
The Mandan City Commission met in regular session at 5:30 p.m. on October 6, 2015 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota.

Commissioners present were Van Beek, Tibke, Rohr, Braun and Laber. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Fire Chief Nardello, Business Development & Communications Director Huber, Planning & Engineering Director Froseth, Planner Decker, Assessor Shaw, and Building Official Lalim. Absent: Director of Public Works Wright.

B. APPROVAL OF AGENDA: Commissioner Braun moved to approve the Agenda. Commissioner Laber seconded the motion. The motion received unanimous approval of the members present. The motion passed.

C. PUBLIC COMMUNICATIONS: Mayor Van Beek invited anyone interested to speak for or against any items on the Agenda to come forward.

Blaine Engelstad came forward and addressed the Consent Agenda Item No. 15. He said that “Patience Subdivision” no longer exists. It is now called North Prairie Five and was platted about four years ago.

A second announcement was made for anyone to come forward to speak on the Agenda. Hearing none, this portion of the Public Communications was closed.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission September 15, 2015 regular meeting.* Commissioner Laber moved to approve the minutes as presented. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present. The motion passed.

E. PUBLIC HEARING:

F. BIDS:

G. CONSENT AGENDA

1. *Consider confirmation of special assessments for Street Improvement District #177, #178, #179, #181, #182, #185, #186, #189, #190, #191, #192, #193 and #195.*

2. *Consider Change Order for Street Improvement District 200 Project 2015-09.*

3. *Consider agreement with NDDOT for design of Twin City Drive and Main Street Traffic Signal.*

4. *Consider recommendations for Mandan Architectural Review Commission appointments.*

5. *Consider the following reassessments: (i) Jack & Mary Ann Paul; (ii) Craig Ostafin.*

6. *Consider approval of Special Sunday Openings for the Mandan Moose #425 on October 11, 2015 & October 25, 2015.*

7. *Consider approval of an assignment and consent agreement for the Storefront Improvement Project at 112 Second Ave NW.*
8. *Informational item, Change Order #3 for Downtown Street Improvement District #199.*
9. *Consider agreement with NDDOT for design of Highway 6 and 19th St. turn lane and signing improvements.*
10. *Consider CPM agreement with NDDOT for Memorial Highway traffic signals.*
11. *Consider for approval lots splits in West Hills Estates First Addition.*
12. *Consider for approval Change Order No. 6-Final to Thirkettle Corporation for the Water Meter Improvements Project.*
13. *Consider budget transfer from 2016 Street Department Capital Outlay budget to 2015 budget.*
14. *Consider a reduction in the structure value for the 2015 year for Otis R. Patton Jr. property.*
15. *Acting as Board of Adjustment, consider request to grant a variance to allow a garage to be located in front of the primary structure on Lot 1, Block 1, Patience Subdivision.*

Commissioner Tibke said that she would like clarification on Item No. 15, as the location being referred to as North Prairie Five. Planner Decker clarified that it is the original subdivision for this parcel. They updated the alignment of some lots and renamed it indicating where the variance would sit on the original parcel within the original subdivision.

Commissioner Laber moved to approve the Consent Agenda as presented. Commissioner Tibke seconded the motion. Commissioner Laber stated she was pleased to see that the MARC Board received more applicants than they had positions open. She encouraged individuals who were not selected at this time to continue to come forward and apply for other opportunities to serve on the many Boards available throughout the City. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

H. OLD BUSINESS:

I. NEW BUSINESS:

1. *Consider Visitors Committee recommendation for updated visitor signage and issuance of a request for proposals.* Business Development & Communications Director Huber stated this request comes from the Visitors Committee who met on August 25, 2015. Among the items they considered was a request for new visitor signage that would provide a welcome and direction to visitors for various attractions and a sense of community branding and character. This request was presented to the Visitor's Committee by the Mandan Tomorrow Leadership, Pride and Image Committee which in turn had been tasked to head this project by City and Park District Administration. The Committee studied potential locations in which they came up with 15 recommendations as well as sign content suggestions. The Visitor's Committee was asked to consider supporting the project, which they did in concept, and to support the issuance for the

support of a proposal to identify engineering and signage companies that can assist with this project. The recommendation of the various planning efforts the committee is planning on taking was outlined. A recommended policy of how to achieve the goals that will maintain the city's signage and landscaping and other features at key city entrances was reviewed. The policy will include improved signage and beautification efforts to direct visitors to activities and landmarks in downtown Mandan.

Commissioner Rohr requested clarification as to whether this would be an addition or enhancement to the kiosk at the east end of Main Street? Director Huber stated the kiosk is used to communicate current events that are taking place in the community. This signage would be much different since these would be more permanent and wouldn't be changed on a daily basis. They would be smaller and less expensive. An RFP would be a better way to identify the exact cost for this signage.

Commissioner Laber moved to issue a request for proposal for Visitor Wayfinding signage. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

2. *Consider Bismarck-Mandan Musicians Association request changing the name of the Mandan Band Shell to the "Vern Cermak Band Shell".* Steve Harmon, President of the Bismarck Mandan Musicians Association, presented a request to approve the naming of the Mandan Band Shell at Dykshoorn Park as "Vern Cermak Band Shell".

Mayor Van Beek supported the request stating that it is only right that Vern Cermak should be honored due to his loyalty to the events held at the Band Shell over the last 21 years that it has been in existence.

Commissioner Braun moved to change the name from the Mandan Band Shell to the "Vern Cermak Band Shell" to recognize the work of keeping it in operation for the past 21 years and a place he calls home. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Presentation of Old Red Trail project planning and consider decisions needed as part of the NDDOT required CATEX document to move forward with project.* Planning & Engineering Director Froseth stated that City staff previously recommended the hiring of KLJ earlier this year to help the City plan, design and provide pre-bid services for the stretch of Old Red Trail reconstruction between Highland Road and 47th Avenue Northwest. Much of the preliminary estimates have been completed. A public input meeting was held and decisions now have to be made about the project in order to move forward with the final design step in order to bid this project next year. A representative from KLJ presented the plans for moving forward via a power point presentation showing some of the findings of the project thus far and outlined the issues that are before the Commission for consideration tonight.

Gabe Schell, an engineer from Kadrmas, Lee & Jackson came forward for the presentation. A summary of the points of the project included:

- Project Description: Reconstruction Highland Road to 47th Avenue NW
- Current traffic volumes
- Project Schedule
- Purpose of the Project
- Need for the Project
- Funding
 - 2016-2019 STIP \$4,000,000 (\$3,200,000 federal funds capped; \$800,000 City Funds)
 - 2015 estimated \$6,200,000 to \$7,000,000 construction cost
- Description of Alternatives
 - 1. Alternative A (no build)
 - 2. Alternative B (build)
- Construction phases

A public input meeting was held on August 20, 2015 at Red Trail Elementary School. Mailings were sent out and there were three written comments received that are included in the packet of information. The comments from the meeting were mixed. There was support for the project but the main concern was the cost and how it would be paid for and what are we going to do? This program was funded through the NDDOT as a \$4 million construction project of which 80% will be paid for by the federal government and 20% would be through local share. They won't fund any more than \$3.2 million for their share. A life cycle cost analysis of the project was provided for both asphalt and concrete. He explained the costs of the two options and broke them down to the costs in respect to an annual basis.

In the next portion of the presentation, Planning & Engineering Director Froseth discussed some of the issues the City needs to decide on tonight. In part, these questions and suggested answers are as follows:

Q1: Do you concur with the project concepts proposed?

A1: Yes.

Q2: Which alternative should proceed with the project?

A2: Alternative B-Build alternative 3-lane roadway section.

Q3: Which pavement surfacing section should be constructed with this project?

A3: Bid both the concrete and asphalt pavement as alternatives.

Q4: Which option should be constructed for the 40th Avenue Intersection?

A4: Maintain existing access configuration.

Q5: Should a new 12-inch water main be constructed with this project?

A5: Yes: Install water main.

Planning & Engineering Director Froseth stated that it has not been determined how the assessment district boundary would be created, indicating there are approximately 900 properties within this area. If the project only goes to 40th Avenue NW, the average per lot assessment would be a little under \$1,000. If the project goes up to 47th Avenue, as

was originally intended, (because everything beyond that \$3.2 federal share paid for locally), that assessment goes up to about \$3,000 per lot on average. The recommendation is to note within the environmental documents that the City would want to stop at 40th Avenue Northwest and in a future project, pick up the stretch from 40th west to 47th in order to keep the special assessments reasonable. He said the preliminary plans will be submitted to NDDOT for their review by next month with final plans after they are reviewed to be completed by December. Between December and when they look to bid the project in February or March of 2016, the assessment district would be created and a notice will be sent out of the estimated assessments. Following that there would be hearings held for any protests to the special assessments. The bidding process would be scheduled in the spring of 2016 and construction would also begin in 2016.

Commissioner Rohr stated that in the past, there has been disparity in concrete paving and asphalt due to material costs. Director Froseth stated that asphalt costs have gone up due to the price of oil going up. However that gap has narrowed. Concrete generally requires less maintenance and is more durable than asphalt. Commissioner Laber questioned whether the shared use path for bicycles and pedestrians in the plans provided by KLJ would be part of the project? Director Froseth stated that it would be part of the project and the Park Board was included in the discussion in order to get their input and they are on board with the project. Commissioner Laber recommended replacing the water main as part of the project and said she agreed with the side-by-side comparison of concrete vs. asphalt.

Mayor Van Beek stated that using Hub City Funds for this project is appropriate in order to offset the specials assessments for the residents in that area.

Commissioner Tibke commented that discussion still needs to occur because an overall agreement on vision has not yet happened, in particular, the use of HUB City funds to make sure the funds are used pursuant to legislative intent. She would like to have the discussion and the Commission vote on what needs to be decided for the future.

City Attorney Brown commented that the Commission can vote to accept the staff recommendations in order to keep this project moving without deciding at this time how much Hub City Funding will be needed.

Commissioner Braun moved to approve the staff recommendation for the Old Red Trail Construction project as presented. Commissioner Laber seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

J. RESOLUTIONS AND ORDINANCES:

1. *Second and Final Passage of Ordinance No. 1219 adding language to Chapters 18 and 24 of the New Mandan Code of Ordinances related to offenses and traffic violations.* Commissioner Tibke moved to approve the Second and Final Passage of Ordinance No. 1219 adding language to Chapters 18 and 24 of the New Mandan Code of Ordinances related to offenses and traffic violations. Commissioner Braun seconded the

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

2. *First consideration of Ordinance 1221 renaming street in Lakewood 8th Addition.* Planner Decker stated that when Lakewood 8th Addition was recently replatted it continued the naming of the street as Shoal Loop. When looking at the numbering sequence, Shoal Loop starts out as a north-south street and so it picked up that numbering scheme and then turned east-west with a different numbering scheme. When crossing 40th Street you will cross numbers that are not in unison. The recommendation is to rename that portion of the street, west of 40th in the Lakewood 8th, as 24th Street which is an east-west bound street and that will solve the problem of numbering. There's no development out there. This is a new subdivision so it will not interfere with any other street in that area.

Commissioner Laber moved to approve the First consideration of Ordinance 1221 renaming of a street in Lakewood 8th Addition. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Braun: Yes; Commissioner Laber: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *First consideration of Ordinance 1204 adding a section on graffiti to Chapter 16 Nuisances.* Planner Decker said that the Beautification Committee worked with a draft revision to the ordinance prepared by City Attorney Brown and they looked at other codes from several cities for potential language. He explained there is a need for a procedure to mitigate graffiti because it not only affects the building it is on, it affects the character of the community. He said this is a proposal for consideration to add a graffiti section to our Nuisance Ordinance. The property owner would have to mitigate action and we would be concerned about areas affecting the public on a case-by-case basis. He explained that this is the process to get it started and to begin working with property owners to mitigate the conditions when necessary.

Chief Bullinger stated that there were at least two incidents in the last year wherein homes and vehicles had spray painting damages done. The number of incidents that occur is minimal but there have been multiple homes and vehicles damaged at one time. Bridges and other public places are also struck throughout the communities.

Commissioner Braun moved to approve the First consideration of Ordinance 1204 adding a section about graffiti to Chapter 16 Nuisances. Commissioner Laber seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Braun: Yes; Commissioner Laber: Yes; Commissioner Van Beek: Yes. The motion passed.

4. *First consideration of Ordinance 1220 adding prohibition against incendiary balloons, sky lanterns and celebration lanterns in Chapter 10 Fire Prevention and Protection.* Fire Chief Nardello stated that the City of Mandan was approached by the

Tesoro Refinery to consider banning the use of what is commonly referred to as sky lanterns within Mandan City limits due to the potential for a catastrophic event at the refinery by one of these lanterns landing on one of their petroleum tanks, particularly the ones with floating rooftops. The City of Mandan and Morton County Emergency Management Services met and discussed the issues and agreed that there is a potential for a catastrophic event. He stated that during the last 4th of July season there were 5 fireworks related calls that came in; three of which had to do with the sky lanterns. He said that the Mandan Fire Department and Morton County Emergency Management Services supports banning the sky lanterns. The Morton County Commission is going to decide on a ban at their next meeting. He also indicated that the Mandan Rural Fire Chief is very supportive of this ban on sky lanterns. He mentioned that this matter will be discussed at the next ND Fire Chief's Convention and they will probably be banned in all of North Dakota. The 2015 International Fire Code Standards banned their use.

City Attorney Brown stated that “A balloon that requires fire underneath to propel the balloon is defined as a firework under state law”. State law also permits the sale of certain kinds of fireworks, not including balloons that are heat lighted with a fire. These items are already illegal in the state. Passing an Ordinance might be fine but they are already illegal to sell, use, possess, etc.

Ron Day, Director of Public and Government Affairs for Tesoro came forward and provided the following: Tesoro has seen an increase in the use of the sky lanterns. He stated Tesoro is very concerned about them landing in their petroleum tanks and the highly flammable processing units. He said during the 4th of July season they have operators and mechanics running around the refinery trying to extinguish the sky lanterns that land in their property. He commented that sky lanterns are distinct hazards.

Chad Neff representing Memory Fireworks came forward and stated that over the years, the sky lantern has become more popular and the demand for them has increased. He explained how the lantern is designed to work. They are biodegradable and made out of bamboo. He agreed that there is a chance that when lit off they could land in the area of the refinery. They are designed to go up and by the time they hit the ground they are supposed to be cooled off or at least fully burned out. He said that over the last 7-10 years through those lanterns, Memory Fireworks has donated roughly over \$100,000 to the troops of ND, suicide prevention, cancer survivors, etc., so a large sum of money goes back into the community and the state. He said the National Fire Marshal Office has told him there haven't been any large fires that they have record of caused by these lanterns themselves. He indicated that it is his understanding they are not considered to be illegal because they are not a “firework” because they do not blow up. They are a balloon with a fuel patch on them.

City Attorney Brown clarified that a balloon that requires fire underneath to propel the balloon, (which is what is being sold), is considered a firework under North Dakota law. He said that there is a list of fireworks that can be sold in North Dakota and the sky lantern is not on the list. Under state law they are currently illegal to sell, use, possess, offer for sale, explode, bring into the state or cause to bring into the state. Attorney

Brown clarified that he isn't saying that you should not adopt an ordinance, but instead just reminding everyone that they are illegal. But if you are adopting an Ordinance, that is like putting frosting on the cake.

Commissioner Laber moved to approve the First consideration of Ordinance 1220 adding prohibition against incendiary balloons, sky lanterns and celebration lanterns in light of the amount of danger it represents for the community and for the Tesoro Refinery at Chapter 10 Fire Prevention and Protection.

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

K. OTHER BUSINESS:

1. Commissioner Tibke suggested that at the next meeting on October 20th or at an upcoming retreat there should be discussion on Hub City Funding. The legislature passed this bill to enable municipalities to reduce the impact of rapid growth on the citizens of Mandan. She commented that the City needs to look at the number of projects that will reduce the impact on the taxpayer. So we need to meet as a Commission and prioritize projects so the money will have maximum impact. We should have a well thought out plan in place so we can argue for more funding to help the community with rapid growth and with taxes at the next session.

2. Fire Chief Nardello provided a reminder that Tuesday, October 13th is the annual Fire Prevention Open House at Fire Station No. 1, downtown Mandan, that will start with a parade at 6:30 and from 7 pm – 9 pm there will be fire prevention materials, demonstrations, and other fun things at the Fire Station for the kids.

There being no further actions to come before the Board of City Commissioners, Commissioner Rohr moved to adjourn the meeting at 6:37 p.m. Commissioner Laber 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