
The Mandan City Commission met in regular session at 5:30 p.m. on August 4, 2015 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 Bullinger, 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 Rohr 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. A second announcement was made to come forward to speak. 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 July 21, 2015 regular meeting.* Commissioner Tibke 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:

F. BIDS:

G. CONSENT AGENDA

1. *Consider for approval replat of Lot 7, Block 2 Meadow Ridge 3rd Addition.*
2. *Consider Sunday Opening for the Mandan Moose #425 on August 30, 2015.*
3. *Consider 2015 budget amendments for Public Works Shop repairs, LED Christmas lights and yard hydrants for the park.*
4. *Consider sale of City of Mandan property with an estimated value over \$1,000.*
5. *Inform of approved Change Order No. G-1 of Wastewater Treatment Facility Interim Optimization project.*
6. *Consider allowing the Railroad Museum to sign and paint the city curb to reserve a loading and unloading zone near their main entrance.*
7. *Consider for approval replat of Lots 1 & 2, Block 1 West Bay Estates 3rd Addition.*
8. *Consider for approval contract between City of Mandan and Paulson Contracting for improvements to the Beanery.*

Commissioner Braun moved to approve the Consent Agenda 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.

H. OLD BUSINESS:

I. NEW BUSINESS:

1. *Consider Mandan Renaissance Zone Committee recommendations:* Business Development Communications Director Huber reviewed the following:

(i) *Approval of an application for lease of 100 Collins Ave by Icon Architectural Group.* Director Huber stated this is a recommendation from the Mandan Renaissance zone Committee for the approval of an application by Icon Architectural Group for the leasing of space at Collins Place, 100 Collins Avenue. As a building that was constructed as a Renaissance Zone Construction project, this program allows for an incentive to attract tenants and it allows for a 5-year up to a 100% exemption on state tax liability on income derived from business activity within the leased space. The Icon Architectural Group has submitted an application for a lease. They are looking at one full time licensed architect in the space to start. They plan to expand on staffing within the next five years. A Certificate of Good Standing has been received from the ND Tax Department. The Mandan Renaissance Zone Committee voted unanimously to recommend approval of their application for the 5 year 100% exemption. David Manns, from Icon Architectural was available to answer questions on the project.

Commissioner Braun moved to approve the application for lease of 100 Collins Ave by Icon Architectural Group as a Renaissance Zone project with a 5-year 100% state tax exemption. 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) *Approval to prorate property tax exemption of 100 Collins Avenue in accordance with share of commercial space leased.* Director Huber stated that the Renaissance Zone Committee discussed this matter also indicating that when this project was approved, that if the retail portion of the building of 3,000 sq. ft. of the 39,000 sq. ft. within the building was not leased within one year of the occupancy permit of the building as a whole, that 50% of the property tax exemption for that retail office space would be withdrawn., and, if not leased within two (2) years, that the property tax exemption on that retail commercial portion of the building would be completely withdrawn. The anniversary date of the occupancy date is August 28, 2015. The lease approved to Icon Architectural Group was for @ 1,000 sq. ft. The total office space accounted for 3,248 sq. ft. of the building's area or @ 35% of the building's value when considering tax purposes. At this point there would be @2,248 sq. ft. of the building unoccupied on August 28, 2015. The Renaissance Zone Committee recommended reducing the building's property tax exemption for 2015 at 100 Collins Avenue by a percentage equal to the unoccupied spaces prorated share of the building's value that is about 17.5% based on what has been leased versus what is remaining. Rather than a 100% exemption on that commercial space there would be a reduction of @ 17.5% for 2015.

Commissioner Laber voiced concern about following the policy as written, commenting that the landlord was aware up front of the expectations of what was required to benefit from the 100% exemption. Director Huber explained that the claw back provision only pertains to the retail and commercial space within the building. Director Huber said additional work will be done with the Tax Equalization Office for the county on this matter regardless of the motion on this issue tonight (somewhat in part due to cut-off dates to be taken into consideration) to determine how much credit will be given. Attorney Brown summarized that there are two items for consideration: (i) If they don't get the retail space leased within one year the exemption goes down to 50%, and (ii) How much space are they leasing to be given the 17.5% reduction?

Commissioner Tibke moved to approve the recommendation to reduce the property tax exemption on the Renaissance Zone project at 100 Collins Avenue for the retail/office remaining to be leased at one year from date of occupancy by a percentage equal to the area's prorated value of the building. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: No*; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

* Commissioner Laber stated that due to the fact this matter was not clear to her, she voted "No".

2. *Consider Mandan Growth Fund Committee recommendations:* Business Development & Communications Director Huber presented the following:
(i) *Expansion of Downtown Storefront Improvement boundaries:* Director Huber stated that this is a recommendation from the Mandan Growth Fund Committee to expand the Downtown Storefront Improvement boundaries to include commercially zoned properties. She explained that there are buildings located within the area that are at least 30 years or older that are located on the far end of east Main Street that is beyond the north-south railroad tracks crossing the City. Some of the buildings in this area are visible from Business Loop I-94 and could benefit from an upgrade as they are the first visible buildings coming to Mandan from the east. The Mandan Growth Fund Committee recommended expanding the boundaries as presented.

Commissioner Braun moved to approve the expansion of the Downtown Storefront Improvement boundaries to include the recommended area along and north of east Main Street as illustrated. 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) *Approval of an application by L. Bartch Properties, LLC for a storefront improvement project at 4018 Memorial Highway:* Director Huber stated that a project request from Lindsey Bartch of L. Bartch Properties, LLC for a parcel of property located at 4018 Memorial Highway with intentions of investing \$89,000 in the facade of the building that will involve a steel wall structure. She said that Bartch wants to use the building for a new business called Event Motorway, with plans to sell late model import and luxury autos and also some classic cars. The estimated cost of renovating the

exterior is \$89,000. The applicant also plans on renovating the interior of the building including cooling/heating system, electrical wiring, plumbing, flooring, walls and insulation inside and there are plans to upgrade the building's parking lot. An automatic door will be added to the building per building requirements. The Mandan Architectural Review Commission and the Mandan Growth Fund Committee both recommend approval of the project and the project meets the criteria to be eligible for the \$30,000 in matching funds for the storefront improvement. Director Huber noted that a total of \$200,000 was set aside for Store Front Improvement Projects when the Memorial Highway Program was approved in September 2014.

Commissioner Tibke moved to approve providing up to \$30,000 in matching funds for the storefront improvement project by L. Bartch Properties, LLC at 4018 Memorial Highway. 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.

(iii) Request by Dot Frank for modification of Storefront Improvement project at 112 Second Ave NW. Business Development & Communications Director Huber presented a request for modifications of a project that was submitted in June of 2014 to the Mandan Architectural Review Commission, the Mandan Growth Fund, and this Board for a storefront improvement at 112 Second Avenue Northwest. The modifications will consist of a reconstruction of a doorway to move it closer to the front of the building. It was recommended to waive the requirement that three sides of the building (south, east and north facing sides) are to be painted. But Frank is to replace the windows on the alley sides of the building that are boarded up to qualify for the incentive or substitute the windows with another agreed upon solution. The Mandan Architectural Review Committee and the Growth Fund Committee agreed with the changes.

Commissioner Laber moved to approve the request by Dot Frank for modification of Storefront Improvement project at 112 Second Ave NW to allow for a change in the building's main entrance and to waive the painting commitment, while still requiring that boarded up windows be replaced with windows or other solutions, the latter of which would be subject to approval of the Mandan Architectural Review Commission. 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.

3. *Consider the creation of a Cemetery Advisory Committee.* Director of Public Works Wright stated that the Cemetery Rules and Regulations were approved at the July 21, 2015 meeting as presented by a Task Force of citizens appointed to draft the policy. As a result of the work done by this Task Force and their desire to further improve the cemetery grounds, a request was made to create a Cemetery Advisory Committee. The Task Force members would be considered for the Advisory Committee. Director Wright recommended the Task Force Committee meet with Commissioner Tibke and staff to determine meeting frequency, appointment of officers, length of term, etc. The Task Force Committee consists of Sharon Huettl, Becky Hilfer, Mandy Dendy, Marsha

Boehm, Cindy Rebenitsch and JoAnn Hodny. Director Wright recommended appointing the Task Force Committee to be the members of the Cemetery Advisory Committee.

Commissioner Tibke moved to approve the creation of a Cemetery Advisory Committee by appointing the members that served on the Cemetery Task Force Committee.

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.

Mayor Van Beek noted that Commissioner Tibke will include this Cemetery Advisory Committee in her portfolio.

4. *Consider land lease to Hirsch Floral Inc.* City Administrator Neubauer stated that the City of Mandan owns the property that houses Papa Murphy's Pizza and other businesses. That building is in the process of being sold and Hirsch Floral Inc. will be a new land tenant. Albert and Linda Kuntz, Hirsch Floral, are proposing a Lease Agreement with the City of Mandan. The proposed Lease Agreement (drafted by City Attorney Brown) is proposed for 15 years and would start on August 1, 2015, with an option to renew for an additional 5 years with a 1.5% escalator every year. The lease would be for 16,117 sq. ft. at \$.28 per ft. The current lease on the land received from BNSF is a rate of \$2,400 per year, thus it would increase to \$4,512 per year payable in monthly installments.

Al Wolf, an attorney representing Mr. Kuntz, came forward and stated that he has worked with the Kuntz's on drafting a proposed Lease Agreement with regard to the dollars involved. He has reviewed the proposed agreement with City Attorney Brown. He distributed copies to the Commission members. Attorney Wolf said the proposed lease includes the term of the lease as 25 years (rather than 15); with an option to renew for another 25 years; The rental fees and late fees proposed are \$900 per year for the 1st five years; \$1,000 a year for the 2nd five years of the lease and \$3,000 per year for the remainder of the term of the lease until its renewal date. Attorney Wolf welcomed questions to the proposed lease.

Commissioner Laber stated that she disagrees with the terms of Paragraphs 9, 10, 11; in particular, No. 10 Waiver of Rights of Subrogation and No. 11 Indemnification of City. She said it is not clear to her on what changes the Kuntz' are requesting and said she would not be comfortable if there are material changes being requested. Attorney Wolf explained that it depends on what insurance companies will allow one to do without waiving the rights under insurance policies. That is the concern he has with the language. He said he's not trying to change the concept since he recognizes that it is necessary for the city. He has not had time to check with the insurance companies with regard to liabilities of these types of matters. Commissioner Laber stated that she is confused because what has been provided and reviewed by the Commission is not what is being requested to be approved by Attorney Wolf. She questioned whether this item should be tabled until there is a valid agreement presented. Attorney Brown stated that the lease form that he drafted, (other than the rental amount, the term and the space referenced on

the form), is what the City has been using for other city properties. This was the first he had seen this proposed Lease Agreement that Mr. Wolf had handed out. There are a number of significant changes being requested and he would not recommend approving this proposed agreement by Mr. Wolf. He indicated that if the City Commission wishes to table this matter, he will work with Administrator Neubauer and Mr. Wolf to work out the details and then bring it back for discussion at a future meeting.

A motion was made by Commissioner Laber to table the land lease agreement with Hirsch Floral Inc. and the City of Mandan regarding City owned land located at 205 Second Ave. N.W., until the two parties, Attorney Brown and Attorney Wolf can come to a consensus on the final agreement terms including lease costs and length of the lease.

Attorney Wolf requested the Board act in terms of expressing a favorable reaction to the concept and the terms can be dealt with so that there is a commitment that Kuntz can pursue. Otherwise he believes there is a problem with where this matter is at with the whole plan due to time constraints. Commissioner Braun suggested Attorney Brown and Attorney Wolf get together as soon as possible to avoid this time issue. He also stated that he doesn't think any partial approval should be given until an agreement is brought back before the Commission. Commissioner Tibke brought up that there could be a special meeting if needed if there is a time issue. She questioned what the deadline would be to finalize this? Al Kuntz said that he has been waiting on this (proposed agreement) since April 20th and just received it a week ago. Then he had to get it to his attorney which was yesterday. He said his deadline is the closing date on August 15th.

Commissioner Laber suggested amending her motion to approve what was presented. However, that will be what the City's standard language is that was presented by City Administrator Neubauer. Al Kuntz replied that he believes all of the agreement can be approved other than the fee, which he believes is unrealistic at this time for rental on the property. It is double what the previous owner was paying.

Mayor Van Beek asked Mr. Kuntz if the 15 year term is acceptable. Kuntz replied that the bank would like a minimum of 17 years. Kuntz said he doesn't agree with the 1.5% increase every year. Commissioner Tibke commented that she can understand that the bank would require a long-term (17 year) because Kuntz does not own the property; thus the bank would need some insurance that their investment will have a payoff long term. Also, there is a jump from the \$2,400/year to \$4,500 on the lease and she thinks by having a lower lease agreement for the first 5-7 years, again, that makes sense because reinvesting in the business after that makes sense as well. She suggested that a special meeting occur wherein City Attorney Brown and Attorney Wolf and others have a discussion so that everyone is at a comfort level to move forward.

Mayor Van Beek agreed with Commissioner Tibke's suggestion as stated based on how the payment is laid out. He indicated that the City has taken similar actions in previous requests. He mentioned that he agrees that the proposed payment structure makes sense when moving into a new spot or new location. He encouraged Attorney Brown and Attorney Wolf to come to an agreement considering the 17-year term with the

understanding this is a leasing agreement, not a purchase agreement, so investors will want to see proof that the money will be put towards this.

Attorney Brown requested clarification and guidance on this issue. Does the City want to lease the lot where the remediation building is on? Al Kuntz replied that the plan was to put a greenhouse there. But that will not happen for two years because it is too late now. They would like to put a portable greenhouse on there for the next two years and there would be parking in that area for employees. He said he would work with the Remediation any way he would have to in order for them to get access to the well if they need to. They would like to have that land so they can do what they want to do with it. He said the project is estimated to cost approximately three-quarters of a million dollars in that area. Commissioner Laber suggested that area (the lot the remediation building sits on) be treated as a separate line item. Attorney Brown reminded everyone that the thought when we were talking about the lease is that if he (Kuntz) wants to buy the building, we would lease him the land the building is on. We can address the issue of the greenhouse and the green space and the remediation wells, the remediation building and the public parking later. That was the discussion that he initially had with Mr. Neubauer and Mr. Kuntz on this matter. Attorney Brown said that the second thing he needed clarification from the Commission on is whether they want to charge him the going rate for commercial land on Main Street or something less?

Mayor Van Beek suggested looking at Mr. Kuntz's proposal of \$900 per year vs. the City's proposed figure of \$4,500 per year. Commissioner Laber said she does not see how the City can take less than what was previously paid. Administrator Neubauer said that the current lease was inherited from Burlington Northern when the City acquired the property from them in the settlement at the rate of \$2,400 per year. The question would be as Attorney Brown's guidance would be as to whether the Commission wants to go from \$2,400 to step up to an amount over a time period; and what amount does the Commission feel comfortable with in moving that amount up? Or leave it at \$2,400 for a couple years and then bump it up to \$3,000 for a couple years? Commissioner Laber stated this should be discussed further, in fairness to everyone, including the citizens.

Mayor Van Beek stated that this matter should be considered as a benefit to Mandan's Main Street as well as future investment in the community. He recommended the City consider the fee for the first 5 years at \$2,400 unless the City's prices change and then increase it to \$3,000 until year 10 and then agree to a figure from year 10 for the remainder of the lease term. Commissioner Laber recommended approving Mayor Van Beek's suggestion and get input from Mr. Kuntz before the Special Meeting occurs. Commissioner Rohr commented that he believes it would be reasonable to use the current lease amount as the starting base line figure. Attorney Brown agreed to working with the suggestions as provided.

Mayor Van Beek announced there was a motion made by Commissioner Laber to table this matter in order to allow time for the parties to discuss the matter further.

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. *Second consideration and adoption of Ordinance 1207 - new municipal code.*

Commissioner Laber moved to approve the Second consideration and adoption of Ordinance 1207 - the new municipal code. 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.

2. *First consideration of Ordinance 1213 – Correcting previous annexation documents.* Planner Decker stated this matter is brought to correct previous annexation documents. Ordinance No. 1162 and No. 1186 were adopted to annex certain properties in the Keidel’s area into the City. The paperwork that was filed to record the annexations were prepared in a way that created confusion over what was annexed. The map that was included with Ordinance No. 1162 showed the boundary of the proposed subdivision that was to be developed in a portion of the annexed area rather than the boundary of the annexed area. The wording was correct, the map was not correct. A corrected map was provided with Ordinance No. 1213. This also corrects the description of the second annexation. This is correcting the annexation so the documentation is easily followed.

Commissioner Braun moved to approve the First consideration of Ordinance 1213 – Correcting previous annexation documents. 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.

K. OTHER BUSINESS:

1. Mayor Van Beek encouraged everyone to attend the Wild West Grill Fest scheduled on August 14-15 in downtown Mandan at Dykshoorn Park.

There being no further actions to come before the Board of City Commissioners, Commissioner Tibke moved to adjourn the meeting at 6:33 p.m. Commissioner Laber 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