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The Mandan City Commission met in regular session at 5:30 p.m. on January 6, 2009 in the Ed “Bosh” Froehlich Room at City Hall. Commissioners present were Helbling, Tibke, Gangl, Serhienko and Jackson. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Planner Baehurst, Business Development Director Huber, Engineering Project Manager Bechtel, and City Assessor Barta.

MINUTES:

PUBLIC HEARING:

1. *Consider 5-Year Ad Valorem Tax Exemption for Rick White D/B/A Captain Freddy’s*
2. *Consider 5-Year Ad Valorem Tax Exemption for National Information Solutions Coop (NISC)*

Mayor Helbling asked for comments from the audience.

Susan Beehler, Mandan City resident, came forward to speak. She stated as follows: “That she is of the opinion that a 5-year tax exemption is granted before the request is even before the City Commission for review and approval. She did state that they have proven their longevity and investment in the community but she stated that the tax exemptions that we have been giving come at a price to the homeowners in Mandan. She stated that for the NISC project, it might be a good trade, but, she said that pursuant to the ND Century Code that the construction is suppose to not have been started and it just seems that these things are given out without even... It’s like a stamp of approval before it gets to this Commission Room and as a citizen, I am concerned about that.”

Mayor Helbling replied in disagreement stating that tonight is the time and place for a public hearing on the matter. The hearing prior to this was tabled so that questions can be answered in proper form and legal procedures followed. This is a public hearing for citizens to come forward to ask questions and/or voice concerns about this project.

Tracy Porter, CFO for NISC spoke in support of his request of tax exemption for NISC. He stated that the application for the tax exemption was made before construction started. Further, he stated that was always his understanding of how the process worked when applying for tax exemption. Porter commended the City and extended a thank you to City Administrator Jim Neubauer and Business Development Director Huber, who have been very good to work with from a business standpoint in all respects.

Commissioner Serhienko commented that he believes the NISC project is a worthy business and should be granted a tax exemption. He further commented that the businesses that are already established in the Mandan community providing jobs, providing a tax basis with plans to increase the business. Commissioner Serhienko commented that he is in support of the request for tax exemption for this project. Mayor Helbling asked for any additional comments from the public. Hearing none, this portion of the hearing was closed. The legal recommendation provided by Attorney Brown was to table the matter for further review and bring it back to the next meeting.

Commissioner Gangl moved to table the 5-Year Ad Valorem Tax Exemption for Rick White D/B/A Captain Freddy's and the 5-Year Ad Valorem Tax Exemption for National Information Solutions Coop (NISC). Commissioner Serhienko seconded the motion. Mayor Helbling asked that the vote be polled: Gangl-Yes; Tibke-Yes; Jackson-Yes; Serhienko-Yes; Helbling-Yes. The motion passed.

BIDS:

CONSENT AGENDA:

1. *Consider approval for the following Abatements:*
  - i. *Mandan Park District; Lot 1, Blk 3, Plainview Heights 12<sup>th</sup> Addition – Tax Exempt entity.* The Board approved of the abatement request for the Mandan Park District Lot 1, Blk 3, and Plainview Heights 12<sup>th</sup> Addition – Tax Exempt entity.
  - ii. *City of Mandan; North 40' of SE1/4, Section 22, Township 139, Range 81 – Tax Exempt entity.* The Board approved of the abatement request for the City of Mandan; North 40' of SE1/4, Section 22, Township 139, Range 81 – Tax Exempt entity.
  - iii. *Steve Thilmony D/B/A Riverfront Resources Ltd.; Aud Lot A of Lot 3, Blk 2, Riverwood Commercial Park Addition – Parcel eliminated.* The Board approved of the abatement request for Steve Thilmony D/B/A Riverfront Resources Ltd.; Aud Lot A of Lot 3, Blk 2, Riverwood Commercial Park Addition – Parcel eliminated.
  - iv. *Jason Zahn; Lot 4, Bldg 22, Unit 6, Blk 1, Lakewood Comm Park 3<sup>rd</sup> – Two Year Property Tax Exemption.* The Board approved of the abatement request for Jason Zahn; Lot 4, Bldg 22, Unit 6, Blk 1, Lakewood Comm Park 3<sup>rd</sup> – Two Year Property Tax Exemption.

Commissioner Tibke moved to approve the Consent Agenda items No. i, ii, iii, and iv as presented as presented. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

iv. *John Thilmony; Lot 1, Blk. 2, Lincoln Ridge Est 1<sup>st</sup> Addition – Reassessment of property.* Richard Barta, City Assessor presented a request from John Thilmony to have the value of his property reduced for the years 2007 and 2008 due to a re-assessment of the property. Barta explained that due to a difference in homogenous areas or areas established within the City of Mandan and we ended up having an area factor of 130 which is basically set up for the Marina Bay area – the higher the number the higher priced properties fall into that category. The Thilmony property should have been set at 98 instead of 130 – so to correct it we ran a reassessment at the area factor of 98 under the market analysis program. This was a human error that caused this. Barta explained that in determining assessments to properties the following process is used. The computer program goes through all the sales to find a similar property and it selects the 4 best properties that have sold in a certain time frame. After it selects 4, it makes the necessary adjustment for the square footage, how many garages, number of fireplaces, etc. and also the area factor. The area factor of 100 something might be used but if it turns around such as this one at 98, it will turn around and adjust that house down according to the adjustment difference. The higher the number the better the area. Anything 100 or greater falls in to the Marina Bay and Lakewood area. Even within there we have another adjustment for water frontage, water area so there are a number of

adjustments. If you select something that is higher than it should be it will make a negative adjustment. What happened with this one, since we had it at 130 it was comparing it to the Lakewood Area and it wasn't in the Lakewood area so that's why we have to change it to the area factor of 98.

Mayor Helbling inquired as to who sets the standards and guidelines that are followed? Barta replied that he is the one who determines what type of adjustments would be in each area factor. A sales sheet is used that does not have any names on it, it only has ID numbers. By using this you can determine homes of the same size and similarity to determine how to assess. Basically for somebody to pick out any particular parcel they would have to go to the computer and say number 10,000 belongs to John Doe otherwise just by looking at the whole list of sales and subject property you have no idea which property is being reviewed.

Mayor Helbling stated that there have been comments received that the City should just leave the assessments alone and not increase any of the home values. He inquired if there are any penalties or anything under law who guides the City Assessor's Office? Barta replied that it would be the State Property Tax Department. Barta stated that every sale received has to be reviewed. The state wants a 100% ratio but allows 95-105% in values. All the sales will be turned in to the state. If they do not go up 5 or 10% after we did a study the state could come back and tell us to raise all the values across the board to whatever percentage they want us to be at close to that 100%. They do have a handle on all the communities especially the larger because they are held to their own values. They have ways to check. We cannot artificially hold down the values. And if they raise them they will raise them to 98%.

Mayor Helbling stated he did have a couple calls regarding this matter so he asked Barta's office to look at certain properties in Lincoln Ridge Addition. One other error was found. He stated that it changed the code but did not change the property tax valuation. If anyone has a property that thinks it may be off, there are remedies to correct any errors. Barta stated that values are corrected from time to time and adjustments are made from time to time.

Susan Beehler commented that City Board of Tax Equalization Code 57-11-06 it says: *"No reduction after session of the board. And then it says exception: after germant of the board each year neither the governing body of the City nor the City Board of Equalization may change or alter any assessment. Neither may the governing body or the Board of Equalization reduce or abate or authorize the reduction abatement or return of any taxes levied upon such assessments for any cause except that the property assessed was not subject to the taxation at the time the assessment was made."* Is that what has happened here?

Barta replied that there is an abatement process for errors and the state law allows going back two years and that is why we went back to 2007 and 2008. Attorney Brown commented that the application for abatement and settlement of taxes was submitted under NDCC Chapter 57-23-04. Mayor Helbling pointed out that at times mistakes are made and there are ways to correct those mistakes. Barta again stated that if a property

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owner thinks his/her property values are wrong, they should contact his office for clarification if requested.

Commissioner Serhienko moved to approve the Consent Agenda item No. 1(v) as presented. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

OLD BUSINESS:

1. *Update regarding Mandan Fire Station No. 2 Lakewood construction.*

Steve Nardello Fire Chief provided an update on the Fire Station construction. Nardello noted that this project was given approval previously and this is a status update on progress being made. The construction date has been moved to the end of January 2009. In order to staff the station, the department is made up of several volunteers and 11 career members. Nardello stated that applications have opened up for additional volunteers. He stated that advertising for the junior fire fighter program is in progress. Photos were distributed of fire station project. Work in progress includes the generator will be installed in the next week. The exterior of the station is complete. The concrete has not been poured in the apparatus bay area but is expected to be completed in the next two weeks and Nardello stated that the floor color will be red.

NEW BUSINESS:

1. *Status Report on the Regional North-South Beltway Corridor Study Mandan-Morton.* Steve Windish, Ulteig Engineering stated they have been working on the MPO's Regional North-South Beltway Corridor Study. We have been working on the project for 18 months and nearing the end. We will be looking for adoption of the study in April and this will be the last time for input prior to that. There are five objective key points: 1) To investigate the justification for the beltway corridors; 2) To select optimum alignments for the north-south beltway corridors; 3) To identify potential impacts and associated mitigation strategies; 4) To facilitate stakeholder and decision maker involvement; 5) To secure jurisdictional acceptance of preferred alternatives and implementation strategies. This report will serve as a guideline to preserve the Corridor. The last public input meeting was on December 4, 2008, in Morton County and on December 3, 2008, in Burleigh County. He said turn out was good and questions were directed towards personal property. The major question was why are we looking at building highways when the state highways functions well? He stated this study will protect the future corridor. There is nothing planned for immediate or near distant future. But when it occurs in the future, we want a plan in place. This matter will come back in April to this Commission for approval of the report. The report will include a Decisions Document. Morton and Burleigh counties will be different as there are different concerns for each county that will be addressed accordingly. There will be some sort of agreement between the boards for development of the plan. The Decisions Document prepared was distributed and discussed. Windish stated that no action is required tonight. There have been three public input meetings. There is one more public meeting scheduled. When this comes back for presentation in April, it will be as a public hearing allowing the public a chance to comment at that time.

Mayor Helbling commented that the plan is a good one and will help future generations in the future.

2. *Consider Mandan Growth Fund Recommendations:*  
*i. North Dakota Teen Challenge*

City Administrator Neubauer presented a request on behalf of the Mandan Growth Fund recommendation to provide funding assistance to the ND Teen Challenge related to a number of fire suppression improvements. A previous request in 2006 for \$50,000 did not transpire as conditions placed on its approval were never met thus the request was never funded. This is a new request for re-consideration of ND Teen Challenges original application. Neubauer stated the following has transpired: The building ownership has been transferred to the Fidelis Foundation, a public charity, of which ND Teen Challenge has a lease on the building from March 15, 2008 through March 14, 2013. The following criteria has been developed: 1) Provided current employment of 25 fulltime and 2 part time are met or exceed on December 31, 2008, 2009, 2010, 2011, and 2012, a \$10,000 payment will be made to ND Teen Challenge; 2) ND Teen Challenge enters into a lease agreement with Fidelis Foundation for a period. Neubauer stated that the Growth Fund Committee recommends approval.

Commissioner Serhienko moved to approve the request from the ND Teen Challenge funding assistance as presented. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

*ii. National Information Solutions Cooperative (NISC)*

City Administrator Neubauer presented a request on behalf of the Mandan Growth Fund recommendation to consider a request from NISC for a PACE interest buy-down. That amount is roughly \$36,250 and is through the Bank of North Dakota. Neubauer stated there are funds available in the Growth Fund for this request. The Growth Fund recommends approval contingent upon NISC receiving approval on a request through the Bismarck Vision Fund. NISC is applying to both Bismarck and Mandan for financial assistance.

Commissioner Jackson moved to approve the request from the National Information Solutions Cooperative (NISC) for a PACE interest buy-down as requested. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

3. *Consider appointment of Loren Wetch to Planning & Zoning Commission*

Sarah Baehurst, City Planner, presented information regarding appointments to the Planning and Zoning Commission. She stated that the term appointments are for five years that begin and end in August and are staggered over the years. There is an opening created by a previous member who decided to not re-up the appointment position. Letters of Interest were circulated. The Planning and Zoning Commission recommends the appointment of Loren Wetch to the vacant position.

Commissioner Tibke moved to approve the appointment of Loren Wetch to the vacant position on the Planning & Zoning Commission Board. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

4. *Renewal of Commission Membership for MARC – Jason Krebsbach*

Richard Barta, City Assessor presented information regarding the re-appointment of Jason Krebsbach to the Mandan Architectural Review Commission Board. This is a three year term that would commence January 2009. If re-appointed to the MARC, the MARC Committee has indicated electing Krebsbach as the newly appointed President of MARC. Barta stated that there is another opening on the MARC due to a retirement of one of the members. There is no candidate at this time for the position. If interested, applicants are to contact the City Assessors Office and submit a letter of interest for the position.

Commissioner Jackson moved to approve the Renewal of Commission Membership for MARC – Jason Krebsbach. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

5. *Consider changes to amend city code relating to call out and emergency pay.*

Director of Public Works Jeff Wright presented a request for changes to amend the City Code relating to call out or emergency pay. He stated that Chief Bullinger, Gary Zander and Steve Himmelspach and he have worked out two recommendations for changes to present for consideration. The first is a bookkeeping system to improve payroll system. The proposal would be to add an emergency pay category to the payroll for call outs relating to an emergency situation. This would be a simple change done by CBI. It affects the payroll system only. The second change is to the overtime rates call out time beyond the 2 hr min call out. For this task we compared Mandan with other communities. A survey was prepared and reviewed by the Board. Overtime rates proposal puts Mandan in line with the cities of Dickinson, Williston, Grand Forks, Bismarck and the ND DOT. This change will keep the City of Mandan equitable and hopefully retain trained employees with the City. The draft changes for the proposed changes have been generated with CBI and if approved, the amendment would be drafted by Attorney Brown and then to the Board for a first and second reading. It is this committee's recommendation to accept the proposal. The fiscal impact, minimal, can be absorbed in the existing budget which is a minimal budget item for both the Police Department and the Public Works Department.

Mayor Helbling commented that it is a good thing to be in line with other communities and caution should be used with watching the overtime.

Commissioner Jackson moved to approve the changes as presented to amend the City Code relating to the Administration of Employee Salary Plan, Section 4-06-10(7) and the City Code relating to Administration of Employee Salary Plan, Section 4-06-10(7)(d). Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

RESOLUTIONS AND ORDINANCES:

1. *Consider first reading of Ordinance No. 1048 An Ordinance to Repeal an Initiated Ordinance to the Mandan City Code Relating to Electric Handicap Accessible Doors As Adopted by the Electorate on November 4, 2008, and To Enact a New Ordinance Relating to Handicap Accessibility for Buildings that Accept Public Funds.*

Attorney Brown presented information related to the first reading of Ordinance No. 1048. Brown stated that the initiated Ordinance as adopted on November 4, 2008, as stated below is hereby repealed:

*“Installation of electric handicap accessible entrance doors are required on every building open to the public that has received public funds in any form whatsoever, failure to do so may result in denial of public funding and declare it an emergency.”*

*Attorney Brown:* After that Ordinance was adopted on November 4<sup>th</sup>, I personally, and as an attorney for the City and other City personnel had some concerns about the ambiguities that were contained in the initiated ordinance. At the request of this Commission I drafted an amendment to Section 14-02-12 of the City Code that would restate the basic requirements as follows:

Section 2. A new Section 14-02-12 of the Mandan City Code is hereby enacted as follows:

- A. Restatement: Every building open to public use that has received the benefit of public funds from the City of Mandan shall provide for the installation of an automatic door for at least one main entrance to the building.
- B. Definitions:
  - “Automatic Door” means a door equipped with a power operated mechanism and controls that open and close the door automatically, upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch.
  - “Public Use” means interior or exterior rooms or spaces that are regularly made available to the general public.
  - “Public Funds” means use of City of Mandan authorized and approved business incentives, such as tax increment financing, store front improvement funds, Renaissance Zone participation and 5-year property tax exemption.
- C. Waiver: Automatic doors are not required if the installation of an automatic door would be technically feasible, if there exists other pre-existing accessibility barriers that cannot be reasonably remedied or readily achievable at reasonable cost, or if the installation of an automatic door would create an undue burden on the applicant as defined in Section 36-104 of the ADA Standards for Accessible Design.
- D. Application: This Ordinance shall apply to building projects or renovations that have applied for and received public funds subsequent to November 14, 2008.

Section 3. The provisions of this Ordinance shall be in full force and effect from and after the second reading and final passage.

*Mayor Helbling:* In simple terms anyone who receives public funds outlined in this Memo would have to put in an electronic door.

*Attorney Brown:* Yes and I think we discussed at previous meetings when this was open for public discussion that any applicant whether for property tax exemption, for store front improvement money or growth fund money would start with an application. At that point it would start out with the presumption that if they are asking for public money they have to put in an automatic door. I suspect that every project would be like that. If the applicant believes that it is not practicable, reasonable or technically feasible to put in an automatic door and if they want public funds, they would have the burden of proving that and ultimately the City Commission would approve or deny the request.

*Mayor Helbling:* Before we go on to any public comments – do the Commissioners have any comments or concerns of the Ordinance the way it is drafted?

*Commissioner Gangl:* I still would like to limit it somehow to businesses with more high traffic. I think that is important that we do it according to the type of business.

*Mayor Helbling:* I do not know how we would go about enforcing that once the building ownership would change or the occupancy would change. I am in favor of eliminating warehouses. The general public generally doesn't have access to a warehouse. To go in and define by service groups I think we would create a real hardship for all the staff and the City of Mandan of trying to keep track of who is in what building. Do they qualify? Do they not qualify? Once they do not qualify, what are the remedies to correct it?

*Commissioner Gangl:* What would be a warehouse? How would we clarify warehouses?

*Commissioner Jackson:* I think that's part of the problem. I would point out that's not how the ordinance passed. The ordinance didn't say specifically warehouses or commercial property versus industrial property or something different. It says public funding on any building open to the public at all. As I would interpret it, it was much broader to begin with and by narrowing it even further I think we are going against what the public voted on and so I do not think we should do that. I understand what you are saying and I do not necessarily disagree with you but this is what the public voted on and this is what they passed. I think our duty as a commission is to clarify any ambiguities of the ordinance and Attorney Brown has done an excellent job in fixing those ambiguities and now it is our job to look at it and say those changes are in place. I don't see how we would enforce it. Richard would have to sit there with one of those clickers and after twenty people have entered and say that is the threshold.

*Commissioner Gangl:* I wouldn't see him doing that. The type of business and zoning – the higher traffic versus one or two people a day or month walking through there. That is the distinction we are not making and I think we should be.

*Commissioner Jackson:* How are you going to make that distinction?

*Commissioner Gangl:* Back to the clarification of commercial or retail services.

*Commissioner Jackson:* I don't see that as the intent. I think the goal of the rewrite in my opinion is to clarify the ambiguities and I think that would only add more ambiguities to it. I think as it's written it's very good.

*Commissioner Gangl:* I have no problem as it is written. I think we should put some common sense into it rather than say everyone has to put in an automatic door.

*Mayor Helbling:* I think right now the main objective is to try to get it off of ground zero. I think the way the ordinance was drafted there are so many loopholes in it that we have to get to the next step. I don't think anything stops us from down the road if this has to be amended that the commission can come back in and amend parts of it as they see fit or as problems arise. I think we definitely need to get off of ground zero and repeal the initiated ordinance as it was passed because there are so many problem areas in that ordinance that we need to close up so we can enforce and get somewhere. Do any other commissioners have comments?

*Commissioner Serhienko:* I do. This is actually in support of Commissioner Gangl. I can see what he's talking about. If I had a warehouse, which I don't but if I did have a warehouse and two people a day came to it I would be obliged to put in a handicap access door. I suppose it would probably be only if I had funding from the City of Mandan to build that or do something to it. So it does bring up a legitimate concern here. If one of those things were yes, we need to do this and anybody that knows me knows I am 100% in favor of doing this but I can see where there may be some extenuating circumstances here and something we may need to look at. I just want to clarify; this is our first reading, right? What we do tonight can still be amended or changed down the road or where are we at with this?

*Mayor Helbling:* It's my understanding we do have another reading. Malcolm?

*Attorney Brown:* You can adopt it as drafted tonight or amend it. You can amend it at the second reading.

*Mayor Helbling:* But we do have to have a second reading?

*Attorney Brown:* Yes we do.

*Mayor Helbling:* And another out for the people who don't want to put an automatic door in – don't apply for tax incentives and public funds. That's the easy way out. If you don't want to do it, don't apply for the funds.

*Commissioner Jackson:* I think too we have a definition of public use and some of those warehousing issues that I think you have concerns about Commissioner Gangl, I think would be addressed by public use and that would fall squarely on the shoulders of Mr. Barta and maybe ultimately on us when somebody does come in – in front of the commission as Mr. Wachter did last week and explained that he was not planning on having it being as commercial for access to the public. If it's not publicly accessible then technically this would not apply.

*Commissioner Gangl:* I guess that's a prime example. He's been working on that project for probably a year and now when he gets to the end of it we throw on this additional \$20,000 cost.

*Commissioner Jackson:* I can't remember the exact numbers but I think he's getting thousands of dollars in a tax exemption every year.

*Commissioner Gangl:* A total of \$75,000.

*Commissioner Jackson:* Yes. So it's a give and a take. If people coming into Mandan are business owners or business developers and they are going to have to understand that. This was passed by the voters and we have to follow their wishes as close as we can while at the same time fix any errors that exist within the ordinance itself.

*Mayor Helbling:* In the Wachter case, he fully understood what was going on and agreed to it – that he would have certain units that would not require a door and there were certain units that he would definitely have to put in a door and if used make changes in the ones that didn't require a door he would be forced to put them in without receiving property tax exemptions. Are there any other questions from the Commission before we open it up for public comment?

*Commissioner Serhienko:* Just one more comment and that has to do with the ADA requirements. Even though a business is not getting Mandan Public funds, why should the requirement for handicap accessibility go away? Do you know what I am trying to say here? I'm saying this is something that is there whether Mandan gives them money or not.

*Mayor Helbling:* Right, they are still required to follow all the ADA codes when they are building a building. That's not something that we are addressing here.

*Commissioner Serhienko:* Just a follow up comment to something you had made about new businesses, don't apply for the money if you don't want to put in a handicap door. I kind of disagree with that. I think you have to put in a handicap door no matter where you are if you are building in Mandan especially if the public is going to access it.

*Mayor Helbling:* The hearing is now open to the public.

*Francis Herauf:* You know that I am the one who initially started this. The way I would have written it - all buildings whether you get funding or not – you would have to put in the doors. I didn't have time to study this because my mission was to get this on the ballot. If I would have studied this more, it would have been written where whether you

get city funding or not. It would have been written that way. The way it is written now, you are saying, if a new building goes up, you won't have to put it in if you don't ask for city money. That's the way it was voted in but that isn't the way I would have written it.

*Mayor Helbling:* That's what we are dealing with tonight is the way it was voted in and trying to interpret to the best of our ability.

*Francis Herauf:* How is this going to be enforced? We have to enforce it somehow.

*Mayor Helbling:* If they don't put in the automatic doors, they will not receive whatever type of public funding that they were after.

*Francis Herauf:* Therefore if they don't ask for city money, they don't have to put them in.

*Mayor Helbling:* Correct. If they don't ask for any city money, we cannot force them in any way shape or form to put in an automatic door.

*Francis Herauf:* Unless the legislative decides that.

*Mayor Helbling:* Right, as it currently stands. But if they do ask for public funds the way we are interpreting it they will have to put in the doors unless there is some structural problem or some circumstance that is way out there that they can prove to several different boards and commissions that they should not put the doors in.

*Francis Herauf:* That is the way I would have written the bill up if I would have studied it more.

*Mayor Helbling:* Tonight we have to deal with the interpretation as it is in front of us.

*Francis Herauf:* Right. Did you have any questions for me?

*Commissioner Gangl:* No Francis, we talked the other day and you answered all mine. I'm glad you showed up to clarify.

*Commissioner Serhienko:* I do. The ordinance as it is presented here was brought to you and explained to you, discussed with you?

*Francis Herauf:* Yes.

*Commissioner Serhienko:* Was it Mr. Neubauer who brought it down? Who brought it to you is what I would like to know?

*Francis Herauf:* You mean how did the petition get started? Is that what you are asking?

*Commissioner Serhienko:* This amended version that is in front of us right now.

*Francis Herauf:* To be honest, I haven't seen it.

*Commissioner Serhienko:* Oh, you haven't seen it?

*Francis Herauf:* No.

*Mayor Helbling:* I believe Mr. Neubauer did deliver a copy to your home.

*Francis Herauf:* Yes, he did, I'm sorry. The way it's written I did not like it because there is no way of enforcing this. I don't see any enforcement in this bill.

*Commissioner Jackson:* Just for clarification Francis. Let's say that somebody came in and they said, we're going to put in electronic doors. And we said, okay, and then we're going to grant you a five year property tax exemption and Mr. Barta goes down there and he inspects the property and he says, wait a minute, there are no electronic doors here and the business owner says, what are you going to do about it? We always have the ability and I would assume that the rest of the commissioners would agree with me because that is what the ordinance says, we always have the ability to revoke that five year property tax exemption. And actually by the ordinance I would say that we would have to revoke that five year property tax exemption. That is the enforcement arm that is basically through Mr. Barta's office and then back in front of the commission. The same is true for

the application process itself. Does that clarify that? I guess that is my interpretation. I would defer to Attorney Brown.

*Attorney Brown:* Certainly. It would be the same as if they were applying for store front improvement. They don't get the money unless they comply so there is enforcement.

*Francis Herauf:* It wasn't written in there – that's why I am bringing this up. If you look at it, it isn't written in there.

*Attorney Brown:* It is in the process when they apply and if they don't comply they don't get the money.

*Commissioner Jackson:* Unless I am mistaken, we always have the ability as a commission to revoke a five year property tax exemption or not grant store front improvement or something like that. So if it doesn't get done, we can always revoke it and again, I would say by the ordinance that we would have to do that. I can't say how the other commissioners feel about that but I think clearly by the way the ordinance is written that if you are a developer or a business owner and you want to do this and you want to get public funds, you have to do it and if Mr. Barta were to come to us and say "They didn't do what they promised they were going to do and they did not put in the electronic doors." I guess I would feel that we would have to revoke whatever it might be for the property tax exemption.

*Commissioner Serhienko:* The way I see this. I am not an attorney. I only have the two year Associate of Arts degree so my train of thought is pretty much numbers. The way I see this Mr. Herauf is that I see it as two problems. I see the amendment as it was presented here and it specifies a dollar amount and it says if you get assistance from the City of Mandan you have to do that. The other side of this question is if you don't get assistance from Mandan, let's say you don't get the tax grant or you don't get storefront money or things of that nature, your concern, and correct me if I am wrong, is that then there is nothing that says they have to put in an automatic door.

*Francis Herauf:* Exactly.

*Commissioner Serhienko:* That's exactly your point. But I understand that. And that goes back to the ADA thing that was passed many years ago. You need to have handicap access so where does the responsibility for this stop and begin? Who's responsible to enforce it? The city can say, okay, we can enforce the bill as it is presented to us simply by if you have applied for grants or funds or tax incentives, we can cut the tax incentives. We can do things like that to encourage you to put in a handicap door. Now, what if they say "I don't want your exemptions. I don't want your money". Now we have to deal with the fact that there still has to be handicap access door because that's a law. It's not something you made up. It's not something that the city commission has made up. That's something that is the law of the land.

*Francis Herauf:* Yes there is an ADA law out there.

*Commissioner Serhienko:* But this doesn't address that. Your amendment that you brought in front of the people that we all voted on basically says that if you get money from Mandan or tax incentives or anything of that nature, then you have to put in the door.

*Francis Herauf:* That's what I am saying. If it would have been me writing this up, it would have been written up different.

*Commissioner Serhienko:* I'm catching some response here. I would like to hear the complete side.

*Susan Beehler*, Mandan City resident came forward. When this ordinance, if you look at it, it doesn't say anything about the City of Mandan. It says public funding. And that's what we intended because that would be a bigger catch all. As a City, you have the authority to deny a permit or grant a permit. Or a licensed facility to do business in Mandan depending on what kind of thing it is. The city has a lot of authority. If you know they are getting some kind of public funding, if they apply for a grant or are getting some kind of public funding, the city can deny a building permit and that's where our intent was – to be broader by taking or limiting to only the city of Mandan you have now narrowed down that scope. The ordinance wasn't exactly what Frank wanted but it was broader than what was passed. Taking and writing the City of Mandan has made it narrower and he wanted a broader sweep. We were trying to give it as broad a sweep as possible and still be palatable for business owners and the community. That's why we put the public funding in there because that is a tool that you can have access to finding out if they are getting federal funding, if they're getting state funding and those are all tools that a city can say "Hey, you're getting money from the state to develop this business" so then in our city you are required to put that door on. And you can deny the building permit and they would not be able to build and they would have the same enforcement that goes along with that building permit denial.

*Mayor Helbling*: We can debate this all night and we have hashed it out over the last several meetings so I prefer that we not go into it for hours tonight. We need to limit the scope to something that the city has control over.

*Susan Beehler*: You have to control the building permits.

*Mayor Helbling*: We do have control over the building permits but if we go and say any type of public funds, somebody may go out for FHA financing and some type of government program that the city would never come across again.

*Susan Beehler*: It's all available.

*Mayor Helbling*: It is but the city does not have the staff or should the city even be involved with some of these personal financial arrangements.

*Susan Beehler*: Now I really take offense with that because when we wanted a building permit for Bob Thorberg, we were told to bring in a checkbook from the North Dakota Patriot Guard. Now that's ridiculous. You have the power to do it because you have done it to people in this city and I am saying that you need to take that power that you have and you need to make a box on the building permit and say "Are you receiving any public funds"? And then say public funds on there.

*Mayor Helbling*: Susan, to be responsible to the taxpayers, if we want to add 3 or 4 more staff members to do this, it can be done. There is no doubt, it can be done.

*Susan Beehler*: One box is going to cost taxpayers? I don't understand that.

*Mayor Helbling*: We have to go out and research every document that a person brings in front of us for a building permit.

*Susan Beehler*: This is talking about when somebody fills out an application, isn't it fraud if you do not answer that application truthfully? It wouldn't be your job to prove and research it. It would be your job to have that on the application asking if they are getting public funds and then have a list of it and if they check a box on there that they are getting USDA funds, special incentives from the Commerce Department, if they are getting SBA loans. If they are getting things like that it would be their responsibility as a builder to check that box saying that they are getting those public funds. That's how simple you can make it. You are making it more complicated and that is what Frank

wants is to have a broader sweep and you have taken and narrowed it by rewriting it. This is not what the people voted for.

*Mayor Helbling:* Susan, what would happen if somebody came in and there was a checkbox and said no, we did not apply for public funds other than what we are applying for the city, an FHA loan or whatever. We granted the permit. Everything was kosher and two weeks later they go out and refinance. And do something different. They are in violation. How are we going to track this? We have to come up with something.

*Susan Beehler:* It would not be your responsibility to track it. But as disability advocates if we got wind that somebody did go and get public funds and then they did put a door in and they didn't check that box, that would be fraud, wouldn't it?

*Commissioner Jackson:* I think the goal here was to clarify any ambiguities and I stated that before and that was I think, Attorney Brown's opinion was that, what is the definition of public funds was an ambiguity in the document and we as a commission have to look at that and say "This is ambiguous, how broad do we go?" We have to set a definition at some point.

*Susan Beehler:* Public funds are defined.

*Commissioner Jackson:* I am not finished speaking. That was the goal and I think we did that admirably with maintaining with the goal of what the ordinance was. As I understand from talking with Mr. Herauf and I understand Mr. Herauf has gotten very popular over the last few weeks here as all the commissioners have been speaking with him and everyone else, but he acknowledges that this ordinance really shouldn't, and I don't want to misstate your position Mr. Herauf but it shouldn't be applying to warehouses and everything else. So, at one point it's narrower but at some points it's broader than what I think he originally intended. It's our job, as I see it, to fix those ambiguities and we are doing the best we can and I think it is a fair ordinance right now with what was passed. We are never going to agree 100% from what was passed to what we're trying to clarify. I acknowledge that and I think the commissioners have acknowledged that in past meetings but we are doing the best we can. I think that with what we have come up with, what Attorney Brown has come up with is a very good clarification of the ordinance and is a very good middle ground between what I think some of the commissioners would like to see as more narrow such as Commissioner Gangl was just talking about and what you guys would like to see as more broad.

*Mayor Helbling:* And to add to that a little bit. The past commission meetings we have talked, and I know I would like to see some public funding be made available for the businesses that are not asking for other types of funds so we can get more automatic doors out there and we can help people put automatic doors in so it's better for the handicap people and the general public as a whole. That is not part of this, but that's what I would like to bring back up at another commission meeting once we get past this. We want to encourage people to put in the automatic doors. And if we can do that and help further your cause I think it is something we should do.

*Francis Herauf:* If you get federal money and they do not put in the electric doors there is a bill out there I could go file on the business and I could sue them for not putting it in.

*Susan Beehler:* Under the Justice Department right now the people of disability or people that know of people that have disabilities that have not been able to access certain services within our city are already able to file complaints and that we can still continue with and we probably will depending on who wants to do that. But the whole thing is, that you have rewritten something that the people voted for. I don't mind if you define

things but the public funds, public funds are very clear in all the statutes what they are. Public funds are exactly that. Public. You are supposed to be able to see them. If you can't see them, something weird is going on because they are not public. And to me public funds are defined in all law and statute and that is what was in here and so taking it and mirroring it just to the city of Mandan has now changed the scope in the meaning of what people voted for. Also the other thing is that, that the failure to do so shall result in the denial of public funding. If you want to take and make that different, a denial of public funding, building permit, whatever, to have some kind of enforcement tool on there instead of just saying shall in the way this ordinance is rewritten, it says shall, we also know from previous testimony tonight when I said that in the Century Code it says that the City Commission shall have an ex-officio member of the School Board, and is that happening now? That's where the concern of Frank is coming in is because a lot of things get said even in law and then they are not enforced. What we want is some kind of tool that as citizens we can come and say, hey, this is not happening – to make sure it does happen because this is what the citizens voted on.

*Mayor Helbling:* I think we could rehash this forever. And we are still going to come to the same conclusion. I would like to call on Mr. Barta if he has a comment?

*Richard Barta:* Yes, I guess we could start with permits. That's really going to open up a lot of doors because if there is an individual if they are going to turn around and decide that they don't want a handicap after all. Are they going to turn around and get federal funding and get electronic doors?

*Francis Herauf:* They are going to have to. If they get federal money they have to.

*Richard Barta:* I'm not talking about through the City like you were saying. If they turn around and got FHA or some other kind of funding other than through the City.

*Francis Herauf:* That's all federal money therefore they have to do it. Any federal money you get you have to put them in. Otherwise, like I said that's the law. If you guys do not put them in with federal money, I could get papers and file a suit against their business. It's like these banks that you got here. Did not put in electric doors. If I wanted to I could file a lawsuit against them right now. I could go get the papers from the state.

*Mayor Helbling:* Thank you for your comments Mr. Herauf. Is there anyone else in the audience that would like to comment on this? This is a public hearing.

*Debbie Holter:* One thing I would object to is the complete withdrawal of the remedies. Whenever you have a regulation that gives a duty you have to allow a regulatory process someplace and you ask that they comply with that. I could see the city opening itself up for problems if it doesn't clearly state what could happen if you don't comply with the statute. You have written it so that it says you shall do this and it stops there. Commissioner Serhienko, at the last meeting there was somebody who wanted an extension of money, or a new application for city money and before you allowed that to happen you asked that they comply with that. Every single time something happens, some city commissioner will have to do that with every single application for funds from the city. If you fail to do that, there could be a question of what the remedy is. If you fail to do that, you could be sued for discrimination because you do it for some and not for somebody else. It's cumbersome. And also somebody can bring up a question "How can you withdraw the funds when it doesn't say in the regulation you can withdraw the funds?" It's a simple matter.

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*Mayor Helbling:* I think that's a very valid part of it. I think that's something that could be amended into this without any problem. I don't know how Attorney Brown feels about this. He is nodding, yes it is.

*Debbie Holter:* One other thing, I have a problem with the definition section and I haven't got a copy of it. You do not want to be non compliant with ADA and you don't want to contradict ADA. All these terms are completely defined in very complicated language and then again in very simple language of the ADA. The warehouse clause; the number of doors question; Commissioner Gangl's question about number of people and type of area. All of that is clearly defined. The Department of Justice also has a handbook that is very clear and can answer some of the questions that you may have. You might want to look at that.

*Attorney Brown:* This ordinance as presented tonight as drafted is to deal with situations presented by the issues of the ordinance. If the commissioners want as part of the process of this first reading would like me to add a paragraph outlining the recourse that the city would have depending on what you do with the first reading.

*Francis Herauf:* Just what he said, you would put it in, why would you take it out? When you got the cost there why would you want to take them out?

*Attorney Brown:* Who knows. I have no idea Mr. Herauf. People do strange things.

*Herauf:* You know that new Title Building, they left them in when they remodeled. Why would you take something out that's going to cost you money?

*Attorney Brown:* Well maybe it was a bad example, but my point being that Ms. Holter had a good comment.

*Herauf:* That's all I have to say.

*Mayor Helbling:* Are there any other public comments?

*Susan Beehler:* I would like to see defined at the main entrance. Especially if a building such as where Pizza Ranch, Alltel – what is the main entrance of that building? I think a definition would be better suited to say the main area business entrance or some clarification on that main entrance because if you have a building that have several entrances, that's different than a main entrance to a business. We wanted them at every entrance, but you narrowed the scope.

*Commissioner Jackson:* Just as we have to clear up the ambiguities, I don't think we should be adding more to what the voters voted on. We should be trying to clarify....

*Susan Beehler:* Right so take out the main entrance.

*Commissioner Jackson:* We should be trying to clarify these ambiguities. We should not be adding in a bunch of things the voters actually did not vote on.

*Susan Beehler:* I agree with that and you have done that. So if you are going to add main entrance, it's not in there. It was on every building having an electric door.

*Mayor Helbling:* The way it has been interpreted so far at all the meetings that I have been at, all the storefront improvement meetings that I have been to, everything, if there is a separate business, and separate entrance that is not accessible through a main entrance they are going to be required to put a door in. If there is a main entrance where you can walk in and you can get to five different businesses from that one entrance that one door would probably be fine but if there is a building with five entrances and five different businesses it's going to be five doors.

*Susan Beehler:* Right but I think that the way that it is written in this rewrite the main entrance is questionable and I am just saying that that should be clarified if you are going to keep that in there.

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*Mayor Helbling:* With that I am going to close the public portion of this and defer to the commission as to their wishes. For the record, it is going to take four of the five commissioners to adopt this ordinance. If it is a 3 to 2 vote it does not pass and we go back to exactly what was voted on by the people. Commissioners, your wishes?

Commissioner Jackson moved to approve the first reading of Ordinance No. 1048 An Ordinance to Repeal an Initiated Ordinance to the Mandan City Code Relating to Electric Handicap Accessible Doors As Adopted by the Electorate on November 4, 2008, and To Enact a New Ordinance Relating to Handicap Accessibility for Buildings that Accept Public Funds. Commissioner Tibke seconded the motion.

*Mayor Helbling:* Is there any further discussion?

Attorney Brown stated that if the first reading is to be amended, now would be the time.

*Commissioner Gangl:* My amendment would be to restrict it to the way we have been talking. I still feel strongly about that. I still think we should do something like that.

*Mayor Helbling:* Are there any further comments? There is a motion and a second on the table right now.

*Attorney Brown:* If you wish to amend it, now is the time.

*Commissioner Serhienko:* At that point, Roberts Rules allows any motion, and you can get the book out and check me if you want to, but you are allowed to amend any motion twice. The motion can be amended and then the amendment can be amended.

*Attorney Brown:* That's what I just said.

*Commissioner Serhienko.* Right. We have a motion, we have a second, and it's open for discussion. My question was, do we have an amendment? Is that an amendment that is presenting? If it is, it's valid. If it's not, well... .

*Attorney Brown:* I don't know how I can put it in writing what Commissioner Gangl wants to do. We discussed restricting the ordinance for certain use group and we might be able to do that but then you look at other use groups. I think one came up about a bar that was not in retail or a service group but a bar obviously should have automatic doors. I think it would be very difficult to draft an amendment that would eliminate warehouses without defining warehouse and does the warehouse have so many doors and if there are only two people visiting per month. I don't know. I think it would be very difficult. That's my comment. But I need some help on this.

*Mayor Helbling:* Again, I think we can go back and amend this at any future time if we see a problem. We can go back in and change this as we see fit and see the need but we need to get a starting point to get some clarity to the ordinance as it was passed by the voters. So we have some enforcement regulation and so our staff does not have to sit out and grasp air. They need some clear cut ways and procedures in place to try to deal with this. And are there going to be problems? Sure there are going to be problems. Will we

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need to amend this? We will probably need to amend this several times over the years. But we need to get a starting point and get somewhere.

*Commissioner Gangl:* Malcolm, can we clarify what a warehouse would be? Define a warehouse or a garage if we're not going to go by this?

*Attorney Brown:* Again, there are warehouses, anybody driving by looking at it, could be a warehouse. What comes to mind, I went to a furniture warehouse sale in St. Paul one time. A huge warehouse open to the public. But it was a warehouse. There was furniture stacked four levels high. That might be an exaggeration. If the warehouse doesn't have to be open to the public but is getting public funds it will need automatic doors.

*Mayor Helbling:* And that's the way the ordinance is presented before us. We have a motion and a second on the table here.

*Attorney Brown:* We need to deal with the amendments and that will require the majority.

*Mayor Helbling:* We are going to deal with the amendments first.

*Commissioner Gangl:* I would like to restrict it to garage type of structures or go by use according to retail. Which would be easier to do?

*Commissioner Jackson:* Could I suggest that we wait on this proposed amendment and let's not try to think about it right now but perhaps we could always amend it at the next meeting and so maybe perhaps maybe if you really want to amend it Commissioner Gangl, you could look at it before the next meeting. Malcolm is concerned about how exactly to word it because I don't think right now off the top of his head he can word it is basically what he is saying. So maybe he should research it and get something in writing before the next meeting. Maybe that would be a more appropriate way to deal with it and amend it.

*Mayor Helbling:* We have an amendment on the table right now. Greg, can you restate that?

*Finance Director Welch:* I cannot.

*Mayor Helbling:* Commissioner Gangl?

*Commissioner Gangl:* Could we put it in next time? I guess as far as the wording, I still want it restricted to the type of use or types of structures.

*Mayor Helbling:* It can be brought up anytime in the future once this is passed.

*Commissioner Gangl:* Before the final vote?

*Attorney Brown:* You can. The thing to do right now would be to withdraw it.

*Commissioner Serhienko:* Unless of course it is seconded and I am going to second your amendment just to put you guys through the motions. So now that you have a motion ...

*Mayor Helbling:* Hold on commissioner. He didn't make a second. We are dealing with the amended motion right now. That's the only one. We had the amended motion. We had the original motion. We did not have a third as I see it sitting here.

*Commissioner Serhienko:* I interpreted his as the amended.

*Mayor Helbling:* Right. We are dealing with the amendment right now.

*Attorney Brown:* And again, you can either vote on it or withdraw it.

*Commissioner Gangl:* I'll withdraw.

*Commissioner Serhienko:* Withdraw? He made an amendment to the motion.

*Mayor Helbling:* And now he is withdrawing it. And now you (Commissioner Serhienko) would have to agree to withdraw your second. And if you don't, we will have to vote on it.

*Commissioner Serhienko:* I'm not going to withdraw my second. You will have to vote on this.

*Mayor Helbling:* We have a motion on the table. Commissioner Gangl would you please repeat that motion, or, amended motion?

*Commissioner Gangl:* I would like to restrict the use of the ordinance to businesses listed under Retail A and Service A under Mandan City Code. There are about 25 retail and about 15 services that I counted.

*Mayor Helbling:* That is your amended motion (Gangl). And your second still stands (Serhienko)?

Commissioner Gangl indicating yes and Commissioner Serhienko indicating yes respectively.

*Mayor Helbling* called for a roll call vote. Gangl-Yes; Tibke-No; Jackson-No; Serhienko-Yes; Helbling-No. The amended motion failed.

*Mayor Helbling:* Now we will deal with the original motion. We had a motion to adopt the first reading of Ordinance No. 1048. There is also a second to that motion. Is there any further discussion? Seeing none, please call the roll. Gangl-No; Tibke-Yes; Jackson-Yes; Serhienko-No; Helbling-Yes. The motion failed.

Based on the failure of the motions, the city staff is left to determine and interpret as they wish.

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*Commissioner Serhienko:* May I for just a second Mr. Mayor? Sometime ago at one of these meetings I had brought up the idea that perhaps the differences that we had on this issue could be worked out with perhaps you and the City Attorney and the representatives of the group that brought the initiated measure to the citizens of Mandan and my intention when I presented that was that you could get into a room, not a public meeting where the whole world has to be there, just the interested parties and you could close the door and you could hammer this thing out and come up with language that everybody agrees with and then bring it to the City Commission. Something that we can look at that there is a consensus so that we don't have to sit here for an hour and a half every time this subject comes up and we wind up in complete disagreement. That's what I had presented about 3 or 4 weeks ago. It's still my wish that this would happen but if it happens I would prefer that it didn't happen as having to be a public hearing where the whole world can show up although they can if they want to. I think anybody that has an interest should be allowed to come. I don't think it needs to be a publicized as such, I think the people that are involved, the mayor, the attorney and the group that brought the ordinance can sit down and you guys can hammer this out and I think that's what we need. We need something in front of this board that we can vote on. That everybody agrees with. Mr. Herauf, I want you to agree with it too.

*Mayor Helbling:* I would like to interject here. What you are saying makes perfect common sense but apparently to the North Dakota Attorney General's Office and this is after our meeting and it wasn't an official meeting, it was two commissioners gathering with the petitioners to try to come to some common ground. We had a very productive meeting I felt. We didn't agree on everything. Mrs. Beehler filed a request to the Attorney General's Office to challenge that gathering. So from that point on I will not meet with another commissioner and discuss anything until we get a response back from the Attorney General's office. I said common sense has to come back into play in government because it's gone.

*Commissioner Serhienko:* Well what if we all stay away from this meeting? If the commission stays away and it's just you and the city attorney? The city attorney is not a commissioner. I think if you grant any one of us any power, that's a whole different ballgame. Then we definitely need to have an open meeting and discuss it like we are doing tonight. I think if two people, whether its two commissioners or whatever gather with no authority from the commission you should have every right to do that and discuss it.

*Susan Beehler:* Can I approach?

*Mayor Helbling:* Very brief.

*Susan Beehler:* I just want to say that Jerry I know what you are talking about. But the whole thing is, is that this is a very public issue that we are talking about and sometimes things don't always come to an exact consensus and that's okay. I would like to have a meeting separate than the commission meeting but with that being said we need to have it notified. It needs to be made public that people can show up if they want to. People might not show up. And there are a lot of times hearings are held when nobody shows up. But the whole idea is if people want to come they should be able to sit in even if they

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are not a participant and the media should be able to sit in even if they are not a participant. That is the basis of how we make law and how the public is involved and in the world that you are talking about is more like a family structure or something would be and kinda keep the hashing out of the public. We are doing public business so we have to have a public and that is what I am all for is transparency. And coming to consensus, that would be wonderful and I would be willing to meet with everybody but if we are going to do that I really want it to be followed by the letter of the law and that people that do want to attend even if they are not participants can sit in and listen. So that they can listen to the discussion.

*Mayor Helbling:* I know personally that I put many many hours in as the rest of the Commission has and so have the petitioners and I thought we came to some type of reasonable solution to the problem. Was it perfect for either side? No. Will it ever be perfect? I doubt it. My next motion is that I really am not willing to put a lot more time into this, I'm going to vote to revoke the whole thing. And we have that right. We need to either come to some consensus and get this off of ground zero or we need to bail on it completely. Mr. Brown.

*Attorney Brown:* From a practical standpoint here. Failure to adopt the first reading of Ordinance 1048 means that the initiated ordinance is in place which it appears is what the commentators here want. So from Mr. Frank Herauf's standpoint there is no reason to do anything because they wanted an initiated measure and they've got it.

*Mayor Helbling:* So the compromises are all out the window. Now we left our city staff as short as they are to deal with this. And it is not going to be a pleasant experience.

*Commissioner Tibke:* Mr. Mayor, the reason that we have meetings and public hearings is to come to a consensus and hammer out these issues. That's why we schedule. That's why we plan. That's why we are here. We don't need 10 extra separate meetings when we have been discussing this the last couple meetings. That's why we have these meetings.

*Commissioner Serhienko:* Thank you for pointing that out to me. I guess the only point that I want to make is that I think that when you have something like a City Commission meeting it should deal with the ultimate of the project. The hammering out of the details should be done prior to it coming to the City Commission and to sit here for several hours going over the same information that we went over two meetings ago makes absolutely no sense to me. And to be perfectly honest with you I am very tempted to just table the whole thing.

*Commissioner Tibke:* Commissioner Serhienko, you can't table the whole thing. It's done now. And also, in a perfect world, and I've been on this commission 5 ½ years, sure maybe you can build some consensus within a group and bring it to the commission. That does not mean all the commissioners will agree nor can you legally poll. That's why you come here in a public hearing, take public comment, and hammer it through. That's what we're here for. You signed up for this position and you were elected. Maybe it's not always fun, but that's why we are here.

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*Commissioner Serhienko:* Oh I am not complaining about that.

*Mayor Helbling:* With that, I am going to close these type of comments. What happened was voted on tonight. If we want to change it I guess it will have to be brought back up. The staff...(interruption by Mr. Herauf)

*Herauf:* Can I make a comment?

*Mayor Helbling:* Make one brief comment please. I am not going to open it back up for everyone to comment.

*Herauf:* Would you guys be willing to meet at my house and sit down and hash this out?

*Mayor Helbling:* I don't think we can do that. I think we need to do it in a public setting and I think to be fair to the general public now that these meetings are televised, we need to do it in this setting so everybody can hear and understand what's going on. We need to do it in this type of fashion. We have tried to work it out and compromise and get somewhere on this. Now we have to live with what was voted on tonight, or not voted on. And if one of the commissioners wants to bring it back up, I'm not sure of the process. Malcolm, how many commissioners would it need to put this back on?

*Attorney Brown:* A commissioner who voted – now this is a little different because it requires 4 out of 5. One commissioner who voted in favor of the motion can bring it back.

*Mayor Helbling:* Is it just one commissioner? Does it need two? (Looking at Attorney Brown who nodded his head “yes” to “one”.) So one commissioner could bring this back. I think we have put our staff in a very awkward position which we should have never done but we are where we are and if one commissioner wants to bring this back up we can do it. If not, it's where it's at. We are moving on to the next Agenda item.

2. *Consider first reading of Ordinance 1049 to enact a new ordinance relating to weed control.* Fire Chief Nardello presented information related to the first reading of Ordinance 1049 to enact a new ordinance relating to weed control. Nardello stated that the Mandan Fire Department currently provides enforcement for the City Weed Ordinance and alternatives have been looked at to improve the process over the last several years. A few changes are in being reviewed and while doing so, the enforcement policies for the City of Bismarck have been looked at. The recommendations were forwarded to Attorney Brown. Because there were so many changes to try to stay consistent with Bismarck – we repealed the current Ordinance and enacted a new one which is now before you. The major changes in the Ordinance are as follows: (1) the current ordinance of the City of Mandan requires eradication of weeds over 3 inches in height. This has always been a problem because most lawns are 3 inches in height. The first major change to this ordinance would be from the 3 inches to our proposed 6 inches in height. (2) The second change would be the notification process. We currently see a violation or receive a complaint from a citizen; will go out and investigate the complaint; will draw up the paperwork and send it to the complainant for review; follow up consists of several steps for possible resolution. Nardello referred to a PowerPoint presentation to

depict situations described. It takes approximately two weeks from start to finish of the complaint process which is not satisfactory to the involved parties. The proposal is to follow what the City of Bismarck uses: we would publish one notice each month that the lawn has to be cut by a certain date. So we are proposing the 15<sup>th</sup> of the month with due date of the first of the month. Our intent is to notify all repeat offenders of the change. Nardello stated that there would be no fiscal impact. It is anticipated by changing the ordinance that staff time and administrative costs would be reduced accordingly.

Mayor Helbling asked for comments from the commission or the audience. (No comments were given.)

Commissioner Jackson moved to approve the first reading of Ordinance 1049 to enact a new ordinance relating to weed control. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

Barbara Miller, Mandan City resident came forward to speak stating that behind their property, west of 7<sup>th</sup> Avenue Northwest between 2<sup>nd</sup> and 4<sup>th</sup> Street, is not a lawn, not a yard it's simply a hillside area that has never been developed. It is filled with leafy spurge, yellow clover and some other creeping weeds that roundup has had to be used for the last two years to eradicate. Miller inquired if this ordinance applies to all property within the city because she states she has complained two and three years previously about this property.

Mayor Helbling inquired if this is just within the corporate limits of the city? Nardello replied that it is within the city limits stating that the ordinance does apply to all within the city. If a hillside, we do not cut it because of erosion problems. But eradication will be enforced. Nardello will follow up on this matter.

OTHER BUSINESS:

There being no further actions to come before the Board, Commissioner Jackson moved to adjourn the meeting at 7:53 p.m. Commissioner Serhienko 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