

The Mandan City Commission met in regular session at 5:30 p.m. on April 7, 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, Fire Chief Nardello, Planner Baehurst, Business Development Director Huber, Engineering Project Manager Bechtel, City Assessor Barta and Director of Public Works Wright.

Mayor Helbling commended several people and community organizations for their volunteer services during the recent inclement weather and threatening flood conditions within the Bismarck-Mandan Community. On behalf of the City of Mandan, Mayor Helbling extended thanks to the many people including but not limited to the following: The Mandan City Staff under the direction of Administrator Jim Neubauer, the Mandan Police Department, the Morton County Commission members and county staff, Bismarck Mayor Warford, Governor John Hoeven, the local and national press, the firefighters who were on call throughout day and night and all the citizens involved in the volunteer efforts.

MINUTES:

PUBLIC HEARING:

BIDS:

CONSENT AGENDA:

1. *Consider approval of raffle permit for Railway Credit Union for Relay for Life.*  
The Board approved of the raffle permit for Railway Credit Union for Relay for Life.
2. *Consider approval in accepting an FY06 Law Enforcement Terrorism Prevention Program Grant.* The Board approved the acceptance of a FY06 Law Enforcement Terrorism Prevention Program Grant.
4. *Consider for approval the Final Plat of Lincoln Ridge 5<sup>th</sup> Addition.* The Board approved of the Final Plat of Lincoln Ridge 5<sup>th</sup> Addition.
5. *Consider Special Sunday opening for Mandan Eagles on Sunday April 19, 2009.*  
The Board approved of the Special Sunday opening for Mandan Eagles on Sunday April 19, 2009.

Mayor Helbling requested to remove Item No. 3 from the Consent Agenda for further discussion.

Commission Jackson moved to approve the Consent Agenda Items No. 1, 2, 4, 5 as presented. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

3. *Consider for approval the Final Plat of Bridgeview Bay 3<sup>rd</sup> Addition.* Mayor Helbling stated that this is a piece of property that the State of North Dakota acquired for the Liberty Memorial Bridge. At that time, there were specials attached to it. A.J. Wallevand with Ulteig Engineers was present for discussion. She stated they were directed by the DOT to handle this matter as part of the Bridge Project. Mayor Helbling stated that as a normal process when a piece of property is purchased, specials are

assessed to the property buyer. In this case, the State of North Dakota does not have an obligation to pay specials. Mayor Helbling stated that it would not be fair that the citizens of Mandan be held liable to pay the specials on the property. Mayor Helbling inquired of the city staff that if this request is approved that there is a notation that is submitted to the county stating that there are still specials to be paid on that property. Mayor Helbling stated that it should be noted that if the county or any other entity or individual subsequently purchase this property that they be made aware of unpaid specials on the property. Finance Director Welch stated that there are approximately between \$12,000 to \$15,000 specials due on the property.

Commissioner Gangl moved to approve the Final Plat of Bridgeview Bay 3<sup>rd</sup> Addition with a notation that the specials due on the property will be passed on to the purchaser of the property. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

OLD BUSINESS:

1. *Construction and staffing report of Fire Station 2.*  
Fire Chief Nardello presented a current status report on the progress of Fire Station 2. He stated that it is 98% complete and that emergency services at the station officially began on March 21, 2009. Still under construction are items such as landscaping, outdoor lighting, painting and other miscellaneous items that will be completed as weather permits. Nardello reviewed the current and projected future staffing plans of the new fire station. He stated that the new fire station was ready and was the designated command post during the recent flooding problems. Nardello provided snapshot photos of the new fire station. Chief Nardello and Mayor Helbling extended an open invitation to view the new fire station to anyone who would be interested in seeing it.

NEW BUSINESS:

1. This item was removed from the Agenda: *Bismarck-Mandan Development Association Update i. Consider recommendation for a potential industrial location and cost estimate for conceptual site design.*

2. *Consider Renaissance Zone Committee recommendations:*  
*i. Turning Point, LLC — Rehabilitation of 114 Second Avenue NW*  
*ii. LBG Pharmacy (dba Medicine Shoppe) — Lease of 114 Second Avenue NW*  
Ellen Huber, Business Development Director reviewed with the Commission two new Renaissance Zone applications. The first project, Turning Point, LLC has an estimated investment in building of approximately \$200,000. Huber stated that the proposal exceeds the requirement minimum investment of \$32,000, 50% of the building's value of \$64,000. Huber outlined additional improvements that are planned for the property. The estimated value of the building upon completion of the project is @ \$279,000. Property tax on the building as improved is estimated at \$6,967 per year for a total tax savings of \$34,839 over the 5-year tax exemption period, the land will be taxed. The 5-year tax exemption is estimated at zero. Huber stated that the RZC recommended approval of the application for this project with the 100% 5-year local property tax and state income tax exemptions. The recommendation is contingent upon the approval of the Architectural Review Board.

Kevin Ritterman, project manager, confirmed the plans for the project as outlined by Ms. Huber. He stated the target date for the move-in is within the next 60-90 days. Commissioner Serhienko moved to approve Mandan RZ Project #33: Turning Point, LLC — Rehabilitation of 114 Second Avenue NW. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

The second project, LBG Pharmacy, dba Medicine Shoppe, will lease property from Turning Point LLC at 114 Second Avenue NW and plans to relocate and to expand its services which will include a drive-thru as well as add to its employment base. The 5-year state income tax exemption is estimated at \$10,163 per year for a 5-year total of \$50,816. Huber stated that the RZC recommended approval of the application for this project with the 100% state income tax exemption for the lease by LBG Pharmacy. The recommendation is contingent upon the approval of the Architectural Review Board.

Bob Gustafson, LBG Pharmacy, confirmed the plans for the project and proposed expansion to his business as outlined by Ms. Huber. Commissioner Serhienko moved to approve Mandan RZ Project #34: LBG Pharmacy. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present.

3. *Discussion regarding the City owned parcels within Collins Avenue West Plat.* Project Engineer Bechtel presented information regarding City owned lots within Collins Avenue West Plat. Bechtel reviewed previous actions on the property approximately 2 years ago wherein Interstate Engineering noticed an irregularity in the right-of-way from the plats adjacent to the project and the land that was surveyed for the project. The irregularities were identified as city right-of-ways and they were cleared up by platting extra land adjacent to the project. The matter was before this Board on December 16, 2008 for approval. Bechtel stated that the concern now is how to distribute the lots. The City Engineer's office recommends deeding the smaller parcels to the adjacent landowners. The landowners are interested in building sheds or garages on the property. Further, the two remaining lots are large enough to build homes on them. Bechtel stated that City Assessor Barta has suggested a market value of \$1.00 per square foot for the two buildable lots – Lot 1 for \$10,000 and Lot 2 for \$7,500 and that they could be listed with a realtor to sell. Attorney Brian Giese spoke on behalf of one of the landowners, Leo and Maria Bauer, property owners adjacent to lots 2 and 4. The Bauer's have a single garage on the west side of their home. Giese explained that the map does not show that Bauer's sprinkler system and fence go another 5 feet to the east on the property. They have used and maintained that property since 2000 and the previous owners were there since 1961. Giese requested the Commission offer the same arrangement to his clients as is being offered to the property owners of the north allowing them to purchase the lot at a reasonable cost that is to the east of their property or to take that lot off the discussion and allow additional time to review the matter. Assessor Barta stated that a lot has to be at least 7,000 square feet before it can be built on. City Attorney Brown stated that the title to this area is part of old plats and they were never part of the lots. He stated that it is unknown why they were never deeded. Brown stated that he has started a quiet title action for all these lots. There is no current ownership of record for these lots and the quiet title action is the correct action to take to clear up this matter. Attorney Brown recommended tabling this matter until the quiet title action is completed.

Commissioner Serhienko moved to table this matter until City Attorney Brown has completed the quiet title action on the subject properties. Commissioner Tibke seconded the motion.

The motion received unanimous approval of the members present.

4. *Consider approval of recommended fees referencing taxicab services.* Police Chief Bullinger presented a request for a business license and filing fee's, insurance indemnity, taxicab fares and taxicab drivers license fee and taxicab license approval as outlined in chapter 13-19 of the Mandan Municipal Code. Chief Bullinger stated that an application for a business license from Roger Kroh and Joel Kroh, Metro Taxi, Inc. was previously approved on January 20, 2009. Chief Bullinger reviewed the business license and filing fee requirement under Section 13-19-03 and recommended a fee of \$100. Bullinger reviewed the requirements under Section 13-19-06, Indemnity Bond or Liability Insurance and recommended that Metro Taxi carry liability insurance for each authorized vehicle in an amount of \$250,000 for bodily injury to any one person and the amount of \$500,000 for injuries sustained to more than one person which are sustained in the same accident and \$50,000 for property damage resulting from any one accident. Chief Bullinger reviewed taxicab fares as outlined under Section 13-19-14 and recommended the following: A \$3 fee at the beginning of each fare for a single rider plus an additional \$1 fee for additional riders. A \$1.80 fee per mile or \$.30 for each 1/6 mile plus \$.50 a stop with an additional \$.30 a minute wait for each stop or a flat rate of \$25 per hour. Chief Bullinger reviewed the Taxicab Drivers License requirements as set out in Chapter 13-20 of the Mandan Municipal Code. He recommended approval of the following: A \$20 fee per license and an annual renewal fee of \$10 per license. Section 13-20-05 subsection 2 states that the board shall issue or deny the license. It is suggested that the Chief of Police be granted the authority to issue or deny the license and that denial of a license is subject to appeal to the board. Chief Bullinger stated that applicant's backgrounds have been completed; the health certificates from physicians have been received; and the fees have been paid. An Addendum to the taxicab drivers list is being submitted for approval by the Board. City Attorney Brown stated that the Mandan City Ordinance is out of date in terms of what is transpiring today. Attorney Brown stated that the City of Bismarck's Ordinance is almost identical to the City of Mandan's Ordinance. Attorney Brown stated that he has had discussions with the city attorneys and inquired if both city's need to have taxi cab licenses. Bismarck City Attorney Whitman has redrafted the ordinance to bring it up to date and assuming that we agree on that, it is suggested that both cities have the same ordinance that will include a reciprocity clause for the Bismarck/Mandan areas. Attorney Brown stated that an up-to-date version should be ready on or before May 1<sup>st</sup>. He noted that the fees will remain the same.

Commissioner Serhienko moved to approve the recommended fees referencing taxicab services as presented by Chief Bullinger. Commissioner Gangl seconded the motion. The motion received unanimous approval of the members present.

5. *Discussion related to Mandan School District proposal for the Mandan Community Center.* City Administrator Neubauer stated that the discussions on this matter have been ongoing since July 2008. On February 23, 2009, there was a joint meeting with the three entities: the Mandan City Commission, the Park District and the Mandan School District. That meeting was held for all entities to contribute and voice opinion as to which entity would be the best fit to own and operate the Mandan

Community Center Building. Neubauer stated that the School District has shown a great deal of interest in the facility. The Park District met after the Community Advisory Board met. At this time, the School District has made a proposal for the City of Mandan and the Park District to consider. In essence, the School District will take ownership of the Community Center but the City of Mandan would make the full bond payment through 2019 on the facility. The School District requested the City make the special assessment payments which relate to parking lot improvements. Under these proposals from 2010 through 2022 where all existing debt as it stands today were to be paid off and if we continue to operate as we are now wherein the City, Park District and School District wherein each are paying a portion of the cost of operations the center, they are paying a portion of the bond payment and they are paying a portion of the special assessments on that facility. Barring no unforeseen problems with the facility (boilers, roof or any major repairs) the City's portion would be \$1.85 million dollars. Under the School District proposal, the City would pay the bonding costs and the special assessments amounting to \$1.7 million dollars. Neubauer stated that he and Commissioner Tibke attended the Community Center's Advisory Board Committee but stated they were not in a position to make an offer to the entities but suggested that the City could possibly pick up the full bond payment. Currently the bond payment on that facility is approximately \$140,000. The City pays one-half of that and the School District pays one-fourth and the Park District pays one-fourth. Between 2010 and 2019 that total cost is approximately \$1.4 million dollars. To take and say that the City will make the bond payment and pay off that debt through the years to 2019 versus what we would be paying under the current manner in which the Community Center is operated, in essence the City would save about \$400,000. Mr. Neubauer stated that the funds used to pay the city's portion of the bond agreement are from sales tax monies and there is a special assessment fund that pays the special assessment payment and the sales tax fund is making the insurance payment of roughly \$6,000 on the facility per year.

Neubauer stated that the Park District called a special meeting on April 3, 2009 and indicated they were directed to find other office and recreation space. They are seriously considering a move out of the building so the School District can make plans to take over and begin renovation. There will be little to no change with the operation of the pool within the facility wherein the Park District will still have access to it. Neubauer stated in order for this process to move forward both the Park District and School District need the City to either accept the School District proposal of paying the full bond cost and also the special assessments on the building or the City will need to counter-offer something back to the School District. Neubauer recommended a counter offer that the City make the full bond payment but the City will not pay the subsidy, will not pay the insurance and will not make contributions to the long term maintenance fund on that facility any longer. In essence the City will not pay any more in this deal than is already being paid on behalf of the Community Center.

Mayor Helbling asked for comments from the Commissioners.

Commissioner Serhienko: When this was initially proposed, the discussion centered around as to how the center currently is being used would be realigned and there was considerable discussion as to functions that take place in the gym. I have read the Messenger and various articles in the newspaper and the original content contained some negotiation or some type of addressing that area. But as I read on, it appears that the

School District has plans to re-do the whole gymnasium into a construction area, like where they put their shops and things. It sounds like a permanent change. It's not something that they are going to set up and move out of the way if someone wanted to use that hall. Basically what I am hearing is that "it's gone" for the residents of Mandan. If there is something that is taking place in that "gym" has pretty much gone away. Is that correct?

Administrator Neubauer replied that is correct. He stated that they are still in planning stages of how the "hall" and surrounding rooms might be set up. Neubauer stated that several private entities (St. Joe's; Christ the King; the Eagles Club) within the community are researching what type of rental they might have available. Neubauer stated that no decisions have been made, however, in order for this to move forward, they are looking at alternatives for the activities that have taken place in the Community Center and where those activities would have accessibility and availability for those types of functions. The question(s) are what is the next step and what the City will consider. The Park District will need to look into what they will do and where will they go. Those pieces have not been put in place yet. If the City Commission comes in and states that they are not willing to make a bond payment and we are not willing to do this, then the process kind of just ends.

Commissioner Serhienko: This whole thing, transferring it to the School District makes sense. It really belongs there. The problem is that the event part of the Community Center is disappearing for the community. That is the part I am having a problem with. I agree that the swimming pool and other parts of the facility should have been worked out with the School District long ago. The problem is that this is being done at the expense of the people of Mandan of a facility they use for community events and there is simply just no replacement for the events that have been held in the Community Center. There is not another facility in Mandan that can take over holding the events in comparison to some of those held at the Community Center (i.e. Art Show, Gun Show, etc.). The other concern of this matter is the timeline. It appears they want it done by 2010.

Commissioner Serhienko stated that as far as the recommendation on the bond issue and the other monetary pieces to this matter, he has no problem with how that would be handled. He stated that his concern lies within the losing the facility for community events with nothing to replace it.

Commissioner Gangl inquired as to why the City is paying the \$1.4 million for the bond if it will be School District property?

Administrator Neubauer replied that it is a matter of the School District's bonding of what they can legally go out and bond for. It's a financial consideration for the school.

Mayor Helbling commented that through this process no one wanted to harm another entity and what is the best long term solution for the building. The City cannot run the Community Center and if the School District and the Park District want out of it, the City is not capable of doing it. It could do it, but property management is not something the City wants to be involved in.

Commissioner Gangl commented that he agreed with the use and the building of a different fitness center. Commissioner Gangl stated that his understanding of the School District process – they would have to go back and ask the voters how to come up with the money. This would be an alternative way for the School District to accomplish this transfer. Administrator Neubauer responded that the money that was approved in the last bond issue was to be utilized specifically to renovate the former junior high or the current Great Plains Academy. To answer Commissioner Serhienko’s question, one of the reasons that this time frame is what it is – is because - if the Community Center is made available they (School District) would rather not spend the money moving the administrative offices to the old junior high (Great Plains Academy) and then turn around when/if the Community Center becomes available and now spend more money moving over to the Community Center. If they can transition this within a timeframe that is acceptable to everyone they could avoid spending the extra money at the junior high for renovation. It does not make a lot of sense to continue on with the discussions if the criteria is not outlined if the project is going to move forward. The School District has gone forward and engaged an architect to look at how the Community Center would work and how it would be laid out to make sure that it would be usable for their administrative offices and for their vocational programs. It turns out that it would be very usable with some room to grow. Now if they are to continue on this path and the Park District is to continue on a path of saying “yes” we will move out of the Community Center. We will find another location and where it is right now is not known, but eventually each of these public entities needs to make it known if they like the idea or no, they don’t like the idea. The School District has made a proposal and has stated the things that need to be addressed to make it work.

Commissioner Jackson: Mr. Neubauer, as I look at this, your recommendation is for the payment of the full bond only. Am I correct in saying that the School District is interested in us paying the full bond as well as the special assessments for approximately the next 12 years?

Administrator Neubauer: That is their initial proposal. There has been some discussion regarding possible negotiations.

Commissioner Jackson: I don’t want to oversimplify it, but am I correct in saying that whatever entity is paying the special assessment ultimately is the taxpayer paying the special assessment?

Administrator Neubauer: That would be correct.

Commissioner Jackson: So I as a taxpayer, whether the School District is paying it or whether the City is paying it, “I am the one paying it”.

Administrator Neubauer: It is all coming out of the same pocket, however, because the School District’s levying ability is much broader because the district is much larger and extends beyond the corporate limits.

Commissioner Jackson: Are there any particular benefits to the School District paying the special assessments versus the City paying the special assessments?

---

Administrator Neubauer: They have a larger base in which to spread those costs.

Mayor Helbling: I think it is a fair proposal because you are encompassing the entire School District which is going to utilize the facility and not just the citizens of Mandan.

Commissioner Jackson: Are you or are any of the Commissioners aware if the School Board is looking at building a new high school because of their lack of space right now?

Administrator Neubauer: As I understand it, it is their carpentry program that is, I believe it occurred a few years ago when they had an accreditation reviewer come in and say – that if you are going to continue this program you will need to do some physical plant improvements and if those improvements are not made, you are at risk of losing the program. If the School District wants to continue that program they will need a different facility to do that in. This would alleviate that problem.

Commissioner Serhienko: Mr. Neubauer, sometime ago we tried to give this thing to the Park Board for a buck. And if the Park Board would have accepted it, what would the City's obligation have been at that time?

Administrator Neubauer: I do not know. I would assume that we would be operating under the same conditions that we are today. The School District would be utilizing the facility, the Park District would be utilizing the facility and the City would continue to make their half of the bond payment, their subsidy, and their contribution to the long term maintenance fund and paying the insurance. I don't think anything in the agreement would have changed other than, here are the keys Park Board, it is your facility to do with it as you want – turn it into more of a recreation center, then that would be up to them to do. I do not think that would have changed the dynamics here in any way.

Commissioner Serhienko: So the finance aspect of this whole matter would be pretty much the same? What have you picked up as I have heard some discussion that the Park Board is planning on building? A recreation center? Can you tell me – is the rec center going to have a large space that might be available for the obvious? The people that currently use that gym? Might that be a possibility?

Administrator Neubauer: That is a possibility. At the Park District meeting last Friday, they were not prepared to come out say, if we are going to move out, they have not yet made a decision if it is going to permanent or temporary to move out but they have said let's look for other space so that the School District can in turn take over this facility. They will need some time, if they are going to build a new facility, to determine what it is going to look like, how much it is going to cost, where it will be located and how long it will take to build it. Those decisions and those discussions have not yet occurred.

Mayor Helbling: They also have the option of not doing anything and moving to another facility and not doing anything.

Administrator Neubauer: Correct.

Mayor Helbling: They have told the Community Advisory Board that it is there desire to not operate the Community Center as it stands today.

Administrator Neubauer: You are correct in that it is one of those facilities that it has been made to work as the home for the Mandan Park District from an office standpoint and a fitness facility with a swimming pool. Their estimates were over \$2 million dollars to turn it into a recreational facility that they would say is a “true recreational facility”. In the long term, all three entities, the School District, Park District and the City of Mandan are looking at, as stated earlier, what is the best use for the community of this facility. All three boards are looking at the pocketbooks and if there is something that is going to be done that it is not going to cost the taxpayers any more than they currently are paying. Those are the parameters that each of these boards are looking at. Does the School District moving into the facility make the most sense, community wide? Does it make sense for the Park District to look at building a facility that is purely recreational and for a large space for the events that you are talking about. Those discussions are ongoing and are going to need some time to move through those discussions but it does not make a lot of sense if this Board is not willing to say we are not willing to make any more payments than we are right now.

Commissioner Serhienko: What is it specifically that you are asking of the Commission tonight?

Administrator Neubauer: A direction. If you are willing to say “yes” we are willing to entertain and we are willing to make the full bond payments from the years 2010 through 2019 or whatever that year ends up being – that message needs to be sent to the Park District and School District officials to continue on with this process. If this Board of City Commissioners says we are not willing to do that then the process may then just die right now because it makes no sense to continue it.

Mayor Helbling: I will open this up for comment from the audience if anyone cares to make a comment.

Susan Beehler: A Mandan City resident came forward and commented as follows: I don’t know if the public has seen this attachment and if this was done by the school or if it was done by the City Commissioners on the proposal that was in the Agenda packet. Do you know who did that? The School Board. I think it is important for the public to hear what the School Board has identified as the negative impact. It is as follows:

- Would not have the additional classroom space at the Community Center as we would have at the GPA for any large classes that we may have in the near future
- We need to sell two educational facilities at a time when the market is depressed
- Timeline for the Park District to move out and the School District to move in to the Community Center is quite different

On the bottom part of that proposal, the School District has said that for the school to take ownership of the Community Center: The City of Mandan must continue to pay off the debt on the Community Center. At the present time, the school district does not have any funds available from which the \$140,000 annual payment could be paid. The only way that the school district could pay the annual debt payment would be to ask the patrons to pass a bond issue.

Commissioner Gangl made the point of - is this circumventing the process of the voters. I believe by the School Board coming to you and asking you to pay when they are out of

money and they don't want to take it to a vote of the people I feel that is wrong to the taxpayers. That process. And as the front page of the Sunday paper said, we are now higher in taxes than in Bismarck. I don't know what our entities are not getting about "No more property taxes". The No. 1 issue even when Moore gave the report when he surveyed the community that always comes up. It should not be negated. It's being negated by people not responding when people have said over and over again this is the No. 1 issue but yet this is before us and this, will it drop our mill levy? What I see as happening, if you say go forward with this without the plans in place for anything else this leaves it open for the Park Board to decide to build a new facility yet leaves it open for the School Board to access money that they did not have because they have already been limited by our state legislature and according to the agenda packet, the legal review it says it is under review. Is this legal for our city to do this? These are all problems that I have with this issue. I believe that this does not have to die in its track. I believe that the School Board is probably the best entity. I believe that it should not be fast tracked. I believe that it should go through the process of the people. They can vote on it. They can make up their minds whether they want their community center to be used by the school board and the school board to be the ones to pay for it or the city paying for it. Put it out for a vote. There's time. There is no reason why to circumvent the public view. This little meeting happening tonight is not enough when we are talking about the School Board is already up to their limit.

Mayor Helbling: Mrs. Beehler, could you please keep your comments brief?

Susan Beehler: I think it is very important for this to be discussed because for whatever reason the City Commissioners, the Park Board, the School Board are not getting that we have a property tax issue that people are getting upset about. The other thing that this said that must occur the school district and the park district would need to continue jointly operating the pool. Well that is fine and dandy but tonight my daughter is playing dodgeball at the Community Center. What happens to the dodgeball teams? What happens to the volleyball teams. My husband currently plays volleyball over in Bismarck. Now if we want our patrons, our taxpayers, to continue to leave our community like they have done for the shopping, this will be the big hammer on the nail. There are some questions that I think – will it reduce the city mill levy? And will it raise the mill levy for the school? Those are questions that need to be answered.

Mayor Helbling: Thank you Mrs. Beehler. I will answer some of the questions.

JoAnn Zahursky-Klein (inaudible name): A Mandan City resident came forward: Is there any way we can change the bond for the high school for this or is that earmarked just for that?

Mayor Helbling: I do think the School District is being very responsible as well as the Park District and the City – they are looking out 20 years as to what is the best use – how can we best utilize the taxpayer dollars and the Mandan Community Center facility. If the School District chooses to go about the path that we are on and we stay on the same course we are on – they are going to look at renovating the old junior high in which they are going to spend roughly a million dollars to renovate and it is still not a suitable facility. They still have the address the space issues at the high school or lose programming. The Park District has told us their long term wish is not to stay in the facility so the City will be stuck with it by itself. We have several issues going on here

all at once. Just to address Mrs. Beehler's comments, all of these meetings have been public. We have had a joint meeting of all three Boards which was very lightly attended. All of the negotiations, everything you see on these papers are done in public meetings. Nobody is trying to hide anything. Nobody is trying to fast track anything. There are so many entities and so many different steps involved here that we have to take it step by step and see where it comes back. Nobody is trying to hide anything.

Commissioner Tibke: President Helbling I would like to make a comment. Mr. Neubauer, the School District is planning on taking it to a vote, are they, for transferring the funds earmarked for renovations of the old Jr. High (now Great Plains Academy) money to the Community Center. Am I correct? They are going to take that to community vote or there are talks of that?

Administrator Neubauer: Commissioner Tibke, the February 23<sup>rd</sup> joint meeting with all the entities, there was a March 23<sup>rd</sup> School Board meeting where this was discussed. The idea of a vote has to occur for the funds that were directed to be used to renovate the Great Plains Academy or the former junior high, a vote of the people has to be granted for the School District to use those funds at the Community Center. The School District has talked about a time frame in that. To answer Ms. Beehler's questions, everyone is acutely aware of the property tax issues and all these three entities have had much discussion about trying to insure that the best decision(s) are made with trying to do the right thing with the money that is available. That is why these discussions continue. If the process moves forward there will need to be public input meetings. We understand that. There will need to be public information meetings because there is not one of us that feels that we can take a vote on moving funds to the people of Mandan, the citizens of Mandan without many of these questions being answered. And we are trying to develop the answers to the questions by having the first joint meeting by saying here is a discussion that is occurring. What entity is best suited for the Mandan Community Center? Those were held on February 23, 2009. The School District looked and they came back on March 23, 2009 and said they have looked at the building and have had some drawings completed and it will work for us but in order for that to happen, there are conditions that need to be met. The Park District is now in the process of where they are going to go. And yes, there will have to be a vote but not one of the entities wants to go to a vote of the people without a clear cut direction on here is how the dominos are going to fall. If the green light is given by the city that "yes" we are willing to entertain paying off the bond that will send the message to move this process forward. We understand that there has to be a really good direction on where things are going to go before School District will even take this question to the taxpayers. And yes, there will be public information meetings to flush this out further but there are some initial steps that have to be given the green light to either move forward or you kill the process. Or the process needs more discussion. That's the question before you right now is under this proposal, do you foresee us moving forward or maybe the wish of the Commission will be "no way" we are not going to do that. But those questions need to be answered to move forward.

Mary Beth Osborne, a Mandan City resident came forward: I am really interested because it is kind of sad that you are elected to represent us and from what I am hearing even outside of this meeting is the fact that it is all kind of decided. And I see no advantage yet, and in fact I would say it is cut to the chase what we're actually seeing

here is that the citizens of Mandan have voted down an event center. So if we get rid of the Community Center then we will be forced to build something and same with the recreation center and I would think that you guys have common sense that's why we elected you and I'm not a public speaker but it's fairly obvious there is collusion between three entities has been before. I've been raised in Mandan and I've seen this thing year after year and I would ask for your consideration on the cost how you think you are going to have this event center eventually made because the areas and I have worked on Art in the Park for 11 years, I know St. Joe's, I know Christ the King – they are not big enough for these events. And once we lose them, they're gone. Just like our businesses down town are gone. We need to push forward, I agree, but we need to have a pretty solid plan and a lot of these discussions are based on tourism which we know is down in the state. So please think very logically before you vote.

Commissioner Jackson: To address some of your concerns ma'am. Here's how I personally view this. I am aware that the School Board has been concerned about the size of the school and their programming and things like that. But by transferring the Community Center to them it would hopefully both short term and long term save the taxpayers money because a new facility will not have to be built. That's specifically why I asked my questions about that. To address some of your concerns about what does it do to help as far as reducing taxes now for the City? That's again why I asked my question to make sure it is on the record is because the school is actually a larger district so it probably wouldn't substantially lower your taxes but it would a little bit and that's obviously one of my concerns as your city commissioner. As far as other long term benefits go it would from my understanding save the school board and ultimately me as a taxpayer paying taxes to the school as well a substantial amount of money because they are concerned about having to renovate their administrative offices as well. And I will say this for myself as I can't speak for the entire Board of course, but every discussion that I have been a part and parcel to has been on the open record. All of these things I learned from the last meeting between the three entities and so on and so forth. There has been no sort of clandestine meeting between myself and whoever, Tracy Porter from the Park District or the President of the School Board or anything like that. It's been an open dialogue, that's what we want but the goal is obviously to save taxpayer money. I don't want to see the City take over this Community Center by itself and have us have to run it by ourselves, have the inability to do that and have a nice large facility sitting there that nobody is using because we cannot administer it properly without the School Board and the Park Board's help. I also don't want to see a situation where we have two competing entities because between the City and the Park District running two separate facilities both trying to make a profit or both just having our own facility. And those questions are questions for those entities. Are they going to do that? Are they not going to do that? Are certainly questions for those entities. The purpose that the Community Center serves is a very peripheral item that the City administers. I do not see it totally something we should be administering and we should be running. It's more geared toward the Park District. I would even argue that it's more geared towards the school because of the swimming events and whatnot that are there and not necessarily towards the City. And yes, the City does run some programming there. I did the calculation and my recollection is that it is one-millionth or something like that, no it is four-millionth's of a percent of the taxes and things like that is what the Community Center actually brings in at the events that are held there. In other words, it is an extremely small fraction of what it brings in. My recollection is that it is \$40,000 of a \$29 million dollar budget. So it is

not a significant portion whereas it could be hopefully a more significant portion of the School Board or of the Park Board. It looks like the School District is the interested entity. I hope that addresses many of your concerns.

Mary Beth Osborne: Mr. Jackson, it does some of them but I think you missed the whole point of the fact that if the School Board takes over and puts classrooms and offices in the Center that takes it totally out and Mandan will not be competing with Parks and Rec or anything like that. I think you will be working together and I hear a lot of “ifs” and “what ifs” but I don’t hear any concrete things that you can present to the taxpayer and I am hoping that you will bring this up as an open meeting because to tell you the truth I haven’t heard about these other meetings otherwise I would have been there to ask questions. I don’t know what the problem is and why we’re being told that yes, we are all open and everything but I didn’t know about a February meeting until it was all over with. And I think you have to be open because we are paying the taxes. I’ve had people ask me about buying a house in Mandan and I tell them, don’t do it. Our taxes are high enough as it is. You can buy cheaper elsewhere and they did. I’m sorry, but that’s the way it is. I realize that I am taking up your time but just think about it before you say yes we are going to do this.

Mayor Helbling: I think that’s one of the complexities of this whole situation. We do not have anything concrete at this time because we’re dealing with three different entities with three different needs. Another thing that I would like to clarify, there has never been a vote of the public on an event center and in no way, shape or form should we tie with what’s happening here to the City pushing for an event center. I think I have been fairly clear as well as the rest of the Commission. The only way an event center will get built is if there is enough retail and commercial component to drive an event center so until some of the other functions come in to play, I don’t think we will even bring up the idea of building an event center. That’s all in discussion phase and there again, there is nothing concrete there either. All the Community Center Advisory Board meetings have been open to the public. I know that Susan has been to the majority of them. None of these meetings have been closed and we are doing the best we can to try to inform people and we will try to get that information out better than we have been.

Mrs. Beehler, very brief.

Susan Beehler: I just have a couple questions. If we do nothing the School Board still has their administrative office. They still have their bond issue. They have not used it for 4 years. They can wait another year or whatever to renovate the junior high. They have a building right now. The Park and Rec has a building right now. There is an agreement between the three entities so if we do nothing, nothing bad will happen because we already have an agreement. I say table this until it is further discussed. The other thing, the carpentry center. That can be accessed through Bismarck State College where it is being accessed right now. I asked my daughter where the vo-tech kids go? They drive over to the college. We have a vo-tech center here. There is no reason why we can’t do a contract with them if we do creative thinking. The other thing is, has the CAB building been sold? I believe it hasn’t so there is no rush to get out of it.

Mayor Helbling: Let me address your question – my understanding they did have an offer on the CAB building but I have not been in touch with them to find out where that’s

at. One of the hang-ups with the sale of the CAB building is, okay School District, you want to sell the CAB building, when can you be out?

Susan Beehler: Well they still have the junior high building. They can go in there.

Mayor Helbling: But is it wise to spend money renovating the junior high?

Susan Beehler: They would not have to renovate just to move in. I know I can sit at any desk with my laptop. I'm saying we're in desperate times. We need to do some things for the public. And people out here are hurting. And I say do nothing, continue the discussions but do nothing with the money part. Say we need to look at this further. We need to have these meetings. The Advisory Council. I have never received a notice on the Advisory Council meetings. I have no idea when they meet. I have never seen it publicized in the newspaper. The only one I have seen ever publicized was February 23<sup>rd</sup>. If the press is coming, they are getting a notice but the public is not getting a notice. How many people are showing up at these meetings and what time of day are they being held?

Commissioner Jackson: Point of Order. This is not about public notices.

Susan Beehler: But that's the point. The point is we need the public. The public is missing from this discussion.

Mayor Helbling: The public is not.

Susan Beehler: Yes they are. If they are not there, they are missing.

Mayor Helbling: I am going to reiterate this one more time before we close this. All these meetings are open to the public. The School Board Meetings, the Park Board Meetings and the City Commission. The School Board Meetings are all publicized and are noted on the electronic billboard. The City Commission meetings are all public meetings and the Park District meetings are all public meetings.

Commissioner Jackson: To Mayor Helbling: Point of Order. I did make a motion to move previous question. Excuse me, there was no motion, I withdraw.

Mayor Helbling: All of this has been about Board and it is very complex with the three entities and we will do our very best to make sure everybody is informed.

Commissioners, your wishes?

Commissioner Jackson: I will make a motion to move that the City of Mandan negotiate, send a message to the School Board that it is willing to pay the full bond costs but not the special assessments or insurance to allow the process to move forward. And complete consent of any further sale or transfer to be revisited as additional negotiations take place. Commissioner Tibke seconded the motion. Commissioner Tibke inquired regarding the motion – were you considering any future costs for things such as a heater or special assessments costs. Commissioner Jackson replied that he was not considering that, however, that would be included in the second part of the motion that if something need

be renegotiated. My understanding of my motion is that we will be moving forward in the negotiations process. That's all that is.

Mayor Helbling stated that there is an agreement currently in place with the other two entities (Park District and School District) if something major would happen.

Commissioner Serhienko: Yes, I do. You have a motion and a second; at this point a motion can be amended. I would like to amend the motion that Commissioner Jackson made and I would like to add that consideration be given to leaving the hall as an access to the community of Mandan.

Mayor Helbling: There has been a motion. Is there a second? Hearing none,  
Mayor Helbling (repeating): There has been a motion. Is there a second?

Commissioner Gangl: My only...

Mayor Helbling interrupted stating the motion should be dealt with first. Is there a second to the motion? Hearing none, the amended motion died for lack of a second.

Commissioner Gangl: The only objection I have is - the City continuing to pay the bond issue off - if it's going to be a school property they should be paying for it. It should be a School District payoff rather than the City of Mandan and citizens of Mandan having to pay for a school building. That's my only objection.

Mayor Helbling: Any further comments? Hearing none, all in favor of the motion: Commissioners Tibke, Jackson and Helbling voted in favor. Commissioners Gangl and Serhienko voted against. The motion passed on a 3/2 vote of the Commission.

6. *Dakota Country Cheese Inc. Notice of Violation and Order to Show Cause for violation of their waste water discharge permit.* Attorney Brown stated that this has been published as the time and place on an Order to Show Cause against Dakota Country Cheese for several weeks. Mr. Brown stated as follows: Mr. Himmelspach will address this matter, as provided in the packet of materials, that there have been meetings with their principals and a couple meetings had been postponed due to the weather last week. Mr. Himmelspach was notified today that Dakota Country Cheese has retained an attorney to assist them in this Order to Show Cause. The attorney was contacted today because a continuance had been requested on the Order to Show Cause. I advised the attorney that I had no authority to continue the matter and if he and/or his clients felt it necessary, they should appear at the meeting tonight and request the same. As I understand it from Mr. Himmelspach, there is no one here from Dakota Country Cheese so I guess we are scheduled to have the hearing on the Order to Show Cause.

Steve Himmelspach, Superintendent Waste Water Treatment Plant (WWTP) came forward to speak. Himmelspach outlined a timeline of events in this matter:

- On 3/9/09 the WWTP hand delivered a Notice of Violation and Order to Show Cause. The noticed outlined the following items needed to be addressed:
  1. The continuous pH monitor is not operational at the sampling station. On 6/4/08 Dakota Country Cheese submitted a letter stating they would have the

- 
- continuous pH monitor operational by 7/1/08. As of today, the pH monitor is not operational.
2. Calibration of the flow meter at the sampling station is not being done.
  3. The sampling station is not being maintained and kept clean.
  4. Falsifying of pH records at the sampling station.
  5. Compliance monitoring of the sampling station by wastewater treatment staff indicates pH violations are occurring.
  6. Flow measurement is not being done at the neutralization tank.
  7. Monthly reports are routinely late. (Only 3 reports have been received since May 2008 and all reports have been submitted after the due date.)
  8. Calibration records for the pH meter were not signed or had the dates and times when conducted on them.
  9. Records requested during inspection were not available.
  10. A redundancy plan for pH and flow monitoring has not been implemented.
  11. Chemicals were stored by floor drains that are not permanently sealed.
  12. A chemical spill plan was not available for the milk intake area.

WWTP Director Himmelspach stated that in addition to the above, over the last several weeks, meetings have been scheduled with Dakota Country Cheese to have these issues addressed. Unfortunately the meetings have been cancelled due to the inclement weather conditions or they have just not kept the appointments. As stated by Attorney Brown, a phone call was received today from an attorney asking to postpone this meeting because he has just received the information, did not have time to prepare and could not make arrangements to be at the meeting.

City Attorney Brown stated that he spoke with Attorney Chad Nodland and informed him that (I) did not have authority to continue this matter on the Order to Show Cause and that if either he or his clients were represented here tonight they could request the continuance and the Commission could rule on that issue. It appears neither the attorney or the Dakota Cheese staff are here. Himmelspach stated that there is information in the packets regarding outstanding balances due. The outstanding wastewater charges are in the amount of \$33,171.11 as of April 2, 2009.

Mayor Helbling commented that the City of Mandan has been very flexible in the past with Dakota Country Cheese. He stated that previous attempts to settle the outstanding bill and attempts to assist Dakota Country Cheese with a payment schedule have been unsuccessful.

Commissioner Jackson inquired of Mr. Himmelspach of his recommendation in this matter – Suspension of Industrial Discharge Permit and if there are concerns about suspending it immediately?

Himmelspach stated that his recommendation would be immediate. Dakota Country Cheese was issued their permit in December of 2006 and there have been issues since that time. It is up to this Commission as to how to deal with this matter. There are representatives from the State Health Department available to answer questions if need be. Commissioner Serhienko stated that this has been before this Commission several times in the past. It appears from all the actions taken in the past by the WWTP that Dakota Country Cheese has their own agenda on how they will do things.

Commissioner Serhienko motioned for Suspension of the Industrial Discharge Permit to Dakota Country Cheese Inc. Commissioner Gangl seconded the motion. Commissioner Jackson stated that the Commission had developed a fair compromise in the past, fining them and allowing them to earn their fine back and to see that they are not following that/ In addition to that, it appears from the documentation that they are attempting to falsify records. The motion received unanimous approval of the members present.

Mr. Himmelspach suggested that a notification be served on them that their services are being discontinued. Mayor Helbling requested that all actions that will take place be reviewed and that the actions are within the legal limitations to do so. Attorney Brown stated that it is his opinion that Dakota Country Cheese, Inc. has been given more than sufficient notice under the circumstances.

Mayor Helbling inquired if after service of notification of discontinuation of services, if Dakota Country Cheese complies with the requirements, do they have to come before the City Commission to turn the services back on.

Attorney Brown stated that there is no way the company could comply by tomorrow. The City has been attempting to obtain from them a concrete plan on how they plan to address the problem.

Finance Director Welch commented that he is concerned about the outstanding balance due for services and that that amount be brought to a current status.

Mr. Himmelspach recommended that Dakota Country Cheese present with a plan to address all the items outstanding as well as any past due amounts for services, then their services could be reinstated. The three conditions would be:

- 1) Bring their past due balance up to date
- 2) They meet all the conditions of Mr. Himmelspach and his department
- 3) If all conditions are met the Mr. Himmelspach has the authority to reinstate their service and contact the appropriate entities to turn the water/services back on

Upon compliance of all of the above outlined conditions, Himmelspach will notify the Commission of satisfactory compliance and will then “un-suspend” the Industrial Discharge Permit.

Gary Bracht MPDS Program Manager, State Health Department, who regulates all waste water discharges in the state, came forward to speak and stated that the City of Mandan has been very patient with this matter and stated that he agrees with the recommendation as presented by Mr. Himmelspach in hopes of bringing this matter to resolution.

#### RESOLUTIONS AND ORDINANCES:

1. *Consider amending Ordinance Number 1048 for technical corrections.*  
City Attorney Brown stated that the Ordinance on the handicap electronic accessible doors Subsection 14-02-15 is to read as follows: Be it Ordained by the Board of City Commissioners as follows: (Copy on file in office of City Administrator.)

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, Ordinance No. 1048 as enacted on March 3, 2009, is in all things ratified and confirmed.*

Commissioner Serhienko moved to approve amending Ordinance Number 1048 for technical corrections as presented by Attorney Brown. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

OTHER BUSINESS:

1. *Revised dates for spring clean up.*

Director of Public Works Wright stated that there is a revised schedule for spring clean up of the City (initially set for the week of April 20, 2009). The week of May 4, 2009 has been the agreed upon date between the Mandan and Bismarck cities allowing an additional two weeks to address street maintenance. Notification will be sent to the public through monthly water bills and then notifications will be published accordingly.

2. *Update on flood prevention measures.*

Administrator Neubauer stated that in consultation with Morton County Emergency Management people and national weather service staff, as of today, the Heart River is not expected to flood. The Knife River may have some impact on the Missouri River. The Missouri River is expected to handle the waters from spring melting. The sandbags will need to be returned to the designated locations with a final drop off date of April 19<sup>th</sup>. The Public Works department will take names of volunteers to help.

3. Commissioner Jackson requested to make a motion to reconsider under New Business Item No. 5: “Discussion related to Mandan School District proposal for the Mandan Community Center”. Commissioner Gangl seconded the motion.

Commissioner Jackson: After consideration during the last half of this meeting, I actually agree with Commissioner Serhienko that technically its just in the negotiation phase that certainly doesn't hurt to see if the School Board would be willing to look at allowing the City to continue to use the gymnasium for City events for a certain amount of time or something like that. I would like to see the motion amended to include that that be part of the negotiations as well. In other words, I am agreeing with Commissioner Serhienko. It certainly does not hurt and it is just in negotiations now anyway.

Mayor Helbling commented that if we follow through with the reconsideration to the motion, and the other two entities decide to pursue options, we need to have a plan in place to staff it for those events so that does bring another piece of the puzzle into play The reconsideration has to be passed before an amendment can be made to the original motion.

Commissioner Jackson: I understand what you are saying Mayor Helbling. I guess I'm saying it doesn't hurt to ask them. Maybe they'll agree with you. They probably will agree with you and maybe we will learn that it's just not feasible to do that. As the citizens are concerned about increased in our taxes and then at the same time increase School Board taxes and Park Board taxes, that might be.

Commissioner Tibke: President Helbling and Commissioner Jackson, I did speak with the School Board President Kirsten Baesler after our meeting when the three entities met. We discussed the gym issue because Commissioner Serhienko made the point that he was curious about their intention. If I remember correctly they are going to re-do that gym area so that it will no longer exist for the shop and they could not just switch back and forth. That’s what she indicated to me.

Commissioner Jackson: I understand that Commissioner Tibke, I guess I am thinking more along the lines of - is that turnover planned immediately? Maybe for a year or so we can use it until another adequate place that would come forward that could be used. It’s just a thought and I don’t see any harm right now.

Mayor Helbling announced that there is a motion and second to reconsider under New Business Item No. 5: “Discussion related to Mandan School District proposal for the Mandan Community Center.” The motion received unanimous approval of the members present.

Commissioner Jackson motioned to Amend the previous Motion (Under New Business Item No. 5) that “The City of Mandan negotiate, send a message to the School Board that it is willing to pay the full bond costs but not the special assessments or insurance to allow the process to move forward. And complete consent of any further sale or transfer to be revisited as additional negotiations take place” *to include* negotiations of the possibility of continuing to use the gymnasium for City functions. Commissioner Serhienko seconded the motion. The motion received unanimous approval of the members present.

Commissioner Jackson: President Helbling and for the people who are not getting full notice: What I hope to be the last Fireworks Committee meeting is suppose to be this Thursday, April 9, 2009, at 4:00 p.m. at the Fire Department if anyone is interested in attending.

There being no further actions to come before the Board, Commissioner Jackson moved to adjourn the meeting at 7:49 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