

CITY OF MENDOTA HEIGHTS  
DAKOTA COUNTY  
STATE OF MINNESOTA

Minutes of the Regular Meeting  
Held Tuesday, May 5, 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

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 April 21, 2009 as corrected. Councilmember Krebsbach seconded the motion.

Ayes: 4

Nays: 0

Abstain: 1 (Councilmember Duggan)

CONSENT CALENDAR

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

- a. Acknowledgement of the Minutes from the April 28, 2009 Planning Commission Meeting.
- b. Acknowledgement of the Building Activity Report for April 2009.
- c. Approval of 2008 Transfer to Pilot Knob Fund.
- d. Approval of In Squad Video Purchase.
- e. Authorize Purchase Order for Rogers Lake Weed Control.

- f. Approval of Sign Permit for 50 Main Street, Suite #109
- g. Approval of Sign Permit for 50 Main Street, Suite #102
- h. Approval of the List of Contractors dated April 29, 2009.
- i. Approval of the List of Claims, dated May 5, 2009, totaling \$210,611.79.

Councilmember Duggan seconded the motion.

Ayes: 5

Nays: 0

Councilmember Schneeman referred to item “b” and noted the numbers from last year versus this year. Building permits year to date 2009 is \$39,897.86 versus year to date 2008 of \$90,231.03. Trade permits year to date 2009 is \$56,469.86 versus year to date 2008 of \$118,345.03. Councilmember Schneeman said this shows quite a drop in building activity in Mendota Heights.

Councilmember Duggan said this will cause the city to be more diligent going forward with expenditures, and staff is aware of this, keeping a watchful eye.

Councilmember Duggan moved to approve the Building Activity Report for April 2009.

Councilmember Schneeman seconded the motion.

Ayes: 5

Nays: 0

Councilmember Krebsbach asked to have item “c” pulled for discussion. Mayor Huber asked Finance Director Kristen Schabacker to give some information on this. Ms. Schabacker said this is a transfer to the Pilot Knob Fund. In 2008, the city acquired the second parcel at Pilot Knob and there were expenses incurred last year that were not budgeted for, such as closing costs to acquire the property and real estate taxes that had to be paid the first year of ownership. In addition, there were consulting costs associated with Great River Greening for the restoration costs. Next year the expenses are lower and have been included in the 2009 budget.

Councilmember Schneeman moved to approve the 2008 Transfer to Pilot Knob Road Fund.

Councilmember Duggan seconded the motion.

Ayes: 5

Nays: 0

Councilmember Duggan asked to have item “e” pulled for further discussion. Councilmember Duggan reminded the Council that hopefully the Council will get to the other water bodies in the city of Mendota Heights and provide them with reasonably equal consideration of weed control treatment. Councilmember Duggan said he was concerned on Page 2 of the recommendation where it talks about the actual cost coming in at \$5,100 in one part and further down it states “seasonal costs ranging from \$3,000 to \$8,000” and said he was not sure what “seasonal costs” referred to.

Public Works Director John Mazzitello said the charges of \$5,100 are for the first initial chemical application in June. Because this is the first time this is being done in Rogers Lake, it is going to be an “apply as you go” situation as far as after the initial application. The contractor is recommending that a second treatment be applied later in the summer but it is not known as to what extent that second treatment is going to be. Council authorized \$15,000 for the year.

Councilmember Duggan said he understands that the DNR allows 15% of the area to be chemically treated. Mr. Mazzitello said that was correct. Councilmember Duggan asked if the \$5,100 apply to the 15% of the weeds in Rogers Lake or is that 1/3 of that. Mr. Mazzitello said it is applied to 15 acres which is just shy of the 15%. Additional room was left for the residents to clear the lake close to their shoreline.

Councilmember Duggan said he would like council to consider using any left over money in the budget to apply toward one of the other water bodies. Mayor Huber said the plan is to just focus on Rogers Lake at this time. Councilmember Krebsbach said the other lakes have not been discussed. Councilmember Duggan said the council did by not rejecting what he stated when this was approved previously and saying that the city has to have equal treatment for all bodies of water in Mendota Heights that are challenged. That was not rejected by any of the council. Councilmember Krebsbach said she believes Councilmember Duggan said at that time that the council needs to consider (this). Mayor Huber said there are a lot of things that have been said over the years from the dais

which the council did not vote on, and just because someone says it, it does not mean that the council will head down that direction. Mayor Huber said it's best to see how this goes first as there are some unique issues around Rogers Lake, handling other bodies of water on a case by case basis.

Councilmember Duggan moved to approve the Purchase Order for Rogers Lake Weed Control.

Councilmember Schneeman seconded the motion.

Ayes: 5

Nays: 0

**SWEARING IN OF RESERVE OFFICERS** Mayor Huber asked that this be postponed until later in the evening until Officer Jerry Murphy arrives.

**CASE NO. 09-09, BROOKS**

Mr. Sedlacek introduced Case No. 09-09, which is a request for a conditional use permit for a detached accessory structure located at 1754 James Road.

The applicant is proposing to remove an existing structure on the property and replace it with a new structure totaling 520 square feet, and will match the color and materials of the existing home. This structure will be used as a shed/greenhouse/workshop. This structure is in conformance with the side yard and rear yard setbacks. There will also be a loft on the second story, and there is nothing in the code that pertains to a second story on accessory structures as long as it is not being used for a business or residential purpose.

At the Planning Commission, staff recommended approval of this structure as it would fit within the character of the neighborhood.

The Planning Commission inquired as to whether this building would be used as a garage, which would then require a variance. Another concern was what the flooring of the building would be. The applicant indicated that the flooring would be made of wood, and that he has no intention of using this as a garage.

There were no comments made at the public hearing, and the Planning Commission voted 7-0 in favor of this application based on the finding that the proposed structure

is consistent with the intent of the Conditional Use Permit clause allowing detached accessory structures, and recommended approval based on the following conditions:

1. The proposed storage building is redesigned to meet the maximum building height of 15 feet.
2. The existing shed was to be removed.
3. The building is to be used solely for accessory storage and workshop space as residential living quarters and commercial use is not permitted.

The applicant said he understood the requirements and was agreeable with the conditions.

Mayor Huber asked staff to provide the definition of how the height is determined. Mr. Sedlacek said a conditional use permit states that a maximum of 15' not to the midpoint of the roof. In this application, the house would be the midpoint.

Councilmember Vitelli asked if wording could be put in there that says this building cannot be used for vehicle storage or garage use. Mr. Sedlacek said they can add that condition.

Councilmember Krebsbach asked if the residents from 1067 Overlook, 1065 Overlook and 1071 Overlook have given any feedback. Mr. Sedlacek said they have not heard feedback from those individuals. With variance and wetland permits requests, signature sheets are required, but there is no such requirement for conditional use permits.

Councilmember Krebsbach asked if they were noticed. Mr. Sedlacek said they were notified as was everyone within 350 feet. Mr. Sedlacek said he had not put in the legal notice list in the council packets and would provide that from the Planning File.

Councilmember Krebsbach asked how far from the back lot line is the structure to be located. Mr. Sedlacek indicated the setback measurements on the map. Mr. Sedlacek said at the Planning Commission meeting, the applicant also asked if the final location could change. Planning Chair Lally had indicated that this would be fine as long as the building stayed within the required setbacks.

Councilmember Duggan asked how the vegetables that will be grown in the greenhouse will be used. Mr. Brooks said he will be using the vegetables for family use, as well as taking them offsite for sale at another location.

Mayor Huber asked to put this discussion on hold as Officer Murphy has arrived for the Swearing in of Police Reserve Officers.

## SWEARING IN OF RESERVE OFFICERS

Police Chief Aschenbrener introduced Sergeant Convery, who introduced the 2009 Police Reserve Officer candidates. Upon swearing in these candidates, Sergeant Convery gave a brief history of each individual. The officers include:

- Romel Brown
- Randy Pentel
- Jennifer Spur
- Jesse Mettner
- Charles Lenertz
- Gino Messina
- Andrew Quinlan

Chief Aschenbrener gave a recap of what the Police Reserve Program entails and the training that the candidates go through.

Mayor Huber presented Officer Jerry Murphy, the only remaining personnel from the original unit back in 1967, with his captain pins as Officer Murphy will be in charge of this unit.

## MATT & JULIE BROOKS (Continued)

Mayor Huber asked Mr. Brooks to come back to the lectern as this case has been reopened.

City Attorney Tami Diehm confirmed that in the residential district structures are subject to height restrictions of 15 feet but the definition of height is as was read prior to the recess which in this case is the average distance to the highest gable. Ms. Diehm said Planner Gritman's interpretation is the same as hers. Ms. Diehm said the plan still needs to be adjusted to show the height of the building being 15 feet.

Councilmember Schneeman asked Mr. Brooks if he understood what has been said. Mr. Brooks said he does.

Councilmember Duggan moved adoption of Resolution No. 09-30: "A RESOLUTION APPROVING A CONDITIONA USE PERMIT FOR A DETACHED ACCESSORY STRUCUTRE AT 1745 JAMES ROAD WITH THE CONDITION THAT THIS BUILDING IS NOT USED FOR AUTOMOTIVE STORAGE."

Councilmember Vitelli the motion.

Ayes: 5

Nays: 0

CASE NO. 09-10,  
FEFERCORN

Mr. Sedlacek introduced Case No. 09-10, which is a request for a text amendment to the city's zoning code to allow massage therapy in the B-2 (Business) District. This change would also impact all parcels zoned B-2, B-3, B-4 and MU-PUD. Mr. Sedlacek said the city currently allows massage therapy in all business zones in conjunction with a licensed medical office. This particular request is for a stand alone use.

Mr. Sedlacek reviewed the proposed language changes.

Mr. Sedlacek said no one spoke to the public hearing at the Planning Commission, where the main focus was if this use is allowed, how would the city license it, and what is an allowable use as a permitted use hinges on how this use will be enforced.

Staff is now asking the City Council to determine whether or not this is an appropriate use in the B-2 zones knowing the impact it will have on the other zones. And then if Council is comfortable with that, to consider the licensing provisions.

Mr. Sedlacek said Planner Gritman had provided some language suggestions, which were reviewed and approved by the City Clerk (who is not present at the meeting this evening).

Staff had then made some language changes after obtaining feedback from the Planning Commission.

Staff is now asking for a motion on the resolution, and should that pass, staff would like to receive some guidance on how to draft the licensing of this use.

Councilmember Krebsbach said she would like to have the amendment include language that says the massage therapy service will reimburse patrons through their insurance companies. Mayor Huber said that is not necessarily the case as insurance companies do not always reimburse this type of therapy.

Councilmember Krebsbach said she thought that was the case when the City Council approved Brown College's request for training massage therapists. Councilmember Schneeman said that was for training purposes. Councilmember Krebsbach said she wants to make sure that this business is of a high level that reimbursement would be available depending on the insurance company policies. Mr. Sedlacek said there are some insurance companies that do not cover chiropractic care either.

Ms. Diehm said that given the fact that each insurance company has their own requirements; it would be difficult to require this. Ms. Diehm said in response to Councilmember Krebsbach's point, the city needs to look at the licensing requirements in other areas such as hours of operation, providing more teeth to the licensing language that would make the Council feel more comfortable.

Councilmember Duggan asked for more clarification on the draft language referring to the number of certification hours. Ms. Diehm said the draft language does require a minimum of certification hours that massage therapists need to complete by a national or state therapeutic agency.

Councilmember Duggan asked that the language be consistent when using "enterprise" and "business", except where it is used in the beginning with the quotation marks. Mr. Sedlacek explained that the word "enterprise" encompasses many businesses, except in the beginning of the document, and the word "business" matches up with the other terms in the B-2 zone as was suggested by the Planning Commission in order to tie this ordinance back to the other city ordinances. Councilmember Duggan

suggested using “business” in all the language except in the beginning where it is in quotation marks.

Ms. Diehm said it was her interpretation that the broader use of the word “enterprise” was supposed to get at defending against an argument that this is not a business and one is not making a profit. If it is an enterprise, whether or not one is operating with a license, or the applicant has been convicted of a felony or is in violation of any of the provisions of this chapter than one is prohibited from being licensed. In other words, if someone was operating with out a license, not knowing a license was needed, that does not prohibit that person from obtaining that license. But should that person be in violation of any of the provisions in this chapter, that person would not be able to obtain a license.

Ms. Diehm said Planner Gritman’s draft includes some of the comments and concerns raised by the Planning Commission and indicated in the draft language by redlining and underlining version.

Mayor Huber reminded that the request tonight is just for the zoning text change, and that the Council cannot move on the licensing at this time.

Mr. Sedlacek said council can comment on the licensing at this time or direct staff to come back at the next meeting with that. There is no public hearing required for that part.

Mayor Huber asked if council was comfortable with amending the ordinance.

Councilmember Duggan moved adoption of Resolution No. 09-29: “A RESOLUTION APPROVING AN ORDINANCE AMENDING TITLE 12, CHAPTER 1 OF THE CITY CODE, THE CITY’S ZONING ORDINANCE, TO ADD MASSAGE THERAPY BUSINESSES AS PERMITTED USES IN THE B-2, NEIGHBORHOOD BUSINESS DISTRICT.”

Councilmember Schneeman seconded the motion.

Councilmember Krebsbach asked for clarification on all the locations that this type of business can be operated.

Councilmember Krebsbach announced that she is not in favor of a text amendment, but asked if a conditional use permit could be done instead. Mr. Sedlacek said a conditional use permit could place this type of business anywhere in the city and the Council would be looking at them on a case by case basis. Mayor Huber said the concern about a conditional use permit is that there is a presumption that it will be approved under certain conditions, and this opens up the map broader than going by zoning guidelines. Councilmember Krebsbach said this could only apply to this particular case. Ms. Diehm said the way the zoning code is presently organized, it breaks down by zoning sections and within each section there are permitted uses and conditional uses. The council could then set up the B-2 district and allow this as a conditional use. These would come before the council on a case by case basis and the council would have the option to place certain conditions but would not have the discretion to deny on a B-2 lot.

Mayor Huber said the way the motion plays it presumes that the city will license this use.

Councilmember Duggan reminded the council that when they reviewed the case for Brown College, the council agreed unanimously that this was an accepted use. Councilmember Krebsbach said this is a little different.

Ms. Diehm said amendments to the zoning ordinance need to be published before they go into effect and the council has time to approve the licensing at the next meeting.

Councilmember Krebsbach asked for clarification that the state does not license this. Mr. Sedlacek said that was correct, and that there is no state overseeing of this type of use. The state leaves that up to the municipalities. The draft language reflects what most cities are doing now.

Councilmember Vitelli said the city does not want to see a seedy enterprise come into this city by way of this text change, and asked how the city is protected.

Police Chief Aschenbrener talked about the law enforcement plans that will be in place and ways they will prevent those seedy operations, i.e. sexually oriented

activities. Chief Aschenbrener believes that draft language that was created by staff well covers these concerns.

Councilmember Vitelli asked why this language was changed to felony from misdemeanor. Chief Aschenbrener said any sexual related crime is a felony and should there be problems, the law enforcement practices will be in place that quarterly checks can be done rather than yearly checks.

Councilmember Vitelli said he is comfortable with change the ordinance language now that the police chief has become involved.

Councilmember Krebsbach asked what the strength will be for the compliance checks. Chief Aschenbrener talked about reviewing this ordinance line by line and getting the language that is needed. Councilmember Krebsbach asked about the language as it pertains to the license holder and the employee.

Chief Aschenbrener said there are a number of schools in the metro area that offer massage therapy training / certification and the city has a lot of strength in enforcement with this requirement.

Councilmember Krebsbach asked about the hours of operation. Chief Aschenbrener said that is most likely covered under the PUD for The Village. Ms. Diehm said because the city would be allowing this as a permitted use, the council would not have the option to require certain hours of operation.

Councilmember Vitelli asked why this language refers to the "applicant", and not "applicant and employees". Chief Aschenbrener said the applicant is actually the license holder. Councilmember Krebsbach asked if "applicant and employees" be inserted in number 8 of the provisions. Chief Aschenbrener said it is because the applicant does not need to be a massage therapist. Chief Aschenbrener said that can be changed to make it "all employees".

Ayes: 5

Nays: 0

Mayor Huber said the discussion now comes to the licensing aspect and asked if there are any additional changes that should be made to the language.

Ms. Diehm said the draft proposal incorporates the licensing requirements and will go into the section of the ordinance that deals with licensing. Staff would like to bring additional information that deals with license revocation.

Councilmember Krebsbach asked that more clarification be made on the applicant and employee part.

Mayor Huber, on behalf of the city council, directed staff to come back with more language information.

Mr. Ross Fefercorn, Mendota Heights Town Center, is the planning applicant on behalf of Kimberly Lendt, owner of Relax-n-Tan, a prospective tenant that has come from Inver Grove Heights and would like to have her shop at The Village.

Mr. Fefercorn spoke on his personal experiences on massage therapy as well as the benefits of massage therapy. Mr. Fefercorn said he has a number of massage clinics in some of his developments, all having wonderful business practices.

Mr. Fefercorn said massage therapists also have background checks done on a regular basis. Mr. Fefercorn said Ms. Lendt also works with some clients with insurance coverage.

Ms. Lendt gave more information on her business history, running this business for about five years. Ms. Lendt spoke on how she monitors and hires qualified massage therapists; she currently has two therapists with 700 hours of training and 760 hours of training. Both are very well educated and she has had no black marks on this business.

Ms. Lendt said while in Inver Grove Heights, she was the license holder and her therapists also needed to go to the city to be licensed as well.

Hours of operation are Monday thru Friday, 9am to 9pm, and on Saturdays and Sundays, hours are 10am to 5pm. Although they hold some occasional early start times, they do not go past 9pm.

Councilmember Krebsbach asked if the language pertaining to applicant and employee will adversely affect her business. Ms. Lendt stated she has some concerns as her receptionists are sometimes under the age of 18 and the language as written would not allow for that.

Councilmember Duggan said he agrees that background checks should not have to be done on receptionist or other non-therapist personnel.

Councilmember Schneeman asked if this was a franchise. Ms. Lendt said this is a one owner operation.

Councilmember Duggan asked Ms. Lendt what her process is for background checks and hiring practices. Ms. Lendt said she and the therapists interview potential therapists, and they would not hire anyone until after going through the city's licensing procedures.

#### REQUEST TO PERMIT CHICKENS AS PETS

Mary Holland, 646 W. Marie Avenue, asked the City Council to consider allowing chickens as domestic pets in residential neighborhoods.

Mr. Sedlacek said staff receives a number of calls from people wanting to raise chickens in their yards.

Ms. Holland talked about how the chickens would be raised for personal use, for the eggs, as a holistic and sustainable lifestyle. Ms. Holland said she would not have chickens slaughtered.

Mayor Huber said he is concerned about how the neighbors would react to this, and they would certainly not expect chickens. There may be parcels in the city where this will work, but not all, and how the city would determine who can and cannot have chickens.

Councilmember Duggan reminded the council of the unhappy neighbors behind Fischerville when the coffee shop had chickens in their yard. The city needs to be doing

a lot more thinking on this request, and how would the city determine who gets to do this.

Councilmember Schneeman said there were neighbors that had pygmy goats that were not accepted well in the community. Councilmember Schneeman said she would not want to promote this.

Ms. Holland said considerations can be done to limit the number of chickens and other things.

Councilmember Vitelli asked what the benefit is to her. Ms. Holland said chickens made excellent pets as do cats and dogs. In addition, she knows what is going into those chickens to get a better product.

Councilmember Vitelli said he would not support this as it is a pet that is not expected by neighbors.

Councilmember Krebsbach said she is not in favor of this because of the vulnerability of the chickens in the harsh Minnesota winters. This is just not the right time.

Ms. Holland asked if this is something that would be considered in the future. Councilmember Krebsbach said it would be the very far future.

Councilmember Duggan said the city would also have to struggle with regulating additional structures as they do accessory structures.

Ms. Holland thanked the council for their time and consideration.

## COUNCIL COMMENTS

Mayor Huber thanked everyone that helped with the city's clean up day. The city had a great turnout.

Councilmembers Vitelli said he was amazed on the number of city employees that volunteered to make this a huge success.

Councilmember Schneeman talked about people being on the tennis courts and the parks are full.

Councilmember Krebsbach said she did not attend the cleanup day as she had a work commitment, but said she drove by later and everything was cleaned up very well. Councilmember Krebsbach thanked the staff who participated.

Councilmember Duggan said he watched the last meeting on the webstreaming and applauded the Mayor for his patience and consideration at that meeting.

Ms. Diehm provided an update on a procedural question that was raised at the last council meeting relating to deadlock councils and proper procedures. After consulting with the League of Minnesota Cities, staff found it would be good for the city of Mendota Heights review their procedures for the way meetings are handled. Staff has not found any agreed upon procedures, and would like to come back with some options.

Mayor Huber referred to the vacation request for 694 Hiawatha and said the applicant withdrew the application, and asked Ms. Diehm if there is anything else that is needed. Ms. Diehm said there is no further action needed but that the applicant may come back again.

Councilmember Krebsbach said she will be out of town the week of June 21<sup>st</sup>.

Mayor Huber explained that the council had directed staff to research options for having tie votes in these meetings.

Mr. Danielson said the fire department will be having interviews the week of May 18<sup>th</sup> for an assistant fire chief and asked for council volunteers on that committee. Mayor Huber and Councilmember Krebsbach volunteered to be on that committee, with Councilmember Schneeman acting as an alternate. The date for interviews will be held on May 20<sup>th</sup>.

ADJOURN

There being no further business to come before the Council, the Council adjourned to a closed meeting to discuss land negotiations  
Councilmember Duggan seconded the motion.

Time of Adjournment 9:00 p.m.

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Rebecca Shaffer  
Recording Secretary

ATTEST:

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John J. Huber  
Mayor