subsidiary, Name of Parent Corporation: FORT ABRAHAM LINCOLN FOUNDATION
 - g. Purpose of Incorporation: TO OPERATE LEWIS + CLARK RIVERBOAT
5. Description of Licensed Premises: Address: LEWIS + CLARK RIVERBOAT, MARINA MARINA
Legal Description: (Lot & Block): 2540 MARINA RD. SE, MANDAN
(Also Submit on an attached page a Diagram of the physical layout of the licenses premises including, A minimum: doors, storage areas, & areas where liquor/beer is purchased and consumed.)
6. List Names, Current Addresses, and Dates of Birth, ages & citizenship of all the Officers, Directors, Managers, Agents, and all Persons Holding 1% or more of the Capital Stock in the Corporation. (Note: Separate Notarized List of each individual's Name, Social Security Number and Addresses for last 5 years is required, the Privacy of which will be maintained by City but is required for Background Check: JAY FEIL, WILLIAM SMITHCOBS, TRACY POTTER, PAUL TRAUGER, KEITH ULMER ARE THE DIRECTORS.
7. List Names, Current Addresses, Dates of Birth, ages & citizenship of All Persons Who will have charge, management or control of the establishment for which the license is requested. (Note: Separate Notarized List of each individual's Name, Social Security Number and Addresses for last 5 years is Required, the Privacy of which will be maintained by City but is required for Background Check: MATTHEW SCHWANDORE;

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8. Name of Individual who is to be in Charge of the Day-to-Day Operations and management of the licensed premises: and will be responsible for complying with the municipal ordinances and state laws covering the operation of the premises:

Name: SAME Address: _____

City: _____ State: _____ Age: _____ DOB: _____ Citizenship: _____

If naturalized, give date and Place of Naturalization: _____

List all Other Places of Residence within last 5 Years: _____

9. List the occupations and employers of each of the individuals listed in answer to questions 6, 7 and 8 during the last 5 years. (Use a separate page to answer this question).

10. Ownership/Lease: If licensed premises is owned by Applicant, provide date of purchase. Apr. 14, 2008
(If licensed premises is leased, attach copy of executed and dated Lease.)

11. Does Applicant certify that all property taxes have been paid to date on the licenses premises?

Yes _____ No THREE ARE NONE.

12. Have any of the individuals identified in answer to Questions 6, 7, and 8 ever engaged in the sale or distribution of alcoholic beverages (as an owner, manager, or employee) at a location other than in the City of Mandan at any time prior to this application. Yes: X No: _____ (If yes, explain in detail on a separate page location, type of business and dates of license or employment).

WILLIAM SHALHOOB MANAGED THE RADSON HOTEL IN BISMARCK 199-1990.

13. Have any of the individuals identified in answer to Questions 6, 7 and 8 ever had a license of any kind (including alcoholic beverage license, other business licenses or motor vehicle license) suspended, revoked or non-renewed by any political subdivision, state or federal agency. Yes: _____ No: ✓ (If yes, explain in detail on a separate page)

14. Have any of the individuals identified in answer to Questions 6, 7 and 8 ever been convicted of a violation of any law of the United States, or of any state or political subdivision, other than minor traffic violations, (but including reckless driving or driving under the influence). Yes _____ No ✓
(If yes, explain the violation in detail on a separate page.)

15. Do any of the individuals named in answer to questions 5, 6 or 7 have any interest whatsoever in any other liquor establishment, either at wholesale or retail, within or without the state of North Dakota. (The interest which disclose also includes a right of inheritance by law or by will). Yes _____ No ✓
If, yes please explain in detail on a separate page.

16. Does anyone other than the Corporation applying for this alcoholic beverage license or the business owing the premises have any right, estate, or interest in the lease hold, building, or furniture, fixtures or equipment, in the premises for which the license is requested. Yes ✓ No _____ (If yes, explain in detail on a separate page). THE FORT A. LINCOLN FOUNDATION OWNS THE STOCK.

17. Does the Corporation applying for this alcoholic beverage license have any agreement, contract, understanding or intention to have any agreement, contract or understanding, with any person, partnership, or corporation to obtain for any other person, partnership or corporation, or to transfer to any other person, partnership or corporation the license for which this applications is made or to obtain for any other person, partnership or corporation, for any other purpose other than for the specified use of the applicant. Yes _____ No ✓ (If yes, explain in detail on a separate page).

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18. Does the Corporation applying for this license or the person, partnership or corporation owning the premises named herein, engage in any business other than that for which the license is sought or intending to engage in any business other than for the sale of alcoholic beverages under the license for which this application is made. Yes: ___ No: (If yes, explain, in detail on a separate page giving the type of business and identification of any and all owners.)

19. List the names and addresses of all officers, directors, and stockholders of the Corporation who are engaged or employed in a capacity in the conduct or operation of the business at which the alcoholic beverage license is to be used. NONE

20. The corporation must have a valid Certificate of authority issued by the North Dakota Secretary of state and a valid Alcoholic Beverage License issued by the ND Attorney General's Office. (A copy of the Certificate of Authority and ND Alcoholic Beverage License must be attached hereto.)

21. List the names, addresses of at least 3 business references. JAY FEIL, STARION FINANCIAL, 109 12th ST. NW, MANDAN; KEITY OLSON, 403 E. LUTHERWOOD, BISM.; AUGIE KRUSSEN, LONESOME DRIVE, 3929 MEMORIAL HWY, MANDAN

22. Does the building or structure in which the business is to be conducted meet all applicable state and local building, health and zoning regulations and requirements? Yes No ___ (Applicant must attach certifications of compliance from each state and/or local agency or department responsible for building, health and zoning regulations.)

23. List all the names of individuals who are authorized to make purchases for the business at which the license is to be used and located. MATT SCHAWANDTZE

(Note: These individuals must submit their names, current address and social security numbers on the forms which will protect there rights of privacy, but allow the appropriate police department background checks to be done. If not attached, the application will be deemed incomplete.)

24. List the names of all individuals who are authorized to sign checks used to pay the payroll and expense bills of the business at which the license is to be used. TRACY POTTER.

STATE OF NORTH DAKOTA) Affidavit of Application Completeness and Accuracy,
) ss. Sworn Statement of Conditions of Licensure,
COUNTY OF MORTON) and Agreement to Right of Entry of City Personnel

I, TRACY POTTER having been sworn and under oath, state that I am a duly authorized officer or director, namely PRESIDENT, of the above named corporation which hereby applies for the above referenced alcoholic beverage license in the City of Mandan, and I do hereby certify that the above information is true and correct to the best of my knowledge and beliefs.

I do further certify that said corporation and its officers, directors and employees will abide by the provisions of Chapter 12-01, 12-02 and 12-03 of the Mandan Code of Ordinances and any amendments

ORDINANCE NO. 1098

An Ordinance to create a new Chapter to Title 17, Public Nuisances, of the Mandan Code of Ordinances.

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

17-05-01. Declaration of Purpose and Intent.

1. The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual or unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

2. The provisions and prohibitions of this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

17-05-02. Definitions.

For the purpose of this chapter, certain words and phrases are defined as follows:

1. “dB(A)” means the A-weighted sound level in decibels, as measured with a sound level meter that meets the requirements for a type 1, 2, SIA, or S2A in American National Standard Specification for Sound Level Meters ANSI S1.4.

2. “Noise” means any sound.

3. “Person” means any person, partnership, association, joint venture, corporation or any other entity.

17-05-03. Unlawful Noise.

1. It is unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city. Loud, unnecessary or unusual noises or noises which annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others are defined with reference to subsection 2 of this section.

2. The standards which shall be considered in determining whether a violation

exists include, but are not limited to, the following:

- a. The volume of the noise.
 - b. The intensity of the noise.
 - c. Whether the nature of the noise is usual or unusual.
 - d. Whether the origin of the noise is natural or unnatural.
 - e. The volume and intensity of the background noise, if any.
 - f. The proximity of the noise to residential sleeping facilities.
 - g. The nature and zoning of the area within which the noise emanates.
 - h. The density of inhabitation of the area within which the noise emanates.
 - i. The time of the day or night the noise occurs.
 - j. The duration of the noise.
 - k. Whether the noise is recurrent, intermittent or constant.
3. A noise need not exceed the decibel levels in Table I to be in violation of this section.

17-05-04. Tables; Exceptions.

1. It is unlawful to project a sound or noise excluding noise emanating from a motor vehicle from one property into another, within the boundary of a use district which exceeds the limiting noise criteria set forth in Table I below as measured at the property line of the property from which the noise is emanating.

- a. Sound or noise projecting from one use district into another use district with a different noise level limit may not exceed the limits of the district into which the noise is projected.
- b. The permissible levels in decibels set forth in Table I are modified so that any noise occurring on property deemed to be nonconforming use property is determined upon the conforming zoning designation of the property.

2. TABLE I. Limiting Noise Levels for Zoning Districts.

	Zoning District		
	Residential	Commercial	Industrial
Maximum number of dB(A) permitted from 7:00 a.m. until 11:00 p.m. daily	55	65	80
Maximum number of dB(A) permitted from 11:00 p.m. until 7:00 a.m. of the following day	50	60	75

a. Motorized vehicles. It is unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table II as follows:

3. TABLE II. Limiting Noise Levels for Motor Vehicles.

a. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of ten thousand (10,000) pounds or more:

Maximum allowable limit: 88 dB(A) measured at 25 feet.

b. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than ten thousand (10,000) pounds:

Maximum allowable limit: 80 dB(A) measured at 25 feet.

4. Exceptions. The following uses and activities are exempt from noise level regulations under this section:

a. Noises of safety signals, warning devices, and emergency relief valves.

b. Noises resulting from any authorized emergency vehicles, when

responding to an emergency call or acting in time of any emergency.

c. Noises resulting from work of an emergency nature.

d. Any construction or reasonable and necessary maintenance activities except in residentially-zoned areas between the hours of 11:00 p.m. to 7:00 a.m.

e. Any other noise resulting from activities of a temporary duration permitted by law and for which a special permit therefore has been granted under this section by the city.

f. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations are exempt. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations are also exempt.

g. All railroad locomotives and railroad operations and motor carriers engaged in interstate commerce.

h. The use of snow removal equipment, including but not limited to tractors, plows and snow blowers in the aftermath of a snowfall.

i. The following events will be exempt:

- a. Buggies-n-Blues Sponsored Events
- b. 4th of July City Sponsored Events
- c. Mandan Racetrack
- d. Mandan Shell Concerts in the Park
- e. Use of Fireworks As Currently Set by the City of Mandan

5. Application for special permit. Application for relief from the noise level designated in this section on the basis of undue hardship may be made to the chief of police for the City of Mandan. Any permit granted by the chief of police shall contain all conditions under which the permit has been granted and shall specify a reasonable time that a permit is effective. The chief of police may grant the relief as applied upon a finding:

a. That additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or

- b. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other subsections of this section; and
- c. That no other reasonable alternative is available to the applicant; and
- d. The chief of police may prescribe any conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

17-05-05. Guests on Premises.

It is unlawful for any person to permit or allow guests on his or her premises to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.

17-05-06. Noisy Party or Gathering Prohibited.

No person shall participate in any party or gathering consisting of two or more people when the party or gathering occurs in a residentially zoned or used area or building between the hours of 11:00 p.m. and 7:00 a.m. and when the party or gathering gives rise to unreasonable noise likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area, considering the time of day and the residential character of the area or building.

17-05-07. Order to Disperse - Refusal Prohibited.

When a police officer determines that a party or other gathering of people is creating unreasonable noise, disturbing the peace, or is disturbing the quiet or repose of another person, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person ordered to leave the premises by a police officer shall refuse to do so.

17-05-08. Tenant or Owner - Cooperation Required.

Every owner of a premises, or tenant in charge of a premises, who has knowledge of a disturbance shall cooperate with police and make reasonable effort to stop the disturbance.

17-05-09. Violations - Prima Facie Evidence.

The following shall be prima facie evidence of a violation in any prosecutions under this Chapter:

1. As to tenants, and owner if owner resides on the premises, if twice or more on the same day or if on successive days, the police department is called upon to enforce the terms of this ordinance either by citizen complaint or by personal investigation of a police officer.

2. As to the owner if the owner does not reside at the premises, if the police department gives the owner written notices of three violations of this ordinance by his tenants at any single location within a six month period.

3. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of unreasonable noise in violation of this Chapter.

17-05-10. Classification; Penalty.

A violation of any provision of this ordinance is an infraction, for which the maximum penalty is a fine in the amount of \$500.00.

President of City Commission

ATTEST:

City Administrator

First Consideration: July 5, 2011
Second Consideration and Final Passage: July 19, 2011
Publication Date: August 12, 2011