
The Mandan City Commission met in regular session at 5:30 p.m. on May 6, 2014 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Van Beek, Tibke, Rohr, and Braun. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Planning & Engineering Director Froseth, Planner Decker, Assessor Shaw, and Building Official Lalim. Absent: Commissioner Frank, City Attorney Brown, and Business Development and Communications Director Huber.

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

C. PUBLIC COMMUNICATIONS: Mayor Van Beek invited anyone to come forward to address items on the Agenda. A second announcement was made to speak for or against items on the Agenda. Hearing none, this portion of the Public Communications forum was closed.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission regular meeting held April 15, 2014 the Board of Equalization Minutes held April 15, 2014, the Special Board Meeting Jail Presentation held April 21, 2014 and the Special Meeting Working Session held April 29, 2014.* Commissioner Braun moved to approve the minutes as presented. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present. The motion passed.

E. PUBLIC HEARING:

F. BIDS:

1. *Consider resolution approving contractor and contractor’s bond for Street Improvement District 195 Project 2014-13 (Roughrider’s).* Planning & Engineering Director Froseth provided a background of events that have occurred in this matter. On March 4, 2014, the Commission approved the resolution of the Engineer’s Report and the Resolution of Necessity. On April 1, 2014, the Commission approved the plans and specifications and the resolution for advertisement of bids. On April 15, 2014, the Commission approved the resolution of insufficiency of protests contingent upon the proposed street lighting project not be allowed as part of the project based on the protest petition that was received. Bids were received on April 29, 2014 and 2 bids were received. Mariner Construction was the low bidder at \$701,719.07. If awarded the project, the completion date would be October 31, 2014, and the seal coat would be completed by July 15, 2015. The bid came in 20% over the estimated amount of \$585,839 mostly due to the change in approach to the resurfacing of the mine and blend approach. NDCC allows the commission to accept the bid within 40% over the estimate. With the bid amount and projected administrative and engineering costs on top of that, the estimated cost to each property, after review by the Assessment Committee meets on

this matter, is estimated at \$10,829 for individual lot assessments. This compares to what was sent out with the notification projected at \$9,004 per lot.

Commissioner Tibke moved to approve the bid award for Street Improvement District 195 Project 2014-13 (Roughrider's) to Mariner Construction in the amount of \$701,719.07. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

2. *Consider resolution approving contractor and contractor's bond for Street Improvement District 186 Project 2013-22 (Macedonia Hills 1st Addition).* Planning & Engineering Director Froseth stated that bids were received for this street improvement district on February 11, 2014. There were two bids received and Mariner Construction was the low bidder in the amount of \$716,513.05. The Engineer's estimate was \$671,330 which was 6.7% higher than the Engineer's estimate. The City is an obligee of the performance bond for this project and in essence it will own the infrastructure after installation. The surety relayed objections to how the payments for the project have been handled stating that it is not in line with their indemnity agreement with Manitou Construction. The City Attorney suggested asking Mariner Construction to hold their bid for street improvements until the contractual issues with the water and sewer project had been determined so as not to approve a project that could not be performed if the water and sewer would not get installed. Mariner Construction agreed to that request for a finite period of time until May 8, 2014.

The City has been notified that the original water and sewer contractor for this development would not be able to finish the project due to financial circumstances and recently the developer found Cimarron Construction, Inc., to finish the water and sewer, thus awarding the Street Improvement District contract for this development is warranted. With the new contractor in place, Director Froseth recommended going forward with this project by awarding the bid to Mariner Construction was the low bidder in the amount of \$716,513.05 plus engineering and administrative costs of \$250,779.57 totaling \$967,292.62. That amount would be split over the 44 lots in the development for an approximate cost of \$21,983.92. The lots with 2 units will split the cost of the lot at \$10,991.96 each. Director Froseth stated that the City has been provided a license and proof of insurance for the new contractor and a letter of credit. The City does require a performance bond with all water and sewer 3-way agreement contracts which are in process at the present time.

Alexander Mackovski, representing the developer, was present to answer questions regarding this project. He stated that they received an email about an hour and a half ago from the performance bond company who rejected the contractor. He said that the person that was handling the case is on vacation and he has just received an email from their attorney. Mackovski stated he does not know how to proceed at this time. Look for another contractor? Or wait for them just in case, and have an exception to having a performance bond since we already have the money deposited in a joint account with the City of Mandan. We can finish the work in less than 10 days, the contractor stated.

Mackovski stated he does have a contractor lined up but his application for performance bond that was originally done with Manitou Construction was rejected so there is no performance bond in place but all the money has been deposited in the bank.

Planning & Engineering Director Froseth stated the information just provided by Mackovski is a new development to him, as well. He was not aware they were unable to obtain a performance bond. Water and sewer contracts require both the letter of credit to assure that the developer has the money to pay for these improvements and the performance bond is a redundancy and should guarantee that this project will finish. The bond is to assure that the contractor will be able to finish the project and not just that the developer has the money for the project. Without the performance bond in place and in order to follow procedure, Director Froseth recommended this matter be tabled until a performance bond is intact. If there are no problems, the matter could be completed within a week.

Commissioner Braun moved to table the resolution approving the contractor and contractor's bond for Street Improvement District 186 Project 2013-22 (Macedonia Hills 1st Addition). Commissioner Rohr seconded the motion.

Commissioner Tibke asked for clarification if the recommendation is to table this matter until the next meeting when a performance bond will be in place. Mackovski questioned what they should do if the contractor does not qualify to any bonding company. Should he seek a new contractor or would the City of Mandan look for a new contractor? Mayor Van Beek suggested that after the meeting adjourns that Mackovski meet with Planning & Engineering Director Froseth and City Administrator Neubauer to discuss the process.

City Administrator Neubauer recommended that the City of Mandan deny the 3-way agreement contract and suggested that this matter come back before the Commission at a later date because tabling the matter could leave it in limbo for an indefinite period of time. He recommended not approving the 3-way contract and if it needs to come back it can go through the proper process to come before the City Commission again.

Roll call vote: Commissioner Rohr: No; Commissioner Tibke: No; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: No. The motion to table the matter failed.

City Administrator Neubauer stated this was the action to consider the street improvement award for bids. The Commission already acted on New Business No. 9 and approved the 3-way agreement. With the newest information the City can hold the bid on the street improvement provided Mariner Construction is willing to extend their bid prices. He recommended that the Commission should go back and address the 3-way agreement and rescind the approval of the 3-way agreement with the new information just received that the performance bond requirement has not been met.

Commissioner Tibke moved to deny the street improvement District 186 Project 2013-22 (Macedonia Hills 1st Addition). Commissioner Rohr seconded the motion. Roll call vote:

Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

G. CONSENT AGENDA

1. *Consider for approval adding Telecommunication Facilities to the Utility Service Group Zoning Category*
2. *Consider the following proclamations: (i) May 17, 2014 as National Kids to Parks Day (ii) May 18, 2014 as STRIDES: Lions Walk for Diabetes Awareness Day.*
3. *Update on low bid for sidewalk and incidentals as bid through NDDOT Safe Routes to School program.*
4. *Consider correction of accurate vacant lot value in equalization for Gas U Up LLC.*
5. *Consider approval of sale of 1987 Sludge Truck and transfer \$2500 of total sale for new dump truck.*
6. *Consider approval to create the position of Assistant Utility Maintenance Superintendent.*
7. *Acting as the Board of Adjustment, consider for approval setback and Floor Area Ratio variances for Heart River Storage.*
8. *Consider for approval Plat for Heart Ridge Third Addition.*
9. *Consider for approval Replat of Lot 3, Block 94, First Northern Pacific Addition.*
10. *Consider for approval Longhorn First Addition Replat.*
11. *Consider approval of the following site authorizations for the Fort Abraham Lincoln Foundation from July 1, 2014 through June 30, 2015: (i) Midway Lanes (ii) Broken Oar (iii) Lonesome Dove (iv) Seven Seas*
12. *Acting as the Board of Adjustment, consider for approval a setback variance for Lot 5, Block 1 Sylvester's Industrial Park 2nd Addition.*
13. *Consider approval of games of chance for Chapter B, Vietnam Vets Legacy Vets Motorcycle Club at Colonial Lounge May 28, 2014 through August 23, 2014.*
14. *Consider for approval the Water Meter Replacement Project Change Order 1 deduct and accept the new AMI Agreement between the City of Mandan and Sensus, water meter supplier.*

Commissioner Tibke moved to approve Consent Agenda as presented. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

H. OLD BUSINESS:

I. NEW BUSINESS:

1. *Consider funding requests from the Mandan Progress Organization Funding Committee. Del Wetsch, Executive Director of the Mandan Progress Organization, (MPO), provided a brief background of the basis for the MPO request. The purpose of the request before the Commission is to consider funding from the City of Mandan's Advertising Budget of \$20,000. He stated that applications were reviewed in April 2014 by the MPO Funding Subcommittee for recommendation to the City Commission for*

approval. Participants were invited to talk about their event they are bringing to the community. Funds are allocated to each group consisting of 50% in Mandan dollars and 50% cash being spent in the business community. Wetsch stated there were 16 applications this year of which 13 were approved for funding at the Board of Directors April 25, 2014 meeting and they are now being presented for approval by the City Commission.

Mayor Van Beek stated that the MPO and Rodeo Days have received an outstanding award. The Mandan Rodeo Days Celebration was named “2014 North Dakota Tourism Event of the Year”. The award was presented in Fargo on April 16, 2014 by Governor Dalrymple. Mandan Rodeo Days has been recognized both locally and nationally and has raised more than \$40,000 over the last 3 years for the Wounded Warriors Project. Mayor Van Beek extended congratulations to the Mandan Rodeo Days Committees for this award. Del Wetsch was recognized as the recipient of the John Justin “Standard of the West Award”. Mayor Van Beek congratulated Del as the 2014 recipient and extended a thank you to Del for all his time and contributions to the City of Mandan events.

Commissioner Rohr motioned to approve the funding requests from the Mandan Progress Organization Funding Committee that were approved by the MPO Board of Directors at the April 25, 2014 meeting. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

2. *Introduction of new employee, Rob Gaskill, engineering technician.* Planning & Engineering Director Froseth introduced Rob Gaskill, as the department’s new engineering technician. He was previously employed with Ulteig Engineers, Bismarck, where he did CAD design work within subdivisions and cellular tower sites. Mayor Van Beek extended a welcome to Rob to his new position with the City of Mandan.

3. *Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-01(Keidel’s South Heart Terrace 3rd Addition).* Planning & Engineering Director Froseth presented a request to approve Keidel’s South Heart 3-way agreement for water and sewer improvement. Keidel’s is located south of 19th Street and east of Hwy 6 in south Mandan. The proposed utilities serve the developer and benefit the land. This is being paid by a 3-way agreement and a letter of credit has been secured for the project and all requirements have been met for the 3-way agreement.

Commissioner Rohr moved to approve the resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-01(Keidel’s South Heart Terrace 3rd Addition). Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

4. *Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-03(Lincoln Ridge 6th Addition).* Planning & Engineering Director Froseth stated this property is located south of 19th Street and directly west of Ft. Lincoln Elementary School in southeast Mandan. The proposed utilities serve the developer and benefit the land. This is being paid by a 3-way agreement and a letter of credit has been secured for the project and all requirements have been met for the 3-way agreement. On May 7, 2013, the Commission approved the final plat for Lincoln Ridge Estates 6th Addition with the understanding that the developer Steve Thilmony would either sell Lots 25, 26, and 27 to the residents of Lincoln Ridge 1st or if an agreement did not work out the lots would be added to lots 24 and 28 of Lincoln Ridge 6th. The recommendation would be to approve the 3-way agreement contingent on Mr. Thilmony taking care of this issue and recording the plat.

Commissioner Braun moved to approve the resolution of the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-03(Lincoln Ridge 6th Addition) contingent on the Lincoln Ridge Estates 6th Addition plat being recorded. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

5. *Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-05(West Hills Estates 3rd Addition).* Planning & Engineering Director Froseth stated this property is located north of Old Red Trail and west of Crown Point. The proposed utilities serve the developer and the benefiting land. This is being paid by a 3-way agreement and a letter of credit has been secured for the project and all requirements have been met for the 3-way agreement.

Commissioner Rohr moved to approve the plans and specifications and authorize the execution of a 3-way agreement for water and sewer improvement Project 2014-05(West Hills Estates 3rd Addition). Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

6. *Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-21(Heart Ridge 3rd Addition).* Planning & Engineering Director Froseth stated this property is located north of 19 Street and west of 8th Avenue Southeast in Mandan. The proposed utilities serve the developer of the benefiting land. This is being paid by a 3-way agreement and a letter of credit has been secured for the project and all requirements have been met for the 3-way agreement. This was originally included in Heart Ridge 2nd Addition. It was revised because a mistake was found with alignment. Heart Ridge 3rd Addition was created to correct in order for lots to better fit with the existing shape of the land.

Commissioner Tibke moved to approve the resolution for plans and specifications and authorize the execution of a 3-way agreement for water and sewer improvement Project 2014-21(Heart Ridge 3rd Addition). Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

7. *Consider resolution approving plans and specifications and resolution directing advertisement for bid for Street Improvement District 196 Project 2014-14 (Mandan Industrial Park).* Planning & Engineering Director Froseth provided a background on this matter. On March 4, 2014, the Mandan City Commission approved the creation of Street Improvement District No. 196 aka Mandan Industrial Park and approved the Engineer's Report and the Resolution of Necessity. On April 15, 2014, the City Commission approved the Resolution determining the insufficiency of protest. The City Engineer's Office has been working with consultants Wenck Associates on project design with the intention to publish the advertisement for bids on May 9, 2014, and the second notice on May 16, 2014 pending approval of the plans and specifications. The plan would be to open bids on May 27, 2014 with approval of the City Commission at the June 3, 2014 meeting. Substantial completion of the project would be by October 31, 2014, with seal and asphalt paved streets by July 15, 2015. The assessments, when determined, would be assessed to the individual property owners.

Commissioner Rohr moved to approve the resolution approving the plans and specifications and approve the resolution directing advertisement for bid for Street Improvement District 196 Project 2014-14 (Mandan Industrial Park). Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

8. *Consider resolution amending engineer's report and resolution directing advertisement for bid for Street Improvement District 189 Project 2013-30 (Lakewood 6th Lot 10B Block 1 Replat).* Planning & Engineering Director Froseth stated this project was brought forward to this Commission in the fall of 2013 for bids and no bids were received. This is brought again for approval of the street improvements in Lakewood 6th Addition. This is only for the section which is an extension of 39th Street in southwest Mandan. The estimated costs for this project is \$55,361.20; engineering and administration will add \$19,376.42 for a total cost of \$74,737.62. The assessment would be against the 19 lots in the area which will be approximately \$3,933.56 each.

Commissioner Braun moved to approve the resolution amending engineer's report and resolution directing advertisement for bid for Street Improvement District 189 Project 2013-30 (Lakewood 6th Lot 10B Block 1 Replat). Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

9. *Consider approving the amended 3-way agreement for water and sewer improvement Project 2013-21 (Macedonia Hills 1st Addition).* Planning & Engineering Director Froseth stated that this project is located at 19th Street Southwest, west of Ft. Lincoln Elementary School. The proposed utility only serves the developer and the benefiting land therefore it is being paid under a 3-way agreement and a letter of credit has been secured for the project. The 3-way agreement is in need of amending because the original contractor on the project was unable to complete the project. A new contractor is in place to finish this work under Addendum No. 1 to the original agreement which requires them to follow the conditions of the original 3-way agreement.

Commissioner Tibke moved to approve the amended 3-way agreement for water and sewer improvement Project 2013-21 (Macedonia Hills 1st Addition). Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

Commissioner Rohr motioned to rescind the approval of the amended 3-way agreement for water and sewer improvement Project 2013-21 (Macedonia Hills 1st Addition). Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

City Administrator Neubauer clarified that the intent is to not move forward with the 3-way agreement because there is no performance bond as required by the agreement and in turn the City of Mandan could not award the street improvement project until the underground is completed.

J. RESOLUTIONS AND ORDINANCES:

1. *First consideration of Ord. 1183 Changes to Chapters 1 & 2 of Title 21 related to Planning and Zoning.* Robert Decker, Principal Planner stated this is the first step in the update of the code. He stated that these are administrative changes. There are no changes in the rules or regulations. This is primarily updating definitions and clarifying language. This will be added to codification with Municode.

Commissioner Braun moved to approve the First consideration of Ord. 1183 Changes to Chapters 1 & 2 of Title 21 related to Planning and Zoning. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Absent; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

2. *First consideration of Ord. 1184 – Amendment to Chapter 13-15 of the Mandan Code of City Ordinances regulating door-to-door sales.* Police Chief Bullinger stated that Ordinance 1184 will amend sections of Chapter 13-15 that addresses regulations of door to door sales and the issuance of transit permits. This new ordinance will reassign the responsibilities to the Mandan Police Department. In addition, it will also require additional information from the applicants to enhance background checks and we would

establish the use of a photo ID which would be carried by every person that would be in Mandan going door-to-door. One additional provision would allow the police department to immediately suspend a permit if sales people are engaging in a fraudulent sale or conduct that would be disorderly. This Amendment has been reviewed by the City Attorney.

Commissioner Braun moved to approve the First consideration of Ord. 1184 – Amendment to Chapter 13-15 of the Mandan Code of City Ordinances regulating door-to-door sales. 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 6:30 p.m. Commissioner Rohr 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