

The Mandan City Commission met in regular session at 5:30 p.m. on April 19, 2016 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Van Beek, Tibke, Rohr, Braun, and Laber. Department Heads present were Finance Director Welch, Police Chief Ziegler, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development & Communications Director Huber, Planning & Engineering Director Froseth, Planner Decker, Assessor Shaw, and Building Official Lalim.

B. APPROVAL OF AGENDA: Commissioner Laber moved to approve the Agenda. 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 interested to speak for or against any items on the Agenda to come forward except for the two public hearing matters. A second announcement was made inviting anyone to come forward to speak on the Agenda. Hearing none, this portion of the Public Communications was closed.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission of April 5, 2016 Board of City Commission regular meeting and April 5, 2016 Board of Equalization meeting.* Commissioner Braun moved to approve the minutes as presented. Commissioner Laber seconded the motion. The motion received unanimous approval of the members present. The motion passed.

E. PUBLIC HEARING:

1. *Public hearing for first consideration of Ordinance No. 1238 creating PUD District 2016-01 for Lakewood 8<sup>th</sup> Addition First Replat.* Planner Decker stated this proposal is a request to replat Lots 20 through 39 of Lakewood 8<sup>th</sup> Addition and to rezone this area to a PUD District 2016-01. This request is to modify the plat to create 26 lots. There currently are 20 lots in this development. The goal is to develop smaller footprint single family and twin homes. The PUD option is recommended in order to adjust some of the zoning requirements to accommodate narrower but deeper lots. The standards for R3.2 would allow up to 8 more units than proposed if all lots are rectangular per minimum square footage. The proposal outlines there will be 4 standard size twin homes, 5 smaller sized twin homes and 8 small single family units. The only standard that this proposal does not meet is the building footprint requirement in R3.2 of 0.35. Some lots will be allowed to have a building footprint of up to 0.50. The average for the subdivision will be less than 0.35. Water and sewer lines have already been installed. The Planning and Zoning Commission recommends approval. There was no opposition to the proposal. Pending the outcome of this public hearing, the final review of the plat is scheduled at the next Planning and Zoning Commission meeting and if recommended for approval, it will come before the City Commission for final approval on May 3, 2016 along with the second consideration of this ordinance. It was recommended to approve this ordinance as proposed.

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Mayor Van Beek announced this is a public hearing and invited anyone to come forward to speak for or against the request to approve the first consideration of Ordinance No. 1238 creating PUD District 2016-01 for Lakewood 8<sup>th</sup> Addition First Replat.

Arthur Goldammer, Verity Homes, came forward and stated he would answer any questions regarding the request for the re-platting of Lots 20 through 39 of Lakewood 8<sup>th</sup> Addition. He said the request to rezone the area was approved by the Planning and Zoning Commission and that it does have staff support too. He said that with the current 3.2 zoning, the rezoning to the smaller lot size will achieve more units. He indicated that the goal is to offer some diversity of affordable housing in the City of Mandan.

Mathias Gieser, Trident Court Northwest Mandan came forward to speak. He said his comments don't have anything to do with this specific project. However, the next item on the Agenda is similar in nature and he will comment on that item when it is discussed.

A second announcement was made inviting anyone to come forward to speak on the Lakewood 8<sup>th</sup> rezoning matter. Hearing none, this portion of the Public Hearing was closed and the commission moved to Ordinances and Resolutions No. 2.

2. *Public hearing for first consideration of Ordinance No. 1239 creating PUD District 2016-02 for Ash Grove Estates Addition.* Planner Decker stated this matter relates to a portion of Lot 1 and all of Lot 2, Block 1 of the School District Sixth Addition wherein the proposal is to replat the area as Ash Grove Estates Addition and to rezone it to PUD District 2016-02. He explained that the Mandan School District has determined that this land was no longer needed for school purposes, hence it was offered for sale. The proposal is to develop this area with a mix of different styles of housing that will include 31 single family dwellings in several building configurations and 7 small footprint twin homes. Some lots will be smaller and the street design standards are being modified to help reduce the cost of the houses. The PUD option is being used to adjust some of the zoning requirements to accommodate these smaller lots and narrower street standards. Planner Decker explained that this is not something that is new. He said that the City has adjusted zoning standards for quite some time. In the past they called it "restricted". The PUD option is a more formal way of approaching those adjustments for specific parcels. The concept of the project is that it is totally self-contained in that none of the units face any of the existing units. They are all facing each other within the project. It is a "U-shaped" street. The smaller units are in the center of the project. The larger more standard single family lots are around the perimeter and back up against the existing developed single family units.

The other item that has been discussed is that there is a strip of land along the western boundary that is 20 ft. wide that is being offered to the adjoining property owners so they can expand their rear yards. There has been some encroachment into this field from those properties because they have small, narrow backyards. Thus the developer is offering that option. Staff is concerned that there is not a "jigsaw puzzle" along that back line. So if a majority of the owners are interested in buying those little strips of land, then we can go forward with that plan. If there is no agreement, then that area will be re-platted as part

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of these lots. There are concerns with soils issues that have been brought forward. There is high ground water in this area so there will have to be adjustments to the design standards for water, sewer and streets to assure those construction issues are accommodated. Director of Public Works Wright will be working with the developer to make sure that issue is addressed. There is a detention pond on the site which drains the school and this area. That detention pond will be expanded to accommodate this development. This will only be a detention pond and it will not hold water, so it will drain off. The Home Owners Association will be responsible for that pond and it will be maintained appropriately. Recently, the discharge pipes in that pond have plugged up. So that has been an issue in that area because the pond did not drain the way it should have.

The Planning and Zoning Commission reviewed this proposal at their March 28, 2016 meeting and unanimously recommended approval. Pending the outcome of this public hearing, the final plat is scheduled at the Planning and Zoning Commission meeting and if recommended for approval, it will come before the City Commission for final approval on May 3, 2016 along with the second consideration of this ordinance. Planner Decker reviewed items for consideration regarding this proposal. It was recommended to approve this ordinance as proposed.

Mayor Van Beek announced this is a public hearing and invited anyone to come forward to speak for or against the request to approve of the first consideration of Ordinance No. 1239 creating PUD District 2016-02 for Ash Grove Estates Addition.

Mathias Gieser, Trident Court Northwest Mandan, north of the Red Trail Elementary School came forward to speak. He stated he is representing a number of residents from that area. Sixty plus signatures have been gathered in opposition of this project with the main intent to keep it zoned as R-7. No one is opposed to Verity Homes building there, but it definitely needs to remain R-7. Using the PUD as a scapegoat is not what the residents expected when building and moving to that area. The expectation was that there would be single family homes with a nice area for the children to ride their bikes up and down the sidewalks, etc. He said his understanding of the (City) code is that the City does not have a legal obligation to rezone this area to PUD. The only legal obligation is to allow the developer to build in R-7 and the developer's request can be heard to rezone as a PUD. But the R-7 is what it is today. That's what it was by default when the area was annexed, and that is what all the residents believed it would be when they moved to that area. The school is already overflowing. This land is not sold; this is condition of sale, like Planner Decker has brought up before. Having 56 homes at 2 children per household equals 112 children at that school, many of which who are not going to school there (due to enrollment capacity). Some of the children are going to Lewis and Clark.

Mr. Gieser said that his daughter came home from school today with a letter stating that she will be attending Roosevelt School next year. She will not go to Red Trail Elementary. She went there for her first year. She is in early childhood education, she has autism. Change is very tough for those children. That is not an issue before this Commission today, but it is something the Commission should think about when making this decision.

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The (rezoning) would be inconsistent with the surrounding neighborhoods. The RM zoned to the southwest is convenient for this project. There are only 2 twin homes in there, for a total of 4 homes. The rest of the homes are sizable single family homes. There is no reason they should be RM today, but it is what it is. This is a chance to set the course in that area. It is “patchwork” zoning there. You have commercial, industrial, residential, and manufactured. These homes should be built, but preferably to the west of the area where Verity Homes has already built single family homes and other existing twin homes. A concern with these homes is that some of the lots are only 25-30 feet wide. Parking will be at a minimum for vehicles that will be in that area and wider lots will be needed for parking purposes.

Regarding the retention pond that Planner Decker spoke about, the residents that are directly adjacent to that are very opposed to it. There are evident water issues that exist in that area and it is designated as a swampland by the USGS. The road is not meant to be a dam. The drain tile installed is insufficient because the resident’s sump pumps are running constantly. There have been emails going back and forth between residents and Planner Decker and there is a misunderstanding that Verity is going to sell all these homes. Verity is renting these homes in Bismarck at \$1,600 because he cannot sell them all. That is not affordable housing. On behalf of the residents, he said that they moved there specifically because it was single family housing and that is the way they expect it to stay.

Arthur Goldammer, Verity Homes, came forward and brought photos to show of the project he is proposing. He provided clarification of concerns brought up by Mr. Gieser. He said that notifications were sent to adjacent property owners pursuant to the City of Mandan requirements of notification. A meeting was held and there were some people who had questions and the majority of the individuals talked to support the project. Most of the resistance came from opposite sides of the school. He said that this will be offered as a for-sale community. With regard to the water and sewer issues, a representative from Swenson, Hagen & Company is present to address those issues and explain what will be done to mitigate some of the water issues that are currently there. He said they will be taking adequate construction steps to the footings and basements to those homes. He said that Verity Homes is the only developer in the City that offers a 10-year warranty on their product. They stand behind their product.

Parking requirements will be met pursuant to City Ordinance and the lots for the twin homes do comply with the R3.2 zoning district. The R7 zoning that it is currently there occurred when the school platted it and brought it into the City because it had been zoned agricultural. Regarding the school overflow concern, Goldammer stated he has spoken with various members of the Mandan School District and this area will not impact where students will attend school. The Mandan School District allocates their school district boundaries however they do it, and by adding 40 or 60 homes will not impact those boundaries. Concerning the nearby zoning, there are modular homes in this area and there are single family, twin, industrial and commercial which is normal in any city zonings. At this time Goldammer presented photos of the proposed project. He said these are homes are similar to those currently existing in Mandan, Bismarck and Lincoln.

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He mentioned that they have the approval of the City staff support as well as the Planning & Zoning Commission.

Commissioner Tibke asked Goldammer how they will mitigate the water concerns in that area. Landon Niemiller from Swenson and Hagen came forward and stated that any storm water management plan has to be approved by the City of Mandan. So the City's engineers will look at the plan to make sure compliance is met. There is an existing pond in that area now and they are expanding it to deal with the additional runoff from the project and the pipes will be cleaned out. Regarding the R7 zoning, there is multi-family residential zoning to the south and that is single family housing in that area. But there are also mobile home parks, CB, RM, all in this area. R7 and PUD are close in square footage.

Arthur Goldammer came back up before the Commission and stated that basements will be optional where they can be, depending on soil. Price point will be from \$179,900 for a 3 bedroom with 2.5 baths, at 1,550 sq. ft. for the twin homes going up to \$300,000 for single family homes.

Commissioner Rohr had a question about the "U-shaped" street. If there is a heavy snowfall, how will that be to remove that snow without blocking the driveways or will the city be expected to remove snow beyond the resources available? Can that street be maintained if there is heavy snowfall? Goldammer replied that with tighter subdivisions there is less room to pile the snow and both Mandan and Bismarck have struggled with areas similar to this when having to remove snow. He said that Bismarck has recently purchased the snow gates for the plows to help in that regard. Commissioner Rohr commented that with the snow gates they are costly to purchase, they breakdown, and increases the amount of time that the maintenance crew has to use to set up. He does not feel that is an option.

Planner Decker stated that Director Wright and Director Froseth have discussed this issue and if there is a major snow event, then some snow may have to be hauled out. But that would occur in any subdivision where there is a high accumulation of snow. The street design is minimally less than the standard. It will be a 3-lane with 2 lanes driving and one lane of parking. Parking will be on one side so one side of the street would be plowed up to the driveways. So there will be parked cars on only one side of the street to plow around.

Mathias Gieser returned to the podium and presented a document that had several resident signatures on it. He directed the Commission's attention to "Lewis Road Northwest" in which there were signatures from 25 residents on Lewis Road. He said these people are all opposed to this project. They are not present at today's meeting due to many conflicts allowing them to attend in person. However, they have signed this document and have requested that Mr. Gieser represent them in this protest. Mr. Gieser commended the City's Public Works crews on the great job they do with the angled scrapers for snow removal. He concurred with Commissioner Rohr's concerns about snow removal, stating that it will most likely be a concern.

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Mr. Niemiller from Swenson and Hagen, returned to the podium and clarified that with a 31 ft. wide road, that actually increases the boulevard size by about 3.5 ft. on each side of the road so that will provide additional snow storage. Planner Decker explained that the sidewalk is against the property line so there is a grass area between the curb and the sidewalk.

Frank Leingang, home owner at 5006 39<sup>th</sup> Avenue Northwest, came forward and stated that Verity Homes is capable of building homes. But he disagrees with the architectural look of the homes wherein looking at the home, you see a garage with the front door somewhat hidden. The original design for this area was for 30 homes and now it will be 56-57. Traffic will be increased because of the school in that area. He does not want to see any more families moving to this area than was originally anticipated. He would like this project included within the special assessment district for the Old Red Trail Road because it will affect them as well. He believes that if this project is approved, there should be a re-assessment done of that subdivision for special assessments for Old Red Trail. Director Froseth clarified that assessment is within the Old Red Trail district.

Daryl Keller, 3808 Lewis Road, came forward and stated that he bought his home in that area knowing that it is single family homestead. Secondly, the school is overflowing. He moved there so his children can attend that school and adding several more children will create more overflow.

Mayor Van Beek provided a second announcement inviting anyone to come forward to speak for or against the project.

Mathias Gieser came back to the podium and stated: “To rezone this so quickly is to say that people are not doing their job and these commissions are just here for the developers to talk to. We expect things, they expect things. It seems pretty one-sided. If you rezone this you will alienate a lot of people up there.”

Mayor Van Beek provided a 3<sup>rd</sup> and 4<sup>th</sup> announcement inviting anyone to come forward to speak for or against this project. Hearing none, this portion of the public hearing was closed and the Commission moved to Resolutions and Ordinances No. 3.

F. BIDS:

1. *Consider award of bid and approving Resolution Approving Contract and Contractor’s Bond for Street Improvement District No. 201, Project 2015-11 (Meadowlands Addition).* Planning & Engineering Director Froseth stated this is a request for the award of bid and approval of Resolution Approving Contract and Contractor’s Bond for Street Improvement District No. 201, Project 2015-11 (Meadowlands Addition). He stated that two bids were received on 4/5/16 for the project. Mariner Construction submitted the low bid in the amount of \$428,523.00. The Engineer's estimate was \$477,321.50. The low bid is 10% below the engineer’s estimate. The project will be paid for by special assessments from the benefiting properties within the district. The construction cost of the project is \$428,523.00 plus the engineering and administrative cost of \$149,983.05 for a total project cost of \$578,506.05.

The special assessments will be assessed to the benefitting property. There are 35 acres in this special assessment district which brings the amount to be assessed to an estimated \$0.38 per square foot. It was recommended to approve the bid award to Mariner Construction the low bidder in the amount of \$428,523.00 and approve the Resolution approving Contract and Contractor's Bond.

Commissioner Laber moved to approve the award of bid to Mariner Construction the low bidder in the amount of \$428,523.00 and approve the Resolution Approving Contract and Contractor's Bond for Street Improvement District No. 201, Project 2015-11 (Meadowlands Addition). Commissioner Rohr 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.

#### G. CONSENT AGENDA

1. *Consider approval of monthly bills.* MERCHANTS BANK EQUIPMENT - 14,987.91; MONTANA-DAKOTA UTILITIES - 22,636.44; ADVANCED ENGINEERING SVC - 709.05; ALBRECHT/KENNETH - 10.50; BANK OF NORTH DAKOTA - 141,196.13; BIS-MAN CONVTN & VISITOR - 5,070.57; BLH, INC - 3,700.00; BURLEIGH COUNTY SHERIFF - 3,814.21; BUTLER MACHINERY COMPANY - 17,666.00; CENTRAL MECHANICAL INC - 59,735.00; FRIED'S FLOORING INC - 353.00; FRIESZ/DUANE - 10.50; GRAYMONT CAPITAL INC - 12,448.91; HORST/VIRGIL - 6,806.25; KS STATEBANK - 11,766.77; L. BARTCH PROPERTIES LLC - 30,000.00; MANDAN PARK BOARD - 2,500.00; MB HOMES - 68.20; MID AMERICA STEEL INC - 1,275.00; MISSOURI VALLEY PETROLEU - 12,932.88; MORTON COUNTY AUDITOR - 8,507.19; MORTON MANDAN PUBLIC LIB - 2,229.50; MUNICIPAL CODE CORPORATI - 540.00; ND STATE DEPT OF HEALTH - 640.00; ND WEED CONTROL ASSOCIAT - 275.00; NORTHERN PLAINS EQUIP CO - 33,868.23; PRESORT PLUS - 2,448.86; ROUGH RIDER INDUSTRIES - 1,916.15; R8PA - 390.00; STARION BOND SERVICES - 6,141,985.20; SUTER/JAMES - 10.50; TOMAN ENGINEERING CO - 3,400.50; ADVANCED ENGINEERING SVC - 42,888.51; BERBERICH DESIGN - 11,277.90; BROOKE/PATRICK - 75.00; C S DOORS INC - 130.43; D & F TELEPHONE - 35.00; EDLING ELECTRIC INC - 19,660.80; ETHANOL PRODUCTS - 980.27; FETZER ELECTRIC, LLC - 2,123.85; HACH COMPANY - 832.99; HDR ENGINEERING, INC - 1,659.98; HUB INTERNATIONAL OF ND - 170.00; HUBER/ELLEN - 125.35; KADRMAS, LEE & JACKSON, - 5,245.87; LEWIS & CLARK REG. DEV C - 53,389.00; MANDAN PARK BOARD - 500.00; NDSU - 400.00; TOMAN ENGINEERING CO - 14,653.50; TREEBIZ - 2,074.00; VAULT1440, LLC - 1,875.00; MONTANA-DAKOTA UTILITIES - 35,137.04; AT & T - 762.34; BALABAN LAW OFFICE - 1,500.00; BLH, INC - 1,100.00; CENTRAL MECHANICAL INC - 6,935.00; COMPANION LIFE - 10.00; DAKOTA MEDIA ACCESS - 9,704.00; FORT DEARBORN LIFE - 1,741.19; GLASS/THOMAS J. - 1,500.00; KADRMAS, LEE & JACKSON, - 3,239.08; KELSCH KELSCH RUFF & KRA - 4,000.00; MANDAN PARK BOARD - 500.00; MORGAN/ROBERT - 1,310.00; ND PERS - 110,688.34; POST BOARD - 295.00; SCHLOSSER EXCAVATING INC - 2,164.00; WELLS FARGO COMMERCIAL C - 130,622.70; MISSOURI VALLEY COALITIO - 50.00; POST BOARD - 45.00; ARMSTRONG SANIT & ROLL O - 97,116.80; BENCO EQUIPMENT CO - 42,922.00; BERBERICH DESIGN - 7,822.25; BIS-MDN TRANSIT BOARD - 1,915.94; BISMARCK MAYOR'S COMMITT - 850.00; BLACK BOX NETWORK SERVIC - 239.00; BOERGER, LLC - 2,985.46; CBI BUSINESS SERVICES - 7,437.91; COMPUTER PROFESS UNLIMIT - 93.00; CROWLEY FLECK PLLP - 4,500.00; CUSTER DISTRICT HEALTH U - 1,075.00; DAKOTA SANITATION, INC -

33,188.45; ERGOMETRICS - 500.00; ETHANOL PRODUCTS - 560.97; GLENCOE GUN CLUB - 840.00; HUB INTERNATIONAL OF ND - 454.00; INFORMATION TECHNOLOGY D - 613.30; INTERGOVERNMENTAL SHOP - 6,057.86; LASER SPECIALIST INC. - 40.00; LEYER/GERMAINE - 400.00; MANDAN AIRPORT AUTHORITY - 3,832.02; MANDAN MUNICIPAL COURT - 1,720.00; MANDAN PARK BOARD - 2,000.00; MISSOURI WEST WATER SYST - 81.62; MORTON COUNTY AUDITOR - 4,133.42; MORTON COUNTY RECORDER - 13.00; MORTON MANDAN PUBLIC LIB - 23,935.53; MY GOV, LLC - 1,050.00; ND DEPT OF TRANSPORTATIO - 15,248.00; ND STATE DEPT OF HEALTH - 0.00; ONE CALL CONCEPT INC - 132.30; PCS MOBILE - 10,862.98; PHAT BROTHERS BAKERY, IN - 625.00; POST BOARD - 45.00; PRESORT PLUS - 3,918.95; RAZOR TRACKING - 425.00; SANFORD BISMARCK - 75.00; SCHLOSSER EXCAVATING INC - 967.00; SIMPLEXGRINNELL - 580.38; SKEELS ELECTRIC CO - 1,323.90; ST. ALEXIUS MEDICAL CENT - 624.00; STARION BOND SERVICES - 10,771.75; VOGELPOHL/STEVEN L - 11,306.45; WEHRI/RADEANNA - 300.00; POST BOARD - 45.00; MONTANA-DAKOTA UTILITIES - 19,058.61; ADVANCED ENGINEERING SVC - 45,195.65; BANK OF NORTH DAKOTA - 96,872.61; BIS-MAN CONVTN & VISITOR - 4,373.96; BOB'S CUSTOM SERVICES - 315.00; COAST TO COAST OFFICE MA - 1,129.01; D & F TELEPHONE - 297.50; HUB INTERNATIONAL OF ND - 50.00; KEY'S CRANE SERVICE - 180.00; MANDAN PARK BOARD - 116,620.28; MORTON COUNTY AUDITOR - 4,503.99; ND STATE DEPT OF HEALTH - 10.00; SIMPLEXGRINNELL - 171.32; STARION BOND SERVICES - 42,621.42; ULTRAMAX - 4,392.00; WILLIAM E. YOUNG CO., IN - 3,825.00; YOUNG/AGLAE - 342.00.

2. *Consider approval of the following proclamations: (i) Bike to Work Week (May 16-20) & Bike to Work Day (May 20); (ii) Dacotah Lions STRIDES Walk for Diabetes – May 15, 2016; (iii) National Music Week – May 1-8, 2016.*
3. *Consider Employer Participation Agreement in the North Dakota Public Employees Retirement System Law Enforcement Retirement Plan.*
4. *Consider approval of Special Sunday Openings at the Mandan Moose 425 on May 15, July 3, and June 5, 2016.*
5. *Consider approval of the following Site Authorizations for the American Foundation for Wildlife from July 1, 2016 through June 30, 2017: (i) Lakewood Bar & Grill; (ii) Last Call Bar.*
6. *Consider approval of the annual Liquor License, Special B Liquor License Permit and Special Sunday Permits for Dacotah Speedway from May 1, 2016 through Oct. 31, 2016.*
7. *Consider approval of Site Authorizations for Mandan Baseball Club, Inc. from July 1, 2016 through June 30, 2017: (i) Powerhouse/501; (ii) Rock Point; (iii) Broken Oar.*
9. *Consider Architectural Services contract with EPIC Engineering for the Public Works Expansion Project.*

Commissioner Laber moved to approve Consent Agenda items 1-7 & 9 as presented, excepting item No. 8 to be removed for further discussion. Commissioner Rohr 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.

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Consent Agenda Items removed for discussion:

8. *Consider ballot language related to publishing the minutes of City Commission meeting.* Commissioner Laber stated that it appears that it costs \$500-\$600 to publish the Commission meeting minutes in the paper. She inquired if it could be published online in lieu of paper or can it be put in the ballot language such as that a “yes” vote says yes we want it in the paper and a “no” vote means it will not be in the paper anymore and that it will be offered on line. Can it be done paperless and less expensive, more available? City Attorney Brown stated that this is the first time that has been brought up to him, and he can research to see what the statute says. He doubts that online would be an equivalent of publication in the designated newspaper. He recommended approaching the legislature to request that as an alternative. Commissioner Tibke voiced concern that if a resident does not have web services and wishes to purchase the Mandan News for the information. City Administrator Neubauer commented that the City previously attempted drafting ballot language saying do you support publishing the minutes of the Mandan City Commission in the official newspaper - last year it cost the city “x” thousands of dollars. You can’t ask that question that way according to century code. That’s why it has to be very generic in how you ask that question. Do you want it published or not.

Commissioner Laber moved to approve Consent Agenda Item No. 8. 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.

H. OLD BUSINESS:

I. NEW BUSINESS:

1. *Consider recommendations from Mandan Growth Fund Committee.* Business Development & Communications Director Huber presented the following:  
(i) *Application for Restaurant Rewards sales tax rebate and interest buy-down program.* This is a recommendation from the Mandan Growth Fund (MGF) Committee to consider approval of the Restaurant Rewards Program application form. She provided a brief overview of what has transpired thus far in this matter. At the April 5, 2016 meeting the City Commission approved a recommendation from the MGF Committee to establish a Restaurant Rewards incentive program for new and expanding enterprises. The program has two components: a five year rebate of the 1% local sales tax, which is the tax that can be used for economic development, and the allocation of \$162,000 in the Growth Fund to be used on a first-come, first-serve basis for the local match for the Flex PACE interest-buy program with the allowance that this local share can be provided in the form of a forgivable loan rather than the typical repayable loan.

The MGF Committee met April 14, 2016, with agenda items including the review of a draft application for this new incentive tool. The MGF Committee voted to recommend approval of the application, noting one area of clarification. The area of ambiguity was coffee shops or other formats which might mix food service with another enterprise. Rather than single out only liquor establishments, the MGF Committee voted to recommend adding an eligibility clarification that at least 50% of sales must come from

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prepared food, noting that the intent is to have more businesses serving prepared food. That would apply to a bar and grill entity as well. If approved, the program description should be revised accordingly. There was also discussion about requiring verification of prepared food component that provisions of the rebates on an annual basis would be best versus quarterly. The adjustment to the plan of the rebate being provided annually, rather than quarterly, is also noted in the proposed revisions to the program overview and would be noted in any recipient agreement. The fiscal impact of the sales tax rebate and interest buy-down program was addressed during the program approval at the April 5, 2016, meeting. The sales tax rebate has no direct cost, only a potential indirect cost under the following assumptions:

- (1) That the new or expanded restaurant(s) would come without the incentive and therefore generate the sales tax dollars anyway that could then be applied to the general fund to reduce property taxes.
- (2) The sales tax rebate would have an unfavorable impact on property taxes, which would occur only if there was a need to increase the City's budget as a result of a restaurant opening or expanding. The Restaurant Rewards Sales Tax Rebate & Interest Buy-Down Incentive Program was presented via a 2-page document. The contents of the document included the following components: (i) Program Overview (ii) Program Structure & Benefits including the outlines for the Sales Tax Rebate and Interest buy-down (iii) Eligibility (iv) Conditions (v) Application Process (vi) Implementation Procedures.

Director Huber recommended approval of the proposed Restaurant Rewards application and revisions to the program as presented.

City Attorney Brown stated that the restaurant alcoholic beverage license requires food sales to be equal to alcohol sales or 50%. So this request is consistent with our current licensing policy on restaurants.

Commissioner Braun moved to approve the Restaurant Rewards Application and revisions to the program overview as presented. 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.

*(ii) Clarifications and modifications to the Retail and Restaurant Incentive Program requirements.* This is a request from the Mandan Growth Fund (MGF) Committee to consider a recommendation for the clarifications to the Retail and Restaurant Incentive Program. This Program was first approved and established in 2010 and modified in 2011. The program provides a stipend of up to \$5 per square foot of operating space during the first year of operation for qualified retail and restaurant businesses that fill a gap in the community's market profile. The program is capped at \$20,000 per project.

The MGF reviewed program guidelines and eligibility criteria at its April 14, 2016, meeting and recommended two substantive clarifications and just some minor clean-up language. The substantive clarifications are:

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- (i) That the application must have final approval from the MGF Committee and Mandan City Commission prior to the business opening (or expanding);
  - (ii) That the list of retail preferences (Exhibit A) be modified similar to the proposal for the Restaurant Rewards Program recommendations to indicate that a restaurant business is defined as having 50% or more of its revenue generated by prepared food sales (as compared to sales of beverage or other non-food items). Director Huber recommended approval of the proposed clarifications and modifications to the Retail and Restaurant Incentive Program requirements as presented. Commissioner Laber moved to approve the Clarifications and modifications to the Retail and Restaurant Incentive Program requirements. 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.

2. *Consider visitor way-finding sign recommendations including design, locations, destination listings and issuance of a request for bids.* Business Development & Communications Director Huber presented a request to consider a recommendation for the Ad Hoc Visitors Wayfinding Sign Committee for the design, locations and destination messaging for the visitor way-finding sign project and to issue a request for bids for sign fabrication and installation. The purpose of the proposed signs is to provide direction to visitors for various attractions and destinations as to provide a sense of community branding and character. The City Commission at its Dec. 1, 2015 meeting approved up to \$250,000 for this project to include design and engineering fees as well as sign fabrication and installation. The money was approved from the Visitors' Promotion Fund that is generated with the 1% city restaurant and lodging tax. Visitor promotion funds must be used in accordance with N.D. Century Code 40-57.3-02 for "tourism or the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion".

The Commission approved of the formation of an ad hoc committee that will assist with various components of the project. The Committee consists of: City Commissioner Braun, Brian Dehnert from the Community Beautification Committee, Melissa Frohlich from the Leadership, Pride & Image Committee, Miles Melhoff from the Mandan Architectural Review Commission, Lee Pierce from the Visitors Committee, City Administrator Neubauer and City Business Development & Communications Director Huber. Director Huber provided the signage proposed on the overhead. The consultants providing the design and engineering services for this project as approved in a contract by the City Commission at its Dec. 15, 2015, meeting are provided by Berberich Designs and Kadrmas Lee and Jackson.

The ad hoc committee has met 3 times on this project and soon realized that, because of the NDDOT constraints, more signs will ultimately be needed than originally envisioned, the new signs are generally smaller and simpler, but need to be greater in number as compared to the existing way-finding signs. The committee prioritized and recommends the initial 24 locations shown in the packet along with design and destination listings presented. A Phase II project could be considered pending future funding. Berberich

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Design has received tentative approval of the package to date from the NDDOT with final approval to come once the package is bid out and the fabricator produces engineered shop drawings that are signed and stamped by a professional engineer.

The proposed sign design package was presented to the Mandan Architectural Review Commission (MARC) at its April 12, 2016 meeting. MARC consensus was that the sign policy allows for the project to be exempt from permit because the signs are for roadways and will be placed in the public right-of-way. They are also directional and instructional, without commercial advertising. MARC members did express some reservation about the use of cedar posts. The sign policy has sections that reference support posts being made of non-flammable material. Building Official Doug Lalim indicates flammable materials are allowed by building code up to a height beyond the proposed sign height. MARC will review policy in the coming year for inconsistencies and clarifications. The consultant recommended bidding the project with both post options. The tentative timeline was presented. But due to the magnitude of the project, it needs at least a 21-day bid period. This would take the bid opening to May 13<sup>th</sup> rather than the 12<sup>th</sup> that it had originally been listed as. It would need publication in a daily newspaper, in addition to the Mandan News. There were some revisions to the bid documents as well. The signs would be in 24 locations. The informal Engineer's estimate is \$100,000-\$125,000. There are maps available showing the location of the signs and what will be on each of those signs. There could be a potential phase 2 improvement to this project but that has not been decided at this time. The ad hoc Visitors Wayfinding Sign Committee recommends approval of the design package as presented and to issue a request for bids.

Commissioner Labor indicated that she doesn't agree to recommend bidding the project with both post options. She thinks that if the NDDOT is okay with the cedar options, (which is clearly the lower cost option), and it goes along with the other Wayfinding signs that we presently have, then it may not be necessary to require a metal bid design as well.

Commissioner Labor moved to approve the visitor way-finding signage project design with the cedar postings, locations, and destination messages as presented and to authorize issuance of a request for bids. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Labor: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for Water & Sewer Improvement Project 2016-10 Big Sky Additions (Jude Lane NW).* Planning & Engineering Director Froseth presented a request for the authorization of the installation of water and sewer for the development of the project area. This area is located at Jude Lane Northwest and is located north of Old Red Trail Northwest and west of Sunset Drive Northwest. The proposed utilities will serve the developer of the benefiting land. Therefore, this will be paid for by the developer. The Engineer's office has not received a letter of credit therefore it is recommended to approve the 3-way agreement contingent on receiving the letter of

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credit. The entire cost of the project will be paid by the developer as part of the 3-way agreement. Director Froseth recommended approval of the project as presented.

Commissioner Rohr moved to approve the resolution approving the plans and specifications and authorizing execution of 3-way agreement for water and sewer improvement Project 2016-02 (Big Sky Additions (Jude Lane NW), contingent on receiving letter of credit. 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.

4. *Consider approving the Resolution approving Plans and Specifications and Resolution directing advertisement for bids for Street Improvement District No. 206, Project No. 2016-07 (Big Sky Additions).* Planning & Engineering Director Froseth presented a request for the authorization of a resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 206, Project No. 2016-07 (Big Sky Additions). He said that the City Commission approved on 3/1/16 the Resolution creating district, Resolution approving Engineer's Report, Feasibility Report, and Resolution of Necessity. On 4/5/16 the Commission approved the Resolution determining insufficiency of protest. This is a request for the approval of the plans and specifications and approval to advertise for bids for this project. A timeline of events will include the bids to be opened on 5/10/16 and awarded 5/17/16 with substantial completion of the project anticipated on or before 10/16/16. The base construction cost of the project would be \$936,800.12, engineering, administration, and contingency is estimated to add \$327,880.04, bringing the total to \$1,264,680.17 (\$26,076 per unit). Director Froseth recommended approving the resolution approving plans and specifications and approving the resolution directing advertisement for bids for Street Improvement District 206, Project 2016-07(Big Sky Additions) as presented.

Commissioner Laber moved to approve the resolution approving plans and specifications and to approve the resolution directing advertisement for bids for Street Improvement District No. 206, Project No. 2016-07 (Big Sky Additions). Commissioner Rohr 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.

5. *Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for Water & Sewer Improvement Project 2016-02(West Hills Estates 4<sup>th</sup> Addition).* Planning & Engineering Director Froseth presented a request for the authorization of the installation of water and sewer for the development of the area located at the West Hills 4th Addition plat and is located north of Old Red Trail Northwest and west of 40th Avenue Northwest. The proposed utilities will serve the developer of the benefiting land therefore it will be paid for by the developer under a 3-way agreement. The Engineer's office received a letter of credit today. The entire cost of the project will be paid by the developer as part of the 3-way agreement. The Engineer's office recommends approval of this project as presented.

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Commissioner Laber moved to approve the resolution approving the plans and specifications and authorizing execution of 3-way agreement for water and sewer improvement for Project 2016-02 (West Hills 4th Addition). Commissioner Tibke 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.

6. *Consider approving the Resolution creating district, approving Resolution approving Engineer's Report, approving Resolution of Plans and Specifications, approving Resolution determining sufficiency of petition, approving feasibility report and Resolution directing advertisement for bids for Street Improvement District No. 203, Project No. 2016-03 (West Hills Estates 4<sup>th</sup> Addition).* Planning & Engineering Director Froseth presented a request to create and allow the assessments of specials related to, authorize the required paperwork for the requested project, and allow for the project to be bid. The developer has requested that the City allow the special assessment of street costs to the benefitting properties for the development of West Hills Estates 4th Addition. Based on the estimate of cost included with the documentation, the cost of the project would be \$415,868.40; engineering and administration will add \$145,556.94, bringing the total to \$561,422.34. These items would be entirely special assessed to the benefitting properties. There are 19 lots within this special assessment district which would equate to approximately \$29,548.54 per lot in special assessments for this subdivision. The Engineer's office recommends approval of this project as presented for advertising for bids.

Commissioner Braun moved to approve the Resolution creating district, approve Resolution approving Engineer's Report, approve Resolution of Plans and Specifications, approve Resolution determining sufficiency of petition, approve feasibility report and approve Resolution directing advertisement for bids for Street Improvement District No. 203, Project No. 2016-03 (West Hills Estates 4th Addition). Commissioner Tibke 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.

7. *Consider amendment to the Joint Powers Agreement between Mandan Park District and City of Mandan.* City Administrator Neubauer reviewed with the Commission a proposed amendment to the Joint Powers Agreement (JPA) between the City of Mandan and the Mandan Park District related to the financing of the Starion Sports Complex. He stated that a newly revised amendment to the JPA that was discussed just today, is being suggested in order to outline what would occur in the event that collections from the .75% sales tax are, at any time during the term of the revenue bonds insufficient to pay as and when due payments on said revenue bonds, the Park District acknowledges that it would be responsible for the funds required to pay any deficiency and that the following sources shall be used to make up any deficiency. The Park District shall have the option to request refinance of the revenue bonds, if feasible and appropriate. If the revenue bonds cannot be refinanced, the Park District shall make up any deficiency from any and all sources available to it, including, but not limited to, the following:

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(a) Any surplus sales tax collected funds;

(b) Subject to appropriation, the Park District covenants and agrees to include as required in the Park District's budget such additional amounts as are necessary to pay principal and interest on the bonds to the extent not paid from the sales tax. Such appropriation may be from any legally available source, including, but not limited to, state aid distributions, general fund tax levy, and facility revenues, and;

(c) The sales tax bond reserve fund.

This is an effort to make sure the City of Mandan is protecting ourselves in case there is a shortfall in the  $\frac{3}{4}$  cent sales tax collections. It is the city's decision on whether to refinance bonds if there looks like there may be a shortfall or not. It is still the Commission's call.

Commissioner Tibke stated that the group has been working diligently on this matter over the last few weeks and voiced concern that due to the work involved, there should not be any misunderstandings between the City of Mandan and the Park Board of the agreement and this should strengthen the contract.

The City's financial underwriter Mike Manstrom and Bond Counsel Scott Wegner have indicated this will only serve to strengthen the rating of the bonds and potentially provide a more favorable interest rate.

Commissioner Braun moved to approve the amendment to the Joint Powers Agreement (JPA) between the Mandan Park District and the City of Mandan. Commissioner Rohr 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. *First consideration of Ordinance No. 1237 amending and re-enacting Chapter 16, Article 4 of the Mandan Municipal Code related to the Emerald Ash Borer and Dutch Elm Disease.* Director of Public Works Wright presented a request to amend the Mandan Code of Ordinances related to the Emerald Ash Borer and Dutch Elm Disease. He explained that the Emerald Ash Borer is a destructive insect that is migrating across the country and has been found in nearby states. The Emerald Ash Borer is a public nuisance that attacks and eventually causes the death of ash trees. The proposed changes to the municipal code identify the insect as a public nuisance and give the City Arborist authority to deal with any infestation that is discovered. Planting or selling ash cultivars susceptible to the Emerald Ash Borer was listed as a violation. A list of susceptible ash cultivars will be provided on the City web site if this ordinance is approved. Edits were also made to the language related to Dutch Elm disease. These edits included minor word revisions and listing the planting or selling of an American Elm or Siberian Elm as a violation. Violations of this article are infractions with a maximum penalty of \$1,000. The Community Beautification Committee voted on February 11, 2016 to approve this ordinance. City staff has reviewed and is recommending approval, as well.

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Commissioner Laber moved to approve the First consideration of Ordinance No. 1237 amending and re-enacting Chapter 16, Article 4 of the Mandan Municipal Code related to the Emerald Ash Borer and Dutch Elm Disease. 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.

2. *First consideration of Ordinance No. 1238 creating PUD District 2016-01 for Lakewood 8<sup>th</sup> Addition First Replat.* Commissioner Tibke moved to approve the First consideration of Ordinance No. 1238 creating PUD District 2016-01 for Lakewood 8<sup>th</sup> Addition First Replat. Commissioner Rohr seconded the motion.

Commissioner Laber stated that there were many emails and she personally received telephone calls from people who were not as happy that this area was being re-platted with twin homes and a design. She believes Verity Homes did a good job of responding to the matters that were of concern from the developer side. She also indicated that Planner Decker responded to matters that were related to the City's position. She said that communication apparently was well received or communicated because there are not many people here at this meeting who spoke at the public hearing. She said that when this is before the Planning and Zoning for the final approval, (should there be any more concerns at that time), that we continue addressing those concerns for the neighborhood. Planner Decker clarified that both projects are looking at the same style of housing. Many of the emails and concerns received were of the larger project which is the second Public Hearing. However, they are the same type of units so it's the same smaller unit on a smaller lot).

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

3. *First consideration of Ordinance No. 1239 creating PUD District 2016-02 for Ash Grove Estates Addition.* Commissioner Tibke requested information from Commissioner Laber as to what transpired at the Planning and Zoning Commission (P&Z) meeting when this matter was discussed. Commissioner Laber stated that both she and Mayor Van Beek sit on the Planning and Zoning Commission. She said that Verity Homes had meetings with the neighbors and they presented a PUD district that appeared to meet what P&Z was looking at for affordable housing. Affordable housing is a price point in the \$200,000 range that a median income wage earner can afford to purchase. No one came forward at that meeting to speak in opposition to the project. She would like clarification from Planner Decker about noticing adjacent landowners with regard to changes in zoning.

The PUD was passed and there were communications received where they were against it. But that happened subsequent to that initial meeting. Planner Decker stated that 110 letters were sent out to the neighbors for both the Planning & Zoning Meeting and again for this meeting. The typical standard is 300 ft. from the property subject to rezoning.

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However, Nancy in Engineering goes 400-450 ft. beyond the project to identify those parcels. Notices were also published in the paper twice for each meeting. They were published approximately 1- 2 weeks prior to each meeting.

Commissioner Laber inquired if there is a statutory regulation? Planner Decker said that technically the city does not have to send any notices per state law. He said there were no responses in opposition, and there was one neighbor who showed up in support of the project because he was concerned about the drainage issue.

Commissioner Tibke commented that affordable housing is important noting she understands the neighbor's concerns. Planner Decker stated that one of the requirements in the zoning code is the establishment of a minimum lot size of 7,000 sq. ft. But the code also references the old lots as small as 5,000 sq. ft. are acceptable. They recognize that the older subdivisions had smaller lots. A twin home can be built on half the lot of a single home. So you save the lot cost which can be put into the value of the house. We have a standard that does not give us that small lot option. For affordability we need to broaden the options and that is the intent here is to come up with additional options and this is a mix of different unit sizes in order to spread that market.

Commissioner Tibke inquired about how PUD came up in this project. Planner Decker stated that one of the reasons for using the PUD option is because of the current standards within our zoning code. We do not have a small lot option built into our code and the only way to modify that is to use the PUD option. Previously, a "restricted" option was used and the PUD is a more formal way of doing that. It will only be used for specific projects. We are not going to use this for every project and we will be looking at revising the code to allow for standard zones that reflect the PUD zoning. This will encourage single family development in order to improve affordability. These are not large adjustments; these are tweaking the standards to allow for this type of units.

Commissioner Laber was somewhat shocked to see that 25 landowners that live on Lewis Road, which is directly adjoining the project property, are half the people who are somewhat not in favor of this project. She wondered if the people did not get notice or why they did not speak up at the Planning and Zoning Commission meeting. She also is concerned about the water issues that have been brought up. She recommended sending this First Consideration back to Planning and Zoning for consideration to have it properly noticed; to allow the people who want to speak to come forward; and to really review that storm water management program to make sure that with the type of house that they are going to build and the density they are going to build, that Public Works can effectively manage it.

Commissioner Laber moved to send the First consideration of Ordinance No. 1239 creating PUD District 2016-02 for Ash Grove Estates Addition back to the Planning and Zoning Commission for rehearing. 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.

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K. OTHER BUSINESS:

There being no further actions to come before the Board of City Commissioners, Commissioner Braun moved to adjourn the meeting at 7:00 p.m. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present. The motion passed.

/s/ James Neubauer

James Neubauer,  
City Administrator

/s/ Arlyn Van Beek

Arlyn Van Beek,  
President, Board of City  
Commissioners