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The Mandan City Commission met in regular session at 5:30 p.m. on July 19, 2016 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Helbling, Rohr, Braun, Davis, and Laber. Department Heads present were Finance Director Welch, Police Chief Ziegler, City Attorney Brown, City Administrator Neubauer, Fire Chief Nardello, Business Development & Communications Director Huber, Planning & Engineering Director Froseth, Principal Planner Decker, and Building Official Lalim. Absent: Director of Public Works Wright, and Assessor Shaw.

B. MINUTES:

1. *Consider for approval the minutes from the July 5, 2016 Board of City Commission regular meeting.* Commissioner Braun moved to approve the minutes as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

C. PUBLIC HEARING:

D. BIDS:

E. CONSENT AGENDA

1. *Consider approval of the monthly bills.* ROCKPOINT - 215.00; ADVANCED ENGINEERING SVC - 44,039.03; AVENET LLC - 1,600.00; BOERGER, LLC - 1,916.88; ETHANOL PRODUCTS - 1,411.21; FETZER ELECTRIC, LLC - 1,252.36; FOUR SQUARE CONCRETE LLC - 616.00; HEPPEL OLSON ARCHITETS - 1,495.00; HIT, INC. - 735.00; ILD CORP. - 8.77; MANDAN PARK BOARD - 2,000.00; MORTON COUNTY AUDITOR - 6,761.78; ND DEPT OF TRANSPORTATIO - 22,253.75; ND STATE DEPT OF HEALTH - 85.00; PIT BOSS - 160.00; PYNNONEN/NICKOLAS - 11.91; RICOH PRODUCTION PRINT S - 92.09; TODD'S TREE & STUMP REMO - 1,800.00; MONTANA-DAKOTA UTILITIES - 30,091.44; AT & T - 761.90; BALABAN LAW OFFICE - 1,500.00; COMPANION LIFE - 10.00; DAKOTA MEDIA ACCESS - 9,704.00; FORT DEARBORN LIFE - 1,820.01; GLASS/THOMAS J. - 1,500.00; KELSCH KELSCH RUFF & KRA - 4,000.00; ND PERS - 112,268.10; OLSON/EDDY - 13.45; PERKIN/JAY - 23.00; SKEELS ELECTRIC CO - 1,800.00; POST BOARD - 25.00; WELLS FARGO COMMERCIAL C - 163,929.31; ND GUARANTY & TITLE CO - 470.00; MONTANA-DAKOTA UTILITIES - 23,071.61; A-1 TREE SERVICE - 300.00; ADVANCED ENGINEERING SVC - 16,794.45; ARMSTRONG SANIT & ROLL O - 47,051.46; BIS MAN DEVELOPMENT ASSO - 25,000.00; BIS-MAN CONVNTN & VISITOR - 40.00; BIS-MDN TRANSIT BOARD - 8,367.89; BISMARCK MAYOR'S COMMITT - 50.00; CBI BUSINESS SERVICES - 7,442.41; CHIEF CONSTRUCTION - 390.00; COMPUTER PROFESS UNLIMIT - 93.00; CROWLEY FLECK PLLP - 4,500.00; CUSTER DISTRICT HEALTH U - 1,075.00; DAKOTA SANITATION, INC - 33,422.82; DAKOTA'S BEST COFFEE - 50.00; EIDE BAILLY - 20,500.00; EPIC ENGINEERING - 6,134.00; ETHANOL PRODUCTS - 2,793.93; FLECK & SONS CONCRETE IN - 32,514.13; GOLDADE/MARCIA - 2,547.57; GUTHMILLER & SON DIRTWOR - 19,125.00; HDR ENGINEERING, INC - 1,312.90; HENDRICKSON/GAIL - 100.00; HEWLETT-PACKARD COMPANY - 14,384.00; HIT, INC. - 735.00; HOLTER/DEBORAH - 35.00; HUB INTERNATIONAL OF ND - 831.00; HUBER/ELLEN - 193.20; HYDRO KLEAN - 26,509.00; INFORMATION TECHNOLOGY D - 694.10; INTERGOVERNMENTAL SHOP - 9,099.94; JACOBSEN/CARL - 35.00; JAKE'S AUTO

GLASS INC - 50.00; KADRMAS, LEE & JACKSON, - 86,019.56; LEXIPOL LLC - 8,468.00; MANDAN AIRPORT AUTHORITY - 16,735.86; MANDAN BASEBALL CLUB - 10.00; MANDAN MUNICIPAL COURT - 3,480.90; MANDAN PARK BOARD - 7,000.00; MANN SIGNS, INC - 78,241.50; MARKWED EXCAVATING INC - 161,730.00; MISSOURI WEST WATER SYST - 76.36; MORTON MANDAN PUBLIC LIB - 46,517.41; MY GOV, LLC - 1,050.00; ND DEPT OF TRANSPORTATIO - 36,622.74; ND FIREMENS ASSOCIATION - 20.00; ND INSURANCE DEPARTMENT - 30,807.83; ND PERS - 451.58; ND STATE DEPT OF HEALTH - 320.00; ND STATE DEPT OF HEALTH - 30.00; ND STATE RADIO COMMUNICA - 600.00; ND TRAFFIC SAFETY SERVIC - 12,614.73; ONE CALL CONCEPT INC - 405.70; PRESORT PLUS - 2,010.89; RAILROAD MANAGEMENT CO I - 4,431.02; RAZOR TRACKING - 450.00; SCHIFF/CRYSTAL - 100.00; SCHLOSSER EXCAVATING INC - 2,152.73; SIMPLEXGRINNELL - 482.00; ST. ALEXIUS MEDICAL CENT - 624.00; STANTEC CONSULTING SERVI - 3,860.34; THORSON/SHILA - 50.00; TOMAN ENGINEERING CO - 10,518.25; TWIN CITY ROOFING INC - 508.00; VOGEL/DARCI - 56.55; WEHRI/RADEANNA - 450.00; WINKS/LOREN K - 35.00.

2. *Consider for approval replat of Lots 10 and 11, Block 1, Keidel's South Heart Terrace Second Addition.*
3. *Consider approval of We Got Hope games of chance at The Drink from August 1, 2016 through October 1, 2016.*
4. *Consider approval of pledge of securities reports as required by NDCC 21-04.*
5. *Consider Police Department transfer of funds in 2016 budget.*

Commissioner Laber moved to approve the Consent Agenda as presented. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

F. OLD BUSINESS:

1. *Consider signing contract with TL Stroh Architects for architectural services of Mandan Fire Station 3.* Chief Nardello presented a request for the approval of a contract with TL Stroh for the architectural services of Fire Station No. 3. He said that the Mandan Fire Department advertised and received proposals for architectural services for Fire Station 3 in February 2016. An architectural selection committee recommended TL Stroh for the design of Fire Station No. 3 and the Mandan City Commission previously awarded the project on June 7, 2016. TL Stroh submitted a contract for architectural services and City Attorney Brown has reviewed the proposed contract. It is now recommended to enter into a contractual agreement for Fire Station 3 with TL Stroh of Fargo, ND. The architectural design fees are \$82,500 with funding provided through the Mandan City allocation of Oil Impact Fund for "Hub Cities". There was discussion at the Department Head Meeting on July 18, 2016, and there was confirmation that the funding for this is still available for the architectural services. The proposed design fees will move the project to the construction document phase wherein the bidding process will wait until such time when the City of Mandan is ready to complete the entire construction project. Chief Nardello recommended entering into the contract with TL Stroh Architect & Design for the amount of \$82,500.

Mayor Helbling commented that Commissioner Davis and he were not members of the City Commission at the time this was originally discussed. He would like to see this item

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removed based on looking at the main fire station and the south fire station. Neither is currently fully staffed. He said that constructing another fire station and not being able to staff it is of no benefit to the City. In addition, it will cause the City more expenses for upkeep, maintenance, equipment, etc. without being able to staff it. He recommended finding solutions to staffing at the other stations and to increase the response time out of those stations before building a third fire station. Commissioner Rohr commented that this fire station was approved based on the expected monies that were to come in. However, that has now become questionable as to what the future of those monies will be. A primary deciding factor was that all these funds would be available from the state and federal funding sources, and if not, that will make a difference if this is affordable into the future anymore. Commissioner Laber concurred with Mayor Helbling that the timing of this project was during impact funding which is the reason why the fire station was selected. The Commission all agreed at that time that it would be a good use of money due to the growth in the City and wanting to make sure there was adequate fire protection. Commissioner Laber suggested tabling this matter until there is discussion about what funds are available, currently, and what our current stance is regarding this matter.

Commissioner Laber moved to table this matter until there is definite information on impact funding and the money is in the City accounts and to make sure this is what needs to be done for the City of Mandan. Commissioner Rohr seconded the motion.

City Attorney Brown commented that the matter before the Commission is a proposal to enter into a contract with the architect. He stated he does not believe it would be appropriate to table it indefinitely. They made a proposal and if you want to defer it indefinitely, then a motion should be made to not enter into the contract. Mayor Helbling inquired if the City is financially obligated to enter into an agreement once it is made. Attorney Brown stated there was an RFP and several firms responded and they were selected. But there is no contract in which we are obligated to pay them any consideration. If the City's intention is to not enter into a contract, the motion should be to not do so. Chief Nardello did not think there was a deadline to enter into the contract.

Commissioner Laber amended the motion to not approve a contract with TL Stroh Architects and Design at this time. Commissioner Rohr seconded the motion. Commissioner Davis commented that there has been discussion on the Hub City funds for this project, keeping in mind that the money will sunset next year (2017). With the current state of our state there is a lot out there on hold and he agreed with the motions on the floor.

Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

G. NEW BUSINESS:

1. *Consider Young Professionals Network commitment to develop park concepts for expansion of Richard M. Longfellow Veteran's Park.* City Administrator Neubauer

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presented a request from the Bismarck-Mandan Young Professionals Network (YPN) to develop a park concept for the expansion of Mandan's Longfellow Veteran's Park to create a green space on the 2 acres of land along the river. He said this matter was discussed at the March 3, 2015 City Commission meeting and provided a recap of that information to the Commission. He noted that it was discussed at that time that should the Commission approve of this amendment, the planning improvements to the area would bring with it the potential funding which would come from the Visitors Fund.

A member of the YPN, Dave Lehman, contacted the City of Mandan looking for a project they could become involved in. Administrator Neubauer suggested the idea of having the YPN involved in developing a park concept for this 2 acre site. The YPN, through its diverse membership and skillsets available would be committed to leading and / or supporting the project from concept to completion. The YPN would assemble a committee to move this project forward. In addition to the YPN leading this effort it has been suggested to include representation from adjacent property owners, (Pirates Cove, Bridgeview Bay Homeowners Assn.), along with City of Mandan and Mandan Park District, (as the Mandan Park District has agreed to the maintenance of the area). A draft schedule of the project and letter from Stacey Thomas, YPN President, was reviewed and the following timeline was suggested: (i) 2016 Summer/Fall develop concepts and make a proposal to Visitors Committee for funding; (ii) 2016 Fall/Winter develop plans and specs, and (iii) 2017 Spring/Summer to advertise for a bid and start construction.

City Administrator Neubauer recommended that the YPN lead efforts on developing park concepts for the expansion of Richard M. Longfellow Veterans' Park. Members of the YPN were present to answer questions on this project. Mayor Helbling extended a thank you to the YPN for volunteering to do something on the Mandan side of the river.

Commissioner Braun moved to approve the YPN lead the efforts on developing park concepts for the expansion of Richard M. Longfellow Veterans' Park. Commissioner Laber seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

2. *Lower Heart Water Resource District (LHWRD) update on levee system.* Bill Robinson, from the Lower Heart Water Resource District, came forward to discuss this matter and referred to a memo provided to the City Commission in February 2016 related to the current levee system. The LHWRD met on Thursday, July 14, 2016. Mr. Robinson provided an update from that meeting. The levee system was created in Mandan in 1950 and currently provides 100 year flood protection. He explained that it is currently undergoing a study by FEMA for recertification with concentration on ice-jam effects which was not included in the original design. He said they have been working with Kevin Bittner, an engineer from the Bolton & Menk Engineering firm out of Marshall, MN who has worked with State Water Commission and the Corps of Engineers. They are doing a hydraulic analysis and a number of changes were brought to the table to accommodate this. A draft has been provided to the Water Commission, the Corps of Engineers and FEMA. The Mandan levee system is set up into 3 systems: the Sunny

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unit, (which is the Highway 10 Bridge out to basically the bridge of Arnie Kuhn on the west end of town); from the Highway 10 Bridge to the Trolley Bridge (known as the Mandan unit); and the Trolley Bridge to the Confluence which is the Lower Unit. The major issue with the Sunny Unit is that it's part of the operating and maintenance agreement with the Corps. That's a big part of the cost going forward. He said he is looking to get it reclassified or sever it from the flood protection system. The cost to getting this up to standards would be financially impossible for the LHWRD. When that is completed, the inner system, the Mandan unit, could be addressed. He explained which residents would be affected by this. The options to regain certification include: (i) Do nothing; (ii) Decrease future commercial and residential developments in the plain; (iii) Raise the levee entirely; (iv) Expand the flood plain storage. The project plans would include starting at the Highway 10 Bridge, (actually the Railroad Bridge), and the 2<sup>nd</sup> step would be to widen the channel between Highway 6 and 1806 bridges of about 30-35 yds.

The goal would be to provide an overflow channel that would accommodate the water flow and the sand bar that poses a concern for moving ice. The overflow enhancement would assist in moving ice out to the north side of the sandbar. He said meetings occur with the Corps on a monthly basis in hopes to make progress over a 12 month period. This project does not address the Missouri River, only the Heart River at this time. The FEMA studies included the cities of Fargo, Minot and Mandan. Mayor Helbling questioned what if FEMA decides to include the Missouri River? If so, financially one or both may not be feasible for the City of Mandan to handle. Until the status of the Missouri River is determined, it may not be wise to move ahead with this project. Mr. Robinson said the Missouri River was not included in the study with these other cities. When he wrote this plan, the state cost share program was 60/40 and that is now expected to change. If they don't change, it could cost the City up to approximately \$14.5 million.

Mayor Helbling said that without some state funding, the City will not be able to go ahead with this project. Mr. Robinson said that LHWRD is working with the State Water Commission for 60% of the funding. There is also a possibility of applying for a FEMA mitigation grant for \$3 or \$4 million that would be pursued. Mayor Helbling commented that if the City were to say "no", the LHWRD has the ability to levy on their own without the city's approval. Mr. Robinson replied that in the big picture, the City can't afford to say no. Commissioner Laber offered the City's resources, if needed, when applying for funding for any of these projects so that might mitigate passing it on to the citizens. Mr. Robinson explained that LHWRD is a subdivision of Morton County and up to this point the county has not been involved in any decisions. The LHWRD budgeting is done through Morton County which is the primary relationship with the county. A county commissioner is assigned to sit on the LHWRD board. Mayor Helbling stated that if this does come to fruition, the county will be requested to be involved to some extent.

3. *Consider recommendations from the Community Beautification Committee (CBC) regarding advertising benches in the downtown area.* City Administrator Neubauer presented a recommendation from the Community Beautification Committee (CBC) regarding the advertising benches located in the downtown area. He said the CBC has

formed a subcommittee to review enhancements for the downtown area and some of those include additional decorative street lights, trees, brick kiosks, benches, trash receptacles. As the subcommittee reviewed the benches for the downtown area, many of which are in the state of disrepair, the 1988 contract with Signs and Wonders was reviewed. Contact was made with Rick Knodel of Signs and Wonders for him to appear at the April 14, 2016 CBC meeting. A review of the minutes from that meeting was done followed by another discussion held on May 19, 2016 wherein clarification was made to require the removal of any of the advertising benches not under an existing contract within 60 days from first notice. There are about 5 or 6 benches with advertising on in the downtown area.

Commissioner Laber moved to approve the contract between the City of Mandan and Signs and Wonders be terminated as of March 31, 2017. In the meantime, any benches being used for advertising (advertisement for Signs & Wonders is not considered advertising) be removed within 60 days of first notice. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

4. *Consider Growth Fund Committee recommendations:* Ellen Huber, Business Development & Communications Director presented:

(i) *Storefront Improvement application for 122 E Main St by HB Properties:*

The Mandan Growth Fund Committee met July 14, 2016 to consider this application. The estimated cost of the proposed storefront improvement project is \$82,920. The application is for the maximum \$30,000 in matching funds. The application outlines plans to replace all windows in the building including two openings presently boarded up on the building's north side, adding stucco to the exterior in a tan color, and brick about 3 feet high around the building's base. The garage doors will be painted. A landscaping wall and planter will extend from the building's west wall to the sidewalk, eventually to feature vines once growth is established; but initially hanging plants. A pole sign for Dakota Crop Insurance is planned for the corner of the lot at Main Street and First Ave. NE to include a landscaped area at its base with a rock between the sign poles for the business Rocks That Talk.

To help assure that all signs of blight are addressed on the site, the applicant is also going to improve a portion of the lot on the north side of the parcel that is currently graveled. The plan is to install a cedar screening fence immediately behind the building (for the storage of boulders for the rock engraving business) and hard surfacing the remainder of the area for overflow parking. The owners may add on to the building's north side shop area in the future. The building will be leased to two businesses, Holly's Dakota Crop Insurance and Rocks that Talk.

The applicant is planning additional investments within the interior building renovation and other project components not eligible for the Storefront Improvement program such as new concrete and the hard surfacing of the non-fenced portion of the gravel lot. These costs will likely exceed \$20,000.

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The site and building renovation plan received approval from the Mandan Architectural Review Commission on July 12, 2016. The placement of the pole sign and rock need further review to be sure they do not intrude on the sight triangle as per the sign policy.

Director Huber stated that the request is for \$30,000 in matching funds. All funds previously earmarked within the Mandan Growth Fund for the Downtown Storefront Improvement program are expended and committed. Funding for this application would need to come from unallocated funds for economic development projects as a whole. The balance of uncommitted dollars is at \$122,718.

City Attorney Brown has reviewed the application. An automatic door is required and will be installed. A business incentive agreement has been signed which is required for projects exceeding \$25,000 in assistance. The Mandan Growth Fund Committee voted to recommend approval of the application for up to \$30,000 in matching funds for the storefront improvement project by HB Properties at 122 E Main Street. Dave Layman from the Mandan Growth Fund Committee was available to answer questions, as were the property owners Holly Campbell & Brandon Brandt.

Commissioner Laber moved to approve providing up to \$30,000 in matching funds for the storefront improvement project by HB Properties at 122 E Main Street. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

*(ii) Updates to the Restaurant Rewards program overview:*

The following is the Mandan Growth Fund Committee recommendation to update and clarify the Restaurant Rewards Program Overview. The Mandan Growth Fund Committee met July 14, 2016. Among agenda items was the review of some language that had been flagged as pending in the Restaurant Rewards Program description. Specifically, under the section called “Conditions”, the following statement still exists: *First-time restaurant operators or applicants that have been in business for less than one year must submit applications to the local N.D. Small Business Development Center office and after start-up participate in quarterly consultations with the SBDC or another approved business consultant.* Director Huber explained that this item was flagged after a conversation with a commercial real estate agent who inquired about the program and asked if that was a requirement.

The MGF Committee determined that this requirement is not needed given that the Restaurant Rewards Program components are low risk, so the MGF Committee does not need to be highly involved in assessing an applicant’s probability for success. This is because (i) The sales tax rebate is performance-based, meaning there’s no reward unless there are sales; and (ii) The interest buy-down component requires approval of the base loan by a lead commercial lender and the Bank of North Dakota.

The Committee reviewed additional proposed changes in verbiage to put the program

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description in present tense instead of future tense or a hypothetical context, which was approved. City Attorney Brown has reviewed the proposed changes and the Mandan Growth Fund Committee voted to recommend approval of the program overview updates. The MGF recommended unanimously voted to update the Restaurant Rewards Program Overview.

Commissioner Braun moved to approve the updates as proposed to the Restaurant Rewards Program Overview. Commissioner Laber seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

5. *Consider an expedited emergency to fix a segment of sanitary sewer that is not properly graded.* Justin Froseth, Planning and Engineering Director presented a request to fix a section of sanitary sewer that is improperly sloped. He explained that during the installation of the sewer main to serve the Lakewood 8<sup>th</sup> Addition, it was observed that the 8-inch sewer main stubbed to the west of 40<sup>th</sup> Avenue along 24<sup>th</sup> Street corridor (formerly Shoal Loop), is not at proper grade to drain towards the 40<sup>th</sup> Avenue sewer main. This was verified using survey instruments that showed the west side connection point invert to be 0.45 feet lower than the invert at the 40<sup>th</sup> Avenue manhole. It should actually be 0.6 feet or more above in order to properly drain towards 40<sup>th</sup> Avenue.

There were two projects for which this segment of sanitary sewer was constructed. The first 40 feet from the 40<sup>th</sup> Avenue main was constructed in 2005 by Robert Gibb and Sons with Swenson-Hagen Engineering involved as the engineer for both design and inspection. The next 110 ft. were constructed by Bowers Excavating with Toman Engineering as the engineer for both the design and inspection projects that were installed in 2012.

The Engineer's office has sent notice letters to all four entities involved with these projects to give them a chance to correct at no cost to the city. Three of the four have agreed to dedicate their resources to do the fixes. Robert Gibb and Sons responded stating that they will not participate and do not feel responsible for this issue.

This fix comes with urgency due to the following reasons:

(1) There are apartment buildings to the south of this sewer main that are using the existing sewer line and have been since 2012. To our knowledge they have not backed up, but they do run an increased risk of sewer backup in the sewer lines current state of improper sloping.

(2) A relatively large apartment complex is being built just north of this segment that will need to tie into this main. The apartment's targeted move in date is August 15<sup>th</sup>. The goal would be to get this fixed by August 5<sup>th</sup> in order to beat the August 15<sup>th</sup> date.

(3) The Lakewood 8<sup>th</sup> Street Improvement project, currently under contract, cannot be finished until this problem is resolved.

The Engineer's Office believes this fix qualifies as an emergency situation. Given the emergency classification, we believe it is necessary to have an abbreviated request for

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quotes with several contractors familiar with the area being asked for quotes to do the work. The Engineer's office has invited contractors to submit lump sum quotes to make this fix. We estimated the fix to be approximately \$50,000. We have asked that the contractors submit their quote by 4:00 on Tuesday, July 19, 2016. One bid was received from Basaraba Excavating in the amount of \$175,000. The contractor stated that the depth of the sewer is approximately 20 ft. to make this connection. We could remove the resurfacing at 40<sup>th</sup> Avenue and discuss that project with Public Works. Director Froseth recommended rejecting this bid due to the high nature, and negotiating with Basaraba and probably Bowers Excavating. Negotiations are warranted going forward to get the price down. The Engineer's Office will work with the City Attorney to recoup the cost from the original installer not willing to participate in the fix. Director Froseth recommended that after the fix is completed that the City pursues reimbursement from the original contractor for the costs incurred to do the fix.

City Attorney Brown stated the issues that need to be addressed in this matter are the segment of the section of 40 ft. which was installed 11 years ago and that until the 110 ft. extension was put on, the 40 ft. section did work. Director Froseth stated that the City was not aware of that since it was never used. The first 40 ft. was a stub-out beyond the pavement of 40<sup>th</sup> Avenue curb line and in order for ease of connection in the future. That future was the 110 ft. that was put in to serve those apartments south of that segment. Attorney Brown suggested addressing this when this matter is concluded.

Commissioner Laber moved to reject the low bid at a high cost and to allow engineering staff to proceed with negotiations with various contractors to get this done expeditiously. Commissioner Davis seconded the motion.

Finance Director Welch stated that according to the City's procurement policy, normally an item like this would reach the threshold where you would have to obtain competitive bids; and after consultation with Director Froseth and City Attorney Brown, the recommendation is that the Board should declare an emergency so then it allows the City to negotiate in a situation with a contractor. Therefore, we can forego the competitive bidding process. That should be part of the motion.

Commissioner Laber amended the motion to state that due to the emergency nature of fixing this section at 40<sup>th</sup> Avenue and 24<sup>th</sup> Street, that the low bid be rejected and that the engineering department be allowed to negotiate for the work to be done with contractors rather than going through competitive bids. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

#### H. RESOLUTIONS AND ORDINANCES:

1. *Second consideration of Ordinance No. 1248 creating Chapter 26 of the Mandan Municipal Code related to code enforcement.* Planner Decker stated that after the last meeting some questions were brought up; and based on those, there are recommendations to the text. One would be to bring an action against the property so that it is on record

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indicating there is an action in process in the event the property is offered for sale. The second item would be that the members of the Board of Appeals, (noting that the preference would be to have 5 members because 3 is a quorum), then you could have a majority vote on an item. But if there were only 3 members, there could still be an action to move forward and the quorum would be 2.

Commissioner Laber moved to approve the Second consideration of Ordinance No. 1248, creating Chapter 26 of the Mandan Municipal Code related to code enforcement as amended. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

2. *First consideration of Ordinance 1245 adding and enacting Article 5 to Chapter 18 of the Mandan Municipal Code related to abandoned, found, recovered and unclaimed property.* Planner Decker stated this matter was brought forward by the Mandan Police Department to clarify issues that came up regarding recovering things found on the street. This revision will clarify the code to align to what they do and does not change the typical things they do.

Commissioner Laber moved to approve the First consideration of Ordinance 1245 creating and enacting Article 5 to Chapter 18 of the Mandan Municipal Code related to abandoned, found, recovered and unclaimed property. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

3. *Second consideration of Ordinance 1246 rezoning Lot 3, Block 1 Sylvester's Industrial Park 3rd Addition.* Planner Decker stated this area was rezoned with conditions many years ago and those conditions were fairly onerous. Those conditions were removed on the property adjacent to this property which is a Tire Store. Commissioner Laber moved to approve the Second consideration of Ordinance 1246 rezoning Lot 3, Block 1 Sylvester's Industrial Park 3rd Addition. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

4. *Second consideration of Ordinance No. 1247 amending and reenacting Sections 18-2-2 through 18-2-5 of the Mandan Code of Ordinances related to juvenile curfew.* Planner Decker explained this revision pertains to corrective wording because the current code does not have any enforcement provisions. Commissioner Laber moved to approve the Second consideration of Ordinance No. 1247 amending and reenacting Sections 18-2-2 through 18-2-5 of the Mandan Code of Ordinances related to juvenile curfew. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Laber: Yes; Commissioner Braun: Yes; Commissioner Helbling: Yes. The motion passed.

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I. OTHER BUSINESS:

Commissioner Laber requested the following items for discussion:

1. *Request for Special Meeting on Hub City Funds:* Commissioner Laber requested a Special Meeting be scheduled by City Administrator Neubauer for the City Commission to discuss the Hub City Funds. What is the balance? Where does the City Commission want to go with the funds? If we get all the funding or if there is a shortfall, what will be the procedure so that issues such as the Fire Station 3 has a backup plan. She requested the meeting be scheduled no later than August 31, 2016.

2. *Business Development & Communications Director Huber's Position.*

Commissioner Laber said that the Mayor and the Commissioners were sent a letter (via email) from Business Development & Communications Director Huber dated July 10, 2016 wherein the contents of the communication stated that she wanted to clarify her position regarding her salary and how she felt that negotiation went. On May 3, 2016, the City Commission members at that time made that position from a contract position to a civil service position and increased her salary to \$82,000. On May 2, 2016 a working session for budgeting was held and it was known to everyone at the meeting, including Ms. Huber, that there were budgetary constraints. Employees have been told the possibility of receiving pay raises this year is very low with the possibility of freezing police department positions. The City has to budget for what they can pay employees.

Commissioner Laber moved that no additional salary be considered for the Business Development & Communications Director position and to accept Ellen Huber's resignation effective immediately. Commissioner Davis seconded the motion (for discussion). He stated that he agrees that the Hub City Funds requires further discussion as to what the funds are to be utilized for. With regard to Director Huber's position, reference should be made to the previous City Commission action that took place on May 3, 2016. He feels they should stay the course on that vote.

Mayor Helbling stated that it is his opinion that the City has not received an official resignation from Director Huber. It is his belief that the contract should have been handled on or before its renewal date in February, 2016. He further stated that it is his opinion that this is not the proper time or place to discuss this matter. He indicated that without an official resignation letter, this matter should not be discussed at this time. City Attorney Brown clarified that he believes that the correspondence received from Director Huber on July 10<sup>th</sup> should not be considered as a formal resignation. He stated that everything regarding this matter is to be guided by legal counsel, is to be done correctly and is fair to both the employee and the City.

Commissioner Laber stated that Director Huber's position was discussed and it was the previous Commission's opinion on May 3, 2016, that a position was offered and an increased salary was offered and given to Director Huber and the issue was closed. She refused that.

Attorney Brown stated that he read the email that Director Huber sent out on July 10, 2016. He viewed that email as the response, albeit late, to the May 3, 2016, action of the

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Commission. The May 3, 2016, action of the commission was to change her status from a contract employee to a civil service employee and to offer her a salary of \$82,000 a year. Her response with her email is considered to be a response to that offer, which was civil service and salary, and several pages of justification from her perspective about the job she was doing and why she felt she deserved an increased salary. Attorney Brown stated that he does not consider that email to be a resignation. He said her status today is that of a contract employee albeit a contract that has technically expired by its terms. But she has to have a status and he believes her status today is still a contract employee.

Commissioner Rohr stated that this matter goes back to the fact that the contract should have been completed by February 1, 2016. There was a similar situation with the City Administrator's position. He said that the portfolio holder has to make it a point to make sure these matters are followed up on. He stated he did not consider Director Huber's email to be an official resignation to be the intent of the email. It needs to be resolved if she is to be a contractual employee or a classified employee. The primary point of argument was the pay and that goes back to comparisons. In addition when the City looked at upgrading pay scales to those similar in Bismarck City positions, this position was not reviewed at that time because of its contractual nature. He recommended that this matter be discussed again and that the City Commission is more specific as to what it wants this position to be due to the varying perceptions. The City Commission needs to discuss and resolve this and do what is right so this does not occur in the future.

Mayor Helbling concurred with Commissioner Rohr's comments and reiterated that this process should have occurred 6 or 8 months ago. He again stated that this is not the time and proper forum, to discuss this.

Commissioner Laber stated that her motion was that due to the budgetary and salary constraints that are being imposed on all other department heads, that no additional salary is to be considered for this position and if that results in her resignation then we should accept her resignation. The previous City Commission offered her \$82,000 for a civil service position.

Commissioner Rohr indicated that this position is not paid out of the General Fund budget - it is paid out of the Mandan Growth Fund, which is a different funding mechanism. She is currently being paid the salary amount under the old contract.

Commissioner Davis said that there has to be a defined difference to the position of the status of any employee whether they are contract or an FTE. Going back to the May 3, 2016 vote, it was voted on. He voiced concern that the City should not break its own rules. He requested clarification of the status of this position if it is contractual or city employee.

Mayor Helbling requested clarification from City Attorney Brown as to how to move forward with the motion (since it is not a formal resignation).

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City Attorney Brown stated there is a motion and a second on the floor whether it comports with the facts is up to the City Commission, the decision makers. Unless there is further debate, the motion should be addressed.

Mayor Helbling recommended clarifying the issues that have been discussed before acting on this motion and that it should be addressed fairly.

Commissioner Braun commented that based on the discussion held thus far along with Attorney Brown's input, he said that his viewpoint of the email received from Director Huber, based on the meeting held in May, was that the Commission agreed to move her to a civil service position and offer her this pay. She did not sign the old contract nor has she signed the new one. So she is still a contract employee. The email basically explained her qualifications and what she wanted for pay. He said he views the issue as it is still in limbo.

Commissioner Laber moved to amend her motion that no additional salary be considered for this position and to accept Director Huber's resignation if that is the result of the fact that we will not increase her salary.

Attorney Brown stated the motion to amend is a 2-step process. It is one thing to say to reaffirm the salary offer but then to condition it on the acceptance that may or may not happen and then something else happens that goes beyond the appropriateness of a motion.

Commissioner Davis said that for clarification of the motion, his second for the motion was for discussion on the floor. The limbo status that Commissioner Braun is referring to is not just for the present. But for the future when there is a contract for anyone and it is not signed off, it's not agreed to and that person or entity continues to work on behalf of the City, the City business, or whatever would be constructed. There is a huge liability here for leaving something in limbo for such a long time.

Mayor Helbling asked for a second to the motion. Hearing none, the amended motion died for lack of a second.

Mayor Helbling referred back to the original motion which was to accept the resignation of Director Huber.

Commissioner Laber moved to amend her previous motion so that no additional salary will be considered for the business development position of \$82,000 that was approved at the May 3, 2016, City Commission meeting.

Commissioner Davis stated he still goes back to the May vote and looking at that vote that was taken. However, since that was passed, how can we legally go back and change something that was voted on in the past?

Attorney Brown explained it is not like an ordinance that is needed to enforce the law. The action that was taken at the May 3<sup>rd</sup> meeting was the action taken and it is effective until it is changed. This body can rescind that motion, it can change it, and it can do anything.

Commissioner Davis stated he believes the status needs clarification. He would like to have more discussion on how to handle that.

Mayor Helbling stated there is an Amended motion on the table that Commissioner Davis did not second or agree to second the motion for a second time so that motion dies.

Commissioner Laber recommended setting a salary so Director Huber knows what she is negotiating. Mayor Helbling indicated he could be available via teleconference or he is willing to call a special meeting to resolve this matter. He stated that the action needs to be fair, legal and done correctly when it is acted upon.

Director Huber came forward to voice her concerns on perspective of the matter. Even though the position was to be renewed on 2/1/16, the first time it was addressed was on May 15, 2016. It was tabled and revisited on May 3<sup>rd</sup>. She said she was misled on the salary offering that night because it was about contract renewal that shifted into discussion about civil service. The dollar amount that was approved that evening was not the amount that had been agreed upon. There was no opportunity on May 3<sup>rd</sup> to respond to that offer of that salary amount and the civil service position. She told City Administrator Neubauer that evening that she was not sure she wanted to accept it, asked for time to think about it and asked for additional information. From her perspective, she was blind-sighted on the salary and did not mean to delay her response until July 10<sup>th</sup> because it took time to receive the information that was requested. She said that prior to the motions being made this evening that it was her understanding that this was still in negotiations.

Mayor Helbling stated there is a motion and a second on the table to accept the resignation of Director Huber.

Roll call vote: Commissioner Rohr: No; Commissioner Davis: No; Commissioner Laber: Yes; Commissioner Braun: No; Commissioner Helbling: No. The motion failed.

Mayor Helbling extended an apology to Director Huber and the rest of the City staff in the way this matter was brought forward at this meeting stating that it should not have been discussed in this fashion.

There being no further actions to come before the Board of City Commissioners, Commissioner Rohr moved to adjourn the meeting at 7:13 p.m. Commissioner Davis seconded the motion. The motion received unanimous approval of the members present. The motion passed.

/s/ James Neubauer  
James Neubauer,  
City Administrator

/s/ Timothy A. Helbling  
Timothy A. Helbling,  
President, Board of City  
Commissioners