

The Mandan City Commission met in regular session at 5:30 p.m. on April 21, 2009 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Jackson, Gangl and Serhienko. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Fire Chief Nardello, Planner Baehurst, Business Development Director Huber, Engineering Project Manager Bechtel, City Assessor Barta and Director of Public Works Wright.

Mayor Helbling indicated that he has one additional agenda item:

1. Request for Meeting Notices: On April 10, 2009 a request was received from a Mandan resident regarding open records and providing meeting notices. Mayor Helbling and the Mandan City Administrator have consulted with the Attorney General office and the Mandan City Commission legal counsel. The City Commission will not address items that are related to the Mandan Public School Board or the Mandan Park Board. Mayor Helbling stated that if any resident would like to receive notice of any public meeting that the City is required by ND Law to do, the following options are available:
 - 1) Register at the City of Mandan website @ www.cityofmandan.com. By registering, an automatic email notice will be sent
 - 2) Contact City Hall Offices, ATT: Deb @ 701-667-3215. You will have the option of having the notice faxed, emailed, or mailed.
 - 3) The City Administrator’s office provides all information regarding public meetings to the local newspaper publications: the *Mandan News* and the *Bismarck Tribune*.
 - 4) Meeting notices are posted outside of the meeting location. For City Hall, it is on the bulletin board located outside the Ed “Bosh” Froehlich Meeting Room.
 - 5) There is an electronic sign on the east side of Main Street. The majority of the public meetings are posted there that include the City Commission Meetings, the Park District Meetings and the School District meetings.

Mayor Helbling provided the details of an email request from Susan Beehler, Mandan City resident requesting she be provided notice to the Advisory Community Center Group/Council/Board, The City of Mandan, the Mandan School Board and the Mandan Park Board meetings and/or any meeting that includes a Mandan Commission member.

Mayor Helbling replied: Committee meetings that are the responsibility of the City and for which a legal notice is required will be mailed to Ms. Beehler at the email address as provided. In the case of the general public, the notices can be mailed, faxed or via one of the communication options as listed previously. Regarding the Mandan Community Center Advisory Board, Cole Higlin, Parks and Recreation Board provides public notice as required for these meetings. The Park and Recreation Department has been notified to forward meeting information as it becomes available. By registering with the City of Mandan website, notices can be received via that communication alternative. Mayor Helbling stated that in response to Ms. Beehler’s request to be notified of any meetings that includes a Mandan Commission member, that notice of meetings which are not subject to a legal notice requirement will not be emailed to you (Beehler). At the present time there are no portfolios held by more than one commissioner therefore there is no notice required. The above responses from the City of Mandan Commission were sent to Ms. Beehler by the City Administrator’s office. Mayor Helbling reiterated that the City of Mandan will make all attempts possible to notify the public of the meetings scheduled as required by ND Law again reviewing all the options that are available.

MINUTES:

1. Consider approval of minutes from the following meetings: January 6, 2009 and March 17, 2009. Commissioner Jackson moved to approve the minutes as presented for January 6, 2009 and March 17, 2009. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. Public Hearing to consider alternatives for North-South Beltway Corridor. Steve Grabill, PE, PTQE, Ulteig Engineers presented information regarding the Bismarck-Mandan Regional North-South Beltway Corridor Study. Grabill provided a power point presentation depicting the study plans. Focus on the Morton/Mandan City side was reviewed. The initial review consisted of Hwy 25 and sub-extensions of that highway. Initially this study began as a study of an interchange on the west side of Mandan. Grabill reviewed the key reasons for the study:

- Plan for future growth
- Build consensus
- Identify responsibilities
- Establish local priorities
- Common beginning of roadway
- Corridor enhancements based on need
- Key facts regarding beltway
- Short intermittent range
- Long range typical sections
- Corridor comparisons among alignments

Grabill reviewed the conclusions as a result of the study:

- A beltway is needed
- Preserve beltway corridor
- Interchange location should be preserved

Report recommendations outlined:

- Short term 0-5 years
- Mid term 6-10 years
- Long term 10-20+ years
- Recommended alignments

Grabill stated that public participation will be necessary. He stated that they have met with the planning commission and they have supported what the staff has discussed. The staff has requested that we provide a Decision Document like this for each jurisdiction. It is intended to help jurisdictions see what decisions need to be made. Mr. Grabill concluded his presentation.

Mayor Helbling announced that this is a public hearing and asked for comments from the audience. Hearing none, this portion of the meeting was closed. Mayor Helbling directed the Commission members attention to the Decisions Document handout that included two questions that will need to be addressed in order for Ulteig Engineering to move forward. Mr. Grabill stated that he recently provided a revised handout that included three questions. The third question has to do with the Beltway name explaining

that Bismarck may consider changing or dropping the designations. The Project Decisions questions are as follows:

- No. 1: Should the 24th Avenue corridor be preserved according to current City and County standards as the beltway (minor arterial) route? (Yes or No)
No. 2: Should right of way be preserved for an I-94 interchange at 24th Avenue? (Yes or No)
No. 3: Should the beltway designation be eliminated in reference to these corridors? (Yes or No)

Regarding the above questions, Mayor Helbling stated that it is important that the Commission be up front with citizens that this is what the Commission guesstimates the future use of the property will be. And the buyers also need to know that also when they are selling. Commissioner Jackson inquired about Ulteig's position on calling it a beltway and if indeed the speed will be up to 65 mph. Grabill replied that design speed is what is used. Mayor Helbling again stated the importance of communications to the citizens regarding the Commission's intentions and that a name change is probably not going to change what it is. Commissioner Serhienko concurred with Mayor Helbling.

Commissioner Serhienko motioned to allow the beltway to stay as the designation. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

BIDS:

CONSENT AGENDA:

1. *Consider approval of monthly bills.* The Commission approved of the monthly bills.
2. *Consider the following abatements:*
 - i. *James Johnson – Disabled Veteran*
 - ii. *Rodney Morrow – Disabled Veteran*
 - iii. *Harold House, Jr. – Disabled Veteran*The Commission approved of the following abatements: (i) James Johnson, Disabled Veteran; (ii) Rodney Morrow, Disabled Veteran; (iii) Harold House, Jr, Disabled Veteran.
3. *Consider acceptance of Traffic Safety Contract for FY 2009.* The Commission approved of the Traffic Safety Contract for FY 2009.
4. *Consider approval of raffle for Blue Knights (Make-A-Wish Foundation) for May 9, 2009.* The Board approved of the raffle for Blue Knights (Make-A-Wish Foundation) for May 9, 2009.

Commissioner Serhienko moved to approve the Consent Agenda as presented. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

OLD BUSINESS:

NEW BUSINESS:

1. *Consider the creation of, approve the feasibility report for, approve the plans and specifications for, and authorize the advertisement of the Resolution of Necessity for*

the following Project Numbers 2009-06 through 2009-11:

- i. Street Improvement District No. 155 Areas A & B 27th St NW – 12th Ave to 8th Ave NW Old Red Trail – Collins Ave to Sunset Dr NW*
- ii. Street Improvement District No. 156 Areas A, B & C, Division St NE – Collins Ave to 8th Ave NE 14th St NE – Collins Ave to 3rd Ave NE 3rd Ave NE – 5th St NE to 14th St NE*
- iii. Street Improvement District No. 157 Main Street – Mandan Ave to 10th Ave SE*

Project Engineer Bechtel presented a request for the creation of, approve the feasibility report for, approve the plans and specifications for, and authorize the advertisement of the Resolution of Necessity for the following Project Numbers 2009-06 through 2009-11 at i. ii. iii. outlined above. The six projects are part of the Stimulus Project that was brought before this Board in January 2009 for approval. Bechtel stated that his office was tasked with an assignment of putting a cap on the federal funds for the stimulus projects. Each project has been given a federal cap. Bechtel explained that by capping the funds, the city could either lose certain amounts of federal money or possibly have to provide certain amounts of money to complete the projects. Bechtel stated that based on the capping activity, it was necessary to put street improvements into place as a provision for future financing by special assessments or other means if that would have to take place. Mayor Helbling inquired if these were on the short term list in Terra Valley? Bechtel answered yes, that is correct. And in Diane's Addition, would this boundary cover those street maintenance projects also? Bechtel replied those would be covered as a separate boundary because for each of these districts the public does have a protest period to which they can object to the project.

Commissioner Jackson commented that he has had discussions with Mr. Bechtel regarding these properties when they had been previously discussed. Generally speaking, even improving these special assessment districts, overall this should save those people in those districts a significant amount of special assessments as these are projects that are in need to be done and the federal government will hopefully be paying a large chunk if not all of these.

Bechtel replied that is correct and it is hoped that all these come in under bid and if that is the case we could see these districts of no use to the City. However, the intent at this time is to look at future funding and to provide that information if needed.

Commissioner Jackson moved for the creation of, approve the feasibility report for, approve the plans and specifications for, and authorize the advertisement of the Resolution of Necessity for the following Project Numbers 2009-06 through 2009-11: Street Improvement District No. 155 Areas A & B, Street Improvement District No. 156 Areas A, B & C, Street Improvement District No. 156 Areas A, B & C. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

- 2. Consider agreements with Dakota Commercial and Development Company for development of certain city-owned properties 200 West Main, 111 First Avenue NW, and 118-120 Second Avenue NW)*
 - i. Purchase agreement*
 - ii. Business incentive agreement*

Business Development Director Huber presented a request for consideration for agreements with Dakota Commercial and Development Company for development of certain city-owned properties (200 West Main, 111 First Avenue NW, and 118-120 Second Avenue NW: (i) Purchase Agreement and (ii) Business incentive agreement. Huber stated that this property is formerly known as the Furniture First Building and other properties, referenced as A, B, C. Huber provided the following background: The City in January of 2008 issued a request for redevelopment of these properties. Four responses were received at that time. Those developers were invited to come in on last April 1st. Huber stated that tonight we are dealing only with the property on 200 West Main. The other properties will be discussed later. Huber reviewed the timeline of events that have transpired on this project. Kevin Ritterman, the president of Dakota Commercial Development will be speaking tonight on the business highlights. Subsequently, a review of the purchase agreement was done. Ritterman provided a power point viewing of the property. He stated there are no tenants as of yet, however there are prospects that are interested. In review of the building tenant interests, he stated that construction is being planned to allow businesses such as banks or restaurants as occupants. He said that there will be 25-30 apartment type units located above the commercial portion of the building. These tenants will require Site A parking. Site B will have parking on it and that parking issue will be determined and discussed at a later time. Site C is designed to have a drive-up with parking available. Construction is being planned to commence on the Century 21 Building by mid-May, possibly sooner. There has been a Renaissance approval received from the State. Regarding Site A approvals, there will be a TIF request for real estate tax abatements.

Business Development Director Huber directed the Board's attention to the Purchase Property Agreement. This agreement would provide for the sale of these properties for \$1 each and the reason being that we went out for request for qualifications rather than putting these on the open market in attempts to get that downtown redevelopment step. The Purchase Agreement stipulates that the City would retain the rights to see through the recommendations of the downtown parking study. Huber stated that Dakota Commercial and Development has indicated an intent to apply for Renaissance Zone benefits to include the five-year property tax and state income tax benefits for the entire project. Based on the above, Huber recommended approval of the purchase and business incentive agreements noting that 1) final site and building plans will be subject to the final approval of the Mandan Architectural Commission; 2) requests for renaissance zone and tax increment financing will be subject to standard review and approval processes and 3) site and building plans will be subject to the approval of the Mandan Remediation Trust and the ND Dept of Health.

Regarding Site B on the maps that were discussed, Mr. Ritterman stated that it is assumed that that area will be needed for parking space and provided a viable explanation for future parking needs in this area.

Commissioner Jackson moved to approve agreements with Dakota Commercial and Development Company for development of certain city-owned properties 200 West Main, 111 First Avenue NW, and 118-120 Second Avenue NW) (i) Purchase agreement (ii) Business incentive agreement - with the provisions that the final site and building plans will be subject to the approval of the Mandan Architectural Commission; the

requests for renaissance zone and tax increment financing will be subject to standard review and approval processes and, the site and building plans will be subject to the approval of the Mandan Remediation Trust and the ND Dept of Health. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

3. *Consider electronic door issue for 103 2nd Ave. NW.* Richard Barta, City Assessor, presented a request for an exemption from Ordinance No. 1048 Electronic Doors due to the installation being technically infeasible. Mr. Barta stated that he has inspected the premises and concurs with the recommendation received from Superior Glass, Inc., stating that it is not possible to install an automatic door. Mr. Barta stated that Mr. Goetzfridt, the owner of the building has plans to install an electronic door into the building, however, not at this particular location. Attorney Brown stated that the proper procedure for this would be that the Commission approve a waiver of the requirement of the automatic door as required under Ordinance No. 1048 due to it being technically infeasible due to the structural problems of the building.

Commissioner Serhienko moved to approve the granting of a waiver of the requirement of the automatic door as required under Ordinance No. 1048 due to it being technically infeasible due to the structural problems of the building at the property located at 103 Second Avenue Northwest, Mandan, North Dakota. Commissioner Gangl seconded the motion.

Susan Beehler, a Mandan City resident came forward to speak. She stated that she had photos of the property for viewing if anyone would be interested. She stated that she called the Justice Department. She stated that the electric door technically is a problem but, that does not negate because if there is an addition or alteration to this building being done then this falls under ADA law. Beehler stated that what the Justice Department said is that the ADA law is federal and so what we can do as citizens that are advocating for ADA accessibility is we can ask that business owner to put a ramp or something to make that door level so they can get in. The electronic part, maybe that is technically infeasible but that does not negate that it is ADA compliant. In the letter that was attached to the Agenda packet it says that it does not comply to ADA code and once you do an alteration on a building it does fall under the jurisdiction and I can leave copies with Mr. Neubauer, the one thing to be addressed is that because there were alterations done to the building it needs to be ADA accessible. Not necessarily have an electric door, but it has to have a ramp. If you go along the sidewalk, and I don't know whose responsibility, the City or if it is the owner of that building, but that sidewalk, and I have pictures of that, that sidewalk just in the condition it is in, is not ADA accessible. There are drops and dips in the sidewalk and it is in very poor condition. Also by having the parallel parking, the angle parking, it causes it to go into the pathway of a wheelchair also. The parking would be better to be parallel to give that width room. So just because the door would not be installed it does not negate responsibility that ADA would have. So what we would do is ask the owner to make that door ADA accessible meaning that he install some kind of sloped ramp. There are instructions and vendors out there that would help with that. Then I don't know if it's the city's responsibility or the owner of the property with the sidewalk. These are items that are not being addressed by the city or the owner making ADA accessibility. So whoever is responsible the first step is to ask the owner

and then the second step is the City if they choose not to address it or whatever, then we will file a complaint with the Justice Department to have the ADA addressed.

Mayor Helbling: Thank you for your comments. This matter was discussed with Mr. Barta previously and it does not appear to be a problem to provide the proper ramp. Mr. Barta will follow up with this matter. The City will do whatever is possible to make it right and that whoever applies for these that it is feasible for them to make the improvements.

Ms. Beehler replied that this is not a decision to be made by Mr. Barta in that it is a federal law and a civil rights issue. So if the city cooperates with the owners and we advocate for it then we have a win-win for our city and for our people that need that access to a building.

Francis Herauf, a Mandan City resident came forward to speak. He stated that he did go look at that door and he told Mr. Barta to find out what the cost is going to be because it is feasible to have it done. Mr. Herauf stated that he wants it done and what the cost is to drop that so that an electric door is on there. He stated that it is his opinion that it is feasible and he wants to know what the cost is going to be and if it's going to be expensive then he wouldn't do it but if it's not going to be that expensive then why not do it.

Mayor Helbling replied that he is not a licensed contractor however; being an owner of rental properties and after having looked at this project, an estimate of \$15,000 could be a possibility. It could be a considerable expense and hopefully the alternatives will accommodate everyone here.

Mayor Helbling stated there is a motion and a second on the floor. Roll call vote indicated: two in favor, two in opposition, a split vote. Commissioner Jackson stated that he would like to see the matter tabled to see what alternatives are possible. Mayor Helbling called for a roll call vote: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: No; Commissioner Serhienko: No; Commissioner Helbling: No. Based on the roll call vote, the motion failed.

Mayor Helbling asked that an estimate be provided before any further action on this matter is taken. Commissioner Jackson addressed Mr. Goetzfridt by stating that it is appreciated that he is trying to move forward with the storefront improvement project.

Discussion ensued about lowering the sidewalk to meet the requirement. Commissioner Jackson stated that for future purposes and setting a standard as to how to handle these matters, and although an inconvenience, that an estimate should be provided in order to make an informed decision as to how this fits into granting a variance. It was recommended that a written estimate be obtained and this matter will be discussed at a future meeting.

RESOLUTIONS AND ORDINANCES:

1. *Consider first reading of Ordinance 1051 An Ordinance To Amend Section 7-01-07(5) of the Mandan Municipal Code Relating To Fireworks.*

Commissioner Jackson moved to approve the first reading of Ordinance 1051 An Ordinance To Amend Section 7-01-07(5) of the Mandan Municipal Code Relating To Fireworks. Commissioner Tibke seconded the motion.

Commissioner Jackson stated that a Committee was organized in August 2008 pursuant to complaints filed by Mandan citizens regarding fireworks. Concerned residents attended committee meetings expressing concern about the type-of and the amount-of debris the fireworks left behind. The committee reviewed the ordinance and agreed that it was somewhat difficult to interpret. The ordinance can be found at Section 7-01-07(5) of the Mandan Municipal Code @ 3301.1.3 Fireworks which is part of the international fire code. We are dealing with Subsection 3: Fireworks are banned except in limited circumstances and subsection 3 speaks to personal use of fireworks. The Committee of 4 designated individuals, reviewed many things including but not limited to: the lateness of time. Commissioner Jackson explained that when the committee initially sought individuals as its members, there was no one person that came forward to serve on the committee that was “pro fireworks”. Due to that dilemma, the meeting formation and meeting schedules prompted a delay. There were 3 citizens that were interested in sitting on the committee and all 3 were interested in banning fireworks. Subsequently, Rod Feldner was invited to sit on the committee. Fire Chief Nardello and Police Chief Bullinger were invited to sit on the committee due to their roles in fire prevention and enforcing city ordinances. Commissioner Jackson stated that he attempted to look for Mandan citizens who would be pro fireworks to be prospective committee members. Commissioner Jackson stated that there were ten fires attributed to causing fires in the Mandan community during the 2008 fireworks season. The fire damages cost the City of Mandan \$2,000 for firefighter personnel, excluding wear and tear on vehicle use and gasoline or diesel fuel costs. Some of those calls involved police force for fire control at the respective locations. For purposes of the ordinance and the audience as well, sky rockets, bottle rockets, roman candles and any item that fits within those definitions, are illegal under the ordinance. The ordinance allows fireworks use between the hours of 8 AM and 11 PM from July 1st through July 5th for the discharge of fireworks. Commissioner Jackson stated that was a major concern for the committee because of the number-of and type-of violations committed by citizens using fireworks. It was noted that some of the other cities in North Dakota such as Dickinson, Fargo, West Fargo, Bismarck, Minot, Grand Forks, all have banned fireworks. Jamestown and Valley City do not ban fireworks. Mandan’s ordinance needs to be rewritten. Commissioner Jackson stated that one of the items reviewed is that it is a Class B Misdemeanor of the ordinance if there is a violation. The Committee members unanimously agreed that should be revised to be an “infraction” providing reasoning that it would be more conducive to enforce and also that a B Misdemeanor carries jail time as a condition of the violation. However, if there would be a determination that a fire was a cause as a result of fireworks that could then be charged out under a different ordinance of the law. The committee reviewed the pros and cons of the fireworks ordinance and by a 3-1 vote, voted to ban fireworks.

Mayor Helbling reported that the Fireworks Committee consisted of Police Chief Bullinger, Fire Chief Nardello, Rod Feldner and Commissioner Jackson. Mayor Helbling commented that the City Commission has the final authority to determine if the ordinance will or will not be changed and that the Fireworks Committee had been tasked with researching what is in the best interests of the City of Mandan and it’s residents. Mayor

Helbling reviewed possible alternatives as to changes to the Ordinance. He also stated that he has received several telephone calls and emails regarding the banning of the fireworks. He stated that many people come to Mandan for the “fireworks” and that if it were banned, he feels people would go elsewhere where the fireworks is legal. Mayor Helbling stated that perhaps it would be in the best interests of the City and residents who are-or-who-are-not in favor of fireworks, to come up with a compromise to banning the fireworks altogether.

Commissioner Jackson commented that during his process of interviewing several residents for or against the fireworks he has found that many residents from Bismarck and other surrounding towns do come to Mandan to partake in the 4th of July activities (rodeo, Art in the Park). Commissioner Jackson asked that it be noted also that they do not necessarily come for the fireworks. It was brought to his attention by a Bismarck resident who in the past has attended Mandan activities that he literally has had people intentionally shoot bottle rockets or other fireworks at his car upon leaving Mandan after the event (such as the rodeo) is over. Commissioner Jackson also stated that it should be noted that it is more than bottle rockets that have contributed to starting fires. He stated that he has not received a substantial amount of responses regarding the fireworks and that the ones he has received amount to a 2-1 ratio in favor of banning the fireworks.

Commissioner Tibke responded that she has received several responses in favor of keeping the fireworks ordinance intact. She stated that the concerned property owners came forward last season as a result of damages done to their homes, roofs, decks, etc. which prompted the formation of the Fireworks Committee. The bottom line was how do you enforce the violators of these laws? How do you get people to take responsibility for their actions when using fireworks, doing cleanup and being respectful of their community? Commissioner Tibke stated she would be interested in a compromise, she is not in favor of banning fireworks, she is interested in a compromise in restricting the fireworks as well as looking at the implementation of a monetary penalty for violations.

Commissioner Gangl responded that he agrees that the fireworks should not be completely banned and that there should be a monetary penalty in place for any one violating the Ordinance.

Commissioner Serhienko responded that he has received several calls regarding this matter with the majority of the calls in favor of not-banning the fireworks. Commissioner Serhienko reviewed the types of calls that he has received, in favor and against. He pointed out the pros and cons of fireworks use from his past and current experiences. He reminded everyone that fireworks are a symbol of the honors of the independence of our country and in particular, remembrance of our veterans who have served and are currently serving in the armed forces. Commissioner Serhienko reiterated that fireworks activities are an important part of the US Independence Day celebration on the 4th of July.

Mayor Helbling opened the floor at this time to the public.

Ron Otto, a 58 year resident of Mandan came forward. He spoke to his observations of how this matter is/has been viewed by the City Commission members. He stated that he

is in favor of fireworks being allowed and that it is his opinion that fireworks is a part of Mandan's heritage and that it should stay that way.

Ken Quick, a 25 year resident of Mandan came forward to speak. He stated he is against fireworks. He has had property damage done due to fireworks.

Susan Beehler, a Mandan resident came forward to speak. She stated that she grew up in Dickinson and when she resided there, fireworks were allowed there. She commented about her experiences with fireworks and in one such circumstance, her daughter's jacket caught fire from sparkler fireworks. She explained how her husband is employed by the railroad and that he uses earplugs to reduce noise. Ms. Beehler stated she is in favor of fireworks a good compromise should be considered. She suggested that for those citizens who are against fireworks proceed with banning fireworks on their property as an alternative to fireworks control. She stated that she believes there has been or soon will be a legislative action that addressed making bottle rockets illegal in the state.

Matt Reuter came forward to speak. He stated that during the July holiday, family and friends come from other states to celebrate and partake in the fireworks activities. He stated he is in favor of keeping fireworks and that it is ultimately the adults and parents responsibility to monitor and/or assist children when using them.

Audrey Herman came forward to speak in support of keeping fireworks legal.

Rod Feldner, a 30 year resident of Mandan and a member of the Fireworks Committee came forward to speak. He stated that he moved to Mandan in 1980 as the Assistant State's Attorney for Morton County and served in that capacity for about 4 years. Subsequently he had a private law practice wherein he defended adults who got into trouble with fireworks issues. At that time, the prosecution took place at the county level because they were considered to be more serious offenses than they are today because of the fires that were started from fireworks. He shared his past experiences with fireworks problems that occurred amongst his family, his home and his neighborhood. He also stated that in the 1990's there was an election that was non-binding on the commission and by almost a 2-1 margin, there was a vote against fireworks. At that time, the City Commission thumbed their noses at the wishes of the voters and went ahead and approved of fireworks. Mr. Feldner expressed concern that if the commission votes in favor of keeping fireworks, that restrictions are put in place and that for anyone committing violations of the restrictions that enforcement actions take place appropriately.

David Kroll, a Mandan resident came forward to speak stating that he was one of the residents who brought this matter to the attention of the Commission last year. He asked the Board to consider the evolution of the fireworks that goes into the air. He spoke against the fireworks debris that is left on the grounds and residential properties.

Debbie Holter, a Mandan resident who resides on Crying Hill came forward to speak. She spoke to the problems of fireworks during 2008. She stated that she, as well as her neighbors made calls to law enforcement regarding the problems, stating that the complainant calls were never answered by law enforcement. Ms. Holter requested the Commission consider prohibiting the Bismarck vendors and distributors of fireworks from selling bottle rockets or any fireworks items in Mandan.

Rob Knutson, a resident of Marina Bay in Mandan. He spoke in favor of fireworks. He stated that at one time he sold fireworks. He requested the Board leave the rules and regulations regarding the fireworks ordinance intact.

Corey Knutson, a Bismarck resident and vendor for Memory Fireworks, came forward to speak. He stated that he has been selling fireworks in the City of Mandan for over ten years stating that financially it is a good business and that it is a good business for the City as well. On behalf of the City of Mandan and as a vendor of fireworks products, Mr. Knutson stated he is in favor of keeping fireworks in Mandan.

Drew Knutson, a Bismarck resident and a fireworks vendor came forward to speak in support of the fireworks ordinance. He stated he is not an owner of any fireworks business, however he does sell the product and enjoys working with the many customers from Mandan and the surrounding communities.

Debbie Holter, a Mandan resident came forward to speak and correct a previous statement. She stated that she resides on Crying Hill in Mandan and there are no fire hydrants on the hill in the area where she lives. She stated all fire hydrants are located at the bottom of the hill.

Commissioner Jackson requested that those speaking state their place of residence. Further, he stated that he attempted to find a fireworks vendor to serve on the Fireworks Committee and was unsuccessful in that attempt.

Robert Knutson came back to the podium to state that he is a resident of Mandan, residing at Marina Bay and that many of the people in the Marina Bay area do purchase and enjoy fireworks.

Chris Robbins, a resident of Bismarck, however he did reside in Mandan for 8 years. He stated that he had been with Memory Fireworks for the past several years and prior to that he has been with TNT. He pointed out the importance of supervision of children by adults when using fireworks. He would like to see fireworks continue.

Stan Scott: Came forward to speak in support of leaving the fireworks ordinance as it is.

Mayor Helbling ceased comments at this time. He asked for a show of hands in the audience as to those for and those against fireworks. *The show of hands poll indicated @ 5 audience members against fireworks and the majority of the rest of the audience voted in favor.* Mayor Helbling polled the audience with the question “*Who would agree to a compromise?*” The majority of the audience polled raised their hands in support of a compromise.

Commissioner Jackson commented that as the ordinance is written today, it will need to be revised due to some of the fireworks item are not legal.

Mayor Helbling inquired if the Commissioners have further comments stating that there currently is a motion and a second to consider the first reading of Ordinance 1051 an Ordinance to Amend Section 7-01-07(5) of the Mandan Municipal Code Relating to Fireworks. Commissioner Jackson commented that when this matter was voted on by the

Fireworks Committee to ban fireworks, the vote was 3-1 of which he was the only descending vote, voting in favor of the fireworks ordinance. Further, he explained that the emails and survey type of information that he has gathered indicates a 2-1 in favor of banning the fireworks. Commissioner Jackson pointed out that there is a sign on Main Street and there has been an ad campaign over the radio and although it has been fair, it was encouraging people to show up here tonight to discourage the banning of fireworks. His opinion is that those who are in favor of banning fireworks do not have the resources to support their ad to support their position in a similar fashion. Further, the majority of the people who spoke in support of fireworks were from Memory fireworks and not citizens of Mandan. Commissioner Jackson reminded the Commission that it is their duty to serve the citizens of Mandan.

Commissioner Serhienko asked for a definition of what fireworks are illegal.

Commissioner Jackson stated that the ordinance reads skyrockets, bottle rockets, roman candles. By definition, a rocket is something with a propulsion system in the sky means anything with a propulsion system that would go up into the sky. Attorney Brown concurs that all those items are probably illegal at this time and ultimately it would be up to the municipal judge. One way or another, the ordinance needs to be changed to provide clarity and that is one issue the fireworks committee discussed - whether to the allowing or banning of fireworks and to clearly define what an aerial fireworks is.

Mayor Helbling commented that the Commission needs to keep in mind that if one type of fireworks is banned (aerial) the police department will need direction as to what defines what is banned and what is not banned and consideration will have to be given as to how the police department can enforce any bans. Commissioner Jackson commented that the Fireworks Committee looked at different aerial fireworks bans. Attorney Brown was directed to draft an ordinance banning aerial fireworks simply stating that it could be anything that self propels itself into the air. Commissioner Jackson suggested that consideration be given to leaving the days and times the same except aerial fireworks be banned everyday except for July 3rd and July 4th. We could write it as anything that propels itself into the sky. I viewed the recommendation given based on the facts and the information that was gathered including but not limiting to a ban on fireworks. By extending the hours is not really a compromise, that's allowing the people who want to light fireworks additional time. Commissioner Jackson stated that he would be more in favor of a ban or limitation on aerial fireworks as that addresses the point of concern. He does not feel that making the hours later is a compromise.

Mayor Helbling commented that his suggestion would be to allow fireworks only on July 2nd, from noon to midnight; July 3rd, from noon to midnight and July 4th, from noon to 2:00 AM.

Commissioner Serhienko moved to amend the motion to allow fireworks on July 2nd from noon to midnight; on July 3rd from noon to midnight and July 4th from noon until 2AM, and clarification that bottle rockets or starbursts (aerial fireworks) are not excluded.

Commissioner Jackson inquired if the motion is intended to allow fireworks on all three days?

Commissioner Serhienko: Bottle rockets can go. I agree. They can be dangerous and they should not be allowed but bottle rockets are the things on the sticks

Commissioner Serhienko stated his intended Amended motion as follows: Noon to 2 AM on July 2nd, July 3rd and July 4th and amend the wording so that that it doesn't exclude the star bursts and bottle rockets and things with a stick on them. For lack of a second to this motion, the motion died.

Commissioner Serhienko moved to amend the motion of the original motion as follows: Allow all fireworks on July 2nd and July 3rd from noon to midnight and on July 4th from noon to 2 AM. Commissioner Tibke moved to second the motion.

There was a question from the audience on bottle rockets. Commissioner Jackson commented that bottle rockets are now illegal under ND State Law effective 2010. Mayor Helbling reminded everyone that the police department will need to enforce the law so we need to leave it open enough so that if there is a violation the police department can issue citations for violations.

Mayor Helbling announced that there is a motion and a second on the table to allow fireworks on July 2nd from noon to 12 midnight; July 3rd from noon to 12 midnight and July 4th from noon to 2 AM. All fireworks would be included.

City Attorney Brown stated that the ND Century Code defines fireworks. He will add the section of the century code that outlines what fireworks are allowed. The reason for this is that the vendor cannot sell something that is not permitted by the state. Mayor Helbling indicated that there should be a penalty addressed. Commissioner Jackson stated that the amendment should have not affected the penalty phase which is under Subsection 5. This is under the exception. Commissioner Jackson stated that he is against the times that have been set, therefore is opposed to the amendment.

Mayor Helbling asked for roll call on the Amendment: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: No; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. Based on the roll call vote, the amendment passed.

Mayor Helbling directed attention to the initial motion on the floor of Ordinance No. 1051 as amended to consider the first reading of Ordinance 1051 An Ordinance to Amend Section 7-01-07(5) of the Mandan Municipal Code Relating To Fireworks. Mayor Helbling asked for roll call on the motion: Commissioner Gangl: Yes; Commissioner Tibke: Yes; Commissioner Jackson: Yes; Commissioner Serhienko: Yes; Commissioner Helbling: Yes. Based on the roll call vote, the motion passed.

Attorney Brown stated that the amendment will be before this Commission for consideration on May 5th at which time there was be additional public comment and changes if need be at that time.

Attorney Brown explained that the revision from a Class B Misdemeanor to an infraction will basically be treated similar to the way a parking ticket is handled. An infraction violation could be up to a \$500 fine. An infraction enables the police department to write a ticket immediately without waiting to file a complaint. It is a much simpler

enforcement tool for the police department. Mayor Helbling stated that the police department will be instructed to issue citations to anyone violating the ordinance.

Commissioner Jackson extended a thank you to the Fireworks Committee representatives who were assigned to review and present recommendations.

2. Consider second and final reading of Ordinance No. 1052 amending Ordinance No. 1048 of the Mandan Municipal Code relating to Electric Handicap Accessible Doors. Commissioner Jackson moved to approve the second and final reading of Ordinance No. 1052 amending Ordinance No. 1048 of the Mandan Municipal Code relating to Electric Handicap Accessible Door. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present. Attorney Brown read the Ordinance:

ORDINANCE No. 1052:

An Ordinance to Amend Ordinance No. 1048 of the Mandan Municipal Code Relating to Electric Handicap Accessible Doors. Be it ordained by the Board of City Commissioners as follows:

1. Section 2 of Ordinance No. 1048 is hereby amended to read as follows:
Section 2. A new Section 14-02-15 of the Mandan Municipal Code is hereby enacted.
2. In all other respects of Ordinance No. 1048 as enacted on March 3, 2009, is in all things ratified and confirmed.

BY: /s/ Timothy Helbling
Timothy Helbling,
President Board of City Commissioners

ATTEST:

/s/ James Neubauer
James Neubauer,
City Administrator

First Reading: April 7, 2009
Second Reading and Final Passage: April 21, 2009

OTHER BUSINESS:

1. *Consider approval of the Fire Hydrant Painting agreement with HIT Inc.* City Administrator Neubauer presented a request for approval of the fire hydrant painting agreement with HIT Inc. Neubauer stated the City has an annual plan to paint a certain number of fire hydrants. There are almost 800 hydrants, 175 /year, of which it costs the city \$6 each to have them repainted. \$1,250 for the 2009 costs are within the budget. The color of the hydrant is based on the flow of the hydrant. Neubauer stated that the hydrants are color coded so they are consistent with the apparatus that is attached to them for use by the firefighters. Chief Nardello stated that there are either red or yellow tops representing the gallons per minute that the hydrant will flow. They are color coded that way for preplanning purposes for the fire commander so he knows how much water is

disbursed from which type of hydrant. Traditionally the main barrels of the hydrant are yellow or red for easy spotting for the firefighters.

Commissioner Serhienko moved to approve the Fire Hydrant Painting agreement with HIT Inc. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

2. *Fireworks Fee Assessments (Fines) by Municipal Judge:* Mayor Helbling suggested that the Municipal Judge be contacted for information related to what a typical fee assessment (fine) will be for a fireworks violation. In addition, the fireworks stands should be asked to provide an informational type flyer as to what the City Ordinances are related to fireworks. Commissioner Jackson commented that the Fireworks Committee discussed talking with Morton County as to what, if any equivalent county ordinance exists. The committee also talked about requiring fireworks vendors to post whatever is passed. Prior to following up with this matter, Commissioner Jackson stated that he wanted to see what this Board did before going to the County Commission.

There being no further actions to come before the Board, Commissioner Serhienko moved to adjourn the meeting at 8:09 p.m. Commissioner Gangl seconded the motion. Upon roll call vote, the motion received unanimous approval of the Board and the meeting adjourned.

/s/ James Neubauer
James Neubauer,
City Administrator

/s/ Timothy A. Helbling
Timothy A. Helbling,
President, Board of City
Commissioners