
The Mandan City Commission met in regular session at 5:00 p.m. on September 3, 2013 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Van Beek, Tibke, Rohr, Frank, and Braun. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development and Communications Director Huber, Planning & Engineering Director Froseth, Engineering Project Manager Fettig, and Assessor/Building Official Lalim.

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

C. PUBLIC COMMUNICATIONS:

Terry Fleck, a Mandan resident came forward to speak. He stated he was before this Board in June regarding a lot that he owns near the Mandan Municipal Golf Course. He has met with his contractor and said that the building project will be started within the next two weeks. He requested a meeting with a City representative about water utilities hook up. He referenced a letter that was dated in 2000 wherein the Park Board Commission petitioned the city to vacate that street based on selling it to an individual in the future. Fleck stated he would be interested in purchasing that 40’ right of way and build a twin home on that property. City Attorney Brown advised Fleck to go to the Park Board District regarding that matter.

Casey Chapman, a Bismarck Attorney, came forward and stated he is working with the parties constructing a Cenex store on the strip. He indicated that when reviewing the Agenda for this meeting there was a reference to Class A licenses. He mentioned that he has already made arrangements for a license and does not know if the rules are going to change. He said that he would like the opportunity to participate in discussion when it comes up at this meeting. He indicated that his client has moved forward with his plans for the Cenex store based on the liquor license. Mayor Van Beek replied that if the Board has questions when that matter is discussed that he will be called upon.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission meeting held on August 20, 2013.* Commissioner Tibke moved to approve the minutes from the Board of City Commission meeting held on August 20, 2013. 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.

E. PUBLIC HEARING:

1. *Public Hearing to consider the vacation of public streets as platted in Terra Vallee 6th Addition and School District 5th Addition.* Engineering Project Manager Fettig presented a request from Dennis Meyer and Eagle Ridge Development, LLC to vacate 28th Street NW from 8th Avenue NW to 12th Avenue NW; 29th Street NW from 8th

Avenue NW to 12th Avenue NW and 30th Street NW from 8th Avenue NW to 12th Avenue Northwest. She explained that these lots were platted as Terre Vallee 6th. Since the time it has been recorded and platted it has been sold to Eagle Ridge Development which is Eagle Ridge 1st. They are planning on building apartments and a 12-plex unit and twin homes. In order for that plan to work the City allowed vacation of the streets right-of-ways that show on the map.

Mayor Van Beek announced this is a public hearing and invited anyone to come forward to speak for or against the request for vacation of public streets as platted in Terra Vallee 6th Addition and School District 5th Addition. A second announcement was made to come forward. Hearing none, this portion of the public hearing was closed.

Commissioner Rohr moved to approve the street vacations of 28th Street NW from 8th Avenue NW to 12th Avenue NW; 29th Street NW from 8th Avenue NW to 12th Avenue NW and 30th Street NW from 8th Avenue NW to 12th Avenue NW. Commissioner Braun 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.

F. BIDS:

1. *Consider award of bid for Street Improvement District 177 Project 2012-22(Meadows 6th Addition). (See Resolution No. 2)* Engineering Project Manager Fettig reviewed with the Board the bids received on August 23, 2013 for this project. Northern Improvement was the low bidder in the amount of \$340,999.10. The Engineer's estimate was \$377,248.00. KLJ revised the quantities that were not matching the drawings and specs and had to revise the estimate to reflect the quantity change with the correct totals. After that revision was made, the Engineer's estimate changed to \$339,486.75. The estimate is less than 1% higher than the bid received. The construction cost of \$340,999.10 plus the engineering and administrative cost of \$102,299.73 brings the total cost to \$443,298.83. The 15 benefiting lots will be assessed \$29,553.26 per lot.

Commissioner Tibke pointed out the lot costs and reminded the Board of the upcoming working session addressing assessments. She suggested the developer pay more of the upfront costs. Commissioner Frank recommended getting information in advance from the developer regarding the cost and she agreed this should be discussed once again by the Board.

Commissioner Frank moved to award the bid for Street Improvement District 177 Project 2012-22(Meadows 6th Addition) to Northern Improvement was the low bidder in the amount of \$340,999.10. Commissioner Tibke seconded the motion. Commissioner Rohr inquired about the lots sitting vacant over a period of years and the taxes being unpaid. Finance Director Welch explained that if the lot taxes are not paid in full or kept current then the property goes back to the City for taxes. To make the special assessment payments on those lots, it goes onto the property tax levy and all the property owners in the City are responsible for making those payments because of delinquent taxes.

Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: No; Commissioner Van Beek: Yes. The motion passed.

2. *Consider award of bid for Street Improvement District 179 Project 2013-10(Meadow Ridge 3rd Addition). (See Resolution No. 3) Engineering Project Manager Fettig reviewed with the Board the bids received on August 26, 2013 for this project. Tand Construction LLC was the low bidder in the amount of \$334,275.00. The Engineer's estimate was \$326,413.00. The bid was 2.4% higher than the Engineer's Estimate. The construction cost of \$334,275.00 plus the engineering and administrative cost of \$116,996.25 brings the total cost to \$451,271.25. The special assessments will be assessed to the 30 benefiting units at \$15,042.38 per unit.*

Commissioner Frank moved to approve the award for the bid for Street Improvement District 179 Project 2013-10(Meadow Ridge 3rd Addition) to Northern Improvement Company the low bidder in the amount of \$334,275.00. Commissioner Rohr seconded the motion. Finance Director Welch clarified that the low bidder was Tand Construction LLC. Commissioner Frank amended the motion to award the bid to Tand Construction, LLC the low bidder in the amount of \$334,275.00. Commissioner Rohr seconded the amended motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

G. CONSENT AGENDA

1. *Consider Professional Services Agreement with Advanced Engineering and Environmental Services for the Water Meter/Reading Improvement Project.*
2. *Consider for approval the final plat of the Replat of Lots 4B & 5, Block 3, Lakewood Commercial Park 3rd Addition.*
3. *Consider for approval the final plat of the Replat of Lot 2A, Block 3, Lakewood Commercial Park 3rd Addition.*
4. *Consider for approval the final plat of Keidel's South Heart Terrace 3rd Addition.*
5. *Consider for approval the final plat of Eagle Ridge Addition.*
6. *Consider confirmation of special assessments for Street Improvement District #147, Street Improvement District #165, and Water & Sewer Improvement District #52.*
7. *Consider request from Human Resources Department to destroy personnel information in accordance with the records retention schedule.*
8. *Consider assignment and consent of rights and obligations to Crown Equity, LLC for the purchase and development of property at Collins & Main.*
9. *Consider the following street appraisal abatements: (i) Scott Johnson – Parcel #3774 (ii) Scott Johnson – Parcel #3867 (iii) Scott Johnson – Parcel #5851.*

Commissioner Frank moved to approve the Consent Agenda as presented. 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.

H. OLD BUSINESS:I. NEW BUSINESS:

1. *Consider the Morton Mandan Public Library's 2014 Budget.* Kelly Steckler, Library Director, presented approval for the Morton Mandan Public Library's 2014 Budget. The following is a summarized statement.

Revenues:

Taxes	\$360,600
Intergovernmental	\$224,150
Charges for Services	\$ 2,850
Fines and Forfeits	\$ 5,000
<u>Miscellaneous</u>	<u>\$ 44,450</u>
Total Revenues:	\$637,050

Expenditures:

Salaries and Benefits	\$392,620
Fees and Other Service Charges	\$ 29,650
Insurance	\$ 4,000
Rentals	\$ 1,000
Travel and Training	\$ 3,500
Utilities	\$ 18,550
Publishing and Printing	\$ 2,000
Library Materials	\$113,640
Supplies and Maintenance	\$ 33,400
Repairs and Maintenance	\$ 30,250
Capital Outlay	\$ 2,000
<u>Transfers</u>	<u>\$ 25,000</u>
Total Expenditures:	\$655,610

Commissioner Frank questioned the 11% increase in tax revenue collection and noted that salaries and benefits have increased. She also noted an increase in library materials. She inquired about the e-related increase in supplies. Steckler replied that they are tracking that item and the State Library is also working on new standards because the current standards only include a library print book. They do not take into account the electronic books which are the way things are moving right now. There is an almost 200% increase in technology support that will support a technology plan for having the public access computers updated and the remainder will be used for the e-books and things like that. The insurance costs have increased due to building insurance and maintenance insurance increased costs. Steckler said that electronic online materials area is a major item related to budget increases. Commissioner Frank moved to approve the Morton Mandan Public Library's 2014 Budget as presented. Commissioner Braun 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.

2. *Consider authorization to advertise for bids for the Mandan Water Treatment Plant, Phase II Optimization project.* Planning & Engineering Director Froseth stated that City staff has been able to secure a state revolving fund loan to make improvements to the City's Water Treatment Plant. AE2S provided a list of improvements and projected costs for those improvements. Froseth explained that some changes were made since the loan application was submitted and approved primarily with the pre-treatment basin and the storage room. Due to the revised costs the bids will be structured to allow the City to select the options that are affordable within the available funding for the project. However, there may be some funds available in the Utility Fund if the costs run over \$1.2 million. A DWSRLF loan is in place for the \$1.2 million. Finance Director Welch commented that the loan is at a low interest rate.

Commissioner Frank moved to approve the authorization to advertise for bids for the Mandan Water Treatment Plant, Phase II Optimization project. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Consider parking lease agreement with Crown Equity, LLC.* Business Development and Communications Director Huber presented a request from Crown Equity, LLC as part of the redevelopment of land for parcels at Collins Avenue and Main Street with 12 parking spaces on the site. The building will have 3000 square feet of commercial property at the street level and 29 apartments. They are seeking to rent 25 spaces that have not been utilized in recent years in the parking lot east of the fire station (Public Parking Lot R). The proposed rate is \$20 per month, the same rate other tenants pay. The term on this agreement is for 2 years. Huber reviewed the free parking areas in the downtown area and the pay for parking on this lot and surrounding lots. Chief Bullinger commented that the parking spaces in this lot have never been completely full. The rental agreements would require payment every six months.

Commissioner Frank moved to approve the Parking Lease Agreement with Crown Equity, LLC. Commissioner Rohr seconded the motion. Commissioner Frank suggested that Huber be forthright in communicating the parking availability that exists along with preferred routes for the public. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

4. *Consider process for issuing a Class A liquor license.* City Administrator Neubauer reviewed with the Board an application for one of the two Class A licenses not being utilized. The number of liquor licenses available in the City coincides with the City Ordinances regulation to the number of living units in the City. Neubauer reviewed the issues that have come up with the issuance of liquor licenses. The intent of the applicant in this matter is to have an off sale beer and wine license, however, would add an on-sale area to meet the requirements of a Class A License. Neubauer referenced the City Ordinance in regards to how to issue the license and provided the options to obtain a Class A license. The recommended bid is \$25,000 based on the Class D-1 in which the

last bid had a recommendation of a minimum of \$7,500 and the Class D was a recommendation of a minimum of \$40,000. The auctioning of the license will follow the process outlined. Attorney Brown stated that on July 1st - the process for awarding licenses starts over under the Ordinances in effect at that time. Neubauer explained that the intent of a Class A license is to have bar type of facility and the ability to sell off sale. Commissioner Frank inquired if this matter could be discussed in one of the upcoming City Commission meetings. Neubauer stated he could do some research with two new developments currently under construction however he thinks the applicant would like to know what they need to put into the structure. Neubauer stated that a recommendation for consideration would be to put up one of the Class A licenses for public auction with a minimum bid of \$25,000; that the license must be put into production within 12 months (because there is currently no limitation) and this would prevent someone with a license to use it with its intended purpose. If the successful applicant for the Class A license obtains a Class D-1 or a C-store license within 3 years that entity could use the money they paid for that Class A license as their bid on a Class D-1 license and in return the City would get the Class A license back. Again, the intent is for the Class A license to be a bar with some off sale. The applicant is simply looking for a convenience store off sale license. In summary, the City is trying to address a couple different opportunities. Mayor Van Beek commented that the key issue is for “on and off sale”. Commissioner Tibke inquired if the developers or their attorney have an idea for a timeline of construction and if two weeks might affect the construction plan?

Tory Otto, the property owner/developer stated that where they are currently in construction and the building will be up by the end of the month with anticipation of having the business open by the middle to end of December 2013. The bar is going to be very limited but will be a full on and off sale. He inquired if it would be possible to do a re-count of living units this fall to speed up that process versus waiting until spring 2014?

Casey Chapman, attorney for Cenex, came forward and stated that his client is looking at the Class A license from a different perspective and they would be requesting a transfer of an existing license. He pointed out that when looking at the Class A license there is no minimum regarding on-sale. The requirements for on-sale, (when the applicant comes forward to request the transfer), the initial thought was that it was an option (for the applicant). The concern is they will be paying premium for a Class A license versus what would be paid for a D-1. He stated they will move forward with the request because they also want to open up their business by the end of the year. He clarified that his client is making plans under the current Class A license requirements. He pointed out that the ordinance states on-and-off sale and there are no requirements other than that. Attorney Brown stated that there has been discussion and the intent was that a Class A license that it would be both on-and-off but there is no requirement if you sell one drink a month or 50% on premises. Attorney Brown stated that Mr. Chapman’s scenario of using the Class A for off sale is within the Ordinance. However, any transfer of a liquor license must be approved by the Commission. Mayor Van Beek stated that his interpretation is for both “on-and off sale”.

Commissioner Tibke commented this is a challenge of a developer's interpretation versus the Commission's interpretation, and the City Attorney is of opinion that both versions can be correct. She concurred with Commissioner Frank's comment that the license requirement should include more detail. Commissioner Frank stated she would appreciate additional time to discuss this further to determine if it is truly on-and-off sale or if it can be both. She believes there should be some definition of what "on" entails and that it is up to the Commission to decide what position to take. Commissioner Tibke concurred that she would like additional time for discussion at the working session to address this matter.

Joe Hoffert, a Cenex representative came forward to speak. He stated they are on a tight timeline and went forward with their plans that included having an off-sale in their establishment. Commissioner Frank stated that it does not seem to be a concern with off-sale, the question is what amount of "on" sale is required, if any. He said his building foundations are in and they anticipate an opening of the middle of December 2013.

City Administrator Neubauer indicated the issue could be placed on the Agenda for the Working Session scheduled for September 10, 2013. The matter would then come back for a decision on September 17, 2013.

Commissioner Braun asked whether delaying a decision on this matter for two weeks while the Commission develops a policy would be a disadvantage to either of these parties.

Joe Hoffert stated that the foundations and rooms are all constructed and set up. He stated they are leasing and renting the property so the sooner the better. City Attorney Brown called a point of order stating that neither of the parties have an application before the Commission at this time. The only item on the Agenda is to advertise for a Class A liquor license. If the Commission wishes to defer that discussion, that is appropriate. However, neither of these entities have an application for a liquor license before the Board now.

City Administrator Neubauer stated that the City does have an application from one of the entities and that is why it was brought before the Board as to how the Board would like to proceed with the issue of bid requirements for the Class A license (or not). Regarding the second party who is working on acquiring a Class A license - they would have to bring a transfer request to the Board for consideration along with an application so we could do the background checks, etc. noting that it would be the transfer of a license on the other situation.

Commissioner Frank motioned to table the discussion on the issuance of the Class A liquor licenses until the next meeting. Commissioner Braun 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.

J. RESOLUTIONS AND ORDINANCES.

1. *Introduction and first consideration of Ordinance No. 1158, An Ordinance to Amend and Re-enact Section 21-03-10(1)(a) of the Mandan Code of Ordinances relating to automobile parking.* City Attorney Brown stated that he drafted the Ordinance at the request of Building Inspector Lalim explaining the reason for off street parking in order to take some of the parking off the street because of the new apartments being constructed on 40th Avenue and Lakewood. City Neubauer stated that the City will take this before the Planning and Zoning Commissioner Committee before this Commission takes any action. No action is required at this time.

2. *Consider Resolution Approving Contract and Contractor's Bond for Street Improvement District No. 177, Project 2012-22(Meadows 6th Addition).* Commissioner Frank moved to approve the Resolution Approving Contract and Contractor's Bond for Street Improvement District No. 177, Project 2012-22 (Meadows 6th Addition). Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Consider Resolution Approving Contract and Contractor's Bond for Street Improvement District No. 179, Project 2013-10(Meadow Ridge 3rd Addition).* Commissioner Tibke moved to approve the Resolution Approving Contract and Contractor's Bond for Street Improvement District No. 179, Project 2013-10(Meadow Ridge 3rd Addition). Commissioner Braun 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.

4. *Consider Resolution approving vacation on streets as platted in Terra Vallee 6th Addition and School District 5th Addition.* Commissioner Frank moved to approve the Resolution approving vacation on streets as platted in Terra Vallee 6th Addition and School District 5th Addition. 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 Braun moved to adjourn the meeting at 6:27 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