
The Mandan City Commission met in regular session at 5:30 p.m. on June 7, 2011 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Rohr, Frank, and Jackson. Department Heads present were Finance Director Welch, Deputy Police Chief Leingang, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development and Communications Director Huber, Engineering Project Manager Bechtel, and City Assessor Barta.

Mayor Helbling extended a thank you to all the city staff members, the citizens and the National Guard for their efforts during the flood emergency situations.

MINUTES: *Consider approval of the minutes for May 17, 2011, Regular Meeting.* Commissioner Rohr moved to approve the minutes of May 17, 2011, Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

Minutes of May 30, 2011, Special Meeting of the Board of City Commissioners: Commissioner Rohr pointed out a clarification @ Paragraph 4 wherein it was someone other than Mayor Helbling that “seconded” the motion (declaring a state of emergency). City Attorney Brown stated that it was Commissioner Jackson who seconded that motion. Commissioner Rohr moved to approve the *Minutes of May 30, 2011, Special Meeting of the Board of City Commissioners* noting that Commissioner Jackson “seconded the motion” and that the Minutes be amended as corrected. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *Public Hearing to consider a 2-year Ad Valorem tax exemption for Jessara Properties LLC.* City Assessor Barta reviewed with the Board a request to consider a 2-year Ad Valorem tax exemption for Jessara Properties LLC. He stated that this is a request for a construction of a new 24-unit apartment building at 2401 40th Avenue SE, Mandan, ND. The Mandan Growth Fund reviewed the project and voted unanimously in support of the request. The Park District and School District were given notification of this exemption and there has been no opposition to the request received.

Mayor Helbling stated that this is a public hearing and asked for comments from the public. Hearing none, this portion of the public hearing was closed.

Commissioner Tibke moved to approve the recommendation for a 2-year Ad Valorem tax exemption for Jessara Properties LLC for a newly constructed commercial building due to meeting all criteria under North Dakota Century Code 40-57.1. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

2. *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 with members a request from a landowner to vacate the public right-of-way along 4th Street NE, as platted on the north boundary of block 30, Helmsworth-McLean Addition. Bechtel stated that when this lot was platted, it was platted square. He explained that due to the hills within the plot, it is necessary to vacate the right-of-way in order for the landowner to acquire some of the land in order to build on the property. Bechtel stated that his office does not have any issues with the request to vacate the right-of-way as requested.

Mayor Helbling asked for public input regarding the request to vacate the public right-of-way along 4th Street Northeast.

DeNae Kautzmann, a Mandan resident, came forward to speak. She stated that she is in opposition to the vacation stating that she does not think it is prudent for the City to do so. She stated that the map provided is not true to what the intersection looks like, stating that it is not a “T” intersection and that the roadway does not go to the east. She indicated that if a home or garage is placed on that particular location, a “blind intersection” will be created. She gave examples of how the view is obstructed when traveling on that street. She mentioned that the CAT bus route runs along that street. There are walkers on that street. There are school children attending Custer School that walk on that street. She voiced concern of safety issues if the right-of-way is vacated and requested the Board further research the matter before voting on it. Mr. Barta stated that the landowner has not been issued a permit to build on that property from the City Assessor’s office. Bechtel noted that he supports the request to vacate the public right-of-way along 4th Street Northeast as long as the landowner meets the set back requirements. He does not believe there will be safety issues any different than any other city block if a structure is placed on that lot if the necessary requirements are met. Barta stated that the property is zoned RM and the set back for an RM zone is 15 ft. from the front of the property and the sideline would be 5 ft. on the north side where it is coming down the hill. Bechtel stated that this parcel is approximately 25’ wide in the front of the street and wider at the back as it is a triangular type parcel.

Mayor Helbling asked for additional comments from the public. Hearing none, this portion of the public hearing was closed. Commissioner Frank recommended that before making any decisions on this matter that it may be beneficial to investigate the type of structure that will be put on the property due to restrictions in the size not allowing him to construct any kind of sizable structure. Assessor Barta stated that the landowner plans to move a house that he purchased by the high school that will be converted into a 2-unit structure with plans to put a garage in front of the house and one on the side of the house, thus the request for the vacation. Barta stated that the landowner is allowed to cover 40% of his lot.

Commissioner Frank motioned to table the matter until the safety issues are reviewed. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

BIDS:

CONSENT AGENDA:

1. *Consider approval of individual Special Assessments for Snow Removal of 2011.* The Board approved of the individual Special Assessments for Snow Removal of 2011.
2. *Consider approval of the following site authorizations for the Fort Abraham Lincoln Foundation from July 1, 2011 through June 30, 2012: (i) West Side Bar and Grill/Mulligans (ii) Seven Seas (iii) Midway Lanes (iv) Lonesome Dove (v) Broken Oar.* The Board approved of the following site authorizations for the Fort Abraham Lincoln Foundation from July 1, 2011 through June 30, 2012: (i) West Side Bar and Grill/Mulligans (ii) Seven Seas (iii) Midway Lanes (iv) Lonesome Dove (v) Broken Oar.
3. *Consider approval of the plat of Heart Ridge Addition.* The Board approved of the plat of Heart Ridge Addition.

Commissioner Jackson moved to approve the Consent Agenda as presented.

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

OLD BUSINESS:

1. *Consider offer for city-owned building at 116 E Main.* Business Development and Communications Director Huber outlined the following: She stated that this matter was previously discussed wherein Scott Johnson submitted an offer of \$15,000 to purchase the building at 116 East Main, subject to certain conditions. The Board tabled the matter to allow additional inquiries and expressions of interest through June 7, 2011. The Board further directed Huber, City Attorney Brown and City Administrator Neubauer to review additional offers until June 7, 2011. Huber stated that she re-visited the matter of Johnson's offer and that a counter-offer was presented to Pat Maddock of Oaktree Realty with several stipulations: (1) Extend purchase offer to closing on or before June 30, 2011; (2) Eliminate contingency for the city to supply water line for fire suppression system; (3) Supply a letter of intent to lease from the retail business referenced at the May 17, 2011 City Commission meeting; (4) Deposit funds for rehab work with the City of Mandan at closing; (5) Renaissance Zone and Storefront Improvement incentives subject to normal application, consideration and approval process; (6) Supply a list of addresses for other commercial or rental properties owned in Bismarck; (7) Offer subject to City Commission consideration at its June 7, 2011 meeting in combination with any other offers received at that time.

Huber stated that three (3) additional offers on the property have been received within the last 24-48 hours. Representatives from those offers are present for discussion. (1) Fred Berger has offered \$25,000 with a request that the City install a waterline only if it will be required by the City. (2) Mamma Maria's, an Italian Restaurant from East Grand Forks with an offer of \$1.00 in recognition of the cost for rehab of the building – this request being for restaurant use in which a fire sprinkler system would be required of which they would bear the cost of the fire suppression system; (3) An offer received from

Julie Haibeck in the amount of \$10,000 with a contingency that the City replace the awning on the building.

Huber stated that the following individuals are present with regard to the offers received on the property: Scott Johnson; Karen Fleck, Oaktree Realtors on behalf of Fred Berger; Nick Hallerman on behalf of Mamma Maria's Italian Restaurant; and Julie Haibeck.

Mayor Helbling invited prospective buyers to come forward to provide any additional information to their proposal.

- Scott Johnson came forward and stated that he would have a retail furniture tenant on the property.
- Julie Haibeck came forward and stated that she would have massage masseuses and a clothing apparel retail site including wedding party spa services. The upstairs would be pursued as rental property. Her estimated costs would be over \$100,000.
- Nick Hallerman, Mamma Maria's Italian Restaurant, came forward and stated he would house the restaurant in the building. The location in East Grand Forks is at capacity and he would like to expand the business to a second location in Mandan. Both the downstairs and upstairs would be utilized for restaurant purposes. They would apply for a full liquor license. His estimated costs for improvements would be about \$250,000. Business Plan expectations would be more than the current store in East Grand Forks; which, between what is projected and what has been done so far this year, they are hoping on topping \$1M. He expects to employ 50-60 employees with a late fall of 2011 opening date.
- Karen Fleck, Oaktree Realtors presented on behalf of Fred Berger. Berger plans to put an office in the back of the building. The front part of the building would be retail space. The upstairs would be converted to apartments. His estimated costs for renovation would be at least \$125,000-\$150,000. He would pursue renovation immediately and complete the project as soon as possible.

Commissioner Frank stated that based on the feedback received consistently from the community as well as the future investment and value for that location she motioned to enter into a contract of negotiations on the property located at 116 East Main Street, Mandan, ND, with Mamma Maria's Italian Restaurant. Commissioner Tibke seconded the motion.

Commissioner Jackson commented that no perimeters have been discussed such as claw back provisions if the work wasn't substantially complete by a certain date.

Commissioner Frank clarified that her motion was to enter into negotiations regarding this matter and that further discussions be held regarding the dollar amount of the sale of the building, and other negotiations as deemed necessary by the city staff on behalf of the best interests of the citizens of Mandan. Huber provided information regarding the sale of a building if pursued at the cost of \$1.00, explaining that whenever an incentive is provided in the amount exceeding \$25,000 to a business, there is a requirement by state law to have a business incentive agreement in place with claw back provisions. If this

matter is pursued, City Attorney Brown will be involved in negotiations with Mamma Maria's Restaurant to outline a business incentive agreement and what those claw back provisions might be. Commissioner Rohr asked what the backup plan would be if there are problems with the negotiations? Mayor Helbling suggested that if that would occur, the commission would go back to the other offers and explore the options again. However, it would not be re-advertised.

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

Mayor Helbling extended a thank you to the other three offers presented in this matter and encouraged them to continue to pursue their business venture within Mandan.

NEW BUSINESS:

1. *Consider funding requests from the Mandan Progress Organization Funding Committee.* Del Wetsch, MPO Executive Director, presented a request for the distribution of funds received from 20 applications for assistance in funding provided by the City of Mandan for groups and/or organizations which work for the betterment of the community in the amount of \$20,000. Wetsch explained that a point system was used to grade the impact of the events to the community. The funds are limited and are awarded by 50% in Mandan Dollars and 50% in cash. A MPO subcommittee has reviewed the criteria and recommends the disbursements as presented.

Commissioner Rohr moved to approve the funding recommendations as presented by the MPO subcommittee and reviewed and accepted by the MPO Board of Directors at their May Board Meeting. Commissioner Tibke seconded the motion.

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

RESOLUTIONS & ORDINANCES:

1. *Consider second consideration and final passage of Ordinance No. 1095 Zone Change for Lakewood Commercial Park 5th – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map.* Commissioner Jackson moved to approve the second consideration and final passage of Ordinance No. 1095 Zone Change for Lakewood Commercial Park 5th – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

2. *Consider second and final passage of ordinance 1096 – an ordinance to repeal and enact section 6-03-07 of the Mandan Code of Ordinances relating to State of Emergency.* City Attorney Brown stated that this matter was discussed at the May 30,

2011 Special Meeting in that the existing Section 6-03-07 of the Mandan Code of Ordinances provided for a declaration by the Board of City Commissioners in a state of emergency. The state of emergency didn't define what the criteria were for that emergency or what authority or powers other parts of the city departments may have. The issue that came up was with dealing with the issue of temporary dikes. He discussed the matter with the City Attorney in Fargo as to how to deal with these issues. The Fargo City Attorney pointed him to their ordinance, which is now before you as Ordinance 1096. This ordinance gives the Mayor, (the President of the City Commission), the authority to proclaim a State of Emergency and then for a period of no more than thirty (30) days, (or the commissioners themselves could terminate it sooner), that a state of emergency would exist in the community giving the President of the Commission the authority to order the Chief of Police to do certain actions; to authorize, for instance, the construction of temporary dikes; to authorize evacuations if that were necessary. It's fairly broad. But it is an appropriate method to more particularly address the situations that hopefully will not occur due to the flood emergency that we are currently in. The first reading of this was held on May 30, 2011, Special Meeting.

Commissioner Jackson moved to approve the second and final passage of ordinance 1096 – an ordinance to repeal and enact section 6-03-07 of the Mandan Code of Ordinances relating to State of Emergency. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Yes. The motion passed.

City Attorney Brown prepared a Proclamation for signature by the Mayor, which was read by Attorney Brown. Based on the above, Mayor Helbling declared a State of Emergency for the City of Mandan.

OTHER BUSINESS:

1. *Daily Flood Report Coverage:* Mayor Helbling inquired of the Board if they could assist with the daily flood report coverage in order to relieve him of that duty until the end of the week. Commissioner Frank stated she would be able to cover the meetings at 9 AM for the remainder of this week. Mayor Helbling stated that if the flooding situation changes, he will step back in.
2. *Lawn watering:* Mayor Helbling highly encouraged the residents to water lawns sparingly. In particular, he pointed out not to water on a fixed schedule or when rain is forecast. Excess amounts of water can contribute to raising the ground water levels. There may be a need to put fines in place if people do not comply with limited lawn watering and also for those who do not pump their sump pumps out into the streets.
3. *Acknowledgment:* Mayor Helbling also wanted to sincerely thank Dakota Media Access and Mary Van Sickle in particular for all they've been doing and for their assistance in being flexible in accommodating the changing meeting times during the last couple of weeks with the flooding situations.

There being no further actions to come before the Board, Commissioner Rohr moved to adjourn the meeting at 6:29 p.m. Commissioner Tibke 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