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The Mandan City Commission met in regular session at 5:30 p.m. on September 20, 2011 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were 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, and Business Development and Communications Director Huber. Absent: Mayor Helbling, City Assessor Barta and Engineering Project Manager Bechtel. In the absence of Mayor Helbling, Sandra Tibke, Vice-President, as Acting Chair, called the meeting to order. NOTE: Commissioner Jackson was excused from the meeting at 6:23 p.m.

MINUTES: *Consider approval of the minutes for September 6, 2011, regular meeting.* Commissioner Jackson moved to approve the minutes of September 6, 2011, Commissioner Frank seconded the motion. The motion received unanimous approval of the members present. The motion passed.

PUBLIC HEARING:

BIDS:

1. *Consider award of bids for Flood Improvement District #1, Project 2011-06* City Administrator Neubauer reviewed with the Board the bid information received from Brent Erickson, Kadrmas, Lee and Jackson concerning awarding of bids for Flood Protection Removal Bid Package #5 – Riverbend Area Earth Levee Removal, Sandbag Removal, Disposal and Restoration. The bids were opened on September 16, 2011 and two bids were received. The low bid was from Guthmiller and Son Dirtworks, Inc., with a bid amount of \$38,485.10. The engineer’s estimate was \$53,560. KLJ recommended awarding the bid to Guthmiller and Son Dirtworks.

Commissioner Frank questioned whether this bid includes removal of the sandbags from the curbside? Neubauer replied that it would; explaining that sandbags have been put on the west side of the road and this bid will include pick up of those sandbags at that location. Neubauer stated that when the package was bid out for the removal of the dike, (which the residents voted on last week to have the dike on the river side), that would include the sandbags that are on top of the dike and adjacent to that dike. Commissioner Jackson clarified that this is not actually for the clay earth and levee. This is just for those other sandbags. So if anyone is watching this recording at home and wondering why it seems a little cheap that’s the reason. Neubauer concurred with Commissioner Jackson and stated that the city is looking into some other sandbags that are on pallets on the east side of the road to see if those could be picked up at the same time because the contractor is in the area taking the bags from the west side.

Commissioner Jackson moved to approve the bid for Flood Protection Removal Bid Package #5 – Riverbend Area Earth Levee Removal, Sandbag Removal, Disposal and Restoration to the low bidder Guthmiller and Son Dirtworks, Inc., in the amount of \$38,485.10. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

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CONSENT AGENDA:

1. *Consider approval of monthly bills.* The Board approved of the monthly bills.
2. *Consider approval of Games of Chance for the Morton County FNRA Committee for Oct. 10, 2011.* The Board approved of the Games of Chance for the Morton County FNRA Committee for Oct. 10, 2011.
3. *Consider Change order for Mandan South Side Pump Station and Collins Ave. Reservoir Demolition projects.* The Board approved of the Change order for Mandan South Side Pump Station and Collins Ave. Reservoir Demolition projects.
4. *Consider approval of Acteva Addition Zone Change. (First consideration of ordinance 1105.)* The Board approved of the Acteva Addition Zone Change. *See: Resolution and Ordinance No. 2 below.*

Commissioner Rohr moved to approve the Consent Agenda items 1 through 4 as presented. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present. The motion passed.

OLD BUSINESS:

1. *Re-visit previous offers for city-owned building at 116 E Main.* Business Development and Communications Director Huber reviewed with the Board the status of the Mamma Maria's Italian Restaurant purchase transaction at 116 East Main as explained in an email received on September 19, 2011, from Linda Thomas, President, MM Restaurant Group that stated as follows: *"Unfortunately, due to circumstances out of our control, we will be backing out of the purchase of 116 East Main in Mandan. However this does not signal that we may not open a location in Mandan. Our business plan still shows Mandan as a viable expansion sometime in the future."* Huber stated that the deadline for closing on a purchase was extended until October 4, 2011 at the September 6, 2011 meeting.

Huber stated that at the June 7, 2011 meeting, the Board directed that if the negotiations and transfer of the property to Mamma Maria's did not work out, the Commission would go back to the other offers received by that date to re-explore options. Pat Maddock and Karen Fleck have been requested to confirm with the parties to see if their offers were still good and if anything substantially changed in those offers. The offers submitted at the June 7, 2011 meeting were as follows: (1) Scott Johnson, \$15,000; (2) Fred Berger, \$25,000; (3) Julie Haibeck, \$10,000. Huber reported that Fred Berger's offer of \$25,000 still stands and that Scott Johnson submitted a proposal today in the amount of \$25,000. Each party has expressed investments and improvements: \$104,900 by Johnson and the investments and improvements by Berger are @ \$125,000 to \$150,000.

Huber outlined the following options for Board consideration:

- (1) Evaluate the proposals submitted today on their own merits;
- (2) With consideration to fairness - a date could be established for final offers from these parties to be submitted by sealed bids with a closing date of Friday, September 30, 2011 prior to the next commission meeting scheduled for October 4, 2011 for final consideration.

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Commissioner Jackson asked Huber if she has discussed the increased offer received from Scott Johnson with Fred Berger or Karen Fleck. Huber replied that they were contacted and stated that in all fairness sealed bids by a certain date would be appropriate under the circumstances.

Acting Chair Tibke commented about fairness because it was agreed that if Mamma Maria's would not come through with their project that the Board would look at the other projects based on what they had already put forward and that she would be in favor of a sealed bid. She expressed concern about the condition of the roof wherein there has been additional damage to the floors at the back end of the building. Commissioner Rohr inquired if the specific improvements could be submitted with the bids. Huber stated that information was available as part of the proposals that were submitted earlier in the season. Referencing the documentation provided in the packets, Huber stated that Mr. Johnson had included a new roof and automatic fire suppression system (this may have already been removed) along with several other items on the proposal. Huber stated that Johnson has been at the meetings in May and June and outlined plans to lease for retail or put his own retail business in the building within a certain date. Mr. Berger's proposal had similarly included estimates to gut the whole upstairs and to do a remodel and the main floor planned to host retail and also that the exterior would be refaced, etc. Huber stated that both proposals have their respective merits to be considered.

Tibke commented that a possibility would be to request bids be submitted and then call a special meeting called to discuss the bids received. In the alternative, she inquired if the Commission would be willing to make a decision based on the merits of the offers at this time?

Commissioner Jackson commented that the Commission might want to look closer at the updated offer submitted; however, the two other offers have not had an opportunity to bid against that updated offer and it would be a good thing for the City to pursue. He stated that the City purchased the building for \$75,000 and it would be his recommendation to get as close to that figure as possible. Commissioner Frank stated that if the Board were to consider the next best offer on this matter when it was initially discussed, that offer would have been the one submitted by Mr. Berger. Based on the information in front of the Board at this time, she stated she feels a decision could be made immediately and thereby the City would not be in a position to lose out on any offers currently open and not lose lack of control of the process.

Scott Johnson came forward to comment and stated as follows: *“One comment isn't really totally correct because when I was called, um, if my bid and what I wanted to do were to increase my bid from the real estate firm which is shared by both of these two brokers, I find it kind of not highly correct that both weren't somewhat knowing what was going on in the same office. As a matter of fact, I had a call later today, when they called on Friday I was busy working a street fair for one of the schools so I could not get back until later today. I bid the same price granted to be based on the merits of the proposal and not to get into any bidding contest. Just to let you know if you do put it for bids I'm not going to change it. I want to be judged for myself and not be trying to buy my way*

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*into this community. I told you what I had intended to do for the building. I went there again today. The city has owned this building and why nobody would even put containers to catch the water that's running in the back of the building all these months still baffles me. I have another property that I have on the list that I have been waiting over a year to get a roof put on that building and I brought this up several times to this Board that getting a contractor to do roofing in these two towns is next to impossible. He told me that if I...I would be able to take that off that project they would be able to contain the leaks with tar on that one and would be able to guarantee me that this building's roof would be done by the end of November. You have a commission that dictates what complies with the front of the building."*

Johnson stated that he would be able to write a check for the building immediately indicating that he has interest in this building and that he instigated this project over two years ago. He stated that when the building is completely renovated there will be a retail business located within the building.

Commissioner Frank asked Johnson how confident he can be that the renovation plans outlined will be completed in a timely fashion. Johnson replied that in his previous proposal he offered to put the money into an escrow account for the City. Commissioner Frank inquired if there would be a retail furniture store in the plans as outlined in the proposal? Johnson replied that the furniture store he owned in Bismarck was partnered with his mother and the furniture was more of a high end type of furniture. His offices are located on the second floor of that building. He stated that he did not think he could justify that type of furniture for the Mandan store.

Acting Chair Tibke inquired of Director Huber if Mr. Berger pulled the fire suppression request. Huber replied that he had indicated in his proposal "Only if it would be required from the City." It would not be required for the uses he has proposed. Huber stated she would defer further questions on this topic to Fire Chief Nardello, as it is her understanding that it would only be required if it were a bar or restaurant or for some other use that would entail larger public gatherings. Tibke asked Huber what her recommendation would be regarding the proposals. Huber stated she would recommend accepting the Berger proposal based on the higher level of investment into the building anticipated; a level of rehab on the apartments that would demand a little higher rent and because of being a long-standing business in the community that wants to own its own location. Tibke clarified that the differences in the re-investments in the building would be between \$125,000 and \$150,000 from Mr. Berger, and Mr. Johnson had proposed rehabilitation from \$104,000. Huber stated that Karen Fleck, Realtor, indicated that Mr. Berger owns his own construction company and he would have some control over the timing of the rehab and the costs associated with that.

Commissioner Frank stated that consideration should be given to Mr. Johnson for attending all these meetings on this subject matter. Another thing is to take a look at anticipated investment into the building should there not be a way to weight these offers. Commissioner Rohr motioned to accept the proposal submitted by Scott Johnson for the property located at 116 East Main. Commissioner Frank seconded the motion.

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Commissioner Frank inquired of City Attorney Brown if the Commission has the ability to enter into any type of counter-offer with Mr. Johnson so the City can have those additional nuances about timelines and investment timelines. Attorney Brown replied that the Commission does have authority as the original proposal included that.

Commissioner Frank suggested and Commissioner Rohr amended his motion to reflect that the City move forward in the negotiation process with Mr. Johnson and additional conversations be conducted geared towards counter-offer re-negotiation of the timeline for completion of the project and what the plans are to get to that point. Commissioner Frank seconded the Amended Motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

Acting Chair Tibke requested a roll call vote on the original motion: Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: No; Commissioner Helbling: Absent. The motion passed.

City Attorney Brown suggested that Business Development and Communications Director Huber, Scott Johnson and he meet sometime within the next two days.

#### NEW BUSINESS:

1. *Consider application for U.S. Department of Treasury Small Business Credit Initiative.* Business Development and Communications Director Huber stated that this action is a follow-up to an application approval by the City of Mandan for the U.S. Department of Treasury Small Business Credit Initiative Act of 2010. Municipalities have been given the opportunity to apply for \$13.1 million in funding available for five specific programs to grow small businesses and manufacturing to expand and create jobs. A plan was outlined wherein Mandan would serve as the lead applicant in central and western North Dakota for applying for these funds and contracting with the Lewis and Clark Regional Development Council for administration and management of the programs. Huber listed some of those commitments are from Fargo, Bismarck, Grand Forks, Minot and the Standing Rock Sioux Tribe – 33 other cities including Mandan. Huber provided an explanation of the requirements for new and expanding businesses as well as other provisions as outlined. Key points: there is no local match required. Also, responsibility and liability for these programs, as long as overseen by the federal regulations, there is no liability. Lewis and Clark Regional Development Council is on board for this project. Huber explained how the funds would be allocated, disbursed and repaid. The program would be de-federalized in 2017.

Commissioner Frank asked what would happen if the funds are allocated? Are they divided up per city based on population prior to being awarded? Would we know if Mandan were to get \$2 million - would the Board award that out as applications come in or would they take that whole board as a pool and give a set amount based on population? Huber stated that there would not be any certain amount set aside for any particular city because there would be risk of worthy credit applications coming forward from each of those cities and then the maximum allocation may not be met by getting those additional

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second and third portion of what is allotted. By working together with other cities, there is the opportunity to have a state-wide or at least among the cities participating, economic development program that any of those cities can participate in. Huber recommended the broader pool approach in order to have a greater opportunity to the funding than to try to get the funds earmarked for specific communities. Huber stated that the application deadline for this program is September 27, 2011.

Commissioner Frank moved to approve Mandan’s application for U.S. Department of Treasury Small Business Credit Initiative. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed.

2. *Consider recommendation from Renaissance Zone Committee for appointment of committee member.* Acting Chair Tibke stated that Jay Feil resigned from the RZ Committee effective September 30, 2011. She extended a thank you to him for his dedication and time committed to committee work. Huber stated that a news release was published calling for interest from the financial sector. She stated that a letter of interest was submitted by Darren Haugen, Senior Vice President of Financial Services for Starion Financial. The Committee met with Mr. Haugen and they voted unanimously to recommend his appointment to the Renaissance Zone Committee.

Commissioner Rohr moved to appoint Darren Haugen to the Renaissance Zone Committee. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present. The motion passed.

RESOLUTIONS & ORDINANCES:

1. *Consider Resolution authorizing filing of application with the Industrial Commission of North Dakota for a Disaster Loan under the Capital Financing Program through the North Dakota Public Finance Authority.* Finance Director Welch reviewed with the Board the purpose of this resolution is to assist the City of Mandan to meet its cash-flow needs as a result of the flood control costs to date as well as future costs over the next several months. The resolution provides terms for the loan that will be repaid from FEMA. Since the City does not know the exact date of those reimbursements, the need for this loan is necessary. Commissioner Frank inquired as to the “loan interest rate”. Welch replied that it would be a lower interest rate than any citizen would be able to borrow from a bank and it would be a rate lower than what the City would finance under other circumstances. He stated that there is flexibility with the repayment process to the Bank of North Dakota since designated flood municipalities are not apprised of when their reimbursement funds will come through. Welch stated that the City will only borrow what it needs to borrow to meet cash flow in order to minimize the amount of interest to be repaid.

Commissioner Frank moved to approve the Resolution authorizing filing of an application with the Industrial Commission of North Dakota for a Disaster Loan under the Capital Financing Program through the North Dakota Public Finance Authority.

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Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Absent; Commissioner Helbling: Absent. The motion passed. *(A copy of the resolution is on file open for public inspection during regular working hours in the Building Inspection Department.)*

2. *Consider first 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 first reading 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 Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Jackson: Yes; Commissioner Helbling: Absent. The motion passed. *(A copy of the resolution is on file open for public inspection during regular working hours in the Building Inspection Department.)*

OTHER BUSINESS:

1. *Consider providing assistance to the Mandan School Board related to the disposition of the former Mandan Jr. High.* City Administrator Neubauer stated that the Mandan School Board is requesting the City's assistance in the disposal of the former Mandan Junior High building. The School Board has inquired if the City wishes to be part of that process and if the City agrees; it is recommended that a commissioner be appointed to participate in that process. This is the first step in developing a process for the disposal of that facility. Acting Chair Tibke commented that it would make sense to have a commissioner be a part of that process. Commissioner Rohr stated the City's interest will be to assure that the property does not become a burden or eyesore for the City in the future. Commissioner Frank concurred with the recommendations of Acting Chair Tibke and Commissioner Rohr.

Commissioner Frank moved to nominate Commissioner Rohr to serve as the Commission member participant providing assistance to the Mandan School Board regarding the disposition of the former Junior High building. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present. The motion passed.

There being no further actions to come before the Board, Commissioner Frank moved to adjourn the meeting at 6:31 p.m. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

/s/ James Neubauer

James Neubauer,  
City Administrator

/s/ Sandra Tibke

Sandra Tibke,  
Vice-President, Board of City  
Commissioners