

CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY
STATE OF MINNESOTA

Minutes of the Regular Meeting
Held Tuesday, April 7, 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: Councilmembers Duggan, Krebsbach, Schneeman and Vitelli.

PLEDGE OF ALLEGIANCE

Council, the audience and staff recited the Pledge of Allegiance.

AGENDA ADOPTION

Mayor Huber noted that the agenda has been changed to reflect that Paster Enterprises notified the city that they would not be at the meeting tonight, and therefore asked to be removed from the agenda (Item 9f). City Attorney Tami Diehm said that the letter received from Paster Enterprises is sufficient. Councilmember Duggan asked that Item 9e be kept on the agenda in order to allow for Council discussion. Mayor Huber said that was acceptable. Mayor Huber added discussion of Police Reserve Unit as 6p.

Councilmember Duggan moved adoption of the agenda as revised.

Councilmember Schneeman seconded the motion.

Ayes: 5

Nays: 0

APPROVAL OF MINUTES

Councilmember Schneeman moved approval of the minutes of the regular meeting held on March 17, 2009 as presented.

Councilmember Duggan seconded the motion.

Ayes: 5

Nays: 0

CONSENT CALENDAR

Councilmember Duggan moved approval of the consent calendar as presented, pulling items g, h, i, m, and p for further discussion, and authorization for execution of any necessary documents contained therein.

- a. Acknowledgement of the Minutes from the March 24, Planning Commission Meeting.
- b. Acknowledgement of the NDC4 Meeting Minutes and Agenda.
- c. Authorization for Hiring of Engineering Department and Summer Intern.
- d. Authorization for Temporary Liquor License, Beth Jacob Synagogue.
- e. Approval of Sign Permit for 2273 and 2279 Waters Drive (Klingelhutz Development).
- f. Approval of Sign Permit for 750 Main Street Suite #109 Relax-n-Tan.
- g. Approval of Plan Review for Ammonia Condenser Platform at Lloyds Food, 1445 Mendota Heights Road.
- h. Approval of Joint Powers Agreement for County Funding Portion of Highway 110 and Dodd Road Pedestrian Feasibility Study Contract.
- i. Approval of Design Change Notice (DCN) 1 to Highway 110 and Dodd Road Pedestrian Feasibility Study.
- j. Appointment of NOC Representatives.
- k. Adoption of Resolution No. 09-21: "A RESOLUTION ACCEPTING BIDS AND AWARDING CONTRACT FOR 2009 SANITARY SEWER TELEVISIONING AND CLEANING PROJECT (CITY PROJECT NO. 200906)".
- l. Adoption of Resolution No. 09-22: "A RESOLUTION RENEWING A CONDITIONAL USE PERMIT TO LINDER'S GREENHOUSES TO OPERATE A TEMPORARY SEASONAL GARDEN CENTER IN THE PARKING LOT OF MENDOTA PLAZA UNDER CERTAIN CONDITIONS)".
- m. Adoption of Resolution No. 09-23: "A RESOLUTION GRANTING AN EXTENSION FOR A CONDITIONAL USE PERMIT FOR A HOTEL AND RETAIL SALES AND SERVICE COMPLEX AT THE SOUTHEAST CORNER OF PILOT KNOB ROAD AND NORTHLAND DRIVE)".
- n. Approval of the List of Contractors dated April 2, 2009.
- o. Approval of the List of Claims, dated April 7, 2009 totaling \$193,494.63

Ayes: 5

Nays: 0

Councilmember Schneeman seconded the motion.

Assistant to the City Administrator Jake Sedlacek introduced Item 6h regarding the ammonia condenser for Lloyd Foods, and said this is a standard building application for a mechanical structure which staff reviewed and felt that the size of the structure merited further review. Mr. Sedlacek showed a photo of the current building, along with the same photo showing a rendering of what the additional condenser structure would look like. This structure would be 35-ft high with two condenser units on top, with the storage tank underneath.

Mr. Sedlacek said the City of Mendota Heights does allow mechanical structures on buildings without limits on structure heights, and this is the largest one seen.

Councilmember Krebsbach asked for the staff's definition of this type of application. Mr. Sedlacek said it was a mechanical structure. Councilmember Krebsbach asked if the city has any type of designation for this kind of structure. Mr. Sedlacek said there is none, and that mechanical structures are allowed in the industrial zone. Councilmember Krebsbach asked if the city has any ordinances that allow such structures on a platform. Mayor Huber said the ordinance does not address where the location of the structure needs to be. Councilmember Krebsbach said she is concerned about the security around this structure as well as some sort of warrant on the strength of the structure.

Councilmember Schneeman asked if the building next door was the same height. Mr. Sedlacek explained that he is not aware of the height of that building and that the angle the photo was taken may be a little misleading.

Councilmember Vitelli asked if the Council is required to approve this. Mayor Huber said the Council would need a basis to turn it down. City Administrator Jim Danielson said building permits within the commercial and industrial zone for exterior work are always brought to the City Council. Mayor Huber said this is not a request for a variance or anything special, and it is a permitted use.

Councilmember Duggan said in some areas of the ordinance there are some exclusions to structures that are higher than the main structure and this additional structure would perhaps be considered higher. Councilmember Duggan said he also has a concern on the safety of this structure based on its weight, noting he is confident that it is built to all the universal building codes, and he is concerned about safety factors regarding explosions, and asked staff to further check on these items, including obtaining comments from the fire department. Councilmember Duggan suggested that he would not mind seeing a 20-ft tree to screen and break out the heavy mechanical appearance.

Mr. Sedlacek said the city always has a mechanical engineer sign off on these types of structures.

Councilmember Vitelli said he has a problem with the aesthetics of this and asked if neighbors have been shown this plan, and asked why the condensers cannot be put on the roof.

Chuck Morrisette, Plant Engineer from Lloyds BBQ Company, said the company has its own HazMat team that address any leaks, and asks for the assistance of the city's fire department should the need be. Explosions are more apt to happen inside the plant rather than outside the plant, as there is more air outside. This is ammonia, not gasoline or propane, and pure ammonia will not explode.

Councilmember Schneeman asked what the purpose is of the ammonia condensers. Mr. Morrisette explained how the refrigeration process needs to be cooled, which is cooled by the liquid ammonia. Mayor Huber asked if this process is going on today. Mr. Morrisette said it is, which is what the existing three roof units do. The new structure will replace those three units.

Mayor Huber asked Mr. Morrisette to speak to why this structure is put in this particular plan. Mr. Morrisette said they need to be able to expand the plan, and the only way to expand is to the back of the plant. Mr. Morrisette explained the comparisons on the heights of the units. Mayor Huber said he is concerned about having additional trees near the existing power lines. Mr. Morrisette said there would be no problem with putting trees in.

Councilmember Vitelli asked why the units cannot be placed on the roof. Mr. Morrisette said the roof is not designed to withstand the weight of this unit, and explained how the units drain into the receiver, and how the new structure will correct existing drainage problems.

Councilmember Krebsbach asked if Clark Engineering has signed off on this. Mr. Morrisette said they have. Councilmember Krebsbach asked about further expansion. Mr. Morrisette said any expansion will depend on how busy the plant gets. Councilmember Krebsbach said Clark Engineering is a reputable firm and she is comfortable with this. Councilmember Krebsbach talked about concerns with people accessing this structure. Mr. Morrisette said there will be no access from the ground; the only access will be from inside the plant.

Councilmember Duggan asked how often the equipment is inspected. Mr. Morrisette said the fire chief comes in yearly, but their staff inspects this equipment on a daily basis. Mr. Morrisette said during Process Safety Management (an OSHA and EPA program), mechanical integrity inspections must be done, which requires bringing in an outside side source to look at the entire refrigeration system. Councilmember Duggan asked if these reports are submitted to the fire department. Mr. Morrisette said he does not believe so.

Councilmember Schneeman asked Fire Chief Maczko to speak on this. Chief Maczko said they have had a very good relationship with Mr. Morrisette and the company, having a very good safety program and have been very compliant. Chief Maczko said he feels comfortable that the fire department is an assisting agency.

Councilmember Vitelli moved to approve Ammonia Condenser Platform at Lloyds Food, 1445 Mendota Road, as presented.

Councilmember Schneeman seconded the motion.

Ayes: 5
Nays: 0

Public Works Director John Mazzitello presented an update on the Highway 110 and Dodd Road Pedestrian Improvement Feasibility Study.

Mr. Mazzitello said there is a consultant producing a feasibility study on these improvements, specifically the north/south movement of pedestrians from The Village area to the Mendota Plaza area. On March 19th, there was an agency meeting for the consultant to meet with the city, county and MnDOT to iron out issues and discuss options and alternatives. At that time, Dakota County brought to the city's attention their desire to apply for federal money under the stimulus package to separate the NURT trail from Dodd Road, constructing an underpass under Dodd Road to get the pedestrian traffic on the NURT trail from east to west. Because the application timeline was so short, they could not get a contract executed with a qualified consultant in time to meet the application deadline. They asked the city to piggy back on its existing contract with the city's consultant to complete the application package. The consultant provided a proposal for an additional \$4,000 to be added onto the \$16,889 contract that is already in place with SRF.

Mr. Mazzitello presented a Joint Powers Agreement with the county. Prior to the city entering into the agreement with SRF, the city had discussions with Al Singer from Dakota County, and the county has committed to pay a portion of the feasibility study. That amount has been increased by this change order to the contract and the Joint Powers Agreement agrees that the county will pay the city the sum of \$6,000, which is 29% of the contract cost.

Councilmember Krebsbach asked if the tunnel would be constructed instead of the overpass, or is it an additional feature. Mr. Mazzitello said the request of the county would not interfere with the city's desire for a north/south connection. The consultant is still looking at the over/under/on scenarios for the north/south.

Councilmember Schneeman moved to approve the Joint Powers Agreement for County Funding Portion of Highway 110 and Dodd Road Pedestrian Improvement Feasibility Study, and the Design Change Notice (DCN) 1 to Highway 110 and Dodd Road Pedestrian Feasibility Study Contract.

Councilmember Duggan seconded the motion.

Ayes: 5

Nays: 0

Mr. Danielson referred to item m and said North Central Group has submitted a request for an extension of the CUP for one year as, due to economic conditions, they will be extending the deadline for purchase of the property. Mr. Danielson said United Properties will be willing to extend if the city does so also. Councilmember Krebsbach asked if it would be one year from today. Mr. Danielson said that is correct.

Councilmember Krebsbach moved to approve Resolution No. 09-23: "A RESOLUTION GRANTING AN EXTENSION FOR A CONDITIONAL USE PERMIT FOR A HOTEL AND RETAIL SALES AND SERVICE COMPLEX AT THE SOUTHEAST CORNER OF PILOT KNOB ROAD AND NORTHLAND DRIVE)". Councilmember Schneeman seconded the motion.

Ayes: 5
Nays: 0

Police Chief Aschenbrener presented his request for obtaining a reserve squad vehicle. Chief Aschenbrener explained that work is underway to establish a reserve unit for the Mendota Heights Police Department. The goal is to have a volunteer unit to provide assistance to the police department. A used squad 2004 Ford Crown Victoria has been located, and was inspected by the city mechanic. Chief Aschenbrener said this vehicle would not be for emergency use. In speaking with Ms. Schabacher, the city's Finance Director, the policy would go up about \$200 to \$400 per year. This insurance policy would cover any volunteer that works for the city in accordance to the League of Minnesota Cities.

Chief Aschenbrener spoke about the program and how it is taking shape. The vehicle is a used vehicle that the City of West St. Paul will give to the City of Mendota Heights in exchange for the City of Mendota Heights joint training operation valued at \$2,000.

Councilmember Schneeman asked if the volunteers need to have background checks. Chief Aschenbrener said they do.

Mayor Huber asked that care be taken to ensure that all volunteers are covered adequately

Councilmember Vitelli moved to authorize staff to put the reserve squad car (VIN#2FAHP71W14X104651) into service.

Councilmember Duggan seconded the motion.

Ayes: 5

Nays: 0

150th CELEBRATION COMMITTEE

Committee members Ultan Duggan and Ralph Dumond talked about plans for the celebration of the school district's 150th anniversary proposed to be held on June 6, 2009.

This celebration is using the theme "Proud Past, Bold Future" and will be offering activities that are fun as well as being historically significant, such as a parade, music, games, rides, exhibits and races. A large social picnic (no alcoholic beverages allowed) where people can bring their picnic basket and blanket.

Plans are in place for holding events at Mendakota Park (12:00 pm to 3:00 pm) and Henry Sibley High School (3:30 pm to dusk).

The committee is requesting financial support from the business community in the ISD #197 school district, as well as public and private donations, including other municipalities within the school district. The emphasis of this celebration is to bring families and community together to salute and celebrate over 150 years of continuous education.

Mayor Huber asked who will own this event, as someone needs to own this event in case of emergencies, and who will be liable in case someone gets hurt. Mr. Duggan said this question was raised with the School Board and asked them if their insurance would cover this, and was told that the school district's insurance will cover and they are checking to see if any additional riders will be needed. Ms. Schabacher said when the city completes the insurance applications each year, they always list any festivals or events that will be held.

Ms. Diehm said if the city was interested in contributing either financially or with limited services but wanted to avoid liability, often times groups such as this will form a

separate entity that the city can then contribute to. If this is just an unincorporated association of individuals, then the city has to be careful that by joining that association they are not accepting the liability of what may happen.

Mr. Duggan said they will take the issue back to the school board where they see any liability questions and get written assurance.

Mr. Duggan said all contributions and donations will go through the school district office.

Councilmember Vitelli emphasized to get in writing that the school district owns this and will carry the liability insurance.

CASE NO. 09-06, LAMANA

Mr. Sedlacek introduced Case No. 09-06, where the Applicant, Mr. Paul LaMana, is requesting a three foot variance to the side yard setback at 17 Dorset Road setback to expand their existing garage. Mr. Sedlacek noted the applicants are not in the audience at this time.

Councilmember Krebsbach said she visited the applicant today and was told that it was not clear to him that he needed to be here.

Mr. Sedlacek reviewed a map of the location of 17 Dorset Road, which is a single family parcel that is occupied by Mr. Lamana. There is currently a two car garage and the applicant provided to Mr. Sedlacek a drawing of what the existing garage would look like when placing his two vehicles in the garage. The extra square footage of the proposed addition is 410 sq. ft. Mr. Sedlacek noted that code allows for a detached single car garage to be as small as 440 sq. ft. City code requires the attached garage to be a minimum of 1,200 sq. ft.

Mr. Lamana is making an application for a two car garage, however the area on his site is not large enough for a 1,200 sq. ft. garage and he is asking for a garage that totals 756 sq. ft. which will give him additional storage area and a mud room.

Mr. Lamana provided a list to the city of signatures from his neighbors in support of this application, however he

could not get signatures from the neighbor at 15 Dorset Road, the neighbor that is on the side of the garage. Mr. Sedlacek said he has recently received a voicemail from that neighbor that they are out of town and whole in support of this application.

Staff feels the applicant has looked at all other alternatives and a hardship has been identified as the size of the proposed garage is a reasonable request and would comply with the city standards, and that the hardship is not of the applicant's making. The Planning Commission heard this case on March 24th and there was no public input. The Planning Commission recommended approval of a 3 ft variance to the side yard setback.

Councilmember Schneeman said she believed that the Planning Commission asked some very good questions.

Councilmember Schneeman moved adoption of a Resolution No. 09-25, "A RESOLUTION APPROVING A 3' VARIANCE TO THE SIDE YARD SETBACK AT 17 DORSET ROAD".

Councilmember Duggan said in keeping with the residential nature of the area, he encouraged the applicant to include a window on the side of the new garage.

Councilmember Vitelli said he would not support that as there may be a security concern and should leave that up to the resident. Councilmember Duggan said it was only a suggestion. Councilmember Krebsbach said the neighbor at 15 Dorset has a window on their garage and may be a nice feature. Councilmember Krebsbach said Mr. Lamana said he has a very nice driveway and will have to extend that concrete.

Councilmember Krebsbach seconded the motion.

Ayes: 5
Nays: 0

CASE NI, 09-07,
SILVERBERG

Mr. Sedlacek introduced Case No. 09-07, which is in response to a neighbor dispute on the rear lot line at 1830. Faro Lane. Mr. Sedlacek explained that when the homeowner moved in, they wanted to do some landscaping in their back yard, which abuts Mr. Dick Dvorak, 1831 Summit Lane. It has been found that the fencing did not

line up with the current lot line, and after some mediation, Mr. Dvorak offered to give up that small portion of land in between the lot line and the fencing. Ms. Silverberg agreed to contribute \$600 toward the construction of a new privacy fence.

Mr. Sedlacek said there have been some problems with lot lines in this area in the past.

The Planning Commission heard this at their March 24th meeting, and there was no additional public input.

Councilmember Duggan asked if the city code requires a survey to be done when putting up fencing. Mr. Danielson said the city does not require surveys for fencing, but does require permission to be granted from the adjoining property owner if it is on the lot line.

Councilmember Krebsbach said this application, which was recommended for approval by the Planning Commission, does comply with the agreement of mediation.

Councilmember Schneeman complimented these two families for working together and going through the mediation to settle this dispute nicely and friendly.

Councilmember Duggan moved to approve Resolution No. 09-24, "A RESOLUTION APPROVING A LOT LINE ADJUSTMENT AT 1830 FARO LANE AND 1831 SUMMIT LANE."

Councilmember Krebsbach seconded the motion.

Ayes: 5

Nays: 0

ROGERS LAKE

Mr. Danielson said at the last meeting a number of residents that adjoined Rogers Lake attended and informed the City Council about the problem with weeds in the lake. There was a long discussion about the weeds and a few of the residents are in attendance at this meeting. City Council, at that last meeting, gave staff direction to look into what could be done to deal with the weeds. Since the last meeting, staff has held a meeting with the DNR, the Soil and Water Conservation District and a large contingent of the neighbors. At that meeting, staff learned that they can treat up to 15%, or 16 acres, of the lake with chemicals

or up to 50% mechanically. The DNR prefers the chemical treatment as they believe the mechanical treatment stirs up the bottom and adds to the pollution of the lake. Mr. Danielson said he had discussions with the Steve McComas, (a.k.a. the Lake Doctor) after this meeting and said that Mr. McComas disagrees with the DNR. Staff then looked at what could be done, looking at this summer to do some testing by treating some of the lake with chemicals and some mechanically with a harvester, comparing the results. Staff could also engage the Mr. McComas to take some statistics and view the lake, providing his results to staff.

Mr. Danielson referred to a map of the lake, saying that the plan would be to chemically treat the northern part of the lake, north of Wagon Wheel Trail, is a shallower lake. It would be much more difficult to use the harvester in this area. The southern part of the lake would be done with the harvester (6 to 7 acres along the shore south and a smaller portion by the city's pier to the west).

Mr. Danielson said staff would like to apply the chemical treatment by the homes along Swan Drive and allow the residents to get individual permits from the DNR to treat or remove the vegetation to get out to the treated center of the lake.

The cost estimate for this treatment and analysis to be about \$15,000 and staff recommends that the city could fund this for 2009 out of the storm water utility fund as this would be a test year. In future years, it will be expected of the landowners to participate with this treatment should it be successful.

Councilmember Krebsbach asked on what level. Mr. Danielson said staff is suggesting a 50-50 basis on-going as the weeds will be coming back every year. Councilmember Krebsbach said the residents have in the past talked about the storm water assessments and she would approve this for one year only, and not commit to an ongoing process. Councilmember Krebsbach said the Council has talked about the real nature of this lake and what it wants to be, and to keep it at a point that it is open water. But if the natural state wants to turn into a marsh there is a level at

which the city will not be able to keep it open to the satisfaction to the residents.

Councilmember Schneeman said Councilmember Krebsbach makes a good point, but she would like to see the funding done for three years as then the city will really begin to see what happens.

Councilmember Krebsbach clarified her point that she does not believe there should be an open-ended agreement at this point, whether it's 50% or \$15,000 each year.

Councilmember Schneeman said she does not believe that it makes sense to only help the residents for one year as it could take more than that to see any success.

Mayor Huber said he is fine with the city providing the funding for 2009 as the city will be able to see what happens. Mayor Huber said the residents need to understand that this will not be a one year thing that they will have to continue treating the lake. Not knowing what the on-going plan will be, Mayor Huber believes that the lot lines of the homes along the lake extend into the lake and the residents will have to become participants in the funding going forward.

Councilmember Schneeman said there may hopefully be other funding sources in the future. If this is successful, the city may be able to work with the DNR and other sources to get more funds, feeling strongly that this could be accomplished.

Councilmember Krebsbach said she does not believe the Council needs to commit anything beyond the first year and suggested doing this for the first year, and see what happens.

Councilmember Duggan said in looking at the map, he believes it may be a better idea for the city to try to get one blanket permit that would encompass all the property owners rather than the individual landowners having to get their own. Mr. Danielson said staff had brought this up to the DNR, and the DNR said each individual landowner must get their own permit. Councilmember Duggan asked if they gave a reason for this. Mr. Danielson said he was told that this was just the rule. Councilmember Duggan

said rules can be worked with and suggested the city try to again approach the DNR to request a blanket permit.

Mayor Huber said the city would be going onto the private lands and perhaps some of the landowners would not want to have this done to their land. There is probably a strong majority, but the city should not put themselves in the situation where they will just do this without the permission of the landowner.

Councilmember Duggan said he understands that, and that even with the blanket permit, the individual landowners would be entitled to say no, but believes there are more than enough "others" that wish to have it done.

Councilmember Duggan asked if staff contacted anyone on Warrior Pond to find out how those landowners seem to be successful with their pond, and asked staff to find out what it is that these residents are doing, how are they doing it, how are they able to have a lake that seems to be reasonably pristine.

Councilmember Duggan said he supports the funding for this year but also supports the reservation of looking to future years partially because he lives on Copperfield Pond and believes he and the other residents will most likely want the same consideration of having their pond treated in kind, and the city needs a policy that goes to all water bodies in the community in relation to support and helping the residents.

Councilmember Krebsbach said her support is strictly for this application. This is a lot of money per household but the city should at least make an attempt to clean it and then figure out what is reasonable going forward in another year.

Councilmember Vitelli said he agrees with Councilmember Krebsbach and the Mayor that this should be a decision for this year, and not committing money for forthcoming years. There will be a lot of information in the future about this process that will be new and helpful. Councilmember Vitelli said he would support this only for 2009, and this is a good proposal that the city find out what can be done. Councilmember Vitelli said it is also a good move as the city tries to get funding through Representative Hanson and

other public control agencies and funding sources to see that the city is committed to this. Councilmember Vitelli said he does not believe the city should obtain a blanket approval as the form is very simple to fill out and send in. He had to do this once and it only cost about \$30, and it is not a big deal. It would take more staff time to coordinate a blanket request.

Councilmember Duggan said some of the landowners have been canvassing for the blanket, and this was merely a suggestion.

Councilmember Vitelli said it is important to note that the intent is to have the city fund this for the first year (2009) but if it is found to be successful, the intent of the Council would be to provide about 50% monetary assistance from the people residing on the lake. Councilmember Vitelli said he does not want to see residents complaining in future years that the City will not help anymore.

Pat Hickey, 2303 Swan Drive, referred to the harvesting percentage. Mr. Danielson said the DNR asked that the city makes sure that they don't treat over 15% and that the residents could apply for permits to additionally treat the areas closer to their docks. Mr. Hickey said one of the concerns of the residents with the weed harvesting is that all this will do is create a path for the landowners and the landowners really care about the entire lake. From a chemical standpoint, would it be better to chemically treat the whole lake instead and go without the weed harvesting. Mr. Danielson said the idea was to clear the weeds with the harvester out to a certain area of the lake that is relatively cleared already. Mayor Huber suggested that there may be a rotation of treatment of different areas over time to address other areas and it may take the accumulative effect of several years to do this, giving a wider expanse of the lake. Mr. Hickey said he is only trying to get clarification of the intent and does not disagree with what the Council is trying to do, and noted his appreciation of the efforts being made by the Council. To try to do something for one year is better to not doing anything.

Mr. Hickey talked about a shallow lake forum that was held on March 30th and a lot of information can be found inside the promotion brochure that was provided. Mr. Hickey

said he would like to go ahead and do something this year, and then next year a lake association or watershed association could help to keep this moving forward.

Councilmember Vitelli said in looking at the cost, the chemical treatment of the north part is \$2,000 and the harvester for the rest of the lake would be about \$6,000. If the residents really want to do the chemical on a wider area, the lake could be treated in three times the size of what the north area would be, unless staff really wanted to experiment. Mr. Danielson said it was the intention to do some sort of testing between the two methods, and then next year either go totally chemical or harvester depending on what is found from this year's application.

Councilmember Duggan expressed his concern that the harvester may cause more weeds by stirring up the bottom and releasing seeds, creating more generation and growth of weeds. Mr. Hickey said Mr. McComas was also at this forum with the DNR and this is all a matter of opinion.

Councilmember Schneeman said there is a lot of harvesting done on Lake Minnetonka. Councilmember Krebsbach said Minnetonka also has an on-going financial commitment, as well as having to truck the material out.

Councilmember Krebsbach said the DNR recommended the chemical and she does not believe the city is in a position to be able to experiment. There has been a lot of research done by people who are into the lake business, and there may be more benefit to do all chemical this year and see how it goes. The final choice should be left up to the landowners on what should be done. Mr. Hickey said he understands the value of testing, but believes the residents will get more mileage out of the chemical treated option. Mr. Hickey said the students at St. Thomas Academy may be willing to do further testing. Mr. Hickey said this may reduce the need for Mr. McComas to work on this and have the city spend more money on his services. Councilmember Krebsbach said she would rather just go with the DNR recommendation and use chemical.

Councilmember Duggan asked when the chemicals are used, do the weeds simply sink to the bottom and disintegrate. Mr. Gary Loufek, St. Thomas Academy, said

they will settle down and decay and add to the stratified layer of muck. Mr. Loufek cautioned the city on using the harvester and agrees with the DNR, as a lot of the shoreline currently has rip rap which is to protect from the westerly winds. If the weeds are harvested, that stratified layer will be kicked up by the winds and will cause a very turbulent lake. By disturbing the lake with the harvester, it may take a whole season to turn that lake around. By using chemicals, more of the lake could be treated.

Councilmember Duggan asked if the academy property is healthier because they don't use as much lawn fertilizer as homeowners do. Mr. Loufek explained that these chemicals will migrate throughout the lake, and that the academy property does use some chemical treatments on their sports fields. The academy has more natural buffer than the homeowners have. Councilmember Duggan said lawns that lead to the lake without any sort of buffer will cause a leeching effect on the lake.

Councilmember Krebsbach asked if Mr. McComas charges \$4,000 (under Blue Water Services) for his services. Mr. Loufek said he believes there is a certain amount charged for laborers and testing. St. Thomas and Visitation have been testing these waters for a long time in a certified lab, and would certainly bring data, although student generated, where Mr. McComas would have a certified and guaranteed report. Councilmember Krebsbach asked what role does the DNR play in this. Mr. Loufek said they do lake reports and sampling of fish. Councilmember Krebsbach said it would be nice to take that \$5,000 and put it into the cost of the treatment. Councilmember Vitelli asked if this could be done. Mr. Danielson said the city could, and they were just trying to analyze what could be done this year and use that experience to create a plan for future years. Mr. Loufek said the harvester could work along the south side where the academy is, but it would cost about \$1,000 per day to put the harvester in the lake regardless, as it would be nice to see a comparison of what the harvester does as compared to chemical at some point. However, to get more bang for the buck, seeing what the chemical does at first and if it takes care of the majority of the weeds, then the harvester would not be needed. Councilmember Vitelli said eliminating the costs for the

Lake Doctor would give more area to treat with the chemical.

Councilmember Schneeman asked Mr. Loufek for his suggestions. Mr. Loufek said historical data can be obtained from the DNR as well as St. Thomas' historical data on phosphorus. There are no plant surveys like the Lake Doctor does.

Councilmember Krebsbach said the point is to get rid of the weeds, and feels that going with the DNR recommendations, this would be all that is needed for year #1. Mr. Loufek said he would also agree that there would be no disturbance to the bottom of the lake.

Councilmember Duggan asked what the total size of the lake is, both the north and south. Mr. Danielson said he believes it is a 100-acre lake, one fourth being the north, and three-fourths being the south.

Councilmember Vitelli moved to eliminate the Lake Doctor and harvester costs this year completely and stick with just chemical treatment, treating as much of the lake as the \$15,000 will allow.

Councilmember Krebsbach seconded the motion.

Ayes: 5
Nays: 0

Councilmember Vitelli said there will be a meeting with Representative Hanson at Mendakota Country Club to draw him into this project, which Representative Hanson has agreed to do. Councilmember Vitelli asked Mr. Mazzitello to summarize the situation on the meeting. Mr. Mazzitello said he and Councilmember Vitelli met with Representative Hanson at his office shortly after the DNR meeting that was held at City Hall to keep him abreast of the issue and to discuss his thoughts on possible future funding sources. Now that staff has direction from Council, members from the Rogers Lake area and members from the Council, and members from Dakota County and DNR can get together to discuss with Representative Hanson what some possibilities are for the long to continue treatment of Rogers Lake, and to see how he may assist with funding sources.

Councilmember Vitelli said Representative Hanson said it was very important to work with the County Soil and Water Conservation as they will be key to helping the city gain attention at the funding level at the state (MPCA or DNR).

PURCHASE OF ASSISTANT CHIEF VEHICLE

Fire Chief Maczko reviewed his request for the replacement of the current Assistant Chief's vehicle. The current vehicle is a 1996 Chevy Blazer. Mr. Maczko reviewed the options of replacing this vehicle, as the city's mechanic deemed the current vehicle has out served its life. The city approved in the 2009 budget funds for a new extended cab pickup truck, but the department has found that an SUV would be better as equipment would remain inside and be secured. Chief Maczko said the department surveyed some of the surrounding community fire departments to see what they are using, and found that pickup trucks do not serve a dual purpose very well of hauling equipment and serving as a command vehicle.

The price of a pickup truck is about \$24,000 for the extended cab model. The price of a Tahoe would run about \$2,000 higher. Chief Maczko said he recently had a conversation with Mayor Huber on the size of the vehicle and the need for a vehicle of this size, and Chief Maczko explained how the bigger vehicle would be better to accommodate firefighter's equipment and turnout gear.

Chief Maczko said he checked on the Chevy Trailblazer which came in with a price of \$23,753, but this vehicle would not be big enough.

Councilmember Vitelli asked if the department checked Ford products. Chief Maczko said they checked the Ford Explorer which is the next down version, and did not get a price on that as they expected it to be comparable to the Trailblazer, and would rather stay with the GM products to be consistent with the rest of the fleet. Councilmember Vitelli said a lot of things have recently changed with GM.

Councilmember Krebsbach asked if the department is looking at Car/Truck City and where is it located. Chief Maczko said they are located in Hinckley, MN.

Councilmember Krebsbach noted that the two bids received came from out-state dealers and noted that the department

is not looking locally. Chief Maczko said Car/Truck is the state contracted agency, and when getting a bid for the grass truck a few years ago, Park Rapids actually bid the state contract.

Councilmember Vitelli said he would like to see the fire department provide a more definitive specification on what is needed for this vehicle and then get bids from various other automobile manufacturers on those specifications.

Councilmember Krebsbach suggested delaying this request to allow the Fire Chief to come back with more details. Councilmember Krebsbach said the Council budgeted \$28,000 and this request is coming in under budget. Chief Maczko said that was correct, except they did not add the cost of the lights which will increase to about \$28,100.

Councilmember Krebsbach said she does not have a problem with this request, but feels there should be documentation showing the itemized comparisons.

Councilmember Schneeman said there seems to be a consensus of the Council that the Fire Department needs to come back with more bids, although she is content with the Tahoe. Councilmember Duggan said he was fine with the Tahoe as well. Councilmember Krebsbach said it would be good government policy to have a formal specification process.

Chief Maczko said he needs to check with the state contract's ordering deadlines and could not even purchase a Trailblazer this year because of the cutoff of the build dates. At this point, they may not meet the contract and will have to get the new vehicle next year.

Councilmember Schneeman said the proposal will have to prove the need and not the want.

MENDOTA MALL ASSOC.

Mayor Huber said the Paster Enterprises requested to be removed from the agenda at this time and asked to be on the agenda for the next meeting.

Councilmember Duggan said he will not be at the next meeting and is very concerned as there are two things left

for the Council to do, and that is the approval of the land dedication and he can't believe there is such confusion in relation to the number and this is something that this body should have clarified as to what exactly is the city entitled to, and the overall rest of the agreement.

Mayor Huber asked for some input from City Attorney Tami Diehm to whether Councilmember Duggan not being at the next meeting is sufficient reason to push this discussion back further knowing that this will go beyond the time limit because the applicant has asked for an extension. Ms. Diehm said the applicant has asked to have this tabled for two weeks and if that does not work for the Council's schedule, the Council can go back to the applicant to ask for a revision. One of the concerns is that the applicant is obviously anxious to get the project started and there has been an initial date set in the last version of the development agreement of May 1st. She is not sure how that has been impacted by this delay but certainly if the Council waits another month, the construction date will be pushed back even further.

Mayor Huber said he is also concerned that if this is pushed back another two weeks, he would be surprised if there would be any conclusion then, not expecting any new information being brought forth by the applicant. Mayor Huber said the reason the applicant is not here is because they had to attend a Saint Paul City Council meeting to address their location on Larpenteur Avenue. He does not believe any agreement will be settled regarding the park dedication and the development agreement at the next meeting. There are clearly issues not resolved on this matter.

Councilmember Duggan said there are clearly some discrepancies in the park dedication and he saw a letter from Paster requesting a reduction of the park dedication. When looking at what the city has done for Paster overall in allowing for an MUPUD, the applicant is now taking a current evaluation of \$45+ million project. Councilmember Duggan spoke about the confusion and lack of information and review time on the housing.

Councilmember Krebsbach said the Council has already voted on the housing. Councilmember Vitelli said he does

not want to discuss the housing anymore, and can see where the park dedication fee is a closed well-defined issue that still needs to be resolved. Councilmember Duggan said he is just concerned that the Council has repeatedly requested information and finally got something, although rather small, at the last minute and the Council had no time to digest and analyze, while trying hard to give the applicant what it wants. Councilmember Vitelli said this was voted on and it's all done, and asked why the Council will want to discuss it further.

Mayor Huber said when the Council reviewed and voted, the plans were clearly for senior housing. Councilmember Schneeman said it was articulated very well.

Councilmember Duggan said as he understands it, senior housing still allows \$2,700 per unit towards park dedication. The applicant does not see it that way.

Councilmember Krebsbach suggested tabling this discussion until the next meeting that Councilmember Duggan can attend to raise these points when the Pastors are present.

Mayor Huber said he thinks that it would be pessimistic to think this will be resolved in two weeks and his preference would be to have the discussion with Paster in two weeks and if everyone comes to an agreement that would be great. Mayor Huber asked Councilmember Duggan to submit any of his comments and concerns to staff that they can be addressed at the next meeting, recognizing that the applicant will not want to crack open for debate any of the concerns regarding things that has already been voted on. Councilmember Duggan said he is only making these statements to provide background to how the applicants have analyzed and provide their numbers in relation to the park dedication. Councilmember Duggan said he would like staff to work with Paster to come up with a report showing Paster's calculation of the park dedication fee and how they arrived at those numbers in detail, and compare to the city's calculations as all the numbers are just all over the place.

Ms. Diehm said Councilmember Duggan has provided comments, suggestions and language additions on a couple

of occasions and the version that the Council received yesterday (April 7th) contain the comments that were received by Councilmember Duggan. Since then, Ms. Diehm and Councilmember Duggan has further conversations where Councilmember Duggan presented some additional comments which have not been presented to Pastors yet and some of those are language modifications and some are more substantive that do need to be considered by the Council.

Councilmember Krebsbach said she would rather not discuss those tonight. Councilmember Vitelli said Councilmember Duggan needs to take responsibility for delaying this project, if he wants to go through all these things again and nitpick the development agreement and consistently have changes surface at the last minute. Councilmember Vitelli said the word he received a few evenings ago was that Ms. Diehm made the changes that were requested by Councilmember Duggan and gave the Council a red-lined version, and is now having more issues come forth to change the agreement again. Councilmember Vitelli said he is very willing, and recognizes there is a very big issue about the park dedication, to discuss this issue. Councilmember Vitelli said he has no interest in going back through every nitty-gritty detail that has already been approved.

Councilmember Duggan asked Ms. Diehm if the suggestions and comments/changes he submitted to Ms. Diehm were inappropriate and unfair to this process from a legal standpoint. Ms. Diehm said many of the suggestions brought forth by Councilmember Duggan have been very valid and excellent and staff has been happy to incorporate those. In addition, the Council can continue to make tweaks if there are language concerns, although she is concerned about that some that should be addressed by the Council relate to things like hours of operation, construction hours, etc., those are terms that have been in the form of the agreement that the Council as a whole has reviewed since December. If staff therefore has been requested to make changes to those terms, those changes should come from the entire body. If these types of changes were to be made from an individual council member, staff will be changing constantly. Councilmember Duggan said his intent is to note things

that he believes are wrong or inappropriate or that are not clear, and those comments are presented to the Council as a body with a document received from staff.

Mayor Huber expressed his concerns with staff accepting comments from any of the Council if that person making the comments felt they were applying technical knowledge in that particular area. Mayor Huber said it is his expectation that when receiving documents from legal staff, that should legal staff have concerns about a certain section of language, that this language be highlighted and brought to the attention of the Council as a whole with a request that Council review this section to make sure it makes sense and that everyone understands this section of language.

Councilmember Krebsbach said she only wants to read a document that has been prepared by the city's legal counsel and that counsel should not be inserting anything that any of the Council members have asked to have inserted or changed. This is a legal document that legal counsel has written and if the Council members have changes to it, those changes should be made at a Council meeting unless the Council designates a sub-committee to read and respond. Otherwise, she does not know what she is reading, and does not feel it is the Council's responsibility to read comments submitted on an individual basis and try to critique the document.

Councilmember Duggan said when he reads a document, he questions whether that document makes sense to him and it is not to try to correct because he is a professor of English or Law, but if he does not understand a document, he needs to address this. Councilmember Krebsbach said he has the right to do that, but does not have the right to insert without discussion with the other Council members. Councilmember Duggan said his comments are presented in the document as a red-lined version so that the other Council members can clearly see what his suggestions are. Councilmember Duggan used as an example some of the language in past minutes that Councilmember Krebsbach brought up regarding design standards, and that those standards should be the city's standards. Councilmember Duggan said the document clearly states the Pasters design

standards and therefore, Councilmember Duggan felt the need to address this.

Mayor Huber said he was not aware of the red-lining as his document is all in black. Councilmember Duggan asked staff to provide him with a color copy to show the different changes which were put in color. Ms. Diehm said in the black and white copy, the underlined language is new language, the crossed-out language is language that has been taken out, and on the color version, one can see if language has been moved from one section to another, but it would appear the additional language in here.

Ms. Diehm said in December, staff presented the Council the first draft of the development agreement. Staff then negotiated with the attorney for the Pasters. This went back and forth through seven to eight versions, and staff incorporated comments from staff and some comments received from Council members, then what was presented to Council was a red-lined version comparing where the city is today versus where the city was in December showing all of the changes. That was the document that Council received at the end of March via email. Since then, additional conversations were held with the Paster's attorney and additional conversations with Councilmember Duggan, staff then made additional changes and those changes are in the document that the Council received on Monday, April 5th.

Councilmember Krebsbach said that could cause a problem for those that do not have a color printer, and said it should be the city's responsibility to provide those documents in color. Ms. Diehm said it would be easier for the Council members to see the changes in color.

Mayor Huber said when he read the language related to hours of construction, his presumption is that this was what the city has always put in their documents, and he did not perceive it to be one Council member's thought that it should be something different. Mayor Huber said certain changes should have to be brought before the Council as a body.

Councilmember Schneeman said things would never get done if everyone continues to change things and relies on

the thought that the document comes from Ms. Diehm and therefore, everything has been done and she felt comfortable with this document. Now she is concerned that things are being changed. Councilmember Duggan said he is not changing anything, but only pointing out things that he questions whether or not it is good for the city.

Councilmember Krebsbach said Councilmember Duggan has right to raise these issues but these issues should not be inserted into the document via staff or legal counsel into the development agreement because the other Council members do not know where those comments are coming from.

Mayor Huber suggested that this be brought back in two weeks at the next Council meeting and if any Council member has any concern, it should be addressed in a separate memo attributed to them.

Ms. Diehm reminded the Council members that those comments need to be presented and discussed at City Hall in an open meeting so that everyone can comment.

Councilmember Vitelli asked that the development agreement be sent to the Council members as it should be reviewed without all the suggested changes as he does not know what he is looking at with all the colored lines, and have it sent as soon as possible and not the Friday before the next Council meeting. Ms. Diehm said staff is now at a point that there is a document that staff recommends, and that staff needs some guidance on the changes that have been suggested as to whether or not the Council would like staff to go back to the Pastors with those changes.

Mayor Huber asked staff to talk about the approach they have taken with the park dedication as there is some color and context that they can provide that goes beyond just the words.

Assistant to the City Administrator Jake Sedlacek said the development agreement addresses the park dedication issue. Staff has provided the city's park dedication ordinance to Paster and their attorneys.

Park dedication is an open-ended ordinance in the City of Mendota Heights. The city has typically accepted 10% of the land in a development or 10% cash valuation of said land in the development. Specific to residential properties, the city has the opportunity and has exercised the right to charge \$2,700 per residential unit. That park dedication applies to single family homes, multi-family homes, condos and apartments. In the park dedication ordinance, it is not required that any specific approach be taken and it is up to Council to decide the appropriate park dedication for a parcel.

For purposes of this development agreement, staff has looked at it as a mixed PUD agreement which includes much commercial and residential with the understanding that this housing unit is some form of assisted living.

Staff looked at the valuation of the land with 10% of the current property value for park dedication which comes to \$179,450. This is 10% of the land value as assessed by Dakota County.

In response, Paster Enterprises provided a letter dated March 19, 2009, recognizing the park dedication fees at \$179,449, offering their analysis that they are spending \$223,050 in park dedication in like expenses. Paster Enterprises is proposing a hybrid that is neither 10% land donation nor 10% cash valuation of the property. They are looking at expenses that they are putting into this parcel that they feel are park uses, which include grading for a regional trail as requested by Dakota County.

Mr. Sedlacek noted a letter that was received from Benson North Associates stating items such as pylons for retaining walls, grading work for underpass and walls, those things that are specific costs to the trail. The trail being separated from the grade as Dakota County requested the users of that trail have free access without having to cross the street.

Paster has provided as their proposed offset for park dedication is work to be done relating to the trail going under the surface driveway within in the site.

Staff has looked at park dedication as 10% of the commercial value of property and that does not include the

current mall site because that has already paid park dedication in the past. This is just valuation of the newly created lots that are to be developed. Staff is looking to Council to determine whether Paster's proposal would be an appropriate offset for the park dedication.

Mayor Huber said he is looking for guidance from staff and recognizing that the Council wishes to protect the wetlands, and that costs that Paster needs to incur to protect those wetlands in no matter, shape or form, should count against park dedication because they have to do it anyway. It is one thing to protect the wetlands and that does not count as part of the park dedication at all; it's another thing to say it's ok where that wetland goes underneath the roadway that connects the two pieces of land, to the extent that the applicant needs to have a special construction high enough that someone could walk underneath as opposed to just letting water go through, that may work towards park dedication because it ultimately contributes towards the trail. Mayor Huber said there needs to be some guidance from staff as to whether or not some of these improvements make sense.

Councilmember Vitelli said he agrees and that staff should follow this logic and determine what is on Paster's list that really benefits the city and what is on the list that Paster has to do or is their decision to do. Staff needs to have some negotiation meetings with Paster to determine these things, and bring back those open issues to the Council.

Mr. Sedlacek said staff did have that discussion with Paster last week and items 1 through 6 are all associated just with the trail that Dakota County has asked them to include, and staff believes that this trail is an amenity to the park system and these costs are appropriate. Mayor Huber said these are then things that the county is requested and it is chewing into the city's park dedication, then maybe staff has to think of that relative to the county, and the question would be "should the Pasters put those requests in."

Mr. Danielson said staff understands what is being asked of them, and this is a doable thing, and that staff will have a spreadsheet of information back to at the next meeting.

Councilmember Krebsbach said the Council decided to have the water feature put in, maybe the trail is a separate

issue, but Paster gained a considerable amount of acreage to build a much larger building on the front portion of the PUD. As far as the amenities, that was part of their testimony that they are putting these things in to enhance the approval of the whole PUD. Councilmember Krebsbach does not feel the Council needs to be looking at how this should be taken apart now because they gained a much longer building in terms of moving the setback. Mr. Sedlacek said they lost square footage. Councilmember Krebsbach said there was thorough discussion regarding all of this in terms of that being a PUD package, and whether there is some particular cost related to that trail, but that was all part of the general amenity of moving people throughout the center.

Councilmember Schneeman said she agrees with Councilmember Krebsbach and nothing was "in lieu of" when talking about this. The Pasters went along with it all, and the Council never heard anything about it.

Councilmember Duggan said there was nothing promised and there were no tradeoffs. Councilmember Krebsbach had insisted for a long time on a specific request for a building, and the Pasters came back to say that this was a trade off. In looking at the \$40,000 for the trellis, and subtracting that out from their calculation brings to \$183,050. Then the city has to pay them under Park Dedication the other way around, and the city has never had to pay any developer a park dedication in reverse. The city is already paying them because whatever goes through eventually, they will have maximized probably in the region of \$15 million down the line overall valuation because the city has allowed them to go through with a MUPUD when the city had requested that they have residential.

Councilmember Vitelli said if Paster convinces the Council that they have created \$10,000 worth of public park type access, then the Council should give them credit for it. Mr. Sedlacek said the value of the trail in relation to the park system needs to be determined. Mayor Huber said that having space there that allows the wetlands to flow through there and the ability of people to walk through there has value, but he would not spend any money to develop a trail that does not go anywhere, and he will be

very reluctant to spend any money on a trail that might not be built in 10 years that does not connect to anything.

COUNCIL COMMENTS

Councilmember Schneeman said the tennis courts are open and the nets are up. The Par 3 golf course is open and there were people there tonight.

Councilmember Schneeman said there are problems in Mendakota Park with one of the slides that is cracked.

Mayor Huber said May 2nd is Spring Cleanup Day.

Mayor Huber asked that residents continue to support all of the city's retail establishments.

Councilmember Krebsbach gave a hats off to Henry Sibley High Basketball team for their great run, and to the Visitation girls who competed in the Battle Bots.

Councilmember Duggan asked about the property at 694 Wentworth Avenue, and will those big mounds of dirt be spread out. Mr. Danielson said those mounds will be smoothed.

Ron and Diane Burfelds, 688 Wentworth said they have been happy with this process as this home has been removed. The people running the operation have been very good to work with, and that they are waiting for the weather to dry out the land.

Mr. Mazzitello updated the Council a some open houses that will be coming up:

- April 15th, 6:30 pm to 8:00 pm – open house for the Pedestrian Feasibility Study for the Dodd/Highway 110 improvements. The open house will be at the Village, Suite 113.
- April 16th, 6:30 pm to 8:00 pm – open house for the Cherry Hills project neighborhood meeting at City Hall.

These open houses will be listed in the Southwest Review for resident notification, as well as flyers being handed out.

ADJOURN

Mayor Huber adjourned the Council meeting to a closed meeting to discuss real estate negotiations

Time of Adjournment 9:50 p.m.

Rebecca Shaffer
Recording Secretary

ATTEST:

John J. Huber
Mayor