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The Mandan City Commission met in regular session at 5:30 p.m. on March 5, 2013 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, Director of Public Works Wright, Fire Chief Nardello, Business Development and Communications Director Huber, Engineering Project Manager Fettig, and City Assessor Barta.

B. APPROVAL OF AGENDA: Commissioner Tibke motioned to approve the Agenda as presented. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present.

C. PUBLIC COMMUNICATIONS:

(1) Susan Beehler, Mandan city resident, came forward to comment on the Great Plains Academy property tax incentive exemption. When this came up for bid before the School Board they said the project did not need any tax credit or tax exemptions from the ND Housing Agency or from any other entity. They said they would not be asking for any incentives from the city. It is her opinion that if they come before the Board tonight, that it is apparent that they are going back on their word. She understood that was the reason why the School Board and patrons were in favor of it. They told the citizens of Mandan that they would not be asking for any kind of help from the city.

(2) Wayne Papke, Mandan city resident came forward to comment on the request for tax exemption on the former Mandan Junior High building. He stated that this is taxpayer money. This is more than a tax exemption and there should have been another line item on the request than just the tax consideration – the contractual obligation the company entered into in obtaining title to the property. You (the City Commission) must first determine if you will allow the contractor to violate the terms of that contract upon which he obtained the deed and title to this property which was previously owned by Mandan taxpayers. This discussion should stop here. How can you override contract law without exposing yourselves, (City Commissioners), to liability? The information on the website, regarding the RFP’s, the key component under the key feature of bids, is not asking for tax breaks. Papke stated he spoke with Kirsten Baesler the day after this was awarded and she indicated that was the main criteria why they awarded this bid to this vendor at \$1,000 vs. CommunityWorks at a \$50,000 offer.

Papke continued on stating that if the City Commission allows the violation of the contract terms, then and only then should any discussions on tax exemptions take place. A “yes’ vote on the tax exemption for the old Mandan Junior High: if you vote yes, you are saying that you support that someone can come in, obtain a property from Mandan taxpayers, and then if they make bad business decisions, or have poor planning or unfortunate circumstances, that the city will be here to bail you out. You would support that it is okay to violate contracts made with Mandan taxpayers because you made bad business planning decisions or you are willing to support violating agreements that are in place. You are willing to use our taxpayer money to support and bail out private businesses that may have intentionally over-promised just to obtain title and deed to the

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property. If you vote yes, you say it is okay to over-promise and under deliver on future RFP's and responses to your economic development. CommunityWorks offered \$50,000 and this group offered \$1,000 and promised to not ask for tax incentives. At a minimum, we as taxpayers walked away from \$49,000. This group is in violation of their original agreement in even *submitting* this request. He encouraged the City Commission and the City Attorney to investigate the possibilities of a bait and switch. He requested the City Commission address one action at a time (1) Is this ethical and right? (2) Is there a reason we can violate the contract between the taxpayers and the new owner and if so, move on to the tax exemptions? Papke commented that granting this would open up the door to widespread fraud and abuse of economic development laws and setting a precedent telling all future developers that the City of Mandan will not enforce its contract promises.

(3) DeNae Kautzmann, Mandan city resident came forward and stated that she is a life-long resident of Mandan and an apartment building owner. She stated she objects to giving the exemptions to MJHS, LLLC. She referenced the Mandan News dated 7/20/12 and they said they would not seek tax breaks from the City. The company went on to say that the estimated property tax that would be coming in over the 5-year period would be \$450,000. The School Board relied on that when they made their decision as to what proposal they were going to accept. Mr. Papke is correct in that they received in consideration \$1,000 as their bid for the building. She requested the City Commission vote no to this tax incentive and tell this company that you are honoring their word to the Mandan School Board that they will not seek tax incentives from the City.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission meeting held on February 19, 2013 Regular Board Meeting and February 26, 2013, Special Board Meeting Working Session.* Commissioner Rohr moved to approve the minutes from the Board of City Commission meeting held on February 19, 2013 Regular Board Meeting and the February 26, 2013, Special Board Meeting Working Session. . Commissioner Tibke 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.

E. PUBLIC HEARING:

F. BIDS:

G. CONSENT AGENDA

1. *Removed for discussion. See below.*
2. *Consider for approval the final plat of Terra Vallee 6<sup>th</sup> Addition.* The Board approved of the final plat of Terra Vallee 6<sup>th</sup> Addition.
3. *Consider for approval the final plat of Midway 14<sup>th</sup> Addition.* The Board approved of the final plat of Midway 14<sup>th</sup> Addition.
4. *Consider for approval the final Replat of North Prairie Subdivision.* The Board approved of the final Replat of North Prairie Subdivision.

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5. *Consider approving amended Engineer's Report and authorizing a call for bids on Water & Sewer Improvement District No. 60, Project 2012-21 (McKenzie Drive SE)(Resolution No. 1).* The Board approved of the amended Engineer's Report and authorizing a call for bids on Water & Sewer Improvement District No. 60, Project 2012-21 (McKenzie Drive SE)(Resolution No. 1).
  6. *Consider the approval of plans and specifications, Engineer's Report and authorize the call for bids for the 2013 Municipal Sidewalk Improvement Project 2013-03.* The Board approved of plans and specifications; Engineer's Report and authorized the call for bids for the 2013 Municipal Sidewalk Improvement Project 2013-03.
  7. *Consider the Contract for Services for the City's Employee Assistance Program from St. Alexius Medical Center.* The Board approved of the Contract for Services for the City's Employee Assistance Program from St. Alexius Medical Center.
  8. *Consider request for out-of-state travel for the Fire Department.* The Board approved of out-of-state travel for the Fire Department.
  9. *Consider the following abatements/exemptions: (i) 2-year exemption – Dustin Erhardt (ii) 2-year exemption – Jared Reimer (iii) Wheelchair exemption – Leroy Schmautz (iv) Blind Exemption – Leo Voll (v) Blind Exemption – Loriena Ereth and (vi) Blind Exemption – Joseph Wingerter.* The Board approved of the abatements/exemptions as listed.

Commissioner Frank moved to approve the Consent Agenda excluding Item No. 1 which was removed for discussion. 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.

REMOVED FOR DISCUSSION: Commissioner Frank requested these items be removed from the Consent Agenda so that they could be read out loud to the public.

1. *Consider the following proclamations:*
  - i. *Designating April 9, 2013 as National Service Recognition Day.*
  - ii. *Designating the week of April 15-19, 2013 as Project Hope Week.*
  - iii. *Designating April 29th – May 4<sup>th</sup>, 2012 as "Spring Clean-Up Week" in the City of Mandan.*

Mayor VanBeek indicated that he would entertain a motion to have Commissioner Frank read the proclamations. Commissioner Frank motioned to read the proclamations herself. Commissioner Tibke 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.

Commissioner Frank read the proclamations as listed. After all were read out loud, Commissioner Frank moved to approve Consent Agenda Item No. 1 (three proclamations). 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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**H. OLD BUSINESS:**

1. *Consider Application for Property Tax Exemption for Improvements to Commercial and Residential Buildings (Former Mandan Jr. High).* Jordan Schuetzle provided handouts “Information for Mandan City Commission Great Plains Apartments”. He admitted to the fact that when his bid for the Mandan Junior High building was submitted, he said they could do the project without any tax breaks or incentives. He directed attention to three items of his testimony: 1) Addressing misconceptions and confirming intent. 2) Identifying the Financial Need. 3) Addressing the Expectations of the School Board when awarding the bid. In addition he provided three Appendixes to the written testimony regarding the bid. Schuetzle stated that the main point is that this is a remodeling project. Regarding the contractual agreement, he stated that it is legally possible for them to ask for this assistance.

The Appendix B addresses all the construction costs – including the unexpected increases. After a brief summary of the handouts provided, he stated that he will be going back to the Housing Authority because they were only awarded one-third of what they can potentially get. He stated there is \$1.2 million available from private funds. Referencing Appendix C, he stated that he went back and reviewed all the City Commission meeting minutes, School Board minutes and highlighted areas that pertained to this matter. He also indicated that he has since gone back to the School Board and advised them what actions he has or will be taking. He stated he comes before this Board admitting that he failed with his predictions; that he didn’t accurately predict that the prices were going to rise as much as they did. He requested consideration to grant the tax exemption request.

Commissioner Tibke questioned as to when the numbers were put together for this project. Schuetzle replied that was done in June 2012 by using pro forma models used in Williston, Dickinson, Beach, Watford City, Jamestown, Fargo, Valley City, Devils Lake and Grand Forks and re-construction data from 2010 and 2011. The sub-contractors have cited material costs as one of the major reasons for the cost increases. The \$7.1 million cost projection came back about February 3, 2013. Commissioner Frank inquired as to what other options were looked at prior to coming to this Board? Schuetzle replied that they have been cutting costs in many areas. He said he is not taking a fee for his work on the project. The contractor and architect each took a half-percent cut in which he explained does make a difference when there is a 7-10% overhead. Expansion in their banking efforts have been increased as well as seeking incentive dollars that may be available.

Commissioner Frank asked how he plans to leverage the tax exemption requested. Schuetzle replied that this is not adding any dollars into the investor’s pockets. He explained that there is future income coming their way, in the form of tax exemption savings and that he will request to borrow against that and use that to build the existing building. Once that is lumped back into debt service, (or what is to be paid out), that essentially equates out and adds that \$1000 bottom line to the net operating income. The property appraises at \$5.5 million but the cost to remodel is \$7.1 million. The Housing Incentive Fund (HIF) loan with 25 yrs. will help with that. He pointed out that North

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Dakota Century Code allows for these funds to be made available in order for a developer to “make the building nicer”.

Commissioner Frank commented that constituents have come forward to present their position to this matter. She asked Schuetzle if there are any requirements or commitments as to what they have to do under the contract for the property. Schuetzle replied that under the contract he is not under any obligation but stated that he personally is obligated to abide as close as possible to what he said they wanted to do. He reassured the Board that their commitment to low income housing has not budged at all and that is the real commitment in this project. He stated that the project cannot get done without additional assistance. He stated that the 5-year property tax exemption would add about \$250,000 to the upfront costs.

Commissioner Rohr commented that he was appointed to the committee for the junior high building sale. He stated he recalls the request that no tax exemption would be sought and now stated some disappointment that this is now coming up for a tax exemption request. He indicated that he has some reservations to the tax exemption request even though he feels Schuetzle has been up front with the situations he is dealing with.

Commissioner Frank commented that she has a good feeling about the project as outlined by Schuetzle’s presentation. Her main concern is that for the community. There are two options: Schuetzle can seek out the exemption or, with the type of contract he has, he can decide just to walk. She pointed out that this is the third time this matter has come before the commission. Based on the housing problems in the community she feels this is a project that should be reviewed as one of consideration on a “case-by-case basis”. She stated that with all the projects that have come before this Board, given the history of this building, that she feels this project has potential. The School Board had a opportunity at the last commission meeting to voice objection to the tax exemption request; however, they did not.

Commissioner Tibke asked City Attorney Brown his opinion regarding the legal questions that were brought up earlier in this discussion. Attorney Brown stated that if developer had an agreement with the School Board not to ask the City Commission for tax incentives, the City Commission was not part of that agreement and is not bound by that agreement. He stated that as Commissioner Frank pointed out, the School Board had an opportunity to object to the request. However, they have chosen not to come forward. His opinion is that the Commission can grant or deny the request. They can put conditions on the request.

Commissioner Tibke questioned City Administrator Neubauer and Project Manager Fettig as to what they are experiencing with regard to costs related to various projects. Engineering Project Manager Fettig replied that they are seeing costs rising and for the most part are higher than the engineer’s estimates. Commissioner Braun commented that he concurs with what Commissioner Frank spoke to in favor of the tax exemption and

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that he also recalls what Commissioner Rohr alluded to in that no tax incentives would be applied for when the building was sold.

Commissioner Frank commented that this is an opportunity for the City Commission to control and provide some guarantees to the community as far as the development of the property. Commissioner Rohr inquired if there are any timelines involved if the project does not get to where it would like to be? Commissioner Frank referred to City Attorney Brown, (if the commission would approve the request), as to whether we could put the language in that the developer would have a certain time limit for construction to commence, or for the project to be completed, etc. Attorney Brown replied that the Commission can require any conditions on the granting of this exemption as they want - whether it is time, or specific details, all kinds of things that are in his plan could be part of the requirement for the granting of the exemption.

Commissioner Frank also commented that based on Attorney Brown's reply, is the Commission in a position to come up with the conditions if the exemption is granted? She recommended that Schuetzle come up with a timeline. Schuetzle stated that they have a soft start date of March 15<sup>th</sup> - that's what was told to the subcontractors when the dollar amount was at the \$5.8 million; however, 2-3 more weeks is more realistic due to the extra dollars that have to be obtained. One other option is that the project is eligible for about \$900,000 of state incentive funds through HIF and that would push the start date to May 1<sup>st</sup>. He explained that one of the options was to delay construction until the fall of the year when perhaps building costs would go down. Given that, he indicated that a timeline date may have to be moved to January 1, 2014. Once it gets going it is estimated to be a 6-9 month construction period. He stated that his contractor told him that incremental building would actually be more expensive because of tying up certain crews so that idea was abandoned.

Commissioner Frank questioned Schuetzle as to whether at this time he was comfortable making a commitment that would be a contingency of this public support that the project will proceed as presented and that it will be reviewed and determined by administration what those contingencies will be? Schuetzle stated that "Yes, that is why he put his testimony in writing and yes he will be 100% committed."

Commissioner Tibke commented that this is not the first situation of this nature referencing an RFP (up north) wherein they had a great proposal and they competed with other proposals wherein they had to cut back on their costs and they still requested exemptions. In other words, it is not unusual that projects are put together and the costs change and then the Board has to reconsider. In that case, that contract was with the City as compared to the current situation wherein the contract is not with the City.

Wayne Papke, Mandan resident came forward and stated that there are legal contracts and there are ethical contracts. Just because this is with a school contract, this is still a mutual contract with the taxpayers of North Dakota. You are violating your ethical contract with the taxpayers. He commented other points that did not make sense to him.

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Commissioner Frank stated this is the second time Schuetzle has come before the Commission. Knowing that he is making the commitment to follow through with the project including air conditioning and green space, she requested Administrator Neubauer and Attorney Brown put into writing the requirements that need to be followed through with regarding the project. Attorney Brown said the suggested motion would be to direct City staff to negotiate a tax incentive agreement with the developer and then that agreement would need to be presented to the Commission for consideration to grant a tax incentive at the next meeting.

Commissioner Frank motioned to direct City staff to negotiate a tax incentive agreement with the developer to be presented to the Commission for consideration to grant a tax incentive at the next meeting. Commissioner Tibke seconded the motion.

Commissioner Frank extended a thank you to the residents who came forward to speak on this matter. She stated that it would be equally unethical to not consider a tax incentive exemption based on the fact that this matter has come back before this commission three times in the past. Roll call vote: Commissioner Rohr: No; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: No. The motion passed.

I. NEW BUSINESS:

J. RESOLUTIONS AND ORDINANCES:

1. *Consider Resolution approving Amended Engineer's Report and Resolution Directing Advertisement for Bids for Water & Sewer Improvement District No. 60, Project 2012-21 (McKenzie Drive SE).* Commissioner Frank moved to approve the Resolution approving the Amended Engineer's Report and Resolution Directing Advertisement for Bids for Water & Sewer Improvement District No. 60, Project 2012-21 (McKenzie Drive SE). 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.

K. OTHER BUSINESS

There being no further actions to come before the Board of City Commissioners, Commissioner Tibke moved to adjourn the meeting at 6:39 p.m. Commissioner Frank 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