

The Mandan City Commission met in regular session at 5:30 p.m. on January 7, 2020 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, Commissioners Braun, Davis, Larson and Rohr. Department Heads present were, Finance Director Welch, Fire Chief Nardello, Planning & Engineering Director Froseth, Principal Planner Van Dyke, Police Chief Ziegler, City Administrator Neubauer, Assessor Markley, Human Resource Director Cullen, Building Official Ouradnik, Director of Public Works Bitz and Attorney Oster. Absent: Business Development and Communications Director Huber.

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider approval of the minutes from the December 17, 2019 Board of City Commission regular meeting.* Commissioner Larson moved to approve the minutes as presented. 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.

D. PUBLIC HEARING:

1. *Public hearing and consideration of sufficiency of protests for Mid-Town East Street Improvement District 215.* Planning and Engineering Director Froseth presented a request to move forward with the resolution determining insufficiency of protest for the Mid-Town East Street Improvement District project. He summarized the previous action taken on this matter stating that at the December 3, 2019 City Commission meeting, the resolution creating the district, the engineer’s report, the feasibility report and the resolution of necessity were all approved for this project. The Resolution of Necessity was published in the Mandan News on December 6 and 13, 2019 and per city policy notification letters were sent out to the property owners (490 properties) within the district. The 30 day protest period started on December 6, 2019 and ended January 6, 2020. Property owners were given until Monday, January 6, 2020 at 4:30 p.m. to submit letters of protest.

Director Froseth reported that the protests that came in by the deadline on January 6, 2020 tallied 18 of 490 properties submitted letters of protest. The percentage of the district by area (not including public properties as is viewed by the NDCC) was at 4.1% protest of the project wherein 3.7% would be the percentage rate of protest of the project. He provided a map of the project area on the overhead however; there was no strong pattern to the results. For example, 9 of the 18 protests were in the upper region however those areas will not get any direct improvements on the streets in front of them but because they are located within the watershed where the pipes are located for this project those properties are included in the district and will be assessed a portion of the storm water cost. To the south of the project area, 9 letters of protest were received for that area. The main reasons for the protests were the costs to be assessed to pay for the project and also the fairness of the assessments of those who would not have work done on their street.

Director Froseth recommended approving the resolution determining insufficiency of protest and authorize the project to move forward. He indicated that if the Commission approves moving forward with the project the next step would be to seek an amendment to the agreement with Moore Engineering that would authorize them to move forward to final design. That amendment would come before the Board for approval and it is reflected in all of the previous estimates provided that was available for review.

Mayor Helbling commented that his concern is that the last special assessment district that occurred to the east of this project and now this project will go back into that area, it is his opinion that as a city or the engineer, the storm sewer should have been planned for in that area when the project was initially done by increasing the size through that area and then moved into this project. He does not feel it is fair to go back to the residents (to the east) who just had a street project done and then now, impose another assessment. That should have been planned for in their special assessment. It is understood there is a different engineering firm on this project and there are different circumstances. He stated he has received a lot of calls on this project. It is a financial burden and it needs to be completed however he believes that the City will have to take some responsibility.

Mayor Helbling announced this is a public hearing an invited anyone to come forward to speak for or against the consideration of sufficiency of protests for Mid-Town East Street Improvement District 215.

Gary Swensrud, a Mandan resident, came forward and stated that he owns a property at 206 4th Street Northeast in Mandan, the lot size is 50' x 70' and the house is 900 sq. ft. The City assessed the property value at \$115,000. He said that the specials on this house are estimated at \$16,724 but could be 40% over the budget and still be approved, which in his opinion is excessive and will devalue his property. He said that he contacted Director Froseth today and who suggested that he attend this meeting to express his concerns. He said that he agrees the streets need to be repaired and his recommendation to the Commission is to find funds to offset the costs for the property owners. He inquired if he pays these specials if it will be possible that the other specials he owes would be offset? Mayor Helbling replied that generally, the City does not see a lot of devaluation due to special assessment districts. Generally the values go up because residents tend to clean up and upgrade their property due to having a new street. If there is devaluation it will be taken care of at the time of the assessment. Mayor Helbling stated the City has reviewed this project thoroughly and he said that approximately \$1.5 million from the Prairie Dog funds or 20% of the street/storm sewer costs will be applied towards this street project and in addition, the water, sewer utility improvements are being taken care of through the utility fund so there will not be special assessments on those so it will basically be the street and storm sewer project that are being special assessed.

Mayor Helbling announced again that this is a public hearing to approve the Resolution determining insufficiency of protests for Street Improvement District No. 215, Project No. 2019-05 (Mid-Town East) and invited anyone to come forward to speak for or against the project. A third and final announcement was made for anyone to come forward to speak for or against the project. Hearing none, this portion of the public hearing was closed.

Commissioner Davis requested clarification of the buy down rate of 20% of Prairie Dog fund, if that is a statute policy, in particular, why 20% vs. 25%? Director Froseth explained that 20% is approximately the percentage that the Southside buy down was determined to be and that \$1.5 million was pledged towards that and thereby the buy down was approximately 20%. That percentage figure was the Engineer's Department recommendation given that precedence on the south side to go forward with this. Mayor Helbling recalled that was set as precedence for the Southside considering there would be future projects, thus the 20% was agreed on.

Commissioner Rohr commented on delaying projects, and provided the reminder that sometimes delays can be difficult to do because many of the street improvement projects are on arterial or state roads, wherein the City receives 80% or 90% paid for. When the City is told by the state that this is the year they are going to do the project, the City is bound to take the project on for that particular year. The City does not have the option to defer projects scheduled by the state or federal governments. Mayor Helbling commented that the area west of Collins Avenue has been put off for too many years. (See Resolutions and Ordinances No. 4.)

2. *Consider approval of a variance to the front setback from 20' to 9' on Lot 2, Block 2, Diane's 1st Addition for the construction of an accessibility ramp.* City Planner Van Dyke presented a request to consider approval of a variance to the front setback from 20' to 9' on Lot 2, Block 2, Diane's 1st Addition for the construction of an accessibility ramp. He stated that the property owners, Mr. and Mrs. Kerzman are seeking a variance to the front setback from twenty (20) feet to nine (9) feet to install an accessibility ramp. The residence as constructed and lot topography prohibit alternative construction of the ramp. The applicant has provided pictures and a sketch of the ramp to be constructed with their application, if the variance is approved as shown on Exhibit 1.

He provided the requirements under the Mandan Code of Ordinances in granting a variance. Variance may be granted under the following circumstances (See Sec. 105-1-12) (italicized):

1. *There are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this chapter, whether in violation of the provisions of the chapter, or not.*

Planner Van Dyke stated that the building is a split level design and explained that the attached garage for the dwelling resides at a different elevation than the main floor for which the ramp is desired. Locating the ramp within the garage would therefore provide no benefit to the applicant and the sloping topography would require substantial excavation and create additional storm water runoff issues that would need to be addressed if the ramp were installed running parallel to the street.

2. *For reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.*

The existing dwelling construction coupled with the topography of the land creates a unique circumstance that does not apply to every building or property individually. A strict application of the front setback would require a substantial excavation resulting in additional storm water mitigation measures being required.

3. *The granting of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.* Planner Van Dyke stated that the granting of the variance will be in harmony and not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Planning and Zoning Commission recommended approval of the variance to the front setback from 20' to 9' for the purposes of accessibility ramp construction based on the findings in Exhibit 2. It was recommended that a refund of fees be provided to the applicant.

Mayor Helbling announced this is a public hearing and invited anyone to come forward to speak for or against the variance to the front setback from 20' to 9' for the purposes of accessibility ramp construction based on the findings in Exhibit 2 and to refund the application fees. A second announcement was made inviting anyone to come forward to speak for or against the variance. A third and final announcement was made to come forward, hearing none, this portion of the public hearing was closed.

Commissioner Davis moved to approve the variance to the front setback from 20' to 9' for the purposes of accessibility ramp construction based on the findings in Exhibit 2 and to refund the application fees. 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.

E. BIDS:

F. CONSENT AGENDA

1. *Consider approval of a raffle permit for Lewis & Clark School PTO on 1-15-20 to 3-31-20 at the Lewis & Clark School.*
2. *Consider reduction in 2019 value of the property at 3721 Gale Circle owned by Spence Koenig.*
3. *Consider appointment of Malcolm Brown as City Attorney, Amy Oster as Assistant City Attorney and legal retainer agreement.*
4. *Consider approval of the voting locations for the June 9, 2020 election.*
5. *Consider approval of the transfer of General Fund operating savings from the 2019 budget to the Police Department 2020 budget for the purchase of 2 Ford Interceptor vehicles.*
6. *Consider approval of a raffle permit for Guardian Warrior Foundation on 7/18/2020 at the Mandan Eagles Club.*
8. *Consider approval of acceptance of a FEMA grant as administered through the North Dakota Department of Emergency Services (NDDDES) for the installation of two generators at select facilities.*

Commissioner Larson requested Consent Agenda Item No. 7 be removed for discussion.

Commissioner Rohr moved to approve the Consent Agenda items No. 1 through 6 and No. 8 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.

Consent Agenda Item No.7: Consider approval of Indigent Defense and Prosecution contracts along with 2020 budget amendment. Commissioner Larson requested clarification of the revised document regarding the decrease in prosecution budget but the amount set forth for the prosecution shows an increase in 2020 and beyond that in 2021 and 2023.

Administrator Neubauer explained that there are two indigent defense contractors, Steve Balaban and Thomas Glass and that was indicated in the paragraph in the background but missed in the middle paragraph. He stated that the intent is for each individual to be compensated at \$1,750 per month. The overall numbers show that because the budget for 2020 had been set prior to the negotiations with the attorneys is why there is an increase in the indigent defense contract and there is to be a decrease in the prosecution contract. In summary there is an increase by \$13,200 to the indigent defense contract and a decrease by \$6,000 in the prosecution contract. Those adjustments will be correctly reflected in the 2021, 2022 and 2023 budgets and those contracts run through 2023. Commissioner Larson recalled discussing an increase in the prosecution budget which already went into the 2020 budget which allows for the decrease.

Commissioner Larson moved to approve Consent Agenda Item No. 7 Indigent Defense and Prosecution contracts along with 2020 budget amendment. 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

I. RESOLUTIONS AND ORDINANCES

Mayor Helbling stated that there has been a request to table Ordinance 1333 until after January 15, 2020 in order to allow additional time for Bismarck and Mandan to discuss uniformity amongst the two cities before adopting the ordinance.

1. *Introduction and First Consideration of Ordinance 1333 to amend and re-enact Chapter 10, Fire Prevention and Protection, of the Mandan Code of Ordinances. The purpose of this ordinance is to adopt the 2018 International Fire Code (IFC) with proposed amendments.* Commissioner Rohr moved to table Ordinance 1333 until after January 15, 2020. Chief Nardello stated that he has been informed that it would be possible to approve the First Consideration of Ordinance 1333 and when it comes back for the second passage, any amendments could be made at that time. It is up to the City Commission if they want to proceed with the First reading because there is a requirement to have a second.

Commissioner Rohr withdrew his motion to table Ordinance 1333 until after January 15, 2020 and moved to amend the motion to approve the Introduction and First Consideration of Ordinance 1333 to amend and re-enact Chapter 10, Fire Prevention and Protection, of the Mandan Code of Ordinances. The purpose of this ordinance is to adopt the 2018 International Fire Code (IFC) with proposed amendments. 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.

2. *Second and final passage of Ordinance 1331pertaining to Building Codes.*

Commissioner Davis moved to table the Second and final consideration of Ordinance of Ordinance 1331pertaining to Building Codes until further notice, to allow the cities of Bismarck and Mandan additional time to discuss aligning the codes so they are in uniform.

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. *Second Consideration and passage of Ordinance 1332 to Amend and Re-enact the Mandan Code of Ordinances Relating to Criminal Trespass.* Police Chief Ziegler reported this was presented by Attorney Brown, however, there have been no comments or opposition received since the first presentation and he recommended approval. Commissioner Larson moved to approve the Second Consideration and passage of Ordinance 1332 to Amend and Re-enact the Mandan Code of Ordinances Relating to Criminal Trespass. 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. *Resolution determining insufficiency of protests for Street Improvement District No. 215.*

Commissioner Larson moved to approve the Resolution determining insufficiency of protests for Street Improvement District No. 215, Project No. 2019-05 (Mid-Town East) and authorize the project to move forward. 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.

J. OTHER BUSINESS:

Commissioner Larson announced that there is a new coffee shop that opened up that in addition to specialty coffees, it will offer Yoga classes too. It is located on north Sunset, by Arby's and Bennigan's. She commented that new businesses continue to open up in Mandan and extended a thank you to business owners for choosing Mandan for their business operations.

K. ADJOURNMENT:

There being no other business to come before the Board, Commissioner Braun motioned to adjourn the meeting at 6:00 pm. Commissioner Davis seconded the motion. The motion received unanimous approval of the members present.

s/s James Neubauer
James Neubauer
City Administrator

s/s Tim Helbling
Tim Helbling, Mayor
Board of City Commissioners