
The Mandan City Commission met in regular session at 5:30 p.m. on May 7, 2013 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Van Beek, Rohr, Frank and Braun. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, Director of Public Works Wright, Fire Chief Nardello, Business Development and Communications Director Huber, Engineering Project Manager Fettig, and Building Official Lalim. Absent: Commissioner Tibke, City Administrator Neubauer.

B. APPROVAL OF AGENDA: Commissioner Frank 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:

Jim Davis came forward to comment on Ordinance 1146, the Proposed Unit Development. He stated that it has been two years since this matter was discussed and it is the request of the homeowners in that area that saturation does not take place across the street from their property (Lot 30 and Lot 31, Heart Ridge Addition). He indicated that he has concerns for the amount of traffic that will be utilizing that small area. In particular, the traffic that flows through the trailer court which includes cement trucks working in the area. He stated the property owners in that area are not opposed to new development but the City needs to look at the infrastructure. His concern is two-fold. One concern is controversy with one of the property owners they are at odds with regarding what is going in there and what the majority of the property owners want to see on the land use. The other concern is about the areas in that area that could be developed in the same way.

Nancy Eisenbarth came forward and stated she recently purchased a bar and grill at Ft. Rice. She stated her concern is all the junk around her property. She inquired what could be done to remedy the problem. Mayor Van Beek stated Ft. Rice would be in the jurisdiction of Morton County, not the City of Mandan.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission meeting held on April 16, 2013 Regular Board Meeting and April 16, 2013, Working Session.* Commissioner Frank moved to approve the minutes from the Board of City Commission meeting held on April 16, 2013 Regular Board Meeting and April 16, 2013, Working Session. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The motion passed.

E. PUBLIC HEARING:

1. *Consider the annexation of a tract of land owned by Ardys Bahm Couch, being a part of Government Lot 1 and the SE 1/2 of the NE 1/4 of the NE 1/4 of Section 3, Township 138N, Range 81W. (Proposed Lincoln Ridge Estates 6th Addition). (First consideration of ordinance #1147) (See Ordinances No. 3).* Engineering Project Manager Fettig provided a map of the area to be annexed. She stated that it is the owner of the property who is requesting to have it annexed.

Mayor Van Beek announced this is a public hearing for consideration of a tract of land owned by Ardys Bahm Couch to be annexed to the City of Mandan. He invited anyone for or against the request to come forward. A second announcement was made to come forward to speak for or against the annexation request. Hearing none, this portion of the public hearing was closed.

2. *Consider approval of a zone change for part of Government Lot 1 and the SE ½ of the NE ¼ of the NE ¼ of Section 3, Township 138N, Range 81W. (Proposed Lincoln Ridge Estates 6th Addition). (First consideration of ordinance #1148)(See Ordinances No. 4).* Engineering Project Manager Fettig stated this is a request from the property owner Ardys Bahm Couch and the developer Steve Thilmony to change the zoning to R3.2 for Lots 1-21, Block 1 and R7 for Lots 22-30, Block 1. The Planning and Zoning Committee voted unanimously to approve the zone change.

Mayor Van Beek announced this is a public hearing for consideration of a zone change for part of Government Lot 1, SE ½ of NE ¼ of NE ¼ Section 3, Township 138N, Range 81W. He invited anyone for or against the request to come forward. A second announcement was made to come forward to speak for or against the zone change. Hearing none, this portion of the public hearing was closed.

3. *Consider approval of a zone change for Government Lot 2, less Outlot A and the NW ¼ of the NE ¼ of Section 3, Township 138N, Range 81W (Macedonia Hills Masterplan). (First consideration of ordinance #1149) (See Ordinances No. 5)* Engineering Project Manager Fettig stated this request for zone change came from the owner Risto Mackovski from A (Agriculture) to R3.2 (two-family residential) and RM (Multi-Family Residential). The Planning and Zoning Committee voted unanimously to approve the zone change with restrictions. The RM (Multi-Family Residential) would be restricted to no more than a four-plex per lot and no more than two stories tall.

Mayor Van Beek announced this is a public hearing for consideration for a zone change for Government Lot 2. He invited anyone for or against the request for zone change to come forward. A second announcement was made to come forward to speak for or against the zone change request. Hearing none, this portion of the public hearing was closed.

4. *Public Hearing to consider a 5-Year Property Tax exemption for Prairie View Properties, LLP, with Little Caesar's Pizza franchise. (See New Business No. 2.)* Doug Lalim, Assessing Department Building Official, presented a proposal for a 5-year tax exemption to Prairie View Properties for a Little Caesar's Pizza franchise. Notifications were posted as required and no competitors have submitted a written protest. Morton County, the Mandan School District, and the Park District were all notified of the request. No opposition was received from those entities. Mr. Randy Rhone, Prairie View Properties provided an overview of the building to be constructed. He stated that the business will generate revenue for the City of Mandan. He anticipates employing approximately 17 part-time and about 3 full-time employees. Rhone

explained that the fast-food market has lower profit margins so a tax exemption is critical to building this facility.

Mayor Van Beek announced this is a public hearing for consideration of a 5-year tax exemption for Prairie View Properties for a Little Caesar's Pizza franchise. He invited anyone for or against the tax exemption request to come forward. A second announcement was made to come forward to speak for or against the project. Hearing none, this portion of the public hearing was closed.

F. BIDS:

1. *Consider award of bid for 2013 Annual Sidewalk Project (Project No. 2013-03).* Engineering Project Manager Fettig reviewed with the Board the only bid that was received for this project on April 1, 2013. That bid came in 50% higher than the engineer's estimate. According to State code that bid had to be rejected. It was put out for bid again under two separate contracts – Part A for new construction and Part B was to remove and replace existing sidewalks and aprons. Bids were then received on May 13, 2013. On Part A, (new construction), there were no bids. On Part B there was one bid received for the repairs from Alliance Concrete in the amount of \$79,195. The engineer's estimate for Part B was \$58,135. Fettig recommended awarding the bid to Alliance Concrete for Part B in the amount of \$79,195. Fettig stated that in reviewing the work carried over from last year there were 50 residents that signed up since the beginning of the year. In addition there are 45 new construction projects and 10 needing repair. She asked if the property owners should be notified that there are no contractors available to do the work this year. Fettig stated that priority for these projects lie with new construction jobs because that is where the majority of the calls are coming from. Fettig said another approach to take would be to re-bid the new construction projects but keep the quantities down. Commissioner Rohr suggested consideration be given to informing the developer to put in the sidewalks/aprons for the homeowner, thus it would not have to be special assessed by the City.

Commissioner Frank moved to approve the bid award that was opened on May 13, 2013, to Alliance Concrete for \$79,195.00 for Part B (remove and replace) for 2013 Annual Sidewalk Project (Project No. 2013-03). Commissioner Braun seconded the motion.

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

2. *Consider award of bid for Millennium Trail resurfacing. (See Resolution No. 6)* Engineering Project Manager Fettig reviewed with the Board the bids for this project received from the NDDOT on April 19, 2013. The low bid for asphalt paving and associated work of the existing trail was submitted by Northern Improvement Company in the amount of \$244,619.70. Federal funds for this project are \$129,949.00. The balance of the project cost of \$119,570.70 is the City of Mandan's share and that amount will be reimbursed by the Park District through a special assessment. Fettig recommended accepting the bid from Northern Improvement.

Commissioner Frank moved to approve awarding the bid for Millennium Trail resurfacing to Northern Improvement Company in the amount of \$244,619.70 for project TEU-1-988(035)046, PCN 19984 contingent upon approval by the Mandan Park District Board. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

G. CONSENT AGENDA

1. *Pulled for reading (Proclamation)*
2. *Pulled for discussion.*
3. *Consider for approval the final plat of Macedonia Hills 1st Addition.*
4. *Consider for approval the final plat of Meadow Ridge 3rd Addition.*
5. *Consider for approval the final plat of Mule Ridge Addition.*
6. *Consider for approval the final plat of Big Sky Estates 4th Addition.*
7. *Consider for approval the final plat of Big Sky Estates 5th Addition.*
8. *Consider for approval the final Replat of Lot 2B, 3A1, 3A2, & 3B, Block 2, Lakewood Commercial Park Addition.*
9. *Consider for approval the final Replat of Lot 10B, Block 2, Lakewood 6th Addition.*
10. *Consider Approval of the Police Department Making Grant Application With The Office Of Community Oriented Policing Services, COPS.*
11. *Consider Approval for Out of State Travel for the Police Department to attend training in St. Paul, MN.*
12. *Consider approval of beer garden street dance application for Buggies-n-Blues, All Class Reunion, Wild West Grill Fest and Oktoberfest all for Mandan Progress Organization.*
13. *Consider approval of beer garden street dance application for Silver Dollar Bar for June 7 – 8 and July 2 -3.*
14. *Consider approving amended Engineer's Report and authorizing a call for bids on Street Improvement District No. 176, Project 2012-20 (Lakewood 6th and 7th)(See Resolution No. 7).*
15. *Consider the following abatements/exemptions: (i) Street Appraisal – Dewitz (ii) Street Appraisal – Wentz (iii) Flood Discount – Reid.*

Commissioner Rohr moved to approve the Consent Agenda Items No. 3 through No. 15 as presented. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

Commissioner Frank requested Item No. 1 is removed for discussion.

1. *Consider proclamation designating May 25, 2013 as National Missing Children's Day in the City of Mandan.* Commissioner Frank stated the reason for removing this item from the Agenda is because it is a Proclamation. Mayor Van Beek read the Proclamation. Commissioner Frank moved to approve Consent Item No. 1 designating May 25, 2013 as National Missing Children's Day in the City of Mandan. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes;

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

Commissioner Rohr requested Item No. 2 be removed for discussion.

2. *Consider for approval the final plat of Lincoln Ridge Estates 6th Addition.* Engineering Project Manager Fettig stated that the Engineering Office recommends moving ahead with this plat contingent on the matter of the three lots (Lots 25, 26, 27-Block 1) that are land-locked on the plat. The contingency of these lots need to be addressed to the Engineering Office whether they are going to be going to the property in Lincoln Ridge Estate first or if they are going to be part of the lots down below. Steve Thilmony, the developer on the project came forward and stated that he is the developer of the Lincoln Ridge 6th and that he submitted a letter to the City of Mandan on May 6, 2013 as follows: That he agrees to sell Lots 25, 26, 27 to the residents of Lincoln Ridge 1st. If an agreement cannot be worked out the said lots will be added to Lot 24 and Lot 28 of Lincoln Ridge 6th. The lots will not be stand-alone lots.

City Attorney Brown suggested that if the Commission is going to approve the plat that the Mayor defers signing it until May 21, 2013, which will allow Thilmony additional time to work with the property owners on this matter.

Commissioner Rohr motioned to approve the final plat of Lincoln Ridge Estates 6th Addition deferring the signing of it until the next City Commission meeting on May 21, 2013. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; 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, reviewed the 17 requests from various organizations for funding requests. The applications were reviewed and accepted by the MPO Board of Directors who recommends the City Commission approve the requests.

Commissioner Frank moved to approve the funding allocations from the Mandan Progress Organization Funding Committee as presented. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

2. *Consider Growth Fund Committee recommendation regarding application for property tax incentive by Prairie View Properties, LLC (Little Caesar's Pizza), 310 6th Avenue SE.* Commissioner Rohr commented that the Commission has approved a plan with tier levels and it appears this request fits into Tier 1 as a possibility rather than Tier 2.

Business Development and Communications Director Huber provided the following information from the Mandan Growth Fund (MGF) Committee's discussion on this matter. In summary, based on the application from Prairie View Properties, the MGF determined the project meets the requirements of the Property Tax Policy for a Tier 2 exemption based on two qualifying criteria: (1) Job creations and (2) Sales tax revenue. Huber provided details as to how the criteria are met for both items. The total value of the exemption rate recommended by MGF is 100%, 100%, 75%, 50%, and 25% over a 5-year period for a total of \$29,550 during that period. Huber stated that this project also qualifies for filling a market gap explaining that this is for projects where validated market demand exceeds supply. Huber recommended entering into the standard claw-back agreement with the owner. The MGF committee recommended that if it is determined that this request is not granted a Tier 2 exemption that a Tier 1 be given. Huber noted that the MGF determined that granting this exemption would not be a substantial detriment to the existing businesses of this nature in the community.

Commissioner Rohr motioned to approve the application for property tax incentive by Prairie View Properties, LLC (Little Caesar's Pizza) at a Tier 1 Level for two years at 100%. Commissioner Frank seconded the motion. Commissioner Frank commented that when reviewing what eating places would be considered she noted that sit-down type facilities were favored more than fast food. She also pointed out possible concerns that might arise if sit-down style, full service restaurants subsequently come forward with similar exemption requests that qualify for both Tier I and Tier II levels and how this Board might have to handle those requests. Another concern she brought forward had to do with competition in this matter is not just limited to five pizza competitors but other fast food places located in Mandan as well.

Commissioner Braun commented that he is a member of the Growth Fund Committee and indicated that due diligence has been done on their part. He stated that he is in favor of following their recommendation to approve the exemption for Little Caesar's.

Mayor Van Beek commented that, as stated by Business Development Director Huber, no protests were received from other competitors. This matter was before the Board of Commissioners in 2011 and they (Prairie View Properties) was granted a 100% exemption for 5 years at that time. He stated he feels they qualify for Tier 2 as has been recommended by the Growth Fund Committee. Commissioner Rohr commented that he appreciates the work done by the Growth Fund Committee but he feels the Commission should be allowed independent thinking when it comes to decision making in circumstances such as these

Commissioner Braun motioned to amend the original motion to maintain the exemption as a Tier 2 Level. There was no second to the Amended Motion. The amended motion died for lack of a second.

Mayor Van Beek called for a roll call vote on the first motion to approve the application for property tax incentive by Prairie View Properties, LLC (Little Caesar's Pizza), a Tier 1 Level for two years at 100%: Roll call vote: Commissioner Rohr: Yes;

Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: No; Commissioner Van Beek: No. The vote tied. The motion failed.

Commissioner Braun motioned to put this matter on the Agenda for the next meeting under Old Business for discussion once again. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Consider entering into contract with Wenck Associates for a detailed Engineering Study for 8th Ave NW.* Director of Public Works Wright presented a proposal to enter into a contract with Wenck Associates that will include a detailed engineering study for the extension of 8th Avenue NW from Old Red Trail to the north where new development is being considered Option 2 of the proposed contracted. It will be an hourly cost not to exceed \$25,426. Wright confirmed with Finance Director Welch that the General Fund will support this project. Wright recommended entering into the contract with Wenck Associates, Option No. 2.

Commissioner Rohr motioned to approve entering into a contract with Wenck Associates for a detailed Engineering Study for 8th Ave NW. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

J. RESOLUTIONS AND ORDINANCES:

1. *Consider second consideration and final passage of Ordinance No. 1146. – An ordinance to create and enact Chapter 21-13 of the Mandan Code of Ordinances relating to Planned Unit Developments.* Commissioner Frank moved to approve the second consideration and final passage of Ordinance No. 1146. – An ordinance to create and enact Chapter 21-13 of the Mandan Code of Ordinances relating to Planned Unit Developments. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

2. *Consider second consideration and final passage of Ordinance No. 1145 – An Ordinance to Repeal Section 04-06-10(5) of the Mandan Code of Ordinances Relating to Salary Increases Due to Change in Status.* Finance Director Welch stated that this matter was brought before this Board at the April 16, 2013 meeting for first introduction. This would be replacing the existing promotional policy with the attached policy included in packet documentation. Commissioner Frank moved to approve the second consideration and final passage of Ordinance No. 1145 – An Ordinance to Repeal Section 04-06-10(5) of the Mandan Code of Ordinances Relating to Salary Increases Due to Change in Status. Commissioner Rohr seconded the motion. Commissioner Braun commented that there is work in progress to revise the current payroll system. When that process is completed it will be brought before this Board outlining the improvements that are made to the payroll system. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent;

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

3. *Consider first consideration of Ordinance No. 1147, An ordinance annexing certain adjoining lands to the City of Mandan, North Dakota, and extending the corporate boundaries thereof (tract of land being a part of S2-T138N-R81W).*

Commissioner Frank moved to approve the first consideration of Ordinance No. 1147, An ordinance annexing certain adjoining lands to the City of Mandan, North Dakota, and extending the corporate boundaries thereof (tract of land being a part of S2-T138N-R81W). Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

4. *Consider first consideration of Ordinance No.1148 Zone Change for a part of Government Lot 1 and the NE ¼ of the NE ¼ of Section 3, Township 138N, Range 81W (proposed Lincoln Ridge Estates 6th Addition)– An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map.*

Commissioner Frank moved to approve the first consideration of Ordinance No.1148 Zone Change for a part of Government Lot 1 and the NE ¼ of the NE ¼ of Section 3, Township 138N, Range 81W (proposed Lincoln Ridge Estates 6th Addition)– An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

5. *Consider first consideration of Ordinance No.1149 Zone Change for Government Lot 2, less Outlot A and the NW ¼ of the NE ¼ in Section 3, Township 1389N, Range 81W (Macedonia Hills Masterplan) – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map.*

Commissioner Rohr moved to approve the first consideration of Ordinance No.1149 Zone Change for Government Lot 2, less Outlot A and the NW ¼ of the NE ¼ in Section 3, Township 1389N, Range 81W (Macedonia Hills Masterplan) – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

6. *Consider Resolution of Concurrence to award Project TEU-1-988(035)046, PCN 19984 -Mandan Millennium Trail to the low bidder.* Commissioner Rohr moved to approve the Resolution of Concurrence to award Project TEU-1-988(035)046, PCN 19984 -Mandan Millennium Trail to the low bidder.

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

7. *Consider Resolution approving Amended Engineer's Report and Resolution Directing Advertisement for Bids for Street Improvement District No. 176, Project 2012-20 (Lakewood 6th and 7th).* Commissioner Frank moved to approve the Resolution approving Amended Engineer's Report and Resolution Directing Advertisement for Bids for Street Improvement District No. 176, Project 2012-20 (Lakewood 6th and 7th). Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Absent; 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 Frank moved to adjourn the meeting at 7:00 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