

SPECIAL MEETING – MARION COMMON COUNCIL – JANUARY 8, 2019 – 7:00 P.M., CITY HALL

The Common Council of the City of Marion, Indiana met in special session on Tuesday, the 8th day of January, 2019 at the hour of 7:00 pm in the Council Chambers, City Hall.

Council President Alan Miller welcomed everyone to the special meeting of the Marion City Council called specifically for Council members to gather additional information on General Ordinance No. 24-2018 which they, as they may know, the 2nd reading and public hearing was delayed a week ago tonight, actually last Wednesday, and will be held next week. He guessed he always likes to have an end game when they have meetings and his end game tonight would be that this would be the last opportunity that Council members have to ask questions about the ordinance. They've had a first hearing, they had two hours last week, they've had committee hearings, Mr. Foustnight invited them to come visit with him this week if they chose so it is his intent when this meeting ends tonight that they will come in next Tuesday for their regular meeting, they will begin with the public hearing and then they will vote the ordinance up or down. As he said, that is his plan, that is his end game. Councilwoman Lynn Johnson said she just had one quick question. With Mrs. Goodman (Deputy Clerk Debbie Goodman) here, does that mean they're on record? Is she taking minutes? Miller asked Goodman, is she recording? Yeah, he assumes so. Mrs. Goodman said, it's a special meeting. Miller said, this is actually a meeting. The only thing he deviated, he said he didn't think they needed to begin with a prayer and the Pledge of Allegiance tonight. But he will have her do a roll call before they begin.

On the call of the roll the following members were shown to be absent or present as follows:

Present: Henderson, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller.

Absent: Brunner.

DISCUSSION ON GENERAL ORDINANCE NO. 24-2018 - An Ordinance of the Common Council of the City of Marion, Indiana to repeal in its entirety Ordinance 9-2005 codified at Chapter 113 in the Code of Ordinances for the City of Marion, Indiana and to repeal that portion of Ordinance 39-1996 codified at Chapter 150.31 of the Code of Ordinances for the City of Marion, Indiana and adopting replacement language therefore in a new Chapter 154, Contractor Registration. Mr. Miller said he would be glad to consent to waive the reading of the prelude. They've done that a couple of times so she won't need to do that, he told Mrs. Goodman. Miller told the Council, they know Jerry Foustnight, the Building Inspector. He would ask Ty and Phil if they would just introduce themselves briefly, for those who don't know them. Ty Leming introduced himself. Phil Bowers introduced himself and said he is with J.G. Bowers Construction. Miller stated, they're here for questions. Who wants to be first? Well, he (Foustnight) has something to hand out, doesn't he? Building Commissioner Jerry Foustnight told the Council they have some information to hand out to them, which he did. Mr. Miller commented that Mr. Brunner has a Marion or IWU, Taylor basketball game tonight so he apologized to him, the timing wasn't good for him. He told Foustnight to begin with a few comments if he would like then they will turn their attention to questions. Mr. Foustnight said, before them in the folder that they prepared for them is the Chapter 113 which they are going to eliminate, the new ordinance will eliminate that, and also Chapter 150, concerning the building regulations which is provided for them per their request. And also, there's a sheet here that they worked on that they want to present to them that maybe will help understand a little bit about this ordinance and about a superintendent and about the general contractor and sub-contractor. He knows there were some questions last week and they thought maybe that if they could see it, maybe they might understand what they were trying to address last week. Miller told Foustnight, let him interrupt him and make one other comment for the benefit of the Council members. Mr. Hunt is at the Marion School Board meeting which he expects to be fairly short and he will be here soon. He told Phil Stephenson he did not need to be here this evening but he is home and available by phone if they need to call him. Mr. Hunt will be here soon. Mr. Foustnight continued and said they wanted to give them this information and as they proceed tonight, Phil, Ty and himself, hopefully they can address some of the questions they might have again tonight. He's been thinking about this since they had the last meeting and he thinks there's some confusion about the difference between being licensed and being registered as a contractor. And, as they go forward tonight, hopefully they'll be able to understand the difference between what the difference is between taking a test and being licensed and also just being registered as a contractor within the city. So, as they move forward tonight, he would encourage them to maybe start at the first of the ordinance, which would basically be on page 3 and they can go through like 154.01, Licensing and Registration, they can start on (A), which is

General Contractor License, give everybody a little bit of time to make sure they have read this and then they will address any questions they have. They will also provide to them some information concerning each category, if that's permissible, he asked Council President Miller. Miller asked, does that format work for the rest of them? So, he's (Foustnight) going to sort of walk them through it and he wants them to interrupt at any point, he asked Foustnight. Foustnight replied, sure, sure. As they go, like General Contractor License, (A), as they present what this is trying to say and explain what this is, if anybody has any questions, they can ask at that time. He thought, as they do this, maybe they won't get from Section (A) down to (E) and somebody wants to go back up to (A) and then people start getting confused about that certain license. Miller said, but before he says yeah, that's how they're going to proceed, he guessed the alternative would be to start with questions from Council members. Do they prefer Jerry's approach? Do they want him to walk through it and then interrupt him? Foustnight said they'll do it however they want to do it. Councilman Dave Homer said he doesn't have a copy of the actual ordinance itself in front of him this evening but he would rather they walk through it, just so they can kind of interpret what they're talking about as they go through and if they have a question then they can interject. That would be his preference. Miller asked, everybody comfortable with that? Yeah, that's his only intent. He wants them to set their agenda and not the Building Commissioner but if they agree with his plan..... He sees them nodding heads. Homer said, yes. Miller told Foustnight they will follow his approach. Miller asked, does anybody have another copy that David could have? Homer told Foustnight, it's okay if he doesn't have one. Miller told Foustnight to go ahead. Mrs. Cain or Mrs. Johnson can share theirs. Foustnight told the Council, on page 3, they'll start with (A) which is the General Contractor License. When they're speaking of a general contractor, they're talking of a company such as maybe Gillespie Morrell. The general contractor does not take the test himself. A company does not take the test. It's an individual that represents that company would be the one that would take the test. For instance, if it was Gillespie Morrell, he's using them as an example because that's what they have here, Gillespie and Morrell would be required to have one individual that represented their company that was part of Gillespie Morrell's Construction Company with a ratio of 1 to 20 which they would be responsible, that individual would be responsible for the general contractor to make sure that the work performed was within code and that the ratio was, again, 1 to 20 and that they were, they met the requirements as a general contractor license. Councilman Henry Smith asked Foustnight, whereabouts is he starting? Is he starting with (A) or (B) or (C)? Miller told Smith, page 3, right at the top. Smith said, that's where he's at. Smith asked, okay, where's general contractor license at on here? He was told (A) on page 3. Smith said, it doesn't say anything about general contractor license. Miller told Smith he's got the wrong document. He needs the ordinance. That's the thing that Jerry just handed out this evening. They're working off the same document they did last Tuesday. Smith said, you mean he left all that stuff at home? Councilwoman Cain asked, does he (Smith) have the ordinance? Miller replied, no, he doesn't. Cain asked, is there a way she can go make copies? Deputy Clerk Debbie Goodman said she'll go. How many copies does she need to make? She was told to make four. Miller stated that they would take a break until everybody had a copy. It's silly to go through the ordinance if they don't have it. After the break and everyone had a copy of the ordinance, Council President Miller told Foustnight to start from the beginning. Foustnight said, okay, they're on page 3 which would be the Licensing and Registration under (A) which is General Contractor License. What this license will do is it will permit any person or firm to engage in the erection of new structures, new additions to existing remodeling, repairing and demoing of existing structures. This license itself will permit all construction activity permitted in residential application and also as sub-contractors. As it says, the license provision is unlimited in scope. So, with this license as a general contractor, you would be able, again, to perform those repairs, remodels, new additions, demos, things like that that would be associated with the general contractor's license. Mr. Smith asked, now how do you get the general contractor's license? Phil Bowers told Smith, you have to have an employee or yourself, as an owner, take the test and then that individual is licensed. Smith said, okay, hold it. He says you've got to do what now? Bowers said, you've got to pass the test. You have to have an employee of the firm, a 1 in 20 ratio, pass the test. Or you, yourself, can take it and pass the test. Then you can go get registered with the City of Marion. Smith said, okay first you have to pass a test then, is that what he's saying? Bowers said, correct, yes. And the test essentially is testing your knowledge of the codes that you have to build to and the city and state inspect to. Smith asked, now is this a special test that is given to general contractors or is it the same test that is given to everyone? Bowers answered, so, there's going to be, he thinks, seven different tests. There's a test for a general contractor license, there's a test for a residential contractor license. Smith said, okay, hold it. That's what he asked last time. Okay, so there's seven tests that they're

talking about. Correct? Okay, slowly, give him the tests that he's talking about. He says there are seven of them. Bowers said, yes and they're right here in the packet for them. It's the general contractor license, the residential contractor license..... Luzadder said it's (A) and (C). Smith said, (A) and (C)? Okay, that's two. Where are the other five? Bowers said, your commercial contractor electrical license, which is (A) in 154.02. Smith said, okay, on this sheet here, okay, that's be on page 5? Bowers said, correct. And then your master electrical license which is also on page 5 and then your master residential electrical license which is on page 6. Smith said, hold on, he said electrical what now? Bowers said, master residential electrical license. Smith said, okay, what's the other one? Bowers said the next one is also on page 6, that's your sign contractor license. And then the next one is your HVAC contractor license which is on page 7. Smith asked, okay, 154.05? Bowers told Smith, correct. Smith said, okay, and that's seven? Bowers said, yes. Smith said, okay, so, going back to page 3, (C), now is that a license within itself or does it have a subtitle of license? Bowers responded, it's a license within itself. So if you are a residential contractor and you've got employees or just yourself, you can go take that test and you can do an unlimited scope of work within residential buildings which is, he thinks, one or two family dwellings. Smith stated, okay, say he's working on contractors, okay, that he's a masonary. Okay, so he has to take (C) license in order to qualify to do (C), is that correct? Bowers said, well that'd be under the subcontractor registration. So, if he's doing it himself in his own home as a self..... Smith said, no, not for his own home, he knows that, that he doesn't need it but he's talking about he's a contractor and then his specialty would be in concrete or masonry or something like that and then he has to go back and take this residential contractor..... Bowers told Smith, yes, if you continue reading (C), it says this license permits all construction activities permitted by 154.01(E) below which is all of the subcontractor license forms. Smith said, okay, so in other words, his specialty is drywall and that's the only thing he's concerned about or just wants to do, then he's got to specialize in (C), all six of those other ones, is that correct? Foustnight asked, is he talking about the demo and the roofing and all those? Smith said, well, in other words, if the only thing he did was drywall, he specialized in drywall, so is there a license just for drywall? Bowers told him he could do the residential contractor license if he's only going to do it in homes. Smith said, no, no, no, he's talking about he's a contractor, he's a contractor just for drywall, specialize in drywall because he knows there are some contractors specialize just in drywall. Okay, now, why couldn't he just go out and say, since he specializes in drywall, why does he need all the rest of these licenses in order to do drywall? Bowers told Smith, if he's not going to work as a subcontractor and he's got to pull a permit to do that drywall, he's going to have to show that he's a licensed contractor. Smith said, so, in other words, that's what he's asking. So basically speaking, he's going to need to take this test for (C) in order to just do drywall then and Bowers told him yes. Smith said that's the same thing he asked before. Bowers stated, or if he hires a subcontractor. Smith told Bowers, no, no, no, no, no, don't put words in his mouth. Bowers said, well, he's just saying that's an additional option. Smith said, he's just saying, he's a contractor just for drywall so if he's just for drywall, that's the only thing he wants to do is just drywall so therefore he has to go back here and take a test for 1, 2, 3, 4, 5, 6, 6 things. Is that correct? Bowers replied, correct. No, no wait a minute. Six things? No, he's going to have to take a test that proves that he knows the codes, the building codes, if he's going to pull a permit. So essentially, if he is just doing drywall, he's acting as a contractor and somebody hires him to do drywall..... Smith said, no, no, no, forget about hiring him. It's just that he's a contractor that does drywall. That's all he does is drywall. Bowers asked, who does he work for? Smith said, no, he's doing it on his own. Just say he's doing it on his own. Mr. Bowers said, so in his own home? Smith replied, no, no, no, no. Councilwoman Deb Cain asked Smith, is he his own company? Bowers asked Smith, but you're working for a client, right? Smith said, he's a contractor within himself. He knows some contractors work just for themselves and then they go out and do things like this and so he just wanted to make sure that they're not violating the law, and by that, do they need a license, do they have to take this (C) license, the residential contractor license, in order to do just one particular thing? Bower said, yes you would because your client is hiring you personally to do drywall and so you have to go get a permit to do that construction work. Smith said, then he would have to have taken that test then? Bowers replied, correct. Mr. Leming said the one thing he did want to clarify before they move on, because he is correct in stating that there are seven licenses, if you read, like in Section (A), that if you acquire the general contractor license as stated in (A), and the reason for this is there are several different codes that are applicable to the different licenses so the general contractor license covers commercial code and residential so that is that (inaudible) if you read at the bottom where it says this license permits all construction activity permitted by 154.01(C) and (E), that's because it's a harder test. It's a higher standard, if you will, to acquire the general contractor.

Councilman Smith said that's what he asked last time. Leming said, and he apologizes if he didn't answer his question well last week but if you are only specializing in residential work, you don't need to show a working knowledge of commercial code so that is the Section (C) and that is only applicable to residential code. Mr. Miller asked, where are we now? Mr. Bowers said he thinks (B). Miller said, just to (B)? Bowers said (B) is the superintendent registration, the general contractor superintendent registration. So all that means, and they made a chart here. So the superintendent is essentially the person on site responsible for the project. So when a general contractor, a licensed general contractor, is awarded a project to build a building and so they're going to have to go pull the permit. So when they pull that permit, they are going to say okay, this person is the superintendent and, in their world, superintendent is just a project manager who runs the project, who's on site, site foreman, the guy in charge of the construction site. So, the city is going to say they want to know who that person is so when they go and inspect, they know who to talk to. And so that's all that means for superintendent registration. They just have to have the name and the contact information of the person who's going to be running the job site. Mr. Luzadder asked, does it cost anything to register as a superintendent? Bowers said, no it does not. Mr. Miller asked, can the contractor, general contractor, also be the superintendent? Bowers replied, there has to be a person, an individual. If it's a one man show, if it's Henry's drywall company, he would be the superintendent registered. He's going to be doing the work for his client. Questions? Miller said, nope. Keep moving, Jerry, (C)? Foustnight said, (C), residential contractor license and that's what they were just discussing with Mr. Smith concerning that. Again, the residential means that you can only do work on residential properties. You can't do work on commercial properties. If you look down here at the very bottom, when it says this license permits all construction activities, as you go further it says for one or two family residences not exceeding two stories. So, if you are a contractor and you are doing strictly residential construction then that's the license you would be required to have. You would not need the license where you would be required to do commercial applications. So that's what the residential license or residential contractors license would allow you to do. Bowers stated, and then (D) is essentially the same thing for a residential contractor. Mr. Foustnight said, right, and (D) for the residential contractor superintendent, again, this is the person that would be basically overseeing the work. He would be the person that when we come out to do an inspection, he would be the person that we would communicate with concerning what inspections we were there to do at the time. Again, it's a registration, it's not a license. Remember, there's a difference between licensing and registration. Registration is not part of the licensing part of it. So, let's not get that confused. As we move forward, (E) is the sub-contractor registration. As you read through this here, we have this in there as any person, firm or corporation that, if you are a sub-contractor and you, a general contractor hires you as a sub-contractor and that person could be the general contractor or his superintendent can hire individuals as sub-contractors to come in and work for a certain project within that project, be it whether we hire Mr. Smith as a drywall on that project or we hire Mr. Luzadder as a roofer, yeah, doing the roof for us. You would have to be registered as a sub-contractor. Bowers added, and in that instance, you would not have to be licensed because you would not be pulling a permit. You would be registered for that particular project through the general contractor. Foustnight said, and let us keep in mind, in order to pull a permit, through this ordinance, you have to be licensed to pull a permit. Now, Mr. Smith here could go and work for a contractor as a sub-contractor. He wouldn't be required to be licensed to work for a general contractor. But if Mr. Smith goes out here and he receives any kind of compensation for doing for another individual then he has to be licensed. So you will have contractors that will be working as sub-contractors that will be licensed. It's not a requirement but they will be licensed because they have already taken the test because they do work in drywall, for instance. Councilwoman Lynn Johnson said she had a question. Is it sufficient to say that he (Foustnight) has many different registrations already in his office? He has registrations, right? Foustnight said, yes. Johnson said, but sometimes, a person will register who's already been registered before so you have a history of what that person has done. Would that be correct? Foustnight told Johnson, correct. Johnson stated, okay, so he would carry a log about who has registered in the past, they may or may not be licensed because he knows what job they've been on, they know whether they've registered before and who contracted them. Would that be correct? Foustnight answered, correct. Johnson said, so this gives him the ability, would he say that's a good thing for him to know? To pull up somebody's history and he knows where they have worked before, what they've done before and if they are compatible with the job they have been hired to do. Would he say? Foustnight stated, right. This ordinance will make sure or the intent of this ordinance is to make sure that an individual that has a license, he knows what the codes are, he's able to follow those codes and apply those codes where necessary. Having said that, we know that some people

will be able to take this test and could possibly pass it but they won't be able to apply the codes the correct way. And this is why we have, within this ordinance, where if an individual, over a period time, shows he is lax in being able to perform those codes and apply those codes the way they need to be applied, that we have the right to do a suspension of his license, if we go before a body. Johnson said, if he's already had a license, passed it and got a license. But if he's just been registered, you know that he has been possibly successful on different jobs as a registration. He's completed them or actually performed (inaudible). Foustnight stated, the contractors that we have today that are licensed through the city, the way we know whether they're following the codes or not is by our inspections that we do. And when we do those inspections, we know whether or not code is being followed. Johnson added, and then he has a track record of a lot of the people that are already applying for registrations and permits. Foustnight stated, right, we keep, we know who is registered as a contractor within the city, we know who is not registered, and again, the registration today that is required has nothing to do with whether or not you know the codes. What the registration today is is saying that that contractor has liability insurance, that contractor has workmen's comp and also if he's working within the right-of-way, city right-of-ways, that he is bonded. So, those are the requirements today. Mrs. Johnson said, right, okay, so push this one step into the future. Say that they pass this ordinance, okay, it becomes to his (Foustnight) disposal and then in the spring, when the registered contractors and the people come in that may or may not have a license, he can actually say to them he sees everything but their license, are they planning to take that test? He can like give them an extra boost as encouraging them to complete their licensing procedure while they're working as a contractor and getting registered. She means, actually he has that at his disposal. Okay? So he has a bit of information that will assist him in encouraging these people to get their license. Mr. Foustnight stated, we know that if we pass this ordinance, we know that we're going to have to set a time as far as how long we're going to give individuals to take this test and pass it. We also understand that we will have individuals that will be able to pass it on the first test. We also understand we have individuals that may have to take it twice, three times, whatever. We, as a city, or maybe he shouldn't say city but we, as a Building Department, we are trying to make sure that everyone's treated fairly, that the work that's being completed is going to be completed within codes and that, at the end of the day, that we feel like that the citizens or the businesses within the city are being built or remodeled or whatever in a safe way, to protect those individuals. We know, again, that we're not going to be able to say, okay, you have a month to take this test. It's not practical, we know that. We've been having a lot of thought upstairs about what is the best way to do this. We've kind of thought about it and we're thinking, the way it is now, contractors can come in today and register as a contractor and their registration is good for one year. Johnson told Foustnight, so she wants to go back to his original thought pattern when he thought and did the homework and the research that an ordinance of this size would be applicable to a city of our size and would work effectively. So he's never brought those research papers to them to tell them cities of that size that do this and that maybe our city is maybe overreaching, she doesn't know. Are we in line and in scope with other cities that he's researched that actually have implemented this ordinance? Foustnight answered, yes and he'll let one of these individuals speak because they deal with communities all around. Miller said he believes Judge Hunt gave them a website, did he not, the last time that they could look up that information? Mrs. Johnson told Miller, it's only the codes. Miller said, only the codes, oh, okay. City Attorney Tom Hunt asked, do they want it now? Miller said, no, he thinks he gave it to them last week. Hunt said, yeah, he did. It had the entire Code of Ordinances on it. Johnson said, she'd rather hear from Mr. Bowers. Bowers stated, well, there are cities all over that make the contractors, he'll say, jump through different hoops to protect their own buildings and their citizens. Plenty of tests. Their guys have taken them, Ty and his crew have taken them. A lot of other, he means you name it, there's different types of registrations. There's different fees and other things you've got to do, tests. He means, these things exist all over the place. The main issue is the cities need some, he thinks it was brought up a couple of weeks ago about are we going to be sued, if (inaudible) this test and somebody gets sued? He thinks the exact opposite, he's seen the exact opposite because right now, to be registered in the City of Marion, all you have to do is have insurance and so we're not, the City of Marion isn't saying anything about whether or not the guy knows anything about construction or how to build a building but they're registering them and that can cause problems. He thinks, when the new Administration took over, they called all the registered contractors in Marion to a meeting. Anybody have an idea of how many registered contractors there are in Marion? Take a guess. Over 600, Bowers said. Councilman Smith told Bowers, let him ask him this. What is the difference in the old contract and this one here? Bowers replied, this one says if you're going to register as a contractor, you better know how to understand and interpret building codes, the one thing that contractors should know

how to do. Smith asked, what's the difference in the old one? Bowers said, there was no checks and balances in place to ensure that they knew what they were doing or they knew anything about life safety building codes. Smith said, okay, in other words, isn't it up to the individual contractor who's doing the work to know those building codes in order to do the work for a person? Bowers replied, oh absolutely but, you know. Smith said, okay, and then isn't it up to the individual building inspector to go out and check to make sure that that is performed efficiently? Bowers answered, yeah but when you've got over 600 contractors registered and you have no idea whether or not any of them know anything about construction, he doesn't know how he (Foustnight) sleeps at night to be honest with them. Smith told Bowers, but what he's saying, just like you have, you're not going to have 600 jobs started in Marion at one particular time but you might have them, whatever out there but the thing of it is, you might have five or six contractors come in for that particular week to do a job so that means you have five or six different, certain things you've got to pull to inspect those jobs, is that correct? Smith said, if he's got five or six jobs that came in, contractors came in for that..... Bowers asked, that are ready for inspection? Smith said, right. Don't they have five or six that are ready for inspection like that? Bowers stated, yeah. Smith said, so we're not talking about some (inaudible) number, 600. That's way out there but we're not going to think about it because if we had 600 people come in for permits, he means, that would be worse than building down there in Indianapolis. Mr. Bowers stated, well if they're doing work and not pulling permits, that's illegal. Smith replied, well he knows it's illegal but what he's saying is, he (Bowers) mentioned we have 600 contractors. He doesn't want to know the 600 contractors. He just wants to know how many do we have coming in that week and then they're supposed to follow through with inspecting them, right? So, that's all he's asking but the thing of it is, what's the difference then, the old and the new? This is the new. What's the difference in them? Foustnight told Smith, the difference would be that, it doesn't matter if you have 600 registered contractors in the city or you have 200, that doesn't make a difference. What makes a difference is the quality of work and the job that they're performing. They, because, and we don't have over 600 but the contractors that are registered today are contractors that within the last year has performed work within the city, be it whether it's roofing, demo, whatever the case may be. Those individuals or those companies have had to be registered. They go out and inspect those jobs. So if Mr. Smith's drywall company is doing drywall at a residence or at a business, they go in and they check to make sure that it's in compliance. Be it whether it's a separation because of a firewall or whatever it could be, they check that. So as far as he (Smith) wants to know how many are coming in this week and doing it, they don't do their inspections that way. You, as a contractor, when you come in and you say, okay, my job is ready for an inspection, they go and do that inspection. They also take and before they allow a business to open or a new residential or a remodel or whatever, they go in and do a certificate so they can occupy that building. So, it's a safeguard. They not only do their inspections but they do a final inspection to make sure that Mr. Smith did his job right. If you don't do your job right, that's where we, on their inspection forms, he should have brought one maybe, their inspection forms will show them that you failed and they put the reason why they failed. Smith asked, from the past, how many people have been, haven't done their job right that they had to bring to their attention? Foustnight said, quite a few. He just went out today and did six inspections and out of the six, four of them didn't pass. Councilman Don Batchelor asked Foustnight, the four that didn't pass today, did he just happen to go out and make the inspection or was that a scheduled inspection? Foustnight told Batchelor, those were scheduled inspections today. Batchelor asked, so what did he do after he found out they did not pass? Did he give them the reason why they didn't pass? Foustnight answered, correct. On their inspection form, it shows you either pass or you fail and then it has over to the side where they make the notations of why they failed or why they passed. Batchelor said, then they go back out, do another inspection on what he had told them that needed to be corrected. Once that's corrected, does he pass them then? Foustnight told Batchelor, right. If he, Mr. Batchelor, he's a contractor and he calls up and he's doing some type of work that's not within, doesn't pass. They take and they give him a copy of the inspection form that shows Batchelor Construction did not pass and here's the reason why and they list them over here. And it could be one item, it could be 20 items, whatever. They give that to him. They tell him that he has to correct those issues. When he gets those issues corrected, he calls the Building Department, he schedules another appointment and they will come out and re-inspect to see if he followed what needed to be done per code. They have the right, they haven't done it but they have the right as a city right now that if you call for an inspection and you're saying you're ready for that inspection to be performed and you fail that inspection and when they have to come back again, they can charge up to \$60. That's in the ordinance. It says they can charge them \$60 as a re-inspection. They haven't done that. Batchelor asked Foustnight, what's going to be different if they pass the new

ordinance versus what he just got through explaining to him. Foustnight replied, he would hope that, if they pass this ordinance, he would hope that, as a licensed contractor, that he would make sure that the codes were followed. The way it is now, they don't know, because of the registration how they do that, they don't know today that if Mr. Batchelor or Batchelor Construction knows the codes. They don't know that. If they require you to have a license and you pass that test, they have to assume that Batchelor Construction or Mr. Batchelor has taken that test knows what the codes are. Batchelor commented, assuming. Foustnight said, right, they assume that he knows that. Batchelor told Foustnight, you know what assuming stands for. So, his question is, once they go out and make an inspection, they've passed or failed, he tells them the corrective action that needs to take place, okay, if he goes back out, he has the right to charge them \$60 to come back out and do a re-inspection, right? Foustnight said, they do have that right. Batchelor said, you have that right. So, they're going to assume, with the new ordinance that is being proposed, that they won't have to go out and do an inspection. They'll just assume that, because they passed the test, it's going to be okay. Foustnight told Batchelor, no, he's wrong. Batchelor replied, that's what he's asking. Foustnight told Batchelor, no, no, he's telling him, no, no, that's wrong. It's required, in the ordinance and everything, it's required that you have those inspections. So they will, and again, he would assume that you, when you took that test and you passed it, you know and you can follow the codes and you can apply those codes to the job that you are doing. If not, again, they will come out, because, remember, in order for that individual you're doing that work for, in order for them to occupy that building or that structure, they have to have a certificate that shows that they can occupy it. If you do work, you don't call for an inspection and they don't know you did that work, then they're not going to get that certificate to occupy the building. And they have done that. They have taken individuals and they have said, you know what the codes are, and they go ahead and drywall when they're not supposed to drywall, for instance. They've went to those individuals and said they can't see what's behind there, they need to have that removed so they can see what's behind there. Do they want to do it? Absolutely not and that's where they run into the issues where they see where wires aren't in boxes like they're supposed to be, that's where they see that they wire-nutted things together, put some tape around it or whatever. And so we, as a city or as inspectors, we won't do that. He understands what he is saying as far as will this prevent re-inspections. No, it won't because we're still going to have individuals out here that will possibly forget to do something or whatever and that's basically their job to see that they did follow the rules. Councilwoman Deb Cain said, but it's going to cut down on the problems. Miller said, one at a time here please. Councilwoman Johnson said she had a question. Miller said, Lynn. Johnson told Foustnight, let's go back into his fabulous brain and what he remembers about his work and what goes on in his department. So she has a question, what is the average permit time, from time to open to close? In his department, say a contractor comes in, gets registered, gets a permit. How long is that permit open until he says this is done and he signs off on it? What's the time frame? Foustnight told Johnson, when an individual or a corporation, whenever they get a permit, a permit is good for one year. Within that year, if he could, within that year, if construction hasn't started within 180 days then the permit is pulled. Johnson said, let's say, just for an example and using the reference points that were entered into this conversation, let's just say there are five registrations a week, okay, new registrations, new permits issued. Let's just say five, okay? So if you do that every week for the year, okay, that's what you're looking at, and you have a year's full of inspections, okay, so five, just five times 50 when there are 52 weeks in a year, that's 250 open permits. Okay? And of those he has to keep track of, he has to be reliant upon the people that have those permits that are open to be able to accomplish their goals, do their job and not waste his time. Is she not correct? She told Foustnight he wants them to complete their jobs in a timely fashion so it costs him and this department a lot of money to continue the inspections of 250 and by the end of the year, those may not still be open but she would say that the majority of them (inaudible) 180 days and then had to be renewed, they'd carry over into the next year. Would he not agree? Mr. Foustnight answered, the City of Marion, we do not renew permits. A permit is good for a year. Again, within 180 days, if they don't do it, it's revoked. At the end of one year, they would have to come in and get a new permit. Johnson said, so that's still a project that (inaudible) a hardship or whatever it is they do. So what is happening here is his entire department continues to build open permits that need constantly looking at, reviewed, assessed and hopefully they come to completion and he has to continually inspect them. Is that not true? Foustnight said, yes. Johnson said, so if he does an inspection and the things have been done wrong, how does that lengthen the permit? What does it do to the job? Does it stop the job, if it's done wrong? Foustnight stated, they can stop the job. If it's a life safety issue, they can stop the job. Johnson asked, so does he extend their permit when he stops the job? Foustnight replied, when they stop a job, no work can be done on that site.

Johnson said, until they complete and get inspected. Okay, so that could take some time. So what she's looking at, of record for his actions and the time work study that he has to put in place in order to accomplish the department's job and, right now, as it stands, he's telling them that there are a certain percentage of these jobs that are not coming to completion because the people are not following and don't know the code. So if this is taking up the department's time, would he not say that this ordinance would contribute to reducing the time and reducing the time he has so he can inspect, get it closed, keep moving and things get done? Foustnight said, yes. And just for the record, the Building Department made 683 inspections last year. So they did do a lot of inspections. Mrs. Johnson said, right, so this is a positive, for function within the city and within his department, just for management function, this ordinance gives us a positive, actually a very positive option and an opportunity we haven't had in a long time. Okay, so we're looking at an opportunity here and the people that really take these licensing tests probably, you know, if they can't pass this test then we have an issue. Okay? So there's an issue all the way around. So if they can't pass the test, they can't bother us with inferior work. Foustnight said, correct. Miller said, ready to move on? We're on page 4, contractor registration, sheet metal, (F), page 4 (F). Foustnight said, again, the contractor registration is the registration which refers to the general contractor. Any firm or person or corporation who contracts or engages in the following activities as a contractor or subcontractor to the general contractor, and again, the key words there are general contractor. If a general contractor hires you as a subcontractor, again, you would have to be registered but not licensed. Miller said, that just applies to different kinds of work, not residential. It's architectural, building towers, swimming pools, manufactured housing, okay. Councilman Smith asked, so do they, (a) through (d), do they need individual licenses? Foustnight answered, if you're working for a general contractor, no. Smith said, okay, no, he doesn't want to add general contractor in there whatsoever. He's just saying, okay..... The reason why he asks that is he knows some people that make their own steel boxes when they're doing certain things. He knows certain people have put in swimming pools, he knows that. And you go right down through here and housing, manufacturing houses, (inaudible) and you have steel, erecting steel. He sees individuals (inaudible). You take a lot of people that do things on their own. They can do each and every one of those four there (inaudible) for somebody else. He's saying they need a license so there's four different types of licenses there that you would need. Miller asked, anybody follow Mr. Smith's question and can help him with that? Foustnight said, this here is, again, not a license, it's a registration. If you read, any person, firm or corporation who contracts and/or engages in the following activities as a contractor or subcontractor to a general contractor or residential contractor shall be required to be registered with the City of Marion. He thinks the key words here that they need to understand are that activities as, if you're doing activities as a contractor or a subcontractor to a general contractor then you have to be registered. Smith said, okay, he understands that part but what he's asking is is say that you have a gentleman over here who can make steel boxes for (inaudible) and all that good stuff that furnaces and everything goes to. In other words, do they need a license? Mr. Leming said, if we're on (F), (F) only speaks to registration. You can register as the contractor or as a sub. Either way, it requires registration. Smith said, okay, let's forget about those two items there. We know and you know that you can find people out there that can do certain elements of something like this and for other people and they will do it too. And, if that person over here knows that they can get somebody over here cheaper and that can do it, guess what they're going to do? They're going to hire that person who is cheaper that can do any one of these four items here and you know it and he knows it. And so, to say okay, and he's going to say okay, if you hire them, they're going to go through the ramifications (inaudible) do they need a license and they say, if they need a license then they can't do it. Leming said, and maybe he's not understanding the question because (F) does not speak to licensing at all. Smith said, well it says, mentions to general contractors. Mr. Foustnight asked Mr. Smith if he could repeat that. He means not all of it but they're kind of confused as far as..... Because what they feel this is saying is that if a person, firm or corporation who contracts and/or engages in the following activities as a contractor or a subcontractor to the general contractor or a residential contractor shall be required to be registered. He thinks the key word that they need to keep in mind is, first, that you're being hired by a general contractor or you're being hired by a residential contractor to perform one of these four categories. So, you wouldn't have to be licensed to do those four categories. Smith said, okay, in other words, let him use himself as an example because he can't do either one of them so he's going to use himself. Okay, let's say he knows something about erecting steel and he knows how to use a torch and all that, okay, and let's say John Blow over here asks him to do it. So, he's going to erect whatever it is, whatever it might be, a miniature house, could be whatever it is, a barn or whatever it is. Would he need a license? Foustnight asked Smith, is he working for a client? Smith replied, he's

working for himself, to make some money for himself. Foustnight said, right but he's being compensated for that. Smith said, that is correct. Foustnight said, if he is compensated as a contractor and he's working directly for another individual..... Smith stated, no, no, no, no, no, no, he's working for John Blow over here, John Blue, the neighbor, right. Foustnight said, if he's working for somebody and he's being compensated then he would have to have a license. Smith said, that's exactly what he's asking. Foustnight stated, that refers back to what they previously said. But keep in mind that they're talking about activities, he's working, on these four here, he's working for a general contractor or a residential contractor that had pulled the permit and he's working for them. Mr. Smith said, okay, he understands that part, he understands that wholeheartedly but how many people, if you go walking down the street during the summertime that have (inaudible) working for themselves, for their neighbors, for somebody within that block or whatever. And so, he would venture to say a lot of them do not have any kind of contractor license or any kind of license. So, that's the same thing, same theory here, applies to (a), (b), (c) and (d). So that's four different individual licenses that if he's working for someone else, he means, he's working for himself but doing it for his neighbor, doing it for John Blue, doing it something like that. So he has violated that rule right there. Mr. Bowers told Smith, there's not four different licenses there in what he just listed, there's two. Mr. Leming said, again, and he apologizes if he's not answering the question, but what is being said is if you are working directly for the client because if you're performing the work, even if you're not working for a contractor, you're working for somebody, somebody is paying him. Smith said, that is correct. Leming told Smith, so if you're working, let's say he's working for him, he's the client and he's (Smith) working at his house, you are not working for a general contractor and you're not working under another sub, if you will, you would absolutely have to fulfill the requirements of, if you were working at his house, (A) would meet the statute because it means commercial and residential and if you were just working at his house, (C) (inaudible). But you wouldn't have to hold both. (A) covers both. Smith said, okay, so in other words, there's two or three in there that doesn't cover, in other words, that you would need licenses for. Leming told Smith, say that again. Smith said, there's two or three in here he needs license for, correct? Leming replied, well, there's two license options that would cover all (a) through (d). Does that make sense? Smith said, so that's a total of seven and two make nine that we need so far. Leming asked, nine what? Smith said, nine individual licenses, if he's working for himself. He's counting the other seven that they agreed upon and the two here that they're agreeing upon now and seven and two is nine. Leming said, there's only seven total. There's no additional two. Councilwoman Deb Cain said, committee, she thinks the question is, he's saying if he works for himself, he has to have seven licenses. Is that correct or not? Mr. Leming answered, no. Mr. Foustnight said he thinks they all agreed on the original seven licenses that are required which he put on the handout for each of them to see those there. If you, Mr. Smith, work for a contractor as a subcontractor, you would only need to be registered. If you receive compensation and you have, as you say, you're out here making boxes or whatever and you were doing that and you were being compensated from individuals, from a client say, then you would have to take and either be a like a general contractor for residential or you could be a general contractor which would allow you to do both residential and commercial applications. Cain said, so it would be (A) or (C) then, is she right? Foustnight said, yes, correct, it would be (A) or (C). But, again, if you are working for a contractor or as a subcontractor then you're not required to be licensed. But if you have a business and you're out here and you're being paid by an individual then you would be required to have a license, which you could either be (A) or (C), your general contractor or residential contractor. Miller asked Smith, ready to move on? Smith told Miller, yes please. Mr. Miller said (G) on page 4, regional/national account contractor. Foustnight explained that this is, as he explained last week, there are companies that come within the City of Marion wanting to build a facility. An example would be Texas Roadhouse. Texas Roadhouse, when they came in, they hired some local contractors as subcontractors but they brought their own crew in to help build that structure. These crews, most of the crews will come from out of state to perform this kind of work. So in order to not take the opportunity for businesses not to come to Marion, they put this in that if a company brings those individuals in, they don't have to take and be licensed. What they have to do is that company has to provide documentation to us and there's a list of things that's required that they would do. One thing is they would have to complete an application, the company would give them a resume and the resume would include who is going to be the project manager of it, a list of the plan register and subcontractors for the project and a letter from the client, verifying that they've performed other structures around the United States or around this state or whatever. They did this and this gives a little bit of free, if you would, it gives them the opportunity to bring their own crews in to do the work. They've had it at Meijer's, they've had it at Texas

Roadhouse. Belle Tire had some of their people come in. So, a lot of these corporations, when they're looking to build a structure, they use their people because it's a quicker turnaround because those individuals have done this over and over and over again so it provides them with a little more..... Council President Miller said, okay, he thinks they've got their arms around that. Move on to the electrical licenses. Foustnight said, okay, on the commercial contractors electrical license, this has to do with a person, a firm or corporation that engages in doing wiring, whether it's the installation of it, alterations, or repairs of any electrical wiring. This is a commercial contractor. A commercial contractor's license will allow you to do commercial work or you can do residential. If you have your commercial license, a commercial license would be above your residential license therefore it will allow you to do either commercial or residential wiring. As they had their last meeting and, of course, he's sure all of them were thinking about different questions and everything and one of the questions that was asked by he believes it was Mr. Batchelor about the electrical part, when they were talking about the electrical, and a comment was made, which he's very correct when he said electricity goes from point A to point B and he said he said yes it does, which he agrees with Mr. Batchelor. But, today, the question is is how does it get from point A to point B? 50 years ago, they didn't use the wires that they use today, they didn't use the applications, the codes, so that would be the difference, Mr. Batchelor. After he thought about it, he wanted to kind of say that. So, anyway, this commercial application, again, would allow a contractor to do not only commercial but it would allow them to do residential. Miller said, okay (B), he assumes, is the person who supervises the work and Foustnight told him, yes. Miller stated, master residential license as opposed to the master electrical license. Foustnight replied, and this here, again, if you have a master residential license, it only allows you to do residential applications. It doesn't allow you to do commercial. Miller asked, any questions on electrical? There was no response from the Council. Miller stated, ready to move on to sign licenses, people that put up signs, electric, non-electric. Mr. Foustnight said, the sign contractor license, they had Mr. Ramsey, Sam Ramsey, which is in (inaudible), that he..... City Attorney Tom Hunt asked, can we take a break so that these guys can discuss something? Miller said, yeah certainly. We'll take a 10-minute break and resume at 8:30 pm. After the break, Council President Alan Miller told the Council, let us resume and let him have their attention please so he doesn't have to repeat this. After the conversation with Mr. Hunt, if they would go back to page 4, contractor registration, all the line of questioning Mr. Smith was talking about relating to architectural sheet metal, miscellaneous work, so forth, Judge Hunt believes that that language is not written correctly. It is vague and doesn't say what it's intended to. He is going to provide some instruction for Mr. Foustnight to rewrite that in the form of an amendment and bring that to them next Tuesday. It would be nice if they could get it to them even before they show up next Tuesday. So basically, he told Mr. Smith, he has raised a question, the Judge agrees with him that it doesn't really answer the question that he was trying to ask so that is going to be rewritten and incorporated in another area that should make it make more sense. So, with that, thanks for his advice, he told Mr. Hunt. Miller said, alright, he guessed they were on sign licenses on page 6, sign contractor license. Foustnight said, on the sign contractor license, he guessed this deals with exterior signs and displays used for advertising, promoting and public notice purposes. This refers to signs with a square footage of over 32 square foot. The one in category B, which is, that is the erection, placing, repairing, enlarging, or moving non-electric signage of 32 square feet or less. (A) refers to 32 foot, 32 square foot or more of an electric sign and (B) refers to 32 feet or less, square feet or less that is a non-electric sign. Councilman Henry Smith said, okay this sign that's electrical, is that the ones that have all that illumination and all the coloring and everything? Foustnight said, if it's electrical, yes. Smith stated, okay, the reason why he asked that, down in Noblesville, they are putting a stipulation on that because of where it's at, (inaudible), because of that illumination and everything gets in people's houses and it becomes a problem more than anything else. That was on the news so he knows. He asked Foustnight, did you take into consideration all of that because he doesn't see it in here? Foustnight answered, well that, the reason that's not in there is because that becomes a zoning issue which the Building Department doesn't deal with zoning issues. That would be Sam Ramsey and his department. They're the ones that actually, when it becomes, they get a permit for a sign that he is the one that approves it. Or zoning, there's encroachments you have to sit back so far and different things like that so that would be a zoning issue, and again, what we're here saying is is that if you're going to have a company come in or whatever, they're going to have to be licensed in order to do that signage. He told Smith he knows exactly what he's saying because he noticed there's a sign here in town that is very, very bright as you're driving down the road, it kind of blinds you and everything and so he knows and he believes that that is a zoning issue. Miller said, Mr. Ramsey would have to approve the sign being put up to begin with. Alright, plumbing. Foustnight

stated, the plumbing license and registration, again, if you are a plumber in the State of Indiana, you have to be licensed as a plumber, therefore, you wouldn't be required to take that test because you've already taken and you have already passed the test that the state makes you take, therefore, it would be accepted and you could become registered as a contractor (inaudible). Miller said, HVAC, page 7. Mr. Bowers said, very similar. Miller stated, everything else, just HVAC. That's not regulated by the state though. Okay, ready to move into the examinations, licensing, suspension, page 8. Everybody's there? Go ahead Jerry, Miller said. Foustnight stated, he's sorry, the examinations, again, this is where you would be required to take your examination. In the packet that he gave them, they had, they will partnership with Ivy Tech Community College out here. They will administer the test for the different licenses that will be required. Mr. Bowers added, he thinks it's important to note but he knows this question came up a lot, just because he believes the city is going to partner with Ivy Tech to proctor the exam, it does not mean that's the only place you can take the exam. The exam is created by Prometrics, a third party organization that does these exams all over the country, and any Prometrics testing site, you can take this exam at any Prometrics testing site. But he believes the city has worked out something with Ivy Tech so that we can have one actually right here in Marion, which is a good thing. Foustnight said, right. They do have testing available like in Indianapolis, Lafayette, Ft. Wayne, different areas but we are going to partnership with Ivy Tech out here, make it more accessible for individuals that would like to take the test. And this here, as you go through it, it's talking about examination approval, that if you don't take the test, the applicant may appeal such results to the vendor administering the exam. The examination fee is what is set, it's the national fee which they set for each individual test. So it's, again, they felt that, as a city or as a Building Department, they felt that it was important to have a third party involved in it so that they wouldn't be involved in actually giving the test or scoring the test. Miller told Foustnight he said he was currently kind of determining internally how much time current registered contractors would be given to take the test. Foustnight replied, correct, and again, they've been thinking about that and if the Council here would like to have them add to this, make an amendment to this examination part of it, they can add that to it that they will give a contractor X amount of time to be able to pass the test. Miller stated, that's just where he was headed. He thinks there ought to be something in there so that it doesn't become an arbitrary decision by him (Foustnight) and he gets caught in the middle. Yeah, he would stick an amendment in there. He doesn't know what's a reasonable time. Foustnight said, well, he would think that from the time that your registration is, for instance if you get your registration today, possibly maybe six months would be enough time to prepare. Miller said, yeah, he doesn't have a suggestion on what the time period should be, only let's put it in the ordinance so they're not being accused of being arbitrary. Renewal every five years, he guessed. Foustnight replied, yes. Miller stated, suspension or revocation. Questions any of them have about that, Miller asked. Councilman Brad Luzadder said he thinks the only problem he has, looking at the original document, the land usage from 150.41 and 150.42, remedies and right of appeal, going under 154.08. The original is under the Marion Board of Zoning Appeals and then under a jurisdiction executive body then applicable to the Fire Prevention and Building Safety Commissioner of the State of Indiana. Under the remedies for that would be with the Advisory Plan Department, which he's assuming no longer exists, and then shall in the name of jurisdiction bring actions in the City Court, which is what he asked last time, for a mandatory injunction and relief of enforcement of the secure compliance with any order or orders made. Again, in former Administrations, a way in which things were brought about and were pushed through was to move everything into the Board of Works. We have back-pedaled a lot of that back out of the Board of Works and have given departments their dues in which to say yes, no, and how, but he believes that we, as a city, as a Council of elected officials, it would be their, it's their constituents they're talking about. They elected us for a purpose to make sure that we're being the fiduciary body, make sure that everything runs smoothly. The Board of Works isn't elected, it's all appointed. He has no problem with having an independent board to look at it but instead of putting it over into the Board of Works, he would much rather have the Administration maybe pick a few, have the Council pick a few and come together as an independent board instead of the current Board of Works. He's served on the Board of Works, he's been through that and sometimes it can be done really well. Other times, it's a brush through. And so, he would feel much more comfortable by having an independent board put together by the Administration and by the Council, just as they do with the Redevelopment Commission. Mr. Miller told Luzadder he's going to let Mr. Hunt respond to what he's saying and then he'll propose how they handle an amendment, if that's the course he wants to follow. Mr. Hunt told Luzadder, this is a touchy subject and he hopes he addresses his concern carefully and with respect. This issue is a question of separation of powers that we all learned about many, many years ago, and the founders of our

government, including the State of Indiana, were afraid of too much power being centralized in any particular body. And in order to do that, they created a system of three branches of government, co-equal, with separate powers. To do what he's suggesting creates a system whereby this body writes an ordinance and then this body enforces the ordinance and that's a problem, in his judgment, for two reasons. Number one, he thinks it violates the Separation of Powers Doctrine because you, as a body who create the ordinance, can't enforce it. That's left to administrative bodies under the Executive Branch which is charged with enforcing laws and ultimately the Judicial Branch of government which is the ultimate arbiter of whether or not an ordinance is constitutional or ought to be enforced. And so, when you, as a Legislative Fiscal Body, write a law, you should not also be charged with the responsibility of enforcing that law under our system of government. That's, first, a violation of separation of powers, and number two, in his judgment, it creates a real problem with due process. Due process, under our Constitution, the Fifth and Fourteenth Amendments to the U.S. Constitution, which have similar provisions in the Indiana Constitution, say that citizens have a right to due process of law, which is essentially a fair, reasonable process by which they can adjudicate claims and wrongs and be held accountable for their actions. And for you, as a body, to write a law and then also put yourself as the arbiter of that law is a violation of due process. Now, that's the first thing. Number two, he can guarantee them that they, as a body, are not going to want on their agenda every time they meet a list of ordinance violations. Those ought to be and have been for a long time and he doesn't know what Mayor it was that appointed the Board of Works as the hearing official on these matters but somebody in the past, long ago, did that and the Board of Works has been doing that for some time. That's a proper use of their power because it's under the Executive Branch of government which is charged with enforcing laws and then ultimately those decisions are appealed to the court, the Judicial Branch. Because your powers are limited to passing laws and approving finances, Hunt said. Mr. Luzadder told Hunt, he thinks he's misunderstanding him. Not that he wants them to be put on their agenda, no. It's his suggestion that we would have an independent board, not of us but of someone that we, as a nine, could choose two members of, as well as the Administration could choose two members of and then that could be the independent board that would hear those appeals. Mrs. Cain said, a question, for clarifying. We're not appointing us nine. We're appointing..... Luzadder told Cain, no, not at all. He said an independent board, none of us. Mr. Miller told Luzadder, he's proposing, in effect, another board that would be an administrative-type board, as the Board of Works currently is. Luzadder commented, just like they have for the Board of Zoning Appeals. Miller asked, would a like comparison be a Police Merit Board? He doesn't think we have one of those but some cities do. He doesn't know whether we want to be in the business of creating more governmental agencies. Hunt said, well, that's not a legal question. That's, he understands what he (Luzadder) is saying now because he heard him say members of this body doing it and that causes him some concern. Luzadder said, no, not of us but as an independent board. Hunt stated, whether or not you want to create another agency to do something like this is not a question that he should weigh in on because it doesn't involve any legal question. That's a political question. He will tell them that the Board of Works probably, and he doesn't know this but he's guessing, was probably chosen years ago because they are a board that has statutory adjudicative powers granted to them by the General Assembly. They are the sole arbiter of matters involving the Police and Fire Department, other than finances, which they (Council) have the responsibility for. But by state statute, the Board of Works is the sole arbiter for matters of the Police Department, the Fire Department and Public Works projects. And so, by virtue of their powers already given to them to be the adjudicative body for those matters, he assumes some Mayor in the past decided to let them handle these matters. That's just his guess. Miller said, yeah, just a little history of the Board of Works and he won't be as precise as he should be, probably predates the Judge, originally the Board of Works, the first dates of it consisted of specific city officials. It was not a randomly appointed board. It consisted, he knows the City Attorney, the City Controller and there was a third person. So it wasn't people that the Mayor was appointing, it was actually members of his Administration that were employees of the city and that was the Board of Works at the time. Tony Maidenberg may have started it. Mr. Hunt told Luzadder, if his concern is about what the constituents of our community want, certainly you answer to them but so does the Mayor and whether you appoint them or the Mayor appoints them, he guessed from his perspective, that's not a legal matter, that's a political matter and it's a question of who gets to appoint them. The bottom line is, whoever appoints them is somebody who answers to them anyway so does it really matter whether you do it or whether whoever the Mayor is does it? Luzadder told Hunt, he just thinks cooperation in that would be a good idea. He thinks that we, as nine, could decide on nominations and just as he would offer that to the Administration. He thinks it wouldn't be overstretching but it does extend the olive branch between

that they work together. Hunt replied, well, as he's said, that's a political issue and he doesn't have an opinion on that. Mr. Miller said, okay, Mrs. Cain make a comment and then he will try to bring this to a close. Councilwoman Cain said she has a question. So, Jerry, how many contractors does he think would fall under this situation? Foustnight told Cain, if we were speaking today and this was enforceable today, he has one contractor. Miller asked, now what's that again? Foustnight said he would have one contractor today that is to the point that he would need to go before the Board of Works for possible suspension of his license. Cain said, and, one more question. Miller said, oh, is that the question she was asking? How many people would be affected by this? Cain said, yeah, she was just curious how many cases a year we might be looking at listening to. So, does he have an idea, she knows this is new but would he have an idea of what processes he would take beforehand to make that decision and how he would take it to whatever group he took it to? Foustnight answered, this contractor that they're dealing with at the present time, they have taken and of course they've done their inspections. They found (inaudible) not following the code. They've instructed him on what needs to be done. He's had him in his office, going over things that were wrong. He was just out on an inspection today that he failed and it's because this contractor went in and was doing the electrical part of it and the company from out of town had to hire another contractor to come in today to redo the wiring because it didn't meet code. And so, this is the only individual right now that they're dealing with. So when they're talking about the suspension of their license to work within the city, it would be very minimal what they would have (inaudible). Council President Miller said, for the purpose of kind of bringing this to a conclusion, he told Mr. Luzadder he would suggest that if he wished to present an amendment to that effect that he have Mr. Stephenson draft it between today and next week and like the other correction that Tom is going to make, they will vote it up or down next week. That's the best suggestion he can bring and he has his permission as President to use the Council attorney to have him draft something to present to them so they have it in writing. Luzadder said, he was just thinking, they just had a board that they just appointed a person to, the financial board, be it one member of that. The Administration had two members of that. He told Mr. Hunt he was in charge of that committee of three, Mr. Oliver, Mr. Logan and the third individual they talked about. Hunt said, oh, the Economic Development Commission? Luzadder said, yes and they only meet for a specific purpose. That's what he would consider this to be. They would only meet if it had to get to this point. So it would be special, just like that. That's kind of what he was looking for. Foustnight told Luzadder, that's how they do it currently, for the Board of Works. They notify the Administration saying that they want to take this before the Board of Works and so it's the same principal they use. They only attend those meetings or (inaudible). Luzadder commented, it's just only for specific purposes. Miller stated, yeah, we understand the process. Mr. Luzadder's point is whether it ought to be an independent board. Okay, yeah let's continue. Really it would be nice if they could wrap up in the next, maybe by 9:15 pm. He asked, do they want to continue moving forward or do they need to go through the whole process of appeals? Do they want Jerry to walk them through that or are they at a point where they have general questions that they want to ask everybody before they wrap up? Councilman Dave Homer told Foustnight, just going back to (C) on page 3, how does this, what would be the requirement for an individual who, let's say, owns 30 rental properties and he has to maintain those properties in a safe way. Is he required to.....? Foustnight told Homer, what first would be is, is it a multi-family? Is it a single-family? Homer said, well, he sees on (C), that it says this license permits all construction activities permitted by A.5 below as to residential structures only and is limited to construction, remodeling, repair or improvement of one or two-family residences. Is that like a duplex? Mr. Leming said he can speak to that. These terms are pulled straight out of the Building Code so the Building Code considers a multi-family building, like an apartment building for instance. A duplex is considered a residence. So if you have a home that's (inaudible) and let's say there are five renters, even if it's not a large apartment complex, by the definition of the Building Code, if there's more than two families that reside at that building, it's a multi-family and it automatically bumps up to a commercial grade building code. Homer asked, is he missing something here? Shouldn't that be in here some place or is it in there? Mr. Bowers said that would be the general contractor license, if it's more than a single family residence. Homer said, okay, it wouldn't specifically have to line out that it had to be more than two units? Councilwoman Lynn Johnson said she thinks she might be able to..... Miller told Johnson, Mr. Homer has the floor. Bowers asked Homer, is his question, so if this person owns an apartment complex or 30 individual homes that are single family homes? Homer replied, well, let's say he has a house and he's cut it into a five-plex or a four-plex. Bowers said, then it's a commercial structure. Leming said, so he thinks the question is should there be a sentence under A that states multi-family residence, more than two. Is that what he's saying? Leming said, it's not

stated there. It is within the code but he is correct, it's not stated there. Miller stated, so there just needs to be a sentence added somewhere. Is that what he's suggesting, he asked Mr. Homer. Homer said, yeah, he just didn't see it. He sees where it says one and two but he just wondered if that needed to kind of spell that out. Bowers said, back in the permit requirements, there's a sentence that says if you want to, say, work on your own home, a self permit shall be issued when an individual shows to the satisfaction of the Building Commissioner that the person is the owner and resident, the property is not a commercial property, such as a rental..... Miller asked Bowers, what page is he on? Bowers said, 10, the last paragraph. And, that the person has reasonable knowledge of any work and is capable of completing such work. So, he guessed, if you own a property that's a rental and you want to do work on it, you would have to have a residential contractor come in and do the work with a license. If it's more than two families living there then it would have to be a general contractor license. Homer said, or the owner would have to apply. Bowers stated, the owner would have to come in, well the owner couldn't do a self permit on a rental. Homer said, but he would have to be licensed, correct? Bowers answered, well, not the owner. The owner would have to ensure that the licensed contractors are doing the work. Homer said, are we saying we don't have to do that, make it more than....? What his question was, does it need to say three to four family? Leming said, they can amend that, if it's pleasing to the Council. Mrs. Cain said, so, we're talking about someone who has rentals and they're going to have work done. They have to pull their permit. They have to get a permit. When the permit is pulled, at that time, that is when you will determine if this is a residential home or if it's a multiplex dwelling. That means, residential is a one or two family dwelling or they have more families so then you determine, okay, but I need a residential contractor, licensed contractor, because you're only doing a home of two families or less or do you have to have a general contractor license to do the work and to be able to obtain the permit? Mr. Bowers told Cain, that decision would be, the determination would be made when the contractor brings in the scope of work to the Building Department and applies for the permit. They would say, okay, well what's the scope of work, what's the project, what's the address and they'd say it's a single family home and they would say okay. So, in order to get the permit, the contractor would have to be registered or licensed or it would have to be a self permit in which they would have to prove that they live there in the home and it's not a rental. Cain said, so at that time, you could determine which licensed contractor you need, at which level, A or C. Bowers said, correct, and if, say you're an owner, you would hire the right contractor, you would know kind of who to hire if you had 30 homes. Cain asked Homer, did that answer that? Homer replied, yeah, that answered the question. Now, just one more thing and Jerry, if he could, there was a situation where he shut an apartment house down. It was a multi-unit apartment house at 6th and Boots. Is that correct? Foustnight said, yes. Homer said, for violations? Foustnight answered, yes. Homer asked Foustnight if he could explain to the Council what those violations were when he went in that home. Foustnight said, this was a residence used for veteran's housing in the City of Marion. This was used as a facility for veterans to live in. When they went into that facility, there were numerous violations. They didn't have a sprinkler system that was active, they had no fire extinguishers, the emergency lighting wasn't in place, no exit signs. One of the means of egress was climbing up some stairs and going out and being on top of a roof without the accessibility to get down. So, there were some violations, health violations, also about in their cooking facility and everything. So, that's where they used the codes and they also had the State of Indiana, their Fire Marshall, Deputy Fire Marshall come in with them and that's when they made the decision because it became a life-threatening issue and when it becomes a life-threatening issue, it gives them the power to close that facility down. Homer asked, do we know or does he have a good idea of who was doing the upkeep or repairs there that should have been required to be taken care of? Foustnight said, the individuals were, apparently they were trying to do them themselves. They had their staff, for instance, their cook that was doing the cooking was actually changing light bulbs in the facility. They were trying to do it in-house and as they were trying to do it in-house, they didn't meet the requirements. Homer said, they weren't licensed so it was a dangerous situation? Foustnight said, right, it was life-threatening. Homer said, and that would be the property on Western Avenue, is that correct? Is that the one or is it down here at 7th and Adams? Mr. Foustnight replied, down here on Adams. Homer asked, what about the apartment house at 6th and Boots? Back behind the library there on the corner. Foustnight said, oh, yes, they did make those individuals move out of that until they brought it up to code. There were many violations. There was spare electrical wires in there, wires with no junction boxes. It was infested with bedbugs and roaches. There was some issue of means of egress again. One of the stairways that was on the outside wasn't safe. When you walked on it, you had to walk on one side right up against the rail. The railing wasn't to code. It has to be so wide, it wasn't to code. So, there were a lot of violations there, and again, as a life safety

measure, they had those people evicted until they brought it up to code. Homer asked Foustnight, now as far as he's aware, the person that was responsible for that, the people responsible for the repairs there, they weren't licensed, were they? Foustnight answered, no. Homer stated, so in his view, a lot of this is safety, it's quality of life for people that even rent properties, not just homeownership or people that haven't had things done in their own residence or hiring a contractor but monitoring what goes on in some of these apartment houses where it's unsafe for people to live with their children. So what we're trying to do here is improve these standards and just raise the standard a little bit more by doing this licensing and registration. Is that safe to say? Foustnight replied, yes. And you also have to understand, if he could, that we have landlords throughout the city, we have excellent landlords that do a very, very good job. We have some that don't do what is expected. And we have individuals who have called them, he had a call today, an individual pays \$700/month, her heat doesn't work, she has electrical problems, there's bedbugs and he asked her very point blank, he said why doesn't she move from that facility and she said because she doesn't have good enough credit to get to a better place so she has to stay where she's at. And nobody should have to live like that, nobody. Homer told Foustnight, thank you for your work on this, thank you. Councilman Henry Smith said, question, for himself. If you have rentals, does he have to get a license to work on his rentals? He's reading here and he heard what you told Mr. Homer. Bowers asked, what page is he on? Smith said, 10 and 11, right there. Bowers asked, where at? Smith said, well, he's going by the last paragraph on number 10, he's going by what was heard when he was talking to Mr. Homer. Mr. Leming told Smith, well if you read in the last paragraph on page 10, it says permits covering the work to be performed are to be issued only to licensed or registered permit applicants. However, nothing in these rules or regulations shall be construed to prevent a person who owns and occupies a single or two-family family residence from securing a permit to personally perform the work allowed by the permit. Again, this goes back to the multi-family dwelling. Smith said, no, he's just talking about.... He doesn't want to jump the gun, he just wants to make everything correct. He's talking about a one or a duplex. Leming said, there's nothing in here that prevents him from pulling a permit. Smith said, right, he understands that but, if he's not mistaken, he thought he said that you needed a license and that's the reason why a flag went up in his head. Leming stated, if it's more than a duplex. Smith replied, no, he's talking about one that (inaudible) and that's what he's asking now, to clarify something. Mr. Foustnight told Mr. Smith, when he was referring to the apartment down here (inaudible) is because they had he believes 14 individuals living in there. In fact, it was a commercial application. They were being paid by the government to house those individuals (inaudible) and it was a commercial application. Bowers added, and you would have to live there. You wouldn't have to have a license if you're working on your own home. Smith said, okay, that's what he took this last paragraph to mean, as he read it, but he thought he misheard something when he mentioned about a license to work on your own things. Mr. Bowers stated, no, that would be, and you can pull a self permit for that, if it's your own home and you're doing the work yourself. Smith said, as long as it's in writing and verified (inaudible). Bowers said, and the question was about rental properties so he thinks that's the difference. That's where you couldn't do a self permit on a rental property that you own. Smith said, now hold up, say that again now. Leming stated, for the record and clear, on a single or duplex rental, as the owner, you can pull a self permit (inaudible). Mrs. Cain said, okay, so, this testing, she means she had to take a test in school to pass so she had to know the information, she had to understand what she was studying to answer the questions and to pass. So, she thinks it's only prevalent that contractors understand the codes on the work that they're making. This test assures that they understand it, that they understand today's codes versus codes that were back in 1960 and any new ones that the state imposes because we all know that the state imposes and increases new laws and everything. But how does a consumer know that the contractor is up on codes if they can't ask if they have a license? So that's what this is for is to help protect her. If she is going to have a contractor do some work on her house, she can then ask that contractor before he comes on to do her work, does he have a license and then she knows and trusts in them that they are going to do the work appropriately, which then, is she correct in this statement, that when they're at inspection time and she has a contractor who is licensed and is up to date on the codes, the inspections will go a lot quicker, there will be a lot less failures, lot less problems. You know, like he said in his statement, sometimes we all forget one little step but that one step is not going to lead to her having, hopefully it doesn't lead, and she doesn't want to put words in because there was a time that the word was "assumed" and then that went too far so she's hoping she's saying this statement right. So she'll slow down. She can feel more confident that the work is done when she has a licensed contractor that she can verify they have a license. Her inspections are going to go better and she's going to have less of a chance of having additional costs to her as the client

and having to hire a new contractor because this one messed up because they had no idea what they were doing but she put her faith in them first. Does he get her statement? She hopes she didn't convolute it, she's sorry. Foustnight told Cain, yes. Leming stated, he'd like to say he doesn't believe, and he's sure there are some but he's sure a lot of the instances that Jerry runs into on a regular basis, he doesn't believe in his heart of hearts that there's a bunch of guys running around, he takes a lot of pride in his trade, in his craft, he doesn't believe there's a bunch of guys running around, the masses, intentionally trying to cut corners. He doesn't believe the masses are doing it to cut corners. Cain said she agrees with that. Leming stated, and he does feel that way but, not being aware of the code is not an exception to the code. He means, the state has chosen to adopt the code as a regulation, this is the standard we are to build to. So yes, to have a license does not mean necessarily that the individuals that cut corners will stop but he thinks what it will do, those guys that are trying to (inaudible) will be aware, will have that (inaudible) knowledge (inaudible). It's kind of like a driver's license, if you will. He thinks we all feel safer going home tonight, knowing that the other drivers on the road have taken a test and have a working knowledge of what the laws are to be on the road. To say that we all know how to drive and the patrolman will catch those that don't, he doesn't think, that's not the way he would like to go home. The bar today is fairly low. To register, you come in, you pay the \$25, you show proof of insurance and that is it. He has no knowledge of electrical work but he could come in and register as an electrical contractor today if he could meet those criteria. He promises them, they do not want him wiring their house because he doesn't know what he is doing but this just raises that threshold of knowledge so that the consumer can say yes, the person they hired does know what they're doing. Mr. Miller said, final comments, questions. There were no questions or comments from the Council at this time. Miller told Mrs. Goodman, just an informational question, any idea what their agenda looks like next week, other than this? Goodman told Miller, they have one item of New Business filed but we still have tomorrow. Miller told Mr. Leming and Mr. Bowers, thank you so much for the input they've had from day one in this process.

Being no further business to come before the Council, on a motion by Smith, 2nd by Henderson, the meeting adjourned. Time being 9:16 p.m.