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

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

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

PUBLIC HEARING:

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

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

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

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

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

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

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

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

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

BIDS:

CONSENT AGENDA:

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

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

The following Consent Agenda items were removed for discussion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OLD BUSINESS:

NEW BUSINESS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESOLUTIONS & ORDINANCES:

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

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

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

OTHER BUSINESS:

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

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

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

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

/s/ James Neubauer

James Neubauer,
City Administrator

/s/ Sandra Tibke

Sandra Tibke
Vice President, Board of City
Commissioners