

CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY
STATE OF MINNESOTA

Minutes of the Regular Meeting
Held Tuesday, September 2, 2008

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 revised agenda as presented indicating that 8b has been added. Councilmember Schneeman seconded the motion.

Ayes: 5

Nays: 0

APPROVAL OF MINUTES

Councilmember Duggan moved to approve the minutes of August 5, 2008 as corrected. Commissioner Schneeman seconded the motion.

Ayes: 5

Nays: 0

Councilmember Duggan moved to approve the minutes of August 19, 2008 as corrected. Commissioner Krebsbach seconded the motion.

Ayes: 5

Nays: 0

CONSENT CALENDAR

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

- a. Acknowledgement of the Minutes from the August 26th Planning Commission Meeting.

- b. Acknowledgement of the Building Activity Report for July and August 2008.
- c. Acknowledgement of the Minutes from the Budget Workshop held August 18, 2008.
- d. Authorization of Purchase Order for Installation of Flat-Panel Video Monitor in Council Chambers.
- e. Authorization for Purchase of Play Components for 2009 Reconstruction of Friendly Hills Park Playground.
- f. Approval of Building Permit Request for Building Exterior Alterations at 2360 Pilot Knob Road.
- g. Approval of Sign Permit for Mendota Heights Orthodontics to be located at 750 Main Street.
- h. Adoption of Resolution No. 08-53: “A RESOLUTION APPROVING AN EIGHTEEN FOOT VARIANCE TO THE SIDE YARD SETBACK AT 2515 PILOT KNOB ROAD.”
- i. Adoption of Resolution No. 08-54: “A RESOLUTION FORMALLY ACKNOWLEDGING THE RECEIPT OF THE GIFT FROM ROTARY TO THE CITY OF MENDOTA HEIGHTS.”
- j. Adoption of Resolution No. 08-55: “A RESOLUTION PROVIDING FOR THE SALE OF \$3,200,000 G.O. IMPROVEMENT BONDS, SERIES 2008”.
- k. Adoption of Resolution No. 08-56: “A RESOLUTION ADOPTING 2009 PROPOSED BUDGET”; and
Adoption of Resolution No. 08-57: “A RESOLUTION APPROVING TENTATIVE 2008 LEVY COLLECTIBLE IN 2009”; and
Adoption of Resolution No. 08-58: “A RESOLUTION APPROVING FINAL 2008 TAX LEVY FOR SPECIAL TAXING DISTRICT NO. 1 COLLECTIBLE IN 2009”.
- l. Approval of the List of Contractors, dated August 28, 2008.
- m. Approval of the List of Claims, dated September 2, 2008, totaling \$369,616.50.

Councilmember Duggan asked for corrections to Item j, changing the resolution to reflect 7:00 PM as the meeting time in Item #2.

Ayes: 5
Nays: 0

Councilmember Schneeman seconded the motion.

Councilmember Krebsbach asked for clarification that the monitor (item d) will be used to show site plans. City Administrator Jim Danielson said that was correct. Councilmember Schneeman said Councilmember Vitelli and herself appreciate this new monitor as they will be able to see the presentations better as it will be better located. Councilmember Vitelli said it looks better than the former television on a cart that was used.

Councilmember Vitelli moved to authorize the City Administrator to issue Purchase Order(s) for materials and vendor services for a 52-inch flat panel monitor for the Council Chambers. Commissioner Duggan seconded the motion.

Ayes: 5
Nays: 0

Councilmember Krebsbach referred to item e and asked if these materials will be the spongy surface that many playgrounds use. Assistant to the City Administrator Jake Sedlacek said this is a typical surface and parks will do at least a portion for accessibility. When using this surface all over, it tends to break down. Mr. Sedlacek said Mr. Kullander's site plan does not indicate this material.

Councilmember Schneeman said she believes this spongy material is prone to getting holes in it.

Councilmember Krebsbach said this material seems to protect children by cushioning potential falls.

Councilmember Duggan mentioned some of the items in the quotation and asked if these are the materials Councilmember Krebsbach is speaking of. Mr. Sedlacek said he did not know.

Councilmember Duggan said he would also like to know when the playground equipment at Friendly Hills Park was last replaced.

Councilmember Duggan moved to table this item until further information is available from Mr. Kullander.

Commissioner Schneeman seconded the motion.

Ayes: 5

Nays: 0

Councilmember Schneeman asked to have item i pulled for discussion and said it is wonderful to get these types of gifts and reminded residents of the park bench donation program. Councilmember Schneeman said this is a good program as the residents enjoy using these benches.

Councilmember Duggan asked to have the resolution changed on Item #4 to say “WHEREAS, the City Council of the City of Mendota Heights have duly considered this matter and wish to acknowledge the civic mindedness of its citizens and officially recognize their donations.”

Councilmember Vitelli moved adoption of Resolution No. 08-54: “A RESOLUTION FORMALLY ACKNOWLEDGING THE RECEIPT OF THE GIFT FROM ROTARY TO THE CITY OF MENDOTA HEIGHTS.”

Commissioner Vitelli seconded the motion.

Ayes: 5

Nays: 0

Mayor Huber opened discussion on Item k and said Finance Director Kristen Schabacker prepared what was exactly agreed to for a first pass at the budget meeting a few weeks ago.

Mayor Huber said the resolution here would increase the levy 2009 by about \$483,000. Mayor Huber said the main drivers are:

\$208,000	Staff Wage/Salary Increase
\$126,000	Increase to Debt Service – Road Reconstruction
\$119,000	Purchase of Fire Truck (5 Yr.)
<u>\$30,000</u>	All other
<u>\$483,000</u>	

Mayor Huber said one action that Council may want to consider is the fire truck was presumed to be

financed over five years, keeping in mind that coming back to a future agenda is a fuller discussion on the final levy with Staff and Chief Maczko about the fire truck purchase. He asked for feedback on having the truck financed for five years as opposed to ten years, which would lower the levy amount about \$60,000. Mayor Huber said he is fine with whatever Council wishes to do.

Councilmember Krebsbach said the fire department has a ten year capital plan and would prefer staying with the five year.

Councilmember Vitelli said he would prefer setting this as ten years because it seems the depreciation should be related to the useful life of the truck, and this truck will probably last about 25 years.

Councilmember Krebsbach asked if the levy will drop if the truck goes to ten years. Mayor Huber said it would by about \$60,000. What has been prepared tonight can not be increased, but the Council can bring it down.

Councilmember Schneeman said she agrees with Councilmember Vitelli as this equipment lasts so long. Mayor Huber said he also agrees.

Councilmember Vitelli said it is good to keep the levy as low as possible for the residents.

Councilmember Duggan said the ten year makes more sense.

Councilmember Krebsbach said she is fine with the ten year as suggested by Councilmember Vitelli and will support this.

Councilmember Duggan moved to adopt the levy which includes the direction to presume that the financing is for a ten year period dropping the number to \$60,000.

Ms. Schabacker said she will revise the resolution so that the equipment certificate shows a levy

amount of \$60,000 assuming the ten year equipment certificate duration.

Councilmember Duggan asked for more refinement to the last resolution that would state the meeting time as 7:00 pm.

Commissioner Krebsbach seconded the motion.

Ayes: 5

Nays: 0

**MENDOTA HEIGHTS
LODGING INVESTORS**

Mr. Sedlacek introduced the application for a Zoning Ordinance Text Amendment, Conditional Use Permit, and Preliminary and Final Plat.

Mr. Sedlacek reviewed the site plan, showing the location of the parcel surrounded by I-494, Pilot Knob Road, and Northland Drive. This area currently exists in an industrial park, and has been sitting vacant for some time. The city has been hoping for an upscale restaurant on this location, and United Properties (the owner of the property) has come forward several times with their struggles to land a good tenant. United Properties have also presented a concept plan about a year ago for a service station, and Council was clear that there is to be no service station at this location.

Mr. Sedlacek said this new application is a concept that was discussed at the June 17th Council meeting, and contains details for a four-story, extended stay hotel as well as a separate building that will house a retail service center which would include two or possibly three new retail stores in it such as food service, coffee shop, dry cleaning, all being allowable uses in an industrial park.

Mr. Sedlacek said United Properties have been saying that their tenants are requesting these types of services to service the industrial/business park.

Mr. Sedlacek said Staff recommended that United Properties request a text amendment to the zoning ordinance as this type of development will need some flexibility as is done in a Planned Unit Development, however the property is only 3.7

acres in size and PUD's are required to be a minimum of 5 acres. Staff felt the change to allow the conditional use inside the industrial zone is more appropriate than changing the Planned Unit Development requirements.

Mr. Sedlacek said the regular process could be done, but would need a number of variances, and Staff wants to see if first, this concept is something that the Council would feel is an appropriate use of the site. If this is found to be true, the conditional use permit would be a little more permissive and easier to use.

Mr. Sedlacek said the zoning ordinance text amendment would be needed for the service center as a conditional use in the industrial district. Hotels are already allowed.

Mr. Sedlacek said these text amendment changes would affect any and all future development projects.

Mr. Sedlacek said the Planning Commission held their discussions and a public hearing at their August 26th meeting, and there have been some questions around the details. There were no public comments taken. Mr. Sedlacek said the Planning Commission voted 5-0 in favor (Norton absent, Viksnins excused himself from this case).

The applicants have requested Section 12-1G-2 of the Zoning Ordinance be amended by adding the following language:

Retail Sales and Service Complex, provided that:

1. The Complex be comprised of more than one building. Lot area for the retail site to be less than one acre;
2. The retail uses are listed as permitted or conditional uses in the B-2 Zoning District;
3. Drive-in and Fast Food Restaurants may be included as allowed in Section 12-1J-3;
4. The site of the proposed use is located adjacent to an Interstate Highway, and is within 300 feet

- of an interchange entrance or exit ramp with such Highway;
5. Cross parking and access shall be permitted;
 6. Hotels and Motels in the Complex may be a maximum of four stories, or 50 feet in height, notwithstanding the height requirements of the I District;
 7. The Floor Area Ratio of the Complex may be a maximum of 65%, notwithstanding the FAR requirements of the I District;
 8. Pylon sign along I-494 to be approximately the same height as the adjacent Courtyard by Marriott hotel, relative to the I-494 elevation;
 9. Exterior finishes shall be consistent with Conditional Use Permit application; and
 10. Buildings may be set back 35 feet from a front property line or side property line abutting a street, on the hotel lot.
 11. Building may be set back 40 feet from the rear property line or interior side property line not abutting a street, on the retail building lot.
 12. Parking spaces may be reduced to eight (8) feet in width and eighteen (18) feet in length.
 13. Parking spaces may be set back 10 feet from a front property line or side property line abutting a street.
 14. The required number of parking spaces for both buildings may be reduced by five (5) parking stalls.
 15. At least twenty five percent (25%) of the land area shall be landscaped with grass, approved ground cover, shrubbery and trees. All lots within the proposed hotel and retail sales development may be calculated together to meet the 25% requirement.
 16. Freestanding or pylon signs may be located 35 feet from a front property line or side yard abutting a street. This shall apply to those property lines adjacent to Interstate Highways. Freestanding or pylon signs may be 10 feet from interior side property lines.
 17. Up to three freestanding or pylon signs may be allowed on one lot within the hotel and retail sales complex. All other lots within the complex shall comply with the requirement of one freestanding or pylon sign.

18. Freestanding or pylon signs may be located ten (10) feet from a front property line or side yard abutting a public street. This shall apply only to those property lines adjacent to streets that are not Interstate Highways.
19. All other standards of the "T" Industrial District and other applicable zoning standards shall apply.

Councilmember Duggan asked if the fire department has reviewed the site and plans. Mr. Sedlacek said they have not, and they will have the opportunity to comment on this.

Councilmember Duggan asked if the fire department equipment can reach the 50-ft height. City Administrator Jim Danielson said there are other four-story buildings in the community, as well as the adjacent buildings.

Councilmember Duggan said he does not have a problem with the proposal in relationship to shared entrances and shared parking, but has some concern about the actual language regarding the signage in Item #8. Councilmember Duggan said if the Council makes a change to the ordinance, can they specify a specific building (as it relates to the Courtyard by Marriott in this case) because the text amendment would then not apply to future cases. Councilmember Duggan asked that this language be deleted.

Councilmember Schneeman said she remembers having a lot of discussion with that pylon sign at the Courtyard about the height.

Councilmember Duggan referred to Item #12 and said he does not have a problem with eighteen feet, but can not agree to reducing the width of 8-ft with the larger cars and SUVs that people are driving. Mr. Sedlacek said the applicant has agreed to stay with the 9-ft width. Councilmember Duggan said he would agree to the reduction of the length.

Councilmember Duggan referred to Item #17 and said he would not support having three pylon signs

on the lot for the retail center, and perhaps two on the hotel site would be acceptable.

Mr. Sedlacek said the applicant is concerned about that language as they don't want to have three pylon signs, but one pylon along with two monument signs. Mr. Sedlacek said the language can be changed to reflect that. Councilmember Duggan said he is not at this time aware of what the applicant is intending to place on the site.

Councilmember Duggan said he has no problems with Item #14 to reduce the total parking by five spaces and he is assuming that the number of parking spaces is based on the calculations of 9-ft.

Councilmember Duggan referred to Item #7 and said if looking at some of the calculation that were provided by Planner Steve Gritman, Page 5 Item 4 – Floor Area Ratio, with the suggestions of having the percentage at 65%. Councilmember Duggan said he would be more comfortable with 60% as Mr. Gritman's report shows 59.05.

Councilmember Krebsbach said her concern is the drive-in / fast-food and said one of the reasons the Council did not approve a gas station was the Council did not want to open up Mendota Heights to Mall of America traffic. Councilmember Krebsbach said Brown College is not interested in moving in there either.

Councilmember Krebsbach said she is not in favor of the drive-in and asked if there was a particular tenant in mind. Mayor Huber suggested waiting to get those questions answered when the applicant is at the podium.

Councilmember Schneeman said she would like to have some discussion on the lighting at night.

Councilmember Vitelli said he is comfortable with the recommendation of the Planning Commission and the Planner, which is reflected in the resolution.

Mr. George Burkards, United Properties, said these are all good questions. Mr. Burkards said the information given on the signage is incorrect, as they are looking to put in only one pylon sign with both the hotel and retail information, and two monument signs similar to what is in the Mendota Heights Business Park (one for the retail center and one for the hotel).

Mr. Burkards introduced Nate Gundrum from The North Central Group, and Gary Brink, from Brink Architects.

Mr. Burkards said the lighting will be high pressured sodium as is in the rest of the park. The lighting standards will be the same as throughout the business park as well.

Councilmember Duggan said he found a challenge in the ordinance, which states that the light should not flow over to another building, and can be up to 150-ft. if the neighbor does not object. Councilmember Duggan said in this case, there will be some light reflection even if it is reasonably shielded, to where at least slightly flow beyond the lot line. Councilmember Duggan said the Council might want to use the language already in the ordinance that says “per our ordinance).

Councilmember Duggan said the ordinance states “not to disturb the use or enjoyment of properties within 150 feet of the property under consideration”, and in this case, this would not apply but may be a concern with other cases that come up. Councilmember Duggan said if this is similar to what United Properties has done in the past, there should be no concern.

Mr. Burkards said the retail center will not be fast food restaurant because of the drive-in. The usage would be for a coffee shop, sandwich shop, and/or dry cleaners – there would be only three or four businesses. The total building is only about 5,500 sq. ft. The plans will be presented to the Council prior to being constructed as there are no designs done for this as there are no exact tenants. Construction will not be started until the hotel is

half way or all the way up. The drive-up facility could be used for a Starbucks or Caribou.

Mr. Burkards said fast food is defined as taking food to go. Councilmember Duggan said a “Jimmy John’s” can be taken to go and would be considered to be fast food.

Councilmember Krebsbach said it is a big difference on whether it is a McDonalds or a Culvers. Mr. Burkards said it can’t be a McDonalds as it would not be big enough. Councilmember Krebsbach said if this change is made, what would there be to ensure that a McDonalds/Culvers type restaurant would not be allowed. City Attorney Tami Diehm said the code does not currently differentiate between a drive thru, and a separate section of the code would need to be placed to address the Caribou type drive thru.

Councilmember Krebsbach said she would like for the Council to do that as it would make a big difference. Mr. Burkards said the entire building will not be a drive thru fast food restaurant as that is not their purpose. Mr. Burkards said the tenants wish to have some sort of drop off for dry cleaning and perhaps a small insurance agency. The largest tenant would most likely be 1,500 sq. ft. that would accommodate a Subway and perhaps a small coffee shop.

Councilmember Krebsbach said the applicant is asking the Council to re-do the zoning ordinance, and she wants to protect the city on this.

Councilmember Krebsbach said she once the Council has made these changes as proposed, then the Council has allowed fast food drive-ins.

Mayor Huber said, as an example, Fischerville could be considered fast food as people drive up and go in to get food to go.

Councilmember Duggan said he would be comfortable with a restaurant with a drive thru capability, and it would be a restaurant that does not include fast food.

Ms. Diehm said there needs to be some clarification from Staff as certainly a Subway restaurant would be considered fast food under the current zoning ordinance. Ms. Diehm said Staff would be creating a new definition of coffee shop and allowing that to have a drive thru facility, and this would limit it to that particular use.

Mayor Huber said he is not positive how the ordinance would create a restaurant use where people would drive up to a window and get their food to go and not walk in.

Councilmember Vitelli asked what the required size is for a typical fast food restaurant such as a McDonalds. Mr. Burkards said it would be probably around 6,000 sq. ft. on average. Mr. Burkards said his proposed facility would only be a total of 5,000 and 5,400. Mr. Burkards said the whole building is not going to be a fast-food; that is not their intent.

Councilmember Vitelli asked Councilmember Krebsbach what she is trying to make sure the Council avoids. Councilmember Krebsbach said she has nothing against McDonalds, but she believes that collectively the view has been this end of the city needs to remain fairly sedate.

Councilmember Vitelli said he believes things will get all tangled up if the Council is trying to define the difference between a Subway and a Hardees, and suggested that the Council consider saying that this building must be occupied by at least two tenants. That would prohibit any fast food restaurant such as that.

Councilmember Duggan suggested that Item #3 be deleted entirely, and simply have this as part of the conditional use permit for their application. Councilmember Krebsbach said she would like to see that definition 12.1c.3 deleted.

Mayor Huber said it sounds like there needs to be some work on the words. Ms. Diehm said if the Council keeps in mind that the zoning amendment

creates the framework under which the Council then evaluates a single application, and the zoning amendment needs to be broad enough to encompass anything that might come before the Council, and then in the conditional use permit application, the Council can place further restrictions on it. Ms. Diehm said if the Council hopes to leave open the possibility of a Subway it is important that the language on #3 is left in there. Ms. Diehm said to Councilmember Vitelli's suggestion, the Council could add additional language that says any retail building must contain a minimum of two tenants.

Mr. Sedlacek said restaurant use is a conditional use in the industrial zone and business for a particular type of restaurant where food is ordered over the counter is considered fast food. Although the restaurant is a conditional use, the fast food is not.

Mayor Huber said it would seem that Item #3 would then need to be left in and there would need to be conditions to the tenant as proposed by Councilmember Vitelli.

Councilmember Krebsbach asked about the restaurants that are combined, such as Arby's and Sbarros. Ms. Diehm said that would be considered one tenant as both have a common ownership.

Mr. Burkards said the materials used in this project are a result of his involvement and the service center will be of the same kind of materials as the hotel.

Mr. Nate Gundrum, Director of Development for The North Central Group, said at the June City Council meeting, he had the opportunity to introduce the Council to The North Central Group and walked through a preliminary development plan for this site. Mr. Gundrum said he also talked about the Homewood Suites hotel that they are proposing, and said he appreciated the Council's feedback at that meeting. Mr. Gundrum said they have been working with Staff and United Properties to pull together a conditional use permit application and

the request for the zoning ordinance text amendment.

Mr. Gundrum said he believes that since then, they have pulled together a plan that will not only meet the expectations of The North Central Group, but also that of United Properties and hopefully the City of Mendota Heights. Mr. Gundrum thanked Mr. Sedlacek and Mr. Gritman for all their work on this.

Mr. Gundrum shared information from an article that came out a few weeks ago in the US Today, which a JD Power and Associates satisfaction survey shows the Homewood Suites hotel ranking #1 in the extended stay hotel market.

Mr. Gary Brink, Brink Architects & Associates, reviewed the site plan and materials. Mr. Brink showed how the parking lot would be laid out, giving room for trucks and emergency equipment. Mr. Brink said there will no access on Pilot Knob Road.

Mr. Brink highlighted the inside courtyard of the hotel, that includes a basketball court and patio areas that can be used for meeting space, breakfast area and gas grill for residents that like to cook outside.

Mayor Huber asked how many units will be in the hotel. Mr. Brink said 120 unit.

Councilmember Krebsbach asked if this will be a concrete constructed building. Mr. Brink said this will be a four story wood frame. Mayor Huber asked if this complies with the fire code. Mr. Danielson said it does. Mr. Brink said the building will be sprinkled for NFPA 13 and the structure will be one-hour fire rated as well.

Mr. Brink indicated a gas main easement that runs along the south property line and said the trash enclosures will need to be located internally inside the lot; there being two of them for retail and hotel. These 8-ft high enclosures will also be made of the

same materials with solid metal gates to visually hide the containers from the guest views. Mr. Brink said there will not be a roof on the top as this makes it difficult for trash collection. Mayor Huber asked if cars will be able to park along this south edge of the parking lot. Mr. Brink said cars are allowed to be parked there; there just can't be structures over the gas lines.

Councilmember Duggan asked about screening of the trash enclosure. Mr. Burkards said the only screening will be on the I-494 side.

Councilmember Krebsbach asked if the site will be graded and will there be any trees saved. Mr. Burkards said the site will be graded and the trees that are there are scrub trees that will be removed.

Councilmember Duggan suggested screening that be placed along the back of the enclosure toward the hotel side with some fairly tall trees; screening more on the east side and west side with screening that will fill in.

Mr. Brink said the monument signs are to be internally lit, with overall dimensions of 6' x 10'. The sign will also be two-sided. Mr. Danielson said the ordinance allows 100 sq. ft. per side.

Councilmember Krebsbach asked if the fire protection for this plan adheres to at or above the code. Mr. Danielson said this will have to meet the fire code or exceed, and assumes the applicant has done so. Mr. Brink said this plan will be rated code is 13 and is the most restricted as it provides the most protection. Councilmember Schneeman said she is sure that Hilton requires the footprint for their hotels. Mr. Brink said they have a standard set that must be met that may or exceed the local requirements.

Mayor Huber asked Mr. Danielson for clarification that the city adopted the most restrictive codes. Mr. Danielson said that was correct, and the other hotels in that area are also wood framed.

Councilmember Krebsbach said it was her understanding that 3 stories can be wood frame, but 4 stories must be concrete. Mr. Danielson said he will check into that. Mr. Brink asked Mr. Danielson if their code was IBC2006. Mr. Danielson said that he believes it is but will check. Mr. Brink said the IBC (International Building Code) allows for 4 story construction. If it is a fully sprinkled 3-story building, then one additional story can be built. Other factors that can allow for addition square footage such as this is the frontage of the property.

Councilmember Duggan asked about the restrooms in the plans and said he would like to see more restroom space by the pool instead of the one unisex bathroom. Mr. Brink said that particular bathroom is for the exercise room and the swimming pool.

Mr. Brink showed where the public restrooms are located, and are used by the guests using the breakfast room area. Councilmember Duggan suggested putting in a third stall for the ladies room and another stall in the unisex bathroom.

Councilmember Duggan said for the number of employees and number of guests on that floor, is that enough restroom facility. Mr. Brink indicated another unisex restroom for employees by the laundry room. Councilmember Krebsbach said these facilities seem to meet the codes.

Councilmember Vitelli said he would not ask the Hilton chain to check out toilet facilities as he is sure they are very experienced in designing and would not think of questioning their layout. Councilmember Krebsbach said the Council's concern should only be that they are meeting code on this item. Councilmember Vitelli said he believes this plan looks excellent.

Councilmember Vitelli asked what the average size room is. Mr. Brink said about 420 sq. ft. for studio, which is a single room, one bedrooms are about 450 sq. ft.

Mayor Huber asked what the normal stay is. Mr. Gundrum said about 5 to 7 days.

Councilmember Duggan asked where the employees will park and what the average number of employees per shift is. Mr. Gundrum said there will be a cross access easement agreement with United Properties that will share cross access and cross parking and indicated on the map where the employees will park.

Councilmember Krebsbach asked if The North Central Group has had properties that have run their normal course for useful life as a hotel. Mr. Gundrum said typically in the franchise business, they will submit a franchise application to Hilton for whatever brand they want to build, and the term of the license is twenty years. At the end of that twenty years, the hotel undergoes a significant renovation to extend for ten additional years. Councilmember Krebsbach asked what happens after thirty years. Mr. Gundrum said typically after that point in time, the hotel is sold to another hotel brand, and in this case the rooms are large enough to be turned into corporate apartments.

Councilmember Krebsbach asked where The North Central Group is based out of. Mr. Gundrum said Madison, Wisconsin.

Councilmember Krebsbach asked where some of their other properties are. Mr. Gundrum said they have properties predominantly in the Midwest (Minneapolis, Eagan, Milwaukee, Madison), and some in the Phoenix, Arizona area.

Councilmember Duggan asked for clarification on the map of the sidewalk and pathway areas. Mr. Brink indicated those paths on the map.

Councilmember Duggan said he believes city code does not allow cooking facilities in hotel rooms, which was the purpose of looking at the sidewalks, to allow guests to walk to a restaurant, and asked Staff check into the code language on this.

Mr. Danielson said the applicant would have to meet the ordinance, and it sounds like the cooking area is not in the bedroom but a kitchen area. Councilmember Duggan said he would like clarification on this.

Mayor Huber asked for more discussion to Item #7 and asked if the applicant wishes to change to 60%. Mr. Sedlacek said the applicant is agreeable to change to 60%.

Mayor Huber asked about Item #8 and asked to have the specific height defined. Councilmember Duggan said the ordinance calls for 25-ft for the pylon height sign with an average grade level. Mr. Sedlacek said that would be for the front end of the building and the applicant's issue is that this area drops off in relation to the Marriott Courtyard next door. Mr. Gundrum said the adjacent hotel facilities have pylon signs that are approximately 35-ft. tall, and the reason they asked for the language change is so their sign is comparable to the adjacent signs. Mayor Huber said the Council does not have a problem with that. Mr. Gundrum said the elevation of I-494 is relatively consistent across the three hotel sites, except the topography on their site changes drastically. Mr. Gundrum said they have used the balloon strategy in past projects to determine the height, and has not as yet done this study for this project.

Mayor Huber said the ordinance needs to state the height in the language, and that the wording cannot reflect the name "Courtyard by Marriott" as it may not apply to other future applications. Mayor Huber said Staff can determine how to craft the appropriate language in this.

Mayor Huber said the words need to be changed to address the pylon sign and the monument signs, the parking space measurements, and the cooking issues.

Ms. Diehm said it is Staff's recommendation that Item #3 is left as is, and adding an addition item (i.e., #20) to say any retail building must include a

minimum of two tenants. Councilmember Krebsbach asked if this is specific only to this site. Ms. Diehm said this creates a conditional use in the code, but as Mr. Sedlacek introduced this, it contains very specific restraints. It may only occur within "X" number of feet from an interstate.

Councilmember Krebsbach asked Ms. Diehm if she feels that there is somewhere else down the road where the Council would not be safe with using this language. Mayor Huber suggesting the language requires having two tenants, one not being a food service use. Ms. Diehm said that would be fine, and the Council also has the right when approving the conditional use permit to place additional conditions on that particular application. If another application came before the Council, and it is unlikely that it would because of the constraints on location, the Council could add conditions to that application.

Councilmember Krebsbach said she believes that is difficult to do.

Councilmember Duggan said the code reads under 19.2(12) "restaurants, but not drive in or fast food types". Ms. Diehm said this would be creating a new conditional use permit in section 12.1. Councilmember Duggan asked if they would have to change the existing. Ms. Diehm said she will look into this. Councilmember Duggan said he does not believe the Council needs to rush into this tonight, and supports what the applicant is trying to do, but needs to get this language right.

Councilmember Duggan said he is concerned that this language, even though it's restricted to those area close to freeway intersections or off ramp/on ramps, he would not want this interpreted by somebody else down the line.

Councilmember Krebsbach asked if a public hearing is needed. Ms. Diehm said the public hearing was held at the Planning Commission, and therefore not needed today. Ms. Diehm said it is also important to remember that the Council is not placing conditions on this particular application in

this motion. In this motion, the Council would be drafting language for the zoning ordinance, and these are the parameters that will apply to any application which comes in for a retail sales and service complex in the industrial area.

Councilmember Duggan asked about Item #1 and asked if it should read “to be less” or “may be less”. Councilmember Duggan said the “should be less” is more strictly enforceable than “may be less”, which is the way most of the ordinances are crafted. Councilmember Duggan asked Ms. Diehm to look at this and come back with her recommendation. Mr. Sedlacek said Staff went that direction feeling that Council would want this to be more restrictive than more permissive.

Councilmember Duggan asked about Item #5 and asked for clarification on the cross parking and access, and asked if this was shared parking and shared access. Mr. Burkards said they have a document that has been drafted and will be recorded against this property which will permit cross access to the parking as well as cross access to the driveway. This is the exact wordage their attorneys have used, and this is permissible.

Mayor Huber said, as to emphasize the importance of Councilmember Duggan’s concerns, this goes beyond fine tuning the resolution, this is the law that will be on the books which is a little different than drafting a resolution that nobody may ever look at. Mayor Huber said Councilmember Duggan is trying to get the wording right and he agrees that something in front of the word access is needed. Mr. Burkards asked if this is needed as part of the ordinance requirement as it is strictly a restriction that United Properties on the site. Mayor Huber said this is the city’s law and they need to read in a sensible manner whether or not it pertains to this particular project. Mr. Burkards said they will agree to reword this as “cross access and cross parking shall be permitted”.

Ms. Diehm said without that language, each particular lot would be required to have its own

access. Ms. Diehm said the Council seems to be saying that by adding this provision they are giving them the right to deviate from the regular ordinance provision. Although this is site specific, it is important to include in the ordinance.

Councilmember Krebsbach said since legal counsel received this today, she thinks this should be held over to another time to allow Staff to redraft the language so the Council knows exactly what it is agreeing to.

Mayor Huber said he believes that Staff needs to make sure they understand the comments made by the Council.

Councilmember Vitelli asked if this will be a problem if it is delayed as this project is so close, and he would hate to see the applicant make another trip. Councilmember Vitelli said he is not OK with tabling this and feels this could be moved upon with the changes as outlined.

Councilmember Vitelli said he would be in favor of the Council communicating with the applicant without the applicant having to attend the next meeting.

Councilmember Duggan asked if once the language is accepted and approved, does it have to be published in the newspaper. Ms. Diehm said she does believe public notification is required.

Councilmember Duggan said if there is no clarification tonight on the food cooking, nothing else should be approved. Councilmember Krebsbach said if somebody is doing business in Madison, that is part of doing business, and does not think the Council should rush something.

Mayor Huber said Staff is going to take these comments and determine how to change these points 1 thru 19, and does not think the majority of the Council is willing to pass this tonight. Mayor Huber said he believes that Staff will engage into conversations with the applicant through this

process to make sure the works fit the ordinance appropriately.

Mr. Danielson reviewed the proposed text amendment with the following changes:

1. The Complex be comprised of more than one building. Lot area for the retail site to be less than one acre (keep the “to” in)
2. The retail uses are listed as permitted or conditional uses in the B-2 Zoning District (stay as is)
3. Drive-in and Fast Food Restaurants may be included as allowed in Section 12-1J-3 (needs to keep this in and Staff will think of some wording that will prevent a McDonalds type fast food)
4. The site of the proposed use is located adjacent to an Interstate Highway, and is within 300 feet of an interchange entrance or exit ramp with such Highway (stay as is)
5. Cross parking and access shall be permitted (change to say “cross parking and cross access shall be permitted”)
6. Hotels and Motels in the Complex may be a maximum of four stories, or 50 feet in height, notwithstanding the height requirements of the I District (stay as is)
7. The Floor Area Ratio of the Complex may be a maximum of 65%, notwithstanding the FAR requirements of the I District (changing to 60%)
8. Pylon sign along I-494 to be approximately the same height as the adjacent Courtyard by Marriott hotel, relative to the I-494 elevation (removing “approximately the same height as the adjacent Courtyard by Marriott hotel” and come up with some alternative language that will be acceptable to the Council , Staff and applicant.)
9. Exterior finishes shall be consistent with Conditional Use Permit application (stay as is)
10. Buildings may be set back 35 feet from a front property line or side property line abutting a street, on the hotel lot (stay as is)
11. Building may be set back 40 feet from the rear property line or interior side property line not

- abutting a street, on the retail building lot (stay as is)
12. Parking spaces may be reduced to eight (8) feet in width and eighteen (18) feet in length (removing “eight (8) feet in width” for the stall size)
 13. Parking spaces may be set back 10 feet from a front property line or side property line abutting a street (stay as is)
 14. The required number of parking spaces for both buildings may be reduced by five (5) parking stalls (stay as is)
 15. At least twenty five percent (25%) of the land area shall be landscaped with grass, approved ground cover, shrubbery and trees. All lots within the proposed hotel and retail sales development may be calculated together to meet the 25% requirement (stay as is)
 16. Freestanding or pylon signs may be located 35 feet from a front property line or side yard abutting a street. This shall apply to those property lines adjacent to Interstate Highways. Freestanding or pylon signs may be 10 feet from interior side property lines (stay as is)
 17. Up to three freestanding or pylon signs may be allowed on one lot within the hotel and retail sales complex. All other lots within the complex shall comply with the requirement of one freestanding or pylon sign (changing to “ ‘ to three freestanding signs; one pylon and two monument signs’ may be allowed on one site...”
 18. Freestanding or pylon signs may be located ten (10) feet from a front property line or side yard abutting a public street. This shall apply only to those property lines adjacent to streets that are not Interstate Highways (stay as is)
 19. All other standards of the “I” Industrial District and other applicable zoning standards shall apply (stay as is)

Mr. Danielson said there may be an Item 20 to address the retail building having to have more than 2 tenants.

Councilmember Duggan said in relation to Steve Gritman's report (pages 5 and 6), there is some wording about diminutive variances that may be needed and would go forward with adopting this amendment. Councilmember Duggan asked if this needs to be included or does this happen with the application is back for review.

Ms. Diehm said the new section creates a separate conditional use permit framework that allows the applicant to move forward with what they have proposed without seeking variances and their request would not include any variances.

Ms. Diehm confirmed that the amendment will be published and effective upon publication.

Mayor Huber said this discussion has been about the text amendment, but there is also the matter of the conditional use permit and preliminary site and building plans.

Ms. Diehm said these can be discussed but the Council cannot act upon it under the text amendment has been approved.

Mayor Huber asked for any discussion on these matters.

Councilmember Duggan said Item #7 is not needed because it is already included in the existing ordinance.

Councilmember Duggan asked if it is known that the property description is as presented is for the whole site. Mr. Burkards said that was correct. Mr. Sedlacek said this is the correct legal description. Mr. Burkards said there is only one now, but there will be two later.

Councilmember Vitelli and Councilmember Schneeman both said they think this is a great project. Councilmember Vitelli asked Staff to make certain they address closely the pylon sign height issue. Councilmember Duggan said if a variance is needed, a hardship would be identified as the

contour of the land. Councilmember Duggan said he would be comfortable with the applicant coming straight back to the Council without going to the Planning Commission. Ms. Diehm said the Council needs to be careful because if the applicant is asked to apply for a variance it would have to go through the Planning Commission but Staff could come up with some other alternatives, maybe putting a height restriction in using the string test that is used for setbacks.

Councilmember Schneeman moved to table this case until the next City Council meeting.
Councilmember Krebsbach seconded the motion.

Ayes: 5

Nays: 0

BUILDING PERMIT RENEWAL

Mr. Sedlacek apologized for not having this information in the Council packets. Mr. Sedlacek said a building permit was issued on April 11, 2007 to Mr. Douglas Holman, for the property located at 694 Wentworth Avenue, for the construction of a new home on that property.

Mr. Sedlacek said construction has since stopped as Mr. Sedlacek recently sent a letter and documents to Mr. Holman that his building permit had expired on April 11, 2008. The code allows for this to be reinstated if Council chooses to do so and upon written request.

Mr. Holman has requested permission to have the building permit reinstated or extended. Mr. Sedlacek said Code Enforcement Officer Paul Berg has submitted the following conditions that need to be met should the Council agree to reinstate or extend this permit:

- 1) Apply for a new building permit with a suggested fee to be charged to cover additional Staff time/involvement in administering this expired permit at one half of the original permit fee which would be \$1,056.88.
- 2) Supply Staff with a current list of subcontractors who will be involved with the recommencing of construction so Staff can confirm required city and or state licensing.

- 3) Respond with a written commitment from Mr. Holman insuring that completion of the project with the issuance of a Certificate of Occupancy being completed by a date set by City Council.
- 4) Submit report from structural engineer as to the repair of the damaged foundation wall to Staff as Staff must inspect repair to insure structural code compliance.

Councilmember Duggan said he would request that Item #4 be completed first and then brought back to the Council or to Staff. Councilmember Duggan said this is something that is manageable, and if the applicant does not have some financial back-breaking reconstruction to do, the city will need to know that this building is structurally sound. Mr. Sedlacek said Items 2, 3 and 4 would have to be done before a new building permit could be issued.

Councilmember Duggan said he is sure the neighbors are not happy that this project has been sitting there unfinished for a long time in its current state, but if there is damage, certainly the potential occupant wants to know and get that repaired. Councilmember Duggan said it needs to be clarified that there is damage, and what is the cost of all that damage, and is that something they are able to pursue.

Councilmember Krebsbach said that is not the Council's business.

Councilmember Duggan said the Council should know that the structural engineer has submitted a report telling them that it is sound and the that applicant can go ahead and build it, or if it was not sound.

Councilmember Vitelli said he believes this cannot be extended because it expired, but rather will need to be renewed. Mr. Sedlacek said according to code, the permit needs can be extended if done before the original contract expires. Councilmember Vitelli said this is then a renewal because the old one expired.

Councilmember Schneeman said Mr. Holman provided a letter that states the structure issue has been addressed and he wants to proceed, and asked Mr. Holman what has been done and how he will fix this.

Douglas Holman, 694 Wentworth Avenue, said he has engineer orders to address the structural issues on the property. Mr. Holman said there was more than just a wall that caved in, as there was some heaving over the winter.

Mr. Holman said the structural engineer has orders for what needs to be done, and the block guys are actually waiting on this meeting on the approval to go ahead and proceed to fix this.

Mr. Holman said the part of the wall caving in was wet this spring and when driving next to it, the ground pushed in. The structural engineer will verify that the wall was not constructed correctly.

Councilmember Schneeman said the neighbors have been calling her because this project has been very dangerous as it sits there the way it has.

Councilmember Schneeman asked the applicant if he is prepared financially to go forward with this once the permit has been issued. Mr. Holman said he does.

Councilmember Duggan asked the applicant if he would be able to tear the whole thing down if the structural engineer tells the applicant that this needs to be done. Mr. Holman said he would.

Councilmember Duggan asked if the engineer report has been submitted to Staff. Mr. Holman said he has not done that yet, but will do so as soon as it is available from his certified engineer.

Councilmember Vitelli said for him to support this new building permit, he would like to be convinced that the applicant has the financial resources to build this house as the Council wants to see it built. Councilmember Vitelli asked if the applicant if there are any liens on the property as of now. Mr.

Holman said he does not. Councilmember Vitelli said the word on the street, based on neighbors and calls to City Hall, is that the applicant has not paid the excavator, the carpenter, and the mason subcontractor. Mr. Holman said the mason has not been paid because he needs to fix the issues that caused this problem.

Councilmember Duggan said that is a private matter, although it pertains to the city in order to get the permit issued to continue the project.

Councilmember Vitelli asked why this was not done in the year timeframe, and why should the Council grant the permit again. Mr. Holman said he has a lot of money tied up in this project and wants to finish it.

Councilmember Vitelli said there are seven bags on the property and asked if there were asbestos from the ceiling tiles in the bags. Mr. Holman said there were not, and there was not asbestos in the house.

Councilmember Vitelli asked why this has taken so long. Mr. Holman said those bags were supposed to go in the dumpster a long time ago, and now because the way the site it, it's hard to get to them.

Councilmember Schneeman asked what is in the bags. Mr. Holman said they were floor tiles, ceiling tiles, and things from the house that he had tested. Councilmember Schneeman said she has seen the applicant out in the yard with his truck and believes he could carry some of that stuff out.

Mayor Huber asked Staff what the Council's ability is to check to see what is in those bags. Mr. Danielson said it sounded like the applicant has had the contents tested for asbestos, and Staff would like to see a copy of those tests. Mayor Huber said it is time the city research what their ability is to see what is on the property.

Councilmember Vitelli said the neighbor complains that the temporary silt fence is 7 feet on their property. Mr. Holman said he believes that is false

as prior to building the house, he had surveyors place the fence according to what the survey showed. Councilmember Vitelli said there is a setback on the silt fence and according to the neighbor, the surveyor has confirmed that this fence is currently 7 feet on their property. Mr. Holman said he was not aware of that.

Councilmember Duggan asked who put the silt fence up. Mr. Holman said it was the excavator.

Councilmember Duggan said he believes this should be delayed until all the property submittals have been presented to the city (i.e., what is in the bags, a resubmittal of the survey that was done properly and officially, somebody from Staff that has checked that the silt fence was indeed on the neighbor's property). Mr. Holman said he is more than happy to remove the fence. Councilmember Duggan suggested that the applicant bring a copy of the survey to the city if not already done, and let Staff take a look at the property so that the applicant and the neighbor can work more happily together because Staff has helped to verify where that fence should be.

Councilmember Duggan said information should also be submitted as to what is in those bags, hopefully from a certified agency stating it is not asbestos, and then the method of removing them especially if they are suspect.

Councilmember Duggan said reports from the structural engineer must be submitted stating what needs to be done to rectify the foundation of the building. How the applicant pursues his issues with the mason is no business of the city.

Mayor Huber said it may be possible to add conditions #5 and #6 so that these items get taken care of before #1 happens, phrasing it such as "that no silt fence or other impacts of construction are impacting adjoining neighbors and if so, that condition is corrected before the building permit is issued".

Mayor Huber said these bags should be removed before the permit is issued as well.

Ms. Diehm said it sounds as though the applicant is allowing the city to come onto the property and take a look at those bags, and maybe the city should just have the applicant agree to that here and then it can be arranged to have Staff go out to the property and take a look. Mayor Huber asked Mr. Holman if he were agreeable to that. Mr. Holman said he was.

Councilmember Duggan said there has been some sheeting material there for some time exposed to the elements, and asked if these materials will be used as they have been sitting unprotected for several months. Mr. Holman said there are some sheets that will not be usable, but he will be able to use most of them.

Councilmember Vitelli said he can go either way, but with all that has to be done with the Staff, he does not understand why the applicant is only getting charged one half of the fee for a new building permit.

Councilmember Duggan said he would support half if Staff feels this is reasonable so that the applicant can finish what he is trying to do properly and as soon as possible.

Mr. Ron Berfelz, 688 W. Wentworth Avenue, said he is the applicant's neighbor. Mr. Berfelz said he has talked to Mr. Holman and is pretty sure there are asbestos floor tiles in those bags. Mr. Berfelz said Mr. Holman said he has had his property surveyed and the monument pins that Mr. Holman was basing his silt fence on was the old marks. Mr. Berfelz said when there are two old farms coming together, sometimes there is a difference in where the monument pins are. Mr. Berfelz said he has found out that the new monument pins were exactly 6½ feet from where the old monument pins were (not 7 feet as he originally claimed). Mr. Berfelz said what Mr. Holman thought was the correct spot was the old monument pins, and will give Mr. Holman the benefit of the doubt and asked to have that fence moved to the correct spot. Mr. Berfelz

said he now has the property marked correctly for Mr. Holman.

Councilmember Duggan asked when the original house was built. Mr. Berfelz said it was built in the 1940's and still knows the lady that lives there.

Matt Steiner, 702 Wentworth, is the neighbor on the other side, and has the concern about if there is some type of legal issues about the foundation and Mr. Holman, this may end up in court for a long time, and what happens to the process as far as renewing the permit. Mayor Huber said he is concerned about is that if this process drags on, visually this is very frustrating and becomes a nuisance. Mayor Huber said he believes that there needs to be some sort of temporary fence around this area so kids do not get hurt.

Mayor Huber asked what date does the Council want to kick this out to. Mayor Huber asked Mr. Holman if he would be able to complete the process by April 17, 2009. Mr. Holman said he would.

Councilmember Duggan suggested that the Council, considering winter is coming, be reasonable in allowing three or four more months to get this done.

Councilmember Vitelli said the applicant is not even asking for this and if he said he can get it done by April 17, 2009 then he does not want to discuss other dates.

Mr. Steiner said he would like to see a barrier between his property and this property because this whole is about 12 feet deep. Mayor Huber said he would like to see some type of fencing put on the applicant's property to keep people out.

Councilmember Schneeman asked code enforcement and was told they do not require this. Councilmember Schneeman said she feels this is absolutely necessary.

Ms. Diehm said the Council can ask the applicant if he would voluntary put some type of fencing up.

Mayor Huber asked the applicant if he would be willing. Mr. Holman said he would be.

Councilmember Schneeman moved to approve the renewal of the building permit for 695 Wentworth Avenue as proposed with the conditions as outlined. Councilmember Vitelli seconded the motion.

Ayes: 5
Nays: 0

COUNCIL COMMENTS

Councilmember Schneeman said it was the first day of school today, and is sure there has been a lot of talking at the dinner tables this evening and wished all students good luck.

Mayor Huber said he was at Tommy Chicago's Pizzeria and it was terrific. Mayor Huber said he is now waiting upon Theresa's opening as well.

Councilmember Krebsbach said the kids are growing up in her neighborhood and it's good to see everyone back in school again.

Councilmember Duggan said TK's in Lilydale is doing the collector car show again this weekend.

ADJOURN

There being no further business to come before the Council, Councilmember Schneeman moved to adjourn the meeting to the closed session to discuss Public Works Labor Negotiations. Councilmember Duggan seconded the motion.

Ayes: 5
Nays: 0

Time of Adjournment 9:30 p.m.

Rebecca Shaffer
Recording Secretary

ATTEST:

John J. Huber
Mayor