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The Mandan City Commission met in regular session at 5:30 p.m. on December 4, 2012 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota.

Commissioners present were Van Beek, Tibke, Rohr, Frank, and Braun. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Business Development and Communications Director Huber, and Engineering Project Manager Kim Fettig. Absent were Fire Chief Nardello, Director of Public Works Wright, and City Assessor Barta.

MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission meetings held on November 20, 2012 – Regular meeting* Commissioner Rohr moved to approve the minutes of the November 20, 2012 Regular meeting. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The motion passed.

PUBLIC HEARING:

1. *Public Hearing to consider the vacation of Oxbow Trail SE.* Engineering Project Manager Kim Fettig reviewed with the Board a request from Lee Roy Mitzel and Lourdes Nelson to vacate a street as platted in Lakewood 6<sup>th</sup> Addition. Fettig stated that the Engineer’s Office does not recommend approval of the request because it would create inadequate access to the property that is located to the west.

Mayor Van Beek announced that this is a public hearing to consider the vacation of Oxbow Trail SE and invited comments from the public.

David Patience of Swenson, Hagen & Co. came forward representing the petitioners (Mitzel-Nelson) in this matter. Using a map to depict the area proposed to be vacated, he pointed out access points on the south and north sides of Oxbow Trail Southeast. He stated that the fire department would have two access areas to the property. He requested that the vacation be granted.

Mayor Van Beek announced a second and third invitation for comments from the public. Hearing none, this portion of the public hearing was closed.

2. *Public Hearing to consider for approval the final plat of Mandan Industrial Park 8<sup>th</sup> Addition.* Engineering Project Manager Fettig stated this request is here before the Board for final plat approval of Mandan Industrial Park 8<sup>th</sup> Addition. She indicated that the developers would like to add a commercial building. She indicated that the Engineer’s Office recommends approval of splitting the two lots in order to accomplish this. The plat was approved by the Planning and Zoning Commission.

Mayor Van Beek announced that this is a public hearing to consider for approval the final plat of Mandan Industrial Park 8<sup>th</sup> Addition and invited comments from the public. A second and third announcement was made to invite comments from the public. Hearing none, this portion of the public hearing was closed.

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Commissioner Frank moved to approve the final plat of Mandan Industrial Park 8<sup>th</sup> Addition. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Public Hearing to consider for approval the final plat of Riverwood Commercial Park 3<sup>rd</sup> Addition.* Engineering Project Manager Fettig reviewed with the Board a request from Steve Thilmony who was platting this area in order to clean it up. They have some auditor's lots from this area. By doing this, it's making it possible so he can sell some of the lots. This was approved by the Planning and Zoning Commission. The City Engineer's office recommends approval.

Mayor Van Beek announced that this is a public hearing to consider for approval the final plat of Riverwood Commercial Park 3<sup>rd</sup> Addition and invited comments from the public. A second announcement was made to invite comments from the public. Hearing none, this portion of the public hearing was closed.

Commissioner Tibke moved to approve the final plat of Riverwood Commercial Park 3<sup>rd</sup> Addition. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

4. *Public Hearing to consider for approval the final plat of Christianson's 1<sup>st</sup> Addition.* Engineering Project Manager Fettig reviewed with the Board a request from Kenneth Lohstreter for final plat approval of Christianson's 1<sup>st</sup> Addition. Paces Lodging will be purchasing the property for multi-family residential housing. This was approved by the Planning and Zoning Commission. The City Engineer's office recommends approval.

Mayor Van Beek announced that this is a public hearing for approval the final plat of Christianson's 1<sup>st</sup> Addition and invited comments from the public. A second announcement was made to invite comments from the public. Hearing none, this portion of the public hearing was closed.

Commissioner Frank moved to approve the final plat of Christianson's 1<sup>st</sup> Addition. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

5. *Public Hearing to consider an Ad Valorem tax exemption for Winbauer Koch Partnership.* Business Development and Communications Director Huber presented this matter in the absence of City Assessor Barta. The partnership is requesting a 5-year tax exemption for a new commercial structure pursuant to NDCC 40-57.1. The Mandan Growth Fund Committee approved the request and has recommended a 100% exemption for the five years based on verification of the number of jobs being created at the end of year two and sustained through year five. The building proposed will include a variety of businesses to be leased, including an

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Electrical Shop, a Heating and Plumbing Shop, a Trucker Shop, a Concrete Shop and an Industrial Service Shop. The building will be 11,400 sq. ft. The project is estimated to cost \$400,000. Notices have been provided to the Morton County Auditor and Tax Equalization Director, Mandan Public School District and Park District. There have not been any objections received. They estimate that at least 16 jobs will be created by the end of 2017.

Mayor Van Beek announced that this is a public hearing to consider an Ad Valorem tax exemption for Winbauer Koch Partnership. He invited comments from the public. A second announcement was made to invite comments from the public. Hearing none, this portion of the public hearing was closed. (See New Business No. 1(i).)

BIDS:

CONSENT AGENDA:

1. *Consider the Service Agreement for the City's Employee Assistance Program with Sanford Health.* Commissioner Frank requested this item be discussed.
2. *Consider Comprehensive Drug-Free Workplace Program.* The Board approved of the Comprehensive Drug-Free Workplace Program.
3. *Consider Fraud Policy.* The Board approved of the Fraud Policy.
4. *Consider approval of abatement for Richard Bushee – reduction in structure value.* The Board approved of the abatement for Richard Bushee – reduction in structure value.
5. *Consider approval of site authorization for Mandan Baseball at Captain Freddy's Riverside Restaurant & Bar from January 1, 2013 through June 30, 2013.* The Board approved of the site authorization for Mandan Baseball at Captain Freddy's Riverside Restaurant & Bar from January 1, 2013 through June 30, 2013.
6. *Consider Audit Services Contract from Eide Bailly.*

Commissioner Tibke moved to approve the Consent Agenda as presented. Commissioner Frank requested removal of Item No.1 for discussion. Commissioner Tibke moved to amend the motion to approve the Consent Agenda items No. 2 through No. 6.

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

*Consent Agenda Item No. 1: Consider the Service Agreement for the City's Employee Assistance Program with Sanford Health.* City Administrator Neubauer reviewed with the Board the Employee Assistance Program, (EAP), the City has contracted with since 2007 (Medcenter One, now Sanford Health) noting that approximately 10% of employees use the service on a yearly basis. The program has been utilized by employees for both business and personal matters. The program has also been used for training topics and for employer/employee referral on a case by case basis when needed. Neubauer stated that city administration has the position that by participating in this program it serves as an important benefit to the employer, the employee and the citizens of Mandan.

Commissioner Frank moved to approve the Service Agreement for the City's Employee Assistance Program with Sanford Health. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

OLD BUSINESS:

1. *Consider supplemental information to be provided by BNC National Bank related to their offer on the Collins & Main property.* Jason Arenz, SVP, BNC National Bank reviewed with the Board supplemental information requested by the Board from a previous meeting. He stated that the BNC Bank has revised their initial plan as a result of the request from the Board. He stated that the bank would like to become a part of the Mandan community and pay its share of taxes. He said that the main structure has been revised to go from 11 feet to 22 feet. The top will reach up to 33 feet or at least 3 stories high. One of the other changes they wanted to focus on is the space between the buildings. There will be a planter system with benches. The goal is to bring more people to that downtown area. BNC will still be able to maintain the same parking areas. Arenz said that the suggestion to partner with another business, which is a great idea, but it will not fit the BNC plan. There would be no parking and it would be difficult to maintain a partnership and accommodate customers. Arenz requested the Board to consider the revised BNC building plans. The second item for discussion is the financial impact. Dave Hoekstra, BNC, provided the following:

1. Clarified the bank's present cash flow analysis from 10 years to 30 years.
2. Will offer a full service commercial bank – \$10M dollars commercial loans per year.
3. The bank will employ 10-15 people at the start.
4. The bank will offer plans for future expansion in north and south Mandan.
5. The bank will be a reputable and responsible business in the Mandan community.

Commissioner Tibke extended a thank you to BNC Bank for revising their project plans as requested by the Commission. Hoekstra stated that the estimated cost of the newly constructed building will cost between \$1.5 and \$1.6 million.

NEW BUSINESS:

1. *Consider Growth Fund Committee recommendations:*  
(i) *Application for property tax incentive by Winbauer Koch Partnership for project at 2928 37<sup>th</sup> St NW.* Commissioner Rohr commented that in the past there have been some disagreements amongst the Commission as to the granting of tax incentives such as this request pointing out that the Commission is currently reviewing the policy and addressing the criteria for requests for tax exemptions and until policy is changed it will stand as is. Commissioner Tibke commented that the recommendation from the Mandan Growth Fund is based on verification of the minimum number of jobs created at the end of year two and sustained through year five. Business Development and Communications Director Huber explained that it is her understanding that the number of employees being employed by the end of year two will be the total number of employees throughout the building, perhaps 2-3 employees per anticipated 4-6 businesses located within. Huber commented that there was no opposition to the tax exemption request.

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However, City Assessor Barta was absent from work today so there could be a possibility of an opposition that may have come in today. She clarified that they would be entered in at 100%, 100%, 75%, 50% and 25% (years one thru five respectively) and the burden would be on the Winbauer Koch Partnership to prove employee verification if they were to be bumped up to the higher level for exemptions. Huber stated that this request is consistent with the way other projects of this nature have been handled. She also stated that the tax incentive program is still within two years of its implementation so there has not been any challenge yet as to employment compliance required of any business that has received this tax exemption incentive. Commissioner Frank stated that based on this discussion and considering what the MGF has recommended that she is not in favor of granting the 100% five year exemption; but rather, consideration should be given to the tiered exemption and even possibly scaling that back and granting only two years at 100%.

Commissioner Frank motioned to approve a tax exemption for Winbauer Koch Partnership for project at 2928 37<sup>th</sup> St NW with the exemption being the City of Mandan's tiered exemption outlined in the policy at 100% for years one and two, 75% for year three, 50% for year four and 25% for year five. Commissioner Rohr seconded the motion.

David Koch came forward to provide further insight into this matter. He stated that he is one of the owners of the Winbauer Koch Partnership and the business has been in existence for 25 years. He stated that in that industrial park area, four current buildings have been leased and function by various companies from 2 to 25 years. The employees have increased in numbers from the time the leases were in put into place from ten employees to people currently leasing the premises to about 60 employees currently. He explained the reason they are anticipating the new building is because various companies have been looking for lease spaces and they want to grow and develop and this is a good location to expand their businesses. Koch stated that Winbauer Koch Partnership has never received tax incentives from the City of Mandan in the past.

Commissioner Braun commented that as a member of the Mandan Growth Fund Committee the goal is to entice people to come in but they also want to keep in mind the financial situation of the City. His understanding is to consider which tier the request best fits under based on the criteria being met.

Mayor Van Beek called for a roll call vote on the approval of the Application for property tax incentive by Winbauer Koch Partnership for the building project at 2928 37<sup>th</sup> St NW. Commissioner Rohr: Yes; Commissioner Tibke: No; Commissioner Frank: Yes; Commissioner Braun: No; Commissioner Van Beek: Yes. The motion passed.

*(ii) Revisions to commercial property tax exemption policy and guidelines:*  
Business Development and Communications Director Huber presented information related to the MGF recommendations for revisions to the City of Mandan's Commercial Property Tax exemption policy and guidelines. A sub group was assigned by the Mandan

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City Commission and MGF after agreeing to a policy that would outline exemptions in three tiers and to remove any exemption for multi-family housing.

The subgroup agreed to the following measurable and objective criteria for the three tiers of exemption:

- ~ Jobs creation as measured by the number of jobs.
- ~ Job quality as measured by average hourly wages and benefits.
- ~ Increased local use taxes including sales, restaurant and lodging, and hotel occupancy taxes.
- ~ Filing a gap in community or region's market profile as determined by market data which shows that demand exceeds supply or in accordance with a list of targeted businesses identified as a need in the community, generally based on 2008 household survey of retail preferences.

Proposed limitations

- ~ Projects involving relocation of an existing business from another N.D. community to Mandan will not generally receive an incentive unless the business is expanding in some capacity.
- ~ Jobs must be based at the project location to apply towards job creation thresholds. Out of town or traveling jobs stemming from the project location may be awarded partial credit in situations where permanent local residency of employees is likely.

The claw back provision of the policy is strengthened to indicate that if a project fails to deliver on public benefits that were the basis for approval of an exemption, or any other requirements including timely reporting, the City Commission may revoke the exemption and/or require that all or part of the exemption be paid back.

Because the proposed revisions to the property tax exemption policy rely on additional criteria not addressed in the state exemption application form, a supplemental application form is proposed. Because it is recommended that any applications for exemptions for multi-family housing be dealt with directly by the City Commission, any policy in this regard may need to be addressed separately.

A summary of the three tiers being proposed:

1. *Base Level/Tier 1* – 100% exemption for two years

Project should include at least one of the following measurable public benefits:

(Requirements are further defined in complete policy proposal)

- i. Jobs creation – Minimum of 3 FTE's by first anniversary of certificate of occupancy
- ii. Job quality (wages and benefits) Min \$9/hr, \$18,720/yr or 30% of median household income
- iii. Increased local taxes - \$5,000 to \$10,000 annually in local use taxes
- iv. Filling a gap in the community or region's market profile
  - a. Business in retail category in which demand exceeds supply – generates \$500,000 to \$1 million in annual sales
  - b. Targeted business approach (retail/services, restaurants, hotels)

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2. *Intermediate Level/Tier 2* – 100% for 2 years, 75% year 3, 50% year 4, 25% year 5  
Project should include at least two of Tier 1 benefits listed above or at least one of the Tier 2 benefits as follows:

(Requirements are further defined in complete policy proposal)

- i. Jobs creation - Minimum of 3 FTE's by first anniversary of certificate of occupancy plus an additional FTE for each \$100,000 in structural value subject to exemption
- ii. Job quality (wages and benefits) Min \$20.35/hr, \$42,326/yr or 70% of median household income
- iii. Increased local taxes \$10,001 to \$100,000 annually in local use taxes
- iv. Filling a gap in the community or region's market profile
  - a. Business in retail category in which demand exceeds supply – generates \$1 million to \$10 million in annual sales
  - b. Targeted business approach (retail/services, restaurants, hotels)

3. *Top Level/Tier 3* – 100% for five years

Project should include at least three of Tier 1 benefits listed above, or at least two of the Tier 2 benefits as listed above, or at least one of the Tier 3 benefits as follows, or be a primary sector business:

(Requirements are further defined in complete policy proposal)

- i. Jobs creation - Minimum of 3 FTE's by first anniversary of certificate of occupancy plus an additional two FTEs for each \$100,000 in structural value subject to exemption
- ii. Job quality (wages and benefits) Min \$29.07/hr, \$60,466/yr or 100% of median household income
- iii. Increased local taxes \$100,001 annually in local use taxes
- iv. Filling a gap in the community or region's market profile
  - a. Business in retail category in which demand exceeds supply – generates \$10 million or more in annual sales
  - b. Targeted business approach (retail/services, restaurants, hotels)

Commissioner Frank commented that the current policy consists of a two-page policy and this revised version is six-page policy. She stated she would like to have additional time to review the revised policy and talk to some of the community members regarding the proposed changes.

City Attorney Brown reminded the commission that this proposal is a real property tax exemption and that mom and pop purse stores do not normally build their own buildings.

Mark Weide from the Mandan Growth Fund commented that the revised policy has a unique feature in that there is the sliding scale built into it. It allows the business to move up with increments of proving up which has been a problem in the past. If the business can't prove up in two years, it won't get the full exemption. If the business can't prove up the jobs, the tax increases, etc. it won't see the exemption. The policy has never differentiated between the higher end businesses from the ordinary ones that have

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previously come to Mandan. This policy will accommodate that. He explained the approach used by the MGF was to take into consideration factors of those who build the buildings, those that fill the buildings and those that work within the buildings.

Commissioner Frank questioned why multi-family housing was removed from the revised policy. Weide replied that the MGF does not have the survey information related to what kind of housing is needed (low income, high end, etc.) and that the City holds that information. There are a lot of programs out there for low income housing. He pointed out that the Commission holds the growth of the City. Weide stated that it was the consensus of the MGF Committee to drop the housing aspect. City Administrator Neubauer further clarified that it was discussed at the Commission working sessions to remove the housing piece from the MGF Committee because they ultimately decide if an exemption would be available for a 2-unit, 12-unit, 48-unit type of complex. The MGF had nothing to do with those decisions in the past. The decision to allow a two or three year exemption is decided by the commission who can set those policy guidelines. So there is no reason to have the MGF involved in those actions. Based on that explanation that is why the multi-family was removed from the policy. Commissioner Frank concurred that it would be up to the City Commission to decide that next step at the time they review the tax exemption request from the applicant.

Commissioner Frank motioned to table this matter until the next City Commission Meeting in order to allow the commissioners additional time to review the revised policy that has been proposed. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

2. *Consider appointment to the Mandan Airport Authority:* City Administrator Neubauer presented this matter on behalf of Jim Lawler, Manager of the Mandan Airport Authority. Neubauer stated that there is one position up for appointment. He indicated that there were four letters of interest received. Neubauer stated that the Mandan Airport Authority reviewed the four applicant letters of interest and they recommended that Marc Taylor fits the qualifications and that he be re-appointed to the Mandan Airport Authority position for a period of 5 years beginning January 1, 2013 through December 31, 2017.

Commissioner Tibke moved to approve the reappointment Marc Taylor to the Mandan Airport Authority position for a period of 5 years beginning January 1, 2013 through December 31, 2017. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Consider entering into contract negotiations for a Comprehensive Plan with Stantec Consulting Services Inc.* City Administrator Neubauer provided a brief timeline summary of the process that has been occurring over the last 4 months in order to come up with a recommendation for a Comprehensive Plan for the City of Mandan. He commented that it appears the City has never had a full-blown plan. However, this will accommodate one. Neubauer said that a task force group that consisted of Commissioners

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Rohr and Frank, Park Director Higlin, Commissioner Knoll, Engineering Project Manager Fettig and Planning & Zoning member Laber. The group received four proposals and after receiving rankings, the top two firms (Kadmas, Lee & Jackson, and Stantec) provided their presentations. The consensus of the group along with Business Development & Communications Director Huber, Director of Public Works Wright and City Administrator Neubauer, was to enter into negotiations with Stantec. The consensus fell in line with the original rankings of the proposals. Neubauer stated that it is estimated that it will take approximately 14 months in order to perform a thorough and complete plan for the City of Mandan and Mandan Park District. He stated that the group would now like to complete the contract negotiation in order to bring a contract to this Commission to the December 18, 2012, meeting.

Shauna Laber from the Planning & Zoning Commission explained that the reason for a Comprehensive Plan is to have a planning tool available. The planning tool will help assess where there will be high density housing and how that will interact with roadways, the park system, a transportation system, etc. The planning tool will provide a guide as to the vision of where the city plans to be, say, five years down the road. The expectations from Stantec is that they will deliver a planning tool guideline for the Planning and Zoning Commission which will help in making decisions as to where land use makes the most sense in what has already been planned. Commissioner Rohr commented that it is also important to have the city staff in place (city engineer, city planner) in order to use the tools out of these types of toolboxes. Administrator Neubauer stated that there are some studies that have occurred in the past but there is not one complete “here’s the book” plan that outlines what has been done and where we are going and how those fit together. Stantec will be able to consolidate what exists and bring forth recommendations for land use and also assist the city staff with current plans. Neubauer stated that references have been checked and Stantec has been given glowing recommendations from the City of Minot and other entities (from Minnesota) that have also utilized their services.

Commissioner Tibke noted that the 2003 plan was instrumental in the Commission’s decisions when rebuilding the downtown.

Commissioner Rohr motioned to enter into contract negotiations for a Comprehensive Plan with Stantec Consulting Services Inc. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

#### RESOLUTIONS & ORDINANCES:

*1. Consider first consideration of Ordinance No.1134 Zone Change for Heart Ridge 2<sup>nd</sup> Addition, Lots 15 & 16 – 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 moved to approve the first consideration of Ordinance No.1134 Zone Change for Heart Ridge 2<sup>nd</sup> Addition, Lots 15 & 16 – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District

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Boundaries and Zoning Map. Commissioner Braun seconded the motion. Engineering Project Manager Fettig indicated that a developer has come forward and stated that they plan to develop on the south side of 19th, which is west of the Ft. Lincoln Elementary School. It's approximately a 10 acre area that is excluded from that, but they are looking at developing in that area. She mentioned that the developers will be requesting RM zoning on that south side.

Shauna Laber from the Planning and Zoning Commission commented that she is not in favor of the zone change to RM in this area because the people in R7 in that area were expecting a neighborhood rather than a large multi-family development right in the middle of it. Commissioner Tibke concurred with Laber stating that she voiced her concerns at a previous meeting. However she felt it necessary that other commissioners be allowed to review the request and offer their opinions as well. Tibke stated that the area is zoned R7 on either side.

Dave Patience, a senior planner with Swenson, Hagen and Co. came forward to explain the zone change request from R7 to RM for Heart Ridge 2<sup>nd</sup> Addition, Lots 15 & 16. He provided a map depicting the area alluded to by Laber. He explained that he strives to come up with ideas of land areas that are tough to develop. He explained how installing "buffers" in areas such as these will essentially develop into appropriate housing in these difficult to develop areas. Buffers such as the mixed use of multi-family housing and high-end housing built on top of the hill overlooking the river while taking into consideration the high traffic use of streets within an area (8<sup>th</sup> Street and 19<sup>th</sup> Street). Commissioner Tibke commented that she understands the plans as outlined by the developer to re-zone the land area however she stated she does not agree with the zoning change request from R7 to RM.

Jim Davis, Mandan City resident came forward and stated he resides on Emberland Avenue, across from 8<sup>th</sup> Street and serves as a spokesperson for the residents in that area. He stated that they are opposed to the zone change for Lots 15 and 16 and they would like to keep the zoning residential, including Lot 31. The irregular parcels on Lots 15, 16, and 31 were discussed by the Planning and Zoning Commission. Immediately after the discussion with this rezoning they started talking about proposed unit developments which means they can come in and take Lots 15 and 16 and develop those differently in a zone change per irregular lot and that would also include Lot 31. Lot 31 is 6 acres with a buildable area which is 3 at most. When they came in with a design for Lot 31 they had 14 buildings there consisting of duplexes and four-plexes which could be up to 56 units there. He stated the residents are opposed to RM zoning for lots 15 and 16 and that they see that as eventually a concern for Lot 31. He said that saturation on 8<sup>th</sup> street is the busiest street in that area.

Commissioner Rohr commented that it is how one perceives their neighborhood using the example that he has Alpha on one side of his home and the new HIT building on the other side which raised concern at the time they were built but he now realizes they are probably the best neighbors he could have. He mentioned that it comes down to personal preference at times and this may be one of those times. He stated that a professional

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planner has outlined a (reasonable) plan for the development of that area and how it can be difficult (for the City Commission) to make decisions that affect residents when addressing the requests that come before them. Commissioner Tibke indicated that in the absence of a City Planner, the City Commission relies on the Planning and Zoning Commission to come forward with recommendations after they have reviewed requests brought to them. She stated that she does not like spot-zoning or hodge-podge types of zoning, thus she is opposed to the zoning request from R7 to RM in this area.

Commissioner Braun indicated that he would appreciate hearing from residents when situations such as this come up whether they are for or against this type of request that will affect them. This will in turn assist the City Commission in their decision to approve or not approve such requests. Commissioner Frank commented that with all the activity going on in the community, residents should be charged with paying attention to what the issues are when they come up. She stated that the plans from the planning perspective make sense. However, considering the community needs and the terrain of the land in this area it is important that the residents understand what multi-family housing means. She thinks that with the community as a whole there is a need to change the understanding of what multi-family housing means. If residents have strong feelings one way or the other they should come forward to voice their opinion when the City Commission is requested to make decisions on these types of issues as they come before them.

Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: No; Commissioner Frank: Yes; Commissioner Braun: No; Commissioner Van Beek: No. The motion did not pass.

2. *Consider Resolution to vacate Oxbow Trail SE.* Commissioner Frank asked the engineers for the project what the reason is for the request for the vacation and if the land south of Oxbow Trail was going to be developed. Patience replied that Lot No. 2 is a mitigation area and it cannot be developed. It was developed as mitigation for Lakewood. Mitzel owns everything on the southeast side of Oxbow. Commissioner Frank questioned the Engineering Department as to which is the best route to develop – the Oxbow Trail or moving it south of the Wastewater Treatment Plant as suggested by the applicant? Engineering Project Manager Fettig replied that there is a levy on the south side down by the Water Treatment Plant so that is not a good option and if there were a flood occurrence again, the levy would be relied upon for protection. Fettig stated that with regard to special assessments, if the road goes in, the property behind it would be part of the special assessments too. Commissioner Frank inquired if it would be possible to assess the neighborhood properties gaining access as well? Fettig replied that yes, they can be assessed.

Commissioner Rohr clarified that the engineer's office has indicated there could be other properties involved in the costs for the street and that it is not recommended to put a street on the south side because of diking and environmental features in that area. Fettig confirmed that is correct.

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Commissioner Frank stated that based on the recommendation from the Engineering Office she moved to deny the request received from Lee Roy Mitzel and Lourdes Nelson to vacate Oxbow Trail SE. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Consider Financing Resolution for Sidewalk, Curb and Gutter Warrant of 2011.* (Note: Bond sale was approved by the Board on November 20, 2012). City Finance Director Welch stated that Resolutions 3-5 refer to what was passed at the last meeting. These finalize the bond requests from the last meeting.

Commissioner Frank moved to approve the Financing Resolution for Sidewalk, Curb and Gutter Warrant of 2011. (Note: Bond sale was approved by the Board on November 20, 2012). Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

4. *Consider Financing Resolution for Sidewalk, Curb and Gutter Warrant of 2012.* (Note: Bond sale was approved by the Board on November 20, 2012). Commissioner Frank moved to approve the Financing Resolution for Sidewalk, Curb and Gutter Warrant of 2012. (Note: Bond sale was approved by the Board on November 20, 2012) Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

5. *Consider Resolution Authorizing Issuance of \$480,000 Refunding Improvement Bonds, Series SCG-2012.* (Note: Relates to Agenda items H.3. and H.4.) Commissioner Braun moved to approve the *Resolution Authorizing Issuance of \$480,000 Refunding Improvement Bonds, Series SCG-2012.* (Note: Relates to Agenda items H.3. and H.4.) Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

6. *Consider a Resolution of Amendment Authorizing the Issuance of Water Improvement Interim Certificates of 2008, Series B and Water Improvement Revenue Bonds of 2008, Series B, and the State Revolving Fund Program Loan Agreement with the North Dakota Public Finance Authority for South Side Water Reservoir and Water Transmission Main Improvements.* Commissioner Tibke moved to approve a Resolution of Amendment Authorizing the Issuance of Water Improvement Interim Certificates of 2008, Series B and Water Improvement Revenue Bonds of 2008, Series B, and the State Revolving Fund Program Loan Agreement with the North Dakota Public Finance Authority for South Side Water Reservoir and Water Transmission Main Improvements. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

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OTHER BUSINESS:

1. *Consider moving into executive session under North Dakota Century Code Section 44-04-19.1 for attorney consultation regarding contract negotiations and instructions related to the proposals for development of city-owned property located at the corner of Collins Ave & Main Street.*

Commissioner Braun motioned to move into executive session to discuss this matter. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed. Mayor Van Beek stated that the executive session will be recorded and all members of the governing body are reminded to limit their discussion during the executive session to the announced topic. Any collective decisions or collective commitment or other final action by the governing body must occur after it reconvenes in an open meeting unless the final action is specifically required by law to be taken during the executive session. The prohibition of taking final action during the executive session does not apply to providing guidance or instructions to our attorney or negotiator. Members were excused to convene in the Dykshoorn Room.

The regular meeting adjourned at 7:40 p.m. to enter into Executive Session. Present: Commissioners Van Beek, Braun, Frank, Rohr and Tibke. Department Heads present were City Administrator Neubauer, Business Development and Communications Director Huber, Engineering Project Manager Fettig and City Attorney Brown.

There being no further actions to come before the Board of City Commissioners, Commissioner Tibke moved to adjourn the regular meeting at 8:10 p.m. Commissioner Braun 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