
The Mandan City Commission met in regular session at 5:30 p.m. on July 2, 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 and Rohr. Commissioner Larson arrived 5:37 p.m. Department Heads present were, Finance Director Welch, City Administrator Neubauer, Fire Chief Nardello, Building Official Ouradnik, Director of Public Works Bitz, Police Chief Ziegler, Planning & Engineering Director Froseth, Principal Planner Van Dyke, and Attorney Oster. Absent: Attorney Brown, Assessor Markley, Human Resource Director Cullen and Business Development and Communications Director Huber.

B. APPROVAL OF AGENDA:

Mayor Helbling announced that Item No. 6 from the Consent Agenda and Item No. 7 from New Business were removed at this time. Commissioner Rohr moved to approve the Amended Agenda as presented. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes. Commissioner Larson: Absent; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

C. MINUTES:

1. *Consider approval of the minutes from the June 18, 2019 Board of City Commission regular meeting.* Commissioner Davis moved to approve the minutes as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes. Commissioner Larson: Absent; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

D. PUBLIC HEARING:

1. *Consider vacation of a segment of 8th Ave NE between 16th St. NE and I-94.* City Planner Van Dyke stated that Tee and Ski LLC and the Mandan Parks District are seeking to vacate a segment of 8th Avenue Northeast between 16th Street Northeast and I-94. The subject property is west of Mandan Avenue NE and south of Old Red Trail NE at the southern end of 8th Avenue NE. The subject property is not paved. The City of Mandan has no plans to extend 8th Avenue NE across I-94 at this location stating that portion of 8th Ave. NE is unnecessary. The Mandan Parks District owns the adjacent property to the west. Both Tee and Ski LLC and Mandan Park District have entered an agreement to allow Tee and Ski LLC to acquire the entirety of the vacated right-of-way. Notices were published in the Mandan News for 4 weeks leading up to this public hearing. No comments have been received. The Engineering and Planning Office recommended approval of the vacation as presented in Exhibit 2.

Mayor Helbling announced this is a public hearing to approve the vacation of a portion of 8th Avenue NE between 16th Street NE and I-94 and invited anyone to come forward to speak for or against the vacation. A second announcement was made. A final announcement was made to come forward to speak for or against the vacation. Hearing none, this portion of the public hearing was closed.

Commissioner Rohr moved to approve the vacation of a portion of 8th Avenue NE between 16th Street NE and I-94 as outlined in Exhibit 2. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Absent; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *Consider ratification of Planning and Zoning Commission recommendation for approval for a Mandan Union Cemetery Columbarium.* City Planner Van Dyke presented a request to consider ratification and approval for Mandan Union Cemetery columbarium. He explained that the City of Mandan owns and operates the Mandan Union Cemetery and is seeking a special use permit to establish a columbarium park in the green space area. The Mandan Union Cemetery Committee recommended the use of the park for the purposes of a columbarium. He explained that a columbarium is a location to store urns of those who have been cremated. Currently, the Mandan Union Cemetery only has space available for the burial of urns. A columbarium is an alternative placement for those who choose cremation. The proposed columbarium has 40 “niches”, or areas to place urns. Subsequent columbariums will be installed in a similar manner to the site plan submitted upon reaching the 40-niche capacity. The Planning and Zoning Commission unanimously approved the recommendation for approval of the Special Use Permit for the Columbarium area in Mandan Union Cemetery. The Planning and Zoning Commission recommend approval of the Special Use Permit for the Columbarium area in Mandan Union Cemetery.

Mayor Helbling announced this is a public hearing to approve the request for a Mandan Union Cemetery Columbarium and invited anyone to come forward to speak for or against the vacation. A second announcement was made. A final announcement was made to come forward to speak for or against the vacation. Hearing none, this portion of the public hearing was closed.

Commissioner Davis moved to approve the Special Use Permit for the Columbarium area in Mandan Union Cemetery. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Absent; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed. Commissioner Rohr stated the trend of many cities is to move towards columbariums.

E. BIDS:

F. CONSENT AGENDA

1. *Consider approval of minor plat for Replat of Lots 17-19, Block 3 Heart View Addition and amendment to a storm water/surface drainage easement affecting the subject property.*
2. *Consider approval of variance to the front setback to Lots 17-19, Block 3, Heart View Addition.*
3. *Consider approval of Special Event Permit for MPO Mandan Rodeo Days/Art in the Park 2019.*
4. *Consider request for permission to advertise for bids for the demolition of the structure at 210 5th St. NW.*
5. *Consider approval of the Silver Dollar Bar Beer Garden Special Event Permit Application for July 4th, 2019.*

Commissioner Rohr moved to approve the Consent Agenda items 1 through 5 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.

G. OLD BUSINESS:

H. NEW BUSINESS

1. *Consider approval of new Class E liquor license for the Copper Dog Café located at 218 West Main Street.* City Administrator Neubauer stated that all new Class E liquor licenses must be approved by the Board of City Commissioners at time of application. The application for Copper Dog Café has been received and background checks have been run with no issues found. The fees will be collected upon approval noting that \$2,500.00 is the fee for the Class E liquor license for July 1, 2019 to June 30, 2020. He said that approval would be contingent upon the establishment meeting all Fire Code, Health & Safety Code, and Building Inspections codes and all property taxes paid. The Copper Dog Café is anticipating opening in July, 2019. He explained that a Class E license requires 50% food sales and 50% liquor sales.

Commissioner Davis moved to approve a new Class E liquor license for Copper Dog Café at 218 West Main Street contingent upon the establishment meeting all Fire Codes, Health & Safety Code, Building Inspection Codes and all property taxes and fees are paid. 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.

2. *Consider approval of the fire department's request to amend the fire department 2019 building maintenance budget to include a \$20,000 increase with the additional funding to come from the 2019 City general fund.* Fire Chief Nardello presented a request to consider transferring funds from the 2019 general fund to the fire department building repairs budget. The Mandan Fire Department Station No. 1 rear door does not open in winter months due to concrete heaving from frost. Several contractors quoted repairing the concrete at the rear door and all contractors recommend replacing the entire 49.5 foot x 49.5 foot rear truck apron. There are no provisions within the 2019 fire department building repairs budget for the concrete repair therefore a budget amendment will be required to complete the needed repairs. Three quotes have been received for the concrete repair work with lowest quote of \$20,000. The cost of repairs and funding sources has been discussed with Finance Director Welch and he advised requesting a budget amendment to the fire department building repairs fund from the City general fund. Chief Nardello recommended amending the fire department 2019 building maintenance budget to include a \$20,000 increase with the additional funding to come from the 2019 City general fund.

Commissioner Braun moved to approve the fire department's request to amend the Fire Department 2019 building maintenance budget to include a \$20,000 increase with the additional funding to come from the 2019 City general fund. 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.

3. *Consider the request from the Police Department to appoint Victoria Vayda to the Code of Enforcement Appeals Board with the term beginning at appointment and ending on December 31, 2021.* Police Chief Ziegler requested filling a vacant position on the Code Enforcement Appeals Board. The Code Enforcement Appeals Board consists of 3-5 members and they hear appeals of enforcement action taken by the Code Enforcement Officer. Victoria Vayda, who was on the Board expressed her interest in remaining on the Board. This is a reappointment. As the term for this position started on January 1, 2019, Ms. Vayda's term would begin at appointment and end on December 31, 2021. Chief Ziegler recommended the appointment of Victoria Vayda to the position of the Code Enforcement Appeals Board for a term beginning at appointment and ending on December 31, 2021.

Commissioner Larson moved to approve the appointment of Victoria Vayda to the Code Enforcement Appeals Board for the position with the term beginning at appointment and ending on December 31, 2021. 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.

4. *Consider the request from the Library to appoint Linda Ehreth to the Morton Mandan Public Library Board of Trustees to a three-year term to be held through June 2022.* Library Director Hawes requested the Board of City Commissioners to reappoint a City representative to the Morton Mandan Public Library (MMPL) Board of Trustees. She said that pursuant to the Memorandum of Understanding signed by both Commissions the MMPL operates with an equal number of city and county representatives therefore both the City and County Commissions should approve MMPL trustee appointments. She stated that at the June 24, 2019 meeting, the MMPL Board of Trustees approved a recommendation to appoint Linda Ehreth (City representative) to a second term as trustee on the Morton Mandan Public Library Board of Trustees. She previously served from July 2016-June 2019. Director Hawes recommended approval.

Commissioner Braun moved to appoint Linda Ehreth to the Morton Mandan Public Library Board of Trustees to a three-year term ending June 30, 2022. 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.

5. *Consider approving the necessary resolutions for set up of Street Improvement District No. 214, Project No. 2019-04 (16th Street NE).* Planning and Engineering Director Froseth presented a request to create and allow the assessments of specials related to authorize the required paperwork for the requested project, and allow for the project to be bid. The property owners within this district have unanimously requested a special assessment district be implemented for the purpose of constructing street and storm sewer improvements. The property owners requested this project move forward for construction in 2020. This is a request to start with the planning and engineering portions of the project. The total project cost will be divided among district participants through special assessments. He recommended putting in a sanitary sewer up to 16th Street to Old Red Trail and cap it before the road goes in and when the Old Red Trail project is started, it can be picked up from that point and constructed to the west, up north along 1806. The Utility Fund may be utilized to pay for the trunk sewer and these properties do

not benefit much from that because its main trunk line is north of the location. The Park Board district and two other landowners would be the parties to this particular assessment. The assessment will be determined by the policy for commercially owned properties and that will apply in this case to be assessed by square foot in the district.

Commissioner Davis moved to approve the Resolution creating district, approve Resolution approving Engineer's Report, approve Resolution determining sufficiency of petition, and approve feasibility report for Street Improvement District No. 214, Project No. 2019-04 (16th Street NE). 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.

6. *Consider Entering into an Engineering Service Agreement with KLJ for Street Improvement District No. 214, Project No. 2019-04 (16th Street NE).* Planning and Engineering Director Froseth presented a request to enter into an Engineering Service Agreement with KLJ outlining responsibilities to plan and design the 16th Street NE project. The property owners within this district have unanimously requested a special assessment district be implemented for the purpose of constructing a street and storm sewer improvements and they indicated KLJ as their engineers of choice for the planning and design of it. City staff agrees that KLJ is the best consultant engineering firm for this project given their experience and success with projects adjacent to this one as outlined in their cover letter. The property owners would like to see this project move ahead for construction in 2020 and are requesting to start now with the planning and engineering of the project. The total project cost, including these engineering costs, would be divided up among benefitting properties of the district.

Commissioner Rohr moved to approve entering into an Engineering Service Agreement with KLJ for Street Improvement District No. 214, Project No. 2019-04 (16th Street NE). Commissioner Davis seconded the motion.

Commissioner Larson commented that pursuant to the last action item, there is a fair amount of property owned by a public entity so while all the property owners all agreed to this, she said she does not believe this is a good practice for the City Commission to take public funds and bypass the usual RFP process and do a direct award. She believes that is an inappropriate use of public funds. She does not support this request. Commissioner Rohr requested an alternative resolution from Commissioner Larson. Commissioner Larson suggested that the City Engineering staff should issue an RFP for this project. Commissioner Davis inquired if the three property owners agreed as KLJ as their preferred choice and they agreed to that - is that appropriate in this case for neighboring property owners to agree on the engineering firm to contract for a project? Director Froseth stated that via an email the three property owners were contacted and all three indicated their preference for KLJ to be the engineer on this project. Commissioner Davis requested clarification on this process versus a regular RFP going out. Administrator Neubauer commented that this process was used when the expansion occurred that currently is in process on the widening of Old Red Trail, explaining that KLJ has experience within that area, when they were involved in the Old Red Trail project. He did not think RFP's were obtained with the expansion of those turning lanes on Old Red Trail. Director Froseth stated that he would be comfortable with KLJ for this project. Mayor Helbling commented that with the support of the

three property owners and the City Engineer supporting KLJ as the engineer of choice it is a waste of time of the process if everyone agrees to it. Commissioner Larson commented that knowing there are many engineering firms to select from in the community that this is a bad precedent because public funds are involved. She stressed the process for this should be followed. Mayor Helbling inquired who is doing the sewer expansion and the trunk line expansion. Director Froseth stated that KLJ is working on the 1806 north project and that includes the sanitary sewer expansion. They were the engineers that did the widening of Old Red Trail two years ago and they also did the site plan for the sports complex and they did the replatting of this area. They have experience in this area. They did the preliminary work to do the trunk line going north. Commissioner Rohr recommended looking at the best practice approach. He asked counsel if there is any indication or anything regarding this process that the City Commission needs to be advised on. Attorney Oster replied she would look into what was done in the past without issue, but she questioned that as well. Director Froseth said he consulted Attorney Brown before bringing this matter before the City Commission. For a qualification based services – he is not aware of one, but if it is for a contract for construction projects those limits are in place. He explained that for a project estimated above \$25,000 is the internal limit for that, but if it's a selection phase, the city does not have that same hard number because the engineer's office needs may need assistance in designing the project. Mayor Helbling stated that if there is an RFQ, they are already qualified for several phases of the project already in place. An RFP is different. Director Froseth said that 2020 is still the assumption however, the DOT may want to postpone to 2021 to stay in line with the 1806 project if that goes to 2021. Director Froseth commented that he has not discussed with the property owners the possibility of moving the project to 2021. Mayor Helbling suggested contacting the property owners regarding the DOT's recent decision and see if they still want to proceed with this project. Legal complications could be researched in the meantime. Director Froseth agreed with Mayor Helbling's suggestion and he agreed to do that and bring the responses back to the next meeting.

Commissioner Rohr withdrew his motion. Commissioner Davis withdrew the second on the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

Commissioner Rohr motioned to table this matter until the next meeting. Commissioner Davis seconded the motion.

Commissioner Davis inquired if there is a policy on this issue or will it be clarified?

Finance Director Welch stated that if the contract is in the City's name the normal threshold for procurement for bidding is when those contractual services are estimated to amount to more than \$25,000. However, the Board does reserve the right to waive the competitive bid requirement if it exceeds \$10,000 but then the Board would have to acknowledge in writing or justify why those competitive bids were waived. The City does have the ability within the Code of Ordinances to do that. The normal rule of thumb is if it is over \$25,000 it is usually through a competitive bidding requirement. If it's over \$10,000 the Board reserves the right to waive the bidding requirement but it has to justify the reasons for doing so. If the contract is in the city's name the City has the procurement requirements to follow. Roll call vote: Commissioner Rohr: Yes;

Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

I. RESOLUTIONS AND ORDINANCES

1. *First consideration of Ordinance No. 1315 to create a new Article 4-4 of the Mandan Code of Ordinances relating to Special Event Permit.* Layn Mudder, President MPO presented a request for the approval of a variance for the sale of alcohol to allow alcoholic beverages to be sold and dispensed in a designated outdoor area without required enclosure of fencing. This request is for an ordinance for this one event only in 2019. He explained that the Mandan Progress Organization and the Musicians Association are planning an alternate event for the Wild West Grill Fest. Food and beverage vendors would be set up on the 400 and 500 blocks of West Main Street. The event is scheduled for Friday, August 9, 2019 from 4:00-9:00 pm and Saturday, August 10, 2019 from 11:00 am - 9:00 pm. He explained that the areas would be clearly marked to the designate areas where beverages would be allowed and there will be security in place monitoring the area. Designed plastic receptacles would also be utilized to control and monitor sales. Anyone purchasing adult beverages must have a required wristband. Dykshoorn Park would be set up for craft and business vendors, kid's games and rides with entertainment at the Band Shell. A review of ordinances in place for other cities in the state with similar circumstances was reviewed which is the source of where these guidelines were obtained. Police Chief Ziegler said the area will be well defined and that security will be placed in the area.

Commissioner Rohr moved to approve Ordinance No. 1315 to allow for the sale and distribution of adult beverages on the 400 and 500 blocks of west Main Street and in Dykshoorn Park for the dates of August 9 and 10, 2019 as outlined. 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:

1. Mayor Helbling requested citizens to follow the rules for Fireworks during the 4th of July weekend. The MPO is doing a 50/50 raffle to help support the Mandan events. There will be two winners who will split the proceeds of the money collected. In addition, Commissioner Rohr commented that the Art in the Park Committee encouraged citizens to not bring their dogs to this event due to many complaints that have been received in the past regarding dogs in the park.

2. *Consider moving into executive session pursuant to North Dakota Century Code § 44-04-19.1(9) and 44-04-19.2(2) to discuss negotiation strategy related to litigation August Kersten, Brian Berube and Lonesome Dove, Inc. vs. City of Mandan.* Commissioner Davis motioned recess the regular meeting and move into Executive Session at 6:17 pm. 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.

K. ADJOURNMENT:

There being no further actions to come before the Board of City Commissioners, Commissioner Rohr moved to adjourn the meeting at 6:38 p.m. Commissioner Davis seconded the motion. The motion received unanimous approval of the members present. The motion passed.

s/s Jim Neubauer

James Neubauer
City Administrator

s/s Tim Helbling

Tim Helbling
President, Board of City Commissioners