
The Mandan City Commission met in regular session at 5:30 p.m. on October 4, 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, 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 Bechtel, and City Assessor Barta.

Keith Hunke of the North Dakota League of Cities presented Del Wetsch with the *2011 Hometown Hero Award*. This award is given to citizens who make their cities better places to live. Wetsch was recognized for organizing Buggies-n-Blues, Rodeo Days, Santa’s Arrival and the Wild West Grill Fest.

MINUTES: Consider approval of the minutes for September 20, 2011, regular meeting. Commissioner Frank moved to approve the minutes of September 20, 2011. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *A Public Hearing to consider a five-year Ad Valorem Tax Exemption for Acteva Assisted Living Center, LLP (see also New Business 2-i).* City Assessor Barta presented a request to consider a 5-year Ad Valorem Tax Exemption for Acteva Assisted Living Center. He said that a notice was published in the Mandan News on September 9 and September 16, 2011 and there has been no opposition to the request received. The property is located at 3010 12th Avenue Northwest, Mandan, ND, aka Section 16, Township 138N, Range 80W. On September 27, 2011, the Mandan Growth Fund Committee voted 8-0 to recommend approval of a 5-year 100% exemption with a provision that Acteva be required to repay the value of the exemption if the facility were sold to a non-profit entity. Business Development and Communications Director Huber stated that the Developer Kirk Simet, Brookings, South Dakota is prepared to provide a summary of the project. Mr. Simet came forward and stated that an L.L.P. was formed under the name of Acteva Assisted Living Center. He stated that he has been involved with assisted living facilities for about 20 years and currently there are approximately 12 facilities in North Dakota, South Dakota and Minnesota in which he is or has been involved with. He recently joined a firm, ICON Development Group, Grand Forks, N.D. Partners in the ICON Group are Todd Mitzel, Bismarck and Mike Kuntz, Rugby. Simet explained that a couple years ago the firm looked at developing the former Mandan Junior High building for this project. However, it was determined that the building did not have the right layout and it was determined that there was a need for this type of living development – senior living; in particular assisted living, in the Mandan area. Subsequently, Simet became acquainted with Perrie Schafer in discussions of this project. Simet stated that financing has been secured for the project (80% local), ICON will be the developer and also an owner in the project. Simet provided the following Master Plan overview:

- Acteva Campus (Current development based on land acquisition)
 - Phase I Assisted Living Facility (50 units) \$7.5M

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- Phase II Complete North, South, East Wings \$3-4M
 - Phase III Independent Living \$2-3M
 - Optional Land Master Plan
 - Phase IV Independent Living \$2-3M
 - Phase V Townhomes (30-40 units) \$6-8M
 - Job Creation
 - 8-10 FT plus 10-15 PT through 2015;
 - Payroll / year @ FT \$380,000; PT \$310,000
 - Construction: potentially \$20.5-\$25M for all phases
 - Community Need
 - 2009 Study showed need for over 700 assisted living or senior housing units in Morton County
 - Currently there is no assisted living accommodations in Mandan
 - Bismarck is the only local choice for assisted living for Mandan residents
 - Location
 - Site is identified with Mandan residents
 - Compliments the surrounding neighborhood
 - Compliments the new Mandan Junior High School
 - Spur future development of all types
 - Local Investors – Majority of the ownership is local to the area
 - Experienced Developers – Experience in developing over 12 similar facilities
 - Community Approach – Engage in community and long-term relationship
 - Building Design – Provides for privacy, activities and unique services
 - Proforma – Financially needs 100% of the 5-year property tax incentive. Proforma based on this. Without it, the project will fail
 - Current Property Tax – Land: Less than \$500/year; Long term \$140,000-\$350,000/year
 - Construction and Opening – Intend to break ground in 2011 and be open by October 2012

Mayor Helbling invited individuals from the audience to come forward to comment on the request for the 5-year Ad Valorem Tax Exemption for Acteva Assisted Living Center.

Wayne Papke, a Mandan resident, came forward to comment. He acknowledged the importance of the assisted living center project for the Mandan community. He stated that previously an ad-hoc group spent four meetings in 2010/2011 creating a tax incentive policy so there would be consistency in recommendations for these types of requests. Within that policy there were guidelines that were developed and there could be deviation from the policy requirements. However, it is his opinion that those criteria are not met for this project. He believes this project falls into the tax exemption @ 100% Year 1 & Year 2, @ 75% Year 3, @ 50% Year 4, @ 25% Year 5.

Papke stated that regarding the second item of discussion it is his opinion that the \$54,000 interest rate buy-down from the Growth Fund, if granted, would violate Article Ten, Section 18 of the North Dakota Constitution as a “gift”. He encouraged obtaining

opinions regarding this action. The \$54,000 grant is a non-recoverable gift. If the business fails, the City will not be able to recover this money. Papke stated that he does not believe the City can afford \$54,000 out of the Sales Tax Budget. If the City grants the \$54,000 he would ask the Board to re-consider the request.

At this point Mayor Helbling requested Mr. Papke only address the issue of the 5-year Ad Valorem discussion at this time.

Papke requested the Board adhere to the policies that were uniformly agreed to by the City Commission on 2/15/11.

Mayor Helbling once again invited individuals to come forward to comment on the 5-year Ad Valorem Tax Exemption for Acteva Assisted Living Center, LLP. He stated that there have been no written protests received.

Perrie Schafer, a Mandan resident, came forward to comment. He reminded the Commission that this parcel of land has zero tax dollars coming in to the City of Mandan. He stated that the request before the Commission is to allow an exception to the 5-year tax exemption for this particular project outlined in the Master Plan, because (1) It allows the project to work; (2) 80% of the investment for this project is Mandan people and not a large corporation or an out of state company coming in.

Hearing no more comments from the public, Mayor Helbling closed this portion of the public hearing.

BIDS:

1. *Consider approval of bids for the Mandan Wastewater Treatment Plant Phase I – Interim Improvements Project.* Russell Sorenson, Advanced Engineering and Environmental Services, Inc. provided a brief summary of the project indicating that there is a grit removal system to be replaced. This project consists of the final design; bidding and construction services for removal of the existing buried butterfly valves and replacement with knife gate or plug valves, a complete replacement of the grit removal system and completion of the utility rate modeling. There is a contract in the bid package to remove and replace that equipment. There was a separate contract for removing and replacing valves that are having problems between that building and the treatment building. Sorenson explained that the contracts were separated because they consist of two different types of work noting that the electrical was not tied to these bids and that they would be handled through the maintenance fund.

Sorenson stated that the list included five contractors. Four are local and known and one is an unknown contractor from Florida. The day before the bids were due we found out there were no bidders. The reason there were no bidders other than the one received on the closing day of the bid, indicates that local contractors are spread thin. Work is coming in their door and they are not enticed to go out and put bid packages together when they do not have crews to put on it. The other side is that the manufacturers will not guarantee delivery dates for any equipment right now. By addendum, the finish date was allowed

into January 2012 and only PKG Contracting submitted a bid. They will have a crew in Bismarck working on the waste water lift station on Washington Street later this winter. The bid came in at \$228,900 for Contract No. 1 (grit removal system) and \$164,000 for Contract No. 2 (valves that need replacing) for a total of \$392,900 which is over the engineer's bid of \$275,000. The contractor is at risk because they do not know delivery dates. The funding available is \$300,000 for the construction portion of the project. Sorenson did not propose a recommendation but rather requested permission to negotiate with the contractors and manufacturers to par down the scope of the project to remove some of the risk from them. He would also visit with them about their bids and bring those responses back to Steve Himmelspach, WWTP Manager, to work within the funding available to address maintenance issues until the project begins. Sorenson indicated he would need about two weeks to address the concerns and visit with staff on these issues.

Mayor Helbling commented that he has concerns with this project. One bidder came forward and the bid is more than \$100,000 over the engineer's estimate – of which there is no funding. Other bidders responded that they did not submit bids due to not being able to get the equipment in a timely fashion. Sorenson stated that he had everything at the time the package was being put together which seemed fine at that time. He stated the response from the other bidders came as a surprise to him on the day before bids. Mayor Helbling stated that if it appears only three valves need to be replaced, that it would have to be re-bid to be done fairly.

Commissioner Tibke stated that during their budget discussions, there was a conversation with Mr. Himmelspach and Mr. Sorenson. There are a lot of existing needs in the Wastewater Treatment facility that are pretty critical. This was addressed by what the immediate needs were for this. When the bids come in and there is a remaining SRF loan from the current 10-inch south side force main project, how do you determine a priority since everything on the list is a priority? She agreed with re-bidding the project as outlined by Mayor Helbling. Sorenson replied that he would be concerned with the re-bidding process trying to entice more bidders with equipment prices going to be higher because they "play their hands" so to speak.

Commissioner Frank commented that she agrees with Mayor Helbling to substantially change the bid for maintenance at the facility but understands the concerns to expedite this project. She stated that it appears that the Engineer's bid in several of the recent projects have been substantially lower than bid at and might be an indication of a trend to become accustomed to.

Commissioner Frank motioned to allow Advanced Engineering and Environmental Services, Inc. to enter into negotiations with PKG Contracting Inc. for the bid on the Waste Water Treatment Plant, Phase 1. Commissioner Rohr seconded the motion. Commissioner Jackson asked Sorenson what the engineer fees are on this project. Sorenson replied \$48,000 on the construction. Commissioner Jackson stated that the SRF loan has a balance left of \$334,000 and the engineer fees come out of the project as a whole. Sorenson stated that the bids have to come in under \$365,000.

Steve Himmelspach came forward to explain the valve situation. There are four valves that control the flow from the pre-treatment building to the selector tank that are the most important valves of that and they are restricted to that – they are butterfly valves and they are holding material and we are having backup in the pretreatment building because of that. That's the reason for this valve replacement. The thought was that there are two other valves that are next to that that bypass the pretreatment building. While we are in there digging the hole, we might as well replace the butterfly valves. We typically do not use them – they would only be used if there was an emergency to bypass the pretreatment building – so those two valves could probably be left alone. The other valve referred to added a lot of cost because they would have to plug that to try to replace it and that is a bypass valve also for the selector tank. So the valves that would get replaced would be the direct line to the selector tank and the bypass valves would be left in place.

Himmelspach stated he would like to have the bypass valves replaced now because it would be cheaper than to go back in five years from now. He indicated that he would recommend replacing the valves that are restricting the flow. Mayor Helbling stated that it is his opinion that if the engineer bid initially sought to have all the valves replaced, that the project should be rebid now to include those valves; and if necessary, borrow the money to complete the project rather than not do the project as a whole and come back in a year's time to re-address the problem again. Sorenson stated he is not confident in this economy that additional bidders will come forward. He suggested that he go back to the bidder and request two separate bids – one for all the valves to be replaced and one for the replacement of the four valves that control the flow.

Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: No. The motion passed.

2. *Consider award of bids for Flood Improvement District #1, Project 2011-06 bid package #6 (Riverbend Dike Removal).* Brent Erickson of Kadrmas, Lee and Jackson reviewed the 4 bids received. The Engineer's bid was \$1.1M to \$1.3M to remove the levy. The apparent low bid was \$634,790 from Weisz and Sons, Bismarck. The range in bids went from \$634,794 to \$1.4M. Erickson recommended holding the bids. There is a 14 day hold period. The funding reimbursement with FEMA is still in process. If this were not to be funded by FEMA but administered through the City, it is understood that the only way to get reimbursed would be through special assessments with 30-35 impacted property owners which could be \$20,000 special assessments. Erickson stated that the funding through FEMA is very important. There is a meeting scheduled on Friday, October 7, 2011, with FEMA to continue the discussion on reimbursement.

Mayor Helbling commented that this area was difficult for both the City and the residents. The installation of the dike system, or the protective system, that went in was also not eligible according to FEMA so this complicates everything. Being that the system was put in place the City had some part of it. The City has been told by FEMA that the removal of the project may qualify. The installation may not qualify but the

removal may qualify because of protecting public infrastructure. The City is hopeful that the removal will be covered and there may have to be a special meeting if that transpires.

Commissioner Jackson moved to receive the bids and hold them for Flood Improvement District #1, Project 2011-06 bid package #6 (Riverbend Dike Removal) pending FEMA approval for funding of the dike removal. 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.

CONSENT AGENDA:

1. *Consider for approval the special assessments for Weed Cutting of 2011, Sidewalks of 2011, and Health and Safety of 2011.* The Board approved of the special assessments for Weed Cutting of 2011, Sidewalks of 2011, and Health and Safety of 2011.

2. *Consider approval of a site authorization for Prairie Public Broadcasting at Little Chicago – October 15, 2011 through June 30, 2012.* The Board approved of the site authorization for Prairie Public Broadcasting at Little Chicago for October 15, 2011 through June 30, 2012.

Commissioner Tibke moved to approve the Consent Agenda as presented.

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

OLD BUSINESS:

NEW BUSINESS:

1. *Consider agreements with Scott Johnson for sale of building at 116 E Main:*

i. Business incentive agreement: Business Development and Communications

Director Huber stated that at the last Commission meeting the Commission voted to approve a \$25,000 offer submitted by Scott Johnson for the purchase of the 116 East Main property subject to agreement provisions including claw back provisions and timelines.

The Developer will:

- Conclude the purchase of the property for the sum of \$25,000 on or before November 1, 2011
- Provide a \$5,000 deposit at closing which will be refundable upon completion of the building rehabilitation based on certificate of occupancy for the main level and second story
- Commit to investing at least \$100,000 to cover interior and exterior building renovations consisting of a new roof system, remodeling the two upstairs apartments, remodel main floor retail space, any required plumbing and electrical repairs, update the façade, windows and install the handicap accessible door
- To begin the renovations no later than January 1, 2012
- The building improvements are to be significantly completed by 7/1/12

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- Establish a retail business at the site that creates at least one new job by 12/31/12 or lease the commercial space to active retail/restaurant businesses

The City will transfer the above described property to the Developer for the sum of \$25,000 subject to the terms of a Purchase Agreement. In the event the Developer has not started construction by January 1, 2012, \$2,500 of the deposit will be forfeited to the City of Mandan and in the event the improvements are not completed by 7/31/12 the remaining \$2,500 will be forfeited.

ii. Purchase agreement: This document contains a clause similar to what was in the agreement with Mamma Maria's taking over ownership of the building whereby the buyer agrees to reimburse the seller the \$1,500 realtor fees and the buyer will bring the 2011 property taxes current. Huber stated that Pat Maddock, Oaktree Realty, has presented these documents to Scott Johnson and he is willing to enter into these agreements with the City of Mandan.

Commissioner Frank motioned to approve the Purchase Agreement and Business Incentive Agreement for 116 East Main, Mandan, ND, purchased by Scott Johnson.

Commissioner Jackson 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 Mandan Growth Fund Committee recommendations:*

i. Application for property tax exemption by Acteva Assisted Living Center, LLP, at 3010 12th Avenue NW. Business Development and Communications Director Huber summarized the discussion held at the Growth Fund Committee meeting and that they did pay close attention to the policy for tax exemption requests. She stated that the project met the criteria for a 100% tax exemption because of the need for the facility and that job growth is anticipated to employ 20-full time and 6-part time people by the end of the 5th year. Other criteria necessary is that it provides diversification of an economic base by providing a needed service or product to the community that's currently missing. The recommendation came with one caveat and that was that the developer would have to sign an agreement that would stipulate that if the facility were to be sold within five years after the exemption period expires, that the value of that exemption would be repaid to the City of Mandan.

Kirk Simet presented the project via PowerPoint presentation of the project in whole reviewing each of the phases of the project and the anticipated costs involved.

Mayor Helbling commented that the Mandan Growth Fund spent a considerable amount of time discussing the tax exemption breakdown request. He stated that the City is not obligated to follow the same routine all the time and that he has been approached by many of the elderly Mandan citizens encouraging support of this project. Mandan is in need of restaurants, retail and assisted living. He stated he is in support of this project and encouraged the Commission to look at approving the request for the 5-year Ad

Valorem Tax Exemption for Acteva Assisted Living Center, LLP. Mayor Helbling stressed the importance of moving forward with these types of projects in the best interests of the City of Mandan.

Commissioner Rohr pointed out that he also has received comments from the elderly in support of this project. He directed a question to the investors/bankers regarding this project: Is this tax exemption really needed and if so, on a scale of 1 to 10, how would you rate the necessity of it? Kirk Simet replied that he would rate the necessity as a “10” and the reason is two-fold: At the commencement of the proforma, the tax exemption was part of the plan and it was a real possibility of obtaining the exemption so that was figured into the initial plans of the project. Secondly, when laying the proforma out and in looking at the market rates, the costs involved, it became clear that the tax exemption would be needed in order to make this work financially. He reiterated that the financial project here, with the incentive breaks even for three years – the owners would lose money for the first three years. And if there is no incentive, that changes the plan financially and that changes the whole presentation to the investors for their return.

Commissioner Jackson mentioned that he understands the developer’s position but he has a concern that there is a policy set for these requests and that this is the first opportunity for consideration that has come before the Board and it appears that the policy is not being followed. He stated that he has reviewed the Acteva application, (assuming it is based on the proforma) and it appears to show an income in Year 3 of \$103,000. Year 4 shows a net income of \$240,000 and Year 5 shows a projected income of \$275,000. Commissioner Jackson stated that assuming these numbers are correct, he would recommend giving a 100% tax exemption for three years to make up for loss of Year 1 and Year 2 with standard step-downs in Year 4 and Year 5 (50% tax exemption in Year 4 and a 25% tax exemption in Year 5) with an option that if the business does not have the net income as projected within the application that the developer can come back to this Board in 2014 and review the tax exemption request for Year 4 and Year 5.

Kirk Simet came forward and commented: (1) (He does not think) The Board has an updated copy of the proforma and (2) It does not take into account that the developer is borrowing another \$250,000 on a loan debt that has to be repaid at the end of five years – so that will wipe out the entire profit for the first five years. He stated that an updated proforma will provide up-to-date project estimates indicating that there will not be any profit made for the first five years into this project, if the \$250,000 loan is to be repaid. Simet stated that he was not aware that the City of Mandan had a step-down tax exemption program until he met with the Growth Fund Committee last week.

Perrie Schafer commented that he has been working on this project for ten years and in order to get to where it is today, a separation of Bismarck and Mandan had to be made. He stated that a study has been done to make sure there was need for assisted living in the Mandan area and obviously, there is. As an investor in the project, as a reminder to this Commission, when he was a new business person in this community 25 years ago this same type of request came before the City Commission. It was called “Kmart” and it is located in Bismarck. Mandan’s exits have remained the same for many years and

Mandan has refused to build on those exits. Schafer requested that the five year exemption be given and that the investors will not be penalized for being good business people. Also, if the business actually does make money in five years, that that be considered a positive for this community not a negative as those dollars will be reinvested into this project at Phase II, Phase III, Phase IV and Phase V. He stressed that the word “profit” should not be considered a bad thing – that it be considered a good thing as it will generate more cash flow into the community. Schafer requested the Commission consider granting the request for a 100% tax exemption relief for a five year period, because right now there is nothing up there for a tax base.

Commissioner Jackson pointed out that the development of the assisted living facility will require more services in that area, (police, fire department, street upkeep and maintenance), in which the facility will be using just as the tax paying citizens who pay the taxes for those services.

Mayor Helbling stated that he has discussed with both the Fire Chief and Police Chief whether the current staff could handle the services with the addition of the new facility without any additional costs and without any additional manpower. Both chiefs stated they are in good shape. As far as the roads, that will help those in that area as any repairs will be special assessed and this project will help pay for those roads rather than put the specials on the property owners right now.

Wayne Papke, a Mandan resident, came forward to comment stating that the reason the Kmart's are not here is because of the inconsistencies with the tax policies. He indicated that the reason the tax policies were developed were to give the businesses a benchmark and a guideline. The inconsistencies from the past have driven businesses out of Mandan.

Mayor Helbling commented that the Commission is following the wants and needs of the community and this project is one on the “wants” list. Once it is checked off the list, there will probably not be a need to provide the types of incentives that are being considered. The same would hold true for any new retail business that may request a similar exemption.

Commissioner Jackson mentioned that this is a great project and commended Simet and Schafer for their efforts throughout the years to put this plan together.

Commissioner Rohr stated that he has reviewed the policies, he has spent time with the investors reviewing the project and plans, and he remembers the development of the step-down tax exemption policy. He stated that the bottom line is to do what is best for the City of Mandan and determine if we are doing more for the City of Mandan or doing less by not moving forward with this request.

Commissioner Frank commented that the nation is seeing similar situations in a lack of consistency within their situations too. She agreed that the City of Mandan is in need of a facility such as this. Based on the step down program of 100% Year 1 and Year 2, 75%

Year 3, 50% Year 4 and 25% Year 5 and that there is a great possibility of filling the facility within three years, Frank suggested following the step-down policy understanding that it is not a complete tax savings or incentive but just a dip from 100% to 75% to 50% to 25%. She stated that this would coincide with the projection to start accumulating some revenue as the project progresses through the years.

Mayor Helbling asked the Commission that if this was a non-profit group coming before them and the City could not collect property taxes on this property, would this discussion be held. If these people back out, there could be a non-profit entity wanting to do the same thing and never have a chance to collect the tax dollars. He commented that it would be beneficial to Mandan if this project takes off and brings in a considerable amount of money because that money would be reinvested into the City of Mandan which is a win-win situation.

Commissioner Frank questioned Simet as to whether now that he is aware of the step-down program of 100% for Year 1 and Year 2, 75% for Year 3, 50% for Year 4 and 25% for Year 5, if he would still rate the need for the tax exemption as a “10”. Simet replied “Yes”.

Commissioner Tibke questioned Director Huber as to whether the jobs referred to were 20 full time and 6 part time, was that at the end of the five years? Huber replied that yes, the numbers referenced came out of the Growth Fund application for the PACE interest buy down.

Commissioner Tibke requested information on the discussion held by the Growth Fund Committee with regard to the policy. Why did they consider this project as an exception to the policy in place as of January 20, 2011? Huber replied that she did not think it was viewed as an exception to the policy. The policy outlines numerous criteria for property tax exemption, one of which is jobs to get to that higher level. The other criteria are the diversification of the economic base in terms of providing a needed product or service. This was seen as checking off a great need in the community of something that is currently missing. There are five assisted living facilities in Bismarck and zero in Mandan. The Growth Fund Committee looked at the other criteria on that project including generation of jobs to the construction activity. A copy of that property tax policy was shared in early conversations and throughout discussions with representatives of the Acteva Assisted Living Center. At one time they expressed interest in extended assistance in years six through ten under the payments in lieu of tax portion of the exemption; however, they are not seeking that today. The base of the criteria is that the project is at least \$700,000 in value and creates at least 20 full time jobs by the end of Year 5 of which the projections of this proposal would meet those criteria. The Growth Fund Committee did not think this would conflict with the policy guidelines.

Commissioner Tibke commented that she views this project as a long term investment in the community; but more importantly, the size and the value of the project in addition to the taxes that will come back far outweighs the immediate concerns in her opinion.

Commissioner Tibke moved to approve the request by Acteva Assisted Living Center, LLP to receive a five year 100% property tax exemption subject to a repayment agreement if the facility would be sold to a tax exempt entity within five years from expiration of the exemption period. Commissioner Rohr seconded the motion.

Commissioner Rohr commented that he has many years of dealing with policies and acknowledged the importance of them as guidelines when you come across situations and the question of whether or not you deviate and it upsets the equilibrium in terms of the objectives and when looking at these guidelines in terms of what was trying to be accomplished on behalf of the City. There are interpretive elements involved in the policy if it does not apply to the general criteria then it fits the guidelines.

Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: No; Commissioner Jackson: No; Commissioner Helbling: Yes. The motion passed.

ii. Application for interest rate buy-down by Acteva Assisted Living Center, LLP.

Business Development and Communications Director Huber stated that the Mandan Growth Fund discussed the application for interest rate buy-down by Acteva and that it is through a Bank of North Dakota (BND) Program called in which the BND provides a 65% funding capped at \$100,000 for interest buy-down and the local community based on population and Mandan's match would be based on 35%. The BND has two programs under PACE – Standard PACE and FlexPACE. The Standard plan requires a certain level of job creation in relation to the amount of money loaned. The Flex plan requires communities to determine what their needs are and if they want to provide that local match and for what type of projects. In this situation, the BND would provide \$100,000 toward interest buy-down and \$54,000 is sought from the sales tax set aside in the Growth Fund. \$250,000 is set aside for economic development in the City's budget. The money is there and the Growth Fund did vote 8-0 to recommend the local match for the interest buy-down and that was in the form of a forgivable loan.

Mayor Helbling requested City Attorney Brown provide legal opinion regarding this. Brown stated that individuals will argue that section of the ND Constitution as prohibiting cities, counties, etc. from economic development programs involving incentives or benefits to businesses. Some years ago, the Supreme Court ruled that the type of activity we are discussing is not unconstitutional and there have been a couple attorneys general opinions since that time that the City can rely on until the Supreme Court says otherwise that states that this is not a gift. Finance Director Welch stated that there is currently a balance of \$211,000 in the sales tax fund. It is up to the city to set up any type of repayment plan for the \$54,000 if it wishes to do so. Simet provided an overview of the financial package wherein the investors have put up \$1.4M. \$250,000 is borrowed from Community Works to help with the operation. Applying \$2.3M from the SBA and the remaining is being considered through Security First who will partner with the BND to get the permanent financing.

Commissioner Frank asked Huber if the Growth Fund Committee discussed any repayment options in the program. Huber stated that the savings would be \$154,000 (\$54,000 from local, \$100,000 from BND). The letter anticipates that the time frame would be over three years, but when BND provided the amortization schedule it was used up in roughly 12 months. The amortization schedule is included under the Growth Fund application. The committee did not discuss payment as it was requested in a forgivable loan and that was the way it was addressed. A survey done by the Jamestown Economic Association showed that about half the cities (21 cities responded) used it in the form of a forgivable loan and half as a zero rate interest loan repayable at some point in the future depending upon the nature of the product and the terms of the financing.

Commissioner Tibke moved to approve funding of a local match of the Bank of North Dakota for the *interest* rate buy-down for Acteva Assisted Living Center, LLP in an amount not to exceed \$54,000 subject to proof of permanent financing for the project. Commissioner Frank seconded the motion.

Wayne Papke commented that no one asked the group whether or not the \$54,000 was taken into account in their financial analysis. Mayor Helbling replied that this was part of the application request.

Commissioner Frank stated that what she would like to have considered is some form of claw back because the City is putting actual money into the project and in the case of the participation, what kind of ability would the City have to recoup some of this if the project does not move ahead as projected. Business Development and Communications Director Huber explained that a check for the buy-down would not be written until such time as the project is built and transitions from the construction phase of financing to permanent phase financing so the City would have the guarantee that the structure would be built and it would meet all the criteria for permanent financing.

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

3. *Introduction of new Police Officer Luke Kapella.* Police Chief Bullinger introduced Luke Kapella, a graduate of the University of North Dakota with a Bachelor of Science degree in Sociology. He is a 2008 graduate of Hibbing Community College having successfully completed the Law Enforcement Officer's Education Program. He commented that 2-3 years ago, Michael Kapella was introduced new to the department and that Luke and Michael are brothers. Mayor Helbling welcomed Officer Kapella to the Police Department.

RESOLUTIONS & ORDINANCES:

1. *Consider second and final consideration of Ordinance No. 1105 Zone Change for Acteva Addition – 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 and final consideration of Ordinance No. 1105 Zone

Change for Acteva Addition – An ordinance to amend and reenact section 21-03-02 of the Mandan Municipal Code relating to District Boundaries and Zoning Map.

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. *(A copy of the ordinance is on file open for public inspection during regular working hours in the Office of the City Administrator.)*

2. Mayor Helbling announced that the Annual Fire Department Open House is scheduled for Tuesday, October 11, 2011.

There being no further actions to come before the Board, Commissioner Frank moved to adjourn the meeting at 7:43 p.m. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

/s/ James Neubauer

James Neubauer,
City Administrator

/s/ Timothy A. Helbling

Timothy A. Helbling,
President, Board of City
Commissioners