

**CITY OF MENDOTA HEIGHTS  
DAKOTA COUNTY, MINNESOTA**

**PLANNING COMMISSION MINUTES  
September 22, 2009**

The regular meeting of the Mendota Heights Planning Commission was held on Tuesday, September 22, 2009, in the Council Chambers at City Hall, 1101 Victoria Curve at 7:00 P.M.

The following Commissioners were present: Chair Lally, Commissioners McManus, Norton, Povolny, Viksnins and Hennes. Those absent: Commissioner Field. Those present were Public Works Director John Mazzitello, Assistant to the City Administrator Jake Sedlacek, and Planner Steve Grittman. Minutes were recorded by Rebecca Shaffer.

Approval of August 25, 2009 Minutes

**COMMISSIONER HENNES MOVED, SECONDED BY COMMISSIONER POVOLNY, TO APPROVE THE MINUTES OF AUGUST 22, 2009 AS CORRECTED.**

**AYES: 4**  
**NAYES: 0**  
**ABSTAIN: 2 (Commissioners Viksnins and Norton)**

Hearings

**PLANNING CASE #09-29**  
**Maureen Haggerty**  
**790 Ridge Place**  
**Conditional Use Permit and Wetlands Permit**

Chair Lally said this case was tabled from the July and August Planning Commission meetings. Mr. Sedlacek said the applicant called City Hall this afternoon to ask that this case be moved later on the agenda as Ms. Haggerty will be late

Chair Lally announced that Case No. 09-29 will be skipped to the end of the agenda.

**PLANNING CASE #09-34**  
**David Kutoff**  
**Materials Processing Corporation**  
**2300 Pilot Knob Road**  
**Conditional Use Permit**

Planner Steve Grittman reviewed a map showing the property located at 2300 Pilot Knob Road, which is an industrial parcel, zoned I-1, guided for industrial land uses. The applicant is seeking a conditional use permit to allow for a portion of the existing building on this site to be utilized for retail sales. The applicant has provided a site plan that shows the existing building and a small portion on the west side of the building that will be occupied by retail floor space that is related to the industrial portion of the business. The city recently adopted an amendment to the ordinance that allows for retail sales as an accessory conditional use on an industrial parcel such as this one. There were a series of conditions that were a part of that amendment. The applicants said they will be able to comply with those conditions, the most relevant one relating to retail floor space. The retail ordinance was adopted with a maximum of 5% gross floor area in the principle use, and the proposed plan indicates 1.2%. All of the other

conditions relates to the existing conditions of the property (site plan, building materials, etc). The applicant will provide adequate parking and signage that is consistent with the city's sign ordinance.

Mr. Gritman said the one potential conflict relates to hours of operation. The applicants had sought the hours of operation to be until 7:00 pm on at least one day of the week, if not more. The ordinance that was adopted states 8:00 am to 5:00 pm and the applicants are still hoping to be able to keep their retail portion open until that 7:00 pm time. To do so would require an amendment to the recent amendment. Under this particular conditional use permit, staff is recommending approval consistent with the terms of the existing ordinance and the Planning Commission can open the amendment portion of this, the Planning Commission can open a subsequent hearing in order to extend the hours. The way the ordinance was adopted, it listed specific hours of operation that were eligible for these kinds of uses, so there is no flexibility. At this point, it is possible to approve the conditional use permit with time limits from 8:00 am to 5:00 pm as the amendment was adopted, and then consider for a future meeting whether or not the Planning Commission wants to discuss an extended time period.

Chair Lally asked what the policy reason is for 8:00 to 5:00 pm. Mr. Gritman said it is his recollection that given the industrial nature of the neighborhood, that is not the uncommon business timing for a lot of those businesses there. Some of the businesses are open for multiple shifts, and this is not a fixed ordinance requirement and it was discussed what the expectation would be for this type of business. Chair Lally said a lot of businesses are open at least one night per week until a later time to accommodate people who are otherwise unable to visit the business.

Mr. Gritman said it was also his recollection that there was no objection to the hours of operation, but the ordinance was adopted this way and the applicant can apply for an amendment, or the City could request an amendment.

Commissioner Hennes said although the Planning Commission can approve the conditional use permit tonight, they must have a public hearing should the time be changed? Mr. Gritman said that was correct. Commissioner Hennes said he does not recall this being an issue at the last meeting but does not believe it did. Assistant to the City Administrator Sedlacek said he has reviewed the webcast of the meetings and said the hours were proposed to be 8:00 am to 5:00 pm but the big question seemed to be whether the business could operate seven days a week or not. At that time, the applicant said that the hours of operation as laid out were acceptable. The applicant did not ask for the additional two hours. It was in the letter of intent, but not discussed. Staff can work with legal counsel to see if there is a way to expedite it the process to allow the additional hours. Mr. Sedlacek said staff was looking to the Planning Commission on whether 8:00 am -7:00 pm is an acceptable time frame.

Commissioner Hennes asked if they are asking to stay open until 7:00 pm just on Thursdays or would they like flexibility to stay open to 7:00 pm every day of the week.

Commissioner McManus asked if the applicant can fit eleven parking stalls in this plan. Mr. Gritman said they can meet that requirement.

Mr. Ted Carlson, NAI Welsh, speaking on behalf of the business owners, stood to answer questions. Mr. Carlson said that they would like the ability to remain open until 7:00 pm as currently they are open Monday through Friday, staying open until 7:00 pm on Thursdays. They currently operate on Tuesdays from 11:00 am to 5:00, Wednesdays and Thursdays from 11:00 am to 7:00 pm and Friday from 11:00 am to 5:00 pm. They would like to have flexibility for future changes.

Commissioner Povolny asked if there will be any Saturday extended hours. Mr. Carlson said at this time, they are not, but that could change in the future. They currently do not operate on Saturdays, but they may want to do some Saturday mornings.

Chair Lally said the materials do not speak to days of operation, only hours of operation, giving them flexibility to be open on Saturday and Sunday from 8:00 am to 5:00 pm.

Commissioner McManus asked if the applicant is only asking for one day a week to be open until 7:00 pm. Mr. Carlson said they are actually asking for having flexibility for every day, as MPC is hoping that the business grows which is the purpose of the move.

Commissioners McManus asked when the business will be open. Mr. Carlson said they are hoping to have the documents signed with the landlord prior to October 1<sup>st</sup> and they have 90 days to build out the space and be up and running, so approximately January 1<sup>st</sup>. Commissioner McManus said it would seem that there is no rush and that the Planning Commission can do this on a routine and orderly fashion. Mr. Carlson said it could possibly go with contingencies with the proposed deal on the table which could influence the funding of the landowner. Mr. Carlson said it was his fault that the hours of operation were not clearly defined on the 7:00 pm as he was not able to attend the last meeting of the City Council, and the owners of the business were not well versed in not knowing that it should have been made known about the 7:00 pm. Mr. Carlson said an expedited process would help them greatly.

Chair Lally asked Mr. Carlson to confirm that they wish to have the hours of operation from 8:00 am to 7:00 pm giving more flexibility without restriction to the number of days per week. Mr. Carlson said that was correct.

Chair Lally opened the public hearing. Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

**COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO CLOSE THE PUBLIC HEARING.**

**AYES            6**  
**NAYES         0**

**COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER POVOLNY, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT BASED ON THE FINDINGS OF FACT OUTLINED ON PAGE 6 OF THE STAFF REPORT.**

Commissioner Norton said it is important to note that the reason the hours are limited in this particular situation is the location of the business amongst somewhat similarly situated businesses that need to operate solely during traditional business hours as opposed to during retail hours. This particular business does have a retail component that he is familiar with, and if it were located within a more traditional retail area, the hours of operation would not be an issue. Accordingly, this would be a positive thing for the city as well as the business to advise staff as a body to explore the options that are available to the city to expand the hours to 7:00 pm Monday through Friday, if not seven days a week.

Commissioner Hennes said he would agree if there was a way to make this work without having to bring this back to the commission as he believes everybody is on board with the idea of longer hours, then it should be done.

Commissioner Viksnins asked if there was a way to short-circuit this as it seems repetitive for the applicant to continue appearing for a second time.

Mr. Sedlacek said the big concern in a process of this is proper notification for a public hearing. The Planning Commission is advisory to the City Council according to code, and City Council conducts all public hearings and has chosen to have the Planning Commission conduct those public hearings. It is staff's understanding that if the Planning Commission makes a motion to have staff pursue other options, the route would be to work with City Council and legal counsel to make sure that a public notice can be sent out properly and hold a public hearing at the next City Council meeting.

Chair Lally called for the question.

**AYES            6**  
**NAYES         0**

**CHAIR LALLY MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND CALLING FOR A PUBLIC HEARING TO AMEND THE ZONING ORDINANCE TO ALLOW HOURS OF OPERATION BE FROM 8:00 AM TO 7:00 PM AT THE DISCRETION OF THE BUSINESS OWNER OR DIRECT STAFF TO PURSUE OTHER PROCEDURAL ALTERNATIVES WITH THE CITY COUNCIL BASED ON THE LEGAL COUNSEL'S OPINION OF APPROPRIATENESS.**

**AYES                   6**  
**NAYES                 0**

**PLANNING CASE #09-35**

**Thomas Costello**  
**24 Somerset Road**  
**Variance**

Mr. Gritman reviewed a map showing the property located at 24 Somerset Road, which is a single family parcel zoned R-1 Single Family Residential and guided for low density residential land use. The site is occupied by a single family home and the applicants are seeking an allowance to construct an addition to their garage, an expansion that would violate side yard and front yard setbacks as it is designed. The applicants are asking for a variance for the side yard setbacks to allow for encroachment to the north and would encroach within 2-ft. of the property line. The current setback for this structure is 13-ft. The current condition of the garage is a single car attached garage. The applicant is also seeking a variance to extend the proposed garage toward the street. The existing setback is slightly less than 60-ft. In the R-1 standards, the requirement is 30-ft. except for a clause in the ordinance that requires a setback that is no closer to the street than a string line drawing between the two adjacent properties. The existing building is right at that forward-most string line front setback so any encroachment toward the street, even though it is more than 30-ft. already, would require a separate variance.

In this particular case, with regard to finding a hardship, the applicants have provided a number of alternatives as part of their design study. Because the side property line angles a little bit, the setback from the side line increases as one travels towards the back. The closest point is 2-ft. at the front corner.

Mr. Gritman said another part of this proposal is to create a vestibule enclosure for the front entryway that would be fully enclosed and allow for access from the front sidewalk area into the home.

Mr. Gritman said as part of the applicant's analysis there is a series of alternatives, one being to eliminate the garage altogether and construct a detached garage to the rear portion of the property. It is possible to do that without violating any setback requirement, so variances would not be needed. Mr. Gritman said the applicants have shown that there is a reasonable use of the property without the variances although it is one that they do not prefer. The zoning ordinance has a clear preference for attached garages and detached garages require a conditional use permit. They are also limited in size much more than the attached garages and there are a series of ordinance requirements that show a strong preference for an attached garage. One of the finding should the application be approved would be that the attached garage policy is stronger than avoiding the variance policy.

From staff's point of view, it has been suggested that there is a hardship in this case is the preference for the attached garages, noting that the majority of garages in this neighborhood are attached. One of the findings for the variance support the idea that an idea of an attached garage is an appropriate design, and as a result, feels that a side yard setback is appropriate. The front yard setback is a bit different as it appears that it is possible to construct that garage addition with the width shown on the project, but have it placed further back at the existing string line. That would cause the applicant to re-design the screen porch which is one of the things they did not want to do, however the screen porch is being expanded as part of this project so it is clearly part of the anticipated construction. It is not clear that a screen porch is necessary to make reasonable use of the property, although it is a desirable feature. From staff's point of view, it was felt that the side yard setback was easier to support than the string rule on the setback at the front.

Staff believes there are some cases where the front entryway enclosures receive variances to allow for this, and in those cases, the city has found that there are weather related or other kinds of conditions on the property that are supportive of allowing some type of front entryway enclosures. The applicant has not addressed those in their application.

Staff recommends approval of the side yard setback based on the findings related to the character of the neighborhood and preference in the ordinance for attached garages over detached garages. Staff also recommends denial of the front yard setback as it is possible to construct this garage while meeting the string rule setback without that violation.

Commissioner Viksnins asked if the construction is pushed to the rear of the property, would there be any issues in terms of the back yard setbacks. Mr. Grittmann it does not appear that there are any restrictions for moving back with an addition.

Commissioner Viksnins asked if the front of the house is basically flush with the garage, entry way and front of the home. Mr. Grittmann said that was correct.

Commissioner Hennes asked if the front of the garage was kept with the expansion flush with the string rule, would it still extend into the 10-ft setback. Mr. Grittmann said it will still extend into the 10-ft setback but not as much as the 2-ft. minimum point.

Chair Lally asked if the door from the house to the screen porch would have to be moved. Mr. Grittmann said it would have to be moved.

Mr. Grittmann noted that the encroachment would be allowed if the entryway was a more open design.

Tom Costello, 24 Somerset Road, said he wants to save the porch at the rear of the home as an entrance to the kitchen as that entry is used quite a bit. Mr. Costello said his home is set back quite a bit already. Chair Lally explained how the string rule would apply in this case.

Commissioner McManus said this garage could be kept as an attached garage, and that the expanded screen porch that will already be altered be accommodated without the variances, and encouraged the applicant to re-visit this design. There are many mitigating circumstances and the owner does have some options here which might not require any variance other than the front door.

Commissioner Norton asked if the door that enters into the home from the screen porch is the kitchen entryway. Mr. Costello said that was correct, and described the layout of the home. Commissioner Norton asked if another doorway was created, would it affect the eating area of the kitchen. Mr. Costello said that was correct.

Commissioner Povolny asked if the garage is moved to the back of the property, would trees be removed. Mr. Costello indicated that one pine tree would have to be taken out.

Commissioner Hennes asked for confirmation that one would have to go through the screen porch area to access the home from the single car garage. Mr. Costello said that correct.

Commissioner Hennes said it appears that the neighbors on both sides of the home are in agreement with the side yard setback as well as the front yard setback. Mr. Costello said they are. Mr. Costello said he is the only resident in the neighborhood with a single car garage and most of the time both their vehicles are parked in the driveway.

Commissioner McManus asked the applicant if he retained the signatures from the neighbors from each side of the home in approval. Mr. Costello said he has and they are listed on the form.

Chair Lally opened the public hearing.

Heinz Otte, 22 Somerset Road, said he and his wife have willingly approved the plans as they feel this addition will enhance their property value as well as Mr. Costello's and others on the block. Mr. Otte said this family is very much in need of a garage where they can park two vehicles in and have the luxury that the rest of the residents have to be able to back their cars out in the winter time and not have to scrape windows. Mr. Otte said here is no impact to the property line as far as he is concerned as there is plenty of room between the homes. Mr. Otte said he and his wife if very sympathetic to the Costellos. Mr. Otte talked about the upgrades he and other residents have done to their homes, and believes that this proposal will bring the block up to snuff with the real world.

Michael Medina, architect for this project, said the idea was to create a vestibule which is important to the protection of the home and reason the porch is being extended is because of the roofline.

Commissioner Norton asked if the proposed garage with the addition of 8-ft. be a total of 26' 4" in depth. Mr. Medina said that was correct and that most of the garages in the area are very small and this option would give the Costellos more space within the garage.

Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

**COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER MCMANUS, TO CLOSE THE PUBLIC HEARING.**

|              |          |
|--------------|----------|
| <b>AYES</b>  | <b>6</b> |
| <b>NAYES</b> | <b>0</b> |

**COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND APPROVAL OF THE VARIANCE TO THE STRING RULE AND THE SIDE YARD SETBACK AS PROPOSED.**

Further Discussion

Commissioner McManus said he spent some time with the owner and looked around to find that Mr. Costello cannot keep his garbage cans inside the home and are sitting out front. There is no storage area and what little storage exists is in the screen porch. Commissioner McManus said he noted the very broad lawns on both sides of the home, that being the neighbors and the Costello's. Commissioner McManus said Mr. Costello's work truck was parked in the driveway and blocks the neighbor's view worse than what the string line would. Commissioner McManus said if this were a tighter neighborhood, he would be strongly opposed to this application because there are other options that Mr. Costello could have used. Commissioner McManus said in these hard economic times, Mr. Costello is trying to improve his home as are the other neighbors. Commissioner McManus said he believes what the applicant is requesting is diminuous as compared to the benefits that could be given to the neighborhood, even though the architect could find ways of building an attached garage.

Commissioner Hennes said he would agree with Commissioner McManus' comments as when looking at the depth of the yard, the setback issue does not bother him as much. If the garage is pushed back further, the screen porch would have to be pushed back thus having to move the doors. Those are hardships that are not fair and are unacceptable.

Commissioner Viksnins asked if the string rule is for aesthetic purposes. Mr. Gritman said he is not positive for the original adoption on the string rule in this code, but it is typically an aesthetic preference.

Commissioner Norton said the motion should also include the findings of fact and there is reasonable support from this commission to approve both the variances. Accordingly, he will amend his motion to include the findings of fact contained on Page 7 of the staff report, however eliminating Finding #2 which discusses reasonable alternatives to the string rule setback and adding in a new finding of fact that the structure of the existing home and its placement on the lot as well as the significant distance that is currently from the street all lead to the approval of the variance to the string rule with the hardship identified as the compliance of the string rule from the front yard setback.

Commissioner Viksnins said it should also be added there is no practical way to access the kitchen without the proposed improvements. Commissioner Norton said that was the intent of his motion.

Commissioner Norton asked to revise his motion, Commissioner McManus accepted the revision.

**COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND APPROVAL OF THE VARIANCE TO THE STRING RULE AND THE SIDE YARD SETBACK AS PROPOSED, AND TO INCLUDE THE FINDINGS OF FACT CONTAINED ON PAGE 7 OF THE STAFF REPORT, HOWEVER ELIMINATING FINDING #2 WHICH DISCUSSES REASONABLE ALTERNATIVES TO THE STRING RULE SETBACK AND ADDING IN A NEW FINDING OF FACT THAT THE STRUCTURE OF THE EXISTING HOME AND ITS PLACEMENT ON THE LOT AS WELL AS THE SIGNIFICANT DISTANCE THAT IS CURRENTLY FROM THE STREET ALL LEAD TO THE APPROVAL OF THE VARIANCE TO THE STRING RULE WITH THE HARDSHIP IDENTIFIED AS THE COMPLIANCE OF THE STRING RULE FROM THE FRONT YARD SETBACK. IN ADDITION, THE RE-PLACEMENT OF THE DOORS INTO THE KITCHEN WOULD BE IMPRACTICAL WITHOUT THIS DESIGN.**

Commissioner McManus noted that the enclosed front entrance will break the string rule and to be sure that this is acceptable.

**AYES            6**  
**NAYES         0**

**PLANNING CASE #09-29**

**Maureen Haggerty**

**790 Ridge Place**

**Conditional Use Permit and Wetlands Permit**

Commissioner Povolny said the applicant's attorney had previously performed legal work for him and asked if this presents a conflict of interest. Commissioner Norton asked Commissioner Povolny if he can be fair and impartial. Commissioner Povolny said he could.

Mr. Gritman briefly gave some history on this application which is for a conditional use permit and wetlands permit for the retention of an existing fence. In 2005, a conditional use permit was granted for the construction of a fence on the property at 790 Ridge Place. The fence that was constructed was not in conformance with the original approvals and there were portions of the fence that were to be removed. The city had notified the applicant that they need to re-apply for a conditional use permit for the fencing and the wetlands permit for the fence on this property.

There are some non-compliances with the fence as it exists as the cedar fence in the front yard is too close to the right of way and the code requires that any fence taller than 3-ft. in height must be set back at least 30-ft. from the front property line. There is a fence along the east boundary that has been set on city right of way and there is some dispute on the exact distance, but ranges from 3-ft. and 6'6" depending on the identified location of the pins.

Mr. Gritman said the fence that was constructed on the rear portion of the property was not constructed with the materials that were indicated as part of the original conditional use permit and there is additional fence on the boundary line between 790 Ridge Place and 800 Ridge Place, and there is some belief that a portion of this fence is on the neighbor's property by a few inches.

The original discussion of the request was that it was the intent of the Planning Commission to consider a fence on this property that met the requirements of the code in relationship to setbacks and property line locations. In addition, staff had recommended that any fencing in the rear portion of the property respect the 25-ft. buffer area from the creek rather than across the creek as the previous fence exists today. A portion of that discussion related to allowing for natural vegetation to occur between the fence line, the disturbed area and the creek itself to allow for any filtering of any runoff or sediment that may run toward the creek.

The applicant's subsequent correspondence with the city has been essentially a request to approve the conditional use permit and the wetland permit with the fence as it has been constructed.

Commissioner Viksnins asked what this fence would look like in a perfect world. Mr. Gritman said the fence should meet all the setbacks around the property and indicated on the site plan where the fencing should be placed and how the materials would be changed to be compliant with the original approval.

Commissioner Povolny said he walked the fence line and said it seemed as though the fencing to the south is further south than what is drawn. Mr. Sedlacek explained the existing fence is well within the right of way to the south.

Commissioner McManus asked if the south fencing was on the owner's property or is it on any public property. Public Works Director John Mazzitello said the proposal that the applicant has brought forward shows the fence to be located either directly on the property line or within her property. The fence that is currently there is a fence that was built non-compliant with the original approval and that fence is well into the public right of way on all three sides of the property.

Commissioner McManus asked how long was this known. Mr. Mazzitello said this was discovered due to a resident complaint earlier this summer; a code enforcement officer walked the site discovering that the fence was off site and not constructed of the approved material. Mr. Mazzitello said the original conditional use permit approval was then revoked and the property owner at 790 Ridge Place was granted the opportunity to apply for a new conditional use permit before removing the existing non-compliant fence. That code enforcement action is still outstanding.

Howard Roston, attorney for the applicant, lives at 1728 Trail Road. Mr. Roston said he became involved in this because former City Attorney Dan Schleck was also representing the applicant, and it was found that there was a conflict. Mr. Roston said he has tried to get up to speed on this case as he has only been involved in this since Thursday the week before the Planning Commission meeting.

Mr. Roston said it has been about five years since he has represented Commissioner Povolny and is not a continuous attorney for him.

Mr. Roston said there is no doubt that the applicant needs to get the fence out of the public right of way and off of any adjoining property owners' land. The application contemplates relocating the fence completely in the applicant's property and be in compliance with any city setback requirements. Mr. Roston said he would only ask that in order to remove the fence from the neighbor's property, the applicant would need permission from the neighbor to access his land. Mr. Roston said if there is a condition about moving this portion of the fence, which the applicant is agreeing to, that condition needs to be conditioned on approval from the neighbor to access his property.

Mr. Roston said in reviewing the Mendota Heights city code on fences, it has been found that there are no material requirements specified and the applicant is willing to bring that fence back to compliance with the original conditional use permit or as staff may feel is a reasonable material. Mr. Roston said he could argue the fact that there are no requirements in the city code that prohibits the materials that were used, but the applicant wishes to work with the city to be reasonable.

Mr. Roston said it is not correct to say there is a setback in relation to the wetlands, there is a buffer zone requirement from the wetland and there is nothing in the city code that says a fence can't traverse a wetland, and in fact, the applicant had retained a wetland permit in 2005 to build the fence across the stream. Mr. Roston said, as a good steward of the land, the applicant can commit to is having the fence go a certain way (which he indicated on the map) across the property line does not help the wetlands. Mr. Roston said he would propose that the Planning Commission recommend that the applicant continue to be able to traverse the wetlands with the fence, keeping the posts as far away from the wetland as possible to provide enough support for the fence and at the same time, Ms. Haggerty will work with city staff and the Soil and Water Conservation District to create an approved buffer of 25-ft. back on either side of that stream which prevents sediment and erosion and take reasonable steps to ensure that that resource is protected. Placing the fence where the city desires is not going to accomplish that and the applicant feels she can balance the requirements of protecting the wetlands here by allowing that fence remain in place. The

other consideration is for allowing a continuous fence like that is for the dogs. Chair Lally said this is not an enforcement action against the dogs. Mr. Roston said it would be in the best interest of the public to allow a continuous fence because of the close proximity to Highway 110 where the dogs could run up by the highway and cause accidents. Mr. Roston asked for consideration to keep the continuous fence that was already approved in 2005.

Mr. Roston said staff wants compliance by October 15<sup>th</sup> and the applicant has been talking to contractors and believes this could be done October 31<sup>st</sup>. Mr. Roston asked for an extension to November 15<sup>th</sup> with the understanding that the applicant feels this will be done sooner.

Commissioner Hennes asked for clarification what the applicant is willing to move. Mr. Roston said that is not an issue and the applicant does not wish to apply for a variance unless the Planning Commission wishes the applicant to move the fencing where a variance may be needed.

Commissioner Povolny asked why it is so important to cross the fence over the creek. Mr. Roston said the applicant owns the land and should be able to make good use of her property.

Commissioner Norton asked what type of fencing material would the applicant be proposing to have cross the stream. Mr. Roston explained how chain link fencing could be used. Commissioner Norton said if the fencing is not actually touching the water, what will preclude the animals from staying inside the fence. Mr. Roston said it is his understanding that the barrier will still keep the dogs within the property.

Mr. Mazzitello said city code does not specify fence types but because this is a conditional use permit, fence type would be at the Planning Commission's purview should the Planning Commission require a fence type. What the city code requires is that the fence is constructed in a workman-like fashion suitable for the use in which the fence is constructed. Mr. Roston said this is also being done by a contractor.

Commissioner McManus said he assumes that the original fence was constructed by a contractor but somehow this thing got messed up. Mr. Roston said he believes that Ms. Haggerty's ex-husband constructed the fence.

Commissioner McManus asked if the city has fence permits which have been granted before. Mr. Mazzitello said there is a fence permit requirement in the city which would be a condition of the approval. This gives the city the ability to inspect the construction to ensure that the fence is being constructed in compliance. This did not happen in 2005. Mr. Sedlacek said the majority of fence permits in the city do not require a planning action and the planning process always indicates as a last step that the property owner is to work with the code permit. Mr. Sedlacek said this language was in the letter to the applicant approving the conditional use permit in 2005.

Commissioner McManus said he was sitting on this commission in 2005 and does not recall that the Planning Commission on a wetland permit has ever indicated that a fence could cross through a body of water. Mr. Sedlacek said staff has researched whether or not this has happened before, and they could not find another case where this has been requested or granted except for the 2005 Haggerty case. Mr. Roston said this was granted for this specific property. Commissioner McManus said he does not recall that. Chair Lally said it was his understanding that as part of the enforcement action, this was revoked as none of the conditions on the original approval were followed.

Chair Lally said it was the planner's recommendation to not have that whole 100-ft. protected with an approval but to have 25-ft. back from the wetland and it does not mean that the applicant does not have any property rights to that portion of the property where the stream is or the portion that is southwest of the stream. It does mean that the location of the fence is still something that the Planning Commission has before them at this time and it would seem that if there are at least three dogs, to have spaces down there for the dogs to run out does not serve the purpose of the application to fence them in. Chair Lally said the other piece that was in the letter of intent that the Planning Commission had a brief chance to talk about is the idea that the applicant is rebuilding and restoring the creek banks that have been washed away over the years and any work in the wetland from the high water mark on each side requires a wetlands permit and one does not need a wetlands permit to pick up debris, but if any grading, drainage or erosion control is to be done those are all matters that would be subject to a wetlands permit.

Mr. Roston said with working with the wetlands, there was a citizen thinking she was trying to do a good thing here and probably did not realize a permit was needed, but it is known that one can't work in the wetland to do any sort of grading or erosion control with a wetland permit to the extent that Ms. Haggerty is an outdoors person and likes to do this to the extent that the city staff and Dakota County Soil and Water Conservation would want her to do that and she wants to do that as well.

Mr. Roston said the wetland permit was granted and is still in effect but technically speaking, if the city is going to revoke a wetland permit which would be a property right, it would have to go through the due process channels for the opportunity to be heard and he really does not want to go there. Mr. Roston said he understands there are violations of the CUP and they need to be corrected. As far as the wetland permit, it was granted across the stream and this is a property right that Ms. Haggerty has.

Mr. Roston said in relation to the issue with the dog containment, there are animals in that stream all day long whether or not the conditional use permit is approved or not. Mr. Roston said they just want to do the right thing in containing them so there are no accidents along Highway 110.

Chair Lally said the wetlands permit was approved in 2005 in order to place a fence entirely on the applicant's property, but the discussion does not include anything about a natural stream running through the property at the time. It is unclear from the wetlands permit whether there was an approval to have a fence cross the stream, and the wetlands permit indicates that the approval was to be able to build within the 100 ft. buffer.

Mr. Roston said that the proposed plan in 2005 showed that fence traversing the stream. Chair Lally said the materials he has indicates there was no discussion about the actual stream running through the property at that time. Mr. Sedlacek said the applicant is correct in stating that the previous application did show a fence which traversed that stream. There was no discussion around the wetlands permit and there were no findings around that and staff believes it is particularly odd. Regarding the revocation of the wetland permit, the City Attorney did review the code enforcement letter which described the revocation of the wetland permit. Staff's recommendation at this point would be for the Planning Commission to look at the wetlands permit as it is before them and make a decision based upon the Planning Commission's knowledge of the city code and the feedback that has been received. If there is a question about the revocation, it would be held at a different venue from this.

Chair Lally asked if Ms. Haggerty objects to the angle of the fencing with the 25-ft. setback from the stream. Mr. Roston said she would just like anyone would object to having their back yard cut off from them. Chair Lally said she still have her back yard, it is just the location of the fence.

Commissioner Hennes said he would like to know what the objection is to the 25-ft. setback from the creek and it would seem that there is no way to get access to that very southwest corner, but it seems to be fairly remote given the size of the rest of the yard. Mr. Roston said Ms. Haggerty simply wants to use her land the way she has been using it and the way the permit was granted.

Commissioner Povolny said just because the yard is not fenced does not mean she can't use it, she can put a gate down there and still use the creek.

Commissioner McManus said he understands the purpose of keeping pets contained and asked what the negative is about having the fence not crossing the creek. Mr. Roston said she would not want to have her back yard cut up. Commissioner McManus said she can put gates around the yard so the dogs cannot get out. Ms. Haggerty said the fire pit is out there also. Commissioner McManus said the fire pit would have to be moved.

Mr. Roston said everyone views this differently, and his client views this as a property right and is asking the commission to consider it. Commissioner McManus said he wants to see the creek in his yard kept up but would never put a fence across the stream because of what it would do to his neighbors.

Commissioner McManus said he does not understand how this violates her right to use her property. Mr. Roston said Ms. Haggerty wants to allow her animals to have the use of the entire yard and there are aesthetic reasons as well.

Mr. Sedlacek asked for clarification that there is a fire pit in the buffer area. Mr. Roston said he does not know. Commissioner Povolny said he has seen a small pit and some chairs in that area.

Commissioner McManus said one can see that the Planning Commission reads the reports and a good faith decision by the Planning Commission and the City Council seems to have been totally ignored in the last efforts and that is why the applicant may detect some hostility and frustration. Mr. Roston said he does not detect any hostility and frustration and he represents developers and private property owners in front of planning commissions and city councils all day long. The wonderful about the way the systems are set up is that these decisions get to be made at a local level and everyone has different views. It is unfortunate that there is strife caused in the neighborhood and no matter what happens, the neighbors will have to resolve that and it sounds like it is personal, and he would encourage both of them to work it out.

Chair Lally said there was a public hearing previously on this matter in July and testimony was heard. The public hearing was then closed Chair Lally said he is not inclined to open the public hearing again, unless there is some interest by the commissioners.

**COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER HENNES, FOR APPROVAL OF THIS CONDITIONAL USE PERMIT AND THE WETLANDS PERMIT IN ACCORDANCE WITH THE CONDITIONS OUTLINED ON PAGES TWO AND THREE OF THE STAFF REPORT DATED SEPTEMBER 22, 2009.**

Commissioner Norton said he would like to amend his motion:

**COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER HENNES, FOR APPROVAL OF THIS CONDITIONAL USE PERMIT AND THE WETLANDS PERMIT IN ACCORDANCE WITH THE CONDITIONS OUTLINED ON PAGES TWO AND THREE OF THE STAFF REPORT DATED SEPTEMBER 22, 2009, AND AMEND THE CONDITION NUMBER ONE ON PAGE TWO WHICH HAS A DATE OF OCTOBER 15<sup>TH</sup> TO NOVEMBER 15<sup>TH</sup> TO ACCOMMODATE THE TIMELINES OF MS. HAGGERTY'S CONTRACTORS.**

Commissioner Hennes said he accepts the friendly amendment.

Chair Lally said the applicant will need to submit a further fence application and staff will have the opportunity to review the specific plans at that time.

For clarification, Chair Lally listed the conditions to the conditional use permit:

1. The existing, non-conforming fence must be completely removed by November 15.
2. A valid fence permit shall be requested and obtained within six (6) months of the date of the final City Council approval of the conditional use permit.
3. Any fence must be constructed pursuant to all applicable city codes, including but not limited to the following: the fence must be located completely within the property and all applicable setbacks, the fence must meet the 30% opacity requirement and the finished side of the fence must face the neighboring property owners.

For clarification, Chair Lally listed the conditions to the wetlands permit:

1. The fence shall be set back at least 25 feet from the stream to establish a buffer area.
2. Natural vegetation shall be planted in the buffer area sufficient to establish a permanent cover.
3. The fence shall be located outside of any public easements.
4. The area of the property outside of the fence line shall be re-vegetated with appropriate wetland buffer plants and grasses.
5. All issues related to grading, drainage and erosion control of the site shall be subject to the review and approval of the City Engineer.

Mr. Roston asked that the condition be added to allow the applicant to access the fence via the neighbor's property. Mr. Mazzitello said the non-conforming area of the fence that will cause the revocation of the original CUP is the improper material which is the welded wire fence. None of that is on the property line between the applicant's property and 800 Ridge Place. The other reason for revocation was for the fence in the right of way.

The property owner at 800 Ridge Place said the fence was built from the applicant's side of the fence. Commissioner Povolny asked this property owner if she would be agreeable to having Ms. Haggerty enter onto her property a couple of inches. The property owner at 800 Ridge Place said she would.

Chair Lally called for the question.

**AYES**            **6**  
**NAYES**          **0**

**Verbal Review**

Mr. Sedlacek gave the following verbal review:

PLANNING CASE #09-29            Maureen Haggerty            Conditional Use Permit/Wetland Permit  
• This case has been tabled by the Planning Commission until the September Planning Commission meeting.

PLANNING CASE #09-20            Kerry Kern            Wetlands Permit  
• Approved by the City Council as recommended by the Planning Commission.

PLANNING CASE #09-30            David Kutoff            Zoning Ordinance Amendment  
• Approved by the City Council as recommended by the Planning Commission.

PLANNING CASE #09-31            Matthew Cunningham            Variance  
• Approved by the City Council as recommended by the Planning Commission.

PLANNING CASE #09-32            Thomas Ademite            Variance  
• Approved by the City Council as recommended by the Planning Commission.

PLANNING CASE #09-33            City of Mendota Hts.            Zoning Ordinance Amendment  
• Approved by the City Council as recommended by the Planning Commission.

**COMMISSIONER POVOLNY MOVED, SECONDED BY COMMISSIONER HENNES, TO ADJOURN THE MEETING AT 9:00 P.M.**

**AYES**            **6**  
**NAYES**          **0**

Respectfully submitted,  
Rebecca Shaffer, Recording Secretary