

The Mandan City Commission met in regular session at 5:30 p.m. on April 7, 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, Fire Chief Nardello, Planning & Engineering Director Froseth, Business Development and Communications Director Huber, Principal Planner Van Dyke, City Administrator Neubauer, Director of Public Works Bitz, Assessor Markley, Deputy Police Chief Flaten, Building Official Ouradnik, Police Chief Ziegler, Human Resource Director Cullen and Attorney Brown.

2. *Winner of “If I Were Mayor” Essay Contest announcement.*

Mayor Tim Helbling announced this year’s winner of the essay was Scarlett Chorne, a third grade student in Mr. Streifel’s class at Red Trail Elementary School. Mayor Helbling read the essay out loud. He reported that the essays focused on what makes Mandan great and ways to improve the community. A total of 34 essays were submitted by Mandan third-grade students. When the coronavirus ban is lifted he said that Scarlett will be invited to sit with the Mandan City Commission. No local seventh-grade essays were submitted. Scarlett will be presented with a certificate, City of Mandan t-shirt and \$50 in Mandan Bucks provided by the Mandan Progress Organization. Mayor Helbling extended a thank you to Scarlett and all the students who submitted an essay this year.

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider approval of the minutes from the March 17, 2020 Board of City Commission regular meeting.* Commissioner Larson moved to approve the minutes as presented. 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.

D. PUBLIC HEARING:

1. *Consider Cloverdale Foods Co. application for a new and expanding business property tax exemption for building additions (see New Business No. 1i).* Business Development & Communications Director Huber presented a request to consider a Mandan Growth Fund Committee recommendation regarding an application for property tax exemption as an expanding business by Cloverdale Foods Company for building additions. Scott Russell, Cloverdale Foods explained the expansion plan with assistance from Scott Stodinger.

Scott Russell introduced himself and via tele-conference he provided a power point entitled “Cloverdale Expansion 2020-2021, dated March 5, 2020 was displayed for viewing. He provided a brief history of the organization of the company and proceeded with reporting:

- Pounds growth 2016 thru 2020

- Under the current circumstances of the coronavirus, there has been a drop with the food industry business
- North Dakota, Minnesota, Oregon and California are dense with many other states increasing
- Current Warehouse Capacity – cooler and freezer utilization
- FTE Growth 385 FTE and 14 PTE
- Bacon growth has been a 180 degree turnaround, has significant positive impact
- Turnover 2018 64%; 2019 41% and 2020 3 month trend 7%
- Community Impact
 - Job creation from entry to manager level
 - Education, banking, insurance, local businesses
- Overall Site Plan
 - 5 Parts Warehouse, remodel, NE expansion, parking lot, office area.
Approximately \$20M expansion
- Timeline: Start in April 2020, completion spring/summer 2021
- Parking lot and site improvements including street improvements to 34th Street NW; approach variance

Mr. Russel concluded his presentation at this time and was available for questions.

Director Huber presented the following: During a March 25, 2020, MGF teleconference meeting, the MGF Committee reviewed an application for property tax exemption by Cloverdale, a company who has been in Mandan for more than 100 years. Cloverdale is planning to invest \$15-\$20 million on an expansion project to include a 45,63 sf warehouse addition, 6,600 sf plant addition and 3,100 sf office addition, plus a utility upgrade, equipment purchases and site improvements. The expansion is needed to accommodate increasing production. The exemption is sought for the building additions, which have an estimated value of \$5,372,000. Company executives hope to have the additions completed by May 1, 2021. The application is for a Tier 3 exemption under Mandan's Commercial Property Tax Exemption Policy and Guidelines, which allows for a 100% exemption for five years. The application meets the requirements as indicated in the policy for a Tier 3 exemption in terms of job creation. With a \$5.3 million estimated building value, the threshold for this project is 73 FTEs. Cloverdale currently has 384 employees in Mandan, including 64 positions added in 2019. The company expects to add another 24 in year one and that will bring the count needed to meet the threshold to 88. By year five, Cloverdale executives estimate another 104 employees, for a projected total of 512 employees. The payroll from these employees is all new money that otherwise wouldn't exist in the economy. Another section of the local exemption guidelines states: "Projects that are primarily warehousing (for the storage of goods, raw materials or commodities) would not receive an incentive unless the owner proves need or provides other information to justify the exemption." The MGF was satisfied that additional warehouse space is needed to accommodate Cloverdale's significant growth in production and they were satisfied there was no conflict. The MGF recommended approval of the requested 100% five year property tax exemption on the value of the building additions for Cloverdale Foods Company. Representatives of the county, school district and park district were notified of the Mandan Growth Fund Committee meeting as well as the public hearing. No comments or opposition has been received to date.

Based on the current consolidated mill levy of 265.49 mills for property taxes, the estimated value of an annual 100% exemption for the expansion would be \$71,310.61, for a projected five-year total of \$356,553.05. This differs slightly from the amount that appears in the application due to rounding. The actual value of the exemption will depend on mill levies in the five years following project completion and the actual value of the additions:

- (1) Under state law, Cloverdale is eligible for a new and expanding business property tax exemption as a certified primary sector business by the ND Department of Commerce.
- (2) A business incentive agreement is required for any assistance exceeding \$25,000 in value.
- (3) An automatic door opener required for retail, service, office and health/medical projects receiving an incentive does not apply for industrial uses.
- (4) A legal notice to competitors was published in the Mandan News on March 13 and March 20, 2020. This included the date, time and location of the public hearing and the opportunity to submit written comments in advance.

Mayor Helbling announced this is a public hearing to consider Cloverdale Foods Co. application for a new and expanding business property tax exemption for building additions. He invited anyone in the audience or online to come forward to speak for or against the application. A second announcement was made for anyone in the audience to come forward to speak for or against the application. A third and final announcement was made for anyone to come forward to speak for or against the application. Hearing none, this portion of the public hearing was closed. See: New Business Item No. 1(i) and (ii).

2. *Consider approval of the first consideration of Ordinance 1300 related to telecommunication towers in the right-of-way.* City Planner Van Dyke presented a request for the approval of the First consideration of Ordinance 1300 related to telecommunication towers in the right-of-way. Ordinance 1300 includes changes to accommodate wireless facilities located within the public right-of-way, specifying which districts require a special/conditional use permit and which ones require only administrative approval. Further, the proposed ordinance change establishes the requirement for a special use permit for telecommunications towers that are one-hundred-twenty (120) feet tall or greater in any district. The Ordinance attempts to consolidate the numerous definitions and uses of terminology related to communications towers. The City of Mandan was approached in 2018 with regard to placement of infrastructure necessary to provide customers with 5G wireless service. The infrastructure is known as “small cell” technology, which is much smaller than a traditional cellular tower. They are small enough to be attached to other infrastructure that is typically located within the public right-of-way, such as street or traffic light poles or larger street signs. They service a much smaller geography and therefore require a higher concentration than a standard tower. This Ordinance outlines the requirements that must be met in order for a small cell to be placed within the public right-of-way as well as within each zoning district. The Ordinance provides standards for small cells attached to existing poles within the right-of-way, city-owned buildings and privately owned buildings. Fees and process are established by reference to the Wireless Facilities Guidelines. City staff including Principal Planner John Van Dyke, Engineering and Planning Director Justin Froseth, Public Works Director Mitch Bitz, City Administrator Jim Neubauer and City Attorney Brown met to discuss the creation of the ordinance and associated guidelines. Several cities including Grand Forks, Minot, Fargo and Bismarck have adopted a close variant of the proposed ordinance. This has established consistency between the larger cities in North Dakota. The ordinance was sent to

Verizon, T-Mobile/Sprint, and AT&T for comment. Most comments were taken into consideration by Verizon and T-Mobile/Sprint. AT&T has indicated several issues with the proposed ordinance. Attorney Brown's recommendation is to move forward with the proposed Ordinance as presented with no known issues occurring in other cities in North Dakota that have adopted a similar Ordinance.

Other telecommunication (125 feet or greater)

While working through the Ordinance changes related to telecommunications some limitations to the height of telecommunication transmissions towers has also been added. The telecommunications transmission towers are exempt from height limitations and in some districts do not require a conditional use permit. This opens the door to the erection of these structures adjacent to residential development with limitless height. The proposed changes would require towers exceeding one-hundred-twenty (120) feet to obtain a conditional use permit. The height of 120 feet was determined based on those in Mandan today. The Planning and Zoning Commission unanimously recommended approval at their March 23, 2020 hearing. No comments or opposition have been received for this iteration of public hearings. The Engineering and Planning Department recommended approval of Ordinance (Exhibit 1). In 2019, it was approved at the first consideration and since then some very minor changes in verbiage were made when reviewed by Attorney Brown and the tele-com companies. This passed the first consideration, then AT&T objected, it was pulled out and reviewed and revised as needed. Mayor Helbling stated that there were two emails received in opposition to this but they were responded to (by Commissioner Rohr) and addressed accordingly. Commissioner Rohr commented that if there has been opposition to this there has been no specific foundation.

Mayor Helbling announced this is a public hearing to consider the first consideration for the approval of Ordinance 1300 related to telecommunication towers in the right-of-way. He invited anyone to come forward from the audience or online to speak for or against the Ordinance. He stated there were two emails received and addressed regarding this matter accordingly. A second announcement was made for anyone to come forward to speak for or against Ordinance 1300. A third and final announcement was made for anyone in the audience or online to come forward to speak for or against Ordinance 1300 related to telecommunication towers in the right-of-way as presented in Exhibit 1. Hearing none, this portion of the public hearing was closed.

Commissioner Braun moved to approve the first consideration of Ordinance 1300 related to telecommunication towers in the right-of-way as presented in Exhibit 1. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: No; Commissioner Braun: Yes; Mayor Helbling: No. The motion passed.

3. *Consider approving the Resolution determining insufficiency of protest for Street Improvement District No. 218, Project No. 2019-12 (Northwest Area).* Planning and Engineering Director Froseth presented a request to move forward with the resolution determining insufficiency of protest for Street Improvement District No. 218, Project No. 2019-12 (Northwest Area). At the March 3, 2020 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. The Resolution of Necessity was published in the

Mandan News on March 6, 2020 and March 13, 2020 and notification letters were sent out to the property owners within the District. The 30-day protest period started March 6, 2020. Letters of protest were accepted until 4:30 pm on April 6, 2020 and by that time 29 protests were received. The protests received represent 4.9% of the area within the district. This is the percentage that ND Century Code requires the city to consider when determining the amount of protest vs. the 50% that would automatically prohibit moving forward. Other ways to look at the protest amount is if 6.5% of the number of properties protests this project and 24.8% of the estimated cost representation protest the project if the city would decide to not go forward with the Lewis Road segment down-scoping as recommended.

In reviewing the protests received, there is a very strong pattern of protests that are coming from those properties that are along Lewis Road and Clark Place, just west of 37th Avenue NW. These protests mostly came in petition style with the same letter contents. Their concerns can be summarized by the following. The Engineering Department expressed concerns stated below:

- Residents do not believe their roads are in that poor of condition and that it is their opinion that a chip seal could be done to extend life.

- ~ Engineering staff believes that a chip seal or mill and overlay would be minimally effective for this segment. However, staff is willing to recommend trying the chip seal of this segment given the overwhelming request by the property owners and the relatively low cost of a chip seal.

- Residents feel as though non-local traffic resulted in deterioration ahead of schedule.

- ~ This segment was used as a bypass for traffic during some of the Old Red Trail reconstruct project in 2016. That bypass time period was predominately in late summer, not earlier in the summer when conditions are softer. The project construction traffic would not have used this segment for their work. The increased traffic was predominately passenger vehicles. The conditions of Clark Place are some of the most deteriorated in this area and that would not have received this extra traffic.

- Because of COVID-19, residents were not able to collect enough signatures to cancel the project.

- ~ Although the City will receive petition style signatures so long as the pertinent information is included, the Engineering office does not consider the lack of that ability necessary when considering protest.

The total project cost that would be divided among district participants is estimated at \$2,257,562. It was previously stated that we would anticipate using Municipal Infrastructure Funds (formerly Prairie Dog Funds) at a buy down rate of 20%. Under that scenario, the reduction would be \$451,512 for a total of 1,806,050. However, because of the current price of oil being down drastically lower than was predicted to fill the Municipal Infrastructure Fund that buy down amount is question at this moment.

Director Froseth recommended approval of the resolution determining insufficiency of protest for Street Improvement District No. 218, Project No. 2019-12 (Northwest Area). The recommendation is to open those bids on Monday April 13, 2020, and the project for Lewis Road would be a chip seal instead of a reconstruct. He stated that the original scope presented to the residents on February 27, 2020, was to reconstruct all of Lewis Road up to 40th Avenue to Clark Place. After hearing comments and looking further into what there is up there, the project was down-scoped on a segment of Lewis Road (depicted on the map) from a reconstruct to a chip

seal. That's what was advertised for and that's what was requested for approval on March 17, 2020. After receiving an overwhelming majority, unanimous, protest letters stating they would like to see a chip seal as well. That is a change from March 17, 2020 to today (April 7, 2020) – To go with a chip seal based on the letters of protest to down-scope this area. The bid package is for a chip seal and not a rebuild on the Lewis Road segment just west of 37th and a reconstruct for the other section of the road plus Clark Place. With the City Commission's vote today, an addendum will be issued to down-scope the segment of Lewis Road and Clark Place.

Mayor Helbling commented he did not think that it would be wise to do until after the bids come in. Commissioner Rohr commented that using an oil base will be significant different now as compared to a few months ago. Commissioner Davis commented that with regard to a buy down on this project, using Prairie Dog Funds, wondering about that bucket of funds, in light of COVID19 and oil prices now, what is the insight on that? Administrator Neubauer replied that it is his opinion that the bucket is not yet filling based on the chart that the North Dakota State Treasurer's Office has published on their website that talks about how those buckets fill. He explained how the \$2.5 million dollars of the total \$6.6M if the first push goes out, which might not be until the 4th quarter of 2020 and the balance starting in 2021. He said the initial bucket has not started to fill; however, that is only his interpretation. Commissioner Davis wondered if the City can achieve the buy down, if that bucket fills slowly. His concern is the 20% buydown and if the City does not achieve that, it will cost more to the residents in that district. Mayor Helbling commented that we are far enough along on this project that if bids come back on Monday, we will have to see where the bids are before approving or not approving this project. Then discussions will need to occur with Finance Department. Due to COVID19, most cities will not be doing the projects they were going to do, but we will have to wait until the bids come in to see where Mandan will be going with projects. Commissioner Davis concurred with Mayor Helbling's explanation. Commissioner Larson stated that the biggest advantage is that engineering has handled this project up to this point and if it is determined the City does not have the funding, the City would not have put lots of money into the project. Mayor Helbling recommended waiting until the bids come in to decide what to do on the project and that will give the City more time to assess the situation with the Municipal Infrastructure Funds.

Mayor Helbling announced this is a public hearing to consider approval of the Resolution determining insufficiency of protest for Street Improvement District No. 218, Project No. 2019-12 (Northwest Area). He invited anyone in the audience, on the phone or the internet, to come forward to speak for or against the approval of this resolution. A second announcement was made for anyone to come forward to speak for or against this resolution.

Marc Montpleiser came forward to speak and stated he had a few questions regarding a chip seal and reconstruction. He is trying to determine the costs for each. Director Froseth explained that this is in regard to the reconstruct in one segment and the reconstruct on East 37th. He said that 8 or 9 years ago, the City worked with the contractor to dig out and replace stretches on Lewis Road and 34th Avenue. That cost was not assessed for those properties at that time and the City does not need to re-do that work. He outlined the recommended process, stating that it will have to first go through the Assessment Committee and then to the City Commission after the completion of the project, however, the City already determined it would be best to go segment by segment, and to chip seal the areas that have not been addressed for several years would be

most fair. That would have to be approved by the Special Assessment Commission for approval of the project.

Marc Montpleiser commented there has been a lot of discrepancy of people trying to figure out how the road reconstruct on both segments can cost each homeowner \$20,000 and now if the Prairie Dog Funds are not available – if this reconstruct job bid comes in higher or lower – what is the next step to deal with this? Director Froseth replied that if the City Commission accepts the City Engineer’s recommendation today, to down-scope Lewis Road from a reconstruct to a chip seal will be much less than the project reconstruction number that was in the letters that were sent out to residents. If the City Commission would still like to go ahead and receive bids calling for a reconstruct of Lewis Road, then there would have to be a re-evaluation of how much is too much, and that number is undetermined at this time because the letters received were to not reconstruct but to consider something else such as a chip seal.

John Lemieux, a resident who lives on Lewis Road inquired about the letters that were sent out because he knows of three residents that did not get letters about these projects. He said he found out from talking to neighbors about the project. He did get notices after he communicated via email with Director Froseth. He inquired if the City is aware of how many residents did not get notification. Director Froseth stated that he exchanged emails with Mr. Lemieux, with questions that are unique to his situation, He said that during the first round when sending letters out to inform people about the public input meeting, four of those letters were returned. He stated that he believes the letters did get to the intended residents with the exception of a few.

Dave Borr, a resident on Lewis Road, came forward and stated an objection to the process. He thinks there could be a significant amount of indifference if there are 450 parcels or homes affected in this district. There are home values of close to \$20,000 amid values that are under \$1,000 all in the same bundle. That’s more than 25 times in amount and that affects individual home owners. The bundling of the assessments in the districts is why you have the results you have protesting this. He objects to the process used in handling this due to the wide value of assessments. Mr. Borr stated he is concerned about the variance across 450 individuals.

Director Froseth said he presented on the percentage of costs and changing the scope, it was 24.5%. Mr. Borr commented that 4% protesting will not be enough to protest out. Some are highly assessed and some are lower assessed.

Mayor Helbling announced a third and final announcement for anyone in the audience to come forward to speak for or against the Resolution determining insufficiency of protest for Street Improvement District No. 218, Project No. 2019-12 (Northwest Area). Hearing none, this portion of the public hearing was closed.

Commissioner Larson commented that the bid amendment for the chip seal for Lewis Road is appropriate however commented that a chip seal on this road is like a temporary band-aid fix that will not solve the issue for a long term and the residents need to be aware that this is only a temporary fix. Mayor Helbling concurred with Commission Larson’s statement. The residents will need to know that this will not last long and a more permanent fix will have to be addressed again in a couple years. Commissioner Davis inquired if there is one more step to this project, in

particular, and that is, will the Prairie Dog funds apply? Mayor Helbling commented there is not enough protest to stop this project. He recommended getting the bids in in order to determine if a chip seal is necessary and if so, that will require another discussion at an upcoming commission meeting.

Commissioner Larson moved to approve the resolution determining insufficiency of protest for Street Improvement District No. 218, Project No. 2019-12 (Northwest Area) and move forward with opening bids on April 13, 2020 and to amend the bid package for chip seal for Lewis Road and Clark Place. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: No. The motion passed.

Mayor Helbling announced the time is 7:00 p.m. which is the time set for the Board of Equalization Meeting. A motion was made by Commissioner Rohr to recess the regular City Commission meeting to move into the Board of Equalization meeting. 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.

At 7:34 p.m. a motion was made by Commissioner Rohr to reconvene the regular City Commission meeting after the adjournment of the Board of Equalization meeting. 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.

4. *Consider approval of Mandan Land Use and Transportation Plan Amendment for area north of Mandan Middle School.* Principal Planner Van Dyke presented a request for the approval of a Mandan Land Use and Transportation Plan Amendment for an area north of Mandan Middle School. Eric Belanger and Wendy McNichols have submitted an application for an amendment to the comprehensive plan for approximately 550 acres in north Mandan. City staff from multiple departments met with the applicant or the applicant's representatives Steve Iverson and Jerod Klabunde on a number of occasions to address concerns or issues that needed to be addressed in order to provide a recommendation of approval to this Commission.

Exhibits 1 and 2 highlight the land use and transportation changes overlaid on one another for ease of review of the proposed changes. Exhibit 3 highlights an amendment that was necessary to obtain approval from Planning and Zoning Commission, resulting in no change to the current plan for that specific area. Exhibits 4 and 5 include the broader plan document providing analysis and evaluation related to the provision of utilities, such as water, waste water, and storm sewer. One of the primary changes is a proposed school site at the intersection of 38th and Sunset Drive. This site will be used as the anchor for other surrounding residential and commercial development in the vicinity. Other changes include adjustments to the alignment of an extension of Jude Ln. (collector) and to the alignment of Sunset Drive (arterial). Another change is the removal of some high and low density designations and replaced with medium density.

If approved, this amendment to the comprehensive plan would replace the future land uses and preliminary road layout presently planned for the area. The Planning and Zoning Commission recommended approval of the amendment as presented in Exhibits 1 and 2 with an adjustment of the area west of the Parks District property from medium density residential back to low density residential.

Planner Van Dyke reported there was opposition to a portion of the plan of the ridge regarding low density residential to medium density residential. Mr. Belanger brought back an amended plan and is amenable to changing the section back to low density residential. Planner Van Dyke pointed out that this is a 15-20 year development. The Planning and Zoning Commission recommended unanimous approval of the amendment as presented in Exhibits 1 and 2 with an adjustment of the area west of the Parks District property from medium density residential to low density residential. This is a high level plan.

Mayor Helbling announced this is a public hearing to consider approval of Mandan Land Use and Transportation Plan Amendment for area north of Mandan Middle School. He invited anyone in the audience on the telephone or internet to come forward to speak for or against the approval of this amendment. A second announcement was made for anyone to come forward to speak for or against this amendment. A third and final announcement was made for anyone in the audience or on the telephone or internet to come forward to speak for or against the approval of Mandan Land Use and Transportation Plan Amendment for area north of Mandan Middle School.

Commissioner Davis moved to approve the amendment to the comprehensive plan as presented in Exhibits 1 and 2 with an adjustment of the area west of the Parks District property from medium density residential to low density residential. 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.

5. *Consider approval of Ordinance 1337 related to Multi-use Shops.*

Principal Planner Van Dyke presented a request for the approval of Ordinance 1337 related to Multi-use Shops. He presented Exhibit 1, a draft Ordinance 1337 related to multi-use shops, commonly referred to as shop condos. The structures have become a popular type of construction and since they have become more popular several issues have arisen. This Ordinance seeks to address these deficiencies moving forward for all NEW multi-use shop construction. Existing shops could voluntarily apply if the owners collectively decide to apply. The purpose surrounding the proposed Ordinance is as follows:

- Multiple complaints have been received from occupants of multi-use shops regarding commercial rates being charged for utilities and insurance when the occupant is utilizing their respective unit for residential storage purposes, requesting the City provide a solution to this issue;
- Multi-use shops are being divided and used for purposes that they were not constructed to accommodate, creating health and safety hazards for all occupants within the structure;
- When the number of units and corresponding square footage of each unit is amended the administration of special assessments for each resulting unit is unnecessarily burdensome.

The Public Works Department has indicated multiple times that shut-offs for individual units are inaccessible, leading the City to continue providing services without receiving payment for such services. No public testimony on the matter was provided at the meeting and no comments have been received by staff. The Planning and Zoning Commission recommended approval of the proposed Ordinance for multi-use shops at their March 23, 2020 public hearing.

Mayor Helbling announced this is a public hearing to consider approval of Ordinance 1337 related to Multi-use Shops. He invited anyone in the audience or on the telephone or internet to come forward to speak for or against the approval of Ordinance 1337. A second announcement was made for anyone to come forward to speak for or against Ordinance 1337. A third and final announcement was made for anyone in the audience to come forward to speak for or against the approval of Ordinance 1337 related to Multi-use Shops.

Commissioner Larson moved to approve the first reading of Ordinance 1337 related to Multi-use Shops. 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.

6. *Consider approval of a preliminary plat and final plat, for Replat of Lots 1 & 2, Block 1, Mandan Industrial Park and variances for a setback to I-94 corridor and number of approaches.* City Planner Van Dyke presented a request to consider approval of the preliminary and final plat for Replat of Lots 1 & 2, Block 1, Mandan Industrial Park and variances for a setback to I-94 corridor and number of approaches. He said that the applicant is proposing to combine two industrial lots into one lot for the purposes of building expansion. The City requires a subdivision grading/storm water plan to be submitted in tandem prior to the final plat approval. However, these plans will be required for any commercial/industrial building permits and therefore will be addressed at the building permit phase of the applicant's development. In addition, this plat is simpler than others, as it seeks to dissolve the property line that exists between the two lots to create one, large industrial lot. Staff is recommending approval of the preliminary and final plats as shown in (Exhibits 2 & 3). In addition, there are two setback variances:

I-94 Setback Variance

The applicant is also seeking a variance to the Gateway Overlay District setback to I-94 from forty-five (45) feet to twenty (20) feet for the existing structure and from forty-five (45) feet to forty (40) feet for the building expansion.

Below are the requirements under the Mandan Code of Ordinances in granting a variance.

Variance may be granted under the following circumstances (See Sec. 105-1-12):

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

The existing building was constructed long before the establishment of the 45' Gateway Overlay setback requirement. The building currently encroaches 25' into the setback (See Exhibit X). The proposed addition is seeking to encroach 5' into this setback. Building expansion options are limited due to the existing building's placement and functionality. Adding square footage to another portion of the building would provide the space but not where the space is needed to work with the layout of the existing facility. If this was an entirely new building then it would be easier to design and construct without encroachment into the setback.

The existing building creates circumstances that are peculiar to any building addition.

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

The findings for granting a variance are as follows:

- The existing building was constructed prior to the establishment of the forty-five (45) foot Gateway Overlay District setback requirements.
- The existing structure already encroaches into the setback by twenty-five (25) feet.
- The proposed addition would encroach into the setback by five (5) feet.
- Applying the strict application of the setback requirements would deprive the applicant of the ability to expand the structure as needed to function seamlessly with the existing structure.
- The applicant has designed the facility expansion so as to minimize encroachment into the setback.

3. *The grant of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

The granting of the variance will be in harmony with the general purposes and intent of this chapter and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Limit to Number of Approaches Variance

Cloverdale Foods would like relief from the limit of two approaches. Six approaches currently exist along 840 feet of street frontage (Exhibit 6). Cloverdale is seeking to obtain one additional approach to serve their expansion for a total of seven approaches. In the process, they will relocate one approach and install greenspace along the corridor to allow for storage of snow. Parking currently exists in some locations within the right-of-way and through this redevelopment project these areas will be converted to a landscaped boulevard. Staff is recommending approval for relief from the maximum number of approaches requirement for the reasons specified in Exhibit 7. If approved, staff also recommends that the grass be established prior to the installation of the new driveways. This requirement is also included in Exhibit 7. The Planning and Zoning Commission recommended unanimous approval of the preliminary and final plat, as well as the variance to the setback requirement. The approach setback variance is solely at the discretion of City Commission and staff recommends approval of the request.

Mayor Helbling announced this is a public hearing to consider approval of a preliminary plat and final plat, for Replat of Lots 1 & 2, Block 1, Mandan Industrial Park and variances for a setback to I-94 corridor and number of approaches and he invited anyone in the audience, on the telephone or internet to come forward to speak or comment. A second announcement was made for anyone to come forward to speak for or against this request. A third and final announcement was made for anyone in the audience, on the telephone or internet to come forward to speak for or against the approval of a preliminary plat and final plat, for Replat of Lots 1 & 2, Block 1, Mandan Industrial Park and variances for a setback to I-94 corridor and number of approaches.

Commissioner Rohr moved to approve the preliminary plat and final plat, for Replat of Lots 1 & 2, Block 1, Mandan Industrial Park and variances for a setback to I-94 corridor and number of approaches. 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.

E. BIDS:

F. CONSENT AGENDA

1. *Consider approval of annual liquor license for Bis-Man Stock Car Association at Dacotah Speedway for May – October.*
2. *Consider approval of Special B Liquor Permit for Bis-Man Stock Car Association at Dacotah Speedway for July 2, 3, 4, 2020.*
3. *Consider approval of the following proclamations: (i) Proclaiming April 12-18, 2020 as National Public Safety Telecommunications Week in the City of Mandan; (ii) Proclaiming April 7, 2020 Mayors Day of Recognition for National Service in the City of Mandan.*
4. *Consider approval of a Minor Plat for Legacy Law Addition.*
5. *Introduction and First Consideration of Ordinance 1338 which will amend and re-enact section (h) of Sec. 24-7-17 Parking of certain vehicles and trailers restricted; and section (c) of Sec. 24-7-18 Restrictions on consecutive parking of the Mandan Code of Ordinances.*
6. *Consider approval of Memorandum of Offer to Landowner with the NDDOT for small Main Street parcels.*
7. *Consider Abatement Application from HM4 LLC.*
8. *Consider approval of the transfer of \$7,500.00 from the Police Equipment Reserve Fund to the Police Department 2020 Capital Outlay Budget (121-62114) for K9 vehicle equipment.*

Commissioner Rohr moved to approve the Consent Agenda items 1 through 8 as presented. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

G. OLD BUSINESS:

H. NEW BUSINESS

1. *Consider Mandan Growth Fund Committee recommendations:*
 - (i) *Cloverdale Foods Co. application for a new and expanding business property tax exemption for building additions. (In conjunction with Public Hearing No. 1).*

Commissioner Davis moved to approve the MGF recommendation for the approval of the requested 100% 5-year property tax exemption on the value of the building additions for Cloverdale Foods Company. 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.

(ii) *Cloverdale Foods Co. application for PACE interest buy down.*

Business Development & Communications Director Huber presented a request from the Mandan Growth Fund (MGF) Committee regarding an application for an interest buy down for Cloverdale Foods to finance building additions and equipment. During a March 25, 2020, a MGF teleconference meeting, the committee reviewed an application for an interest buy down by Cloverdale, a company in existence in Mandan for more than 100 years that makes a variety of meat products. The applicant will be utilizing the Bank of North Dakota (BND) Partnership in Assisting Community Expansion (PACE) program. The BND PACE program is for primary sector businesses with buy down amounts based on minimum investment or jobs creation. The maximum buy down available from the BND under the PACE program is \$500,000. With a required 35% local share, this puts the local match at \$269,231. Cloverdale is seeking half of the required local share, or \$134,615.39 from the City of Mandan and will seek the other half from the City of Bismarck. The buy down will reduce financing costs to 1% for 12 months on a \$12.5 million loan toward permanent financing on building addition and site costs and also for 60 months for a \$2.5 million loan for equipment.

The MGF voted to recommend approval of the interest buy down for Cloverdale Foods Company with a local match of \$134,615.39 to be structured as a 0% interest repayable loan, to be repaid within 5-years following the 5-year buy-down period. All origination and service fees are to be paid by the applicant. Contingencies include approval of the other half of the local share by the City of Bismarck plus overall loan approval by the lead lender and Bank of North Dakota.

Commissioner Larson moved to approve the interest buy down for Cloverdale Foods Company with a local match of \$134,615.39 to be structured as a 0% interest repayable loan, to be repaid within 5-years following the 5-year buy down period, subject to all other requirements and contingencies as outlined. 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.

Mayor Helbling extended a thank you to Scott Russell and Cloverdale Foods Management Staff for their services to the community.

2. *Consider approval of advertisement for bid for the Raw Water Intake project, Phase 1A.* Planning and Engineering Director Froseth presented a request to advertise for the bid of the Raw Water Intake, Phase 1A. AE2S has been working the past couple of months on a plan to change some of the bid packages and design scope in order to bring the cost down from what it was projected to be after opening the Phase 1 bids in October and rebid. Laith Hintz with AE2S was in attendance to present the Raw Water Intake project re-bidding effort and revised costs. This business item today is to consider approval of an advertisement for bid for Phase 1A.

A summary of the key power point items presented by Laith Hintz, PE, AE2S are summarized:

- Reviewed construction techniques and components for possible cost-savings and discussions with potential contractors
- Funding
 - ~ Revised planning budget is \$29.964M (based on today's budget)
 - ~ Continue coordination with SWC for additional cost-share support (no guarantee)
- Project Budgets
 - ~ Participation established in MOU between City and Marathon
 - i. Based on 50/50 split of local share
 - ~ Anticipated funding
 - i. Approved SWC cost-share assistance of \$12,627,420 as of June 2019
 - ii. City local share funded by SRF loans or bonds
- Proposed Schedule: Design/Bid March-May; April-June Phase I&II steps staggered and then June 16, 2020 to City Commission to consider bid awards

AE2S and the City have been in contact with all the partners in this project to this point including the Marathon Refinery and the State Water Commission. The bid advertisement allows the City to hold bids for 90 days in order to secure financial commitments. The City may be seeking an increase in commitment from the State Water Commission at the June 2020 meeting after all phases of bids have been opened. With the revised estimate now at \$30M for total project, the City can expect the local match to go from about \$4.1M estimated last year when budgeting to about \$6.0M now based on the new numbers. This estimate is assuming that the other funding partners, Marathon and the State Water Commission, can match at percentages already agreed to. Though they have yet to formally agree to, they have been consulted with and discussions have been favorable to seeing their match. Discussions will continue with SWC and Marathon as the project moves forward. Discussion ensued on the city's cost share if the SWC does not contribute. Mayor Helbling commented that the City would not expect the engineering consultant fees to go above the initially agreed to amount. He stated that as long as the engineering fees are fixed and the cost does not go over the agreed amount he does not have a problem with the request. Mr. Hintz stated that without authorization to go beyond that, he would not go beyond what is in place.

Commissioner Davis moved to approve the advertisement for bid of the Raw Water Intake, Phase 1A contract. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *Consider altering the 2020 spring cleanup week, specifically eliminating the curbside collection for 2020 Spring Clean Up Event, due to Covid-19 Pandemic and waive residential disposal fees the week of April 20.* Director of Public Works Bitz presented a request to consider altering the 2020 Spring Cleanup week, specifically eliminating the curbside collection for 2020 Spring Clean-up event, due to Covid-19 Pandemic and to waive residential disposal fees the week of April 20. He explained that due to an uncertainty if there could be a chance of any cross contamination that could take place from residence to residence or from residence's debris pile to staff working the event. There are many instances when items are set out for disposal and then removed from the curbsides by other residents and subsequently these items are taken home. If

people transport these possibly contaminated items into their family homes, the community stands a risk of increase of Covid-19 cases within or possibly outside of our community. It has been the City's practice to hire outside labor forces to assist during the week of spring cleanup. The hired personnel commonly interact with our staff and our equipment and this also increases risk to Public Works staff, which could prove to be detrimental to the City of Mandan. As an alternate to picking up the debris at the curbside as has traditionally been done, the Public Works Department is proposing to allow all residents that live within the City of Mandan to bring all approved items to the City of Mandan Municipal Landfill free of charge from April 20 – April 25, 2020 and thereby there would not be any curbside pickup conducted. It may be possible to do curbside in the fall of 2020 and that can be visited at a later time.

As a reminder to residents the following items will be charged normal disposal rates or will not be accepted at the Mandan Landfill:

- Tires - During spring clean-up week the landfill will charge \$2 per tire
- Paint must be dried with the lid off and taken to the landfill. (Paint can be dried using sawdust, sand, or an absorbent)
- Refrigerated appliances must be free of food prior to dumping

Residents were reminded they will need to show proof of residency when asked by staff. Director Bitz recommended eliminating curbside collection for the 2020 Spring Clean Up event due to Covid-19 and a request to waive the disposal fees for City of Mandan residents at the City of Mandan Municipal Landfill starting, April 20 through April 25, 2020. The hours of operation will be 8:00 a.m. to 4:45 p.m. each day the landfill is open for the event.

Commissioner Rohr moved to approve eliminating the curbside collection for the 2020 Spring Clean-Up event due to the Covid-19 Pandemic and to waive residential disposal fees for City of Mandan residents at the City of Mandan Municipal Landfill starting during April 20 through April 25, 2020 and the hours of operation would be 8:00 a.m. to 4:45 p.m. each day the landfill is open for the event. 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.

Director Bitz stated a point of clarification that the Mandan Messenger went to print with the caveat that it may be changed, which might be conflictive so he recommended following the City of Mandan website for specific information regarding this 2020 Spring Clean-up Week in the City of Mandan. SEE: cityofmandan.com Spring Free Landfill Week guidelines or call the Public Works Department (701) 667-3240.

I. RESOLUTIONS AND ORDINANCES

1. *Second and final consideration of Ordinance 1336 related to a Zoning Map Amendment for proposed Longhorn Second Addition.* City Planner Van Dyke presented a request to approve the second and final consideration of Ordinance 1336 related to a Zoning Map Amendment for proposed Longhorn Second Addition, the Humane Society property. The zone change will align with future land use. The Board unanimously passed a land use amendment, first consideration of the rezone request, and preliminary plat for the property. A final plat will be presented at a future date. For reference, all exhibits related to previously approved portions of this application

have been included as part of this staff report. The future land use for this property is commercial and rural residential. The proposed zone change aligns with the City's Land Use and Transportation Plan. There were no comments or opposition received since the first reading.

Commissioner Larson moved to approve the second and final consideration of Ordinance 1336 related to a Zoning Map Amendment for proposed Longhorn Second Addition. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *Second and Final consideration of Ordinance 1314 related to outdoor seating.* City Planner Van Dyke presented a request to approve the second and final consideration of Ordinance 1314 related to outdoor seating. There have been no comments or opposition received since the first consideration. This will open up to businesses of all type, not specific to just outdoor seating only and will provide flexibility to all business owners. Commissioner Davis moved to approve the Second and final consideration of Ordinance 1314 related to outdoor seating. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *Consider resolution regarding a moratorium pertaining to the retail sale of alcoholic beverages.* City Administrator Neubauer presented a request to consider a resolution pertaining to the retail sale of alcoholic beverages. Bars and restaurants closures have been hit especially hit hard due to COVID-19. The City has received requests for establishments that have on sale liquor with food to be able to sell alcohol to customers ordering delivery of prepared food. The cities of Fargo, Minot and Jamestown are a few cities that are allowing this. Bismarck has had discussion but at this time, it is not on the table. The resolution would be effective through the date the Governor lifts COVID-19 restrictions. The possible objection would be from owners of establishments where on and off sale is allowed. We have not surveyed these license owners at this time. The other cities have not encountered any problems with this temporary practice and this has allowed businesses to move their inventory. In discussing this with various departments that this would affect, they do not see it as a significant issue. Commissioner Larson requested clarification be sought on what would be considered a sealed container, in particular, mixed drinks would not be served in a to-go cup with a straw. She encouraged coming up with a solution with the Police Chief and the establishments to assure residents remain safe. Attorney Brown stated that the burden for a solution would be on the establishment if they wish to participate, they will have to comply with the ND open container laws.

Commissioner Larson moved to approve the resolution pertaining to the retail sale of alcoholic beverages. 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.

Commissioner Larson inquired as a point of clarification if this arrangement will expire when the governor's mandate is lifted. Administrator Neubauer drafted the language pursuant to the Governor's Executive order and stated that it will expire when the Executive order expires.

J. OTHER BUSINESS:

1. COVID-19 Update: The City of Mandan has been in regular contact with League of City conference calls. Administrator Neubauer reported that:

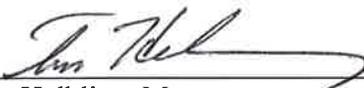
- Many City Staff employees are working from a home
- Split shifts are in place for certain departments
- Equipment is constantly being cleaned
- Additional rooms in City Hall are being used for office space to allow for social distancing of employees
- City Hall has been closed to the public. Telephone call-in requests are welcome and on-line functions are in place
- Virtual meetings are held rather than in-person
- Technology for public hearings are set up for internet or call in

K. ADJOURNMENT:

There being no other business to come before the Board, Commissioner Davis motioned to adjourn the meeting at 8:30 pm. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present.



James Neubauer
City Administrator



Tim Helbling, Mayor
Board of City Commissioners