

**REDACTED TRANSCRIPT OF EXECUTIVE SESSION  
VALLEY CITY CITY COMMISSION MEETING  
JANUARY 22, 2007**

RICHTER: The date is January 22, 2007. The meeting was called to order at 4:00. The first agenda item was to discuss jail funding issue, second agenda item is to call for an executive session. We are now in the executive session, and this is discuss pending litigation issued by Robert Drake at the January 16 meeting of the city commission as defined under North Dakota Century Code 44-04-19.1, section 2 and section 4. Okay, we'll begin the meeting with roll call. President Nielson.

NIELSON: Present.

RICHTER: Commissioner Evenson.

EVENSON: Present.

RICHTER: Commissioner Ondracek.

ONDRACEK: Here.

RICHTER: Commissioner Wagar.

WAGAR: Here.

RICHTER: Commissioner Dutton.

DUTTON: Here.

RICHTER: City attorney Simonson.

SIMONSON: Here.

RICHTER: And assistant city attorney Fitzner.

FITZNER: Here.

RICHTER: And city auditor Avis Richter, here. The time is twenty after four, and it is January 22, 2007.

**(PORTION REMOVED AS PRIVILEGED UNDER EXECUTIVE SESSION, SEE  
GENERALLY NDCC SECTION 44-04-19.1 AND ACCOMPANYING AG LETTER )**

UNKNOWN: Should this be written up. . .

NIELSON: Before we go.

UNKNOWN: Because they'll be hanging on to every single word you say out there.

SIMONSON: Uh-hum.

UNKNOWN: They will be hanging on to every single word and they will have it recorded, so I'm wondering if somehow if, you know, if you decide on what your motion will be, if we have it written out so you can almost read the motion.

UNKNOWN: Okay.

UNKNOWN: Put. . .

NIELSON: Well, if we do anything, I would prefer it would be handled that way.

UNKNOWN: It would be good if got it right the first time.

UNKNOWN: Do we need to do it, we gonna do it tonight or (inaudible).

UNKNOWN: I think, I think it would be a hell, send a hell of a good message saying here it is.

UNKNOWN: Yeah, we gotta do it tonight.

UNKNOWN: If, if there is a suspension, when does that, without pay, when would that begin, the suspension begin?

UNKNOWN: What (inaudible) the (inaudible) is five to thirty?

UNKNOWN: No (inaudible).

UNKNOWN: (inaudible) can do it for five days, the city (inaudible).

UNKNOWN: Right.

NIELSON: But it doesn't even say that we can do it, to tell you the truth, 'cause we don't have anything, we don't even have. . .

UNKNOWN: Oh, no, it doesn't. We don't have the authority to do it. It, actually it does say may be, an employee may be suspended by the department head.

UNKNOWN: And you are. . .

NIELSON: Right, and that would (inaudible).

UNKNOWN: Define department head.

UNKNOWN: We are (inaudible) department head.

NIELSON: Yeah, we are the department head.

UNKNOWN: Yeah.

UNKNOWN: But what I was asking, when would that suspension begin? Does it begin immediately like he doesn't come in to work tomorrow?

UNKNOWN: It would have to.

UNKNOWN: You got something on the plate tomorrow, don't you?

UNKNOWN: No, but I can just (inaudible).

UNKNOWN: Well, we got (inaudible).

UNKNOWN: Well, you can set the period of time of suspension. You'll wanna do that.

UNKNOWN: You set to start at some date in the future.

UNKNOWN: Suspended for a period of so many days commencing at such and such a date.

NIELSON: Did he have a chance to visit with the gals up front on how to take the phone calls and, you know, I have. . .

UNKNOWN: (inaudible) because Lorie wasn't there today.

SIMONSON: Jon, have you dealt with anything along the appeals of a suspension? Is there an appellate process?

UNKNOWN: I am going to excuse myself from the meeting for just a second. I have to make a phone call (inaudible) I didn't think this was going to take this long. Well, I got my phone but if you guys don't mind, I'd do it in here.

UNKNOWN: Yeah, that's fine.

UNKNOWN: (inaudible) it doesn't bother us if it doesn't bother you.

UNKNOWN: I'll step out if you wish (inaudible).

UNKNOWN: The only thing on this, see, we give him a week suspension, well, what is it that. . .

NIELSON: I hate to, to tell you the truth, I hate to go a week because a lot of things can happen in the city in a week.

UNKNOWN: Well (inaudible) can't go one, two days. You're gonna have to, but I was gonna say, February 6 you got that public hearing.

NIELSON: Yeah. You know, we have a public hearing January 29th, you know. He won't be the lead on the public hearing though.

UNKNOWN: No.

UNKNOWN: Well, if we're doing a suspension that's, I'm just talking now, that we start it on the 22nd and end it on the 26th, next week.

UNKNOWN: That is this week.

UNKNOWN: That's this week.

UNKNOWN: That is today.

UNKNOWN: Today is the 22nd.

UNKNOWN: How about Valentine's week? Have we got anything scheduled then? But we can put it off, can we not?

UNKNOWN: Not too long, can we?

UNKNOWN: I think we can do anything we want, but what makes sense.

SIMONSON: Jon, do you have any idea as to an appeal or if there's gotta be some sort of hearing process for a suspension as well under state code?

FITZNER: There doesn't (inaudible) hearing process as long, you know, if you don't receive the hearing, you forego the option of removal.

NIELSON: At the time he's suspended, employee shall receive a written statement explaining why they have been suspended. So that's what our book says.

UNKNOWN: Where's it at?

NIELSON: That's on top of page 27. Notice of suspension to employee.

UNKNOWN: (inaudible) like Steve said and I, and I reiterate.

FITZNER: I think you'd have to say, you know, conduct unbecoming a municipal employee by engaging in this, engaging, or partic, by engaging in that particular website. I think you've gotta say, they gotta say what it's, what your cause it.

UNKNOWN: Well, and I guess, you know, if we're gonna get it, let's get it done and let's make that statement severe enough that it serves as a statement to, to all of us and to all city employees that, you know, this kind of tomfoolery just won't be accepted.

UNKNOWN: Okay (inaudible) 29th through the 2nd of February.

ONDRACEK: But (inaudible) important thing you're not really, you're not making a statement by suspending somebody for 20 days. You're making a statement that's saying it's okay to do that and if somebody else does it or does something comparable to that, does that give us grounds to fire them or does that just say, you know, listen, so and

so did this too and we gave them 20 days' suspension, you know, we're getting back to that thing where, I'm sorry, I just really think that this is gonna come down and it's gonna hit us hard and it's gonna keep hitting us hard and these, you know, these people aren't gonna let up and we're gonna have a lot of consequences to face. I think. . .

SIMONSON: You lessen those consequences by taking action.

NIELSON: That's right.

SIMONSON: And I think you guys are doing a fine job of that (inaudible).

UNKNOWN: We have to take action. I know, Steve, what you're saying, we lost our credibility and they're gonna come down hard on all of us. There's, might as well get used to that, but we have to do, take action tonight and show the citizens. . .

UNKNOWN: It's probably, it's probably good to take action tonight. You know, if you, if you announce you're gonna, that you're, that you're going to, that you are going to take some action and then set it up for even tomorrow, you'll have all the crazies in, a mob scene. You'll just have a mob scene.

NIELSON: So are you suggesting he should be suspended starting tomorrow then? That would make more sense?

UNKNOWN: I don't think, I mean if the, you know, I mean it's silly to go, go to a payroll, but when's the payroll? That makes no difference, does it?

UNKNOWN: That doesn't, it doesn't matter. I mean I can, payroll begins, payroll ends. . .

UNKNOWN: Steve, your argument is for termination, correct?

UNKNOWN: The February (inaudible).

UNKNOWN: So I make sure I understand what you're saying.

ONDRACEK: I, I guess I'm putting myself in the shoes of, you know, I think Nick said that, you know, Ms. Nelson will, will say that Nick's done (inaudible) job and we'd hate to

lose him at our office. My people that I work for would say he's done a great job and we'd hate to lose him at this office, but (inaudible).

UNKNOWN: Okay, just wanna make sure I know what you're saying.

UNKNOWN: If the consensus is that suspension without pay, you know, three days or five days or seven days is pretty nominal.

UNKNOWN: Uh-hum.

UNKNOWN: I think (inaudible).

UNKNOWN: That's in essence a fine.

UNKNOWN: If you wanna say, if you wanna say something, you know.

UNKNOWN: 30 days.

UNKNOWN: 30 days if you really wanna say something.

UNKNOWN: Pardon?

UNKNOWN: Do you have a (inaudible).

UNKNOWN: Do you want me to go get it? It's in my office. How much longer, I mean I just wanna be certain we have enough tape.

UNKNOWN: Grab, grab another one.

UNKNOWN: That's all that's there, that section with the annotation (inaudible).

UNKNOWN: There's nothing about suspension?

UNKNOWN: There's no, there's no appeals process to suspension at all?

UNKNOWN: No.

UNKNOWN: Just bring it anyways (inaudible).

UNKNOWN: I would say if you guys are gonna take that route, you know, I think it's gonna have to, you're gonna have to put a 30-day suspension. I don't think a five or seven-day really (inaudible).

UNKNOWN: 30-day would be the maximum (inaudible).

UNKNOWN: Well I guess you'd (inaudible) well, at the same time that what you need to consider yourself, what's, how is Dave gonna react to what you do. Maybe, maybe that's irrelevant. He should have thought of that before he did what he did, you know.

UNKNOWN: Yeah, exactly.

UNKNOWN: And I told him what my recommendation would be and I said (inaudible) I'm not saying (inaudible).

NIELSON: And I'll tell you, when I was talking to him, I went through the manual with him and I told him, I said what I saw happening, or the least I saw happening was a written reprimand, but I would assume there would probably be a suspension without pay.

UNKNOWN: You did talk to Dave about that?

NIELSON: Yeah. Because when he sat down, he admitted it to me and after the conversation with Nick I started looking into stuff, you know, and seeing what could happen. And so I, you know, so when he came in my office and then did talk about it, that's, I just, I just said (inaudible).

UNKNOWN: (inaudible) whether he feels he can live with this situation as, as it shapes out. I don't know whether he (inaudible) up and quit on his own.

UNKNOWN: (inaudible) I guess we can't worry about that.

UNKNOWN: No.

UNKNOWN: I think it might be well to. . .

UNKNOWN: I don't, you know, I guess, and that's Nick's concern, is there a due process, is there some due process. . .

NIELSON: For a suspension?

UNKNOWN: For, for a suspension or a suspension without pay that we, that we better give him if he, if that's required. Otherwise (inaudible) you'll really have egg on your face if you do something that's premature.

NIELSON: And that's what we pay you for.

FITZNER: (inaudible) need to give an opportunity to be heard. But we have, we have, in the past we have given suspensions without pay to, most of my experience with employment issues has been with the police, different police department people over the years. We did. . .

NIELSON: Uh-hum. A DUI, was there a suspension there?

FITZNER: The, the, you know, where we've done, we've done that without, well, we did have a hearing on Boyd Hagen, I think, before the city commission, but there we, the option of discharge was. . .

NIELSON: (inaudible) put in there.

FITZNER: You know, to, to have the option of deciding, to vote on a discharge, you have to have a hearing. We've, suspensions without, with and without pay and reprimands without, you know, without hearing. We negotiated Mr. Neubauer's dismissal without a hearing. We had a hearing a long time ago on a, on a, on a very nice ineffective employee, the accountant (inaudible) accountant, Kenny Hemmer, remember him?

UNKNOWN: Nice, but ineffective (inaudible).

FITZNER: I mean they, they, he was just (inaudible), you know, just (inaudible) that was it. He was an accountant and he knew nothing about accounting, you know, so. . .

SIMONSON: My recommendation would be if you are going to suspend, give us two weeks' time just in case there, there is an appeal process he might bring under his

attorney in a court or something along those lines, 'cause obviously the one thing he can say is abuse of discretion.

UNKNOWN: You're talking two weeks before it would kick in or two weeks before we announce it?

SIMONSON: Two weeks before it kicks in. Make it tonight. And I think you're, you're kind of already up there, you know, in that 29th through the 2nd or Valentine's Day week or whatever it might be. Jon?

FITZNER: I think you wanna have a chance to visit the AG's office and make sure we're not missing something.

UNKNOWN: So we can announce it tonight and change it if we're missing something?

UNKNOWN: That doesn't sound real good either.

UNKNOWN: No, it doesn't.

UNKNOWN: Are we gonna announce something tonight?

NIELSON: Well, they're all out there.

UNKNOWN: Oh, yeah.

UNKNOWN: Oh, yeah, they won't leave.

UNKNOWN: Well, could we say that. . .

UNKNOWN: You could make, or could you, could you just indicate that you, oh, I don't know.

UNKNOWN: Well, could we come up with that we agreed to make (inaudible).

UNKNOWN: Should we had a little bit of homework done before we had this meeting?

UNKNOWN: That we agreed to suspend him for 30 days but something about we want our attorneys to check with the Attorney General?

UNKNOWN: No, no, no.

UNKNOWN: You don't want that, huh?

UNKNOWN: No, no.

UNKNOWN: No, 'cause that should've been done ahead of time.

UNKNOWN: If we (inaudible) for 15 days with further reprimand or (inaudible) or?

SIMONSON: No, I am comfortable if, if in the past we have suspended people effective immediately and there was no hearing process, let's continue on that line. If we're told otherwise, Mary Lee, I'll take that. I don't mind screwing up 'cause this, you know, and I'll shoulder the brunt of that. But if I'm, you know, I'm confident if we've handled suspensions of police officers and other people, that it should be done. But there is no, in this one here (inaudible).

UNKNOWN: (inaudible) given him a written notice outlining the reasons for the suspension.

SIMONSON: Right. We'll. . .

NIELSON: You did that at the time of the suspension or before? I mean. . .

UNKNOWN: At the time.

NIELSON: At the time, okay. Okay.

UNKNOWN: At the time.

NIELSON: Okay. So. . .

UNKNOWN: And that's all policy. . .

UNKNOWN: We can give them notice, we, you know, the information has been gathered through, without even talking to the person. They've made, they have made admissions and. . .

UNKNOWN: Well, I, I (inaudible). . .

UNKNOWN: (inaudible) they just retire once you (inaudible).

UNKNOWN: Immediate for 30 days.

UNKNOWN: (inaudible) 30?

UNKNOWN: And then the written reprimand.

UNKNOWN: Right.

UNKNOWN: We should get something, write it down and (inaudible).

UNKNOWN: Who's going to make the motion (inaudible)?

UNKNOWN: Well, the written reprimand is to be presented to the employee and discussed between the employee and the supervisor, shall sign the written reprimand to acknowledge that they have discussed it. If they refuse to sign, then that's noted and it's put in the file.

NIELSON: So, you know, it says here at the time they are suspended which is gonna be during our meeting, what if, can you make a motion to. . .

SIMONSON: I, I think you can make the suspension today. I think the public will get you some leeway in this matter, two days, three days, to get your ducks in a row with departmental issues.

NIELSON: Uh-hum.

SIMONSON: I would say a suspension beginning Wednesday or Thursday is reasonable.

NIELSON: Make a motion to give, you know, Dave Johnson a notice of suspension for how many, you know, and. . .

UNKNOWN: For 30 days starting on the. . .

UNKNOWN: Commencing when.

NIELSON: What I'm asking is that it says in our book at the time the employee is suspended, the employee shall receive a written statement explaining why. So, so we, we need to hand that to him.

UNKNOWN: We have to have that for him yet tonight, is that your point?

NIELSON: Yeah, yeah. I mean. . .

UNKNOWN: Well we wouldn't, because if you don't suspend him till Thursday or Friday.

NIELSON: Okay. I mean is this considered the time that he's suspended or is it when the suspension starts?

SIMONSON: No, it's when the suspension starts. We can issue the documents. However, if you wanna go with this immediate (inaudible) business, take 15 minutes to write it up, type it up, get it done.

NIELSON: Well, yeah. I mean, if we do do that, that's the way it's gonna be done in my mind.

UNKNOWN: And I would agree with you there.

NIELSON: So you think doing it at the meeting is not violating his rights as an employee, by doing it, I don't know. But that's the way you did it before is right at a meeting, they didn't know?

UNKNOWN: Well, it was done by. . .

NIELSON: The department head.

UNKNOWN: The department head.

NIELSON: Yeah.

UNKNOWN: (inaudible) and through a supervisor.

UNKNOWN: And through a supervisor, never got to the (inaudible).

UNKNOWN: At that time we didn't have one, Connie, the last one I remember, and we didn't have any administrator or anything, see, so.

NIELSON: Department head?

UNKNOWN: That come through Jeff.

UNKNOWN: (inaudible) that guy that was on the garbage route that was. . .

UNKNOWN: Yeah.

UNKNOWN: We had a full hearing with him, though, didn't we?

UNKNOWN: What did he do?

UNKNOWN: He was. . .

UNKNOWN: Sexual assault.

UNKNOWN: (inaudible) yeah (inaudible).

UNKNOWN: I think well, we brought a dismissal. I don't even know if he appeared (inaudible).

UNKNOWN: Well, he appeared in front of us trying to explain the situation of why. . .

UNKNOWN: But we had the conviction and that (inaudible).

UNKNOWN: So will this be a written reprimand and a suspension without pay?

UNKNOWN: Well, I think the reason of the suspension will in effect be the reprimand.

NIELSON: He's (inaudible), right.

SIMONSON: I would (inaudible).

UNKNOWN: I don't think you need two separate documents.

SIMONSON: I would advise against both. Pick one or the other and if you're gonna go with suspension, you can have it state in the suspension. Now when you say 30 days, do you mean calendar 30 days or 30, five-day period.

UNKNOWN: 30 working days.

SIMONSON: 30 working days? So six, six work weeks?

NIELSON: Oh, you guys, that's a long time (inaudible).

UNKNOWN: I think we go a month, just by the calendar.

UNKNOWN: I would say 20 work days, Monday through Friday, excluding the holidays.

UNKNOWN: That's a \$5,000 fine.

UNKNOWN: Yeah, that's too much (inaudible).

UNKNOWN: A month is a \$5,000 fine. 30 working days is 7,500 bucks.

NIELSON: I'm not thinking of Dave Johnson. I'm thinking of the work that is done by the position.

SIMONSON: Uh-hum.

NIELSON: It's gonna hurt, and I wonder how the city's gonna be run for that long without someone in the position to, to tell you the truth.

SIMONSON: Uh-hum.

UNKNOWN: The department heads (inaudible) need to. . .

UNKNOWN: Well, we've done it before.

UNKNOWN: (inaudible).

UNKNOWN: We have, we have done it before, but, yeah, but you just don't realize how much he's done.

UNKNOWN: No, I, you know what, I know he is everywhere at once and he answers. . .

UNKNOWN: Well, how much of a hit would one pay period be?

NIELSON: That's what I. . .

UNKNOWN: \$5,000.

NIELSON: No (inaudible).

UNKNOWN: (inaudible) one pay period.

UNKNOWN: One, one pay period would be about \$2,500?

NIELSON: Yeah.

UNKNOWN: But one. . .

NIELSON: Well, about 2,000, 25 would be, would be for 20, you know, I mean that's semi-monthly and we go by weekly. So it would be about a couple thousand.

UNKNOWN: Between 2,000 and \$2,500.

NIELSON: So maybe we should, you know, like I said I'm not thinking of the person. I'm thinking of the work that gets done.

UNKNOWN: Well, if you're equating the time of suspension to it, you know, the dollars (inaudible).

UNKNOWN: 30 days sends a message in that 30 days is the maximum that we can levy.

UNKNOWN: Uh-hum.

UNKNOWN: It's either that or you go full (inaudible) and you go to termination. But I understand what you're saying. I know the man is busy.

UNKNOWN: Yeah, yeah.

UNKNOWN: All day, every day, and he's here early and he's here late.

UNKNOWN: You know, quite honestly, going 30 days is putting a lot more work on my table. I'm gonna have to be here a lot more because that's just the way it is. I mean he calls me all the time and I give him answers, you know, and do stuff all the time with him. I mean I'm on the phone with him 10, 15, you know, times a day with everything that's going on. And without him here, I'm gonna have to be here. I'm gonna be taking a 30-day suspension of my pay, too, 'cause I'm paid, I write down my hours. I'm on, you know, and so I'm gonna be taking the same hit he is and this is, okay, I'm speaking very personally, but this is what's gonna happen.

UNKNOWN: Well, we can make that case. We can say, you know, we considered a lot of options and decided that anything more than a two-week suspension would put the work of the city in jeopardy.

UNKNOWN: A hardship, a hardship. . .

UNKNOWN: And put a hardship on department heads and the mayor and. . .

UNKNOWN: One pay period.

UNKNOWN: Suspend him for one pay period.

UNKNOWN: Which is 10 days.

UNKNOWN: Yeah.

UNKNOWN: 10 working days.

UNKNOWN: Yeah.

UNKNOWN: That's (inaudible) said, selfishly, that's what I would recommend.

UNKNOWN: Well, I don't think it's selfish. It's the good of the city as a whole and you can't function without a right arm.

UNKNOWN: We need, yeah, we need to make a point without crippling city services and (inaudible).

UNKNOWN: Okay, I make a motion here that we. . .

NIELSON: We can't make a motion here.

UNKNOWN: Well, gotta get (inaudible) vote.

UNKNOWN: Let's come to that consensus.

NIELSON: Yeah, come to a consensus.

UNKNOWN: Okay, consensus that we suspend him for one pay period.

UNKNOWN: Suspension without pay (inaudible).

UNKNOWN: Without pay for one pay period.

UNKNOWN: And when does that next pay period begin?

UNKNOWN: Next Thursday.

UNKNOWN: Right, it begins, okay, let me see here, it's the 20, Thursday would be the 25th. The next pay period begins February 1st, ends the 31st, or February 1st through the 14th.

UNKNOWN: And I think that gives us ample time that if he does bring a case to a district court to appeal or for some sort of remedy that's available to him.

UNKNOWN: (inaudible) a public hearing.

NIELSON: Quite honestly, Avis and I are gonna have to cover that public hearing anyway just for the credibility of the city.

UNKNOWN: Okay.

NIELSON: We will (inaudible) at the public hearing.

UNKNOWN: Well, I think, you know, you could, as long as you're not firing him, you can time this thing so that it, you know, it's, it becomes manageable.

UNKNOWN: Well, let's do it.

UNKNOWN: You can say, you can say suspension without pay for one pay period from February 1st through February 14th.

UNKNOWN: (inaudible) date (inaudible) us?

NIELSON: Yes, uh-hum.

UNKNOWN: Okay.

NIELSON: Uh-hum. Can you live with that, Steve?

ONDRACEK: No, but I'm just one vote.

UNKNOWN: You can vote no on that action. Obviously, you're pretty strong in your feelings.

ONDRACEK: I just, yeah, I am, I'm pretty strong in my feelings, but the rest of you guys, and I'm sure I'll get hounded for it, you know. Why did you vote that way? Did you feel you didn't need one or do you feel he need to (inaudible) or what (inaudible) you know, that's what, but my personal feelings, no, I, I don't think that, but if you guys feel that, that's why we have five board members and that's the way it works. And I understand all your guys's points that it's gonna be tough on the city, but I have to put that aside with what I know and how I feel personally when it comes to stuff like that. And I've talked about it with my wife and that's exactly what I told her. I said if I know that it's a city employee involved in doing something like that, that my final action would be dismissal 'cause I just don't feel that that's proper conduct for a city official. So, but like I said, if you guys, and I, but that's just my personal feelings on it. So, so I'll bear the brunt of whatever happens when I vote nay, 'cause I know that's what'll happen and I'm just basically not gonna discuss it, to be honest with you.

NIELSON: How would you see the city (inaudible), you know, if we dismissed him, how would you see the city running?

ONDRACEK: I don't know, Mary. I mean, we, we did for years. . .

NIELSON: I mean I just, I (inaudible).

ONDRACEK: And I know we've gotten accustomed to what Dave's doing in there, but I, I can't. . .

NIELSON: We did it for 12 years with Riley being here every day all the time.

ONDRACEK: I can't look at it from that standpoint.

NIELSON: Okay, alright.

ONDRACEK: I, I look at it from. . .

NIELSON: That's, that's your choice.

ONDRACEK: What was done (inaudible).

NIELSON: Yeah, that's fine.

UNKNOWN: I guess the other point in my head, too, so we terminate him, now we're trying to find his replacement and you evaluate as best you can and real often you don't come up with the best that you would like to have. I think we've got him there, you know.

UNKNOWN: Again, you know, that's beside the point. He might decide he's, you know, this is enough of a disgrace to him, to his persona that he resigns. Who knows?

UNKNOWN: Can he do that when he has a contract?

NIELSON: If he gives us so much (inaudible) time.

UNKNOWN: Yeah, he give us (inaudible) 30 day (inaudible).

SIMONSON: From my, from my discussion with him, he (inaudible) with his attorney. He was fully accepting of the responsibility and Dave Johnson, as I've gotten to know him, is hard nosed enough and standup enough to take whatever burden comes his way, so. I think it's, we've, we've gone from my recommendation which was written reprimand to other recommendations which were termination. I think we found something in the middle and I think that based on your discretion and your powers, you know, to hire and fire and suspend and terminate as you're granted under the home rule charter. This falls well within that and I think that outside of termination, there's no need for a hearing. If there comes an injunction from a court, obviously our office will handle that in relation to this matter. Where do we, where do we lie civilly? I don't know. I don't think, I don't foresee (inaudible).

NIELSON: (inaudible) can I just ask one more question? If we went for 30 days, would that make any difference to you?

ONDRACEK: You know what, and I've sat here and thought about that and I, I just don't think it would. I mean I'm sorry (inaudible) I'm sorry to say that. I just, I've spoke my mind, you know, on it and those are just my personal feelings (inaudible).

NIELSON: Okay, and that's fine. You know, I just wanted to see, I was just, you know, wanted to see how the vote might go. I appreciate your honesty.

UNKNOWN: Is there an opportunity for us when we get out there to editorialize at all?

SIMONSON: No, do not comment on anything that's been said in closed session. If they want the minutes of the closed session and what was said, they can obtain a court order to do so.

UNKNOWN: Okay.

UNKNOWN: Can we present the four options that we had to work with?

SIMONSON: Certainly. I mean you can make policy manual available.

UNKNOWN: Okay. Before the motion is made, can we say as a city commission we had four options available to us in this matter. Five. One was to do nothing, one was to provide an oral reprimand, second was a written reprimand, third a suspension without pay, and fourth, termination for cause. Can we go that far or not?

SIMONSON: Sure. That's, that's, that is a public record that's available here. That would be available outside of this meeting. And if you comment, you know, the comment on how Steve wanted, recommended termination. Don't say that.

UNKNOWN: Oh, no (inaudible) no.

SIMONSON: If I. . .

UNKNOWN: I wanna say that all were seriously considered.

SIMONSON: Right, that's fine.

UNKNOWN: Okay.

FITZNER: Well it sounds like Nick and I need to prepare a proposed motion and statement regarding that, you know, regarding a suspension without pay from February 1 through 14. It sounds like that's gonna have a motion and a second and it's gonna carry?

UNKNOWN: Yeah.

NIELSON: Okay.

FITZNER: I guess we better get busy, Nick. (inaudible) fast typewriter (inaudible).

SIMONSON: Should we run out to the firm, should we run out to the firm and do it or should we do it here.

FITZNER: Oh, no, we can do it here, can't we?

NIELSON: Uh-hum.

FITZNER: We don't wanna have you guys sitting here (inaudible) longer (inaudible) already.

UNKNOWN: Becky is still here. I mean, I would think she would do it in her office. Do you wanna do it in her office?

UNKNOWN: Can we just stay here and do it (inaudible) here?

FITZNER: Well, I suppose (inaudible).

UNKNOWN: God yes (inaudible).

UNKNOWN: Yeah, I know, I'm not (inaudible) I didn't wanna, I didn't wanna go anywhere (inaudible).

UNKNOWN: Do you want me to bring back in here or not (inaudible)?

UNKNOWN: I have to go to the bathroom.

UNKNOWN: To dictate it?

UNKNOWN: I was thinking of that too.

UNKNOWN: What would you like?

UNKNOWN: That's what I was thinking.

UNKNOWN: (inaudible) you wanna get it ready (inaudible).

UNKNOWN: Should we go in the front door and come around this way?

UNKNOWN: (inaudible) on the sidewalk and go back and look in the back room, back of the room or (inaudible).

UNKNOWN: We don't have a CD burner (inaudible). I mean (inaudible).

UNKNOWN: Becky burns off the minutes on the CD rom.

UNKNOWN: Off of her computer.

UNKNOWN: But wouldn't it just be easier if you brought it down and just went in her office or not?

NIELSON: Or would you rather do it the other way?

SIMONSON: I would rather do it in here.

NIELSON: Alright, let me go see.

SIMONSON: Rather than have people come in and look and. . .

NIELSON: Okay, if this stops, 'cause I'm (inaudible) we. . .

SIMONSON: Do you wanna make a quick five-minute motion (inaudible).

UNKNOWN: We are, let's just go into recess.

NIELSON: Okay. Make a motion to recess?

UNKNOWN: Some (inaudible) recess the executive session.

NIELSON: Is there a second?

UNKNOWN: Second.

UNKNOWN: Do I have to do roll call in favor?

ALL: Aye. Bathroom break. (BREAK IN TAPE).

RICHTER: Okay, the city commission took a 15-minute recess at 5:50, reconvening at 6:05.

FITZNER: In executive session.

RICHTER: In an executive session.

NIELSON: Okay, how we wanna say things, how about if we say we spent considerable time reviewing the allegations against Dave Johnson regarding the CCI website. Other than taking no action, the other forms of disciplinary action stated in the employee and procedure policy manual are oral reprimand, written reprimand, suspension without pay, and/or dismissal, discharge for just cause. Does any member of the commission have a motion to make at this time regarding this issue? Is that okay?

UNKNOWN: Any other wording suggestion (inaudible)?

UNKNOWN: I think that's fair, fair introduction or (inaudible).

NIELSON: Okay, I'll write it one more time in bigger letters. I don't wanna trip. No tripping.

UNKNOWN: (inaudible) vote, but I'm really not gonna say anything and I hope everybody else keeps (inaudible) issues at bay and I'm not gonna say anything.

UNKNOWN: Well, I don't think any of us should say anything. They're gonna ask.

UNKNOWN: I mean you've had, you've had discussion. You've had an hour's worth of discussion already.

UNKNOWN: Emily Aas (?) is asking for statements.

NIELSON: And what do we do then? That's. . .

SIMONSON: Refer her to me and I will state that under state law (inaudible) the section under here too that that sort of stuff cannot be (inaudible).

UNKNOWN: Just refer them to our city attorney.

NIELSON: Refer to, uh-hum.

UNKNOWN: That's my wordage.

NIELSON: Pardon?

UNKNOWN: That's my wordage. No comment (inaudible).

NIELSON: Please refer to our city attorney.

UNKNOWN: Should we put on little signs?

UNKNOWN: I think you can just, you don't have to (inaudible) any comments from the audience.

NIELSON: Okay.

UNKNOWN: Just say right after that, is there a motion to adjourn.

UNKNOWN: Yeah.

NIELSON: Yeah, we don't have to have the updates.

UNKNOWN: No.

UNKNOWN: (inaudible) you guys get off so easy for all those years. You guys didn't have any of these problems back then, did you?

UNKNOWN: I got one.

UNKNOWN: There were a few. (inaudible)

UNKNOWN: One big one. Weren't you there with Neubauer?

UNKNOWN: No, I wasn't there when he left.

UNKNOWN: Oh (inaudible). That really bothered me to pay a guy money to be incompetent. I even have nightmares over that one.

UNKNOWN: Were you there when he left?

UNKNOWN: (inaudible) weren't there.

UNKNOWN: No.

RICHTER: Jon, we don't need any kind of a roll call or anything when we go back. We just reconvene in open. . .

NIELSON: Oh yeah, what do I need to say to open, to go back into the. . .

FITZNER: That would be good, a roll call again.

NIELSON: Really?

SIMONSON: Yeah. And you're going to have to make, you know, again, in the minutes what I gave you on that list, you're gonna have to go in and say what the meeting was about, what was discussed, obviously pending litigation.

UNKNOWN: She's gonna say that?

SIMONSON: Right.

UNKNOWN: Okay.

SIMONSON: And then who was there.

UNKNOWN: Oh, I need to state that at the, at the hear, I mean at the open (inaudible).

SIMONSON: Right, it should be in that list I gave you (inaudible).

UNKNOWN: Does she have to do it, do we have to do that?

UNKNOWN: We don't have to do that in the open meeting, do we? (END OF SIDE 2, TAPE 1)

UNKNOWN: Alright, well thank you very much.

UNKNOWN: Page 20. . .

UNKNOWN: Uh-hum.

SIMONSON: Employee has been suspended or discharged for cause must request a hearing before the board of city commissioners in five days following suspension or discharge for a grievance.

NIELSON: Yeah.

SIMONSON: So that may be a grievance appeal.

NIELSON: Okay.

UNKNOWN: From him (inaudible)?

NIELSON: Yeah, that's his right.

SIMONSON: So if he does, if he does declare that, like I said, we want that and the buffer time and I think we have (inaudible).

UNKNOWN: I wonder (inaudible).

UNKNOWN: (inaudible).

SIMONSON: Number four is jog satisfactory (inaudible). It'll go straight to the city commission since the city commission is the one that has a suspension or discharge call, you know, along with the supervisors, but the discharge anyways, but then you would have to grant a hearing. Then you can deviate. Then you, 'cause you see it in like basketball all the time where they appeal or they file a grievance with the commission and they state their case. So you, we may have that arise in the next five days under the policy. But under state law, I did a quick research during the break and there's nothing there. This is a policy issue for you guys.

UNKNOWN: Well. . .

UNKNOWN: (inaudible).

UNKNOWN: (inaudible) you need this printed off for (inaudible) too?

SIMONSON: I need, I need, yeah, Jon and I need to make this notice.

NIELSON: Okay, so we stay in here until you get it all printed off? Who's making the motion?

FITZNER: We'll have that, you'll just read that statement, that notice, you'll just read it verbatim what we've got typed up. That'll be your, that'll be your action (inaudible).

NIELSON: But then somebody needs to make the motion and. . .

UNKNOWN: (inaudible) I'll do it.

UNKNOWN: Somebody will have to do it.

UNKNOWN: I'll do it.

NIELSON: Do you wanna hand me, why don't I take that and (inaudible) just put all of this, this can be my closed meeting so I can just, I think I can, I don't wanna leave it out here.

UNKNOWN: Uh-hum.

NIELSON: But it doesn't become public knowledge just 'cause it's here because it's closed meeting material, right?

UNKNOWN: I don't know.

NIELSON: Well, I don't wanna, I just don't wanna leave it.

UNKNOWN: (inaudible) can we just say that the, the commission or can anybody else (inaudible) taking any further comments (inaudible).

UNKNOWN: (inaudible) notice of suspension without pay.

NIELSON: Well, we'll close the meeting. I mean, I mean we're (inaudible) like a motion to end the meeting and then what happens after that is up to us to say.

UNKNOWN: (inaudible) written statement.

UNKNOWN: Okay. Notice and what? Notice (inaudible).

UNKNOWN: We (inaudible) should be fine.

NIELSON: Why, do you want to?

UNKNOWN: No.

UNKNOWN: (inaudible) an explanation of why.

UNKNOWN: Yeah.

UNKNOWN: Do you have something to say (inaudible).

UNKNOWN: (inaudible) motion (inaudible).

NIELSON: Okay, we made it through 6:00.

UNKNOWN: I think you can just proceed to the motion. I (inaudible) move that (inaudible).

UNKNOWN: (inaudible).

UNKNOWN: Oh, you have to serve an actual notice on (inaudible) correct? Or is oral notice enough?

UNKNOWN: Can I use your phone (inaudible) I guess (inaudible).

UNKNOWN: Shall receive a written notice, yeah.

UNKNOWN: Do (inaudible) say that?

UNKNOWN: Yeah, I suppose that can, okay.

UNKNOWN: That's for you guys, but I ain't for, I'm not gonna put that in the motion.

UNKNOWN: What's that?

UNKNOWN: Well, this is the actual paper, but I think (inaudible).

UNKNOWN: Okay.

UNKNOWN: (inaudible) we want them to state the, state the basis for your motion, you know (inaudible) I think that should be stated as part of the basis for the motion.

UNKNOWN: Put it down in writing, otherwise I talk Norwegian and no one will understand it.

UNKNOWN: Well, we can pull out that part of it.

UNKNOWN: (inaudible).

UNKNOWN: Well, this is that.

UNKNOWN: Yeah.

UNKNOWN: So you're fine there. The motion doesn't have to be typed up. I just want the notice of suspension without pay to be. . .

NIELSON: He wants the motion written down.

UNKNOWN: Yeah (inaudible) I thought you did.

NIELSON: Well no, no, this is, this is just what I'm saying before the motion.

UNKNOWN: But I'm gonna have that para, I'm gonna have that paragraph included in the, as the basis for, that's gonna be stated openly too.

UNKNOWN: Yeah (inaudible) prompt her.

UNKNOWN: Yeah (inaudible) he didn't put that in in the (inaudible).

UNKNOWN: (inaudible) motion will be the rest of it. Well yeah, once, yeah, once you get that typed up. . .

UNKNOWN: That'll be the next thing.

UNKNOWN: So that should be signed by who? The president of the board of city commissioners?

UNKNOWN: (inaudible) right on the front of that neat acrylic podium.

UNKNOWN: Sure.

UNKNOWN: And I'll (inaudible) that and put the motion right below of what, cross out what he doesn't need to say.

UNKNOWN: (inaudible) just hook that up to a printer or you gonna do (inaudible).

UNKNOWN: I thought he was burning it to a CD.

SIMONSON: And then I can take it to Becky's computer and burn it off from there.

UNKNOWN: And print it off, okay. Oh.

SIMONSON: And then you can retain the CD with the files.

UNKNOWN: Okay. (inaudible) I didn't know you had a CD burner on that. I think she, yeah, she does.

UNKNOWN: No, he does.

UNKNOWN: Oh, you?

UNKNOWN: Oh, yeah.

UNKNOWN: But then Becky can (inaudible).

UNKNOWN: (inaudible).

UNKNOWN: Too bad we're not so ethical or we could be discussing a lot more.

NIELSON: This is a, can I give a for your information thing (inaudible)? The Legis, with the Legislature going on we, I just want you to know that the department heads and I are meeting because the League of Cities does a phone call where you can call in and talk about what's going on for the week, of what's coming up next week, so we all meet at 2:00 here on Friday and listen to the issues of what's going on and then discuss what we need to do for the city on the bills that involve us. And I just wanted you to know, and this Thursday we'll (inaudible) I'm gonna go down because they're gonna talk about, there's a bill on, where the auditoriums, they are gonna give \$250,000 grant to help municipalities. . .

UNKNOWN: Armories, armories, armories, armories.

NIELSON: National Guard, National Guard armories, okay, there you go. They had this, this is a bill they had before to help municipalities pay for fixing armories that need be, so it's not all local expense. And they're gonna have that bill up again, so we're gonna like go down and be in favor of that one.

UNKNOWN: That worked well several years ago. I think it was in 2001 or 2. We did, you know, I think it was 50, you know, 50-50. . .

NIELSON: It was a match (inaudible).

UNKNOWN: Yeah. And, and so we did a bunch of work up at the National Guard building and. . .

NIELSON: And the other bill that we're interested that day is that they're talking renaissance zone again and they're talking about adding three, a town our size, it's different for different sized towns, a town our size would be able to add three blocks to the renaissance zone that don't have to be connected to the other blocks. And so we're gonna go testify in favor of doing that so. . .

UNKNOWN: The other thing with that, for national, for the armories (inaudible).

UNKNOWN: Well, they have the right to fire and hire, terminate, suspend, and all that stuff.

UNKNOWN: (inaudible) up at that certain facility for the next (inaudible).

UNKNOWN: Building a new one (inaudible) start till 2012, yeah.

UNKNOWN: (inaudible) located (inaudible) they're talking 2012, okay.

UNKNOWN: Yeah. That's just thinking about it, I mean, that's just. . .

UNKNOWN: That's when they start thinking about it is 2012.

UNKNOWN: And then, and so then it's at least (inaudible) seven, eight years out from (inaudible).

UNKNOWN: (inaudible) seven years, eight years out so 2020 is (inaudible).

UNKNOWN: Do you want me to date it?

UNKNOWN: Okay.

UNKNOWN: Date it and (inaudible).

UNKNOWN: Right. (inaudible)

UNKNOWN: (inaudible) had one, a few years ago they come in that they were talking about a new armory and be between here and Jamestown.

UNKNOWN: Yeah, that's, that's what they're talking about, that they're gonna start talking about (inaudible).

UNKNOWN: But maybe put it out in the country out here (inaudible)?

UNKNOWN: Right by Miller Motors.

UNKNOWN: In between, between Jamestown and Valley?

UNKNOWN: Yeah.

UNKNOWN: Really?

UNKNOWN: If I remember right, they were talking about that a few years ago.

UNKNOWN: (inaudible).

UNKNOWN: What in the world would you do with the armory we've got now? That's all we need is another. . .

UNKNOWN: It's called city of Valley City building. (inaudible) needs storage, right? We can get all that stuff, we'll move service. . .

UNKNOWN: City shop.

UNKNOWN: We'll move service center up on the hill and get it out of the (inaudible).

NIELSON: Well, for your information. There are many bills in there talking about appraisal and home valuation put in by people that don't. . .

UNKNOWN: Don't have a clue.

NIELSON: Any idea what they're talking about.

UNKNOWN: Yup.

UNKNOWN: Homestead credit too, that's in, isn't it?

NIELSON: Homestead credit, yeah, they're, yeah, that's, there's a bill in there to up that and that's a good thing. Right now it's like eight, you can take 8,000 in and then, you know, I mean. . .

UNKNOWN: Anything over 8,000 you start to lose credit?

NIELSON: Yeah, yeah.

UNKNOWN: Wow, try living on eight grand.

NIELSON: Uh-hum, exactly. I mean it's not realistic in any way, shape, or form.

EVENSON: We wait long enough, they'll probably all go home.

UNKNOWN: Oh, I don't think so.

UNKNOWN: You won't live that long, Kenny.

NIELSON: Well, it's gonna be interesting to see what John Q. Public says after this one, talking to us. The one thing that's gotta be tough is the public's gonna be disappointed.

UNKNOWN: Uh-hum.

NIELSON: That's the tough part.

UNKNOWN: Yeah, give (inaudible) some credibility.

NIELSON: Yeah, but I mean I had some that just say, you know, to think he, he wouldn't do that, you know, and I, and that's, that's the, that's. . .

UNKNOWN: I think it's been out there for awhile, heard lot of rumblings about (inaudible), you know, of late.

NIELSON: (inaudible).

UNKNOWN: That, coffee shop talk and (inaudible) down at the gas station and (inaudible) brought up to me two, three weeks ago.

NIELSON: Yeah, the only hard part is is that I would say the majority of the people in Valley City never saw the website.

UNKNOWN: That's right.

NIELSON: You know, and they don't know what it's about, you know, and, and that's, you know, like you said, the questioning part there.

UNKNOWN: I gotta go to Fargo tomorrow for a (inaudible) session (inaudible) 6:30, 7:00 (inaudible). There'll be some chattering going on in there.

NIELSON: Uh-hum.

UNKNOWN: I'll send (inaudible) that (inaudible).

NIELSON: I wonder with something like this, you know, when we have our audit. . .

UNKNOWN: (inaudible).

NIELSON: Our audit in April.

UNKNOWN: (inaudible) I'll (inaudible).

NIELSON: You know, that becomes part of the audit, you know (inaudible).

UNKNOWN: Uh-hum, they would need that.

UNKNOWN: Audit by?

UNKNOWN: Well, Eide Bailey, but it's, it's not just, you know, I mean it's financial, it's (inaudible). I don't know if you wanna call it forensic, but, you know (inaudible) on the, on the employees and. . .

UNKNOWN: Operations.

UNKNOWN: Operations.

UNKNOWN: (inaudible).

UNKNOWN: (inaudible) like you said Steve, it's gonna go on for awhile.

UNKNOWN: It is.

UNKNOWN: Suspension without pay. (inaudible).

UNKNOWN: Okay.

UNKNOWN: Gonna go down and win your money on Friday night in that smoker?

UNKNOWN: Oh (inaudible) I forgot about the smoker, yeah.

UNKNOWN: No one even asked me to buy a ticket.

UNKNOWN: You can buy them at the door. Last year I sold a couple books (inaudible).

UNKNOWN: I bought two of them Saturday night but then they didn't have any on hand, but they said they'd let me in.

UNKNOWN: How did the banquet go?

UNKNOWN: It was good food.

UNKNOWN: Some open seats. I don't know if they were expecting a lot more people.

UNKNOWN: Yeah, Gary said it was pretty small.

UNKNOWN: There was a couple of tables completely empty.

UNKNOWN: But I'll tell ya what. . .

UNKNOWN: Good food.

UNKNOWN: Good food and the entertainment was unbelievable. I had seen them before, didn't remember they were nearly that good or that funny.

UNKNOWN: Who was that?

UNKNOWN: They had the Dixie Cups from (inaudible).

UNKNOWN: Oh (inaudible).

UNKNOWN: I was on the floor (inaudible).

UNKNOWN: (inaudible) read every word of it.

UNKNOWN: You can't (inaudible) with this is my motion.

SIMONSON: And, and in connection with the motion, the notice of suspension of Dave that, I mean I can serve it on if you want, but Mary Lee and Avis, you'll have to sign and attest to this. As a result, as the result of a past motion at the meeting of the city

commissioners on January 22, 2007, the board of city commissioners voted in favor of suspending David Johnson, city administrator, for conduct unbecoming to a municipal employee by his involvement in a website critical of CCI prior to the June 2006 municipal election. The time of suspension shall be from February 1, 2007, through February 14, 2007, without pay under the authority vested in the city commission by the Valley City employee policy and procedure manual. David Johnson, you are hereby placed on actual notice of a suspension without pay to begin February 1, 2007, through February 14, 2007. This suspension is subject to the grievance policy as presented in the Valley City employee policy and procedure manual. Dated this 22nd day of January, Mary Lee and Avis. John, sounded good (inaudible).

UNKNOWN: (inaudible).

SIMONSON: Just gotta provide actual notices though.

UNKNOWN: That's fine.

SIMONSON: And I figure it's only fair that we provide notice (inaudible).

UNKNOWN: And you're gonna do that.

UNKNOWN: I am, yeah.

UNKNOWN: Word by, word for word?

UNKNOWN: Yeah, can you read my writing?

UNKNOWN: Yup, I got it.

NIELSON: Okay. So we still need to get this printed before we. . .

UNKNOWN: (inaudible) no, no editorial license in this affair.

NIELSON: That's right. Don't make up your own words at this point.

UNKNOWN: Becky said she booted up her computer (inaudible) so. . . Is it not working?

UNKNOWN: (inaudible) it wouldn't.

UNKNOWN: Grabbed another one. There it goes.

UNKNOWN: Well, Nick will cover all the, all the extra added comments that, you know, the city (inaudible).

UNKNOWN: I'll make, you had to consider the overall impact on city operations, blah, blah, blah, blah, and it was a very hard, difficult decision, all (inaudible) good stuff.

NIELSON: Oh, Nick's gonna comment on. . .

SIMONSON: I won't make any statements as to what occurred in closed session obviously.

NIELSON: No, okay. But when you make those comments, before we close the meeting?

SIMONSON: No. I'll, I'll comment afterwards.

NIELSON: Okay. Okay.

UNKNOWN: (inaudible).

UNKNOWN: No, I'm (inaudible).

UNKNOWN: (inaudible) the hell outta here.

UNKNOWN: (inaudible).

NIELSON: Why do we have a slash in dismissal/discharge, just 'cause? What's the difference?

UNKNOWN: (inaudible).

UNKNOWN: What is the difference, I don't know?

UNKNOWN: Yeah, what's the difference between dismissal and discharge?

UNKNOWN: They're virtually synonymous so why do you have them both?

UNKNOWN: For just, that is what I wanna know.

UNKNOWN: Just, just. . .

UNKNOWN: Just to be sure there's no misunderstanding?

UNKNOWN: Yeah.

NIELSON: Okay, are we, are we closing this now or not yet or you're gonna, we're gonna go get that printed off and then?

SIMONSON: Yeah.

NIELSON: Alright.

SIMONSON: (inaudible).

UNKNOWN: Let the record reflect I'm leaving (inaudible).

UNKNOWN: So reflected.

UNKNOWN: (inaudible) reflect that I'm going to the bathroom.

UNKNOWN: (inaudible) if the record will so reflect, I'll join, well, I better wait till Steve comes back. I suppose I don't want anybody thinking we were in collusion in the restroom. I could go to the general neutral restroom, I suppose.

NIELSON: Yes, you could (inaudible) considerable time.

UNKNOWN: You know what? I shall.

NIELSON: (inaudible).

UNKNOWN: Was there anything, a letter to the editor in the paper today?

UNKNOWN: I didn't see it.

UNKNOWN: (inaudible).

UNKNOWN: I suppose there'll be a few follow-up ones, but that's alright, that's alright.

NIELSON: Never thought I'd be in this kind of position.

UNKNOWN: Neither did I.

UNKNOWN: Me neither.

UNKNOWN: I thought this election was over with. That would be it. Twice they got their tail beat. They're coming back. Well, I knew that when he got acquitted from that harassment thing. I knew then they were gonna come back at us.

UNKNOWN: Yeah (inaudible).

UNKNOWN: I shoulda said that in Norwegian.

UNKNOWN: (inaudible) still recording.

### **UNRELATED CONVERSATION**

UNKNOWN: Oops, I don't even have a pen. I have a pencil. No, you sign first anyway.

UNKNOWN: So I have to attest to this, okay.

UNKNOWN: Should we wait till after it's done to sign it?

UNKNOWN: Yeah, yeah.

UNKNOWN: I thought I can't sign this yet.

SIMONSON: There's one for each of you (inaudible) then too, and I'll hold on to this one. It can be the original. And this is attorney work product under the same section. This is not available to release except under a court order. And at this time I'll go on the record saying do not comment under the situation if anybody asks you what goes on in here. Just take that under attorney advisement and under the Century Code here. I'm not allowed to divulge any of that information regarding pending litigation or other information discussed at this meeting.

NIELSON: I'll never remember all that, but under Century Code I'm not supposed to talk. . .

UNKNOWN: That notice, now that notice (inaudible) available, right?

UNKNOWN: The law says I can't talk to you.

UNKNOWN: That notice is available, though, right?

NIELSON: Nick, is this notice confidential also did you say? I didn't quite get (inaudible).

SIMONSON: I think the policy manual governs that.

NIELSON: Okay.

SIMONSON: The notice, the notice is provided to him.

NIELSON: This is for him.

SIMONSON: Right.

NIELSON: Is there one for city record or does that go in that, I suppose that would go in his personnel file.

UNKNOWN: (inaudible) That has to go in the personnel file.

NIELSON: But then it would become. . .

UNKNOWN: Public record?

NIELSON: Would that be public, well, I don't. . .

UNKNOWN: Well, they don't have to see that notice (inaudible) that's not (inaudible). I mean (inaudible) can get it (inaudible) tomorrow.

NIELSON: We don't have to see that tonight, okay. Got it.

SIMONSON: Right, and it's, it's served on him. Whatever he wants to do with it, he can do.

NIELSON: Okay.

SIMONSON: But the motion, it just reflects the motion.

NIELSON: Just. . .

UNKNOWN: The motion, the motion will be (inaudible).

NIELSON: Okay, so. . .

UNKNOWN: Channel 10 will recite the motion (inaudible).

UNKNOWN: (inaudible) thinking that.

UNKNOWN: Alright, it's (inaudible) 6:35.

NIELSON: So I'm gonna start out the meeting. . .

UNKNOWN: Okay, go ahead.

NIELSON: I'll start out the meeting by saying we are now returning to the open meeting and we'll reconvene with roll call. Okay.

UNKNOWN: Uh-hum.

**END OF TAPE**