

CITY OF MENDOTA HEIGHTS  
DAKOTA COUNTY  
STATE OF MINNESOTA

Minutes of the Regular Meeting  
Held Tuesday, February 3, 2009

Pursuant to due call and notice thereof, the regular meeting of the City Council, City of Mendota Heights, Minnesota was held at 7:00 o'clock p.m. at City Hall, 1101 Victoria Curve, Mendota Heights, Minnesota.

CALL TO ORDER	Mayor Huber called the meeting to order at 7:00 p.m. The following members were present: Mayor Huber, Councilmembers Duggan, Krebsbach and Schneeman. Councilmember Vitelli had notified Council that he would be absent.
PLEDGE OF ALLEGIANCE	Council, the audience and staff recited the Pledge of Allegiance.
AGENDA ADOPTION	Councilmember Schneeman moved adoption of the revised agenda for the meeting. Councilmember Duggan seconded the motion.  Ayes: 4 Nays: 0
APPROVAL OF MINUTES	Councilmember Krebsbach moved approval of the minutes of the regular meeting held on January 6, 2009. Councilmember Duggan seconded the motion.  Ayes: 4 Nays: 0  Councilmember Duggan moved to table the minutes of the January 20 meeting to February 17. Councilmember Schneeman seconded the motion.  Ayes: 4 Nays: 0  There was discussion over how to process minor revisions and corrections suggested by Councilmembers prior the meeting at which the minutes are presented for approval. It was the consensus that staff should provide Council with a red-lined copy of the adjustments at the meeting at which they are to be approved.
CONSENT CALENDAR	Councilmember Duggan moved approval of the consent calendar for the meeting, revised to move items 6f, feasibility study for TH110/Dodd Road pedestrian improvements, and 6h, 2009 street improvement feasibility study, to the regular agenda, along with

authorization for execution of any necessary documents contained therein.

- a. Acknowledgement of the Minutes from the January 27, 2009 Planning Commission Meeting.
- b. Acknowledgement of the January 2008 Building Activity Report.
- c. Authorization for Purchase of Toro Groundskeeper for Parks.
- d. Authorization for Purchase of Copier Replacement.
- e. Approval of Probationary Period of Andy Quinlan, Maintenance Worker 1.
- f. Adoption of Resolution No. 09-13, "RESOLUTION FORMALLY ACKNOWLEDGING THE RECEIPT OF THE GIFT FROM MIKE AND SHANNON PARKOS TO THE CITY OF MENDOTA HEIGHTS."
- g. Adoption of Ordinance 420, "AN ORDINANCE AMENDING TITLE 12, CHAPTER 1 OF THE CITY CODE."
- h. Adoption of Ordinance 421, "AN ORDINANCE AMENDING TITLE 11 OF THE MENDOTA HEIGHTS CITY CODE TO INCLUDE CHAPTER 6, STORMWATER MANAGEMENT, ILLICIT DISCHARGE DETECTION AND ELIMINATION, SOIL EROSION AND SEDIMENTATION."
- i. Approval of the List of Contractors.
- j. Approval of the List of Claims dated February 3, 2009 and totaling \$288,995.37.

Councilmember Krebsbach seconded the motion.

Ayes: 4

Nays: 0

#### TH 110/DODD ROAD FEASIBILITY STUDY

Council acknowledged a memo from Engineer Mazzitello recommending that Council award a contract to SRF Consulting Group for preparation of a feasibility study for pedestrian improvements at T.H. 110 and Dodd Road.

Councilmember Krebsbach stated that she thinks it is good for the residents to know that the authorization would be for the consultants to take a look at both traffic at the intersection and a pedestrian/bike overpass.

Public Works Director Mazzitello stated that in September, 2008, staff met with representatives from Mn/DOT, Dakota County and the Metropolitan Council about getting a pedestrian connection from the Village to the Mendota Plaza. The city solicited RFP's and received four of them, which were reviewed by a subcommittee. The subcommittee scored the proposals and selected SRF Consulting Group. They will be taking a look at possibilities for alignment over

and under T.H. 110 and also at-grade using the existing intersection. He anticipates there will be a final report available by the end of August.

Councilmember Krebsbach stated that she met with Rep. Rick Hansen a week ago and indicated that there might be some resources available to improve the intersection and possibly also for the pedestrian bridge. She asked Mr. Mazzitello to check with Rep. Hansen's office to let him know the study is underway. She commented that no one wants to create a big intersection that would push the traffic north on Dodd.

Councilmember Schneeman stated that Al Singer, from Dakota County, has indicated that the county is interested in participating.

Mayor Huber stated that the city may also be looking to the Metropolitan Council for funding. One good thing about the study is that the consultants will look at all the options – above grade, below grade and at-grade and the agencies the city goes to for funding assistance will know that the city is looking at all the options. He also stated that there may be stimulus money available.

Councilmember Schneeman moved adoption of Resolution No. 09-12, "RESOLUTION AWARDED A FEASIBILITY STUDY FOR PEDESTRIAN IMPROVEMENTS AT INTERSECTION OF STATE TRUNK HIGHWAY 110 AND DODD ROAD (STH 149) AND PROVIDING NOTICE TO PROCEED."

Councilmember Krebsbach seconded the motion.

Ayes: 4  
Nays: 0

#### 2009 STREET PROJECT

Council acknowledged a feasibility report for proposed 2009 street improvements for Hunter Lane, Orchard Place and the rural section of Culligan Lane, and a street rehabilitation project for Veronica Lane, Glenhill Road and the remainder of Culligan Lane.

Councilmember Krebsbach stated that she wants to be sure that the residents know the timetable and that the meeting with affected property owners will be a part of the feasibility process.

Public Works Director Mazzitello stated that what is before Council this evening is to accept the feasibility report which outlines cost estimates and estimated assessments. A public hearing will be held on March 3. Staff intends to conduct a neighborhood meeting on or

about February 18, at which time neighbors can come and see the scope of the project and make comments.

Councilmember Krebsbach stated that last year the church she works at in Burnsville had a project estimated at \$2.6 million that came in at \$2.4 million and that was in a better economy. She felt that in this economy the city may receive some really good bids. It appears in the feasibility study that staff is proposing to keep the assessment rate at \$8,000 to bring the rate closer to the 2008 projects even though the bids might be better.

Mr. Mazzitello responded that the cost estimate is a little higher than unit costs for past projects. In trying to keep the assessed value at the same level staff is proposing to set the assessed value in the same range as the 2008 projects so that everyone is treated fairly. Staff is actually proposing to assess less than half of the estimated project cost.

Mayor Huber stated that until the city gets the bids and knows the feasibility of the project, there should not be any promises made that the price is going to change. If the bids come in really well, the city can look at reducing the rate, but the staff is already proposing that less than half the cost be assessed. He stated that a few years ago the city started in the process where the ratio being assessed began dropping way below the point where the city could sustain the balance, and four years ago staff recommended bringing that ratio up.

Councilmember Duggan stated that he would anticipate that if the bid comes in significantly less than the estimate, the city could adjust the assessment rate. He stated that normally at the end of the report staff has rates shown for each of the properties and this report shows the affected properties but no assessment rate. He asked whether it is entirely up to St. Paul Water to decide what watermain get replaced.

Mr. Mazzitello responded that watermain replacement has to do with the age of the service, so the older mains are being replaced or not. Also, the assessment rate is based on whether the street is being reconstructed or resurfaced.

Councilmember Duggan asked that staff be sure to show those who attend the informational meeting the differences in cost between curb and gutter and no curb and gutter or surmountable curbs.

Mr. Mazzitello responded that staff will provide all of the options to the residents. He stated that he has heard from some of the property owners and some want curb and some want their street so stay the way it is.

Councilmember Schneeman moved adoption of Resolution No. 09-14, "RESOLUTION ACCEPTING FEASIBILITY REPORT AND CALLING FOR A PUBLIC HEARING ON THE 2009 IMPROVEMENT PROJECT."

Councilmember Duggan seconded the motion.

Ayes: 4

Nays: 0

HEARING: VACATION OF  
ALLEY AND EUGENIA  
STREET

Mayor Huber opened the meeting for the purpose a public hearing on application from Mr. & Mrs. Brian Brunette, 591 Hiawatha, for the vacation Eugenia Avenue between Hiawatha and Sibley Memorial Highway and the alley running behind the homes on Hiawatha.

Assistant Sedlacek stated that Cherokee Park Heights was platted in 1924 and Eugenia was also platted at that time. The Council at that time wanted to make sure the city had the proper infrastructure for potential development and 30 feet was platted with the intent that when the property to the south developed they would plat 30 feet for right-of-way. When that property, North Ivy Hills 2<sup>nd</sup> Addition, was platted it was decided that Eugenia would not be needed, so there was no dedication for Eugenia. Responding to a question from Councilmember Krebsbach, he stated that there is no formal trail on the Eugenia right-of-way. The reason Mr. Brunette requested the vacation is because of the foot traffic there and his concern over safety. His home has been broken into. His initial request was to vacate Eugenia and half of the alley behind his property. Staff looked at it and felt there was no reason to keep any of the platted right-of-way, as it is a maintenance liability for the city. Since there are some utilities in the right-of-way, it would make sense to retain an easement.

Assistant Sedlacek stated that staff looked at the entire area proposed to be vacated and notified all of the neighbors whose properties were adjacent to the right-of-way. The owners of 573 and 583 Hiawatha were not interested in adding the right-of-way to their property. The owners of 600, 598, 586 and 580 Sibley Memorial Highway all said they would rather the city retain the right-of-way. Staff is recommending that the city vacate the alley adjacent to 606 Sibley Memorial Highway and 591 Hiawatha Avenue and turn half of that

right-of-way over to each of the two property owners, along with all of the Eugenia right-of-way adjacent to their properties.

Mayor Huber asked whether the fact that the Eugenia had been vacated with the platting to the south was mentioned at the last meeting.

Councilmember Duggan stated that Council did not know two weeks ago that Eugenia was not platted with the development to the south.

Councilmember Krebsbach asked Assistant Sedlacek how he sees it working where one fourth of the alley is vacated and the rest is not.

Assistant Sedlacek responded that it probably will not be a real issue for the utilities because they get access from Garden Lane. From what he can tell without walking down the right-of-way, It looks like all the neighbors have fenced their yards, so the alley seems to function as an alley right now even though it has not been paved.

Councilmember Krebsbach asked if the residents use drive down the alley now.

Mr. Sedlacek responded that there is a curb cut at the end of Garden Lane to the right-of-way. There is a two car detached garage at 580 Hiawatha. From the comments he has received, some of the residents parked their cars in the alley.

Councilmember Krebsbach stated that she has walked this area a number of times. She asked if the police attribute the break-in to the walking path.

Assistant Sedlacek said the police have not said so but responded that it could be a factor that the home owner might want to address. The primary request is to expand his sideyard area.

Mayor Huber stated that the primary request is to expand the side yard area. It was decided last meeting about the 606 Sibley Memorial being able to be split if Eugenia is vacated. It is not large enough now to divide, but with the proposed vacation area it would be large enough to subdivide.

Assistant Sedlacek stated that are four scenarios with 606 Sibley Memorial Highway. He said that there currently is not enough area for the lot to be subdivided. If the alley is vacated there would not

be enough area to subdivide, but the vacation of Eugenia would make it large enough. That was a Council concern last time.

Attorney Diehm stated that it was suggested that the city hold the hearing tonight and get public comments but that staff may have to spend a bit more time on that issue. She and staff are exploring the options available if the city chooses to move ahead with the vacation but address Council concerns about the subdividability of that lot.

Councilmember Duggan stated that the city will also need to know whether Mn/DOT would allow another curb cut on Sibley Memorial Highway if that lot were to be subdivided. He stated that he would like to table this until the snow melts so he can actually see what is involved.

Mayor Huber stated that Council is probably not going to make a decision on this tonight but would notify the neighbors when this will be back on the agenda.

Mayor Huber asked for questions and comments from the audience.

Mr. Brian Brunette stated that he has had two break-ins, March 28 of 1996 and November 19 of 2008 and that is when he came to the police and got the idea of vacating the right-of-way. His objective is to create privacy for his family. He has two daughters aged 2 and 5. There is quite a bit of foot traffic from Sibley Memorial Highway through the area and kids riding their bikes through there. Kids hang out in the Eugenia right-of-way in the summer, partying and drinking beer and he picks up the trash and he maintains the area. Eugenia is his front yard. They have to keep their windows closed in the summer time because of all the kids and pets going through there. He would like to put in a fence and perhaps plant some trees to increase his privacy. He had feedback from one of his neighbors is concerned that his family would not be able to play in the right-of-way because they use it as a playground. Mr. Brunette stated that his family does not play there. He has never claimed the right-of-way as his property even though he has always cut it.

Councilmember Krebsbach asked if any trail cuts though from Sutcliff going back to Miriam or Hiawatha. Mr. Brunette responded that he is not aware of any. Mr. Dunnigan came over to talk to him about the vacation and suggested to his wife that they could perhaps put a swing set in the right-of-way. Her response was that it is city property and you can't put a swing set on city property. There is a wood fence along one of the lots on Sutcliff and the people on

Sutcliff have beautifully landscaped properties. Their back yard is his front yard and his family has no privacy. There is a lot of foot traffic in this area and that is scary when one has young children.

Responding to a question from Councilmember Duggan, Mr. Brunette described the break-ins that have occurred to his home. He stated that he is not aware of any other break-ins in the area.

Mr. Bill Dunnigan, 597 Sutcliff, stated that when he bought his house recently the right-of-way was city-owned and would probably never be developed. That was an asset to him in buying the house. It creates a buffer zone between the neighbors that no one can use. He has not noticed very much foot traffic. He was there today and you can see a few footprints there, but not a significant amount. Some of the foot traffic is from the neighbors. He has used it to get to Sibley Memorial to access the bluffs. There aren't any sidewalks and the right-of-way is something the neighbors and the community can use. If the property were vacated, and it would go all to him, he would not be in favor of it. It is a nice buffer to have between properties. Right now it is 30 feet he can use and 30 feet Mr. Brunette can use to recreate or walk through and enjoy. He has a row of pine trees in his back yard and Mr. Brunette has a row of pine trees also. There is an opening in the Brunette pine trees where they he could plant some more trees for privacy. Regarding the break-in, he does not think landscaping will provide a solution. It will provide more places to hide and that creates more of a problem than before.

Mr. Dunnigan stated that he just heard about this last week. He has a letter from his wife who could not come tonight strongly opposing the vacation, as he does. He has a letter from Noel Zahler, 605 Sutcliff, who has moved east and rents the house out now. His letter also strongly opposes the vacation. He has a letter from Cameron Kruse who commented that open space is shared by all the neighborhood and he would like to see it maintained as right-of-way in the future.

Councilmember Duggan stated that if Council were to go forward with this, Mr. Brunette would probably put up a fence. He asked if Mr. Dunnigan would have a problem with the fence.

Mr. Dunnigan responded that his property goes down behind a row of trees and down a slight hill, so if there is a fence there it will be difficult to access the little bit of yard that is there. The trees create a buffer and there is a row of trees on the Brunette property. The

buffer provides access for people from Highway 13 to get into the neighborhood. He feels there are well respected residents who use and enjoy that right-of-way. He has not witnessed beer cans or the foot traffic Mr. Brunette referred to.

Ms. Celeste Riley, 1013 London Road, directly south about two blocks. She stated that she does not own a lot near the right-of-way but she is a big walker. When she moved into her home one of her neighbors showed her areas where one could walk without having to go onto the street. One was along Ivy Falls Creek. She was walking along there one time and all of a sudden there was a no trespassing sign. She called the city and found out that the right-of-way had been vacated and given back to the property owner. She loves to walk but does not like walking in the street. There are very limited opportunities for her to walk without cars. She has never seen anyone walking in the right-of-way whenever she was walking there. It isn't marked at all, so she cannot imagine criminals are using that for access. There is no way to get in and out of there with a car. She encouraged Council to make public access more accessible and if Council is contemplating taking away public access she would like the city to make it very clear to the neighborhood what is being considered.

Mr. Dave Libra, 737 Knollwood Court, stated that his daughter and son-in-law bought their home at 574 Hiawatha in 2005. There is a separate letter that was provided to the city in which on the opposite side of Hiawatha there is a 30 foot strip that begins at Hiawatha and dead ends in a number of homes that are on Simard so there is no access. There are some separate issues relating to that which will be addressed later. He and his family support the requested vacation. This action might be nice in some circumstances, the city does not and has not maintained that area. He was on the park commission for 13 years and he is in favor of trails and access. This is not the type of access the city is normally in favor of. The 30 foot strip does not provide satisfactory access and will never be developed as a roadway and would be good to vacate.

Ms. Jeannie Ficktel, 623 Sutcliff, stated that she and her husband are not in favor of the vacation if there is discussion about another home being nestled in along Highway 13. They are original owners and builders and they have seen many children in the neighborhood play in the right-of-way. It is not a heavily trafficked area and it has never seemed like an abused space. There is a lot of electrical wiring that seems to converge in that space. There is quite a bit of old brush back there and they have seen some of the dead wood fall on the

power lines. That has been a concern of hers, and they are concerned about squeezing another home in there, especially as things exist today.

Responding to a question from Councilmember Krebsbach, Ms. Ficktel stated that she is not aware of any problems with break-ins in the neighborhood.

Mayor Huber stated that the thing that is weighing on him is that a previous Council at some point decided for whatever reason to allow the developer (Vern Colon) of the property to the south to sell his property to someone and at some point the city said it would vacate half of Eugenia. That allowed the development to the south to be built. The city made an accommodation for a resident of the community to vacate half the right-of-way. The reality is Council made an accommodation for someone and now there is another resident asking for the same thing. Mayor Huber stated that he is big on fairness and what is being asked for is fair to him. The residents on Sutcliff got their vacation a number of years ago and now the owners to the north are asking for the same thing. If Eugenia had not been split in half, he would likely have taken a different view of this because of the concern over the potential subdividability of the lot on Highway 13 at Eugenia. The city vacated the other half of Eugenia so that there could be a subdivision to the south. He stated that he will ask staff to determine what kind of restrictions could be put in place against subdividing that lot.

Councilmember Duggan stated that if Council supports Mr. Brunette's idea perhaps there could be a conservation easement saying there could be no building on the vacated area and that it must be maintained as open space. Council would also have to take a look at the area just west of the Troje home.

Councilmember Schneeman stated that she has some legal questions and concerns about the vacation. Also she went there to walk the property today and there was too much snow to really see anything.

Councilmember Krebsbach stated that she was on the Council when the Colon property was developed. She thinks Eugenia was not vacated at that time because she thinks Council was looking at something more of a trail than a road so that there would be some access for the neighborhood residents to walk through there. She thinks Council did not vacate Eugenia so that it could be used as a trail. There seems to be only two property owners who are interested

in the vacation. She would like to know more from the police perspective about the break-ins attributable to the pathway.

Councilmember Duggan asked staff to research how the south 30 feet of Eugenia was vacated and given to the four property owners adjacent to it to the south, and what the legal reason was for doing that.

Mr. Dunnigan, speaking to the issue of fairness, stated that when the vacation of the south portion was considered, the neighbors to the north probably did weigh in on it. He stated that he feels that benefitted the people to the north because there would never be a street there and they can utilize the right-of-way as if it is their own yard. Neighbors moved in thinking that would perpetually city property. Vacating Eugenia would change the tone of the neighborhood. One issue Council has not considered is if this is vacated and the land is given to the two adjoining property owners, Mr. Brunette may say he is going to just landscape it and keep it rural and then sells his home. The next property owner may come in and say he's going to put in a basketball court or swimming pool. That would dramatically change the tone from his back yard.

Mayor Huber stated that the city has had a handful of requests for these types of vacations in the past. Typically if it is not increasing someone's lot so they can then subdivide their lot and profit by the vacation, Council has typically said yes. If the vacation would have profited someone by subdividability, Council has always said no. Approving Mr. Brunette's request would be consistent with what the city has always done.

Mr. Wally Avante, 613 Sutcliff, stated that his property is maintained all the way back to the right-of-way. He knows that the neighbor at 606 Sibley Memorial sometimes comes and cuts the grass where he has already cut it. His only concern is that someone is not going to be able to build another home there.

Assistant Sedlacek informed Council that he has received a request for vacation of the other portion of Eugenia as well. The public notice went out for all of Eugenia Avenue. Staff suggests that there be another radius notification if Council is interested in considering the new request, it could schedule a public hearing for March.

Councilmember Krebsbach stated that she would rather hold the hearing on both request in the spring.

Councilmember Duggan agreed, stating that would give Council the opportunity to walk the area when the snow is gone and see what it looks like with the fences there and how it is used.

Councilmember Duggan moved to continue the hearing to April 21 and to hold a separate hearing on that date on the petition for the vacation of the second section of Eugenia.

Councilmember Krebsbach seconded the motion.

Ayes: 4

Nays: 0

CASE NO. 09-02, PLUM

Council acknowledged an application from Paul & Megan Plum for a variance to the front yard setback at 1933 Dodd Road.

Assistant Sedlacek reviewed the application and the Planning Commission discussion on the application, stating that the Plums has two requests. They would like to create an addition to the home, completing the offset portion as a new entryway and mud room to the home built in 1951. The string line rule applies as the 30 foot setback is well in front of the home. The existing home is within the string rule. It applies to the home and to the addition. The 10 foot addition would be a 14 foot variance to the string rule. They are also requesting up to an additional 10 feet for an open porch, for a total 24 foot variance from the string rule setback. The planner provided the analysis that especially for the initial request, the hardship is that the house was built square to the lot lines but had it been built square with Dodd, there would be no question that the addition could be built. Covered front steps are common requests and Council has found that protection from the elements is a reasonable use of the property and not having that protection is a hardship. If both requests are approved there would still be a 70 foot setback from the Dodd Road right-of-way.

Responding to a question from Councilmember Duggan, Mr. Sedlacek stated that the house at 1937 Dodd was built in the 1970's and it appears that the string rule was applied to that house. Councilmember Schneeman stated that she knows the house well and Dodd Road curves there. The proposed additions will be a great solution for them and increase the value of the neighborhood.

Councilmember Schneeman moved adoption of Resolution No. 09-15, "A RESOLUTION APPROVING A 25 FOOT VARIANCE TO THE FRONT YARD SETBACK FOR 1933 DODD ROAD."

Councilmember Duggan seconded the motion.

Ayes: 4

Nays: 0

## ZONING CODE REVIEW

Council acknowledged a memo from Assistant Sedlacek regarding review of the zoning code. Assistant Sedlacek stated that this has been discussed at various times in the past and also at the recent Council goals setting workshop. The code was adopted when the city was incorporated and has had a number of repairs but has not had an extensive review to identify inconsistencies and potential policy questions for quite some time. Planning staff has provided a description of the project. It will be about a six month process and will include extensive feedback from Council, the Planning Commission and other interested individuals.

Assistant Sedlacek stated that the project will include three tiers of issues: simple clerical changes; changes to comply with changes in the statutes; and, planning issues that need some policy questions addressed. The budget proposed is \$12,270, which is within the planning budget for 2009.

Responding to Council comments, Assistant Sedlacek stated that this is not a make work project but rather something that really needs to be done.

Councilmember Schneeman moved to authorize staff to proceed with the zoning and subdivision ordinance review.  
Councilmember Krebsbach seconded the motion.

Ayes: 4  
Nays: 0

## CRITICAL AREA BILL

Assistant Sedlacek reviewed the location of the critical area for Council and the audience, stating that it is all along the Mississippi River.

Administrator Danielson stated that staff learned recently through Councilmember Krebsbach's contact with people from Lilydale that Rep. Hansen has proposed a bill to amend the critical area act. Staff has received a copy of the bill and has given Council several comments. He asked if Council would like to add to those comments or give staff other comments they may have. Irene Jones from the Friends of the Mississippi is in the audience and also today staff received an email from Brian Strub from the League of Minnesota Cities. He is going to have a workshop on February 20 to discuss the proposed legislation. Staff plans to attend that workshop and discuss the city's concerns with him. Staff's main concern is the change in bluff definition. At this point it is defined as 40% and they are proposing changing that to 18%.

Mayor Huber stated that what he would like to work towards tonight would be to collect comments from the Council and the audience and prepare a letter for Rep. Hansen. He stated that he had asked Rep. Hansen to attend tonight but he is very busy at the Capitol and cannot be present.

Ms. Jones stated that the critical area corridor was designated in the mid 1970's by executive order and later made permanent by the legislature and the Metropolitan Council. The law directed cities to develop plans and ordinances which would become the rules. That happened in the 1980's, but when the national park came in many communities updated their plans but not their ordinances. Mendota Heights did update its ordinance. There have been many problems in the last ten years with implementing the critical area programs in part because plans do not agree with the ordinances and in some cases the ordinance do not agree with the executive order. It's not quite clear how much of the executive order must be in the ordinances and that has been left first to the EQB and then to the DNR. The proposed legislation will not be a one size fits all approach. A study was ordered by the legislature in 2007 and done by the DNR and they did a lot of stakeholder outreach. The input from stakeholder meetings was the driving force for this bill. People generally agreed they want to keep it as a unique framework for this area but that the regional aspect was missing. The state framework has been weak and people agreed there needs to be somebody looking at the big picture, such as the DNR. People also felt that decisions were being made on a political basis. The bill has a couple of key things. It authorizes rulemaking for the critical area by the DNR. It provides guidance for establishing new corridor districts that takes the natural and cultural features into account as well as land uses and defines key terms and clarifies enforcement responsibilities. The four districts that are currently in the critical area don't adequately protect the resources in some places and in some places they overprotect it. There is no way to guarantee that whatever framework that is being used by the cities or the state actually reflect the geographic features. The DNR does not have variance oversight now, but by giving them rulemaking authority they may be able to work with all of the stakeholders to come up with something that is less "one size fits all" and would address the features that people value. Now the rule is the ordinance although the DNR can approve or deny ordinance amendments. She is envisioning that there will be a lot of districts.

Responding to comments from Councilmember Duggan, Ms. Jones stated that the outside boundaries of the district have not changed. The legislation directs rulemaking in which new districts will be

created. The sum total of the districts will not change the total critical area. Other than the definitions, there are no specific standards in the law. The law directs rulemaking and provides guidance on how the standards are set up. The rulemaking is supposed to commence by January 2010. Rulemaking is a very public process and the stakeholders will participate and assist in drafting the rules. Right now, the cities create the rules (their ordinances) and the DNR can approve or deny them. Under the proposed legislation, the DNR will create a rule and the cities will respond. If the rules would cost local government anything, it will go back to the legislature.

Councilmember Duggan stated that when they changed the rules about ordinances and comprehensive plans in 1996, the comprehensive plan supersedes ordinances. The city has a comprehensive plan which talks about the critical area and MNRRRA, and the critical area ordinance was approved by the Metropolitan Council. Ms. Jones has told Council that one of the four things going on is creation of some new districts. Even if new districts are created, the critical area and the bluff will stay the same. Subdivision 15 of the proposed bill talks about steep slopes being measured over a distance 50 feet or more and Mendota Heights has consistently stayed within 100 feet or more and would prefer to stay with that. Councilmember Duggan asked what the fees are and what the penalties are. Ms. Jones responded that the late fee is a penalty against agencies that do not notify the DNR within 30 days of taking action. He stated that the Metropolitan Council is reviewing the city's comprehensive plan and asked if the stakeholder group is waiting until that review is completed before going forward.

Ms. Jones responded that the new comprehensive plan will be used since rulemaking does not commence until January, 2010. The standards need to take all of the resources into account. The rules will then have to be developed based on that guidance. Everything that needs to be protected will need to be identified. Rulemaking is a very public process. Right now cities adopt ordinances for the critical area and the DNR responds to them. Under the proposed legislation, the DNR will create rules and the cities will respond. If the rules are going to cost local government anything, they will go back to the legislature.

Councilmember Duggan stated that the bill talks about a penalty before it discusses fees.

Ms. Jones responded that was placed in the bill because people want variance certifications. Now a community is required to notify the DNR within 30 days. The difference is that the bill would require a late fee if the city does not notify the DNR in 30 days. The review fees can be passed on to a developer.

Councilmember Krebsbach stated that she was quite surprised when she got the legislation because it really impacts Mendota Heights and the city had not been notified. She has met with Representative Hansen to discuss this legislation. Mendota Heights has very responsibly developed the bluff and in no way damaged the look of the bluff. The bill turns rulemaking over to the DNR. Sometimes they are interested and sometimes they are not. Mendota Heights has been very consistent. One of her concerns is added cost to the city's residents and the large overlay the city has. She knows there is no interest in opening the overlay up to take any of the bluffs out of it.

Ms. Jones stated that the City of St. Paul has spent the last five years developing their ordinance and they have some concerns about this. The study group has suggested that they take their ordinance to the DNR and ask them to incorporate it into the rules.

Councilmember Krebsbach stated that Mendota has allowed the equivalent of four story buildings to be constructed. If Mendota is now going to be put into a different district, are they going to be allowed to put in four story buildings just because they are not on the bluff. The buildings could rise up enough that anyone living on the bluff will be looking into windows or HVAC units.

Ms. Jones responded that her guess is that the rules in that community will be very strict and will reflect the natural features.

Responding to a question from Councilmember Krebsbach, Ms. Jones stated that former Public Works Director Sue McDermott came to the meetings in 2007 along with 87 representatives from cities, developers and state agencies. In 2008 there were about a dozen people participating in the study group. The information from the report that resulted was generated from the 2007 meetings was used by the study group to come up with the legislation.

Assistant Sedlacek informed Council that the Association of Metropolitan Municipalities will be meeting on this issue on February 20. He plans to attend the meeting and wanted to bring this to Council tonight to get some feedback.

Mayor Huber stated that the thought was to give feedback to Representative Hansen on Council's thoughts. He asked that the Council members submit their thoughts to staff.

COUNCIL COMMENTS

Councilmember Schneeman stated that she had a bittersweet two weeks. Her son Chris was the Winter Carnival King, which was a wonderful experience, and then her brother-in-law passed away and she and her husband had to make a quick trip to New York.

Councilmember Krebsbach noted the passing of Mrs. Dodge. She stated that Mrs. Dodge was a wonderful benefactor to the metropolitan area, donating the property for the Dodge Nature Center in West St. Paul and in Mendota Heights.

Councilmember Duggan congratulated the Henry Sibley High School debate team for winning the state debate championship. He also informed Council that he has asked staff to send copies of information to Council about a new group called River Bluff Village.

ADJOURN

There being no further business to come before Council, Councilmember Schneeman moved that the meeting be adjourned. Councilmember Duggan seconded the motion.

Ayes: 4

Nays: 0

TIME OF ADJOURNMENT: 9:20 p.m.

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Kathleen M. Swanson  
City Clerk

ATTEST:

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John J. Huber  
Mayor