
The Mandan City Commission met in regular session at 5:30 p.m. on March 19, 2019 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Mayor Helbling called the meeting to order.

A. ROLL CALL:

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

B. APPROVAL OF AGENDA:

C. MINUTES:

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

D. PUBLIC HEARING:

1. *Appeal of MARC decision on the sign permit for the Lonesome Dove located at 3929 Memorial Highway.* Building Official Ouradnik presented information pursuant to a public hearing pertaining to Brian Berube, owner of the Lonesome Dove at 3929 Memorial Highway who is appealing the denial of the sign permit application by the Mandan Architectural Review Committee (MARC). He provided background of this matter stating that the Lonesome Dove at 3929 Memorial Highway, was cited by Code Enforcement for placing a mural on the wind block on the front of the building a requirement of Section 105-1-15(j) (9). An application was submitted after-the-fact for the mural and that was subsequently discussed by MARC. The MARC denied the mural application at their November 13, 2018 meeting on the basis that it violated mural Guideline #1 that no mural may be placed on the front of a building; and Guideline #2 that no mural shall convey a commercial message per Mandan Municipal Code 105-1-15 J (9) which states, “No sign or wall mural shall be painted on any building without prior approval from the MARC”. The applicant was then advised to apply for sign permit.

The Lonesome Dove filed an application that was brought to MARC on the January 8, 2019 and that application was denied based on Section 105-1-15 (z)(4):_No combination of wall signs and supports shall exceed 20% of the signable wall surface area up to a maximum of 200 sq. ft. unless other limits are approved by the MARC; and Section 105-1-15 (j)(9): No sign or wall mural shall be painted on any building without prior approval from the MARC. Mr. Breube was notified of the denial by letter and he then submitted an appeal letter on February 13, 2019.

Building Official Ouradnik recommended upholding the decision of the MARC and to deny the appeal of the sign located on the building Lonesome Dove at 3929 Memorial Highway for the following reasons:

(1) Section 105-1-15 (z)(4): No combination of wall signs and supports shall exceed 20% of the signable wall surface area up to a maximum of 200 sq. ft. unless other limits are approved by the MARC.

(2) Section 105-1-15 (j)(9): No sign or wall mural shall be painted on any building without prior approval from the MARC.

Mayor Helbling announced this is a public hearing regarding the appeal of the MARC decision on the sign permit for the Lonesome Dove located at 3929 Memorial Highway. He invited anyone to come forward to speak for or against this matter.

August Kersten, Lonesome Dove, 3929 Memorial Highway, came forward and stated that when the mural was painted on the building he was not aware of any requirements for mural permits. He said after he was notified he obtained a permit and was told there would be a meeting, however, he assumed they would pass the mural application request. He said he received a letter stating he could get up to a \$1,000 fine and he was informed that it wasn't a mural, rather it was considered to be a sign. He paid the additional fee for a sign and completed the application, attended the meeting and said he was told he had too much signage. He said the Lonesome Dove's intention was to improve the signage on what they previously had on the building. He requested the City Commission consider allowing the Lonesome Dove to leave the new signage on the building.

Julie Haibeck came forward to speak stating that she had a similar problem with signage on her building but the city found a way to get around making her remove her signage by putting up a wall about one inch away. She stated she believes Mandan has too many rules and regulations.

Mayor Helbling invited anyone else to come forward to speak for or against the appeal of the MARC decision on the sign permit for the Lonesome Dove located at 3929 Memorial Highway. Hearing none, this portion of the public hearing was closed.

Commissioner Rohr inquired as to when the mural ordinance became effective. Building Official Ouradnik replied they went into effect the end of 2018. Commissioner Rohr commented that residents may not be aware of the ordinance, thus they may not know they are in violation. With regard to the Lonesome Dove building, he does not see a correlation with this ordinance in that the mural seems to fit within the business's décor and location. He said he believes there is a difference in aesthetics between downtown buildings and the buildings on the strip. He does not feel that the mural is distracting to the public eye and he does not think the mural should be taken down.

Commissioner Davis commented that the work the MARC has done on this Ordinance is of importance however there should be a fine line of what is acceptable and what is not acceptable. He said it is difficult to tell a business what to do or not do, but consistency and fairness is important when addressing signage, banners and murals. Commissioner Larson stated she has sat on the MARC Committee for several years and she sympathizes with how hard it is to keep up on regulations. This is challenging for MARC even though the mural ordinance is not as new as the sign ordinance. However, we do not want to alienate our businesses but the mural ordinance has been difficult to deal with over the last couple months. The challenge is, none of it

is allowed to be street-facing, etc. If we ignored the Lonesome Dove sign, it would have been in violation. All businesses have to go through this and that is why we offer public meetings so everyone has input. This is a challenge because this does not hurt anyone, but how do we control the next business to stay within compliance. This is difficult on the part of the owner, but MARC has created these guidelines to assist with consistency with business signage and murals. Commissioner Braun commented that the business owners have a responsibility to know what ordinances are in place. If exceptions are made for one or two businesses, it could get out of hand. If the public does not like any such current situation, the City Commission will review and consider a revision when presented in a proper format and it would be possible to change the ordinance. Until that happens, the ordinance will have to be followed.

Mayor Helbling commented he does not like to be told what to do as a business owner, however, in the capacity of sitting on the City Commission, it is important to make sure that the ordinances are followed. In the past, he said that he had received comments from prospective new business owners stating that unless Mandan set up guidelines and rules, they would not bring their business to Mandan. He also suggested that Main Street could have different policy guidelines than other sections of the City, such as the strip or those areas that are out in the open. The good of the whole community has to be taken into consideration in these types of situations. The feedback he has received indicated that rules and regulations do need to be in place. Commissioner Rohr reiterated that he believes there is a difference in aesthetics between the downtown buildings and the strip.

Building Official Ouradnik clarified the guidelines for murals at this point are just guidelines and that they are not an Ordinance. This one is not considered a mural, it is considered as a sign because of the commercial business. He does not want this matter confused with murals as the conversation has referenced murals when indeed it should be addressed under the Sign Ordinance.

Commissioner Davis moved to approve to deny the appeal made by Brian Berube, the owner of the Lonesome Dove and uphold the decision of MARC to remove the sign located at 3929 Memorial Highway based on Section 105-1-15 (z)(4) and Section 105-1-15 (j)(9) of the Mandan Municipal code. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: No; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *First Consideration of Ordinance 1299 related to Crematoriums Continued.* City Planner Van Dyke continued this presentation from last month's discussion requesting the First Consideration of Ordinance 1299 Related to Crematoriums. He said that City staff has provided the Commissioners with information from a study that was conducted by the State of Georgia Senate in 2012 which evaluated crematoriums, specifically looking at emissions, including mercury. To summarize the report findings, the following snapshot from the conclusion and recommendations (Exhibit 6, Page 9) includes "While cremation is a popular and largely safe means of disposal of human remains, the process may emit small amounts of metals such as cadmium, lead, and mercury, among other emitted materials. The amounts of these substances emitted by the cremation process may be too small to pose a health or safety risk, but it is nonetheless important for the public to be able to remain confident that their health and the

health of their families are not being compromised as a result of nearby cremation operations.” Georgia requires a 1,000 ft. setback from a residential subdivision. In addition to researching and identifying a balanced study, staff reached out to the North Dakota Department of Health Division of Air Quality to request mercury emissions quantities for the Mandan Refinery and the Heskett plant, which were reported in 2017 as four (4) pounds and fourteen (14) pounds respectively. The relative quantities of mercury emitted by a crematorium are substantially smaller. It should also be noted that the stacks of both the Heskett plant and Mandan Refinery appear to be located nearly 2,000 linear feet from the nearest residential subdivision. He referenced Exhibit 7, wherein at the City Commission meeting in February, the question came up of using cemetery property as a location for a future crematorium. A deed search identified much of the property having a restriction only allowing it to be used for burial purposes. However, there is a portion of the cemetery property large enough and unencumbered by restrictions that would accommodate both the original setback proposed by staff to Planning and Zoning Commission (300 feet) and the setback proposed to City Commission by Planning and Zoning Commission (100 feet). Exhibit 7 depicts this property to illustrate the setbacks as they would apply to the crematorium equipment proposed in the ordinance. The City has no plans to put a crematorium on this property. For clarification, the question of accepting the adjacent right of way, would allow crematoriums to encroach closer to the property line such that it could locate closer to the right of way and not be encumbered or inhibited by the hard setback line from the property. This would allow it to be located further away from private property and closer to the freeway. The goal would be to accept the right of way and move it closer to the road from adjacent development. Mr. Ross, Funeral Director of DaWise-Perry Funeral Services responded with his written Comment, included in Exhibit 5.

Mayor Helbling announced this is a public hearing and invited anyone to come forward to speak for or against the First Consideration of Ordinance 1299 related to Crematoriums.

Tawnya Clouston who lives at 1608 14th Ave. Southwest came forward to speak. She stated that she, her husband, and six children live in a home in the area of where David Wise is proposing to build a funeral home and crematorium. She said she is here tonight with her neighbors to protest the building of the funeral home and crematorium in the location proposed by Mr. Wise. She read out loud a list of her concerns if this building is approved at this location. She explained that her husband has a lung disease and how she believes emissions exposed to him could make his lung problem worse. She requested the Commission to reconsider the setback of at least 500 feet minimum.

Mayor Helbling clarified that the City is not considering this ordinance, brought by Mr. Wise who is considering building a crematorium. Mayor Helbling said that no matter where the location, the City is not considering a crematorium at this location and is not specific to this funeral home. He explained the intent of the City is to get in front of this issue instead of behind it.

David Wise, owner of DaWise Perry Funeral Home came forward to speak. He explained the reason for the setback was to be further away. Tawnya’s house is over 600 feet away. He does not want this next to any residence and he does not want anyone afraid of this type of business. He referred to the original ordinance set at 300 ft. which is a recommendation of his competitor

and other businesses of this nature. He explained some of the history of his competitor's business and that his business was given a 50 ft. set back. He explained his position regarding the controversy of the 300 ft. setback vs. the 50 ft. set back. In regards to the Ordinance he said that it is his intention to stay as far away as possible and at least a 100 ft. set back and that he intends to stay at least 200 ft. from a residence.

John Ross from DaWise Perry Funeral Home came forward and stated that his concern is about the one cemetery, Union Cemetery, in that it is not in compliance with the ordinances. He reported that a burial he did last month, was 25 ft. from the line. There are diesel drums within 45 ft. of gravesites. He suggested considering the big picture of the issues involved and questioned if Mandan Union Cemetery is in compliance with NDCC and if not, should that be submitted to the ND Health Department. He does not know if that has been done or not.

Commissioner Davis inquired of the public forum held by Mr. Wise last month. Mr. Wise said only two people attended. One individual who came used to work with North Dakota Air Quality and the other was interested in the spiritual part of the forum.

Commissioner Davis commented that he is supportive of Mr. Wise's business and that it appears to be the location of where he would like to build a funeral home/crematorium that is the issue. Regarding the smokestack that would be installed, will it be higher than the rooftops? Another concern brought up was when the equipment is in use, how long does it take to clear the air of the smoke? Mr. Wise stated this building be located nearer to the Lutheran church, east of where all the trees. The pitch of the smokestack will be taller than the houses. Mr. Wise inquired about building a funeral home at that location, without the crematory. Commissioner Davis said the crematory has been the biggest concern from what he heard.

Mayor Helbling directed the discussion to take this property out of this equation and only deal with the ordinance and the setbacks.

Commissioner Rohr said this matter is about a crematory, anywhere in the city, not limited to this location. This meeting is not about granting Mr. Wise authority to build a funeral home or crematory. Mayor Helbling clarified that this discussion will be limited to the ordinance for a crematorium, not a location.

Commissioner Braun said the previous discussion was about a crematory and what to do with setbacks. At that time, Planner Van Dyke presented a recommendation that the crematory be located in a cemetery only. This is a perfect opportunity that creates an ordinance that would produce income for the City of Mandan. Commissioner Braun suggested creating an Ordinance that a crematory will only be allowed within a cemetery. Based on discussion thus far, he said the City has two options: (i) Sell the lot; or (ii) Lease the lot. If the City leases the lot that would create residual income that would take care of this problem instead of having to come back in 10 years to tax once again because the City cannot take care of the lot by just selling it. He proposed that this suggestion be made part of the ordinance and that will relieve some of the issues with the setback issue.

Blake Mickelson, 14th Avenue Southeast, Mandan, came forward and stated that he understands that the ordinance problem is much broader than this project, however, he does not believe it is possible to separate the two matters. He and his neighborhood are concerned. He stated he is opposed to this project for reasons previously stated. Further, he said he is opposed to this location. A further setback is going to make it difficult for this project in this particular location so the further the setback, the better. He is not opposed to the City creating an ordinance but he would be opposed to allowing a crematorium in a residential neighborhood.

Wade Meschke, 14th Avenue Southeast, Mandan, came forward and commented that it appears the City Commission is doing some problem solving and in order for this to work the setbacks would have to be small to fit in this property as well as other factors that would need to be considered for this piece of property. He said that this location is all residential and a funeral home would require a commercial zone. He is in favor of the City requiring a crematory to be located within a cemetery.

Mayor Helbling invited anyone else to come forward to speak for or against the First Consideration of Ordinance 1299 related to Crematoriums. Hearing none, this portion of the public hearing was closed.

Planner Van Dyke reiterated the importance that certain standards should be set for a crematorium. As it stands now, there are areas where a crematorium could be set right up against a property line. This is an important step of the City in being proactive to have minimum standards set.

Mayor Helbling inquired of the wishes of the Commission. He stated that if there is no action taken by the City Commission, Mr. Wise could apply for conditional use permit under the current ordinances.

Attorney Brown stated that the current ordinance permits a crematorium within an industrial district or within an agricultural district. The current ordinance requires the crematory cannot be erected within 200 feet of the boundary of the lot.

Mayor Helbling said that if the City Commission does not want to make a motion one way or the other, the ordinances already in place will stand as written.

Planner Van Dyke clarified that it does allow it as an attachment to a funeral home. Public crematoriums presumably under public ownership are adhered to that 200 foot rule. The private ones are simply attached and are allowed to be attached to any funeral home at the present time. The ordinance is trying to ensure that both public and private crematoriums would be expected to adhere to the same rules. That's why the City is removing the crematorium as an attachment to a funeral home while trying to figure out a setback that will apply to all crematoriums, public or private.

Commissioner Rohr inquired if the question that we are dealing with has to do with the setback? This is a first reading of Ordinance 1299 noting that changes can be made between now and the next meeting.

Commissioner Braun inquired if it would be acceptable to make a motion to only allow crematoriums in the Union Cemetery? Or would it be possible to make a stipulation that crematoriums would only be allowed within a cemetery.

Planner Van Dyke stated that in Exhibit 7 it shows setbacks further than 300 feet away. If the Commission would like an ordinance created and brought back - if Attorney Brown thinks this would qualify for a First Consideration without creating another ordinance. Attorney Brown said that in order to offer an amendment, the First Consideration would have to be approved.

Commissioner Braun moved to amend this and add to it that all crematoriums within the City limits of Mandan will only be allowed within the cemetery and approve the first consideration of Ordinance 1299 as presented in Exhibit 4. Commissioner Davis seconded the motion.

Mayor Helbling inquired of Attorney Brown if that motion is appropriate. Attorney Brown replied that the appropriate language will have to be drafted and yes, the motion is appropriate.

Commissioner Rohr inquired of Commissioner Braun who would run the crematorium and who would run the ownership of it and be responsible for the operations of the crematorium? And what amount of space is required and how would that reduce the life expectancy of the cemetery? He said he would like to look into these questions before going further. Commissioner Braun deferred to Attorney Brown for answers about the lot size and the business aspect (leasing) of a crematorium, etc. Mayor Helbling stated that these are questions that will have to be researched and the life of a cemetery will have to be taken into consideration.

Commissioner Larson stated that her concern regarding that proposal would be putting the City into a position of acting as a landlord. Unless it is a City run crematorium, she hesitates to lease to any particular business within that sphere and then they will lease to other people. Unless it's a City run service, she is hesitant to go that route. She would rather accept the ordinance presented and use the setback agreed on. That would offer more protection to the residents. Commissioner Braun explained further that he does not want to get involved with private businesses, but his recommendation is based on keeping the crematorium within a location that is respectful in the business, that being a cemetery. Mayor Helbling stated that he agreed with Commissioner Larson that government should not get involved in private business, however, if there is a private entity that would like to open a crematorium the City should not hold them back. He recommended that the City set guidelines and let them follow the guidelines. Commissioner Davis commented that the cemetery location complies with current zoning regulations and he agrees with that. He believes that this particular ordinance will from time to time require amendments due to the nature of it. The main focus of discussion tonight is to move the ordinance forward.

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

F. CONSENT AGENDA

1. *Consider approval of monthly bills.* MONTANA-DAKOTA UTILITIES - 37,695.36; ADVANCED ENGINEERING SVC - 27,137.57; ARMSTRONG SANIT & ROLL O

- 33,804.28; BANK OF NORTH DAKOTA - 162,264.50; BIS-MAN CONVNTN & VISITOR - 3,885.08; BOB'S CUSTOM SERVICES - 190.00; BOBCAT OF MANDAN INC - 900.00; BOWERS EXCAVATING, LLC - 1,647.50; CARISCH INC - 12,478.45; CITY OF MANDAN - 0.00; CROSS COUNTRY COURIER - 101.08; DIRK PLUMBING & HEATING - 1,535.00; ELECTRO WATCHMAN, INC - 900.00; GRAYMONT CAPITAL INC - 4,090.05; HP INC. - 18,088.78; HUB INTERNATIONAL OF ND - 12.00; KRIS ENGINEERING, INC - 20.00; MANDAN BENNIGAN'S INC - 10,517.24; MISSOURI VALLEY PETROLEU - 16,899.81; ND ATTORNEY GENERAL - 1,449.00; ND WATER & POLLTN CONTRO - 40.00; PIT MASTERS LLC - 8,861.88; PRESORT PLUS - 4,429.00; SCHLOSSER EXCAVATING INC - 900.00; SHALLOW CREEK KENNELS, I - 10,000.00; TAYLOR MADE BBQ LLC - 3,459.39; THE SHOULTS EXPRESS LLC - 5,862.39; W & G INVESTMENTS - 11,164.34; BALABAN LAW OFFICE - 2,000.00; DAKOTA MEDIA ACCESS - 10,998.00; FORT DEARBORN LIFE - 2,316.57; GLASS/THOMAS J. - 2,000.00; KELSCH KELSCH RUFF & KRA - 4,000.00; ND YOUTH CORRECTIONAL CE - 1,469.00; AT & T - 703.90; WELLS FARGO COMMERCIAL C - 169,969.44; ND PERS - 147,599.00; MONTANA-DAKOTA UTILITIES - 25,725.97; ADVANCED ENGINEERING SVC - 10,331.18; APEX ENGINEERING GROUP - 2,260.95; ARMSTRONG SANIT & ROLL O - 56,510.48; BIS-MDN TRANSIT BOARD - 56,918.67; BOERGER, LLC - 1,083.07; BROOKE/PATRICK - 50.00; C S DOORS INC - 187.67; CENTURYLINK - 6,175.02; COMPANION LIFE - 10.00; CPS TECHNOLOGY SOLUTIONS - 990.00; CROWLEY FLECK PLLP - 5,000.00; CUSTER DISTRICT HEALTH U - 1,119.00; D & F TELEPHONE - 50.00; DAKOTA COMMUNICATION SVC - 695.00; EMC INSURANCE COMPANIES - 103.18; FRONTIER PLUMBING - 681.00; GEORGE STROH TRUCKING IN - 7,125.00; GUITAR LOTS LLC - 378.13; HDR ENGINEERING, INC - 19.23; HP INC. - 20,714.16; HUB INTERNATIONAL OF ND - 435.00; INFORMATION TECHNOLOGY D - 2,267.92; JOHNSON CONTROLS FIRE PR - 880.05; KADRMAS, LEE & JACKSON, - 655.45; KS STATEBANK - 11,766.77; LEXIPOL LLC - 496.25; MANDAN AIRPORT AUTHORITY - 113,279.34; MANDAN MUNICIPAL COURT - 5,019.05; MANDAN PARK BOARD - 500.00; MICHLITSCH/KENNETH - 419.87; MISSOURI VALLEY PETROLEU - 28,319.89; MISSOURI WEST WATER SYST - 102.98; MOORE ENGINEERING, INC - 212,954.06; MORTON MANDAN PUBLIC LIB - 175,937.45; MY GOV, LLC - 960.00; ND ASSOC OF ASSNG OFFCRS - 0.00; ND HEALTH DEPT CHEMISTRY - 16.48; ND HEALTH DEPT MICRO DIV - 400.00; ND HIGHWAY PATROL - 506.89; ONE CALL CONCEPT INC - 45.25; RAILROAD MANAGEMENT CO I - 633.38; RAZOR TRACKING INC. - 450.00; RJR MANAGEMENT - 25.63; R8PA - 450.00; SENGER/CYNTHIA F. - 42.63; SHOEZAM SHOES - 492.50; STANTEC CONSULTING SERVI - 3,356.00; VANGUARD APPRAISALS, INC - 420.00; VAULT1440, LLC - 5,850.00; WALMART MANDAN - 521.20;

2. *Consider the following requests to approve budget amendments and transfers: (i) Business Development & Communications Department; (ii) Fire Department; (iii) Utility Billing Department; (iv) Police Department; (v) Planning and Engineering Departments; (vi) Human Resources Department; (vii) Public Works Department; (viii) Administration.*
3. *Consider proclaiming April 5, 2019 as Wear Blue Day in the City of Mandan.*
4. *Consider approving the Special Event Permit Application for the Mandan Law Enforcement Brave the Shave Fundraiser on 4-9-2019 at Midway Lanes.*
5. *Consider approval of the Inmate Housing Agreement between the City of Mandan and the Burleigh/Morton County Detention Center.*

6. *Consider Approval for the Mandan Police Department to take over the fiscal duties for the High Intensity Drug Trafficking Area (HIDTA) Grant for the Metro Area Narcotics Task Force.*

Commissioner Rohr moved to approve the Consent Agenda items 1 through 6 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.

G. OLD BUSINESS:

H. NEW BUSINESS:

1. *Update from Brian Ritter, Bismarck Mandan Chamber EDC.* Brian Ritter explained that the Bismarck Chamber of Commerce and the Bismarck Mandan Development Association has underwent a merger over the last several months. As of January 1, 2019, they have been operating as the Chamber EDC. He extended a thank you to the Mandan City Commission for their support in making this happen. He provided an overview of the future plans and developments of this organization. In particular, HB1474 is the No. 1 priority on the EDC's legislative agenda. It will give cities and counties the ability to ask for a vote of approval that has been labeled as a street utility fee. This is meant to be an alternative to special assessments and was a product of the City of Bismarck's task force. This bill passed in the House and the first hearing was held and at that point there were some concerns from the Finance and Tax Committee. Subsequently meetings have been held and an amendment to HB 1474 that converted the bill into legislative study. This bill will be before the Senate Finance Committee with the intent to take the bill from a legislative act to a study allowing a study to be done as to how this could be applied state-wide and not just to one community. Mr. Ritter summarized the upcoming events and programs that are scheduled in the near future with information to be shared with Bismarck-Mandan communities. He reviewed the job opportunity programs and workshops that are in process and being developed. He continues to work with Business Development and Communications Director Huber on new and expanding businesses. The continued search for industrial development within the community is also being researched. He extended a thank you to the City Commission for their continued support of the Bismarck-Mandan Chamber EDC.

2. *Consider Growth Fund Committee recommendations.*

Ellen Huber, Business Development & Communications Director presented the following requests and recommendations on behalf of the Growth Fund Committee (GFC):

(i) *Storefront Improvement application for 218 West Main Street.*

The MGF met March 13, 2019 and discussed an application submitted by Brittany Kennedy and Cathy Ehlis for matching funds for exterior improvements to the building at 218 West Main Street, the former Huntington Books location. The applicants are remodeling the building and are seeking a \$30,000 match for the exterior renovation that has an estimated cost of \$61,144.57. The front of the building will have all windows and the door replaced with high quality, energy efficient glass. Plans include two large bay windows on the left side of the door and an 8 ft. garage door with glass on the right side of the entry door. The entry will be replaced by a main entry door flush with the exterior wall which will have an ADA automatic operation. The

exterior brick will be reinforced and replaced as needed. Plans include new signage on the exterior of the building and the rear of the building will be completely refaced, painted and a new rear door will be installed. Other building improvements include a complete interior remodel. The applicants plan to open by June. The exterior building plan has received approval from the Mandan Architectural Review Commission. The applicants are also seeking approval for Renaissance Zone programs but the level of investment is sufficient to meet the investment and match requirements of both the Renaissance Zone and Growth Fund programs without overlap.

The MGF voted 7-0 (with two members absent) to recommend approval of the application for \$30,000 in matching funds for the Storefront Improvement project by Brittany Kennedy and Cathy Ehlis for 218 West Main Street. Randy Ehlis was present to answer questions.

Commissioner Larson moved to approve providing \$30,000 in matching funds from the Mandan Growth Fund for the Storefront Improvement project by Brittany Kennedy and Cathy Ehlis for 218 West Main Street. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Commissioner Davis: Yes; Mayor Helbling: Yes. The motion passed.

(ii) Restaurant Rewards application for Copper Dog LLC for 218 West Main Street.

This is a request to consider the Mandan Growth Fund (MGF) Committee's recommendation for an application by Brittany Kennedy and Cathy Ehlis, Copper Dog LLC, for a café to be located at 218 West Main Street for a five-year rebate of the 1% local sales tax. The MGF met on March 13, 2019 and discussed the application for the Copper Dog Café to be located in leased space in a portion of 218 West Main Street.

The Kennedy and Ehlis partners plan to open a waffle and coffee shop. The concept is a limited service restaurant with a seating capacity of 50. They plan to serve one-of-a-kind waffles topped with a custom blend of as many local ingredients as possible, other light breakfast fare, side dishes, high-quality coffees that are locally sourced and roasted and provide a fun, family atmosphere. A portion of the building will also be leased to the applicants for another business, a youth fitness center focusing on gymnastics.

The applicants plan to have one full-time and 6 part-time employees. The plan is for the business to be open seven days a week from 7 a.m. to 8 p.m. with an anticipated opening date of June 1, 2019. Sales are estimated at \$137,940 annually, putting the projected rebate at \$1,379.40 per year or \$6,897 over five years. The rebate amount will depend on actual sales and sales tax remittances.

The Mandan Growth Fund Committee voted 7-0 (with 2 members absent) to recommend the approval of the application by Brittany Kennedy and Cathy Ehlis for a Restaurant Rewards rebate of the 1% local sales tax in the first five years of operation at 218 West Main Street. Randy Ehlis was present to answer questions.

Commissioner Davis moved to approve the application by Brittany Kennedy and Cathy Ehlis for a Restaurant Rewards rebate of the 1% local sales tax in the first five years of operation at 218 West Main St. 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.

(iii) Updates to Property Tax Exemption Policy and Guidelines.

The MGF has reviewed Mandan's policy and guidelines for property tax exemption for new and expanding businesses at its February 25, 2019 and March 13, 2019, meetings. Mandan's policy for property tax exemption for new and expanding businesses has not undergone a significant review since 2013 when state legislation limited its use, under NDCC 40.57.1, to certified primary sector businesses. As defined in NDCC 1-01-49, a primary sector business "through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth. For purposes of this subsection, "new wealth" means revenues generated by a business in this state through the sale of products or services to: (a) Customers outside of this state; or (b) Customers in this state if the products or services were previously unavailable or difficult to obtain from a business in this state." The only primary sector application received and approved since the legislative restriction became effective was for the 2016 expansion of National Information Solutions Cooperative. The ND Commerce Department's Economic Development and Finance Division uses a 75% threshold for the amount of product or services sold outside North Dakota's borders in reviewing eligibility for the primary sector certification. There are not many of those businesses eligible. The proposed updates to the guidelines, instructions for application and supplementary application eliminate all references to ineligible uses such as retail, restaurants, hotels and other services. Other substantive updates include: (1) an increase in wage rate thresholds using more recent census data on household median incomes, from a minimum of \$9 hour to \$10.60 hour as one of the minimal qualifications for a base level exemption, and (2) an increase in the structural value of the value of the new construction or expansion in relation to jobs creation, from \$100,000 per job to \$150,000 per job. The Mandan Growth Fund Committee voted 7-0 to recommend adoption of the updated policy and guidelines for property tax exemption for new and expanding businesses including the updated instructions and supplemental application.

As part of the review process, committee information was shared and sample guidelines were obtained from some other major cities for comparison. Other cities range in policies from those that are very aggressive or generous with relatively easy and somewhat subjective scoring system that qualifies applicants for a five-year, 100% exemption to those that are more discriminating in use of the property tax exemption tool, using only a sliding scale of 100%-80%-60%-40%-20% over five years.

Commissioner Davis commented that he serves on development boards that discuss funding sources and he believes that following this legislative session there will be more funding available for industry and other jobs to come to Mandan.

Commissioner Larson moved to approve the updated policy and guidelines for property tax exemption for new and expanding businesses including the updated instructions and supplemental application. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3(i) Consider Renaissance Zone Committee recommendation for application for rehabilitation of 218 West Main St. Business Development and Communications Director Huber explained she had just presented exterior improvements to the building at 218 West Main Street as part of a Storefront Improvement application as a prior agenda item. The project also includes interior improvements. The applicants have put together a general construction plan that includes plumbing, mechanical, electrical, removing all false walls and framing that area out for the youth fitness/youth gymnastics area of the building. For the Copper Dog Café area they will be building a commercial kitchen, installing new hardwood floors and increasing the size of the restrooms. Huber believes there are repairs to the roof in the plans as well.

In total, the applicants are looking at investing about \$254,000 in building improvements. The building's current value on the assessing records for tax purposes, exclusive of the land, is \$90,700. Huber stated under the Renaissance Zone Program state requirements to qualify for a rehabilitation project, the applicant needs to invest at least 50 percent of the building's value back into it. The applicant is certainly above the \$45,350 threshold and has investment planned in the building that meets the requirements of this program as well as the Storefront Improvement program.

Huber noted the applicants are seeking the five-year property tax exemption on the value of the building as improved. The estimate on the building with renovations is \$297,000 putting the projected annual property taxes at \$3,935 per year for a five-year total just shy of \$20,000. The state income tax exemption would be an exemption on state income tax liability on income derived from rent of the building to the businesses. Huber has received a certificate of good standing from the tax department and the signed business incentive agreement.

Huber noted the Mandan Renaissance Zone committee voted unanimously to recommend approval of the application for rehabilitation of 218 W Main by 218 W Main, LLC to include the five-year 100 percent property tax exemption on the building as improved and the 100 percent state income tax exemption for five years.

Huber presented a preliminary draft of the floor plan. The idea is to have a wall splitting the café from the youth gym area. She noted that Renaissance Zone applications from the operating companies for the state income tax exemption has not yet been received as the owners are still in the process of getting the operating companies established. She anticipates seeing the application for the state income tax exemption on the income derived from the business activity in the building in the coming weeks.

Commissioner Braun moved to approve the application for rehabilitation of 218 W Main St by 218 W Main, LLC to include the five-year, 100 percent property tax exemption on the building as improved and the 100 percent state income tax exemption. Commissioner Davis seconded.

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

3(ii) Consider Renaissance Zone Committee recommendation for application for rehabilitation of 504 W Main St. Director Huber stated this was a project that has been much anticipated in the community. The building being renovated is known locally as the former Central Market grocery

building. The City closed Jan. 31, 2019 on the sale of the building to JR&R II, LLC which is the real estate company for the operating company Running's Supply. Huber noted JR&R II also owns the adjacent building at 511 First Street NW, formerly known as the Thrifty White Drug building. The applicant has been putting together site plans and building renovation plans. This particular application focuses on the 504 W Main St. building.

The total estimated cost of the project is about \$1,085,000. The project includes total roof replacement, new HVAC and electrical, new ceiling tile, all new LED lighting, concrete floor polishing, new sprinkler/fire/security systems, expanded ADA restrooms, a new garage door, and extension of the existing canopy. Huber reported the concept drawing she presented was what was submitted to the Mandan Architectural Review Commission for approval of the signage, not the building's exterior plan in its entirety. The applicant is working on those plans for a Storefront Improvement application. She noted the applicant has indicated the canopy will probably be beige in color, rather than the black shown on the sign illustration, to match the color scheme of other Running's stores.

The applicant's site plan has received approval from the Mandan Architectural Review Commission with contingencies. She said the contingencies are receipt of a satisfactory landscaping plan and upgrading the aesthetics and quality of the fence plan for the outdoor storage area buildings. Huber displayed the site plan to explain where the greenhouse would be located and point out the location of the fence between 504 W Main and the adjacent 511 First St. buildings. The fenced in area is for Runnings to store large, bulky, outdoor merchandise for sale. There will be gates to enter and exit the fenced area during store hours to pick up merchandise. She also showed preliminary plans for planting of trees along the property.

Huber reminded the commission that the eligibility for the Renaissance Zone program is based on investing at least 50 percent of the building's value on the assessing records back into it in improvements. The building is currently on the assessing books at \$1,466,300, so the minimum investment is \$733,150. With the proposed \$1,085,000 investment, it certainly meets that parameter for the program, as does the use of the building as Running's Supply.

The time schedule to be open in the new location has been advanced. The applicant is striving to have building renovations complete by July 15 and have the new store open by July 22. The applicant has stated they bring a team of employees in to help with the transition, and that the existing store will remain open while they work to complete the transition.

The value of the building with improvements is estimated at \$2,036,500. That puts the estimated annual property tax exemption on the building as improved at \$26,984 for a five-year benefit just shy of \$135,000. The state income tax exemption from the income for lease of the building to Running's Supply is estimated at \$6,240 annually for a five-year total of \$31,200.

Huber stated the West End Redevelopment Committee, that considered proposals for this property, evaluated the economic impact of this proposal by taking a look at the 10-year benefit of an expanded Runnings in Mandan given the assumptions that some incentives could be included. She said Runnings would still have a \$3.2 million additional economic impact above and beyond its economic impact in Mandan today.

The Mandan Renaissance Zone committee voted unanimously to approve this application to include the five-year 100 percent property tax exemption on the building as improved and the 100 percent five-year state income tax exemption, recognizing the contingencies of the Mandan Architectural Review Commission.

Dan Hermann, chief operating officer of Runnings Supply stated the property was on Runnings' radar about five years ago when the grocery store closed and it was way too expensive at the time. He recognized Huber and Administrator Neubauer's efforts in making this happen for Mandan. Hermann stated Runnings currently leases its building. Their lease does end this year, which gives Mandan the opportunity to have another business on Memorial Highway. Hermann said Runnings will expand to offer sporting goods at the new location, footwear, an expanded clothing line and pet supplies as well. He said Runnings has been part of the community since 2002 and they like it in Mandan. Their goal is to keep customers in Mandan and not send them across the river.

Mayor Helbling stated he really likes their goal to keep customers in Mandan. He added Runnings has always been a good partner in the community.

Commissioner Davis moved to approve the application for rehabilitation of 504 W Main St by JR&R II, LLC to include the five-year, 100 percent property tax exemption on the building as improved and the 100 percent state income tax exemption. Commissioner Rohr seconded.

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

3(iii) Consider Renaissance Zone Committee recommendation for application for lease of 504 W Main St. Director Huber stated this application is for Running's Supply as the operating company, and that the request is for the five-year 100 percent state income tax exemption. She stated this is feature of the Renaissance Zone being a combination state and local program. The state income tax exemption is the component the state can bring to help entice occupancy of buildings within Renaissance Zones.

Huber reported the Mandan Renaissance Zone committee voted unanimously to recommend approval of the lease project to include the 100 percent five-year state income tax exemption.

Commissioner Rohr moved to approve the application for lease of 504 W Main St by Runnings Supply, Inc. to include the 100 percent, five-year state income tax exemption. Commissioner Larson seconded. Roll call vote: Commissioner Rohr: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Commissioner Davis: Yes; Mayor Helbling: Yes. The motion passed.

4. *Consider approving the Resolution approving Plans & Specifications and Resolution directing advertisement for bid for Street Improvement District No. 213, Project No. 2018-07 (Southside Project).* Planning and Engineering Director Froseth presented a request to approve the Resolution approving Plans & Specifications and Resolution directing advertisement for bid for Street Improvement District No. 213, Project No. 2018-07 – the Southside project. At the

December 4, 2018 the City Commission approved the resolution creating the district, approved the engineer's report, approved the feasibility report and approved the resolution of necessity for this project. At the December 18, 2018 City Commission meeting a motion was approved to commit \$1.5 million out of the Sales Tax Fund and spread it over the life of the bond. The Prairie Dog Funds may be considered for this project instead of the Sales Tax Fund for project funding assistance. At the conclusion of the protest period, 12.81% of the assessment district area had protested. On January 8, 2019 the Commission found the protests insufficient and elected to move forward with the project. The engineering staff and the consultants have been designing with alternates in addition to the base bid in order to select the project that the Commission determines as the best value while staying in line with the general nature of the project. Examples would be to reduce storm pipe sizes as an alternate and providing the alley resurfacing as an alternate. The total project cost that would be divided amongst district participants is estimated at \$7,366,000 minus the \$1,500,000 that was approved at the December 18, 2018 meeting to be used from the Sales Tax Fund. If all alternates are taken, including downsizing of storm sewer and no alley resurfacing, the estimate is reduced by another \$950,000.

If approved, the project's bid opening would be April 10, 2019. In order to make sure that we allow the City Commission and our residents ample time to review and provide input on the bid, the bid results along with all of the alternatives will be reviewed at the April 16, 2019 City Commission meeting. After that discussion and any input period that may be required by the Commission, the engineering staff would bring it to the Commission for a decision of the award and what alternatives to award at the May 7, 2019 meeting.

Commissioner Davis commented that this is good timing for this project since the Prairie Dog bill has just been approved by the legislature. Mayor Helbling commented that if the bids come in below estimates, the City should be ready to move forward with the project before April 16, 2019 to assure it is completed. Commissioner Larson commended Director Froseth and the consultants for the quick turnaround of this project in order to keep the costs down.

Commissioner Larson moved to approve the Resolution approving plans and specifications and Resolution directing advertisement for bid for Street Improvement District No. 213, Project No. 2018-07 (Southside). Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Commissioner Davis: Yes; Mayor Helbling: Yes. The motion passed.

5. *2019 Legislative Update #5:* Administrator Neubauer presented an update on the 2019 Legislative Bills pertinent to the City of Mandan. Regarding HB1066, that passed and it did not have an emergency clause. It is expected that funds will be available in August 2020 for the first disbursement. \$1.5 million will be applied towards the southside street reconstruction project. He summarized the other bills in process at the legislative session.

I. RESOLUTIONS AND ORDINANCES

1. *Second consideration and final passage of Ordinance 1307 to update city laws regarding animals.* Police Chief Jason Ziegler presented the second consideration and final passage of Ordinance 1307 to update city laws regarding animals. He said there was an update to the

poultry section to allow for the new chicken ordinance. No other revisions are warranted and no comments have been received.

Commissioner Davis moved to approve the Second consideration and final passage of Ordinance 1307 to update city laws regarding animals. Commissioner Rohr seconded the motion. Roll call vote Commissioner Rohr: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Commissioner Davis: Yes; Mayor Helbling: Yes. The motion passed.

2. *Consider approval of Resolution to transfer real property by nonexclusive listing agreement.* City Planner Van Dyke presented a request for the approval of the resolution to transfer real property by non-exclusive listing agreement. He explained that property is acquired over time by the City of Mandan if taxes go unpaid by property owners. In the past, this property has gone to bid and the highest bidder would acquire the property. However, the number of pieces of property that the City has accumulated lends this process to be unmanageable given existing staff responsibilities. He said that the sooner property is placed back into the hands of private ownership the sooner property tax revenue may be collected. The Resolution presented in Exhibit 1 includes 23 pieces of property that have been evaluated by the Assessing, Engineering, and Public Works Departments, Fire and Park Districts and all City Departments and deemed nonessential to the City. The Exhibit 2 provides a map of these locations for reference. The Exhibit 3 provides the listing agreement to allow Oaktree Realtors the ability to list these properties on the Multiple Listing Service (MLS) to begin marketing the properties for sale. The City Engineering and Planning Department, Public Works, and Assessing Departments recommend approval of this resolution.

Commissioner Davis moved to approve the Resolution to transfer real property by nonexclusive listing agreement. Commissioner Larson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

J. OTHER BUSINESS

K. ADJOURNMENT

There being no further actions to come before the Board of City Commissioners, Commissioner Davis moved to adjourn the meeting at 7:53 p.m. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The motion passed.

James Neubauer
City Administrator

Tim Helbling
President, Board of City Commissioners