

The Mandan City Commission met in regular session at 5:00 p.m. on February 20, 2019 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Mayor Helbling called the meeting to order.

A. ROLL CALL:

1. *Roll Call of All City Commissioners.* Present were Mayor Helbling and Commissioners Braun, Davis, Larson and Rohr. Department Heads present were Finance Director Welch, City Administrator Neubauer, Fire Chief Nardello, Building Official Ouradnik, Business Development and Communications Director Huber, Planning & Engineering Director Froseth, City Planner Van Dyke, Assessor Markley, Police Chief Ziegler, Director of Public Works Bitz and Assistant City Attorney Oster. Absent: City Attorney Brown.

2. *Presentation of Retirement Acknowledgement for Mandan Fire Department Firefighter Bob Smith.* Mayor Helbling said that Bob started as a full time firefighter with the Mandan Fire Department on July 25, 1991 and he will continue to serve the community until February 28, 2019. Bob has provided many hours to the Fire Department as a Captain of which he has built, repaired and manufactured many projects. Mayor Helbling extended wishes for an enjoyable retirement and thanked him for his years of service to the City of Mandan. Fire Chief Nardello came forward to assist with the acknowledgement.

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider approval of the minutes from the February 5, 2019 Board of City Commission regular meeting.* Commissioner Braun moved to approve the minutes as presented. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes. Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

D. PUBLIC HEARING:

1. *First consideration of Ordinance 1306 related to backyard chickens.* Principal Planner Van Dyke presented a request for approval of the first consideration of Ordinance 1306 related to housing chickens within the city limits of Mandan. He said that this ordinance was brought by residents who live in Mandan. Previously, Travis Dengel provided a brief presentation for this request in 2018. Additional information was requested by the Planning and Zoning Commission that included a survey of communities in North Dakota that allow chickens, the number allowed, and commonalities within the ordinances such as disallowing roosters. Also provided were the benefits and consequences of permitting chickens and the means to mitigate negative impacts. Currently, the Mandan City Code does not allow chickens within City limits unless they are a part of a commercial-scale operation. The code being presented would allow up to four (4) chickens per lot with several restrictions to mitigate negative impacts to neighboring property owners.

Pursuant to the request, a preliminary Ordinance was drafted and sent to city departments and several other agencies for review which is the normal process for new or revised Ordinances. He presented a copy of Exhibit 4 that provided an acknowledgement of understanding of the

requirements and responsibilities which the applicant and owner would be required to sign prior to the issuance of a permit. He reported that the Planning and Zoning Commission, in a split vote (2 opposed) recommended approval of Ordinance 1306 at their January 2019 meeting. Subsequently, minor revisions were incorporated into the draft document, in particular, the chickens would not be allowed to be taken off the permitted site and located them somewhere else within the City. (Example: Chicken-sitting the chickens off the permitted site would not be allowed.) The structure for the chickens (coup) would be 8 feet in height vs. 5 feet in height. And the right of way was clearly defined. This would be a one year revocable permit, renewable on an annual basis. If this passes first consideration Planner Van Dyke said that he will present a Resolution for a suggested fee for the permit indicating that Planning and Zoning would be responsible for the issuance of that permit and collect the fees. The construction standards of the coup and quantities of chickens would also be the responsibility of Planning and Zoning. He stated that both the Engineering and Planning Department and Planning and Zoning Commission recommended approval of Ordinance 1306 with the revisions made as recommended.

Mayor Helbling announced this is a public hearing to consider Ordinance 1306 related to housing chickens within the city limits of Mandan. He invited anyone to come forward to speak for or against the ordinance.

Travis Dengel, 1707 Third Street Northeast, Mandan, came forward and stated that he introduced this Ordinance. The intent is to keep people responsible for their chickens and to allow this as an activity option for residents. He said he supports the Ordinance.

Mayor Helbling again invited anyone to come forward to speak for or against Ordinance 1306.

Commissioner Larson said she has concerns regarding this request, in particular, the oversight of by the Planning Department - should not be in charge of monitoring chicken coups. She does not have a problem with the chickens; rather it is a concern about staff time spent overseeing this which does not seem like a necessity. Commissioner Davis concurred with the concerns outlined by Commissioner Larson as it relates to staff time, and fee collection as well as compliance issues. Mayor Helbling commented that he thinks this matter is an attempt to be proactive rather than reactive and that residents will have chickens whether it is favorable or not to the City. Commissioner Rohr inquired if there should be a distinction between an urban (city) and rural (outside the city) setting and inquired how many requests have been presented to the City Planner. He commented that it seems to be unorthodox and not a common request in this day and age. Commissioner Braun commented that it is unorthodox and he agrees that the enforcement and staff time are his concerns too. Planner Van Dyke stated that he contacted Fargo to see how they are handling this and they said they regretted passing the Ordinance, after the fact, but they were not having a lot of issues and it didn't seem like there were a lot of people exercising their right to apply for a permit. The main reason people want them is for the eggs and then potentially butchering them.

Shawn Ouradnik came forward and stated he has 5 chickens at his house. There is not much smell. His children have a harness and walk them and they are soothing to watch as they are very low maintenance. They are pets and they do produce eggs without roosters. He supports this Ordinance.

Planner Van Dyke stated that the recommendation would be an initial permit fee of \$100 and it would be renewable annually.

Mayor Helbling announced a third time for anyone to come forward to speak for or against Ordinance 1306. Hearing none, this portion of the public hearing was closed.

Commissioner Braun moved to approve Ordinance 1306 as presented. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: No; Commissioner Davis: Yes. Commissioner Larson: No; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *First consideration of Ordinance 1291 related to fireworks sales and fireworks stands.* Principal Planner Van Dyke presented a request for approval of first consideration of Ordinance 1291 related to the sales of fireworks and fireworks stands. He stated that fireworks sales in the City of Mandan have been contentious for both residents and retailers due to the lack of specific regulations surrounding where retailers can conduct the sale of fireworks. Complaints have been received from the public regarding their location, traffic, or simple distaste for the activity itself being located close to residential areas. In contrast, the retailers are left with last-minute, often stressful situations in terms of identifying an appropriate location. This Ordinance will define where these stands are allowed and provide retailers the opportunity in advance of the fireworks season to identify an appropriate location to conduct their business. He said that city staff met both during and after the fireworks season to discuss this issue. Input was received from several departments including Fire and Building. Commissioner Rohr and Administrator Neubauer were also present for the discussions. Follow-up meetings were held with Natalie Pierce, Morton County Planning and Zoning Director, Malcolm Brown, City Attorney, and Lynn Gustin, Mandan Rural Fire Chief on behalf of Chief Nardello.

In summary, this Ordinance incorporates all of the above input as well as the recommendations of the Planning and Zoning Commission to remove any setback distance from residences. The proposed Ordinance amendment defines fireworks to align with North Dakota Century Code. It also defines fireworks stands, which includes specific requirements that must be met. Fireworks stands would be allowed in Ag zones on property 20,000 sq. ft. (approx. ½ acre) or larger or where the Retail group A use group is allowed (CA/CB/CC Commercial and MA/MC Industrial Districts). Fireworks stands would not be permissible within corporate limits; only permitted within the extra-territorial area.

Planning and Zoning unanimously voted to recommend approval of Ordinance 1291 as presented in Exhibit 1 at their January 2019 meeting. The Engineering and Planning Department and Planning and Zoning Commission recommend approval of Ordinance 1291 as drafted.

Mayor Helbling announced this is a public hearing to consider Ordinance 1291 related to fireworks sales and fireworks stands. He invited anyone to come forward to speak for or against the Ordinance. Mayor Helbling announced for a second and third time for anyone to come forward to speak for or against the Ordinance. Hearing none, the public hearing was closed.

Commissioner Davis asked for an explanation of the extra-territorial zone, there was a gray area of a fire stand that was deemed in the extra-territorial zone. He inquired about plans to eliminate the gray area. Planner Van Dyke said that the need for this Ordinance was for a formal permit and while forming this process – discussion ensued as to what is appropriate. We didn't define where the fireworks stand was assuming it was in a retail location. Ag zoning does not necessarily allow retail. Fireworks stands are kind of in no man's land that needs to be addressed since there have been issues coming up and this is not a replacement to the county permit that is issued rather this is the City of Mandan's localized permit that will be issued in conjunction with the state and county permit. This allows us to make sure it is going in precisely the location that they are declaring and that we have all the information that we need to make an educated decision on whether or not it is appropriate and city staff will issue our permit which they will take to the county as proof that they have already gotten the city's seal of approval.

Commissioner Rohr moved to approve Ordinance 1291 as presented in Exhibit 1. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes. Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *First consideration of Ordinance 1301 related to changes to the R3.2 Residential District.* Principal Planner Van Dyke presented a request for approval of first consideration of Ordinance 1301 related to changes to the R3.2 Residential District. He explained that changes to residential districts were carried out in 2016. These changes included limiting the number of single-family residences to 10% of the total number of lots within a subdivision in the R3.2 Residential District; all other residences within this district are required to be twin home construction. Macedonia Hills and other areas were platted prior to the 2016 Ordinance change with the intent to allow a combination of single-family and twin home construction. Multiple inquiries from lot owners and real estate agents over the past few months brought attention to this particular restriction in the R3.2 Residential district. There has been controversy with the inability to construct single-family residences on certain lots. In discussion with city staff the ability of the City to administer the 10% limitation with the current permit tracking software is difficult and likely to result in an inadvertent issuance of a permit for non-conforming structure. The proposed revisions remove the 10% clause, defines twin home, and clarifies side setbacks for both twin homes and single-family dwellings. The Planning and Zoning Commission unanimously voted to recommend approval of Ordinance 1301 as presented in Exhibit 1.

Mayor Helbling announced this is a public hearing to consider the first reading of Ordinance 1301 related to changes to the R3.2 Residential District. He invited anyone to come forward to speak for or against the Ordinance. Mayor Helbling announced for a second and third time for anyone to come forward to speak for or against the Ordinance. Hearing none, the public hearing was closed.

Commissioner Braun moved to approve Ordinance 1301 as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes. Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

4. *First consideration of Ordinance 1299 related to crematoriums.*

Principal Planner Van Dyke presented a request for approval of the first consideration of Ordinance 1299 related to crematoriums. He said that an inquiry related to allowable locations in Mandan for crematoriums brought attention to several different requirements whether or not a crematorium is public or privately operated. Presently, crematoriums are generally a part of a funeral home or mortuary. These uses are allowed in Commercial and the MA/MC industrial districts. Setbacks are determined by the respective zone and in some cases the setback is at zero feet. In contrast, public crematoriums require a conditional use permit and must be located in agricultural or industrial districts with a 200 foot setback from the property line. When researching this Planner Van Dyke found confusing language within the Ordinance that appears to apply different standards for a use solely based on being a public or private activity doesn't adequately mitigate the negative impact of the use. By applying the same standards to both public and private entities through the requirement of a conditional use permit, adjacent property owners have the opportunity to be involved in the process stemming from any application.

The proposed Ordinance provides a new definition for crematoriums that requires them to be an accessory use to a legally existing mortuary, funeral home, columbarium, or cemetery. They would not be allowed to operate as the primary use on a property. In addition, "facilities for cremation" is removed from the definition of funeral home or mortuary. The standards applied to public mausoleums, columbarium's and cemetery chapels are now applied to both public and private facilities. This includes being limited to industrial or agricultural zones.

What is a setback? In reviewing other municipal ordinances, Bismarck allows them as accessory to funeral home operations as well as through a special use permit as part of a cemetery (similar to Mandan's present Ordinance). Minneapolis requires crematoriums to be located within a cemetery and 1,000 ft. setback from a property line. Denver requires crematoriums to be a part of a cemetery, with a minimum 500 ft. setback from a residential district. Staff also asked for feedback from funeral homes in Mandan. Buehler Larson Funeral Home indicated 300 ft. from a residential zoning district was more in-line with other communities in and outside North Dakota. David Wise has provided comment that included several suggestions for definitions and he suggested 200 ft. from a residential zoning district. Tom Wiegel provided comments stating that crematoriums should be allowed only in the Industrial and Agricultural zones and located no closer than 300 ft. to a residential or commercial property line. Mr. Wiegel noted that while technological improvements have been made that reduce emissions, emissions are still a factor. Crematoriums produce a substantial amount of noise. City staff agreed with the recommendation of a 300 ft. setback from the property line based on other municipal ordinances and input from Mandan funeral homes. Mr. Wise came forward and provided his comments with focus on setbacks from the property line. The Planning and Zoning Commission voted to recommend approval of the Ordinance subject to changing the 300 ft. setback to 100 ft. excepting along adjacent right-of-way. This would take into consideration the somewhat large distance (at a minimum 66 ft. for local roads and up to 100 ft. or more for arterials such as Highway 1806) the right-of-way provides as a buffer to an adjacent property.

The Planning and Zoning Commission recommend approval of Ordinance 1299 as presented.

Commissioner Davis inquired if a bike trail would be considered a right of way. Planner Van Dyke replied that typically bike trails are considered a right of way. Mayor Helbling commented that Bismarck has a crematorium that was built in northwest Bismarck before any homes were built in the area. Most of the homeowners in that area do not even know the crematorium is there. He stated it would be better to be proactive than reactive when situations start to come up.

Commissioner Larson inquired if there is a requirement for a 200 ft. setback for a cemetery chapel but only a 100 ft. setback for a crematorium? Planner Van Dyke said it is the way the Ordinance was created and that all the recommendations had a 200 ft. setback and for this purpose, he was just looking at a crematorium. He said the standards could be relaxed for a columbarium or mausoleum.

Mayor Helbling announced this is a public hearing to consider the first reading of Ordinance 1299 related a crematorium. He invited anyone to come forward to speak for or against the Ordinance 1299.

Wes Eisenmann 1405 17th Street Southeast, Mandan, came forward and said he is opposed to the crematorium in Mandan. He commented that there is evidence that crematoriums produce dangerous pollutants which are linked to serious health problems, especially in young children. He voiced concern that the value of homes will decrease by 15-20% if there is a crematorium in the neighborhood. He requested the request be denied.

Mayor Helbling clarified that there is no formal request at this time for a crematorium.

Wade Meschke 1810 14th Avenue Southeast, Mandan came forward and voiced his opposition of allowing a crematorium site in Mandan. He requested the commissioners look at their own residential dwelling locations and think about how a crematorium would affect them if one were to be built in their neighborhood. He suggested the ordinance reflect a 100 ft. hard set back radius in which no development can occur with a 1,000 ft. setback radius and to notice the property as the zoning commission puts it “buyer beware area”. He inquired if the historical society has cleared this property for development in case of Native American artifacts that may be found in this area. He requested the Commission to consider the requests of the residents of Mandan (to deny this request for a crematorium) so that the property levels continue to rise and so the residents are not continuously dealing with the City Commission about this matter.

Delbert Thompson 712 Farmstead Court Southwest came forward and commented that he would reiterate what Mr. Meschke outlined. He believes the setbacks have to be hard setbacks and they need to be spelled out clearly in the Ordinance.

David Wise of DaWise-Perry Funeral Services 4614 Memorial Highway Mandan, came forward and stated he is in agreement with the Ordinance that Planning and Zoning has drafted. This allows for a 100 ft. hard setback. He said that he understood that the public hearing tonight is to define what a crematorium is and define the hard setback. He provided feedback to some of the statements made regarding property values, crematory emissions, CANA’s, etc. He explained that the site he is interested in sets on a 5 acre plot of land located along 19th Street Southeast, which is next to the Living Water Lutheran Church. He said that during last year there were

3,364 cremations in the state of North Dakota. He said that he would like to expand his business to offer this service in Mandan. The location he would like to operate from is close to the ND Veteran's Cemetery. The crematorium would be more than 500 ft. from the nearest residence. He plans to host a Q & A session at DaWise-Perry Funeral home on Sunday at 2:00 p.m. and he said anyone is welcome to attend.

Commissioner Davis inquired about an existing funeral home, changing it to an accessory regarding the crematory, why not have the crematory where the funeral home is located at this time rather than move it to a residential area? Mr. Wise said that his building is old and the cost of remodeling it would exceed the costs of building a new facility, for much less. Why he is looking at this particular location is because it sits empty and that area is for commercial use; and also to promote his business and with the rate of veterans we have in the state, this location would put his business closest to the Veteran's Cemetery. He would like increase his business to Bismarck as well as other cities in North Dakota. This facility would be state of the art, a larger reception area and at that location, it is on the edge of the City of Mandan and the master plan of City of Mandan is to have that property as commercial. He was open to answer any questions at this time.

Mayor Helbling commented that if taking Mr. Wise out of this matter, and if he goes ahead with his project or not, crematoriums are the up and coming thing of the future.

Mayor Helbling again announced this is a public hearing to consider the first reading of Ordinance 1299 related to crematoriums. He invited anyone to come forward to speak for or against the Ordinance 1299. Hearing none, this portion of the public hearing was closed.

Commissioner Larson commented that she believes it is interesting that Mayor Helbling commented that this is a matter to consider into the future. However, she said that is not what happened at the Planning and Zoning meeting. She has a concern that it went from a 300 ft. setback recommendation, to a 200 ft. recommendation from Mr. Wise and then to a 100 ft. recommendation. There is no recommendation for setback for right of way. She extended a thank you to Mr. Wise and to the residents for coming forward to voice concerns. She recommended reviewing this matter further and determine what would be the best outcome for any location in the City of Mandan regardless of this particular location. She said she did not believe that a 100 ft. setback is a consideration.

Commissioner Rohr said it appears that there should be further discussion to determine the best interests that will encompass the whole city. There should be an Ordinance in place and everything that goes with it.

Commissioner Braun commented the Ordinance should read that crematoriums should only be allowed in cemeteries as in Minnesota and Colorado. His rationale for stating that is because cemeteries are typically where people are laid to rest. The Mandan Union Cemetery comes to mind and it is out of the way, there is smoke involved depending on the wrapper that is used and there are issues. The cemetery could set 2-3 lots aside of which people can purchase and build the crematorium there. It is common knowledge that the Union Cemetery does not bring in

enough money. We are taking out of the tax funds on a regular basis so we can pay the maintenance fees. He suggested considering this recommendation as an option.

Mr. Wise responded to Commissioner Braun's suggestion and stated that it is his understanding that the City of Mandan is not able to sell the property by Mandan Union Cemetery. Even though the property was deeded to the City of Mandan, it is his understanding it cannot be sold. He said he would be willing to look into that option. Administrator Neubauer stated that the City constructed a building on that site for cemetery use purposes and cemetery staff is located in that building. The deed that goes back to 1938 indicates that the City cannot sell property to any individual however it is unknown if the property could be leased. Mayor Helbling commented that the area at the cemetery would be limited if a crematorium, a chapel or a parking lot, were all to be set in that location would probably not be sufficient. Administrator Neubauer recalled that the deed was very restrictive as to what the City can or cannot do at the cemetery with the property.

Commissioner Braun requested tabling this matter to research the possibility of building a crematorium at the cemetery and discuss at a later time. Administrator Neubauer said that updates to the Ordinance will need to occur no matter what the decision is on this matter. He recommended looking at the revisions that were brought tonight and in addition, if the Commission wishes, research can be conducted to rent or lease the property. Planner Van Dyke clarified that the property is zoned Agriculture and that will have to be changed to commercial. For any commercial business to go there it will require a zone change and platting and an annexation, so there are processes ahead of this even if an additional use permit could be applied. Short of a variance application Mr. Wise will have to go through almost every public hearing that the City would have in order to be permitted. However, without this Ordinance, at this point, Mr. Wise can relocate his crematorium anywhere butting the setback line next to a fence. As far as the overall commercial development there that is the plan of the City regardless of the crematorium. It will have to be appropriate and go through the process of changing plat and annexation.

Mayor Helbling stated that Planning and Zoning have recognized there is a problem with this Ordinance and action has to be taken by the City. Commissioner Braun stated he talked with individuals about the setback, he suggested that it be a minimum of 200 ft. setback. Commissioner Rohr concurred with the suggestion.

Sylvia Thompson, 712 Farmstead Court Southwest, Mandan, inquired if there was a setback from the property lines of the residential houses located in that area. Planner Van Dyke stated there is a property line set back that accepts the adjacent right of way which would allow any crematorium placement to be located closer to the road and away from the neighboring property. The hard setback applies to the non-right of ways and the adjacent properties do not have something pushing closer towards them. The purpose of the 100 ft. setback was to get it away from private development and pushing it towards the right of way.

Mayor Helbling said that if this first consideration was approved tonight, there would still be an opportunity to come back and amend the second consideration. Planner Van Dyke said that revisions can be made at this time.

Commissioner Larson stated she concurs with Commissioner Braun and thinks that the minimum should be 200 ft. She is not comfortable with 100 ft.

Commissioner Braun moved to approve Ordinance 1299 with the setback set at 200 ft. as presented in Exhibit 4. Commissioner Rohr seconded the motion.

Commissioner Rohr stated this is the first reading and there is still another reading that we could make changes after reviewing all the issues.

Sylvia Thompson, 712 Farmstead Court Southwest, Mandan came back to the podium and voiced concern that it makes no sense to have the setback closer to the houses. She inquired if an Ordinance could be drafted to protect the houses that are located there by creating an Ordinance that the setback would have to be from the property line of the houses, rather than the street. Mayor Helbling stated that was discussed at the Planning and Zoning meeting. Planner Van Dyke said a clause could be added to include a provision for a set back from residential district as a hard setback as well as a soft set back.

Mr. Meschke came back to the podium and said he meant to have a hard setback and a softset back. In Bismarck they were allowed to build as close or as far they wanted. The hard setback for the residents would have to be quite a distance. As it moves closer to 1806 or whatever road comes in, this is zoned as Agricultural, and the property is not annexed in, everyone on both sides of the road should have input.

Commissioner Davis recommended tabling this matter until further research is conducted to answer questions about setbacks.

The motion on the table is: Commissioner Braun moved to approve Ordinance 1299 with the setback set at 200 ft. as presented in Exhibit 4. Commissioner Rohr seconded the motion.

Mayor Helbling called for a roll call vote on the motion on the table:

Commissioner Rohr: No; Commissioner Davis: No. Commissioner Larson: No; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion failed.

Commissioner Rohr motioned to revisit this matter at a later time in order to allow Planner Van Dyke additional time to gather more information regarding hard and soft setbacks as discussed. Commissioner Larson seconded the motion.

Commissioner Davis said he agrees to the Ordinance. Regarding the right of ways, not just streets but including utilities. Planner Van Dyke indicated he will revise the verbiage to make sure it is clearly known the right of way and what the setback would be no less than 100 feet.

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

5. *Conduct a public hearing to consider an appeal of the MARC decision on a mural at Many Visions located at 100 2nd Ave NW.*

Shawn Ouradnik, Building Official reported that Bobby Cochran, owner of Many Visions located at 100 2nd Avenue NW, has filed an appeal of the denial of a mural application by the Mandan Architectural Review Committee (MARC). He explained that Many Visions was cited by City Code Enforcement for placing a mural on the front of the building without a mural permit, required by Section 105-1-15(j) (9). Mr. Cochran, submitted an application after-the-fact for the mural and the matter was reviewed by MARC. The MARC denied the application at their November 13, 2018 meeting based on violation of the mural guideline #1 which prohibits murals being placed on the front of buildings. The MARC also denied the mural application due to zoning regulations surrounding downtown design related to aesthetic harmony with adjacent structures as outlined in Section 111-1-6 (2).

Due to the denial, an appeal was submitted by Bobby Cochran to the City in December 2018. Staff worked with Mr. Cochran to determine a date to present the appeal before City Commission and February 5, 2019 (postponed until February 19, 2019) was determined to be appropriate.

Director Ouradnik recommended upholding the decision of the MARC and to deny the appeal of the mural located at 100 2nd Avenue NW for the following reasons: No. 1: because of Non Compliance with Mural Guidelines; No. 2: due to violation of Section 111-1-6(2) related to downtown design and adjacent structure color pallets. A photo of the mural was presented on the overhead for viewing by the Commissioners and those in attendance. The reason for the denial was due to the mural guidelines in place in 2018 and the guidelines state that you cannot paint a mural or art depiction on the front of the building and this is the front of the building facing the street.

Mayor Helbling announced this is a public hearing to consider an appeal of the MARC decision on a mural at Many Visions located at 100 2nd Ave NW. He invited anyone to come forward to speak for or against the matter.

A second announcement was made to come forward to speak for or against the appeal. A third announcement was made to come forward to speak for or against the appeal. Hearing none, the public hearing was closed.

Director Ouradnik stated that Bobby Cochran was initially invited to the February 5, 2019 meeting, however, he was unable to attend. He was contacted about today's rescheduled date and time via email correspondence and he acknowledged this time would work. He failed to show up tonight.

Commissioner Braun moved to deny the appeal made by Bobby Cochran, the owner of Many Visions and to uphold the decision of MARC to remove the mural located at 100 2nd Ave NW based on the Mural guidelines and Section 111-1-6 (2) of the Mandan municipal code. Commissioner Davis seconded the motion.

Commissioner Rohr commented that uniformity with the adjacent buildings in downtown Mandan is important to the City. Mayor Helbling commented that there have been many Store Front improvement projects over the last several years to attain uniformity of the buildings.

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

F. CONSENT AGENDA

1. *Consider approval of monthly bills.* ADVANCED ENGINEERING SVC - 35,690.15; AQUA-PURE INC. - 100.00; ARMSTRONG SANIT & ROLL O - 33,033.95; BANK OF NORTH DAKOTA - 134,532.37; BIS-MAN CONVNTN & VISITOR - 2,733.84; BIS-MAN MOBILE PHONE INC - 9,000.00; BURLEIGH-MORTON DETENTIO - 4,016.01; DAKOTA FIRE EXTINGUISHER - 143,233.00; DAKOTA FIRE STATION INC - 110.75; FEDERAL RESOURCES SUPPLY - 11,400.00; IACP - 875.00; MANDAN PARK BOARD - 147,765.99; MATTERN/SHANTELE - 206.48; MISSOURI VALLEY PETROLEU - 12,308.30; NORTHERN IMPROVEMENT CO - 115,745.26; PORTSCHELLER/BEAU - 3,100.00; PRAETORIAN DIGITAL - 2,625.00; PRESORT PLUS - 2,205.14; SEVERIN, RINGSAK & MORRO - 50.00; SURE SHRED - 34.35; VANGUARD APPRAISALS, INC - 3,770.00; WELLS FARGO BANK - 12,896.64; MONTANA-DAKOTA UTILITIES - 45,959.40; POST BOARD - 25.00; ND PERS - 148,503.02; AT & T - 687.10; BALABAN LAW OFFICE - 2,000.00; CENTURYLINK - 4,257.62; DAKOTA MEDIA ACCESS - 10,998.00; FORT DEARBORN LIFE - 2,333.13; GLASS/THOMAS J. - 2,000.00; GRAHL/SCOTT - 62.20; HUBER/ELLEN - 178.20; KELSCH KELSCH RUFF & KRA - 4,000.00; MANDAN PROGRESS ORGANIZA - 25,906.69; MORTON COUNTY AUDITOR - 7,494.37; MUNICIPAL CODE CORPORATI - 478.00; RAILROAD MANAGEMENT CO I - 470.82; SANFORD MEDICAL - 9,550.00; ARTHAUD/KEVIN - 268.00; ARROWHEAD CLEANERS AND - 222,955.75; NELSON AUTO CENTER - 65,627.78; MONTANA-DAKOTA UTILITIES - 28,163.61; ARMSTRONG SANIT & ROLL O - 56,708.23; BANK OF NORTH DAKOTA BON - 354,665.33; BIS MAN DEVELOPMENT ASSO - 23,750.00; BIS-MDN TRANSIT BOARD - 52,179.30; BOERGER, LLC - 4,150.32; BROOKE/PATRICK - 50.00; BURLEIGH-MORTON DETENTIO - 4,470.00; C S DOORS INC - 102.87; CENTURYLINK - 1,765.22; CHAD NICKLOS CONSTRUCTIO - 216.00; CITY OF BISMARCK - 72,739.83; COAST TO COAST OFFICE MA - 285.00; COMPANION LIFE - 10.00; CROSS COUNTRY COURIER - 101.08; CROWLEY FLECK PLLP - 5,000.00; CUSTER DISTRICT HEALTH U - 1,119.00; EMC INSURANCE COMPANIES - 103.18; FETZER ELECTRIC, LLC - 1,386.19; GREAT PLAINS SECURITY SY - 224.00; GUITAR LOTS LLC - 378.13; HDR ENGINEERING, INC - 372.50; HUB INTERNATIONAL OF ND - 1,172.00; INFORMATION TECHNOLOGY D - 837.79; INTERGOVERNMENTAL SHOP - 13,311.08; INTOXIMETERS, INC - 610.00; KADRMAS, LEE & JACKSON, - 2,953.37; KRIS ENGINEERING, INC - 4,773.68; KRONOS SAASHR, INC - 2,068.77; MANDAN AIRPORT AUTHORITY - 103,846.26; MANDAN MUNICIPAL COURT - 4,763.82; MORTON COUNTY AUDITOR - 4,058.80; MORTON COUNTY RECORDER - 80.00; MORTON MANDAN PUBLIC LIB - 161,136.30; MY GOV, LLC - 960.00; ND BUILDING OFFICIALS AS - 325.00; ND HEALTH DEPT CHEMISTRY - 240.11; ND HEALTH DEPT MICRO DIV - 400.00; ND YOUTH CORRECTIONAL CE - 1,469.00; ONE CALL CONCEPT INC - 47.10; PELTON/COLIN - 6.56; RAZOR TRACKING INC. - 450.00; S.J. LOUIS CONSTRUCTION, - 468,363.48; SCHLOSSER EXCAVATING INC - 3,600.00; SENGER/CYNTHIA F. - 35.00; SHALLOW CREEK KENNELS - 100.00; SHOEZAM SHOES - 492.50; SURE SHRED - 73.20; TCCG - 375.65; TOMAN ENGINEERING CO - 2,663.00; VANGUARD APPRAISALS, INC - 9,875.00; WITMER PUBLIC SAFETY GRO - 22,979.00;

2. *Consider approval of a charity raffle permit for the 31:8 Project at Midway Lanes on March 2, 2019.*

3. *Consider amending the Engineering Service Agreement with AE2S to include final design of Raw Water Intake.*

4. *Consider approval of minor plat of Ol' Town Second Addition.*
6. *Consider approval for the Police Department to enter into a contract with Shallow Creek Kennels Inc. for the purchase of a narcotics detection/patrol police service dog and the training of the dog and handler.*
7. *Consider approval of 19th Street Trail project Cost Participation and Maintenance Agreement.*
8. *Consider Approval of the Police Department making grant application with the Office of Community Service Oriented Policing Services (COPS).*
9. *Consider approval of allowing the Police Department to assign Deputy Chief Bier to take on the duties of the fiscal officer for the ND Multijurisdictional Task Force Lottery Program Grant for the Metro Area Narcotics Task Force contingent on final approval by the ND Office of the Attorney General.*

Commissioner Larson requested Consent Item No. 5 be removed for discussion. Commissioner Rohr moved to approve the Consent Agenda items 1 through 4 and 6 through 9 as presented. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

5. *Removed for Discussion:*

Consider the following abatements for: (i) Morton County Water Resource District dba Missouri West Water System (ii) Brandon Charvat (iii) Eileen M & Bryan L Giese (iv) Lloyd Deringer.

Commissioner Larson questioned requests since some are 2017 and it seems the last meetings have been heightened compared to previous years. She inquired if there was a timeframe for these abatements. Assessor Markley replied the law stated that they can go back up to two years. Or up to November 1st of the preceding year.

Commissioner Larson moved to approve the Consent Agenda item No. 5 as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

G. OLD BUSINESS:

H. NEW BUSINESS:

1. *Discuss potential Metropolitan Planning Organization (MPO) study opportunities in 2020.* Planning and Engineering Director Froseth presented study opportunities requested by the Metropolitan Planning Organization (MPO) for 2020. He stated that the MPO has notified all of its member jurisdictions that there are some Consolidated Planning Grant (CPG) funds from past year's distributions that are available to the City of Mandan if used by 2020. The MPO group has discussed some ideas for these funds and one of them includes a possibility of a corridor study for Sunset Drive north where the roadway currently ends. That study has surfaced near the top of supported ideas by the MPO stakeholders. At this time, there is no funding commitment tied to that prioritization exercise. With this agenda item, that corridor study is

presented as an option to move forward. A commitment will have to be in place by September 2019 for it to take place in 2020.

Director Froseth commented that with any of these corridor study ideas, some of the main objectives of the study would be to; (1) Determine the best alignment and corresponding right of way necessary to reserve for that future corridor; (2) Project future traffic volumes to determine general configuration of the corridor such as number of lanes and intersection treatments; and (3) Estimate costs in order to best program funding for a future project. The study would come with a consultant lead public outreach effort and public involvement meetings. As with MPO studies, it would not be a design effort and those details would not be part of the scope.

Director Froseth presented three suggested options as being most worthy of a corridor study:

- (1) Sunset Drive extension corridor study: This has been discussed by the MPO as a potential study since staff does see the north/central part of Mandan as a potential large-scale growth area.
- (2) Boundary Road south of I-94 and west of Sunset Avenue and/or Lohstreter Road extension corridor study: This is also an area that staff can see as a potential large-scale development. Boundary and or Lohstreter are likely a couple of roads that would need to be extended to serve a large scale development into this area. Neither road is currently considered to be on the functional classification system.
- (3) McKenzie Drive west extension and Heart River crossing corridor study: Staff occasionally is asked when such a crossing might occur. It would likely help spur some new development but there is not as much land to be developed as the previous two ideas. It would give residents another route from their homes and to the east relieving some volumes coming from the east.

In addition to these three options, the City could elect no study and the MPO could move on to another jurisdiction's study ideas or forfeit the CPG funds available. Director Froseth stated that he is not looking for a recommendation at this time. The intent is to present options, receive feedback, and come back with a recommendation at some future time before 2020 budgeting.

Based on past studies, the MPO has estimated a corridor study to be between \$160K-\$180K. The MPO would be responsible for 80% of the study cost while the local jurisdictions share the remaining 20%. Since the only jurisdictional beneficiary for this one would be Mandan, we would get the entire 20% of the local share.

Mayor Helbling recommended moving No. 2 to the top. This is for informational purposes.

2. *Consider the approval of plans and specifications, Engineers Report, and authorize the call for bids for the 2019 Municipal Sidewalk Improvement Project 2019-03.* Planning & Engineering Director Froseth presented a request for the approval of plans and specifications, Engineers Report, and authorize the call for bids for the 2019 Municipal Sidewalk Improvement Project 2019-03. This is the annual sidewalk construction project for the removal and replacing of existing sidewalks or aprons in need of repair. Residents may elect to have sidewalk and/or apron work done to their existing sidewalk and/or apron that is adjacent to their property under this project and to have that work assessed to their property. Sidewalks and/or aprons for new construction are not eligible to participate. The work includes any concrete item within the public right-of-way that needs to be done. Public Works is looking at utilizing this contract to

repair some 8” curb and gutter, and some sidewalk gaps that need to be connected. The project cost is estimated at \$49,027.50 for 2019. There were 72 letters sent to contractors that have done work in the city to invite them to a meeting to discuss this project. That meeting was held on February 7, 2019. Two contractors attended the meeting. Technical feedback was received that will be incorporated into standards going forward.

Director Froseth said that pending approval of this project the next step would be to advertise the project on March 1 & 8, 2019 and open bids March 26, 2019 and bring back recommendations to the City Commission for bid awards on April 2, 2019. Director Froseth recommended approval of this project.

Commissioner Larson moved to approve the resolution approving plans and specifications, approve the resolution approving engineer’s report and approve the resolution directing advertisement for bids for the 2019 Municipal Sidewalk Improvement Project 2019-03. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *2019 Legislative Update #3*

Administrator Neubauer presented a handout of the 2019 Legislative Bills pertinent to the City of Mandan. All defeated bills will drop off this list.

I. RESOLUTIONS AND ORDINANCES

1. *First consideration of Ordinance No. 1307 to amend and re-enact the Mandan Code of Ordinances relating to Animals.* Police Chief Ziegler presented the First Consideration of Ordinance 1307 to Amend and Re-enact the Mandan Code of Ordinances Relating to Animals. Several discussions were held with City Commissioners and city officials regarding updating the current ordinances relating to dogs and cats in the Mandan Municipal Code. In November 2018, a first reading on a proposed new ordinance was held. After that reading, additional input was received regarding the proposed ordinance.

City Attorney Oster explained that it was decided to re-examine the proposed changes. Instead of making numerous changes to the Ordinance No. 1303 proposed in November, a new ordinance has been drafted (Ordinance No. 1307) and the previous Ordinance No. 1303 will be rescinded.

Commissioner Rohr moved to rescind the First Consideration of Ordinance 1303. Commissioner Larson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

Chief Ziegler explained that Ordinance No. 1307 - Deputy Flaten worked with Commissioner Rohr and others to come up with the new ordinance that contained a number of additional definitions. Several nuisances’ related sections were repealed and were combined into an expanded restricted activities section. Changes were made to the sections involving running at large and leashes. In addition, a number of sections have been changed to allow for the issuance of a citation for violations instead of having to do a long form complaint for charges.

Commissioner Larson commented that this Ordinance had a lot of public interest. She requested a brief highlight of what this Ordinance 1307 is comprised of.

Mayor Helbling suggested that due to lack of time for discussion on this item tonight, that it be tabled until the next meeting.

Commissioner Braun moved to table the discussion on the Introduction and First Consideration of Ordinance 1307 to Amend and Re-enact the Mandan Code of Ordinances Relating to Animals. Commissioner Larson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

J. OTHER BUSINESS

K. ADJOURNMENT

There being no further actions to come before the Board of City Commissioners, Commissioner Rohr moved to adjourn the meeting at 7:03 p.m. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The motion passed.

/s/ James Neubauer

James Neubauer
City Administrator

/s/ Tim Helbling

Tim Helbling
President, Board of City Commissioners