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The Mandan City Commission met in regular session at 5:30 p.m. on August 2, 2011 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Rohr, Frank and Jackson. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development and Communications Director Huber, Engineering Project Manager Bechtel, and City Assessor Barta.

Mayor Helbling extended a *thank-you* to the City Staff, the Police and Fire Departments in recognition of their efforts put forth in handling each crisis event as they occur.

MINUTES: *Consider approval of the minutes for July 19, 2011, regular meeting.* Commissioner Tibke moved to approve the minutes of July 19, 2011, Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

BIDS:

CONSENT AGENDA:

1. *Consider for approval an application for beer garden and street dance.* The Board approved of an application for beer garden and street dance.
2. *Consider approval of the replat of Lot 3, Block 2, Lakewood Commercial Park 2<sup>nd</sup> Addition.* The Board approved of the replat of Lot 3, Block 2, Lakewood Commercial Park 2<sup>nd</sup> Addition.
3. *Consider site authorization for Prairie Public Broadcasting at the Mystique Lounge LLC for August 1, 2011 through June 30, 2012.* The Board approved of the site authorization for Prairie Public Broadcasting at the Mystique Lounge LLC for August 1, 2011 through June 30, 2012.

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

OLD BUSINESS:

1. *Consider an extension of the purchase and business incentive agreements for 116 E Main Street.* Business Development and Communications Director Huber reviewed with the Board a request from DeLanis and Linda Thomas, owners of the Mama Maria’s Italian Restaurant to purchase the property personally and lease it to the restaurant business. They have also requested an extension of the deadline for closing on the sale of the property from July 31, 2011 to August 19, 2011, to allow additional time to obtain contractor bids and secure financing. The Purchase and Business incentive agreements have been prepared for the transfer of the 116 East Main Property to DeLanis and Linda Thomas to lease the building to the restaurant business with a closing date of August 19,

2011. Huber recommended approval of this agreement.

Commissioner Rohr moved to approve an extension of the purchase and business incentive agreements for 116 E Main Street to August 19, 2011. Commissioner Tibke seconded the motion. Commissioner Rohr amended the motion to move the request for extension of the closing date from August 19, 2011 to August 31, 2011. Commissioner Tibke seconded the amended motion.

Commissioner Jackson commented that he would not be inclined to grant the extension to August 31st, stating that there were initially four parties that were interested in this property and if for whatever reason the parties who were granted the bid fell through, there would be time yet this year for the next interested business in line to renovate the property. He stated that he discussed this with Huber today and the parties should have an idea by August 16<sup>th</sup> to accomplish obtaining contractor bids and to secure financing therefore he does not think it is necessary to grant the extension to August 31<sup>st</sup>.

Mayor Helbling asked for a roll call vote on the amended motion granting an extension date from August 19, 2011 to August 31, 2011. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: No; Commissioner Helbling: Yes. The motion passed.

Mayor Helbling asked for a roll call vote of the original motion which was to approve the extension of the purchase and business incentive agreements for 116 East Main to August 19, 2011. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

Mayor Helbling invited Del Wetsch, Mandan Progress Organization, to come forward at this time to report on the Buggies-n-Blues weekend. Wetsch stated that over 1,600 people attended the Saturday night dance festivities and over 450 vehicles participated in the car show on Sunday. He stated that the MPO will be hosting the Wild West Grill fest in 2 weeks and encouraged everyone to come out at that time.

NEW BUSINESS:

1. *Consider allowing the negotiation of and enter into an Engineering Services Agreement for Street Improvement Project 2010-03 District #161 (North Mandan).* Engineering Project Manager Bechtel reported that an RFQ was submitted to eight engineering firms on July 20, 2011, for Street Improvement Project 2010-03 District #161 (North Mandan) with a deadline of July 27, 2011 to submit a bid. He stated that five proposals were returned by the deadline date and a selection committee reviewed the proposals and provided a recommendation to grant the bid to Toman Engineering/Wenck in collaboration of completing the project. Bechtel requested permission from the Board to allow Administrator Neubauer and himself to enter into negotiations with the selected firm to arrive at the engineering fees scope of work in order to enter into an engineering agreement for completion of the project. Bechtel stated that in projects such as these – a proposal is obtained for engineering fees; however, we considered the qualifications and

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will negotiate the fees. As far as the overall project, the engineering department has an idea of the costs; however, the RFQ is to be determined before determining the scope of costs. He stated that the City already has a lot of information on the Diane's Project, estimated at 30-40%, already completed along with the area to be added west of Collins - which will relate to cost savings with whatever firm is awarded the project. Bechtel stated that in discussions with Toman Engineering the project would not be completed in 2011, rather the RFP will be scheduled in February 2012 indicating that the site analysis would be turned over to the engineering firm selected and the City Engineer's office will work with that firm. Mayor Helbling commented that the benefit of working with one of these engineering firms will be that they may determine that immediate action be taken to repair areas yet this fall resulting in substantial savings.

Commissioner Jackson commented that it would be his preference this matter be handled through the standard RFP process which would save the City money in getting the costs from the engineer's. He realizes it would result in more work and more delay. Bechtel stated that Toman is one of the more reasonable firms to work with. They are familiar with the city processes. He indicated that his office is aware of what the approximate fees will result in with projects such as this one. Jackson mentioned he is of the opinion that if RFPs are obtained in the standard way of doing business of gathering bids, there may be the possibility of doing the patchwork yet this year. Commissioner Frank wanted to clarify that it's the engineering costs that are being considered and the amount of work of the engineering firm as opposed to all the construction costs associated with the street work. So there is a potential for actual cost savings when the project is bid out for the actual labor that the street work involves, understanding that the engineering costs are 10-20% of those costs. Bechtel stated that with projects that involve state and federal funding, the pricing is more consistent among firms.

Commissioner Frank motioned to approve negotiations of and enter into an Engineering Services Agreement for Street Improvement Project 2010-03 District #161 (North Mandan). Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: No; Commissioner Helbling: Yes. The motion passed.

2. *Consider the approval of the feasibility report for, approve the plans and specifications for, and authorize the call for bids on Water & Sewer Improvement District No. 58, Project No. 2011-07 (Shoal Loop extension).* Engineering Project Manager Bechtel stated that this matter was before this Board at the July 5, 2011, meeting and those districts were approved and this is to approve the paperwork and to move forward to the bidding phase of this project in order to determine the costs.

Commissioner Jackson moved to approve the feasibility report for, approve the plans and specifications for, and authorize the call for bids on Water & Sewer Improvement District No. 58, Project No. 2011-07 (Shoal Loop extension). Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

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3. *Consider the Mandan Airport Authority's 2012 Budget.* Jim Lawler, Airport Manager presented a request to approve the Mandan Airport Authority 2012 budget. Lawler reported that the airport is having an average year this year. He reviewed possible updates to the airport, all contingent upon funding.

Commissioner Tibke moved to approve the Mandan Airport Authority's 2012 Budget. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

4. *Consider filing an intent to apply for the U.S. Treasury Department's Small Business Credit Initiative.* Business Development and Communications Director Huber reviewed with the Board an opportunity for the City of Mandan to participate in the U.S. Department of Treasury's Small Business Credit Initiative Program. She explained that this is a part of the Small Business Jobs Act of 2010 funded to provide support for lending to small business and small manufacturers. The initiative is intended to leverage private financing to help small businesses and manufacturers attain the loans or investments they need to expand and create jobs. The total allocated for North Dakota is \$13.1 million. Huber stated she has had discussions with the Director of Commercial Lending at the Lewis and Clark Regional Development Council about the possibility of administering the program on the City's behalf. Huber explained how the allocation of funds is set up and noted the deadlines for application if interested. Huber explained there would be no expenditure of funds to participate in the program but there would be staff time involved in working with the Lewis and Clark Regional Development Council to put together a plan to apply for the program.

Commissioner Frank motioned to approve allowing the City of Mandan file a Notice of Intent to apply to the US Department of Treasury Small Business Credit Initiative.

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

5. *Consider budget amendment to the 2011 asphalt budget for increased street repairs.* Director of Public Works Wright reviewed with the Board a request to consider amending the Public Works Asphalt budget to allow for increased street repairs. Wright stated that the repair breakdown will consist of temporary repairs and permanent repairs and reviewed those areas of concern for the upcoming winter. Wright stated he has discussed this matter with Finance Director Welch, who has recommended the use of Sales Tax dollars to fund this amendment. The total cost of the amendment with anticipated costs in the amount of approximately \$41,000.

Commissioner Frank moved to amend the 2011 asphalt budget for increased street repairs in the amount of \$41,000 requested to make the repairs in a timely manner. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

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Mayor Helbling requested Wright to provide an update with regard to the policy regarding tree removal handled by the City. Wright stated that the City will be taking care of trees in the boulevards and the public right-of-ways. Any damaged trees on private property are the responsibility of the property owners at this time. However, the fees have been waived at the landfill this week for tree disposal. Regarding the areas that the City has already cleaned up, they will not be returning to pick up any branches or trees or debris that have been placed in those areas.

6. *Consider Mandan Wastewater Treatment Plant (WWTP) Phase I – Interim Improvements Project.* Steve Himmelspach, Superintendent of the WWTP, presented a request to consider hiring an engineering firm to design plans and specifications for improvements at the Wastewater Treatment Plant. Himmelspach provided a brief summary of the obstruction in the valves that has caused a diminished hydraulic capacity of the pretreatment units. Repeatedly cleaning of the valves has not improved the problem. All components of the grit removal system are in need of replacement. Himmelspach recommended hiring Advanced Engineering and Environmental Services because they have been working with the WWTP all along and are familiar with its operations. Russ Sorenson from Advanced Engineering was present for questions. Sorenson estimates the cost of the project to be \$275,000. Advanced Engineering will draft the final design and prepare bids to remove buried valves and to replace them; replace the grit removal system and complete the utility rate adjustments.

Commissioner Tibke moved to approve the hiring of Advanced Engineering to draft the final design and prepare bids for construction services for the removal of the existing buried butterfly valves and replacement with knife gate or plug valves, a complete replacement of the grit removal system, and completion of the utility rate remodeling. Commissioner Frank seconded the motion.

Commissioner Jackson commented that he has the same concern with this project as the previous discussion on the work for Diane's Addition, stating that by not getting estimates from other engineering firms as far as the proposed engineering fee and considers it as "leaving money on the table". In this case, within the Master Plan, the City did go through an RFP and RFQ process for that Master Plan, but that has not occurred in this situation. By looking at the numbers provided, the City is at 20% of the cost of this project. He stated he does not think this Board is doing its due diligence on behalf of the Mandan citizens if actions are approved without going through a more rigid (bidding) process. Realizing that this matter should have commenced earlier in the summer time and that there is probably not enough time to complete the bidding process yet this year to get this matter off ground, Commissioner Jackson stated that in the future, this Board should consider following the same protocol for all such actions of this nature in a similar manner the way other government entities do. Sorenson stated that there is an opportunity to take advantage of leftover state revolving loan fund money set aside for other city water upgrades and they will utilize the funds to pay for it this year.

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Mayor Helbling called for a roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

7. *Consider personnel actions.*

(i) City Administrator Neubauer reviewed with the Board to consider compensation for those exempt employees that have in excess of 60 hours of comp time accumulated due to flood related activities throughout the spring and summer. There were five employees involved and the cost would be approximately \$5,300.

Commissioner Jackson moved to approve compensating the five employees who have in excess of 60 hours of comp time due to flood related activities in the amount of approximately \$5,300. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

(ii) City Administrator Neubauer reviewed with members a proposal to amend the Mandan Code of Ordinances Section 04-07-03(9) relative to the carryover of unused annual leave. The proposal would be to move the January 1<sup>st</sup> date to the hiring date of the employee in order to alleviate the problems that occur in November and December when employees tend to use a significant amount of leave or lose hours which causes scheduling problems within departments.

Commissioner Jackson moved to approve the drafting of an amendment to the Mandan Code of Ordinances Section 04-07-03(9) to be revised from carryover of unusual annual leave from January 1<sup>st</sup> to an employee's hire date. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

(iii) City Administrator Neubauer reviewed with members a proposed policy that would offer employees tuition assistance for employee educational growth to maintain and advance professional, technical and managerial competence and to prepare employees for promotional or career change opportunities within city employment. The policy outlines certain criteria that would have to be met followed by several levels of review before granting approval. Department budgets would have to be developed accordingly to accommodate the requests as funds are available. Board members commented in favor of the tuition assistance program, in part to retain employees and suggested that due to tightening of budgets that consideration be given to designing the program to be more of a scholarship-type program on a case by case basis, and again, as funds are available. Commissioner Jackson commented that he would like to see a provision included in the policy that would bound the employee to continued employment with the city in return for dollars expended on that employee's tuition assistance. Administrator Neubauer directed attention to the draft policy @ No. B(i) wherein a clause of that nature has been included in the policy requirements. Ultimately, there will be a plan in place for each individual employee if they choose to apply for this program. Commissioner Rohr and

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Commissioner Tibke commented they favored having a pay-back clause written into the policy to protect the city's investment of dollars provided for education or training that would prohibit an employee from leaving within a certain timeframe once the degree would be obtained.

Commissioner Frank motioned to table the approval of an employee tuition assistance program until a later date. Commissioner Tibke seconded the motion. Mayor Helbling commented that one of the features he likes with regard to the program is that the City will not allow just anyone to apply for it. There will be criteria to follow and proper reviews of the requests made to determine qualifications. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

Administrator Neubauer was directed to conduct further research into this matter and bring additional information to the next meeting for further discussion/approval. The areas of concern are: (1) No. A(a)(i): Undertake a course of study which leads to an associate's, bachelor's or master's degree in an occupation for which the city normally recruits employees; and the class work is in an area which relates to the employee's field of work; and (2) No. B(i): If an employee voluntarily terminates employment with the city there may be repayment options that must be contained within an approved tuition assistance plan; and (3) To set aside a certain amount of money each year as a competitive scholarship-type process; and that a position be open within a department that would warrant consideration for someone to apply and/or qualify for the program.

#### RESOLUTIONS & ORDINANCES:

1. *Consider second and final consideration of Ordinance No. 1100 Zone Change for Sunset Commercial Park & School District 5th Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map.* Commissioner Jackson moved to approve the second and final consideration of Ordinance No. 1100 Zone Change for Sunset Commercial Park & School District 5th Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map.

Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

2. *Consider second and final consideration of Ordinance No. 1099 Zone Change for Seven Seas 1<sup>st</sup> Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map.*

Commissioner Tibke moved to approve the second and final consideration of Ordinance No. 1099 Zone Change for Seven Seas 1<sup>st</sup> Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

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3. *Consider second and final consideration of Ordinance 1101 an ordinance to create a new section to the Title 12, Alcohol and Gaming Licenses and Permits, of the Mandan Code of Ordinances relating to the on or off sale of distilled spirits.*

Commissioner Jackson moved to approve the second and final consideration of Ordinance 1101 an ordinance to create a new section to the Title 12, Alcohol and Gaming Licenses and Permits, of the Mandan Code of Ordinances relating to the on or off sale of distilled spirits. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

4. *Consider second and final 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 Code of Ordinances relating to District Boundaries and Zoning Map.*

Commissioner Jackson moved to approve the second and final 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 Code of Ordinances relating to District Boundaries and Zoning Map. Commissioner Frank seconded the motion.

Jim Davis came forward to speak. Davis extended a thank-you to the Board for acknowledging the email he sent on June 21, 2011. He said his concern with this matter is that there are no numbers disclosed as to the number of apartments that are going to be there. He stated that there are ten homeowners directly across from this property that are opposed to Section 31. The concern is most of the homeowners have spent 30 years building equity in their homes and they will lose that equity to an apartment complex. Davis stated he lives on 8<sup>th</sup> Avenue, one block north of the school. He is concerned that the drainage area directly across the street that is corresponding to the ten homes is 150 ft deep and it would be easy to put 8, 9, or 10 houses on that section; then use the drainage area as the buffer zone. Reviewing the acreage of the land and in comparison to other Wachter apartment complex properties, there could be about 780 possible apartments built on that property. Davis stated that to date, there has been no mention of how many apartments are going in there – that will affect the equity in the homes across the street. He stated that the problem with apartments is that they depreciate. He said that it is not fair to the ten homeowners that they will lose approximately \$20-\$30,000 in their homes' equity due to this project. He stated that most cities such as Fargo, Grand Forks, etc. have a buffer zone. Davis said that the property owners opposed the zoning back in May although Engineering Project Manager Bechtel stated at that time that there was no opposition to the zoning change. Davis stated that at that time, the ten homeowners also voiced concern about the access in and out of that area. Davis cited the Mandan City Code as saying that anytime you are entering a new zoning that what goes into that housing unit should be complimentary to what is already there. Davis recommended that there be a change to the proposed Section 31 where the drainage ditch becomes a buffer zone – wherein 8-10 homes could be constructed there which would create less of an impact on the ten homeowners now currently established across the street. And as previously noted, Davis commented that access to that area will be very difficult and consideration should be given to that concern.

Mayor Helbling inquired of Engineering Project Manager Bechtel if there is a plat already on this property. Bechtel replied that there was a master plan that was reviewed. Bechtel stated that the saturation that Davis referenced is addressed in the ordinance with the restriction of five units per acre – noting that the RM is restricted to five units per acre. The largest section - would be allowed 25 living units and it will be up to the developer how he will accommodate that. The lot across from the school is about 3.5 to 4 acres – which is the same thing and it is restricted to 20 units. The parking will be addressed with the architectural units of the building. Bechtel stated that the drainage ditch cannot be built on. He also stated that the Planning & Zoning Committee looked at the restrictions to the five acres. The density is compatible to what R7 will be. The developer and the homeowners were part of the discussion as to the restrictions that were put into place. Commissioner Jackson stated that it was his recollection that neither the developer or the homeowners were completely satisfied with the outcome, however, this turned out to be a nice compromise to both parties in moving forward in the development of that property.

Mayor Helbling requested a roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

#### OTHER BUSINESS:

1. *Consider the scope of work for flood generated eligible debris removal (sandbags, levee, and dike material).* City Administrator Neubauer stated that there has been work in progress to come up with a plan to remove debris from the areas affected by flood. He stated that a more definitive scope of work will need to be developed as to exactly where the sandbags are that will need to be removed as well as removing the clay levees that are in place. This request is to grant permission for staff to obtain bids for removals and to see what prices come back. Mayor Helbling inquired, (under the emergency clause), if the City is to establish a penalty for those who willingly and knowingly placed their sandbags on public right-of-way, boulevards, streets, etc. before this comes into play? In particular, the City should not have to deal with any personal property debris until this plan is put into place and the City should establish some kind of fine or penalty if this occurs. Commissioner Jackson inquired if this type of action could be special assessed back to the home owner?

Neubauer recommended that the City outline a process for the removal of debris and then publish the proper notices indicating when and where removal will be taking place. City Attorney Brown stated that there is an Ordinance in place @ Section 10-04-05 of the Mandan City Code that prohibits the depositing of debris on a public right-of-way. It was suggested that during regular patrolling of the city, if the police would observe somebody piling debris, etc. they could be cited for violation of that ordinance.

Commissioner Jackson moved to approve the drafting of a plan by Attorney Brown and City staff to draft language for the scope of work for flood generated eligible debris removal (sandbags, levee, and dike material) and that an advertisement for bids be placed

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in the August 12<sup>th</sup> Mandan news. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

There being no further actions to come before the Board, Tibke moved to adjourn the meeting at 7:28 p.m. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

/s/ James Neubauer

James Neubauer,  
City Administrator

/s/ Timothy A. Helbling

Timothy A. Helbling,  
President, Board of City  
Commissioners