

CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY
STATE OF MINNESOTA

Minutes of the Regular Meeting
Held Tuesday, January 7, 2003

Pursuant to due call and notice thereof, the regular meeting of the City Council, City of Mendota Heights, Minnesota was held at 7:30 o'clock p.m. at City Hall, 1101 Victoria Curve, Mendota Heights, Minnesota.

OATH OF OFFICE

The City Clerk administered the Oath of Office to Mayor John J. Huber, who was elected on November 5, 2002 to a two-year term of office, to Councilmember Mary Jeanne Schneeman, who was re-elected to a four-year term of office, and to Councilmember Ultan Duggan, who was elected to a four-year term of office.

CALL TO ORDER

Mayor Huber called the meeting to order at 7:45 p.m. The following members were present: Mayor Huber, Councilmembers Duggan, Krebsbach, Schneeman and Vitelli.

PLEDGE OF ALLEGIANCE

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

AGENDA ADOPTION

Councilmember Krebsbach moved adoption of the revised agenda for the meeting.
Councilmember Duggan seconded the motion.

Ayes: 5

Nays: 0

APPROVAL OF MINUTES

Councilmember Vitelli moved approval of the amended minutes of the regular meeting held on December 17, 2002.
Councilmember Schneeman seconded the motion.

Ayes: 3

Nays: 0

Abstain: Huber, Duggan

CONSENT CALENDAR

Councilmember Duggan moved approval of the consent calendar for the meeting, revised to move items 5, and 5, to the regular agenda, along with authorization for execution of any necessary documents contained therein.

- a. Acknowledgment of the Building Activity Report for December, 2002.

- b. Adoption of Resolution No. 03-01, "CORPORATE AUTHORIZATION RESOLUTION," to add Mayor Huber to the list of authorized signatures at American Bank..
- c. Approval of the appointment of Councilmember Schneeman as the Mendota Heights representative on the Gun Club Lake WMO.
- d. Approval to schedule the annual Board of Review for April 1, 2003 at 7:00 p.m.
- e. Approval of the appointment of Teresa Ganglehoff to permanent status as half-time Recreation Programmer, retroactive to December 26, 2002.
- f. Adoption of Resolution No. 03-02, "RESOLUTION ESTABLISHING 2003 CITY DEPOSITORIES OF FUNDS."
- g. Adoption of Resolution No. 03-03, "RESOLUTION ACCEPTING PLEDGED SECURITIES FOR 2003."
- h. Approval of the list of Rubbish Hauler licenses dated January 7, 2003.
- i. Approval of the list of contractor licenses dated January 7, 2003.
- j. Approval of the List of Claims dated January 7, 2003 and totaling \$99,356.82.

Councilmember Schneeman seconded the motion.

Ayes: 5
Nays: 0

OFF-DUTY WORK POLICY

Council acknowledged a memo from Police Chief Piotraschke regarding the police department's off-duty work policy for police officers.

Councilmember Krebsbach asked if the city would be liable for the actions of a police officer in an off-duty position. She also asked whether the officers will be able to schedule through the city and also take on assignments that are not scheduled.

Administrator Lindberg responded that the policy would only cover officers who are working at the direction of the city for organizations like St. Thomas Academy, Beth Jacob Synagogue, etc. All extra

duty assignments will be scheduled by the city. The city will pay the officers and bill the organizations. The officers will be covered by the city's insurance policy except if the officers are working outside the city's boundaries (State Fair, etc.). The off-duty policy does not extend the city's liability.

Chief Piotraschke informed Council that this issue has been around since May, 1998. It was the former chief's opinion at the time that the city had as much of a standing liability under the current situation as it would if the city controlled the assignments. He did not believe the revision in the policy adds any liability to the city. Also, because the policy clearly defines the responsibilities for each of the jobs, the majority of the work would fall under extra duty. Officers will not be allowed to negotiate jobs by themselves except for work outside of the city's service area – like the State Fair, but in those cases the officers would need approval from the Police Chief. The city is bound by the existing policy and actual labor contracts to schedule off-duty work in as fair a manner as possible.

Councilmember Duggan asked whether there is an extent of duties and limits of duties that an officer would perform and if so, if the officers are aware of them and if the organization they are doing policing for is aware of them.

Chief Piotraschke responded that the assignments would be mandated by normal job descriptions. The policy only requires the officers to do what they would normally do as an on-duty officer.

Councilmember Krebsbach moved to acknowledge receipt of the policy on off duty assignments.

Councilmember Schneeman seconded the motion.

Ayes: 5
Nays: 0

CONCORD WAY STOP SIGN

Council acknowledged a memo from Public Works Director Danielson in response to a request for a stop sign at Concord Way and Lockwood Drive. Mayor Huber noted that the staff recommendation is to deny the request.

Councilmember Duggan stated that he is concerned about a tree that appears to be closer to the intersection than it should be, which is similar to the situation on Decorah. He asked staff to see if the tree should be moved or trimmed back as opposed to installing a stop sign.

Councilmember Duggan moved to deny the request for stop sign.
Councilmember Schneeman seconded the motion.

Ayes: 5
Nays: 0

EMPLOYEE RECOGNITION

On behalf of the City Council, Mayor Huber presented plaques to the following city employees in recognition of their years of service and dedication to the community: Leonard Kanitz and Kathleen Swanson, 30 years; Jim Kilburg, 20 years; Nancy Bauer, Aaron Coates, James Perron, and Kevin Perron, 15 years; Linda Shipton, 10 years, and John Boland and Richard Burrows, 5 years. Although they were not in attendance, the following employees were also recognized: Mike Maczko, 20 years, Richard Gill, 15 years, John Ambrose and Tracy Wilczek, 5 years.

ACTING Mayor

Mayor Huber moved that Councilmember Krebsbach be appointed to serve as the Acting Mayor during any absences of the Mayor in the year 2003.
Councilmember Schneeman seconded the motion.

Ayes: 5
Nays: 0

OFFICIAL NEWSPAPER

Council acknowledged and discussed a memo from the City Clerk regarding designation of an official city newspaper for 2003. Council also acknowledged letters of request from Lillie Suburban News (Southwest Review) and Sun Newspapers. It was noted that the rates charged for legal publications in the Southwest Review are considerably lower than the Sun.

Councilmember Krebsbach stated that the Southwest Review was the official newspaper for several years and the Sun has been the official newspaper for the past few years. She felt that it may be a time to change back to the Review.

Councilmember Duggan informed Council that he has a small claim against the Sun Newspaper because of distribution, so he will abstain from the vote.

Councilmember Vitelli moved that Lillie Suburban News (Southwest Review) be appointed as the city's official newspaper for 2003.
Councilmember Schneeman seconded the motion.

Ayes: 4
Nays: 0
Abstain: Duggan

NDC4 REPRESENTATIVE

Council acknowledged a memo from Administrator Lindberg regarding appointment of representatives to the NDC4.

Councilmember Krebsbach moved to appoint Councilmember Duggan as the Council representative on the NDC4 and Mr. Mike Sokol as the citizen representative for two years terms through January, 2005.

Councilmember Schneeman seconded the motion.

Ayes: 5

Nays: 0

EAW PETITION/
CASE NO. 02-50, CLARK

Council acknowledged a memo and proposed resolution ordering an environmental assessment worksheet for a proposed multi-family housing development at the north end of Pilot Knob Road ("The Bluffs," Case No. 02-50). Council also acknowledged the following communications: letter from the Mendota Mdewakanton Dakota Community; "Oheyawahe or Pilot Knob Preliminary Summary of the Evidence: prepared by Bruce White and Alan Woolworth; letter from Thomas Casey to Dan Schleck; letter from the MAC; letter from Arvo Looking Horse; "Dakota and Ojibwe Land Cession Treaty Sites in Minnesota;" letter from Ann Larson, Lower Sioux Indian Community; letter from Britta Bloomberg, Minnesota Historical Society; email from Tom Weaver; letter from Bruce Kessler, co-chair of the Beth Jacob Cemetery Association; email from Leonard Oppenheimer; letter from Gemini Research; letter from the Shakopee Mdewakanton Sioux Community; letter from the members of the Social Justice Committee of the Beth Jacob Congregation; letter from Christine Snyder and Stephen Landry; and, letter from Cheryl Fields.

As a general statement, Mayor Huber stated that he is sure everyone on the Council has received a lot of information from various people along with many phone calls and they all appreciate it. He asked, however, that in the future all items where a concerned citizen has written information that they want to get to a Council member, the best way to do that is to bring the information to City Hall and let staff distribute it. Then everyone on Council knows that everyone received the information and that staff has the same information. There are times when Council members are gone, and city staff can track them down and get important information to them.

Attorney Schleck added that people should understand that things that are delivered to individual Council members at home do not

become part of the official city record. Only items that are submitted to City Hall become part of the city record.

Councilmember Vitelli stated that if Council decides to move ahead with an EAW, Council must also define what they want it to focus on. That should include historical significance, wetland, air quality and noise.

Attorney Schleck reviewed a letter he sent to Administrator Lindberg on December 27. He stated that the Environmental Quality Board is the state agency that is charged with overseeing this process and they put out good guidance information on how local governmental units are to treat these requests. An EAW is really a determination of the project's environmental impacts and a comparative analysis of its economic and sociological effects. He gave Council an overview, stating that as the Responsible Government Unit (RGU), Council can decide what are the important items with respect to an individual project. The EAW must take into account local affects. The decision to be made tonight is whether Council deems that an EAW is required for this development on the Garron/Acacia site. There are two types of EAW processes. Some projects require mandatory EAWs and some are discretionary. The decision on whether to do an EAW is discretionary in this case and Council makes the determination if one is required. The purpose of the worksheet is to determine if an Environmental Impact Statement is required. The EAW is a screening process to be used by RGUs so that not a large amount of effort, time and expense is spent on a project that may not need an EIS. If a project may have the potential for significant environmental effects, the RGU should require an EAW. The standard for whether there is the potential for significant effects is not clear cut. The RGU can decide on a case by case basis what warrants review and what does not. The RGU can look at social and economic impacts such as noise, green space preservation, infrastructure issues, traffic, parking, etc. The process does not simply anticipate Council look at contamination to the air, water and soil. It allows RGU's to look at different things. There is little guidance to say whether an EAW should be done. He reviewed the items that the EQB suggested in its guidelines that may be considered. He stated that the law is written in less than rigid form to allow flexibility by the RGU.

Councilmember Krebsbach asked if Council could define the EAW down to one question or if it must respond to all 25 items in the worksheet.

Attorney Schleck responded that of the list of items, to some extent Council must look at what of the items are important with respect to this project and what are the concerns with respect to the community, and that is a Council decision. It is part of the decision that the RGU can make and if, for example, there are certain aspects people feel are important to review and the RGU feels they are not, that is an appealable decision, and phases of the decision are appealable as well.

Councilmember Krebsbach asked if what Mr. Schleck is saying is that if Council defines it down, the petitioners can appeal.

Attorney Schleck stated that anyone can appeal but they must be able to show standing. Anyone who was one of the original petitioners would probably have standing. The EAW process is designed to be flexible for Council to determine what items are the best to be reviewed if Council chooses to review anything.

Councilmember Duggan stated that it seems to him there was an indication there could be establishment of mitigating factors and/or ways to mitigate or reduce impacts.

Attorney Schleck responded that the mitigating factors as they relate to a project are things that should be reviewed as part of the EAW or as part of the decision on whether to require an EAW. The important thing with respect to the decision Council makes is that it is important for a Council to fully document and record why it is making its decision.. If mitigating factors are one of those items, that should come into it.

Councilmember Krebsbach asked that if the EAW is done based on the proposal that is before Council but there is a modification to the proposal to create more scenic areas, at what point would a court find an accommodation in a proposal as meeting the worksheet.

Attorney Schleck stated that the question is if there are changes to a project that address some of the concerns as they relate to the potential for significant environmental effects, to what extent does that change Council's review process or its decision. Minnesota Rules 4410 state that if a decision is made to require an EAW, that decision stands for one year after it is made for any similar project proposed for that site. The need to redo an EAW would come down to a Council decision on whether one project is significantly different enough from another to require another EAW. Responding to a question from Councilmember Krebsbach about at what point there

is a level of satisfaction, the end of the EAW process. He stated that the EAW process is designed to identify significant environmental impacts. The decision on whether to require mitigating measures is up to the RGU, and it is also up to the RGU to decide when the scope of the EAW process is complete. If Council chooses to do an EAW, Council also decides when it is complete. Council should be aware that in the EAW process, once it is drafted, it is published for 30 days and the city is to accept comments for 30 days and is required to respond to the comments. With respect to the cost of the study, there is no provision in the statute that requires a developer to pay for the EAW. A developer can volunteer to pay for that work with respect to the EAW. The EIS process requires a project proposer to pay for it. The cost of the EAW is the city's unless the proposer decides to do it on his own.

Mayor Huber asked if Council would like to entertain audience comments at this point.

Mayor Huber stated that this is not a public hearing, but he believes many of the audience members would like to comment. He stated that this is not a public hearing but he invited them to speak on the matter with the guideline that they think of two or three things that they think are most important to be addressed.

Councilmember Vitelli suggested that the people who come forward, do so to provide Council with new information or information, for example, as to why this might be a historic site, rather than just saying they think there should be an EAW. Many people have called him and eight of ten people could not offer a reason why an EAW should be done. One person did not even know where the site is. He asked the audience to try to add something to Council's knowledge.

Attorney Schleck stated that in determining whether to require an EAW, Council is to consider facts as opposed to opinion. It is important for people to state a fact and not an opinion.

Councilmember Krebsbach stated that she has reviewed the documents that have been provided and has made notes on them. She asked whether she should share them at this meeting.

Attorney Schleck responded that the review of the information itself is what the EAW is for.

Councilmember Duggan asked at what point Council determines whether a piece of information is anecdote or fact.

Attorney Schleck responded that that is the key issue. There is no standard in case law on what a significant environmental effect is. The RGU is allowed to determine what is significant.

Mr. Steve Golias, Deputy Mayor of Mendota, stated that he is present to represent the City of Mendota. He stated that Mendota has a joint powers agreement with Mendota Heights on waste water and he would hope that would be addressed in the EAW. Mendota has concerns over the size and scope of the project. He also asked that Mendota be allowed to be an active participant in the EAW, specifically concerning the waste water that would be coming into Mendota's sanitary sewer. That water goes into the same system and pumping station that was designed for the 77 dwelling units in Mendota and this would add 154 units to that. That would have significant impact on Mendota. There will also be billing expenses. When the cities entered into the agreement, Mendota was of the understanding it would just be St. Peter's Church and the immediate adjacent area coming into their system.

Mayor Huber stated that the City Council would still be the RGU, but there is another local government that wants to be involved in the process. They would be in the same role as others who bring up issues: Council would not be sharing the RGU responsibility.

Attorney Schleck stated that there is no provision in the law for dual RGU. Council would make the determination on what weight to give Mendota's comments.

Ms. Olivia Herstein, 2370 Lexington Avenue, a member of the Beth Jacob Synagogue, stated that she was present to urge Council to order an EAW. She felt that the property has serious spiritual significance and significant historical value, and she asked for a thorough review of the archeological, historic and environmental importance of the site. As a Mendota Heights resident, she believes Pilot Knob is a historical gem and that this sacred space should be honored.

Mr. Tom Casey, legal counsel for the Mendota Dakota Mdewakanton Community, stated that one of the Community's missions is to promote and support the heritage of their community in Minnesota. They submitted the petition for EAW. He agreed with what Attorney Schleck said, but stated that even in his memo he said Council should order an EAW if the project may have a potential for significant environmental effects, but in fact the rule

says that an EAW shall be ordered if a project may have a potential. That threshold is very low. All his clients need to do is to make a good faith attempt to submit evidence. They do not have to do an EAW in order to ask for an EAW. His clients submitted one inch thick material with the petition and have submitted new material since that time, including the 32 page memo from Bruce White. He asked that Mr. White be given the opportunity to review and summarize that information about the historical significance of the site. He stated that he is a PhD Anthropologist with a Master's in history and has worked with the Minnesota Historical Society and has been a private consultant since that time.

Councilmember Krebsbach stated that in the past that she had assumed that Mr. White was present in his own interest. She asked if he is here in his own interest or if he was retained by the Mendota Mdewakanton Community.

Mr. White responded that he has been working with the Community to document its family history. He is not being employed by them to represent them in this issue. He is a consultant for them on other issues. He stated that he is employed by the Milacs Ojibwe and the National Park Service and a number of other agencies, but he is not representing them here. He is representing himself as a historian. He stated that his PhD is in Ethno History. He has worked with the Historical Society to do a study on the interpretation of Fort Snelling and that included Pilot Knob and other areas.

Councilmember Krebsbach commented that Mr. White has been present at other meetings, and asked if he was retained to be present at those meetings.

Mr. White responded that he was not paid by the Mendota Mdewakanton to come to the meetings. He is paid to work on other projects for them. He is a historian and historians work on things they believe in.

Mayor Huber stated that Council wants to focus on the project site and its relationship to the area around it. Council needs to establish the concerns about this particular project and the boundaries it encompasses.

Mr. White stated that he came here in December and also appeared at Planning Commission meetings in October and November and spoke about the importance of Pilot Knob. Pilot Knob is a very important historical place based on his experience and knowledge. That is why he prepared documents for the December meeting. He

thought at that time, after attending the meeting, that the EAW was going ahead based on the comments of the City Attorney. As it turned out that was not the case. At the last meeting he presented material to Council and some important and valid questions were raised. The summary he presented for this evening's agenda is a response to those questions. It is important to say why not only Pilot Knob as a whole is important but why this particular property is a part of Pilot Knob and why this particular property has significance and that is what this report tries to show. It is not exhaustive and he would not want to have Council say that since it has been done why is an EAW needed. At a minimum, what the evidence shows is that there is strong evidence that the proposed Garron/Acacia property does include areas of historical and cultural significance, including, he believes, the Treaty of 1851 site. It also shows that scenic and rural character of Pilot Knob has been protected over the years. This is an important site and he would hope Council would protect it. He believes the evidence shown in the summary and the letters the city received from the Minnesota Historic Preservation Office, the Shakopee Sioux, etc., point out the sacred importance of this site to the Dakota people and its historic importance. He believes this development would seriously damage this site, making its historical and scenic character disappear. He believes the report shows at a minimum that a thorough analysis of the site is necessary. When people talked about Pilot Knob, they used a number of different terms that indicated the importance of the area. It was called Pilot Bluff, Pilot Hill, and Pilot Ridge as well as Pilot Knob. The Dakota called it the hill most visited. They were talking about the entire hill, not just the area within Acacia Cemetery. It is rare to find a historic site in which white people talk about sacred character of the place for the Indian people. In his experience in doing historical research there are claims sometimes of sacredness that are totally ignored in the historical record, but there are books and articles all saying this site is sacred to the Dakota people. They also talk about the burials there. A picture of Pilot Knob by Seth Eastman shows burial scaffolds there. Seth Eastman put Pilot Knob in almost every picture he did of Fort Snelling. It is rare to find historical documents that talk about the religious uses of places by the Indian people, but there are detailed descriptions of medicine dances on a plateau on Pilot Knob. He would say that it is very likely that was on the Garron property/Acacia property. There is much discussion about the Treaty of 1851 in the report. For years, people said the treaty was signed on the top of Pilot Knob. The research he has done indicates the treaty negotiation took place on a high plane on the slopes of Pilot Knob. The treaty of 1851 was one of two treaties signed by Dakota people in which they sold the remainder of their land in Minnesota - 34

million acres. There was a preservation in the treaty for a reservation in western Minnesota, half of which was later taken away by the senate. At the last meeting Council raised a question of what effect development over the years has had on this property. The evidence shows that this area has not been developed ever. It has been used primarily for farm land up until the present time. Since before the government survey 160 years ago, this land has been used for farm land. It has been skirted and defined by railroads and roads, but the plat maps and aerial photos show that it has been protected as an island. T.H. 55 was expanded quite a bit in recent years, which cut into the north end of the property. There is some fill along the edge for the grade. He showed aerial photographs of the Garron/Acacia site showing roads that are the descendants of the early trails and the earliest roads in the Mendota area. Highway 55 is the successor of the St. Croix Trail and later the Mendota/Hastings Road. Although the route has been changed along the Garron site, the photo shows the old trail, which is another historical remnant and explains the strange diagonal property line on the site.

Councilmember Krebsbach stated that the purpose this evening it to determine the facts. She asked Mr. White if he could give Council three facts that relate to this site.

Mr. White responded that he gave Council 30 pages with more than three facts, but in quick summary, he stated that: Pilot Knob is an entire hill, not just a knob on the top; it is a fact that this area is known to be sacred to the Dakota; he believes the Treaty of 1851 took place on the Garron site; and this site does not show a great deal of disturbance and has been preserved for more than 160 years. He summarized by saying that there is a lot of evidence from the state historical office that would agree with the conclusions he drew in the report.

Councilmember Duggan stated that Mr. White's submittal that was delivered to Council's residences on Saturday puts into more sensible form the 35 exhibits that had previously been submitted.

Mr. White stated that it includes those 35 exhibits and additional information he and others were able to find in the past 30 days.

Councilmember Duggan stated that it puts into clearer form all the information that has been presented to Council. He stated that he would like a motion to include the material in the public record.

Administrator Lindberg responded that the material was also delivered to City Hall, so it is part of the public record.

Councilmember Krebsbach stated that one fact Mr. White did not include as a fact was whether this site was a burial ground.

Mr. White responded that he does not have archeological evidence that the Garron/Acacia acre site was a burial ground but there is strong evidence that the entire bluff is a sacred place and a burial place.

Councilmember Krebsbach stated that Council has a letter from the State Archeologist from the early 1990's that it was not in fact a burial site nor is there any evidence of human remains there.

Mr. White responded that he has no idea what property he was talking about.

Councilmember Krebsbach responded that the reference was to the Garron site.

Mr. White responded that the letter simply states that the State Archeologist has no evidence that there are burials on the site, and it is only talking about a portion of the site. He suggested that Council would want to get a more complete response to the whole site and not just one part of it. The site is a spiritual site even if there were no evidence of burials found on it. He stated that in preparing this he tried to sift through the evidence and not base the arguments on things where he could not corroborate what was said in the evidence. He did not include anecdotes in the report. He did not put things into the report just because he thought they would help his case – he put them in because he felt they were accurate.

Councilmember Vitelli asked why the state historical society and other historical groups in the State of Minnesota have not been more aggressive at determining this site as a national historic site or why they haven't purchased the land or developed an interpretive center there.

Mr. White responded that the city has evidence from the State Historic Preservation Office in the letter from Britta Bloomberg. The letter discusses the questions being talked about here. It refers back to a study done for the Office in 1990 in which they dealt with a question of where on the bluff the Treaty of 1851 occurred. At that time, the contractor working for the preservation office suggested

that the site should be nominated for the National Record of Historic Places, and it was likely lost in the shuffle. Many people are not aware of the importance of a place until it is endangered.

Ms. Allisa Chester, a Minneapolis resident, stated that she remembers someone saying at a past meeting that when the Mendota Bridge was done upwards of 15 million tons of dirt was removed. There must have been an archeological study done.

Councilmember Krebsbach responded that she had made the comment, and that 200 million square yards of dirt was removed from the bluff. She stated that she was sure the state could not have removed human remains without any acknowledgment. She stated that there has been a sale sign on this property for many years, and also there was significant earth moved when the interchange came in. She stated that she has been a steward of the bluff and was very concerned about the removal of that much soil.

Councilmember Duggan stated that in 1922 the Masonic Order purchased Acacia and took off 20 feet of the top. He asked if anyone has approached the Masonic people to see if there is any record of what damage may have been done to grave sites if indeed there were any grave sites there. There have been three different times when this site has perhaps been impacted – the construction of the original bridge, reconstruction, and the changes made by the Masonic Order.

Mr. Bob Brown, 1016 Douglas Road and Chairman of the Mendota Mdewakanton Dakota Community, stated that as one of the leaders of the original petitioners, he is present to ask Council to give real consideration to doing an EAW. He stated that what has been submitted in information has barely scratched the surface. He stated on a personal note (in response to the questions made to Mr. White) that for three years he did not get any pay for being the chairman. He gets a stipend now because the Community received a grant to bring back the Dakota language. He stated that he does what he does for the Community not for money but out of respect for his ancestors. He stated that the homes do not need to get in the ground right away and asked the City to spend the time to do the EAW.

Councilmember Krebsbach stated that she pursued the question to Dr. White because she feels it is important to know who is retained as a professional to make presentations and who is here as an interested citizen. It is important to know who is speaking as a professional and who is speaking from opinion.

Mr. Golias stated that several times Dr. White talked about the Mendota Community and Mendota. He was talking about the Mendota Indian community and not the City of Mendota.

Mr. Jim Anderson, 19626 Iva Street, Cedar, Minnesota, stated that he is the Cultural Chairman of the Mendota Mdewakanton Dakota Community. He stated that he is here because his relatives were buried on Pilot Knob Hill and in the 1920's a lot of his community's relatives remains were dug up. He has researched hard to try to find where those relatives are. There is a graveyard on each side of where the road goes through and his relatives are buried in those cemeteries and his relatives were in the ground between those cemeteries. He has come here to ask for the EAW to be done so that the questions the Council and others are asking are answered. If the project is allowed to continue, it will perpetuate the cultural genocide of the Dakota people that has been going on for hundreds of years. He asked from his relatives' past and future that this small area that is left of a once great Dakota nation be protected for the future generations so the sins of the past are not repeated. Indians are the only people in this culture who must fight to protect the graves and the culture of its ancestors.

Mr. Ray Fuhrman, MAC Director of Environment, stated that Executive Director Jeff Hamiel submitted a letter to the city. He could not be present tonight. He stated that this site is about 6,000 feet from the runway and MAC believes residential development in that area is a concern. It is within the 65 DNL contour that is currently being used for mitigation in areas around the airport. There is significant concern over residential development on the site.

Councilmember Duggan asked if the objections were as strenuous to the Augusta Shores development as they are to this development, and if not, why not.

Mr. Fuhrman responded that he did not believe they were as strong. MAC had concerns but it was probably more of a consideration on MAC's part that they did not move as aggressively with that. Mr. Hamiel has received some calls from the Augusta Shores area. MAC did submit some documentation to the city at that time but that discussion did not draw on so long.

Councilmember Krebsbach stated that the letter from Mr. Hamiel references that Minneapolis will be allowed to infill the same distance from the end of the runway. It seems that MAC has one standard for Mendota Heights and another for Minneapolis.

Mr. Fuhrman responded that what MAC refers to as infill – in the Metropolitan Airport Guide Chapter there are different standards for infill development than for new development. If there is an established community with an open lot, that would be consistent with the guide chapter for infill development. He stated that he does not believe MAC is imposing different standards. In this particular case, it is new development. There has been new construction that has taken place in Richfield and Minneapolis with redevelopment that took place. The standard that applied to that dates back to 1998. Those properties would not be eligible for mitigation.

Councilmember Krebsbach stated that in her opinion that is a different standard. To be consistent there should not be new construction in those cities in areas that are equidistant from the airport. MAC is not trying to remove residential properties in those cities.

Mayor Huber stated that Mr. Fuhrman is saying that the development that is being proposed does not fit the definition of infill, but there has been new construction that happened in Minneapolis and Richfield.

Councilmember Krebsbach stated that someone can build a new home on a vacant lot within a developed area the same distance from the runway as the Garron site. They are asking Mendota Heights not to build a new house the same distance away.

Mr. Fuhrman does not encourage a new home to go up in Minneapolis or Richfield, but the Aviation Guide Chapter says that if there is an open lot in a developed area, building one home within that area is compatible, versus building an entirely new neighborhood. There is also some inconsistency on the Garron/Acacia site between its zoning and the Comprehensive Guide.

Ms. Amy Goebel, a St. Paul resident and member of Beth Jacob, stated that she has an undergraduate in history, she is an attorney and also a teacher. In her role as a teacher she works with children and being a teacher, she is aware that the issue of facts can be very tricky. The overriding fact is that this is a valuable site for a very long time to very many people. The site has historic significance because of the treaty. To her, that means it deserves a study to determine whether any development can be done. There are many stories in popular culture that are fictionalized. There is a community of

people who live here who are Native Americans and it is important to her that they and their culture be valued.

Mr. Shawn Fitzgerald, from Lakeville, stated that the Highland Pilot Cemetery in Lakeville has suffered many changes over the years. It was a Catholic Cemetery, and unbaptized babies were buried outside the cemetery, in areas surrounding it, and the entire area was sacred ground. Today no one knows where those babies' graves are. They are probably no longer left, but it is a spiritual area out of respect for one's ancestors.

Councilmember Duggan stated that he is in favor of requiring an EAW for the reasons in the documentation from MAC, concern about impervious surface; the traffic in the area, noise from traffic, noise from the airport and the historicity of the site. Mendota Heights has not done much about the history of the community in any form. Council knows that the site has been for sale for a long time. There is enough information available for Council to direct an EAW. The danger is that if the EAW comes back saying to go ahead and do a development, the Native American community may have lost more. Council has asked how much of the site needs to be dedicated to history. How much do the Native American community need for a commemorative site. Setting aside the entire site is unreasonable. He wondered how many people have visited this site in 2000, and suggested that it was perhaps ten people. If there have been 100 visitors in the last ten years, he questioned why there have not been more people if the land has such cultural and historic significance. He stated that he is in favor of three to five acres being set aside as a cultural and historic area. The city also needs to look at what it has done to maintain the history. Mendota Heights is proud of its history, but little has been done about it. The city has never done one thing to acknowledge these sites. Working with the state, the native American community, the MAC, etc., he thinks Council could cover the issues in the next thirty days.

Councilmember Vitelli stated that he feels an EAW should be done but Council needs to address who is going to do the EAW. Mr. Clark will initiate the work and fill out the form. He felt that to be sure this is a finding of fact, the Mendota Mdewakanton Dakota Community must be asked to participate. If they do not contribute to the EAW, it will be empty. There is a lot of work to be done if Council is to make the correct decision. If both entities work on the EAW, the question is who will consolidate the information. In fairness to the developer and those who do the EAW, Council should work up a list of issues. He suggested that those issues include:

cultural history; historical significance in general; sanitary sewer, noise from the question of what additional noise is created in addition to the highway and airport; air quality reduction because of the airport and highway and the number of units; drainage that will be caused to go down the hill to the Mississippi.

Councilmember Schneeman stated that the EAW will provide the city with a process for new insights and appreciation for different perspectives. Complete compilation of data is essential, but Council must have the facts. Council must know if there will be significant environmental effects or not.

Councilmember Krebsbach stated that the biggest question to her that would be a reason for an EAW is the historic significance. The question about whether this is really a burial site and if there are human remains there must be answered. Acacia Cemetery should be able to provide some information in that regard and also about the area identified as Acacia that is not part of the cemetery. The study must include historical significance, an answer to the question of burial sites, and impact on the views and vistas. She recommended that there be some recognized historical compilation so that this process includes some other recognized scholars or organization working with the Mdewakanton community on that material.

Mr. Anderson responded that he would like to make sure that all the Dakota communities be involved.

Mayor Huber stated that he thinks an EAW needs to be done. He stated that there is a consensus, and there have been comments about areas that Council members want to address. He asked Attorney Schleck if there should be a resolution that has findings on why Council is going forward or list the issues Council wants to be addressed.

Attorney Schleck responded that there is a model resolution in the agenda packet that covers the action that is required for tonight, which is simply that an EAW required. Council is making an affirmative decision that the project may have the potential for significant environmental effects. It is not necessary to scope the EAW tonight, and he suggested that there should input from a consultant in this area and also from the developer.

Mayor Huber stated that he is interested that when Council leaves tonight, they will have at least talked about how the structure will be created.

Attorney Schleck suggested adopting the proposed resolution and at the next meeting, staff can submit a timeline and plan on how to complete the project.

Administrator Lindberg stated that she has had discussions with Mr. Clark, but there is no timeline on how long it will take to complete an EAW. It is in the interest of the developer to move this along, and he indicated he would be willing to generate much of the information for the city. Responding to a question about what would happen if the development proposal is withdrawn, she stated that the city does not have an ordinance in place to require a developer to pay for an EAW. If Mr. Clark withdraws the project, there is no project on which to do an EAW.

Councilmember Krebsbach asked what happens to the question of whether Council wants the cost to be shared by the Mendota Mdewakanton if the applicant withdraws.

Councilmember Duggan responded that the recommendation from Councilmember Vitelli was that the Mendota Mdewakanton participate in the process, but not that they pay for it.

Attorney Schleck stated that the city has been designated as the RGU and it is responsible for completing the EAW. Minnesota administrative rules say that the project proposer is required to submit all information necessary to complete the EAW. There is no requirement in statute that a proposer pay the entire cost. Council has the ability in the future to pass an ordinance to say that a developer is required to pay the cost for an EAW process.

Councilmember Duggan moved adoption of Resolution No. 03-04, "A RESOLUTION ORDERING AN ENVIRONMENTAL ASSESSMENT WORKSHEET FOR THE MULTI-FAMILY RESIDENTIAL DEVELOPMENT KNOWN AS "THE BLUFFS," IN THE VICINITY OF THE NORTH END OF PILOT KNOB ROAD, PLANNING CASE #02-50." Councilmember Vitelli seconded the motion.

Ayes: 5
Nays: 0

RECESS

Mayor Huber called a recess at 10:15 p.m. The meeting was reconvened at 10:22 p.m.

CASE NO. 02-50, RON CLARK

Council acknowledged a memo from Administrative Assistant Hollister regarding continued discussion on an application from Ron

Clark Construction and Design for rezoning, preliminary plat, conditional use permit for PUD and variance for "The Bluffs" proposed development. Mr. Clark and Mr. John Uban were present for the discussion.

City Attorney Schleck stated that this application has been discussed at several meetings. Now that Council had decided an EAW is required, the reading of the statutes and rules place prohibitions on governmental approvals during the process. The prohibition prohibits a governmental unit from making any final decision as it relates to the project. The law is not very clear as to what final is. The EQB says things like preliminary plat approvals are final decisions and they recommend they not be made. The law does not prevent a governmental unit from giving a conditional approval. Conditional approval is also not defined in the statute but the EQB gives guidelines on what types of reservations a RGU should keep on whether or not to give a conditional approval. It basically comes down to a reservation of rights of the community to say that if a conditional approval is given it would not prevent a RGU from making changes or denying a project in the future depending on the outcome of the EAW.

Mr. Uban showed overheads of the development area. He stated that he has been here before to review this project and submitted a letter containing additional information. He stated that he would like to review the latest booklet he has prepared to share some of the comparisons in the logic of the plat. The first plan received a number of comments that drove the developer to make quite a few changes in the plan. Those comments related to hard surface coverage of up to 60% of the site, many more units and a barracks look. The density and hard surface have been reduced, and the number of buildings and variations of buildings have been changed. Council did not want the developer to perpetuate outdoor activities, so the swimming pool was removed. A commemorative site area was added, and the plan also was revised to 157 units and reduced to about 44% hard surface coverage with curvilinear streets. One of the things Council asked him to test was the setbacks for a normal R-3 project. In an R-3 zone, there is no conditional that controls hard surface coverage. He looked at the development and placed in red the typical R-3 setbacks and found that this would not work under those types of setbacks. Based on that observation that the plan was more preferred did not address those types of setbacks, he applied the setbacks and rearranged the buildings. He found that created a more regimented layout. When there is a setback for all front yards and sideyards, there is a more regimented pattern. That was not the

original direction Council gave Mr. Clark to have a curvilinear system. He found that 150 units can be placed on the site using R-3 and he would not have to deal with hard surface. He then used that number of units and went back to the PUD and hoped hard surface would come back to about 40%. There are ponds to treat the water, so the water quality leaving the site will be controlled. The setbacks on the perimeter were increased, one of the classic units was eliminated as well as six of the verandas. A number of the street features were kept in place, and the regional trail system. The development anticipates improving Pilot Knob and putting in a colonnade of trees. Two commemorative sites were also provided. At the suggestion of the Park Commission, he provided an overlook that uses the edge along the highway to get the grand view. A retaining wall was created to provide another commemorative site. There are also several other spots for incidental outdoor activities. He stated that he tried to meet all of the criteria he thought Council was looking for and reduced the number of units to 150. He also looked at how he could reduce them more, bearing in mind that he has to keep the project feasible. The developer has agreed to pay the park fee and also build the retaining wall and other things. If he were to take out eight more units, the level of landscaping and his ability to build commemorative sites would be severely restricted. There is a site along Acacia Boulevard that is city property and Mr. Clark anticipates buying that from the city. Not buying the city property would be a way to save money to compensate for the lost eight units. He does not think that would be to the benefit of the city. The plan with 150 units he thinks gives the best aesthetics and the best layout and financial assistance to all the units plus purchasing the city property. Because it had been mentioned there already was a commemorative site on Acacia Cemetery, he went and looked. There is a stone commemorating the panorama of the hill that was done by the Daughters of the American Revolution in the 1920s. The developer proposes two other sites that form a family of sites, one on top and two on the sides. He showed the layout of the one plateau with a commemorative plaque. It is a gathering place where people can look out over the river valley and it is attached to the regional trail system. The other overlook also has a grand view out towards St. Peter's in the other direction. He has tried to address all of the issues Council raised. Some of them he just cannot do. There has been a request for an EAW, and the developer will provide the data on the preliminary issues, like utilities. Only the city can address some of the issues like the sewer running to Mendota. The developer is dependent on others with respect to the historical and cultural issues. That needs to come from other entities. Issues like that are not usually solved very well in an EAW. He felt the he is

eventually going to look at who is going to buy a portion of the property to do what historical and cultural reference needs to take place on the property. He stated that Mr. Clark is requesting conditional approval on his project. He thinks this is the best possible plan and understands that the EAW may say more land is needed to make this more commemorative. Subject to that, he believes this is the best plan, and he asked for conditional approval based on the outcome of the EAW process.

Councilmember Dugan stated that in light of the confusion as to one part of the land being B-1 and one part R-3 and a different comprehensive plan designation, more of a concern is what the impervious surface is of the plan that is now being proposed.

Mr. Uban responded that the first plan had about 60% impervious surface and the next plan was for 157 units and 44% impervious surface. This plan has 40% hard surface coverage.

Councilmember Duggan stated that one of the comments on December 3 was that the plan be as close as possible to 30% impervious surface.

Mr. Uban responded that to get to that point, there would need to be a 25% reduction in the number of units. That is not feasible. Council has told the developer they do not want outdoor activities, like ballfields, just a trail, and the trail plus two overlooks have been provided. The issue is water quality, and a good ponding system will be in place. The only reason for reducing the impervious surface is because it is a PUD, but R-3 development would not require them to do anything.

Councilmember Duggan stated that in the proposed there is about 40% hard surface and that is 60% more than what the PUD ordinance calls for. On this plan, with the landscaping that is indicated, it could be reduced to 142 units.

Mr. Uban responded that if Council wishes Mr. Clark to pursue that plan, which is R-3, he will do so. He stated that he tried to create an interesting area by turning the structures and creating a variety of building sizes.

Councilmember Krebsbach asked if the commemorative site is in the same relationship to the trail as the last plan.

Mr. Uban responded that the regional trail is down below and the development's trail is level with the commemorative area, and that will be part of the regional trail system.

Mr. Casey stated that on behalf of the Mdewakanton Community, he is asking Council not to grant conditional approval. The EQB guidelines say that conditional approval is a distortion of the intended process. He did not see a good reason for conditional approval. He and the city attorney disagree on the point that by giving conditional approval, Council is in reality approving the project. That limits the latitude the city has to change the project in the future. He felt that is a conservative interpretation of the law and suggested Council adopt that interpretation. Every decision has an environmental component. He asked Council to be conservative and not grant conditional approval. He stated that he has not had a chance to review this proposal or comment on it. After the EAW, his clients will have adequate opportunity to review the project with respect to the historical sites. He stated that the Mendota Dakota filed a notice of intervention and asked that no action be taken.

Mr. Ron Clark stated that he has never known of a city to work with a developer in an application and go forward with an EAW without having a conditional approval. When he came before Council on November 5, he got a favorable nod to go ahead and has invested \$65,000 since then responding to city comments. For him to invest more money, commit to the future expenditures and start getting in the EAW process without conditional approvals doesn't make sense. Every city in the metro area has granted conditional approvals. At least Councils then know that if the outcome of the EAW is all right, they have a project. That is the way he has always known the process to work.

Councilmember Duggan stated that he thought at the last meeting a decision was made to hold it over to some other time.

Mayor Huber stated that his opinion is that Council passed a resolution ordering the EAW and mulled that decision over carefully. In his opinion, as part of the resolution, Council has decided based on testimony that this project has the potential for significant environmental effects. That is what the resolution says and he takes that seriously. He stated that he understands that at the December 17 meeting there was discussion with respect to the 60 day rule. When Council ordered the EAW, that froze the clock on the 60 day rule. In his mind, Council has made a finding that the project has the potential for significant environmental effects and the process also

sets out that the review process must be extended while the EAW process goes on. He would not be comfortable giving any additional approvals over what the previous Council gave on December 3. He is not willing to further engage the city in the approval process when he does not know what the review process will bring out.

Councilmember Schneeman stated that her experience with an EAW process in Nevis, Minnesota, is that she was told that while the EAW was going forth, they could not make any promises. She thought that was state law.

Attorney Schleck responded that no final decision can be made by a RGU while the EAW process is taking place. The question is what is a final decision. It is not clear whether preliminary plat approval is a final decision. The EQB feels that it is. That is also the case with preliminary zoning approvals. The EQB believes those decisions can not be made while the EAW is taking place. He did not understand what additional rights the proposed resolution before Council would convey. The resolution that was passed on December 3 conveys the same things that are requested tonight.

Councilmember Vitelli stated that he comes down on the side of not supporting conditional approval because there is the likelihood there are significant historical and cultural questions on the site. He is bothered by the fact that Council does not have a plan for the EAW, and just adopted a resolution. Even if Mr. Clark comes back with an EAW, the Council needs to bite the bullet eventually for this site and will have to pay for a consultant to listen to the input of the Native American community and the developer. In his opinion, Council should do that whether or not there is a development. Council needs to figure out what to do with the site. He feels it is reasonably likely that Council will find issue with the historical and cultural impacts on the site. He stated that if he were the developer, he would walk away. He stated that it is unfortunate because he thinks this is the best residential development proposal Council will ever see for this site. By the next meeting there better be a plan on what to do in the EAW. He stated that he is still open to this development if the EAW says there are not issues. He is not concerned about the air noise.

Councilmember Duggan stated that Council will be reviewing the EAW plan at the next meeting. Perhaps the developer would come back to the meeting a month from now.

Mayor Huber stated that he agrees with Councilmember Vitelli from the standpoint that the process must keep moving forward. Staff

needs to do a time line. This is a very complex thing that the city is going to try to prepare. He cautioned Mr. Clark that his concern about giving conditional approval is based on the fact that Council needs to find out what comes out of the EAW. Until the EAW is completed, he would have a hard time telling Mr. Clark that Council will be giving him an answer in 30 days. Until Council starts to see what information comes back, it is difficult to tell Mr. Clark with any level of certainty as to when Council could give him some approvals or what kinds of mitigation needs to be looked at.

Mr. Uban suggested that a compromise would be to keep this moving and everyone work together. He felt that in the end, the land that is most impacted by the historical character is the Garron site. He asked for conditional approval on the Acacia site but not on the Garron site. That is possibly the area where he will anticipate changes. That would allow Mr. Clark to continue working with the city and developing the information the city needs for the EAW.

Mayor Huber responded that he cannot say that he is more concerned about the Garron site than the Acacia site. In his opinion, this project as presented to Council is one piece of property. He could not say okay to one half and not the other.

Councilmember Krebsbach stated that the Acacia site was proposed to make the Garron site feasible economically. To pull off the Garron site now would be a totally different issue. She was not ready to approve the depth of the resolution, stating that given the history of the development that has come before Council for this site. Council has tried very hard to protect the bluff and gave concept approval on December 3 that did not have the weight of a preliminary plat or zoning but gives Mr. Clark an idea of where Council stands.

Councilmember Schneeman stated that the purpose of doing an EAW is to give Council the information to work with. She felt badly that one was not done a long time ago, and stated that she does not think Council can give Mr. Clark a response at this time.

Councilmember Krebsbach stated that if it is really that the site is of historical significance, that is beyond the city and is a totally different issue.

Councilmember Duggan stated that by at least keeping the possibility open to conditional approval similar to December 3, Mr. Clark has the chance to come back in a month and see what has been

accomplished on the EAW and decide whether to continue. He stated that he would not like Mr. Clark to walk away thinking this is lost. He further stated that Mr. Clark is probably the best developer Council has seen to work with on this site.

Mr. Clark stated that he is looking for approval beyond the step that was taken on December 3.

Councilmember Duggan responded that it is a risk for everyone and that he would like to see Mr. Clark have the chance to stay involved for at least another month.

Mayor Huber stated that there is a proposal before Council that Council is in the process of reviewing. The EAW extends the review process but Council is simply in the process of reviewing the proposal. Everyone knows how the land is zoned and how it is designated in the comprehensive plan, and everyone knows what that means to the land owner with respect to his expectation to develop it with residential units. He stated that he would be uncomfortable with giving an approval while the city is in the middle of the review process. He stated that he understands the EAW extends the process for a longer time than the developer is comfortable with, but all actions Council has taken to this point have been appropriate and within Council's rights and at the root, Council must do what the law says it must do. To do anything more at this point is inappropriate. The clock is frozen on the proposal and Council really does not have to take any particular action on the planning application this evening.

Councilmember Duggan asked Attorney Schleck for options. He asked whether Council can let the resolution sit and not vote on it, and what happens to it then.

Attorney Schleck responded that if Council does not act on the proposed resolution, it can be brought back by a Councilmember for consideration at a later time or it simply dies.

Councilmember Duggan stated that Mr. Clark can come back at a future meeting with a request for the same resolution.

SWAN DRIVE NAME CHANGE Council acknowledged a memo from Public Works Director Danielson in response to a request from Mr. Jerry Nelson, 894 Wagon Wheel Trail, for a street name change for the portion of Swan Drive from Wagon Wheel Trail to Cheri Lane. Mr. Nelson was present for the discussion.

Mr. Nelson stated that Swan Drive starts at Wagon Wheel and goes along his property line and then stops. It starts again a distance away. There are always people getting lost looking for Swan Drive. Recently, an ambulance drove back and forth flashing its lights and the driver could not find the house he was looking for. Several minutes later the police came to show him where the house was.

Mayor Huber stated that Council should get input from the people who live in the area before changing the name. He recommended that staff canvass the people who border on Swan Drive and send them a letter telling them Council is considering changing the name and ask them for feedback and suggestions for names.

Further discussion was tabled to the first meeting in February.

REICH DRIVEWAY

Council acknowledged a memo from Public Works Director Danielson in response to a complaint from Dr. Charles Reich about his driveway, which he had resurfaced in conjunction with the Ivy Falls street reconstruction project. Council also acknowledged a letter from Dr. Reich, 1292 Sylvandale Road, and a letter from the League of Minnesota Cities Insurance Trust (LMCIT).

Dr. Reich reviewed his letter and the driveway situation, which he stated began in the summer of 2000 when the street was reconstructed. He stated that he had his driveway replaced by the contractor who did the street project. His driveway developed some large cracks and he contacted the city engineer and the contractor and told them if nothing was done it would just get worse. Valley Paving told him the preferred to come back the next spring. Dr. Reich appeared at the October, 2000 hearing on the project and recommended that the contractor not be paid for the work until the situation was resolved. He stated that there were many requests similar to his and he understood that the city would take care of their concerns. Following the meeting he received a letter from Valley saying that roots caused the problem and they would come out in the spring and cut the roots and seal the creaks. They did that in the spring. After last winter, the cracks opened up again and now big holes are starting to appear. He asked Valley to come back and they said they would come last summer but did not. He was considering litigation and decided to send his December 5, 2002 letter to the city administrator. He met with her and she suggested he appear before Council. In the meantime, the city's insurance adjuster came out and asked if he would consider getting estimates on cutting out the cracks in the asphalt and filling the hole thing in. He did not like that solution but agreed to do it. He then called several contractors

but no one has come to look at it. He stated he is present this evening because he is not happy with the job that was done and is looking for restitution. He has paid two years of the assessment and thinks it is fair for the city to forgive the remainder of the driveway assessment and he will have the driveway replaced.

Mayor Huber responded that he understands Dr. Reich is having a difficult time getting the work done and Council is aware that an offer was made to split the cost between the LMCIT, Dr. Reich and the contractor. He asked Dr. Reich if he is aware of the recommendation from LMCIT.

Dr. Reich responded that he is, but wants the driveway replaced and not just patched.

Administrator Lindberg stated that the LMCIT proposal was to fill the cracks and then put a layer of seal coat on top.

Public Works Director Danielson stated that he did not discuss the plan with the adjustor, but believes he was talking about removing the tree toots and cracks and then putting a layer over the top.

Dr. Reich stated that he is not interested in that solution. He has seen enough driveways to know what that looks like. It will be a patchwork quilt and he is not sure the seams won't open again.

Councilmember Duggan stated that he thinks the city should go to Valley Paving and tell them they did not do an adequate job and must redo it at their expense. The city should bring its weight on the contractor to get him to do it. He stated that he suspects that Dr. Reich would not want Valley to come back and do it unless it is supervised by the city.

Dr. Reich stated that the only reason he is here is because his contract is with the city. His issue is not with the city, it is with Valley Paving.

Councilmember Vitelli stated that he would support splitting the cost three ways for a patch. When a resident does not opt for an entirely new driveway, there will be patches. He stated that he lives on Sylvandale also and would not ask the city to do an entirely new driveway but would support a patch that fixes the problem.

City Attorney Schleck stated that he reviewed the language in the driveway replacement agreement that was signed by everyone whose

driveways were replaced to identify the important provisions in the contract. There is a provision that says that the property owner would indemnify the city and its contractor as that relates to the project except for the negligent or willful act of the city or any of its officers. The LMCIT adjustor said he did not find any willful act.

Dr. Reich responded that his wife watched them do the driveway and did not seem any aggregate put in.

Councilmember Krebsbach asked Dr. Reich if he is saying that he will withdraw the complaint if the city does not impose the remainder of the assessment.

Dr. Reich responded that there are huge cracks running across the driveway within two months after it was done. He contracted for a new driveway, and the new cracks start as far away from the tree as they could get. He stated that the remainder of the driveway assessment is about \$3,500.

Councilmember Krebsbach asked if there is any precedent.

Attorney Schleck responded that there is nothing that would prevent the Council from adjusting the assessment.

Mayor Huber stated that there is nothing that would keep Council from establishing a precedent based on Dr. Reich's decision on whether to sue.

Councilmember Schneeman stated that it seems that is what Dr. Reich should do based on the city attorney's comments.

Attorney Schleck stated that if there is a point where it appears that the matter would go to a law suit, he would recommend Council retire to closed session. Council should even go to closed session if there is a threat of a lawsuit, and if there is to be any more discussion, perhaps it should occur in closed session. If Council prefers to agree with Dr. Reich's request tonight, he would not suggest closed session, but if Council preference is to do anything else, he recommended calling for a closed session either this evening or two weeks from tonight.

Mayor Huber responded that his feeling is that no decision will be made tonight. If Dr. Reich has talked to the contractor already without any response, nothing will happen in two weeks. He suggested a closed session after the January 21 meeting.

Mayor Huber moved to schedule a closed session for discussion on the issue on January 21 after the regular Council meeting. Councilmember Schneeman seconded the motion.

Ayes: 5
Nays: 0

Mayor Huber directed staff to contact Dr. Reich after the closed session.

JOINT WORKSHOP

Council acknowledged a memo from Administrator Lindberg regarding a request from the Airport Relations Commission for a workshop with Council to discuss the Rogers Lake neighborhood and issues with the MAC.

Councilmember Vitelli asked what the objective the ARC hopes to achieve.

Administrator Lindberg responded that the commission would like to opportunity for Council to hear from representatives from Rogers Lakeside East on their issues with MAC. It would be an educational process on new information that Mr. Guy Heide has acquired.

Councilmember Vitelli stated that this item was discussed at an emergency ARC meeting that he did not attend. He did not see how Council can satisfy the Rogers Lake group's desires. Council made a decision late last year that Council should not get in the middle of the dispute. The only think the group can be asking for to have a workshop on the issue is to get Council involved.

Administrator Lindberg responded that in her memo she outlined a motion by Commissioner Roszak that the city eventually send a letter to MAC but before Council would agree to do that, Council would need to be given more information.

Councilmember Vitelli asked if Council is going to be asked to be the judge and jury on the issue. Before Council can endorse a memo, it needs to address the issue with enough thoroughness, and he does not think Council should do that.

Administrator Lindberg stated that the city did send a letter to MAC but the Rogers Lake group are looking for an additional letter asking the MAC to review the net material Mr. Heide has presented.

Councilmember Vitelli stated that he would be willing to take the time and listen to the information but does not know what Council would do with it.

Councilmember Krebsbach stated that her guess is that the ARC wants a workshop because they do not want to be at a regular Council meeting. She stated that she met with MAC representative Bert McKasy and MAC legal counsel along with Mr. Heide and Mr. Mike Kosel. The apparent affect of the workshop would be to pass on information to Council. When Council holds a workshop, it is generally to give a commission more direction. If the ARC has information and they think it is valid, it should be passed on to Mr. McKasy. She did not know if Council is in a position to judge the validity of the information.

Councilmember Duggan stated that it would be appropriate for he and Mayor Huber to have a copy of the minutes of the meeting at which Mr. Heide appeared before Council so that they have a better ability to deal with the matter.

Administrator Lindberg stated that another option would be fore Council to attend the February ARC meeting and ask Mr. Kosel and Mr. Heide to attend and make the presentation. Senator Metzen and Representative Pugh will be at the meeting also.

Mayor Huber stated that there are several options: attend the ARC meeting, meet in workshop, or present the information at a Council meeting.

Councilmember Krebsbach stated that another option is to forward the information to Council and Council will pass it on to the MAC. MAC is the real audience for the information.

Administrator Lindberg stated that the ARC's concern is that a letter be sent on behalf of the city. The ARC feel that would have to come directly from Council.

Councilmember Krebsbach stated that Council has already engaged the Rogers Lake group with MAC. This would just be a continuation of that discussion. Council opened the discussion with MAC on Rogers Lake and they can continue that discussion.

Attorney Schleck stated that he does not know that Council can say this is valid information. There has been no investigation by the city. For the city to act as a conduit for the information is fine but he feels

the group is asking Council to take the position that the information is valid.

Administrator Lindberg responded that the Rogers Lake group is looking at something stronger than Council did in December. They are looking for the city to say this is strong evidence.

Councilmember Krebsbach stated that the city does not have the expertise to make that determination. She further stated that she does not have a problem with hearing the information.

Mayor Huber asked whether the information should be presented to the Council. He felt that the best way to do that would be to have Councilmembers Krebsbach and Vitelli review it and report back to Council on what they think the best action to take would be, or perhaps he and the Council members should attend the ARC meeting. He did not want the ARC to think Council is not interested in meeting with them in a workshop, and stated that he would be willing to attend the ARC meeting along with any Council members who wish to attend.

Councilmember Krebsbach stated that a workshop is usually broad based, not to resolve a particular issue. The best way to deal with this is to place the issue on the ARC agenda and any Council members can attend the meeting.

City Attorney Schleck stated that he does not think the city should be giving an opinion on the veracity of the information. Attending the ARC meeting and hearing the discussion is fine.

Mayor Huber agreed, stating that Council will attend the meeting and listen to the presentation but will not make any decision.

Councilmember Vitelli stated that he is attending this evening's ARC meeting and will recommend to them that Mr. Heide and Mr. Kosel meet with MAC again and let them know what they found. There may be a simple explanation from MAC, and a meeting with MAC and the Rogers Lake group will keep the channel of communications open.

Councilmember Krebsbach agreed and stated that she would go with them to the meeting with MAC.

TEAM BUILDING WORKSHOP Council acknowledged a memo from Administrator Lindberg regarding a proposed off-site City Council goal setting/team building workshop.

It was the consensus that a workshop be conducted on February 25 and that Dennis Cheesebrow be retained to facilitate the session.

Administrator Lindberg stated that it has been suggested to her that the workshop be conducted off-site, and she has contacted Mendakota Country Club and DARTS in West St. Paul for meeting room space. Dodge Nature Center also has facilities. She stated that she will bring some proposals on location back to Council.

Council directed Administrator Lindberg to also check on availability of a room at the Northern Dakota County Service Center.

COUNCIL COMMENTS

Councilmember Schneeman stated that she saw several children playing on city ponds today and was very concerned because of the poor ice conditions. She asked parents to please keep their children off of the ponds.

Mayor Huber announced that there are openings on various city advisory commissions and any interested residents should submit a letter of interest by February 15.

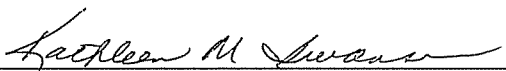
Council briefly discussed the Police Chief recruitment and selection process. Administrator Lindberg stated that she will prepare a tentative process for Council consideration at the next meeting.

ADJOURN

There being no further business to come before Council, Councilmember moved that the meeting be adjourned. Councilmember seconded the motion.

Ayes: 5
Nays: 0

TIME OF ADJOURNMENT: 12:14 a.m.



Kathleen M. Swanson
City Clerk

ATTEST:



John J. Huber
Mayor