

CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY
STATE OF MINNESOTA

Minutes of the Regular Meeting
Held Tuesday, October 21, 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 Schneeman moved adoption of the agenda as presented. Councilmember Duggan seconded the motion.

Ayes: 5
Nays: 0

APPROVAL OF MINUTES

Councilmember Duggan moved to approve the minutes of October 7, 2008 as corrected. Commissioner Vitelli seconded the motion.

Ayes: 5
Nays: 0

CONSENT CALENDAR

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

- a. Acknowledgement of the September Treasurer's Report.
- b. Acknowledgement of the Report from the Traffic Safety Committee.
- c. Acknowledgement of the 17th Annual Fire Awards (A.R.R.T., Associated Bank, Brown College, Checker Auto Parts, Eagle Point Condo Association, Eagle Ridge Condo Association,

Lennox, Mayflower, Patterson Dental, Somerset Country Club, TAJ Technology, Tempco Manufacturing).

- d. Authorization for issuance of a Purchase Order for Public Works Garage Furnace Replacement.
- e. Authorization for Purchase Order for Sander for Dump Truck.
- f. Authorization for Mayor to sign Engagement Letter for 2008 Audit.
- g. Approval of Insurance Renewal.
- h. Approval of Sign Permit for 750 Main Street, Suite #215.
- i. Approval of Sign Permit for 1295 Northland Drive.
- j. Adoption of Resolution No. 08-77: "A RESOLUTION APPROVING SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR A 1500 GPM ENGINE."
- k. Adoption of Resolution No. 08-78: "A RESOLUTION ADOPTING THE DAKOTA COUNTY, MINNESOTA ALL-HAZARD MITIGATION PLAN."
- l. Adoption of Resolution No. 08-79: "A RESOLUTION AUTHORIZING THE CITY OF MENDOTA HEIGHTS TO ENTER INTO A MUTUAL POLICE ASSISTANCE AGREEMENT FOR ENFORCEMENT OF TRAFFIC SAFETY LAWS".
- m. Approval of the List of Contractors, dated October 14, 2008.
- n. Approval of the List of Claims, dated October 21, 2008, totaling \$218,412.30.

Councilmember Duggan seconded the motion.

Ayes: 5

Nays: 0

Councilmember Schneeman asked to have item b pulled and said the Traffic Safety Committee has done a wonderful job and has been addressing residents concerns.

Councilmember Schneeman asked to have item f pulled and said she would like to have Staff send out RFP's next year to auditing companies.

Councilmember Schneeman said this is the 6th year

that the City has been with HLB Tautges Redpath, and she has no problem with their performance, but it would be a good thing for the city to do.

Councilmember Duggan referred to Page 5 of Ms. Schabacker's report and asked if the auditors need to do the Audit and Processing Financial Statement Document part. Ms. Schabacker said it was an error in the recommendation that says \$37,600 and it should be \$38,600

Councilmember Schneeman moved to acknowledge the Report from the Traffic Safety Committee and Authorization for Mayor to sign Engagement Letter for 2008 Audit as presented.

Commissioner Duggan seconded the motion.

Ayes: 5

Nays: 0

PUBLIC COMMENTS

Mayor Huber reminded everyone that the election will be held on November 4th and that the City Council meeting will begin at 8:30 p.m. after the polls close at 8 p.m.

Mayor Huber recognized students in the audience from Cretin-Durham Hall High School.

VILLAGE UPDATE

Mr. Ross Fefercorn, developer of the "Village", presented a progress report and thanked all the people in the city who have helped with this project, and talked about the sense of community that has been created in this development.

Ground was broken for the 750 Main Street building, which is the largest of the four commercial buildings, on August 15, 2007 and is substantially completed and talked about the tenants in that building. Mr. Fefercorn talked about the successes of those tenants, most of them having increased / record sales since moving into the development. Some tenants that will be coming in include St. Paul Oral Surgery, Dr. Andrews from Mendota Heights Orthodontics, Mendota National Bank and Trust and MFD Travel Company.

Mr. Fefercorn highlighted some statistics:

750 Building

- 44% of the total square footage has been leased.
- Plans are in the works for a major restaurant tenant, and more information will be coming on that.
- 47% of the office square footage has been leased; 32% for the retail space.

740 Building

- 100% leased: Verizon, Eyes of Mendota

730 Building

- 70% leased: Sage Market, Tommy Chicago Pizza.

720 Building

- 2,300 sq. ft. of office space remains unleased

Mr. Fefercorn reviewed the parking maps on the site and indicated where the underground parking is located.

Mr. Fefercorn presented a drawing of the proposed clock tower that will be above the entrance to the 750 Building's underground parking and elevators. The clock tower will have clocks on all four sides; the clocks being built by Electric Time out of Massachusetts. Mr. Fefercorn said these will most likely be the first of its kind and explained how the clocks will be lit up with multi-colored LED lights, with continuous color changes. Mr. Fefercorn said he hopes this will become an iconic symbol in the city, and hopes it will be completed by the annual tree lighting ceremony.

The tree lighting event this year will be held on Saturday, December 6th, from 3:00 p.m. until 8:00 p.m. These hours have been extended this year to accommodate the retailers who wish to stay open later. Santa will be there, along with carolers, face painters and hay rides, having the Mayor and other dignitaries attend.

Mr. Fefercorn talked about the housing in the development. Currently, there are three townhome

buildings and two condominium buildings for a total of 55 units, of which there are twenty townhome units and 35 condominium units. There were originally 36 condominium units, but two of those units were combined to offer a larger unit. Of the total of 55 units, 36 are sold and occupied. There are 14 remaining units left to sell (3 are completely finished models, 1 new model is under construction in the condominium building and there will be 10 unfinished units, 2 of which are townhomes and 8 are condos). Mr. Fefercorn said all things considered, it is not so bad in the housing market. Most of the buyers are now waiting to sell their homes before purchasing one of these units, which was not the case a few years ago.

Mr. Fefercorn said they are slowing cleaning up the staging area and checking the irrigation system for leaks before the winter season comes in. The water feature for the pond has not been checked yet, and they are looking into the possibility of making the system work during the winter months.

Mr. Fefercorn said the previously damaged sod along the trail system will soon be replaced and talked about how the trail is a great amenity for the city.

Mr. Fefercorn said there have been some questions regarding the unsavory activity on the part of North Central State's Regional Council of Carpenters and talked about the conflict between the union and non-union carpenters. Mr. Fefercorn said he hired Regis Drywall, who used to be union carpenters, but chose to leave the union and become a non-union shop. Mr. Fefercorn said he received a letter on August 4, 2008 from North Central State's Regional Council of Carpenters asking Mr. Fefercorn to fire these carpenters as they are not in compliance with practices and standards, and announced that there will be lawful picketing and literature distribution in the area. Mr. Fefercorn said he, the city and the tenants have the opportunity to object to non-union labor performance. Mr. Fefercorn said all this has happened a year after Regis was hired.

Councilmember Krebsbach said it has been wonderful to see this vision, which started years ago, come to fruition.

Councilmember Krebsbach asked if the condominiums have balconies. Mr. Fefercorn said they all do, with several of them having two balconies. The townhouses also have their own private outdoor space.

Councilmember Krebsbach asked Mr. Fefercorn what his view is on the possibility of having an overpass crossing over Highway 110 from the Village to the Plaza. Mr. Fefercorn said he believes Highway 110 is a very busy street and the high speeds are a concern. Mr. Fefercorn feels that anything that the Council can do in working with MnDOT to soften the volume of traffic and that a bridge would service to calm the traffic, making drivers slow down. Mr. Fefercorn said the logical place to have the bridge would be to connect to bikes and walking paths, and it would seem to make sense to have it come off the trail along Dodd Road.

Councilmember Krebsbach said it would be beneficial to have the highway between Delaware and Dodd become a parkway, perhaps extending to Lexington and Highway 13. This would also affect the traffic and tie the city together. Mr. Fefercorn said MnDOT would most likely prefer that the traffic along Highway 110 be continuous, and cross traffic be diverted in other more practical ways.

Councilmember Krebsbach asked about the kitchen upgrades at Sage Market. Mr. Fefercorn said they added a full set of restaurant equipment that will allow them to better serve their customers.

Councilmember Vitelli complimented Mr. Fefercorn on the more than adequate space in the underground parking. Councilmember Vitelli said he is also very pleased with the service that was provided at the Eyes of Mendota and the new Verizon store.

Councilmember Vitelli said the Sage Market now has menus for lunch and dinner, and was pleasantly surprised on the number of people at Tommy Chicago's Pizza.

Councilmember Vitelli said Mr. Fefercorn has done a great job and is pleased with the building momentum.

Mr. Fefercorn talked about the synergies between the customers and retailers at the Village, making connections with others such as the Farmers Market.

Councilmember Vitelli said the Sage Market now has a large room which can be used for large groups, and the meeting room rate is waived for non-profit organizations.

Councilmember Duggan asked if the union protesters need a permit to picket on city property. City Attorney Tami Diehm said they do not.

Councilmember Duggan referred to discussions a few years ago where Sibley High School wanted to display a flashing information sign and was turned down by the City. Mr. Fefercorn said the clock tower would not work that way, and would not be a flashing light. Mr. Fefercorn said there are settings that can be used to have the colors changed for a particular season or holiday, and would be left that way for awhile. It is not the intention to have these lights continuously flash.

Councilmember Duggan complimented Mr. Fefercorn for the work that was done, and the cooperation that was performed between the developer and the city.

Councilmember Duggan asked if there is a possibility of having more housing added. Mr. Fefercorn said the property is zoned for an additional 19 two-story townhome units, but he will not be constructing them until there is a better market for it. Mr. Fefercorn said some of this property is near to the high traffic on Dodd Road

and he wants to study that traffic before going forward.

Councilmember Schneeman said she believes the ambience of the Village is exactly what the Council has been hoping for. Councilmember Schneeman said she loves the housing, and asked Mr. Fefercorn to consider elevators in some of the units. Mr. Fefercorn said elevators usually add about \$90,000 to the cost of a unit.

Mayor Huber asked if there is any possibility to have some mailboxes placed in the area. Mr. Fefercorn said he has been working on it, having talked to the Post Office about some good spots.

Councilmember Krebsbach asked if there will be a possibility of the Caribou expanding. Mr. Fefercorn said Caribou has very specific guidelines on the layout of their stores, and that they like to have the stores “more crowded” than having more empty space.

Councilmember Schneeman said Snyder’s is wonderful and getting busier as people notice that it is there. Councilmember Schneeman said the store is a bit smaller, which makes it easier to find things. Mr. Fefercorn said the store is much like a European corner pharmacy where they sell the medical supplies, but not like a smaller version of Target.

Mr. Fefercorn talked about the sustainability of the Village, where the retailers rely on others within the development for certain items, as there are no two stores that will sell the same items (i.e. Snyders will not sell dairy products because Sage Market does, and Sage Market cannot sell bulk cheese because E’s Cheese does). This all creates synergies within the development.

Mr. Fefercorn talked about some awards that the Village has won for the best mixed used landscape development: Minnesota Shopping Center’s Starr Award for the best mixed use development and the Business Journal’s best in Real Estate Mixed Use

Award. Mr. Fefercorn presented the city with their copies of these awards as well.

CASE NO. 08-27, GOBLISCH

Assistant to the City Administrator Jake Sedlacek introduced the application for a variance for a side yard setback for the property located at 694 Ocala Lane. Mr. Sedlacek said the applicant is present at the meeting.

Mr. Sedlacek said the applicant constructed a pergola along the side of the existing garage to cover a small boat. The structure was built up to 1-ft from the property line, and the code requires structures to be 10-ft from the property line.

Mr. Sedlacek said the Planning Commission held a public hearing on this matter at their September meeting and the Planner recommended denial as there was a lack of hardship defined with the findings that there is no unique condition of the property that would create a hardship, and that the project is not consistent with the character of the neighborhood and would actually alter that character.

The Planning Commission recommended 6-0 (Field absent) to recommend denial of the variance as requested, with the conditions that the applicant will need to obtain a demolition permit and that the applicant should consult with the Building Code Official prior to the demolition to receive the proper permit.

Mr. Mark Goblisch, 694 Ocala Lane, reviewed his powerpoint presentation and apologized for not being at the last council meeting. Mr. Goblisch said he was not aware that he needed to be present at that meeting.

Mr. Goblisch said he was prepared at the Planning Commission meeting that he needed to define a hardship, and that he has based his decision to build this structure as it seemed to be a reasonable, practical and sensible way to use his property.

Mr. Goblisch said this is the most practical and common sense place to put his boat, as it is the only accessible portion of his property from the driveway. The planners felt his argument did not meet the hardship requirement of the ordinance.

Mr. Goblisch said he was not aware of the side yard requirements at the time he built the pergola roof. He did not know he needed a variance. Mr. Goblisch said although the Planning Commission was very sympathetic to his situation, they could not find a hardship.

Mr. Goblisch provided pictures of his property and said he has obtained signatures from neighbors showing they have no problem with this pergola.

Mr. Goblisch said he defines the hardship as this portion of the property being the only accessible area from the driveway, as he does not wish to drive through his yard to get to the back of the property. In addition, it is the location of the home and the fact that the garage cannot be moved.

Mr. Goblisch said there is still enough open space (over 25-ft) between his pergola and the neighbor's home, so there is a preservation of open space. Should the neighbor decide to build into some of that open space, Mr. Goblisch said he would reconsider re-examining that open space issue.

Mayor Huber thanked Mr. Goblisch for attending the meeting and feels that if this is denied, the structure will unfortunately have to be torn down. Mayor Huber said this is something that the council does not take lightly and it is difficult to come to the decision that this needs to be done. Mayor Huber explained to the applicant that there is a reason for the setback requirements to allow for space between properties to make sure there is open space. Mayor Huber said if the variance is granted, it runs with the land and should the property change owners, and at that point, the new owner could put in anything he wanted because he already has the variance. The city would have no control over this.

Mayor Huber said if the applicant had come before the city seeking a variance before he built the pergola, he would have voted it down as he does not want to see structures built so close to property lines. Mayor Huber said by approving this, precedence would be set for future applications.

Councilmember Vitelli said he agrees with the Mayor and does not know how the city would be able to say no to residents with similar requests. There is not a hardship in this case, and the applicant has a boat that does not fit on the lot that the applicant owns. Councilmember Vitelli suggested that the applicant consider storing the boat somewhere else. Councilmember Vitelli said he also would not vote to approve a variance for this, acknowledging the difficulty for the applicant to tear the structure down.

Councilmember Schneeman said she also agrees with these comments, and added that although the applicant has submitted signatures, there must have been one resident that complained, bringing forth this issue of non-compliance.

Councilmember Schneeman said she believes another Friendly Hills resident previously asked for a similar approval which the City denied.

Councilmember Krebsbach said she will support the Planning Commission recommendation.

Councilmember Duggan said he will also support the Planning Commission recommendations. Councilmember Duggan asked Ms. Diehm to review the requirements of a hardship definition.

Ms. Diehm said Minnesota statutes, as well as the City's own zoning code, have a specific definition of undue hardship, and as applied to a variance request, an undue hardship means that the property cannot be put to a reasonable use because of something unique to the property, not created by a property owner that prevents the property owner from using the property in a way that complies with

the code. Ms. Diehm said this cannot be created by an individual nor can it be of an economic nature.

Councilmember Duggan said the 25-ft that is currently open is the neighbor's space, and talked about the strict ordinances that apply to recreational vehicles.

Mr. Goblisch said he appreciates all the explanations that the Council provided and asked if the Council would consider allowing an extension to give him time to remove the pergola. Councilmember Krebsbach said she would be comfortable with allowing a six month extension. Mayor Huber said he is comfortable with 60 days.

Councilmember Schneeman said she would recommend 3 months. Councilmember Duggan suggested extending until the end of the year.

Councilmember Vitelli said he is fine with 60 days.

Councilmember Duggan moved to adopt Resolution No. 08-80: A RESOLUTION DENYING A VARIANCE TO THE SIDE YARD SETBACK AT 694 OCALA LANE, WITH THE CONDITION THAT THE STRUCTURE IS DEMOLISHED NO LATER THAN DECEMBER 31, 2008.

Councilmember Krebsbach said she will not support this with the condition as stated, as she would rather the extension be 6 months.

Commissioner Vitelli seconded the motion.

Ayes: 4

Nays: 1 (Councilmember Krebsbach)

MENDOTA MALL ASSOC.

Mr. Sedlacek presented a new site plan concept of the Paster property, known as Mendota Plaza, located on Highway 110 and Dodd Road. The applicant's engineer worked with Public Works Director John Mazzitello on creating a new plan that would incorporate some of the council's feedback. The new plan now shows a trailway system running through the property alongside the water way, preserving about ½ acre of wetlands, and allowing the creek to run through the property serving as an

amenity. This also preserved the square footage that the applicant has been looking for. Mr. Sedlacek said the applicant is therefore requesting that the setbacks along Highway 110 be smaller in exchange for the greenway space along the creek.

Staff is looking to Council at this time to give feedback whether or not this is the direction that the council would like to see the project going in. If so, Staff would like authorization to work with the applicant to bring back the planning application (preliminary plat, preliminary PUD, rezoning request, wetlands permit and conditional use permit).

Councilmember Krebsbach asked how wide the greenway will be. Mr. Sedlacek said the applicant can better answer that question, and it is his understanding that the bed of the creek would not change.

Councilmember Krebsbach asked who attended these meetings and how many meetings were held. Mr. Sedlacek said Mr. Mazzitello and Mr. Aaron Hemquist from RLK only, and as they had heard all the feedback from previous meetings, it was thought best to allow just the two of them work on this plan.

Mr. Sedlacek reviewed how the setbacks were being proposed along Highway 110. Mr. Mazzitello added that the setbacks along Dodd Road were 75-ft from the right of way to the gas station building.

Councilmember Krebsbach asked how wide the ditch along Highway 110 is. Mr. Sedlacek said the distance between the highway and the property line is 72.6-ft., and the building will be 128.5-ft. from the highway.

Councilmember Vitelli asked what will give the City some teeth in making sure, in going forward with this plan, that there will be the assurance of having the residential component built. Mr. Sedlacek said with the PUD, the City will have a preliminary plat that will dictate the uses of those sites, and as the developer develops each of the lots,

they need to come to the City for a building permit. If there will be any changes to the plat, the applicant will need to come to the city for an amendment to the PUD.

Councilmember Schneeman asked what would happen if the developer decides not to complete a certain portion of the property. Mr. Sedlacek said the applicant would have to address that question, and the City cannot enforce a development time period.

Councilmember Duggan asked what will happen should the applicant decide that the housing will not be done because of the low market. Mr. Sedlacek said the PUD approval is for the mixed use, and within that approval, the applicant is providing a timeline when the different phases will be done. This has been provided to the City already. If the applicant were to come back with the application, the City can decide if they will allow an amendment to allow another kind of building, but the City cannot force them to build the residential portion.

Councilmember Duggan asked if there are any teeth that the City can use against the applicant for protecting the City. Ms. Diehm said Mr. Sedlacek has accurately summarized the difficulties, and ask the City moves forward into a Development Agreement, there are some things the City can look at (letter of credit or some type of situation that would give the developer's guarantee of future performance) can be included in the Developer's Agreement.

Councilmember Duggan asked if the City can penalize the applicant in any way in relation to performance failure. Ms. Diehm said the most common way that time lines and restrictions can be placed in the agreement would be when the City is giving something to the developer in exchange for the developer's agreement to a specific timeline. In those cases, the developer would go into default and the City has something to go back on (i.e., payment or contribution that has been made by the City). Ms. Diehm said in the case of a private development, it

is harder to put those teeth in and the penalty clauses are not enforceable.

Councilmember Duggan said he believes the applicant has now presented something that comes closer than what the council has seen previously, acknowledging that more work will still need to be done in certain areas.

Councilmember Krebsbach asked to have more clarification on how the creek will be designed / preserved. Mr. Sedlacek said the request tonight is for the council to give feedback to the applicant on whether they are going in the right direction, and those types of issues will be discussed later in the process when the preliminary plat and the rest of the application comes before the council, those concerns will be addressed.

Mayor Huber said if the council says the applicant is on the right track, it is important to make sure that Dakota County's Al Singer's comments and questions are still included in this process.

Councilmember Duggan said he is in support of this concept, but would like to see at least one unique building constructed in this development, and not what most of their current buildings from other shopping centers look like. Councilmember Duggan referred to the awards that the Village has earned in their design, and would like to have something in Mendota Plaza built to compliment / complement the area, something that would draw people in that are driving down the highway.

Councilmember Duggan said he would also like to see a full and complete rendering of the greenway area.

Councilmember Duggan said if the pedestrian crossing were to go forward, it could possibly start from the Tommy Chicago Pizzeria area at the Village and cross over to MnDOT right of way (east side of Paster property).

Councilmember Duggan said he would like to see more rendering of the housing component, as if more homes are in this area, it will bring more people to the businesses in the Plaza.

Ken Henk, Paster Enterprises/Mendota Mall Associates, gave a brief history of the process. Mr. Henk said he believes Paster Enterprises has made a major concession now in this plan, having issues with the waterway passing through the property for some time. Mr. Henk said when developers spent millions of dollars on projects, they try to eliminate as many risks as possible (grading, topography, tying structures together).

Mr. Henk said they have been keeping Mr. Singer involved in their planning, as the County is looking for a regional trail from Lebanon Park in Eagan to the Minnesota River. Mr. Henk said this concept now may contain the corridor that connects this.

Mr. Henk said 11% of the development now will be set up with preserving the existing water course allowing for a regional 10-ft wide trail following along. Mr. Henk said Mr. Singer's recommendation is to work with McDonalds and have the trail tunnel underneath Highway 110 at the intersection as the ditch already passes underneath the highway at that point. Mr. Henk said he believes the pathway should be further away from the intersection by the Caribou at the Village.

Mr. Henk talked about the waterway elevation differences. Mr. Henk said the width of the waterway will vary as it goes along, averaging about 25-ft wide. Mr. Henk said there will also be some new trees planted along that way.

Mayor Huber asked Mr. Henk if the layout of the southern portion is basically the same as was in August. Mr. Henk said that is correct.

Mr. Henk said the green space of this property was at 31%, but now it will be at 40%.

Mayor Huber said as the waterway creates the development to look as though it is pulled more apart, he would like to see something in there that makes it look more pulled together. Mr. Henk talked about having activities in the center around the bridge, creating a park like atmosphere, and perhaps bringing in the flower markets and the farmers markets.

Mayor Huber said care needs to be taken in designing this waterway so it does not look like a concrete channelized waterway, or a spill over type of waterway.

Mayor Huber said the applicant has come forward with some significant changes to the plan as was asked.

Councilmember Schneeman asked for more clarification on the pipe running under the bridge. Mr. Henk shared some conceptual bridge designs for the crossing over the waterway.

Councilmember Schneeman asked if the brick veneer will cover the back of the original building to match the rest of the building. Mr. Henk said the brick veneer will be covering the whole building except where the loading areas are, and those areas will be screen with brick walls. Mr. Henk said these loading docks are necessary for the retail stores, such as the liquor store and Tuesday Morning.

Councilmember Schneeman talked about the hours of operation for Walgreens and spoke of her concern for having an ordinance to address hours of operations. Councilmember Schneeman said it is a concern that the hours of operation could be in the Developer's Agreement for a 24-hour operation, and there are no city ordinances that would prohibit this type of activity. Councilmember Schneeman asked legal staff to look into how to handle this.

Councilmember Vitelli gave his nod of approval on this concept plan and said he believes this looks great.

Councilmember Krebsbach asked for more clarification on the aesthetics of the waterway, as it seems there will be concrete walls to shore up the sides of the waterway along the trail way. Councilmember Krebsbach expressed her concern that this will not look like a natural creek. Mr. Henk said it is not a natural waterway, and it will be a walled wetland, however there will be some landscaping, and as that landscaping matures, it will look more natural. Mr. Henk said they will not and cannot disturb the bottom as it is a wetland.

Mr. Hemquist referred to the aerial map showing the existing waterway and explained how the wetland will be laid out and how there will be walls put up in only a few areas, leaving other parts of it in a natural state. Mr. Hemquist said the Conservation Act will not allow them to disturb the creek bed so that will be left in its natural state. Mr. Hemquist said the holding ponds will not be used for transfer of the waterway, and the waterway will adhere to the 100 year flood plan.

Councilmember Krebsbach asked if there will be any building along the Dodge Nature Center property to the east. Mr. Hemquist said this is MnDOT property. Mr. Henk said Dodge Natural Center holds the right to acquire this property and they have been working on the design on this portion with the nature center, however they still need to obtain the necessary approvals from MnDOT.

Councilmember Krebsbach asked why there is so much parking by the eastern edge of the existing building. Mr. Henk said they have cut the parking back on other areas of the lots, and they are looking for a 20,000 sq. ft. anchor on this end of the building such as a grocery store, thus needing the 5 spaces for 1,000 sq. ft.

Councilmember Krebsbach talked about the importance of taking the time to do this project right.

Councilmember Duggan said he would prefer to have the trail constructed at the same time the waterway is worked on. Mr. Henk said this is a county trail and it is not know when or how the county will want to extend it, leaving the trail to go nowhere at the present time. Mr. Henk said it would be great if the county wishes to do the work now in coordination with the project, but if not, Paster wishes to make the provisions that someday that routing is available for the county to come in and add that. Councilmember Duggan said he is concerned that more equipment will have to come in later to do that work, having it easier to do it at the same time as the project is being developed, and asking the applicant to work something out with the county.

Councilmember Duggan gave his nod to go forward as the community is saying to get this done, and it needs to be done right.

Councilmember Krebsbach asked if additional dirt will be coming into the site. Mr. Henk said there would be none. Councilmember Krebsbach asked Mr. Mazzitello about the grading. Mr. Mazzitello said at the point the applicant has their new site plan, at this stage it is conceptual, and he has not seen a full blown grading plan. The previous site layout plan has shown a balance according to the geotechnical calculations in those plans, not taking into account the soil conditions encountered during excavation.

Councilmember Krebsbach said she does not see anything on the plan depicting the soccer field to the south that was to access the property off of South Plaza Drive. Mr. Henk showed on the map how that will be done. Councilmember Krebsbach said it is important that this access does not go through Friendly Hills.

Councilmember Krebsbach said she agrees with Councilmember Schneeman that something needs to be done with the ordinance on the 24-hour operations.

Mayor Huber asked the applicant what the next steps will be. Mr. Henk said they would like to break ground in the spring of 2009, and will get together with Staff to address the other 28 concerns. Mr. Henk said he would like to have that all worked out and come back to the City in December. Mr. Henk said since the Planning Commission recommended approval of the other plan, does this need to go back to the Planning Commission?

Mayor Huber asked for a hold on that question, and asked for a discussion on whether or not to hold a workshop with full council, subcommittee, or Staff.

Councilmember Krebsbach said the discussions should not only apply to the conditions, but should still be on the overall project. Councilmember Krebsbach said one of the things that needs to be looked at is the MnDOT property concerns.

After some discussion, the council concurred that the best way to continue is for the applicant to work directly with Staff in the next couple of days on ironing out the points. Mayor Huber asked City Administrator Jim Danielson to provide a memo at the next council meeting updating the council on this progress. Mayor Huber said then the whole group can meet again to discuss the issues before the Thanksgiving holiday.

694 WENTWORTH AVENUE
BUILDING PERMIT

Mr. Sedlacek said council previously discussed this building permit at the September 2nd council meeting. At that point, the property owner had made a written request to have the building permit reissued or extended to allow him greater time to complete the project. Mr. Sedlacek at that time, the council put a number of conditions on that approval with an April 17, 2009 end date. Mr. Sedlacek said since that time, there has been no activity on that site. The city obtained consent by the property owner to examine the bags on the rear yard of the property; Staff confirms that these bags held asbestos tiles.

Mr. Sedlacek said he received a call from the owner this evening previous to the council meeting that he is having financial difficulty as the banks are concerned about the safety of the foundation and the structure.

Mr. Sedlacek said at this point, there has been no progress on this parcel, and there does not seem to be a foreseeable progress done in the future. Mr. Sedlacek said City Attorney Tami Diehm has provided some options, one being that the best course of action is to look at this as a hazardous piece of property. In Ms. Diehm's memo, she states that under Chapter II, Section 2 – Hazardous and Substandard Buildings Act, if there is a condition on this site (not knowing the strength of the foundation and requiring a structural engineer to determine the condition), and the council could take some action on this to have the building fixed or razed, deeming that this act could remedy the situation. Staff is looking for direction from council to see if that is the direction they want to go with, or should they try to work further with the applicant to get this project finished.

Councilmember Vitelli asked if the owner stated that there is no foreseeable progress that will be made. Mr. Sedlacek said he only received a voicemail message from the applicant, who stated he will be going through the foreclosure process. Mr. Sedlacek said the foreclosure process could be very long and drawn out, and the condition of this home standing as is would remain until the foreclosure is resolved.

Councilmember Vitelli asked how long the process would be to declare the property hazardous. Ms. Diehm said the timeline for declaring the property hazardous is as simple as having an inspection done and having an inspector give the council the factual information to allow the council declare this a hazard. If the City does not have the right to enter onto the property, the City would need administrative search warrant to get permission to go onto the property and complete the inspection. Councilmember Vitelli asked what the next steps

would be after the inspector gives an opinion. Ms. Diehm said if it is determined that there is a hazardous condition on the property, there is a series of steps that the City must take. Those steps are summarized as follows:

- The City must provide the owner with written notice that describes the hazard and the grounds upon which the City can order them to fix the hazard, citing the state building code, the city ordinances, and the state statute that defines the hazardous building.
- The City must inform the owner what the owner needs to do to fix the hazard.
- The City needs to give the owner a date by which corrections must be made, allowing reasonable time for compliance.
- The City needs to notify the owner that if the corrections are not made by the date provided, the City will be going into court to seek an order to allow the City to make those corrections for the owner.
- The City must provide the owner with a complete list of penalties that the owner could face if the violation is not corrected. This could range anywhere from the costs associated with correcting the hazard, any administrative fees that can be charged back to them, whether there are criminal penalties that may be sought based on the violation.

Ms. Diehm said a final thing that needs to be included in the written notice is specific language that says any specific costs that the City incurs during this process will be the responsibility of the homeowner. If the homeowner does not pay those costs, the costs are assessed to the property so that the City is paid just as it would be to have a lien on the property.

Councilmember Vitelli asked if this process could take up to 5 months. Ms. Diehm said she does not believe it would take that long, and if the City is in the position to declare this property as hazardous, the City is saying this is an emergency and it needs to be taken care of right away. The amount of time given to the homeowner to make the corrections

would depend on the scope of the corrections that need to be made.

Ms. Diehm said the property taxes would increase by these costs, and the City would hold lien to the property; this would be the same thing as if the property owner did not pay the taxes. The City would have to calculate what the value of the land is. Hopefully in a cleaned up state, that land would be more valuable. The City's lien would take priority if it went through the foreclosure process.

If the property owner does not comply with the City's written notice, the City would then go to the Courts, providing documentation. The Court then issues an order which gives the City permission to actually enter on the property and take care of the hazard.

Councilmember Schneeman said the property owner was supposed to place a safety fence around the property, which has never been done. Councilmember Schneeman said this has been going on way too long.

Ms. Diehm said in providing written notice, this goes not only to the owner but to the mortgage holder so they are aware of this process. Should the mortgage holder choose to step in and do something, they can but most likely they will not.

Mayor Huber said the City needs to act responsibly and needs to have Staff make some assessment on what it will take to get this cleaned up, and the City could at least make the property safe at a cost that could be recoverable.

Councilmember Vitelli said this is indeed a hazard and the City could be legally responsible as it is aware of this situation; something has to be done.

Councilmember Vitelli asked if this process is well defined enough to allow Staff proceed. Ms. Diehm said it is.

Councilmember Duggan said at the September meeting, the owner stated there was a dispute with the structural contractor about the foundation, and the owner also knew about the expiration date of August 25, 2008. Councilmember Duggan said he supports going forward with a full force of the law, and he is very concerned about the safety of the children in the neighborhood.

Mr. Ron Berfelz, 688 W. Wentworth Avenue, said he is the applicant's neighbor. Mr. Berfelz thanked the council for taking action on this property as it has been a long time that the property has sat in this condition. This property has been a problem for at least the last three years, and the neighbors have been very concerned.

Councilmember Vitelli moved that the City Council declare the property at 694 Wentworth Avenue a hazard and direct Staff take legal action against the property owner.

Commissioner Duggan seconded the motion.

Ayes: 5
Nays: 0

OLD FIRE HALL

Mr. Danielson said a subcommittee (which included Councilmember Schneeman and Councilmember Vitelli, as well as Mr. Danielson) was formed two council meetings ago to discuss the disposition of the old fire hall site. The subcommittee reviewed the issues such as time of sale as a residential property, what the price was (\$179,000), the lot was to remain an active listing throughout the summer as a residential property. The firm hired to sell the property came back to the subcommittee on several occasions asking to have the price reduced. The price was reduced to \$129,000. There has been no interest at all on this property.

Mr. Danielson said the realtor suggested that the City consider rezoning the property back to commercial / business use and office use (neighborhood). Mr. Danielson said there has been an expression of interest on the property from two

different potential buyers at this time, so there is known interest in the commercial use.

Mr. Danielson said one of the interested buyers has contacted the neighbors, and the neighbors are interested in allowing that parcel be used for an office building. The office building would not be open at night or weekends.

Mr. Danielson said the subcommittee recommends that the council send this back to the Planning Commission for a public hearing to inform the neighbors that the City will be considering changing the comprehensive plan to have it guided as business, and rezone it to a neighborhood business use, and offer it for sale at the new use.

Mayor Huber said the City has tried to sell this for about a year, and feels that it is a good idea to change to the business use at this time.

Councilmember Duggan moved to direct Staff order the appropriate public hearings for the November meeting of the Planning Commission to consider a Comprehensive Plan Amendment of the site from Residential to Business and a rezoning to B-2 Neighborhood Business.

Commissioner Vitelli seconded the motion.

Ayes: 5
Nays: 0

COUNCIL COMMENTS

Mayor Huber announced that the annual city bonfire will be held on Friday, October 31st at the Mendota Plaza.

Mayor Huber reminded residents of Election Day on November 4th.

Councilmember Vitelli said he experienced a lot of air traffic over his home recently, and suggested Mr. Leque come to the council meeting again to give an update. Councilmember Vitelli has contacted Liz

Petschel to help with this and encouraged residents to report concerns.

Councilmember Krebsbach noted the passing of Dr. William Walsh, a long time teacher at Visitation School.

Councilmember Duggan said the ARC meeting this month will have an expert to talk about airplane construction.

Councilmember Duggan said it was discussed at the most recent NOC meeting, as to whether there needs to be a NOC anymore when looking at the downsizing of the economy and the changes at the airport with Northwest and Delta. NOC members have requested a meeting with MAC to talk about that.

Councilmember Duggan said Councilmember Schneeman's family was featured in The Catholic Spirit as her son and daughter-in-law are expecting twins.

Councilmember Duggan thanked Councilmember Vitelli for the information provided in relation to running cities.

ADJOURN

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

Ayes: 5

Nays: 0

Time of Adjournment 10:15 p.m.

Rebecca Shaffer
Recording Secretary

ATTEST:

John J. Huber
Mayor