

CITY OF MENDOTA HEIGHTS  
DAKOTA COUNTY  
STATE OF MINNESOTA

Minutes of the Regular Meeting  
Held Tuesday, April 21, 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 Krebsbach, Schneeman and Vitelli. Councilmember Duggan was excused.

PLEDGE OF ALLEGIANCE

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

AGENDA ADOPTION

Councilmember Schneeman moved adoption of the agenda as revised.  
Councilmember Vitelli seconded the motion.

Ayes: 4

Nays: 0

APPROVAL OF MINUTES

Councilmember Schneeman moved approval of the minutes of the regular meeting held on April 7, 2009 as presented.  
Councilmember Vitelli seconded the motion.

Ayes: 4

Nays: 0

CONSENT CALENDAR

Councilmember Krebsbach moved approval of the consent calendar as presented, pulling items e and g, for further discussion, and authorization for execution of any necessary documents contained therein.

- a. Acknowledgement of the Minutes from the April 14, 2009 Park and Recreation Commission Meeting.
- b. Acknowledgement of the March, 2009 Treasurer's Report.
- c. Acknowledgement of the March, 2009 Monthly Fire Department Report.
- d. Acceptance of Workers' Compensation Insurance.
- e. Authorization for Broadband Participation.

- f. Approval of Sign Permit for 750 Main Street.
- g. Adoption of Resolution No. 09-26: "A RESOLUTION AWARDING ENGINEERING DESIGN FOR TRUNK HIGHWAY 55 AND MENDOTA HEIGHTS ROAD INTERSECTION IMPROVEMENTS AND PROVIDING NOTICE TO PROCEED."
- h. Adoption of Resolution No. 09-27: "A RESOLUTION FORMALLY ACKNOWLEDGING THE RECEIPT OF THE GIFT FROM DAKOTA VICTUM OFFENDER PANEL TO THE CITY OF MENDOTA HEIGHTS."
- i. Approval of the List of Contractors dated April 17, 2009.
- j. Approval of the List of Claims, dated April 21, 2009 totaling \$552,847.39.

Councilmember Vitelli seconded the motion.

Ayes: 4  
Nays: 0

Mayor Huber pulled item e regarding the request from the Burnsville City Manager requesting the City of Mendota Heights participation in a video to educate residents and businesses about broadband technology. Mayor Huber expressed his concern that this request for the city to provide a nominal dollar amount (\$443.51) to distribute a video that is trying to encourage residents to be more demanding of broadband technology.

Assistant to the City Administrator Jake Sedlacek gave some background on complaints coming to cities from their residents on the choices, or lack of, high speed internet providers for their homes or businesses. A managers group was formed, which Mr. Sedlacek is a member of, that try to get providers to pump up their services. A lot of discussion was in regards to what is the appropriate role for city governments on this, serving as a facilitator between the residents and providers.

The manager group felt that an educational video would be helpful in providing residents information and encouraging them to work with their providers.

Mayor Huber said the dollar amount is nominal and is not concerned with that, but he questions whether government

should be involved, and that the residents would be better served by NDC4.

Councilmember Krebsbach moved to deny authorizing \$443.51 towards the educational video for broadband technology.

Councilmember Schneeman asked how this would be disseminated. Mr. Sedlacek said the plan for dissemination was to provide this information to the cities to use on their cable channels or websites or in some cases, web streaming.

Councilmember Vitelli said this should come from the city's cable commission.

Councilmember Vitelli seconded the motion.

Ayes: 4  
Nays: 0

Councilmember Krebsbach asked Public Works Director John Mazzitello to give some background to item h. Mr. Mazzitello said staff has been working with MnDOT for over two years on the improvements to the intersection of Mendota Heights Road and Highway 55, which include signal improvements and turn lane extensions to provide safer access. In February, 2009, MnDOT notified the city that the city would be receiving cooperative agreement funds in the total of \$424,821.00 for this project. The city has received some cost estimates from Bonostroo, the consultant working on this project, and the city would be responsible for covering about 40% of the construction costs as well as the engineering and design fees. Once the design is complete, the funding is for fiscal year 2010 and it is assumed this would be built next summer.

Councilmember Krebsbach moved to approve Adoption of Resolution No. 09-26: "A RESOLUTION AWARDED ENGINEERING DESIGN FOR TRUNK HIGHWAY 55 AND MENDOTA HEIGHTS ROAD INTERSECTION IMPROVEMENTS AND PROVIDING NOTICE TO PROCEED."

Councilmember Vitelli seconded the motion.

Ayes: 4  
Nays: 0

## PUBLIC COMMENTS

Julie Lauwagie and Alex Bauert, co-commissioners of Sting Soccer Club, talked about issues they are having with trying to get fields between Mendota Heights and West St. Paul. Ms. Lauwagie said she would like to see a better process when reserving these fields. Mr. Powers said it seems that adults are getting more field time before the kids that live in the community. Mayor Huber explained that things brought forth during the public comment period can not be addressed as the council and staff does not have time to digest information, and asked Mr. Sedlacek for some history and feedback on the registration and scheduling process, and asked him to work with the commissioners on this problem.

## LIFE SAVING AWARD

Police Chief Aschenbrener introduced Officer Denise Urmann and Sergeant John Larrive, and talked about their life saving efforts while responding to a call in Lilydale for medical assistance on March 7, 2009.

Mr. Hinshaw spoke of the actions of these police officers, thanking them for saving his life.

City of Lilydale Mayor Tom Swaine and Robert Bullard, Lilydale City Council Member, thanked the police department for their efforts, and the wonderful job they do in serving the city of Lilydale.

Mayor Huber presented these officers with the Life Saving Award for their efforts in saving the life of John Hinshaw, who was having a heart attack.

Kevin Ron, Ambulance Operations Manager for HealthEast Metro Transportation, along with Dave McGowan, Director of Clinical Excellence, and the team that worked with Officer Urmann and Sergeant Larrive that evening presented awards for their work.

## MEDAL OF MERIT

In October 2008, Special Olympics Minnesota honored Office Jennifer Fordham with a Silver Medal for excellence in fundraising. Chief Aschenbrener talked about the numerous contributions that Office Fordham has made to youth in her capacity as a police officer, working with various organizations that include safety camps, high school band instruction, and serves as a School Resource Officer at Henry Sibley High School.

Chief Aschenbrener presented Officer Fordham with the Medal of Merit.

Mayor Huber presented to the Police Department a Silver Medal for the Mendota Heights Law Enforcement Torch Run for outstanding contributions to the Special Olympics Minnesota.

Chad Trench, Torch Run Manager for the Special Olympics Minnesota talked about the participation of the police officers and thanked them for their outstanding contributions.

#### DRAFT FEASIBILITY STUDY DODD ROAD/HIGHWAY 110

Mr. Mazzitello said staff has been looking at, since last fall, the pedestrian crossing situation at Dodd Road and Highway 110. In February, 2009, staff hired SRF Consulting Group to complete a feasibility report on defining a statement of purpose and need as well as looking at three different alternatives for improving a pedestrian crossing at Highway 110. These three alternatives include a pedestrian overpass (bridge), a pedestrian underpass (tunnel), and an improvement to the existing at grade crossing with the traffic signal.

Staff held an open house on April 15<sup>th</sup>, which was located at The Village as The Village was gracious to give the city meeting space. The open house was attended by approximately 20 people. Those written comments submitted have been included in the draft report. There is no action needed by the Council as this time.

Mr. Mazzitello introduced Mr. Matt Hanson, SRF Consulting Group, who reviewed the feasibility report.

Mr. Hanson reviewed the highlights of the options, estimated costs, potential funding sources and recommendations that the city may want to look at.

Mr. Hanson said the concerns of the citizens relate to the crossing of the intersection of Highway 110 and Dodd Road. Efforts have been coordinated with Dakota County and MnDOT with some meetings to address their concerns as well as the city's concerns.

Mr. Hanson noted that there are five schools in the area which impact this pedestrian activity. The study went back ten years to look at accident history and there have been no pedestrian accidents reported in this area. The study does not yet include measureable pedestrian activity due to weather conditions and this will be done mid-May.

Mr. Hanson said they would consider a no-build option (do nothing) where they would continue to see pedestrian concerns crossing the intersection, with significant concerns relating to the time it takes to cross the intersection. Further feedback shows that the pavement is in rough shape as well.

Option #1 – Signal Modifications. MnDOT recommends a counter timer system to allow pedestrians to know how much time it will take to cross. Median improvements are also recommended.

Option #2 – Pedestrian Underpass. The benefit is that this option provides a great separation from the pedestrians to the vehicular traffic. The underpass tunnel would most likely be situated slightly east of the intersection underneath the roadway. This would be a 20' (h) x 14' (w) box culvert by approximately 220 feet long to span the length. This tunnel would be lighted inside and coordinate with existing and proposed trails. Challenges include having an existing gas line running alongside Highway 110, as well as traffic impact during traffic construction (building half the box culvert over time and having traffic bypassed). There are also possible grading impacts to the storm water pond on the north and the waterway to the south.

Option #3 – Pedestrian Overpass. This bridge would be located approximately 900' to the east of the intersection and would provide a great separation benefit. The bridge is located in this area because of the general high spot on the north side that would be able to take advantage of the pedestrian bridge. On the south side, the land is currently owned by MnDOT and conversations with MnDOT representatives have been very cooperative and understanding, and would allow the south end of the bridge and trail connections to be built on that property. The south end could also be placed further south and would need to

be coordinated with the approval of Mendota Mall Associates.

Mr. Hanson said the proposed locations of the tunnel and bridge could be changed, but this seems to be the best options. The tunnel is in this position as the real desire is to keep the pedestrian traffic closest to the intersection. The bridge needs to be further away due to the sloping of the highway towards the intersection, as well as the elevations of the bridge (there needs to be 17' clearance), to eliminate larger ramp ways. Sightlines for the traffic signals also play a big challenge and reason for the placement of the bridge.

General preliminary costs estimates are as follows:

Option A – signal modifications and minor improvements:  
\$50,000

Option B – pedestrian underpass: \$2 million

Option C – pedestrian overpass: \$4 million

Additional aesthetics could be added for additional costs. The general preliminary costs above are for utilitarian style work.

Funding opportunities include:

- City contributions as a lead agency
- Dakota County – depending on the improvement
- MnDOT – depending on the improvement
- Federal funding assistance, applications through the Metropolitan Council as well as potential coordination with Representative Hansen through state appropriations
- City assessments

Mr. Hanson said this report should never be intended for the consultant to come forward with a “this is the best option” but that they are presenting viable options to the Council. SRF Consulting Group recommends that the Council apply for federal funding, the deadline is June 15<sup>th</sup>. SRF Consulting Group recommends that the Council continue to work with Dakota County and MnDOT as they are interested in this project, as well as meeting with the adjacent property owners to gather their input as well, discuss the project, which would help should easements needs come up in the future.

Councilmember Schneeman asked what the “open cut” terminology refers to. Mr. Hanson explained that it would be to cut open the roadway to install the box culvert.

Councilmember Krebsbach said an email was received by a resident that was not able to attend the open house, inquiring about the MnDOT signal improvements. Councilmember Krebsbach said she understood that this part of the improvement could be separate from the project as MnDOT may want to do this anyway. Mr. Mazzitello said when staff had their agency meeting with both the county and MnDOT, they had indicated that the signal at Dodd Road and Highway 110 is due to be modified, taking away the flashing yellow arrow. At that time, they would be willing to install count-down timers and basic intersection improvements coordinated with the city. Councilmember Krebsbach and Councilmember Schneeman said they like the flashing yellow; Mr. Mazzitello said he will relay their comments on that to MnDOT.

Mr. Hanson said the \$48,000 cost estimate includes the cost for signal improvements as well as costs for median improvements. Mr. Mazzitello said MnDOT is only willing to do the very basic improvements apart from this estimate.

Councilmember Krebsbach asked if the federal funds will be shovel-ready money. Mr. Hanson said these would be funds that the city would apply for, competing with different projects within the metro area and would be applied to projects two years down the road. These are the funds coming through Metropolitan Council.

Councilmember Vitelli said the most important thing that is missing is the expectation of pedestrian traffic. Mr. Hanson said they will know better after doing the pedestrian traffic study as soon as the weather gets better. Councilmember Vitelli said this is a very dangerous intersection and does not believe people will want to cross it, and there needs to be a creative vision as to what a successful crossing would look like.

Mr. Hanson said this report is intended to be used as a reference document for funding applications.

Councilmember Schneeman asked what the consensus was from the neighborhood meeting. Mr. Hanson said everyone had their own concerns, a lot of them had to do with safety, and there was a wide variety of comments that were made. There was no big indication of what option was preferred.

Councilmember Schneeman said this will connect the city and believes it is exciting and interesting to learn about these options.

Councilmember Vitelli suggested that Ross Fefercorn (The Village) and Ken Henk (Mendota Plaza) speak on how they view this.

Mr. Henk said there is benefit to connect pedestrian traffic between the two developments and spoke of the safety issues with a tunnel. The large strip that belongs to MnDOT would be a good location for an overpass. Connecting the two locations is very needed to tie the community together as suggested by Councilmember Schneeman.

Mr. Fefercorn said it makes sense to connect the two developments, and encourages walking. Visual enhancements to slow traffic in the intersections will help make it appear more friendly to pedestrians and will make drivers more aware of pedestrian activity, and suggested looking into having the traffic speed limit lowered in this area. Mr. Fefercorn's preference is the on-grade improvement because visual enhancements will encourage pedestrians to use the on-grade which is what the community wants. Pedestrian tunnels are very un-nerving to young kids and older people, and would be dark. People may be hesitant to use this route as it is not an attractive option. The overpass option is nice but the reality, when looking at the approach, 900' to get to a bridge is a long distance, and people may not want to walk that far to get across the bridge, and in addition, they would have to bear the large traffic noise and traffic spray from inclement weather. Mr. Fefercorn said he has noticed in other areas of the cities that people don't wish to use the bridge as there is a fairly steep ramp they have to climb. Larger sidewalks and staging areas in the median may be enough shelter for pedestrians trying to cross.

Mr. Conan, 565 Miriam, asked if a crossing gate has been considered such is used for the light rail system. Mr. Hanson said that has not been considered as it is typically not an application for a crossing gate in this type of situation.

Mayor Huber said this study has brought a lot of things to think about. The overpass is very expensive and people may not want to walk that far, so one may wonder of its usage. The underpass has the safety issue at hand, along with the significant utility challenges. This is a good report that gives the Council a tool to work with moving forward.

Councilmember Krebsbach said she would like to see some information in the report on what MnDOT is planning for Highway 110 in the future as this roadway serves as a trunk highway and the speeds are to be considered.

Councilmember Krebsbach said MnDOT is well aware of Mendota Heights was planning on doing when the city gave up the right of way for Dodd Road (Highway 149) and the state should be looking more closely on what can safely be done. Councilmember Krebsbach said even if a few people use an overpass, as long as it provides access and safety it is worth it.

Councilmember Vitelli said it is useful to see the rough costs now and where things would be placed. He said he favors the at-grade crossing and perhaps some enhanced improvements as mentioned by Mr. Fefercorn could be added.

Mayor Huber said if the city spends money on something expensive, the Council should prioritize what the alternatives should be and narrow it down to two choices.

Councilmember Schneeman said the Council will not know anything until they find out what funds are available.

Mayor Huber said this was a great report and thanked Mr. Hanson.

HEARING: CHERRY HILL REHAB.  
STREET REHABILITATION

Mr. Mazzitello said in January, 2009 the City Council authorized city staff to prepare a feasibility report on the 2009 rehabilitation project which is the Cherry Hills 2<sup>nd</sup>

Addition subdivision with the addition of a couple of other city streets scheduled for rehabilitation (mill and overlay).

On April 16<sup>th</sup>, a neighborhood meeting was held at City Hall and there were approximately 10 people in attendance. The overall tenure of the meeting consisted of some technical questions on the project and the assessments.

Mayor Huber opened the public hearing.

Joel Paper, 1572 Boardwalk Court, said the condition of his road is not bad, and asked what the mill and overlay consists of. Mr. Mazzitello explained how the work is done and is designed to extend the life of the roadway for about another 20 years. Mr. Paper asked how the city determines what sections of curb gets replaced. City Engineer Ryan Ruzek explained what that process is.

Councilmember Krebsbach moved to close the public hearing

Councilmember Vitelli seconded the motion.

Ayes: 4  
Nays: 0

Councilmember Schneeman moved to approve Resolution No. 09-28: "A RESOLUTION ORDERING OF IMPROVEMENT PROJECT AND PREPARATION OF PLANS AND SPECIFICATIONS FOR CHERRY HILLS 2<sup>ND</sup> ADDITION REHABILITATION PROJECT (PROJECT #200903)".

Councilmember Vitelli seconded the motion.

Ayes: 4  
Nays: 0

Michael Stodolka, 1407 Farmdale Road, asked about the assessment period. Mr. Mazzitello said typically for rehabilitation the period is 10 years.

Finance Director Kristin Schabacker explained the process on the assessment hearing and the prepayment option of 30 days after the assessment hearing. After which, the assessment will go into the property tax statement with a 6% fee.

Mr. Stodolka asked if there is a penalty to the contractor if the work goes beyond a certain point. Mr. Ruzek said there

are penalties for going over the completion date which is two months after the start of the project.

ASSISTANT FIRE  
CHIEF VEHICLE

Fire Chief John Maczko presented his findings on bids received for the purchase a new Assistant Fire Chief's truck. Chief Maczko presented specifications and price quotes that were used in the comparison study.

After review of all the options, Chief Maczko recommended that the city purchase a 2009 Chevrolet Tahoe from Car/Truck City off the state contract for the price of \$26,369.00. Chief Maczko said he also obtained the opinion of the city's mechanic stating his recommendation for the purchase of a Chevrolet Tahoe.

Councilmember Vitelli moved to approve the purchase of a 2009 Chevrolet Tahoe from Car/Truck City in the amount of \$26,369.00 as presented

Councilmember Schneeman seconded the motion.

Mayor Huber thanked Chief Maczko for going through the extra work in finding comparisons to look for the best choice.

Ayes: 4

Nays: 0

VACATION OF RIGHT OF WAY  
591 HIAWATHA AVENUE

Mr. Sedlacek shared a map depicting the property located at 591 Hiawatha Avenue, in which the resident, Mr. Brian Brunette is asking for the city to vacate a portion of Eugenia Avenue from Hiawatha to the mid point of the north/south alley behind the property.

Mr. Sedlacek said at the January 20<sup>th</sup> and the February 3<sup>rd</sup> meetings, the Council heard this request. The right of way does not contain any city utilities and is not needed for any roadway purposes. Mr. Brunette currently maintains this portion of city owned property and would like to incorporate this property as a side yard and has expressed an interest to place a fence to intersect the right of way.

Staff previously recommended that the city vacate all of Eugenia and the alley be vacated, but given citizen feedback, staff is now recommending that these requests be handled on a case by case basis as written requests are received.

These types of requests are normal and staff follows state statute which says that the land which the right of way was taken from accrues to the adjoining land owners. Mr. Sedlacek explained how the Cherokee Park Heights was platted in 1923 with 30 feet of Eugenia. Mr. Sedlacek explained how the development to the south (North Ivy Hills Second Addition) of Eugenia was platted differently, which took the southern half of the right of way in exchange for placing a cul-de-sac (Sutcliff Circle) off Highway 13 to access those homes in 1989. This was done because more lots were created in subdividing in this method versus had they done the same as Cherokee Park. The reason for this is that the city now requires a 100' frontage along any right of way, and the developer would not have gotten adequate value out of the subdivision had they followed a standard platting procedure.

Councilmember Krebsbach asked where this has been documented. Mr. Sedlacek said that would have been documented in the Planning Case from 1989 when this plat was developed. Councilmember Krebsbach said she was on the Planning Commission at that time and does not recall any proposal or discussion to do Eugenia as there was always going to be access from Highway 13. Mr. Sedlacek said Eugenia was a right of way that was never completed and the portion that would have been was integrated into the new lots.

Mr. Sedlacek said staff could not find any history that strongly shows why this section of Eugenia was not turned back at that time, but found there was some discussion about it and there was a potential for some trail ways in that area but the homes that were being developed were very close to that easement area.

Staff feels there is no need for any right of way in this area. Mr. Sedlacek noted a utility pole in the area behind the residents of Hiawatha Avenue to the east and therefore recommends keeping this part of the easement in this area to allow for access.

Mr. Sedlacek said the households that would be impacted were notified in January and staff did not do a re-notification which is a break from city procedure, however

staff felt that the citizens in this area have been keeping abreast of the process.

Staff suggests the following options:

- 1) Do nothing and leave as is
- 2) Vacate the requested right of way in its entirety reserving utility and trail easements
- 3) Vacate a portion of the right of way to 591 Hiawatha and retain a portion for future right of way (15/15 split; 20/10 split) if the Council feels that while it was taken for right of way that it does serve a purpose as a greenway or a potential trail
- 4) Do not vacate the right of way, but instead issue a license to 591 Hiawatha to allow the owner to construct a privacy fence within the right of way
- 5) Try and split the right of way between plats which from a legal perspective there has not yet been any way found to legally do this

Mayor Huber asked about the easement in Sutcliffe Circle. Mr. Sedlacek indicated where this easement ran. City Administrator Jim Danielson said at one time, there was talk of putting a trail through from that neighborhood to the neighborhood behind it. A trail easement could not be platted there, but a utility easement could be with the idea of putting a trail in there, which never occurred.

Councilmember Krebsbach said the Hiawatha neighborhood was not interested in that road going through, but to leave it as open space to allow movement through there. Over the years, the city has tried to not block one neighborhood from another as developments come in so it is not detrimental to the community.

City Attorney Tami Diehm said the ownership of the property happens by operation of law so once the street is vacated, that property automatically goes back to the underlying property owner and the city cannot decide to convey that property to anyone else.

Mr. Sedlacek said staff would not recommend trail use that would result in citizens coming out on an uncontrolled section of Highway 13. Mr. Sedlacek said there can also be a perception out there to the public that is a gift of land, and

reminded the Council that this is a request to return land which was taken for right of way.

Mr. Brian Burnette, 591 Hiawatha, has been at this residence for 15 years and talked about his reasons for wanting the city to vacate this right of way. Mr. Burnette said he has been maintaining this right of way for those 15 years. Mr. Burnette talked about on-going problems he has been incurring with attempted burglary on his home. Mr. Burnette shared photos of footprints in the snow that lead from Highway 13 to his home that he has observed while being gone, and having an actual break-in of his home in 1996, stealing personal items of value and killing his cat. Mr. Burnette said one of the police officers at that time told him that it was good he was not home or his life may have been in danger.

Mr. Burnette talked about some problems that occurred at 605 Sutcliffe Circle where there was another burglary. Mr. Burnette supplied copies of police reports that he has saved over the years.

Mr. Burnette was also burglarized in November, 2008 while his family was home. Police were called to the home. Mr. Burnette said he feels that the right of way in the alley contributed to this as Officer Scott Patrick, the police officer on the scene, suggested that Mr. Burnette ask for a vacation of the right of way as these people continually sneak up Highway 13 and down the alley way.

Mr. Burnette went on to talk about the trash and drug / alcohol paraphernalia that he has gathered over the years, sharing pictures that he has taken of this area.

Mr. Burnette said he wants to clean up this area and clean up some of the brush that could be a fire hazard. Mayor Huber asked Mr. Burnette if he was willing to do this on his own. Mr. Burnette said he was. Mayor Huber reminded him that he may have to obtain a permit for fencing. Mr. Burnette said he understands.

Councilmember Krebsbach said one of the options presented by Mr. Sedlacek was that the city could grant a permit to Mr. Burnette to place a fence in the area without having to vacate the right of way. Mr. Burnette said he

understands that but in his view, it would not help as he still would not have any control of the property as people would say it's not his property and therefore, he can't tell them to leave.

Mayor Huber said future city councils could also tell him to take the fence down. Mr. Burnette said that is another reason why he is asking for the vacation.

Bill Mandell, 583 Hiawatha, said he has lived there for 45 years. Mr. Mandell said his initial response to this situation was that he was not in favor of the alley behind him running from Eugenia to Garden Lane being vacated. This area is very well maintained, and in the 45 years he has lived there, he has never had any problems. Mr. Mandell said he does not have a problem with the vacation of Eugenia, but does not want the part between Highway 13 and the alley vacated. Mr. Mandell said he has not seen any suspicious activity coming from Cherokee Park down the alley way. He does not want the alley back.

Veid Muiznieks, Police Chief of the City of Newport, Minnesota, talked about his experience in crime prevention and on the St. Paul Park City Council. Chief Muiznieks said he has looked at the Burnette property from a law enforcement standpoint and is familiar with Mr. Burnette's problems. Chief Muiznieks said he would agree that the access to Mr. Burnette's property would indeed encourage such criminal behavior, and he would also agree that Mr. Burnette's wish to have this property vacated would address the security issues and that the city has the opportunity to help someone that has a direct need for this parcel as well as the city having the opportunity to get this land to go back to the tax roles.

Councilmember Krebsbach said Chief Muiznieks was the President of the Metropolitan Association of Municipalities when she was on the board, and has had distinguished service.

Kevin Warren, a 30-year sergeant of the Saint Paul Police Department, was the officer in the mid-90's that caught the culprits that burglarized Mr. Burnette's home. Officer Warren said one of the items that was stolen was Mr. Burnette's Golden Gloves Championship Ring, which the

thief was planning on having melted down. Officer Warren said he also conducted a site survey and has determined this is a perfect spot for burglars and suggested the vegetation along the alley way be removed, and that more adequate lighting be put in that area. Fencing would also help out. Office Warren extended his congratulations to his brothers and sisters on the Mendota Heights Police Department where he moved from and appreciates them.

Dave Longben, 26-year Saint Paul Police Officer, lives down the street from the Burnette family and talked about his 16-year old son that started a snow plowing business. His son saw the footprints in the snow were there when Mr. Burnette was on vacation. Officer Longben said he and his son noticed where the footprints came from and lead to, and that his son is afraid to go in that area to plow. Officer Longben talked about SEPTED, a crime prevention program that is environmental designed, which is businesses and homeowners asking for the police department to come out and do surveys of their properties, looking at vegetation, shrubbery and exit/entrance points to homes, buildings and dwellings. Officer Longben said Mr. Burnette's property is one of concern. There is also something called the Broken Window Theory, where buildings with broken windows become eyesores and invites other types of crimes to happen.

Officer Longben said he supports what Mr. Brunette is trying to do. Councilmember Krebsbach asked if any of the other homes have been broken into. Officer Longben said he did not have any knowledge of that.

Councilmember Vitelli asked what transfer of ownership will do to prevent this from continuing. Officer Longben said he believes it will give the property owner a right to be able to tell people to get off the property, or the Police can come out and tell people that this is private property and they need to leave. Right now it is city property and anybody has a right to go there.

Councilmember Krebsbach asked if there are groups of kids hanging out there and if there have been police calls on that. Chief Aschenbrener indicated the department has not received calls. Mayor Huber said that the evidence of the beer bottles and other items are an indication that they

are out there. Mayor Huber said the disturbing thing is that they are out there on public property and there is nothing anyone can do about it.

Valerie Blaeser, a 19-year resident of 606 Sibley Memorial Highway, said she has called the police department several times and collected many things such as license plates, beer and booze bottles. Ms. Blaeser is a single mother with four children, and she is afraid that her children will find things that will be a negative influence to them. If the city can't use this property, she would like some of it back as well in order to tell them to get off the property which she also maintains.

Maureen Donagan, 597 Sutcliff, the neighbor to the south of Mr. Burnette, said she moved in last June from the Cathedral Hill neighborhood in Saint Paul. Ms. Donagan said she had served there as the neighborhood block club chair and has learned that the first rule of preventing crime is to tell your neighbors. Ms. Donagan said she was surprised to hear of a burglary in November, 2008. Ms. Donagan is very against the vacation of the property as she walks through there. Ms. Donagan said she was told by previous owners of her home that there have been no incidents in the neighborhood since 2001. Ms. Donagan said there are always ways to get people to leave public property without vacating land, such as in the parks and trails. Ms. Donagan said she would like to see ways that neighborhoods can be connected, and this vacation would take away that connection.

Mary Ann Dupree, 564 Miriam Street, talked about strange cars parked in the neighborhood streets. She has lived there for over 40 years, and knows her neighbors and they now see strangers.

Bill Donegan, 597 Sutcliffe, expressed his opposition to the vacation, and shared numerous photos of the property. Mr. Donegan said he has written a letter to the city with his concerns, and also talked to other neighbors that were not directly adjacent to this property. These neighbors seemed to feel that they wished to have the property vacated. Mr. Donegan talked about other things that could be done that Mr. Brunette has not tried, such as better lighting and cameras. Mr. Donegan said he lives in the same area and

has no problems, and that he would not have any problem with the vacation if the city would give him half of this property as well.

Tim Metzen, attorney for Mr. Burnette, said Mr. Burnette has done a good job in laying out the reason for this request, which is mainly related to safety and security. Good points have been made with respect to the active accessibility and turning the property over to Mr. Brunette does not actually solve the issue, but it will give him some authority to make people leave the property. Mr. Burnette also intends to fence in the property and screen it as best as possible.

Mr. Metzen referred to a comment made by Mr. Donegan "if it's not broke don't fix it", but Mr. Metzen said he believes it is broken. Testimony from the Saint Paul police officers says this is a problem that has been there for a long time. Mr. Metzen said the current lot size of Mr. Burnette's property is 11,800 sq. ft. which is non-conforming under the city code, and the vacation would bring this property into compliance.

Councilmember Vitelli asked why Mr. Burnette has not put up a fence before this. Mr. Metzen talked about issues with the property lines running along the tree line, and Mr. Burnette was not aware of some of the options he has. Mr. Burnette could put up a fence, and he probably will be doing some additional security measures as was mentioned tonight such as the lighting suggestions. In addition, by putting up a fence along the current property line, a funnel would be created that would actually invite people in this area, and would not solve the problem for the community as a whole as a lot of people are affected by this, not just Mr. Burnette.

Celeste Riley, no address given, said the issue is the city considering taking away public green space and putting it into private hands and she uses this as a pedestrian path. Ms. Riley said if she felt that if this was an unsafe area she would never walk there.

Alyssa Troje, 574 Hiawatha, recognized that her property and request for vacation is also on the agenda this evening, but she wanted to say she lived at 574 Hiawatha for about 4

years and has seen a lot of teenage boys walking and biking through there, and it would make sense to have Mr. Burnette put up a fence to deter this activity.

Matt Cunningham, 561 Hiawatha, said the reason this parcel looks so nice is because Mr. Burnette has been taking care of it because the city does not, and he is all for the vacation. Mr. Cunningham talked about cars parking in the area.

Mayor Huber said he feels that about twenty years ago, when Sutcliffe was put in, the city made a decision at that time to not vacate this part of Eugenia. It is not known what the reasons were for this, and the safe answer is probably that they wanted to see what develops in this area. If there was a conscious decision as to why not to do it, and the landowner of the Sutcliff area was asking for it to make Sutcliffe work better, which made sense at the time, perhaps the city thought it would be better to wait. There is no documentation on this. There have been twenty years passing now, and he cannot think of any reason in the world to not grant Mr. Burnette's request. He has lived there for fifteen years, and Mayor Huber said if the city had a purpose for it, it would most likely be a trail. Clearly putting a trail in there now it would come out on Highway 13, which would be a bad idea, acknowledging Chief Aschenbrener's nod of agreement on this statement. Mayor Huber said he agrees with Attorney Metzen that putting in a fence on the existing property line would create a trail, which would do something that nobody would recommend as being a good idea. Mayor Huber said this is city property right now, and Mr. Brunette cannot tell people to leave that property. There are handfuls of properties such as this around the city and he can't imagine the city putting out newsletters inviting people to come play in these areas.

Mayor Huber said when city leaders try to do their thing, they are trying to interpret the laws which are great laws and written for the benefit of the residents, but once in a while the city leaders have a chance to do something that is unbelievably fair, and at the end of the day, this is a fairness question. Twenty years ago, the city decided to take this land and split it to give half to a property owner (Sutcliffe) and after waiting to see if anything would be done with the rest of the land, which Mr. Burnette has very

patiently sat by and waited for his day of fairness. Mayor Huber said that day has come and it's time to be fair. Mr. Burnette has made very compelling arguments on what he is trying to do, and the fencing issue is another matter that would have to be addressed at a later time. Mayor Huber said there is no other solution that allows security and the opportunity to protect this property and make sure people that are not supposed to be there stay off the property. Mayor Huber strongly supports Mr. Burnette's request.

Councilmember Vitelli said he disagrees with the Mayor completely. He does not feel there is any solution that has been proposed and there are a lot of people in the city that have experienced burglaries. That should not be the reason why the city gives away green space. If Mr. Burnette was really concerned about the safety of his family, he could have put up a fence ten years ago but he has chosen not to do that. Mr. Burnette is only asking for the land to place a fence around it without seeking other ways to protect his property. Councilmember Vitelli said he does not see the fairness, and he also has some vacant city land next to him. Councilmember Vitelli said if he chooses to maintain this land, then he would assume that due to fairness, he would be able to come forward in five years to ask for this land.

Councilmember Vitelli said there is equal support for this request as well as opposition from neighbors, and if there was a unanimous agreement he would say to vacate the land. Councilmember Vitelli said he will not support this vacation, however would prefer a 50-50 split to Mr. Donagan and others, but legally that cannot be done.

Councilmember Schneeman said she will support Mr. Burnette as she has walked the property five times. The solution would be to cut off access from Highway 13 to his property. This will not affect Mr. Donegan's views at all and will be a beautiful yard to enjoy. Mr. Donegan's property is so completely isolated from this property. This area cannot be used as a trail as it lead to a ditch along Highway 13. Councilmember Schneeman said she has lived in Mendota Heights for 42 years and she knows what has been going on in that area. Councilmember Schneeman said she noticed today when she visited the area that there was an old beat up car parked by Bruce Vento trail with a kid standing there smoking a cigarette, looking like he was

getting into trouble. Councilmember Schneeman talked about the dangers of small children playing in this area by the ditch.

Councilmember Krebsbach said she is in strong support of not vacating Eugenia, but she does believe the city's Public Works Department should cut the brush out of the alley and right of way. Councilmember Krebsbach said the kids are going to park on that street anyway unless the city goes to a permit parking process, and find their way to Bruce Vento Park.

Councilmember Krebsbach said she would be agreeable into looking at having Mr. Burnette build that fence into the easement so that he would not have to cut the trees. Mr. Burnette feels like this is a part of his yard and putting a fence up would feel very confining to him. Councilmember Krebsbach said she would not support the vacation.

Ms. Diehm said procedurally, a decision to grant or deny a petition needs to be made by Resolution by Written Finding. The Council can entertain a motion to direct staff to come back with written findings to either support or to deny. The findings have to be based on whether or not the vacation is in the interest of the public so while the city can consider a petition by a particular property owner, it is important that the Council discussion and written findings be centered around the affect that it has on the public and staff is comfortable in coming up with written findings to support the vacation and to deny the vacation. This is a legislative decision on the part of the Council. Ms. Diehm recommended that staff bring forth two resolutions, one for the findings of fact in support and one for the findings of fact for denial.

Councilmembers Krebsbach and Vitelli both stated that they would like to vote on this tonight. Councilmember Vitelli said then the findings can be put forth as part of the motion.

Councilmember Vitelli moved to deny the request for vacation of the right of way adjoining 591 Hiawatha Avenue.

Councilmember Krebsbach seconded the motion.

Ayes: 2 (Councilmembers Krebsbach and Vitelli)  
Nays: 2 (Mayor Huber, Councilmember Schneeman)  
Motion Failed

Mayor Huber said he would be willing to make a motion to defer to staff's recommendation to bring this forward.

Councilmember Krebsbach questioned if this was proper procedure.

Mayor Huber said this was a motion to deny and the motion failed. Ms. Diehm said this case is not subject to the 60-day rule so a petition to vacate does not require action to pass or deny, and therefore, if the Council does not pass it, and does not direct staff to come back with written findings it just sits there. Mayor Huber said he would then recommend that this case just sits for now.

Parks Commissioner Steve Commers asked if it is known how Councilmember Ultan Duggan stands on this issue. Mayor Huber said he appreciates this question, and said that Councilmember Duggan is not present at this time and it is not known how he would vote. Mayor Huber said he, himself, always prefers to listen to all the testimony first before he gives any indication on how he would vote. Having said this, Councilmember Duggan has not had the benefit of this discussion and has not given any prior opinion on this case.

Mayor Huber said there is not a motion before the Council at this time that will be able to pass, and believes that this has to come up again at a future meeting. Ms. Diehm said that is not necessarily true. If a motion is not made and passed to approve this, and it is her understanding the public hearing has already been held previously, nothing will happen. Mayor Huber said this is not a public hearing. Ms. Diehm said the public hearing was held at an earlier meeting, and that the public hearing was continued. Mayor Huber asked if the Council voted to close that public hearing. Mr. Danielson said the Council did not, and that the public hearing has been continued this evening. Councilmember Krebsbach said the Council just took a vote and the public hearing was not closed. Ms. Diehm said staff wished to take some time to go back to check the record to confirm that.

Councilmember Krebsbach said the Council just voted on a motion to deny this request, and does that then automatically close the public hearing. Ms. Diehm said if a motion was made to deny the original vacation, that that would have closed the public hearing. Councilmember Krebsbach said the Council just did that. Ms. Diehm said that that motion failed. Councilmember Krebsbach said the motion was accepted. Ms. Diehm said someone could potentially make a motion to close the public hearing and that motion could be denied and would fail, and therefore, the public hearing would then be open. Councilmember Krebsbach asked what is the effect of a motion being presented for a vote without closing the public hearing. Ms. Diehm said a motion could be made prior to closing the public hearing. A motion could be made at any point, whether or not if that motion were to take some sort of effect that required the closing of the public hearing, the Council would have to address that.

Mayor Huber said he surely would not move to close the public hearing.

Councilmember Vitelli moved to close the public hearing. Councilmember Krebsbach seconded the motion.

Ayes: 2 (Councilmembers Krebsbach and Vitelli)

Nays: 2 (Mayor Huber, Councilmember Schneeman)

Motion Failed

Councilmember Vitelli said he cannot believe all the things that the Council agrees on, and they can't come to an agreement on this.

Mayor Huber asked if the Council should now continue on the agenda. Mr. Danielson said the next Council meeting will have an odd number of Council members. The public hearing is not closed at this time.

Ms. Diehm said there seems to be some confusion as to whether or not tonight was a continuation of the public hearing as it has been listed under "New / Unfinished Business" and was not noticed as a public hearing should be, and would be more comfortable on checking into the records to make sure the public hearing has been technically closed.

Mayor Huber suggested going ahead with the case for 574 Hiawatha Avenue while staff continues to look at the records. Councilmember Krebsbach said she would rather table that for now. Councilmember Vitelli said he would like to hear that case as he feels there does not seem to be as much disagreement. Councilmember Schneeman said she would just as soon table that one until this case gets cleared up. Mayor Huber said he has no strong preference either way.

Mayor Huber said he feels strongly if this case comes back to the Council that there should be all five members of the Council in attendance.

Mr. David Libra, 737 Knollwood Court, said the case for 574 Hiawatha falls more into a garden variety of vacation requests that relates to the fact that the roadway was dedicated for utility purposes and not a trail related issue. Mr. Libra said he would have no problem tabling this to the next meeting.

Mr. Libra said he also believes they could offer a compromise solution related to the property, a 20-10 split and acknowledged that he has received no approval yet from the neighboring property.

Mr. and Mrs. Conan, 565 Miriam, asked if they would be able to comment on the 574 Hiawatha case this evening. Councilmember Krebsbach said she would rather table this discussion. Mayor Huber said they would be able to comment at the next meeting.

Mr. Libra said he would like to extend the public hearing for the 574 Hiawatha case or table to the next meeting at this time.

Upon further research, staff confirmed that the records from the February 3<sup>rd</sup> meeting showed that the public hearing was clearly continued until April 21<sup>st</sup>. Ms. Diehm, in referring to the application for 574 Hiawatha said the motion from February 3<sup>rd</sup> also includes that a separate public hearing would be noticed for this second application and unfortunately, staff did not properly notice that application. Staff would now recommend that the Council is more than welcome to speak with the applicant and

solicit any other public testimony, but staff will have to again publicly notice this and come back with a final decision at the next meeting on that one.

Mayor Huber said it would seem that the public hearing on 591 Hiawatha is still open and therefore, asked if it would be proper to table the public hearing until a date certain. Ms. Diehm said the Council could either continue the hearing or could decide that despite the fact that the Council may disagree or may want to wait and make a decision at a future date, that the public hearing be properly closed tonight so that the input of information is what it is. If the public hearing is kept open, then Council will continue to receive input from residents. Councilmember Krebsbach said she made the motion to close the public hearing. Mayor Huber said that motion failed 2-2. Ms. Diehm said staff should have procedurally ensured that a motion was made to close the public hearing separate and before the motion was made to deny the application.

Mayor Huber asked the Council if they would entertain a motion to continue the public hearing of 591 Hiawatha Avenue to two weeks from now. Councilmember Krebsbach said she would not support that and would like to see the public hearing closed. Ms. Diehm said the Council could also close the public hearing but agree as a body that this body would take their final vote at the next meeting. Councilmember Krebsbach said they already took their vote. Mayor Huber said it was 2-2 so the matter is still open.

Ms. Diehm said the Council has two options: 1) agree collectively to close the public hearing just to stop the flow of information that will make up the record and 2) hold the public hearing open.

Councilmember Krebsbach asked what happens when the Council is deadlocked. Ms. Diehm said this creates a unique situation as what should have happened was that the public hearing should have been closed prior to any motion being made. Then the motion to deny failed but when that motion to approve also failed, then it would be a dead issue and it would not have passed and it would be not subject to come up again unless there was a motion for reconsideration or a new application.

Mayor Huber said the Council made a motion to deny, which failed, but the Council did not make a motion to approve the application.

Councilmember Schneeman asked if this could be held over for two weeks. Mayor Huber said he believes this could be. Councilmember Schneeman said she thinks this is what should be done with no more information coming in.

Ms. Diehm said her recommendation was that staff provide the Council with two resolutions at the next meeting for a vote. Obviously whatever action that must be taken must be by a majority vote. Councilmember Krebsbach said she does not agree with that and believes this is a deadlocked council and why that would have to continue to another meeting as this has been a deadlocked, not action is taken, period.

Ms. Diehm said she believes that the technical deficiency of not closing the public hearing would not be sufficient to allow it to live on.

Ms. Diehm said there is nothing in the city code that would prohibit the application to be resubmitted, acknowledging that the applicant would have to pay the normal fees and the public hearing would have to again be noticed.

Councilmember Vitelli said he agrees with all the comments made by Councilmember Krebsbach and that this is done.

Ms. Diehm reminded the Council that to either approve or deny a vacation, they need to do so with written findings so regardless of whether it passes or fails tonight, the Council will still have to consider the written findings at the next meeting. If the public hearing is closed at this time, then Councilmember Duggan can either abstain because he was not here or the record has been set.

Councilmember Krebsbach said there are no findings because the Council is deadlocked. Ms. Diehm said she is not sure what the proper procedure is for that. Councilmember Krebsbach said she believes the Council needs to leave it right there.

Mayor Huber suggested that the Council direct Ms. Diehm to do some further research on what the procedures should be. Ms. Diehm asked for a small recess to allow her to do some research, but if the Council is inclined to make a decision tonight, staff needs to prepare some written findings. Councilmember Krebsbach said the Council is deadlocked. Mayor Huber said he does not believe it will pass either way. Councilmember Krebsbach said she does not believe this should be pushed toward one way or the other. Councilmember Vitelli said he believes Ms. Diehm should do some research.

Mr. Sedlacek said it is not uncommon for staff to look back at council meetings to derive from the discussion different findings for their consideration and then at the next meeting in this situation, the Council would then consider those findings. Councilmember Krebsbach said this is a deadlocked Council and would have no problems with findings. Councilmember Schneeman said this Council has been deadlocked before. Mr. Sedlacek said there has been enough discussion to get some findings and present recommendations. Mayor Huber said he would recommend that nothing else be done on the 591 Hiawatha application, and allow Ms. Diehm to do some further research in the interim, and prepare a memo for the Council on what the effect is of where the Council is at.

It was the consensus of the Council to direct Ms. Diehm to begin some further research as suggested.

VACATION OF RIGHT OF WAY  
574 HIAWATHA AVENUE

Mayor Huber said this was not legally posted as a public hearing and asked Ms. Diehm how the Council should proceed.

Ms. Diehm said it would be staff's recommendation that the applicant has been very patient through this meeting so far and suggested that the Council receives input at this time from the property owner as well as consider comments from other property owners, and that staff will properly re-notice this for the next Council meeting where formal action will be taken at that time.

Mayor Huber said there needs to be a public hearing on this one. Ms. Diehm said part of the motion at the original public hearing was specific to the fact that staff would

notice this as a separate public hearing. Mayor Huber confirmed that there will be a public hearing notice on 574 Hiawatha Avenue in the future, and public comment is welcome at this time.

Mayor Huber asked the applicant what they would wish to do at this time, keeping in mind that Councilmember Duggan is not here and will not hear those comments given. Mayor Huber reminded the audience and Council that Mr. Libra has already stated his agreement in holding this application over until the next meeting.

Mr. and Mrs. Conan, 565 Miriam, said there are power lines and a power pole in this area, indicating their locations on the map. Mrs. Conan showed where these power lines are servicing homes, which includes their home. Mrs. Conan said it is her understanding that this is a public easement in order for utility vehicles to access the power lines and her concerns is that if this easement is vacated, a fence or structure can be built so that there may no access for those trucks without property owners' permission. This could put the power lines in jeopardy. It is noted that Mr. Conan is an employee of Excel Energy.

Councilmember Schneeman asked if the neighbors could get together to have the power poles moved, and talked about doing this on her lake property where the residents paid about \$350 and that took care of the problem. Mr. Conan said that would not take care of the problem in this case as the only solution would be to bury the lines. The reason for those alley ways in the beginning was that residents did not want the power lines running along the streets and put them in the back yards to they could not be seen. Mr. Conan said another option is to specify in the agreements that the utility company would be granted access. Mrs. Conan said that would work only if a fence or structure would not be built that would block this access.

Mayor Huber asked for the timing of the public hearing for this application. Mr. Danielson said it would be two weeks (second meeting in May).

Mr. Libra said this thirty foot strip is an unimproved right of way and the city currently has control over the road or the easements that have the utilities. Mr. Libra said staff

had suggested to him that if this is vacated, the city would reserve a utility and drainage easement over this strip and as Mr. Sedlacek indicated earlier, the property owner would be able to place a fence as it could be easily removed if necessary. However, a structure could not be placed there. This is perfectly fine with the applicant.

Mr. Libra said he has been speaking on behalf of this property as he and his wife are co-owners of this property along with his daughter and son-in-law. Mr. Libra said there is an alley in this area that was previously vacated by the city and the power lines run along this area. At that time, no one suggested that power poles and lines be moved, buried, replaced, or changed. In this case, the city will be allowed an easement for access to the power lines.

#### MENDOTA MALL DEVELOPERS AGREEMENT

At the January 20<sup>th</sup> City Council meeting, the Council adopted Resolution 09-07 for a request for rezoning, 09-08 wetlands permit, 09-09 conditional use permit for grading, 09-10 a preliminary plat and 09-11 preliminary PUD for the Mendota Plaza expansion at 750 Highway 110.

Mr. Sedlacek introduced the developers agreement for discussion as staff has been working on to finalize some details. A clean draft of the agreement has been submitted to Council for review as recommended by the city attorney.

This discussion is to come to agreement on some outstanding issues on the park dedication.

The Dakota County Assessor applied the assessed values to the current two parcels, using the average value per acre of the two lots. The original parcel size is 13.16 acres with an assessed value at \$2,338,700 (assessed value per acre of \$177,712.77) and the new parcel of 8.08 acres has an assessed value of \$816,600 (\$148,554.61 assessed value per acre). The assessed value is applied to each lot to determine the value for each proposed lot. The commercial park dedication is applied to each lot at a rate of 10% of assessed value. Lot 2, which includes the current Mendota Plaza has already paid a park dedication. Mr. Sedlacek provided in his report a breakdown showing the commercial dedication amounts for the newly created lots, which comes to \$185,693.27 which includes a total of

21.24 acres, noting the housing lot is held out of this park dedication.

Paster Enterprises has submitted documentation requesting that certain costs for the site improvements be considered as an offset to the park dedication, noting that 2.5 acres of contiguous open space is platted as open space in excess of the 10% of the land area of the development. Staff's response is that the outlots are not to be considered as an offset to a park dedication. The open space proposed in the plat helps the applicant meet open space requirements, storm water management and reflect the feedback on the MN Wetlands Conservation permit requiring a portion of the wetlands to be maintained rather than filled. The area of land which would be held under easement for a trail could be considered as a park dedication offset. Costs associated with improvements which serve as park-like amenities total \$223,050. These costs are for work specific to the box culvert for pedestrians and are in addition to the project costs for site development.

At the April 7<sup>th</sup> Council meeting, Council expressed the opinion that the proposed pedestrian underpass was not requested by the city and should not be funded by the city. The applicant has agreed to remove the tunnel and to grade the trail to intersect the roadway. Mr. Ken Henk of Paster Enterprises has now come back with a plan that depicts the removal of this tunnel and the re-routing of the trail system giving several scenarios.

Mr. Mazzitello said \$7,900 seems like a reasonable cost estimate for grading a 15-ft wide piece of that land and providing a base that is seeded to be developed at a later time.

Mayor Huber said he can live with 1B. Mr. Mazzitello said Item C is a trail on Lot 6 and direction from the April 7<sup>th</sup> meeting was for that to be put off for discussion until the housing dedication is settled at the time that lot is built.

Mr. Mazzitello said Mr. Sedlacek could speak more to the park dedication but he would like that the park dedication would be recalculated for the housing, that credit for this portion would be debated at that time. Mayor Huber asked if it ends up being assisted housing, then there would be no

more park dedication coming. Mr. Sedlacek said if the city is allowing that as a park dedication amount, as an offset, then the city would require them to build that section at that time. If the city is not allowing that at this point, then there is no further dedication, the parties will have to come to some sort of agreement to get that section of that trail built if the city feels it is necessary. Councilmember Vitelli said it should not be a part of the dedication at this time.

Councilmember Krebsbach said she believes the dedication should stand at \$185,693.27 as the trail does not go to Dodd Road. She does not know that anyone would walk on any of the trails as it has been proposed.

Mr. Henk said from their standpoint on these items, whether the money is put into the grading or pave the section, they are paying the same thing. Councilmember Krebsbach said the grading will still need to be done around the two new proposed ponds and does not believe that credit should be given for the grading.

Mayor Huber said the only way a trail will go through there is if Dakota County puts in a trail system in the area and no one knows when that will be, but grading now has questionable value so removing the easement expense and the grading expense makes sense. Councilmember Vitelli said Dakota County can then buy the land to put in a trail at a later time.

Councilmember Krebsbach prefers Scenario 2 for an easement because it is closer to Dakota County's intent for a trail. Ms. Diehm said there is language in the developers agreement addressing the easement. Mayor Huber said the city establish the easement but does not support credit for grading the future trail at this time. Mr. Henk said that is fine with them.

Mr. Henk said they are only asking for consideration of some of the land on this property that will be given up for public purposes. The covered trellis area is being proposed because they want to tie this area into the Village across the street and will serve as a central gathering place to serve the public. They will be doing the work regardless as they feel it is a good thing to do, pulling the whole project together. This is located on their private property.

Councilmember Krebsbach said the Village's center is actually public property serving as a park. Mr. Henk asked if this was maintained by the city. Mr. Danielson said it is not, but that the city has an agreement with the developer on maintenance.

Mayor Huber summarized by saying City Attorney Diehm has all the information to put the agreement into its final form and from the city's point of view, sans Councilmember Duggan's minor wording changes, keeping the park dedication at \$185,693.27.

Mr. Henk said he is fine with the adjustments to the city's fee cap and the credit issue, acknowledging all outstanding items have been resolved.

Councilmember Schneeman moved to approve the Developers Agreement with minor changes as discussed. Councilmember Vitelli seconded the motion.

Councilmember Vitelli asked if the final number is \$185,693.27. Mayor Huber said that was correct.

Ms. Diehm said now that the Council has determined where that easement should go, the Council should ask the developer to provide them with a legal description of that area so that it can be incorporated into the section that addresses that easement.

Ayes: 4  
Nays: 0

MENDOTA MALL ASSOCIATES  
Case No. 08-11

Councilmember Krebsbach asked if this needs to be approved this evening. Mr. Henk said they are requesting that this be done. Mayor Huber said it should be done.

Councilmember Krebsbach said there is nothing in front of the Council and asked for more information.

Mr. Sedlacek said the final plat and documents were already discussed, and there were no requests to change anything since then. These are the same documents that were received on April 7<sup>th</sup>. Staff is recommending approval with the only condition being the completion of the developers agreement, which has just been done.

Ms. Diehm said because there is no signed Development Agreement at this time, she would prefer to leave that condition on the resolution. Staff is recommending that the Council votes on this resolution tonight and that the decision with the final plat is whether or not they met the conditions as outlined in the preliminary plat approval and whether they conform, however it will not be effective until that Development Agreement is physically signed by both the Mayor and the applicant.

Councilmember Vitelli moved to approve Resolution No. 09-29: "A RESOLUTION APPROVING A FINAL PLANNED UNIT DEVELOPMENT AND FINAL PLAT OF MENDOTA PLAZA EXPANSION FOR 750 HIGHWAY 110", with the findings presented at this meeting and the requirement that the developer's agreement is signed by May 1, 2009.

Councilmember Krebsbach seconded the motion.

Ayes: 4

Nays: 0

#### COUNCIL COMMENTS

Councilmember Krebsbach said she drove by the skate board park and noticed the kids were having a great time. She is glad to see the parks and ball fields being used.

Mayor Huber reminded everyone that Spring Cleanup is May 2<sup>nd</sup>.

Councilmember Vitelli said it was the day after the last Council meeting that he and Mr. Mazzitello met on Rogers Lake, having an excellent meeting with Dakota County, Minnesota DNR and the local residents mapping out an action plan. Councilmember Vitelli said he was very disappointed with Representative Hanson who never showed up, even though the group scheduled this meeting at a time that was most convenient for Representative Hanson, and after several attempts, no one could reach him. This group wasted 40 minutes of their time waiting for him to show up and he never did, and never called. The group did go ahead with the meeting and found it to be very successful. Councilmember Vitelli later sent him an email explaining his concern and the situation, to which an apology was offered.

Councilmember Vitelli said he believes the outcome of the meeting was good, and everyone gave good input, allowing them to put together an excellent agreement. Mr. Mazzitello said he will provide this information to the Council.

Mayor Huber thanked the council members for their demeanor all night long as this was a very long meeting, and this is what makes doing this very worth while.

Councilmember Krebsbach said the Mendota Plaza enhancements are going forward and this is a momentous thing.

Councilmember Schneeman gave her thanks to staff for all their work.

ADJOURN

There being no further business to come before the Council, Councilmember Schneeman moved to adjourn. Councilmember Krebsbach seconded the motion.

Time of Adjournment 12:20 a.m. on Wednesday, April 22, 2009.

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Rebecca Shaffer  
Recording Secretary

ATTEST:

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John J. Huber  
Mayor