
The Mandan City Commission met in regular session at 5:30 p.m. on May 5, 2020 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Mayor Helbling called the meeting to order. Due to the coronavirus situation, this meeting was held virtually.

A. ROLL CALL:

1. *Roll Call of All City Commissioners.* Present were Mayor Helbling and Commissioners Braun, Rohr, Davis and Larson. Department Heads present were, Finance Director Welch, Planning & Engineering Director Froseth, Business Development and Communications Director Huber, Principal Planner Van Dyke, City Administrator Neubauer, Director of Public Works Bitz, Building Official Ouradnik and Attorney Brown.

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider approval of the minutes from the April 21, 2020 Board of City Commission regular meeting minutes and May 1, 2020 Board of City Commission special meeting minutes.* Commissioner Braun moved to approve the minutes as presented. 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.

D. PUBLIC HEARING:

E. BIDS:

1. *Consider approval of the low bid for the Midtown East Street Improvement District SID, #215.* Planning and Engineering Director Froseth presented a request to approve the bid for Street Improvement District No. 215. He said that the bid opening was held on April 14, 2020 and Strata Corporation submitted the low bid. This was discussed at the City Commission meeting in April but the matter was postponed to allow additional time for internal discussions on the items that could be removed from the project and to discuss funding if the Prairie Dog Funds are not available. Updated packet information was provided today (May 5), from what was sent out on Friday (May 5). The Friday bid had an incorrect amount in the post bid review sheet summary that included the items suggested to be removed from the project in order to bring the costs down. The information sent out Friday had the water main improvement Part B at close to \$1.8 million for the construction and in actuality that construction bid was about \$1.45 million and that is reflected in the revision. It brought the bid percent back down to a more reasonable percentage. The percent over the final estimate for these bids is 8.4% and that changed from 14% at the last meeting.

Focusing on the items that are subject to special assessments, the bid came in at 2.4% over the final estimate and came in at 15.1% over the estimate that was used in the December notice letters. The reason for that difference in percentage was attributed to adding items, such as the widening of 3rd Avenue that was not initially accounted for during the preliminary engineering estimate but was added into the final design.

In an effort to bring the costs back down closer to the estimate, cost savings were identified within the special assessment portion of the project outlined in the post bid summary as shown in Attachment #1. He explained this is similar to the Southside SID project, Cement Stabilized Base (CSB) was bid as an alternate in lieu of aggregate base under the asphalt pavement. CSB is a viable alternative in this neighborhood. For both the significant cost savings and to limit some disruption during construction, this is the best alternative. Electing the CSB represents a construction cost savings of \$354,530 or 8.3% off the assessed portion of the project as compared to the noticed estimate. The second major cost saving would be a separate step and it would have to be brought back as a cost reduction change order, and, we would have to receive the bid as is, or not as is. There has been communication with the contractor who indicated by email that they would be willing to work with the City and to move forward with a cost reduction change order should this item be approved today.

Director Froseth stated that in order to move forward with this project it would be his recommendation to remove the widening of 3rd Avenue from the plan and that would represent a savings of about \$480,000 of the cost of the project. Construction engineering services will be needed for the construction phase of this project so pending approval of the award he would bring back an amendment to Moore's Engineering Service Agreement. There will also be a change order that incorporates the items recommended to reduce costs. The contractor has indicated a willingness to execute these cost saving changes identified in order to participate in a successful project for all. With regard to the underground utility, he recommended a cost savings change order to remove items 1-5 from the project scope to realize construction savings of an estimated \$101,412. He said this is the best we can do at this time since we are expecting an absence of Municipal Infrastructure Funds that were previously counted on. He reviewed other items that were recommended for removal however, some items would stay intact because they may cost more in the future. In working with the Finance Department, a funding summary attachment was provided to summarize the cost categories of this project as well as the funding sources identified to pay for each. The scope changes are a result of discussions between the staff of the Engineering, Public Works, Finance Departments and the City Administrator.

The City previously stated it had intentions to buy-down 20% of the assessed portion of the project with Municipal Infrastructure Funds (MIFs) after seeing the projections of Mandan's share after approved by legislature last year. With that funding source now very much in doubt, alternatives have been considered in order to buy-down at that 20% rate. The Finance Department has indicated utilizing an inter-fund loan out of the water and sewer utility fund as a means to do this. Should the MIFs materialize as previously anticipated the inter-fund loan pay back would be with MIFs. Instead of removing some items from the underground utility scope, sanitary lining funds were identified for a future lining project. It is a sacrifice for our older sewer lines in the downtown region, but it would be wise to take care of these immediate needs now while the contractor is in the Mid-Town East construction area which is expected to cost more in long-term. The special assessments will be 3.9% over the estimate, which is appropriate. The overage on the special assessment side will not be assessed because that is covered by the Utility Fund but that was not included in the special assessments from the beginning and the parking lots were not included in the project. For clarification purposes, the assessment is 3.9% over per the letters that were sent out to the property owners. That information is summarized in the attachment that supports the recommendations.

Mayor Helbling stated that the initial attempt was to use Prairie Dog Funds for this project but at this time it is uncertain if Prairie Dog funds will be available. There are other sources for funding and the plan will be to move forward with the project. Commissioner Rohr commented that 3.9% over the estimate is far better than 30% over as was the initial plan. Commissioner Larson inquired about the 3.9% over, is the cost savings universally applied for some in the assessment district that had that, while others did not. She is assuming that some of the cost savings are not necessarily going to mean everyone will see a 3.9% over. Will some properties be assessed greater than 3.9%? Director Froseth replied that the 3.9% is the total overage in the overall special assessment portion if the recommended items are cut from the project explaining how some properties will or will not be assessed. Compared to the December letter, an average person will see a 3.9% more assessment and some will see more or less than the 3.9%. The Special Assessment policy will be followed and subject to the Special Assessment Committee recommendation for all properties. Mayor Helbling commented that when this project was put out for protest, there were 8 properties within the street project and 8 properties outside the street project indicating this was a very low number. Director Froseth explained the use of the stabilized base recommendation and how the water mains will be managed. Commissioner Larson inquired if the properties with specials estimated at 13,000-15,000 range, what would their special assessment be at the 3.9% increase. Director Froseth said he will look into that and report back.

Mayor Helbling stated that if this project is delayed again, the 20% buy down may not be available at that time indicating there are many more street projects that need to be done and if they are also delayed, additional engineering fees may result. He recommended staying within 5% of the engineer estimate when approving projects. Commissioner Braun agreed that by putting off projects will only add to the future costs. Commissioner Rohr expressed he has the same concerns about not delaying projects. Director Froseth said that some change orders will be anticipated conservatively at 5%. This project has a lot to it with all the water mains so change orders could happen anywhere from 2% to 5%. Commissioner Larson stated she is concerned about the buydown now, versus in the future; and now we are taking funds from the water and sewer utility funds, there are special assessment districts that are of concern, and if the infrastructure funds will not be there and funds will be to be taken from other sources, she stated she is concerned that city funds will be spread too thin. As a result taxes will have to increase and she is concerned that by committing City funds that were earmarked for other things to help keep this project going in addition to possible overages that are coming to the citizens. This feels like a trend of engineering estimates that are not reliable when working with budgets that have been set. Mayor Helbling commented on the processes and possible monopoly of local contractor processes. Regarding the use of the Prairie Dog Funds, he believes that is a temporary loan from the Water and Utility Fund with intent to use other city funds and get those back in the future. Finance Director Welch commented that the inter-fund loans are temporary until the buckets fill for the Prairie Dog Fund and if that money does not come to Mandan, then the inter-fund loans are permanent. Mayor Helbling stated that some of the Prairie Dog funds have come in with hopes of receiving enough for the southside project and for this project but other future projects may have to be funded differently.

Commissioner Larson inquired if it is possible to make sure none of the street improvement assessments are over 5% over what was in the letters that were sent to homeowners? Director

Froseth replied that the decision to allocate is decided by the City Commission and that is decided after the project is completed with the special assessment amount. It would take a deviation from the special assessment policy and if there is good reason to deviate from that as determined by the Special Assessment Board and the City Commission that would have to be justified, but it can be done. Commissioner Rohr inquired if Mr. Carmichael, if available, has any comments at this time.

Mr. Carmichael, via teleconference, was present and commented that he owns the property located at 304 4th Street Northeast. He received his letter on December 13, 2019, stating special assessments of \$23,229.12. He talked with representatives in the engineer's office and was told that the actual project estimate never has been as high as the engineer's bid. He said he could handle the \$23,229 because the City does need roads and infrastructure. He has a problem with ambiguity. He heard it when the engineer said 2%, then 3% and now its at 5% and could go up as high as 20%. As a business owner, if he ran his business like that, he believes he would not be in business very long. He also stated that the quality of the homes surrounding his, are less than sub-par. Many homes in the area are not in compliance with City ordinances (curbside appeal of the property such as lack mowed lawns; old and dilapidated vehicles stored on the properties, etc.). What is in place for the City to enforce homeowners to be accountable to take care of their properties?

Commissioner Rohr asked if a motion would be appropriate in line with what Commissioner Larson suggested previously to not go over the 5% over the estimate. Commissioner Davis agreed with Commissioner Rohr's comments. Director Froseth stated that the City could put the bid into the formula into all the properties and come up with a new roll of assessments for each property and he could have that ready for the next meeting.

Attorney Brown stated that as a procedural point, this Agenda item is to award the bid, or not. This is not the time to determine who is going to get special assessments as that is up to the Special Assessment Commission when the project is completed. Per Director Froseth, in following the policy, at such time as the project is completed the assessments are determined, and this is not the time to do that.

Commissioner Davis moved to approve the Resolutions approving contract and contractor's bond for Street Improvement District No. 215, 215A and 215B and award the base bid with alternate 2 along with the electrical bid to Strata Corporation. Commissioner Braun 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. *Consider rejecting the low bid for the Main Street signals, reallocation and Concrete Pavement Repair project.* Planning and Engineering Director Froseth presented a request to consider the bids for the Main Street signals and the reallocation and Concrete Pavement Repair (CPR) project. He stated that the City has been working with the DOT and KLJ on this project since 2016. It started as a traffic signals replacement project only at that time. After the Urban Grant Program (UGP) became a funding option from the Main Street Initiative the City applied for funds based on the Downtown Subarea Study results. After the original project scope, an add-on that came about was a CPR project to perform preventative maintenance on the concrete

panels on Main Street extending through city limits. In order to limit Main Street disruption and in an effort to take advantage of economies of scale, the City worked with the DOT to incorporate all construction scope into one project.

Director Froseth reported that the Main Street project bid opening was held on April 17, 2020 and stated that the results were not good, in particular, the city's new local share estimate. The low bid received was about 25% higher than estimated and that estimate was higher than the estimate given last summer when budgeting for the project. The items that most excessively came in over-estimate related to the curb bulb outs. Those are items that were covered under the UGP instead of the Urban Regional Program. The City anticipated using both programs on this project to fund it. The Urban Regional Program allows for the federal and state shares to move up if the bids are over estimate so that our match stays at 10% of project, however, the UGP has a fixed maximum of federal and state participation. The estimates compounded a change in the local share estimate that was about \$323K last summer to an estimated \$1,501K after opening bids. The City has asked the DOT about options such as cutting some of the UGP scope out of the project or perhaps all of the UGP scope out of the project. The DOT cannot allow that and instead stated that the City could rebid in the fall and decide if we want to leave the UGP scope out of that bid opening effort at that time.

Director Froseth stated that in reviewing the bids, it appears as though the contractors put a premium price on items that are needed to accomplish the curb bulb-outs. Items such as concrete removal and new concrete to replace including the decorative concrete are a couple examples. Given the nature of those items, it was concluded that a premium price has been put on working in the downtown environment and up against historic buildings. He stated that the recommendation is to reject the bids due to fiscal impact at this time is minimal with the understanding between the City and the DOT that the city will bring this project back to bid in the fall. Director Froseth recommended rejecting all bids submitted for this project. Mayor Helbling stated that some of the downtown businesses will not be in support of not doing this project.

Commissioner Braun moved to reject the low bid by Diamond Surface, Inc. 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.

F. CONSENT AGENDA

1. *Consider approval of a final plat for Longhorn 2nd Addition.*
2. *Consider approval of a minor plat for McKiver Addition.*
3. *Consider abatement applications: (i) PM Koski Properties Inc. 3022 Marina Road SE; (ii) PM Koski Properties Inc. 3018 Marina Road SE.*
4. *Consider approval of annual site authorizations for Mandan American Legion at The Paddle Trap for May 1, 2020 – June 30, 2020.*
5. *Consider approval of annual site authorizations for Mandan Baseball Club for July 1, 2020 to June 30, 2021: (i) Powerhouse/501; (ii) Broken Oar; (iii) The Drink (Lakewood Bar & Grill); (iv) Last Call Bar; (v) Silver Dollar;*

-
6. *Consider approval of annual site authorization for New Salem Civic Club, Inc. at Bennigan's for July 1, 2020 – June 30, 2021.*
 7. *Consider approval of annual site authorization for Mandan American Legion at The Paddle Trap for July 1, 2020 – June 30, 2021.*
 8. *Consider approval of site authorization of Mule Deer Foundation at Prairie Public Firearms on June 1, 2020.*
 9. *Consider approval of the advertisement for bids of the Raw Water Intake, Phase IB and Phase II contracts.*

Commissioner Rohr moved to approve the Consent Agenda items 1 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.

G. OLD BUSINESS:

H. NEW BUSINESS:

1. *Consider Renaissance Zone Committee recommendations: Business Development & Communications Director Huber presented two requests:*

ii. Consider Renaissance Zone Committee recommendation for new construction at 222 E Main St by RNR, LLC. Huber stated the Mandan Renaissance Zone Committee met on April 28, 2020, to consider a new construction application by Dan Anderson of RNR, LLC at 222 E Main St. She noted Anderson was participating in the meeting and would be available for questions. Huber stated this is a two-story, 8,050 square foot professional office building to be constructed across the street to the west of M&H on a long vacant dirt lot. She added some folks in the community may recognize the lot as the place where there was a seasonal, temporary greenhouse, but she was unaware of anything ever having been constructed on the lot historically. The construction cost for the project is estimated at \$2.2 million. Huber stated it will add density and significant value to the property in terms of increasing tax base, improve the aesthetic value of the area and create space for two local expanding businesses, both in the professional services sector. There is a provision for some parking on the lot, on the northern end of the lot. The applicant did receive approval from the Mandan Parking Authority and City Commission last fall for additional boulevard parking which will be public parking. The off-street parking will be for tenants of the building. Huber said the construction cost comes in at almost \$280 per sq. ft. which far exceeds the minimum thresholds on a new construction project in the Renaissance Zone.

Huber shared that the Mandan Renaissance Zone Committee voted unanimously to recommend approval of the application for the five-year 100% property tax exemption on the building upon completion and the 100% five-year state income tax exemption. She explained the income would be derived from lease of the building and once the committee takes action on this application, they will turn to the lease of the building. Huber also noted the land does remain taxable and is not subject to any exemption. Rohr asked if the building abuts to the barbershop next door. Helbling said that was correct.

Huber explained the applicant is in the process of obtaining a certificate of good standing from the N.D. Tax Department, and will be submitting the business incentive agreement required by the N.D. Department of Commerce.

Larson asked if the other tenant, ICON Architects, is able to get the same exemptions. Huber stated that ICON Architects is aware that they may apply for the state income tax exemption but would need to do so before signing the lease agreement. She said that ICON does qualify for the exemption because they are expanding their business, but does not believe ICON will seek the exemption.

Larson moved to approve the application for new construction at 222 E Main Street by RNR, LLC as a Renaissance Zone project to include the five-year 100% property tax exemption on the building upon completion and the 100% five-year state income tax exemption. Davis seconded. Roll call vote: Commissioner Rohr: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Commissioner Davis: Yes; Mayor Helbling: Yes. The motion passed.

iii. Consider a Renaissance Zone Committee recommendation for lease of 222 E Main St by Legacy Law Firm, PLLP. Huber explained Dan Anderson is a partner in the Legacy Law Firm. The firm has been in the community for five or more years and is currently located on Old Red Trail. They are out-growing their 1,800 sq. ft. of lease space at their current location. They will have almost 5,000 sq. ft. in the new building. Huber noted the law firm currently has four attorneys and an assistant, plus contracts with two to four landmen and has at least one law student working with them during the summer months. They focus mainly on estate planning, real estate and criminal law, but have plans to add family law to the practice and look to hire two additional attorneys in the next two to five years. They plan to continue practicing with law students during summer months, providing office space for landmen, and expect to hire additional assistants.

Huber stated adding to the professional services of the community in downtown Mandan is part of the downtown redevelopment plan. These are employees that when located here are in proximity of restaurants and retail businesses and become customers for those, so it's all part of an overall community development strategy.

Huber reported the Renaissance Zone committee voted unanimously to recommend the approval of this lease application for the 100% state income tax exemption. She explained that would be on income derived from the law firm's business income. She noted that the new construction project would be Renaissance Zone project number 80 for the community and this lease project would be 81.

Larson moved to approve the application for lease of 222 E Main St. by Legacy Law Firm as a Renaissance Zone Project to include the 100% five-year state income tax exemption. Rohr seconded. Roll call vote: Commissioner Larson: Yes; Commissioner Braun: Yes; Commissioner Davis: Yes; Commissioner Rohr: Yes; Mayor Helbling: Yes. The motion passed.

Helbling thanked Anderson. He stated that this is a very exciting project for Mandan, it is a beautiful two-story building, and that it adds to an already growing downtown.

2. *Consider approval of the sale of Lot 5, Block 73 First Northern Pacific Addition.*

City Planner Van Dyke presented a request on behalf of Mr. Bracht who resented an offer for Lot 5, Block 73 First Northern Pacific Addition (604 1st Ave NE/Parcel Number 65-3286000). The buyer wishes to purchase it for a sale price of \$500. The list price is \$1,000. A specials payoff balance through April 30, 2020 of \$803.55 exists on the property and the buyer would be responsible for this. He stated that the lot does have alley access but the water and sewer are not directly adjacent, being approximately 140 ft. south from the lot boundary. Since the water and sewer are not directly adjacent to the property and the existing specials balance, staff is recommending approval to enter into a purchase agreement with Mr. Bracht for the sale of Lot 5, Block 73 First Northern Pacific Addition to place the property back into private ownership.

Planner Van Dyke stated that the City Engineering and Planning Department is recommending approval to enter into a purchase agreement for the sale of Lot 5, Block 73 First Northern Pacific Addition as presented.

Commissioner Rohr moved to approve entering into the Purchase Agreement provided in the Exhibit 1. 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. *Consider reduction in certain liquor license fees for 2020 – 2021.*

City Administrator Neubauer presented a request to consider adjusting 2020-2021 certain liquor license fees. He reported that due to COVID-19 issues, certain industries have been hit hard. Those include, but are not limited to, restaurants and bars. The annual renewal applications for the 2020-2021 period are subject to City Commission approval prior to June 30, 2020. In order to provide some relief to these businesses the following is proposed:

(1) The time to renew licenses will remain the same.

(2) No need for license fee breaks to (strict off sale): (a) Class D; (b) Class D1.

(3) Grant a two month waiver (1/6) of fees for all those other than D or D1, to be collected with the applications due in May/June, 2020, a two month (1/6) fees for licenses other than D or D1 results in a general fund revenue loss of \$17,465 based upon renewals of existing licenses. Administrator Neubauer stated that this is brought for discussion and if the City Commission approves this, the necessary adjustments will be made to the applications. He will then bring a resolution reflecting the revisions to an upcoming City Commission meeting.

Commissioner Larson expressed extending the 2019-2020 renewal, to give them an opportunity to not having an expense during limited operation and it focuses on the existing businesses in Mandan. Commissioner Davis agreed with Commissioner Larson. He inquired if any other businesses might ask for waivers? Administrator Neubauer replied he is not aware of any other business with a similar situation. Attorney Brown commented that an emergency resolution would authorize the mayor to suspend or restrict the sale of alcoholic beverages which he did with regard to the sale and off sale of beverages. He is not aware of if the Commission can

authorize the extension of licenses that are due. They are due on June 30th. However, there is time to amend the resolution.

Finance Director Welch stated that this is the time of the year the City also sends out other annual licenses for mobile homes, trailer courts, tobacco licenses, etc. They do not rival the amount paid for the beer and liquor licenses although there are other licenses that go out this time of the year. Mayor Helbling stated he did not think those licenses are affected like the alcohol licenses. Attorney Brown stated that the Ordinance provides that the license applications are good through June 30th. The fees are not part of the Ordinance. It would take two meetings to amend the Ordinance and there is time to do that prior to June 30th.

Mayor Helbling inquired that if the City allows the sale of mixed drinks for take out and that has been extended until the end of the current license period, would that also need to be extended until the next renewal period or would that stay as it currently is as of today? Attorney Brown was not sure and it was recommended that be addressed at the same time. He will work with Administrator Neubauer and bring this matter back to the next meeting, to draft a revised Ordinance and address the to-go beverages, the Ordinance and Resolution that establishes the fees for 2020-2021 will also be addressed. This will only be in place for the upcoming renewal period, not a permanent resolution.

Commissioner Davis moved to approve amending the Ordinance for the current licenses period by moving the renewal date back two months and to address the upcoming renewal period for 2020-2021. 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.

I. RESOLUTIONS AND ORDINANCES:

J. OTHER BUSINESS:

1. Mayor Helbling announced that due to COVID-19 social distancing, community events are still in question waiting on guidance from the governor's office.
2. Business Development and Communications Director Huber reported that the annual Community Clean-up date is set for Saturday, May 16th and routes will be assigned. Sign up is due by May 12th. Only the route leaders will come to the site and they will go to the fields from there. More than 100 volunteers are registered. Treat boxes will be provided and door prizes will be held on-line. Kari Moore is the route care leader coordinator.

K. ADJOURNMENT:

There being no other business to come before the Board, Commissioner Rohr motioned to adjourn the meeting at 7:03 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 Helbing
Tim Helbling, Mayor
Board of City Commissioners