
The Mandan City Commission met in regular session at 5:30 p.m. on July 21, 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 and Commissioners Braun, Camisa, Rohr and Larson. Department Heads present were Planning & Engineering Director Froseth, Business Development/Communications Director Huber, Principal Planner Van Dyke, City Administrator Neubauer, Finance Director Welch, Director of Public Works Bitz, HR Director Cullen, Fire Chief Nardello, Deputy Police Chief Flaten and City Attorney Oster. Absent: Assessor Markley, Building Official Ouradnik and Police Chief Ziegler,

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider approval of the minutes from the July 1, 2020, Budget Working Session and July 7, 2020 Board of City Commission meeting minutes.* Commissioner Braun moved to approve the minutes as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Camisa: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

D. PUBLIC HEARING:

1. *Consider approval of the preliminary plat for Sunset Ave 1st Add. and first consideration of Ordinance 1345 related to a zoning amendment from A Agriculture to RM Residential.* City Planner Van Dyke, presented a request to approve of a preliminary plat and first consideration of Ordinance 1345. He explained that this matter was discussed at a previous meeting and pertains to an area near the middle school. Dr. Belanger requested a zone change from A-Agricultural to RM-Multi-family and a preliminary plat as presented in Exhibit 2. The previous version of the preliminary plat showed the entirety of Sunset Avenue 1st Addition upon build-out. Marathon Petroleum has a pipeline through this area and required a 100’ easement. This has substantially changed the nature of the development and the applicant is attempting to accommodate the needs of Marathon Petroleum with plans for development of this area. The applicant seeks to plat eight residential lots for the initial phase of this area and dedicate the appropriate right-of-way along 8th Avenue NW, 31st St. NW, and 12th Ave. NW, as well as the local road to serve the connection between 8th Avenue NW and 12th Ave. NW. Lot 9, Block 1 and Lots 1 and 2, Block 2 would be reserved for future redevelopment. Lot 2, Block 2 is presently a super block to be further developed through nine (9) phases and approximately fifty-four (54) lots. Lot 1, Block 2 will be a stand-alone lot and is yet to be determined if it will be further subdivided. Exhibit 3 outlines a phasing plan where each color represents a similarly sized enlargement of the development, with roughly 8 lots per phase. In total, there are 11 phases. He reported that at this time as noted in Exhibit 3, build-out of Lot 2, Block 2 and Lots 1-9, Block 1 will create 79 residential units across 12.26 acres or 6.44 units per acre. This aligns with the recently adopted amendment to the Mandan Land Use and Transportation Plan designation of Medium Density Residential. These recommended changes to the preliminary plan are included in Exhibit 4. City staff voiced concerns regarding the proximity of driveways to one another for the first eight residential lots. This can be remedied by shared access driveway

easements to provide the necessary amount of space between driveways for placement of snow in the winter. Staff also had concerns that Lot 9, Block 1 does not specify the area to be utilized for a storm water detention pond as was previously done in the original application. The recommendation is to split Lot 9, Block 1 into two lots – one dedicated for future redevelopment and one dedicated for the storm water detention pond. The newly created lot dedicated to storm water detention would be required to be held in undivided interest with all lots within the development so as to ensure that the City does not become owner and responsible for maintenance in the future. He said that in addition, staff recommended the creation of a non-access line along the east side of 12th Avenue NW and north side of 31st Street NW except for a 36' width along the farthest northwest and farthest southeast boundary of Lot 1, Block 2. This will place the approach for the lot from the public street furthest away from the intersection of 31st St. NW and 12th Avenue.

Planner Van Dyke reported that the Fire Department requires a temporary turnaround to be established for the first phase on the easterly end of the proposed local road on the eight lots. Considering that the first phase of the development shows large lots and blocks and does not presently conform to the Mandan Land Use and Transportation Plan and the developer has indicated that upon build-out as shown in Exhibit 3 via future phases that it can and will conform with the plan stating that staff is recommending a development agreement tied to this as shown in Exhibit 5. This provides the developer with the ability to initiate construction for the first phase and address the details of future phases at a subsequent time. The development agreement is in draft format and may change as the agreement is further refined from discussions between the developer and staff.

The Development Agreement revolves around a density range for the entirety of the development, triggering event for the construction of 8th Avenue NW, how specials will be handled and addresses minor landscaping and pedestrian connectivity requirements. Should portions of this land be sold by Dr. Belanger, any future land owners would abide by this agreement. The restriction to single family homes for Lots 1-9 Block 1 and Lot 2, Block 1, includes the addition of the southwest lot and they may want to put in a 24 plex (not for discussion today, but mentioned as informational item) and this agreement could allow for that as it will be for a single family twin row home or multi-family residential construction for Lot 1, Block 1, in the southwest corner. That is the lot they are working on figuring out how to work with a 100' wide easement that separated the rest of the development. There will be minor revisions to this and there will be private roads to serve in this development however as far as emergency services is concerned, private roads are inadequate to serve as a secondary access. If this request is approved it will allow Dr. Belanger to get the development started to install 8th Avenue to connect to local roads and pedestrian walkways. Wastewater and a lift station is not planned for the area and waste is pumped towards the east on 1806 that connects with the existing sports complex and may tie into Terra Vallee which will need to be upgraded in the interim until the waste is pumped into 1806 and that can eventually be fulfilled. Those discussions are ongoing and will come back in the future for discussion.

Commissioner Rohr said he has been made aware there may be a drainage problem in that area. Planner Van Dyke said he is aware of the drainage problems (Landeis property) and said that any

water that flows here will go into a different system. The City Engineer and Storm Water Management will work on resolving this.

Mayor Helbling inquired if during this first phase, if 12th Avenue will be paved in its entirety up to this development? Planner Van Dyke replied that is correct and it will be developer-funded with plans to put in 12th Avenue in its entirety and that will include curb and gutter. He said that typically there is a 66' right of way which the City has reduced to a 50' right of way curb to curb.

Director Froseth presented prior history on right-of-way widths and that the Board approved a right-of-way with a lesser width street at Lakewood 8th or 9th. It was also recommended for local street in Cyprus Grove, south of Red Trail Elementary but the Board did not move forward with that narrower street at that time due to parking on one side of the street. He said he approves the narrower street referred to in this project so it will be a 32 foot width face to face curb to curb. That will allow for parking on one side of the street, which is appropriate for this area.

The Planning and Zoning Commission recommended unanimous approval of this request subject to a few changes and entering into a development agreement. It was recommended to approve of the rezone as presented in Exhibit 6 from A-Agriculture to RM Multi-family and the preliminary plat subject to the changes noted in Exhibit 4 and entering into a Development Agreement similar to the one outlined in Exhibit 5.

Mayor Helbling announced this is a Public Hearing and invited anyone to come forward to comment or speak for or against the request to approve of the preliminary plat for Sunset Avenue 1st Addition and first consideration of Ordinance 1345 related to a zoning amendment from A Agriculture to RM Residential. A second announcement was made to come forward to comment or speak for or against the Ordinance. A third and final announcement was made to come forward. Hearing none, this portion of the public hearing was closed.

Commissioner Camisa moved to approve the rezone as presented in Exhibit 6 from A-Agriculture to RM Multi-family and the preliminary plat subject to the changes noted in Exhibit 4 and entering into a Development Agreement similar to the one outlined in Exhibit 5. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Camisa: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

E. BIDS:

1. *Consider bids for Raw Water Intake project Update.*

Engineering and Planning Director Froseth provided an update on the State Water Commission (SWC) discussions and the options with holding bids. He provided a brief review of the actions of the City Commission meeting held on June 16, 2020 and at that time he presented the results of the bids that were opened earlier in May and June. The message at that time, after the SWC met on June 9, 2020, was that the SWC did not act on the city's request to raise their funding match to keep up with 60% total project costs. The bids were exceeding the estimate that the city had last fall along with the re-estimate done again in the spring. The SWC decided not to act on any new project funding requests or requests to raise the amounts to any particular project state-wide given budgetary concerns. City staff were prepared to request that the State Water

Commission (SWC) continue their commitment to this project at the 60% match given the amount now that bids are received. During the June 9th SWC meeting, they decided to reconvene on the requests at their meeting held on July 16th. At that time, the SWC did not feel comfortable in increasing funds for projects rather they plan to go back to the state legislature in 2021 because of the funding issues they are having now since the main funding source are from oil revenues. Based on the above, Director Froseth recommended holding bids again. The SWC plans to meet in August and perhaps they can act on these projects at that time.

Director Froseth said that there is no action requested today by the City Commission. He recommended discussing this matter again in August or September after the SWC meets. The City will need to get an agreement from the contractor to hold their bids longer than specified in the bid documents. He said that AE2S has contacted the contractors and obtained verbal approval to extend those contracts and they will also be reduced to written form.

F. CONSENT AGENDA

1. *Consider approval of monthly bills.*
2. *Consider for approval the annual liquor licenses for September 1, 2020 to June 30, 2021: (i) Class A –The Drink at Lakewood; (ii) Class A – Vicky’s Sports Bar; (iii) Class F – Ten Spot Lanes.*
3. *Removed for discussion (see below).*
4. *Consider approval of the Transportation Alternatives (TA) grant to go to the Park District’s Old Red Tail Phase 2 Shared Use Path Project.*
5. *Consider approval of minor plat for Lakewood Harbor 3rd Addition First Replat of Block 1.*
6. *Consider approval of Sylvester’s Industrial Park 11th Addition.*
7. *Consider approval of the City of Mandan JAG and Lottery Grant application to provide funding for the Abused Adult Resource Center.*
8. *Consider approval of the City of Mandan JAG and Lottery Grant application to provide funding for the Dakota Children’s Advocacy Center.*
9. *Consider payment of bills for Morton Mandan Public Library / Downtown Parks Project.*
10. *Consider approval of a driveway variance at 500 4th Avenue NE.*
11. *Consider approval of the City of Mandan accepting the 2020 COPS Hiring Program Grant that has been awarded to the Mandan Police Department.*

Commissioner Larson requested removal of Item No. 3: *Consider approval of the Special Event Permit for the Mandan Progress Organization Drive-in Movie Theater event.*

Commissioner Larson moved to approve the Consent Agenda items 1, 2, 4, and 6 through 11 as presented. Commissioner Camisa seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Camisa: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

No. 3: Consider approval of the Special Event Permit for the Mandan Progress Organization Drive-in Movie Theater event. Commissioner Larson stated that since this is a new event and the date is approaching, she wanted to point this out. Deputy Police Chief Flaten said there were a couple things that changed since the application was submitted. The movie shown will be Sonic

the Hedgehog and the times of showing will be 6:00 p.m. and 9:00 p.m. (not 5:00 or 8:00) and the fee will be \$10 per vehicle and concessions will be available. There is a limited number of parking spaces available (124) with tickets now on pre-sale. This event will take place on Saturday, August 1st at the Brave Center, the former Community Center. More information can be found on the MPO Facebook page.

Mayor Helbling extended a thank you to the Mandan Progress Organization for working with the Police Department to make sure events happen safely in the community.

Commissioner Camisa moved to approve the Special Event Permit for the Mandan Progress Organization Drive-in Movie Theater event. Commissioner Larson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Camisa: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

G. OLD BUSINESS:

1. *Discussion regarding fireworks.*

City Administrator Neubauer stated that at the last meeting, the Board of City Commissioners directed staff to discuss possible changes to the Fireworks Ordinance. He provided the following information: He reported that the current Fireworks Ordinance permits the use of fireworks on:

July 2, 12:00 p.m. to 12:00 a.m.

July 3, 12:00 p.m. to 12:00 a.m.

July 4, 12:00 p.m. to July 5, 2:00 a.m.

December 31, 5:00 p.m to Jan. 1, 1:00 a.m.

Noncompliance carries a \$75 ticket if ticketed.

City Administrator Neubauer reported that there have been recent discussions with the Police and Fire Chiefs and their recommendations are to revise the current ordinance as follows:

~~July 2, 12:00 p.m. to 12:00 a.m.~~

July 3, 12:00 p.m. to 11:59 p.m.

July 4, 12:00 p.m. to 11:59 p.m, ~~July 5, 2:00 a.m.~~

December 31, 5:00 p.m. to Jan. 1, 1:00 a.m.

Noncompliance would increase to \$150 ~~75~~-ticket

Mandan Police Department Report: Between 6/27/20 and 7/6/20, the police department received 45 complaints related to fireworks violations. With the majority of the complaints received, the offenders were not found when officers arrived in the areas of the complaints. Many times officers were busy on other calls when the fireworks complaints were received. There were no citations issued.

Mandan Fire Department Report: Between 6/30/20 through 7/5/20, there were seven incidents reported that included one structure fire. All reports received involved fireworks. There were 57 total firefighters that responded and that resulted in approximately \$1,335 in wages paid for labor excluding payroll taxes. There were 14 fire trucks that responded to the calls. During the same time period reports received in previous years were in 2019 there were 4 incidents; in 2018 there were 2 incidents; in 2017 there were no incidents due to the ban on fireworks; and in 2016 there were 7 incidents.

Administrator Neubauer explained that the removal of permitting fireworks on July 2nd may create the expectation that the public will discontinue use. However, it is believed that as soon as fireworks can be purchased is when the public begins discharging them. Administrator Neubauer stated that this item is presented for discussion and he requested direction from the City Commission on how to proceed. He said that the options to resolve this would be to leave as is, adjust as recommended, or to make other adjustments.

Mayor Helbling reported that he has received calls regarding fireworks since the last meeting and that some residents were in support of revising the days and times while others wanted them banned. Commissioner Braun inquired if Bismarck has determined a timeframe for allowing fireworks? Administrator Neubauer replied that he was unsure of the status of Bismarck's decisions on moving forward to permit fireworks. Commissioner Rohr commented that this year it appeared residents cleaned up the residual more so than in past years. Commissioner Braun commented that he would prefer to leave July 2nd there as that is something that the residents look forward to. Commissioner Camisa commented that he supported the recommendation as presented because it's a good compromise for those that do work during those days and to be respectful of our veteran neighbors who have difficulty during the 4th of July holiday. He would support moving forward with the recommendation presented. Commissioner Larson concurred with the recommendation presented that would remove July 2nd.

Administrator Neubauer indicated that if the City Commission approves the recommendation to remove July 2nd and change the ending time on July 3rd and July 4th – from 12 p.m. down to 11:59 p.m. and to increase the fine from \$75 to \$150 – a revision will be made to amend the ordinance and brought back to a future meeting for the first and second readings.

Commissioner Rohr moved to approve amending the ordinance to provide that fireworks dates and times be set as presented. Commissioner Camisa seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Camisa: Yes; Commissioner Larson: Yes; Commissioner Braun: No; Mayor Helbling: Yes. The motion passed.

H. NEW BUSINESS:

1. *Consider appointment for the Mandan Special Assessment Commission.* Planning and Engineering Director Froseth presented a request to consider the appointment of Sherwin Wanner for the remaining term of one open position that ends April 2025 on the Mandan Special Assessment Commission. He stated that a notice was sent in June 2020 seeking letters of interest for this position with a deadline to be submitted by July 14, 2020. This vacancy was due to the resignation of Carl Jacobsen. Two letters of interest were received, one from Sherwin Wanner received on July 10th and another letter from Wayne Papke received on July 15th. Both individuals would be good applicants and both have been residents of Mandan 20 plus years. The Engineering Department indicated that Mr. Wanner's background experience would be an added benefit to Special Assessment Commission and supports the appointment of Sherwin Wanner to complete the remaining term ending April of 2025 to the Mandan Special Assessment Commission. Both applicants were present for discussion and to answer questions.

Wayne Papke, a Mandan resident came forward and inquired what criteria was considered when making the selection? He said he was not interviewed nor was he asked to provide any feedback.

Director Froseth explained that there is no formal process for recommending individuals to sit on the Special Assessment Commission. He said his recommendation was based on project experience that was shown in Mr. Wanner's application which would be relevant on this committee and that was a deciding factor to bring this recommendation to the Commission. Both applicants indicated they have resided in the community for a long time

Mr. Papke stated that it is his opinion that this is more of a finance position than it is an engineering position. He said his background is in finance and that is why he believes he would be a better candidate for the open position on the Special Assessment Commission. He extended a thank you to the City Commission for considering his application.

Sherwin Wanner, a Mandan resident came forward and stated that his background is in engineering, both in project management and business. He believes he can do the financial aspect as well if he were appointed to the Special Assessment Commission.

Commissioner Rohr moved to approve the appointment of Sherwin Wanner to complete the remaining term of the open position ending April of 2025 to the Mandan Special Assessment Commission. Commissioner Camisa seconded the motion.

Commissioner Larson commented that she believes this is a unique situation in that two strongly qualified applicants have volunteered for this one open position. In cases such as this, it serves as an opportunity for applicants to come before the commission to state their purpose and interest for an open position. She commented that she is not sure she has enough information from the letters and brief presentation given tonight to determine if one of the candidates is more qualified than the other. She recommended that the Special Assessment Committee review the candidates and then bring a recommendation back to the City Commission.

Roll call vote: Commissioner Rohr: Yes; Commissioner Camisa: Yes; Commissioner Larson: No; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

Mayor Helbling extended a thank you to Mr. Papke for his interest and application for the open position on the Special Assessments Committee and encouraged him to apply for future positions on committees when they become available. He welcomed Mr. Wanner as the newly appointed member to the Special Assessments Committee.

2. *Consider an amendment to our Engineering Services Agreement with Moore Engineering for the Southside Street Improvement project.* Planning and Engineering Director Froseth presented a request to consider approval of an amendment to the Engineering Services Agreement to cover the increased engineering scope for the Southside Street Improvement District project.

Director Froseth reported that the Southside Street Improvement District project is nearing completion. It is currently at a state of substantial completion of the major constructional items. A formal walk through is scheduled for July 22nd. He reported that there are a few miscellaneous items left to complete stating that the entire project area is scheduled to be re-seeded later this summer since the seeding effort in May did not take effect due to dry conditions

into late June. The City will develop a full list of deficient items for the contractor to correct. Corrective items have been completed throughout the project but an official list of everything is necessary to address before final acceptance. The Park District has been involved and will be responsible for their portion of the project. There is a fog seal that will be done after the chip seal is done, which is another layer of oil that is sprayed to hold the chips in and that will give it a black look. The residents have been satisfied with the project results thus far with no complaints being received. He said that Moore Engineering staff stated that they were concerned that their construction engineering costs would exceed the agreement because of additional scope of services that exceeded the agreement. There have been approximately 14 change orders to this project. He provided a couple of examples of what has transpired creating this request for additional expenses. Property owners petitioned after the project started to have their driveways graveled. Their estimation for additional work summarized is not to exceed an additional \$24,000. The Engineering Department reviewed this request and believes it to be reasonable and fair. The additional \$24,000 will be added to the agreement which would raise the total amount from \$363,711 to \$387,711 which is an increase of about 6.6%. These additional costs will be included in the property special assessments. The Engineering Department recommended approval of this amendment.

Commissioner Camisa inquired that with regard to the increase of \$24,000 as to what the impact will be to property owners for special assessments? Director Froseth said it will be \$80 per property. Commissioner Camisa inquired about the costs related to the access to the Public Works facility and will the City contribute to the alleyway or will that go to the property owners? Director Froseth said he can review those elements, but generally the City has some responsibility to all adjacent roads.

Commissioner Larson moved to approve Amendment #1 to the project Construction Engineering Agreement with Moore Engineering for the Southside Street Improvement District. Commissioner Camisa seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Camisa: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

I. RESOLUTIONS AND ORDINANCES:

1. *Second consideration of Ordinance No. 1344 to Amend and Re-enact Section 20-1-9 of the Mandan Code of Ordinances Relating to Discrimination Prohibited in Employment.* HR Director Cullen presented a request for approval of the second and final consideration of Ordinance 1344 related to discrimination prohibited in employment. She reported on this matter last month explaining that this Ordinance is being amended due to the action on June 15, 2020, by the U.S. Supreme Court ruling that employment discrimination on the basis of sexual orientation or gender identity is illegal and violates Title VII of the Civil Rights Act of 1964. This amendment will ensure the Mandan Code provision is in accordance with the law, as well as clarifying that pregnancy is a protected category. She said that there have been no comments or objections received since the First Consideration.

Commissioner Camisa moved to approve the second and final passage of Ordinance No. 1344 to Amend and Re-enact Section 20-1-9 of the Mandan Code of Ordinances Relating to Discrimination Prohibited in Employment. Commissioner Larson seconded the motion. Roll call

vote: Commissioner Rohr: Yes; Commissioner Camisa: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

J. OTHER BUSINESS:

1. Commissioner Braun brought up a concern related to Costco is advertising throughout the community. He commented that over the past three years, Business and Communications Director Huber has reached out to Costco several times, asking them to consider locating in Mandan and their response was they were not interested in building in this part of the state however, they have decided to open a store in Bismarck. He wanted everyone to think about, that when you drive by these advertising booths, and you contribute to Costco, you are taking tax dollars from Mandan and giving them to Bismarck.

Mayor Helbling clarified Costco did visit Mandan on a couple occasions and tried to get a site to work out but it did not. He felt that Costco did give Mandan an opportunity but chose Bismarck in the end.

K. ADJOURNMENT:

There being no other business to come before the Board, Commissioner Larson motioned to adjourn the meeting at 6:39 pm. Commissioner Camisa 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