CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
207 S. Forrest Street, Stoughton, WI. 53589

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RODNEY J. SCHEEL
DIRECTOR

Date: April 7, 2021

To: Plan Commissioners and Common Council

From: Rodney J. Scheel
Director of Planning & Development

Michael P. Stacey
Zoning Administrator

Subject: Agenda Item for the April 12, 2021 Plan Commission Meeting and Common Council Meetings of April 27 and May 11, 2021

Proposed amendments to the zoning code to allow mobile food vending on private property and to clarify regulations for general temporary outdoor sales regulations.
Staff worked with the City Attorney's and the Plan Commission to draft ordinance amendments to allow mobile food vending and modify other temporary use sections.

Currently, mobile food vending on private property is not encompassed within the zoning code though mobile vending has been allowed under another temporary use section while the City works out ordinance details.

Due to safety concerns and lack of open private property, mobile food vending is not proposed to be allowed in residential or central business district areas (downtown).

A public hearing and recommendation to Council is necessary. The draft ordinance and related materials are provided.

NOTICE OF PUBLIC HEARING

The City of Stoughton Plan Commission will hold a **Virtual Public Hearing** on **Monday, April 12, 2021** at **6:00 o'clock p.m.,** or as soon after as the matter may be heard, to consider proposed ordinance amendments to the City of Stoughton Municipal Code of Ordinances sections 78-015, 78-105, 78-206(9)(a) and 78-906. Also, consider repealing section 78-206(9)(g) and creating sections 78-206(9)(j) and 78-206(9)(k). The amendments are proposed to clarify regulations for temporary outdoor sales and add mobile food vending regulations in the City of Stoughton, Dane County, Wisconsin.

Due to the COVID-19 Pandemic, this meeting will not be open to the public in an in-person capacity. For those wishing to view the meeting and/or ask questions, you may do so via the following options:

Please join the meeting from your computer, tablet or smartphone.
https://global.gotomeeting.com/join/229649357

You can also dial in using your phone.
United States: +1 (571) 317-3122

Access Code: 229-649-357

If you wish to speak at or have your comments read aloud at the meeting, please register at http://speak.cityofstoughton.com by 5:45 on the day of the meeting. The Clerk will the receive comments and forward them on to the "Organizer". The public can click on the link or call in and use the access code. When connected the public will have to identify themselves in order for the "Organizer" to rename them on the "Attendee" screen. If you plan to speak, please mute TV or stream volume (if online) and do not use speakerphone, as it creates feedback, there may be a delay. The Public Comment participant will be unmuted by the "Organizer" when it is their turn and have up to 3 minutes to speak. After speaking, the "Organizer" will mute the Public Comment participant. The participant can log out or hang up and stream at WSTO, or watch on Channel 981 on Charter/Spectrum.

For questions regarding this notice please contact Michael Stacey, Zoning Administrator at 608-646-0421

Published March 18 and 25, 2021 Hub

CITY OF STOUGHTON, 207 S. Forrest Street, Stoughton, WI 53589

ORDINANCE OF THE COMMON COUNCIL		
Creating and Amending Zoning Code Sections Related to Outdoor Sales, Mobile Vending and Mobile Vending at Special Events		
Committee Action:	Plan Commission recommends approval - 0	
Fiscal Impact:	None	
File Number:	O - - 2021	**Date Introduced:**

The Common Council of the City of Stoughton do ordain as follows:

Section 1. Sec. 78-015 is amended to remove "Outdoor sales of farm products (land use): See subsection 78-206(9)(g)" and to include the following definitions:

Mobile food vending: See subsection 78-206(9)(j).

Mobile food vending at special events: See subsection 78-206(9)(k).

Mobile food vending vehicle: means a commercially manufactured, self-contained, movable motor vehicle or trailer in which food is cooked, wrapped, packaged, processed, or portioned for services, sale, or distribution. Mobile food vending vehicles do not include vehicles that are used solely to transport or deliver food or a common carrier regulated by the state or federal government.

Mobile food vendor: A person who owns a mobile food vending vehicle or who operates or conducts any activities from a mobile food vending vehicle.

Section 2. Sec. 78-105(1)(a)4. is amended to remove "Outdoor Sales of Farm Products (per subsection 78-206(9)(g))" from and to add the following to the list of temporary land uses in the Rural Holding (RH) District:

General Temporary Outdoor Sales (per subsection 78-206(9)(a))

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 3. Sec. 78-105(2)(a)4. is amended to remove "Outdoor Sales of Farm Products (per subsection 78-206(9)(g))" from and to add the following to the list of temporary land uses in the Exurban Residential (ER-1) District:

General Temporary Outdoor Sales (per subsection 78-206(9)(a))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 4. Sec. 78-105(2)(b)4. is amended to add the following to the list of temporary land uses in the Single-Family Residential-3 (SR-3 District):

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 5. Sec. 78-105(2)(c)4. is amended to add the following to the list of temporary land uses in the Single-Family Residential-4 (SR-4) District:

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 6. Sec. 78-105(2)(d)4. is amended to add the following to the list of temporary land uses in the Single-Family Residential-5 (SR-5) District:

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 7. Sec. 78-105(2)(e)5. is amended to add the following to the list of temporary land uses in the Single-Family Residential-6 (SR-6) District:

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 8. Sec. 78-105(2)(f)4. is amended to add the following to the list of temporary land uses in the Two-Family Residential-6 (TR-6) District:

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 9. Sec. 78-105(2)(g)4. is amended to add the following to the list of temporary land uses in the Multi-Family Residential-10 (MR-10) District:

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 10. Sec. 78-105(2)(h)4. is amended to add the following to the list of temporary land uses in the Multi-Family Residential-24 (MR-24) District:

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 11. Sec. 78-105(3)(a)5. is amended to add the following to the list of temporary land uses in the Neighborhood Office (NO) District:

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 12. Sec. 78-105(3)(b)4. is amended to add the following to the list of temporary land uses in the Planned Office (PO) District:

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 13. Sec. 78-105(4)(a)5. is amended to remove "Outdoor Sales of Farm Products (per subsection 78-206(9)(g))" from and to add the following to the list of temporary land uses in the Neighborhood Business (NB) District:

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 14. Sec. 78-105(4)(b)4. is amended to remove "Outdoor Sales of Farm Products (per subsection 78-206(9)(g))" from and to add the following to the list of temporary land uses in the Planned Business (PB) District:

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 15. Sec. 78-105(4)(c)4. is amended to remove "Outdoor Sales of Farm Products (per subsection 78-206(9)(g))" from and to add the following to the list of temporary land uses in the Central Business (CB) District:

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 16. Sec. 78-105(5)(a)4. is amended to remove "Outdoor Sales of Farm Products (per subsection 78-206(9)(g))" from and to add the following to the list of temporary land uses in the Planned Industrial (PI) District:

General Temporary Outdoor Sales (per subsection 78-206(9)(a))

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 17. Sec. 78-105(5)(b)4. is amended to remove "Outdoor Sales of Farm Products (per subsection 78-206(9)(g))" from and to add the following to the list of temporary land uses in the General Industrial (GI) District:

General Temporary Outdoor Sales (per subsection 78-206(9)(a))

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 18. Sec. 78-105(5)(c)4. is amended to add the following to the list of temporary land uses in the Heavy Industrial (HI) District:

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 19. Sec. 78-105(6)(a) 4. is amended to remove "Outdoor Sales of Farm Products (per subsection 78-206(9)(g))" from and to add the following to the list of temporary land uses in the Institutional (I) District:

Mobile food vending (per subsection 78-206(9)(j))

Mobile food vending at special events (per subsection 78-206(9)(k))

Section 20. Sec. 78-206(9)(a) is amended to read:

(a) *General temporary outdoor sales.*

Description: ~~Includes the~~ The temporary display and sale of any items, on private property and outside the confines of a building, ~~which~~ that is not otherwise ~~permitted as a permitted conditional use, or a special event otherwise~~ regulated by the City Municipal Code. Examples of this land use include but are not limited to: seasonal garden ~~shops~~ sales, ~~tent~~ fireworks sales, vegetable and fruit sales, and Christmas tree sales.~~, bratwurst stands, and up to three garage sales per year.~~

1. *Temporary use regulations*:

a. ~~The user shall provide a layout of the activities to the director of planning and development for approval prior to any activity.~~ Prior to commencing any activities under this subsection, a site plan of the subject property must be approved by the zoning administrator. The site plan must specifically show where the temporary use will be located on the parcel and otherwise conform to all requirements of subsection 78-908(3), except that an

applicant may request approval from the zoning administrator to omit one or more requirements from the site plan. The zoning administrator may approve the omission of specific site plan requirements upon a determination that the information is not required for the evaluation of the temporary use application.

b. The temporary use must be approved under section 78-906.

c. If other than the property owner, the person seeking approval of the temporary use must obtain, and submit to the zoning administrator, written authorization from the property owner.

d. A temporary use permit issued under this subsection shall be issued for a specified number of days, but no more than 180 consecutive days.

e. The display and sale of items shall not be permitted in the public right-of-way nor in any required bufferyard or landscaped area.

f. The temporary use shall not cause the amount of on-site parking for the existing uses on the lot or parcel to fall below the minimum amount required for the lot or parcel.

g. The temporary use shall not impair traffic or pedestrian flow, nor shall it obstruct vision for intersecting streets, driveways, sidewalks or other traffic areas.

h. Notwithstanding subsection 78-803(1), a temporary use permit under this subsection authorizes temporary signage that complies with the requirements for temporary signs in subsection 78-811(3) without separate approval or additional fee.

i. If the temporary use is located on property adjacent to residential property, sales and display activities shall be limited to daylight hours.

j. The temporary use shall not use amplified music or other amplified sounds.

Section 21. Sec. 78-206(9)(g) is repealed.

Section 22. Sec. 78-206(9)(j) is created to read:

(j) *Mobile food vending*.

Description: Mobile food vending is the retail sale of food or beverages to the general public from a mobile food vending vehicle. A mobile food vending vehicle may operate in any zoning district except in the Central Business District and residential districts.

1. Regulations:

   a. Prior to commencing any activities under this subsection, a site plan of the subject property must be approved by the zoning administrator. The site plan must specifically show where the mobile food vending vehicle will be located on the parcel and otherwise conform to all requirements of subsection 78-908(3), except that an applicant may request approval from the zoning administrator to omit one or more requirements from the site plan. The zoning administrator may approve the omission of specific site plan requirements upon a determination that the information is not required for the evaluation of the temporary use application.

   b. The temporary use must be approved under section 78-906.

   c. If other than the property owner, the person seeking approval of the temporary use must obtain, and submit to the zoning administrator, written authorization from the property owner.

   d. Mobile food vending shall not be permitted in the public right-of-way nor in any required bufferyard or landscaped area.

   e. A temporary use permit issued under this subsection shall be issued for a specified number of days, but no more than 180 consecutive days.

   f. The temporary use shall not cause the amount of on-site parking for the existing uses on the lot or parcel to fall below the minimum amount required for the lot or parcel.

   g. Mobile food vending shall not impair traffic or pedestrian flow, nor shall it obstruct vision for intersecting streets, driveways, sidewalks or other traffic areas.

   h. Mobile food vending shall not be operated or offered through a drive-through facility.

   i. Notwithstanding subsection 78-803(1), a temporary use permit under this subsection authorizes temporary signage that complies with the requirements for temporary signs in subsection 78-811(3) without separate approval or additional fee.

   j. Except as provided in subdivision k., mobile food vending may occur only between the hours of 6:00 a.m. and 9:00 p.m.

k. If mobile food vending is conducted on property adjacent to residential property, sales and display activities shall be limited to daylight hours.

l. Mobile food vending shall not use amplified music or other amplified sounds.

m. A mobile food vendor must comply with all food preparation and sanitation regulations of the Wisconsin Food Code and Public Health Madison & Dane County, and each mobile food vending vehicle must be licensed to sell food and beverages by Public Health Madison & Dane County or by the State of Wisconsin.

n. No mobile food vending vehicle shall be permitted within five hundred (500) feet of the location of a City-licensed event during the hours approved for such event, unless the mobile food vending unit is part of the aforementioned event.

o. Connection of a mobile food vending vehicle to a public source of electricity, water, or sewer is prohibited.

Section 23. Sec. 78-206(9)(k) is created to read:

(k) *Mobile food vending at special events.*

Description: This land use allows the operation of a mobile food vending vehicle in conjunction with a special event licensed under Ch. 14, Art. XVIII and with the authorization of the special event licensee.

1. *Temporary use regulations.*

a. The mobile food vending vehicle must be located on premises described as the special event location in the special event license application under subsection 14-473(b) and shall operate in strict conformance with any conditions imposed under the special event license and only during the hours approved for the event.

b. A mobile food vending vendor must comply with all food preparation and sanitation regulations of the Wisconsin Food Code and Public Health Madison & Dane County, and each mobile food vending vehicle must be licensed to sell food and beverages by Public Health Madison & Dane County or by the State of Wisconsin.

Section 24. Sec. 78-906 is amended to read:

(1) Purpose.

(a) The purpose of this section is to provide regulations that govern the procedure and requirements for the review and approval, or denial, of a proposed temporary use.

~~(b) Temporary uses are those uses that have the potential to create undesirable impacts on nearby properties if allowed to develop simply under the general requirements of this chapter. In addition to such potential, temporary uses also have the potential to create undesirable impacts on nearby properties that potentially cannot be determined except on a case-by-case basis. In order to prevent this from occurring, all temporary uses are required to meet certain procedural requirements applicable only to temporary uses, in addition to the general requirements of this chapter and the requirements of the zoning district in which the subject property is located.~~

~~(c) Land uses which fail to meet one, but not more than one, of the requirements for temporary uses of section 78-206 may be reviewed as a conditional use. (See subsection 78-202(2))~~

~~(2) *Regulations applicable to all temporary uses.* No public hearing is required to review a temporary use, however, a demonstration that the developer proposes to meet all temporary use requirements of this article must be made at time of site plan application. Furthermore, no building permit shall be issued for any development that does not comply with all requirements of this chapter (see section 78-909). Any temporary use found not to be in compliance with the terms of this chapter shall be considered in violation of this Code and shall be subject to all applicable procedures and penalties.~~

(2~~3~~)*Application requirements.* All applications for proposed temporary uses, shall be approved as complete by the zoning administrator prior to ~~certification~~ review of the proposed temporary use. Said complete application shall be comprised of all of the following:

~~(a) A map of the subject property showing all lands for which the temporary use is proposed, and all other lands within 300 feet of the boundaries of the subject property. Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;~~

~~(b) A map, such as the planned land use map, of the generalized location of the subject property in relation to the city as a whole;~~

~~(c)~~ (a)A written description of the proposed temporary use describing the type of activities~~, buildings, and structures~~ proposed for the subject property and their ~~general~~ specific locations;

~~(d)~~ (b)~~The zoning administrator may require a~~ A site plan of the subject property is required. Said site plan shall conform to ~~any and~~ all applicable ~~the~~ requirements of subsection 78-908(3) as determined by the zoning administrator;

(~~4~~3)*Approval by the zoning administrator.* The ~~Approval of a temporary use shall be by the~~ zoning administrator shall approve any ~~following review of said complete~~ application for a temporary use that is complete and complies with the requirements applicable to the temporary use ~~per subsection (3) above~~; and

(~~5~~4)*Fee.* A fee ~~may~~ shall be required for this procedure. Refer to section 78-919.

This ordinance shall be in full force and effect from and after its date of publication.

Dates

Council Adopted:_____

Mayor Approved: _____ _____

Tim Swadley, Mayor

Published:_____

Attest:_____ _____

Holly Licht, City Clerk

Mayor Swadley closed the public hearing.

Motion by **Barman** to recommend the Common Council approve the ordinance amendment as presented, 2nd by **Schumacher**.

Motion carried unanimously.

7. Request by Phil Harrison to discuss the regulations for flags and banners used for commercial signage.

Phil Harrison explained that they are 2 year residents of Stoughton. They had observed "feather flags" elsewhere and thought they could be put up without a permit.

Commissioner Barman indicated as a local business owner he had previously inquired about "feather flags" for his own business and found they were not allowed. He stated it is a difficult time to invest in permanent signage.

Selsor suggested that Barman should recuse himself from voting on this item.

It was suggested that "sandwich board" type signs are better suited for pedestrian traffic vs. vehicular traffic.

Caravello suggested he may be willing to consider 1 feather flag per business with the message "Open".

There was discussion about possibly allowing one wave banner per lot to be used only when the business is open.

Barman suggested maybe considering one for each building per street frontage so a corner building would be allowed one on each street.

Majewski is concerned about the density of feather flags and suggested maybe one per lot in the downtown area. They should not be allowed in the right of way except in the downtown district.

The Commissioners would like staff to draft language for them to consider at the next meeting. They suggested we may need to include the City Attorney into the discussion.

No motions were made.

8. Discuss potential zoning code amendments to allow mobile food vending on private property.

Majewski is ok with 180 days but indicated 90 days may be better. Schumacher indicated support for 90 to 180 days.

Barman indicated Portland, OR has a system where they review mobile vending as part of a site plan. Mobile vending has been incorporated into strategies to encourage business activity in communities.

Mayor Swadley discussed how the Community Affairs/Council Policy Committee has evaluated mobile food vending licensing issues and is not recommending a separate City license. It was recommended mobile food vending be managed through zoning and special event permitting.

It was requested the City Attorney Rachel Synder attend the next meeting to discuss the draft language.

No action taken.

9. Future agenda items.
51 West Development.

Adjournment.
Motion by **Schumacher** to adjourn at 7:30 pm, seconded by **Caravello**. Motion carried unanimously.

Respectfully Submitted,

Rodney Scheel

There was agreement to amend a portion of section 7 to read, "All pools, including those pools existing at the time of passage of this section, shall comply with the fencing requirements of this section."

Motion by **Barman** to recommend the Common Council approve the proposed ordinance as amended, 2nd by **Robinson**. Motion carried unanimously.

7. **Request by Phil Harrison to discuss the regulations for flags and banners used for commercial signage.** (Tabled on November 9, 2020)
Scheel explained the proposed ordinance amendments.

Barman suggested instead of allowing each business to have a feather flag, allow one feather flag per street frontage. This will prevent clutter.

Business districts in the City include: Planned Business, Neighborhood Business and Central Business.

The group discussed how this would affect the downtown. Scheel stated zoning regulates private property not signage within the public right-of-way. A separate ordinance regulates what is placed in the right-of-way in Ordinance Section 64-9.

A public hearing will be set for January 11, 2021.

8. **Discuss potential zoning code amendments to allow mobile food vending on private property.** (Tabled on November 9, 2020)
Scheel introduced Attorney Rachel Snyder who has been working on mobile vending ordinance amendments for the City.

Rachel Snyder gave an overview of the proposed ordinance amendments including handling mobile vending by licensing vs zoning.

Schumacher questioned whether the language would affect private use in a residential district. Rachel Snyder stated the intent is to regulate venders selling a product for consumption to the general public. A vendor hired by a resident to serve guests at a home would generally not be covered under these regulations. Schumacher would like to see language added to be clear that this does not apply for private residential use.

Barman stated there is considerable redundancy between General Temporary Outdoor Sales and Mobile Food Vending. Barman believes these 2 sections should be combined.

The group discussed whether or not to combine the sections. Consensus is to not combine the sections because one section is for temporary outdoor sales while mobile vending may become more permanent.

Barman stated the limit of 180 days/year will be a discussion point.

Schumacher would like the Chamber of Commerce notified of the public hearing for this agenda item.

9. Request by Junction 138, LLC for annexation approval of 1.152 acres of land from the Town of Rutland.
Scheel explained the request.

Motion by **Robinson** to recommend the Common Council approve this annexation, 2nd by **Schumacher**. Motion carried unanimously.

10. Request by Kettle Park West LLC for annexation approval of 4.010 acres of land from the Town of Rutland.
Scheel explained the request.

Motion by **Robinson** to recommend the Common Council approve this annexation, 2nd by **Schumacher**.

Caravello questioned if there is a way to pursue access to the west for the parkland. Dennis Steinkraus stated they will be looking at access to the west as part of future development.

Motion carried unanimously.

11. Future agenda items.
Sign code rewrite; Outdoor dining; USAA for Dvorak property

12. Adjournment.
Motion by **Schumacher** to adjourn at 7:25 pm, seconded by **Robinson**. Motion carried unanimously.

Respectfully Submitted,

Michael P. Stacey

Barman stated Table 78-611 should clarify exactly what the species list is for. Mitch Bergeson stated they tried to limit the amount of language changes without Attorney assistance.

Barman would like the title of Table 78-611 to state, "Species suitable for landscaping use and compatible with Dane County climate and soil factors"

Motion carried as amended unanimously.

9. Proposed amendments to the zoning code to allow mobile food vending on private property and clarify general outdoor sales regulations.

Attorney Rachel Snyder gave an overview of the proposed 2 versions of the ordinance amendment. One version is for administrative review/approval by the Zoning Administrator and the other is for Plan Commission review/approval. The latter would be a special use similar to a conditional use in that a public hearing would be necessary. The proposed ordinance allows a permit for up to 180 days then the applicant could submit an application for another 180 days.

Attorney Snyder stated there are 3 new changes that are not yet in the document:

- Signage for the temporary use would need to meet code requirements but would not be required to get a separate permit or pay an additional fee.
- The daily time allowance is changed from 7am – 9pm to 6am – 9pm.
- No drive-in or drive-up allowed.

Robinson likes the renewal allowance for the same location.

Scheel stated this will still need to come back for a public hearing next month and the Commission needs to decide which version they want to see come back.

Mayor Swadley questioned what would be required for a staff review. Scheel explained how site plans are reviewed.

Scheel noted that a public hearing for each application would be required for Plan Commission review/approval.

Schumacher questioned the language related to the 180 day allowance. Attorney Snyder stated if an applicant applies again prior to expiration the use could run concurrently.

Barman prefers the staff review option.

Attorney Matt Dregne explained the difference in administrative review vs Plan Commission review. Attorney Dregne stated if a plan is administratively approved once, it could be approved again. A Plan Commission review would allow public hearing testimony and allow more latitude to make changes to the site plan. Attorney Snyder stated there is language related to traffic safety for the administrative review.

The Commission discussed administrative vs Plan Commission review.

Majewski questioned having a permanent temporary use with no break.

Attorney Snyder explained the intent behind the 180 day temporary use is to give the City flexibility in changing the ordinance if issues arise.

Increasing the temporary use fee amount was discussed.

Attorney Dregne asked if a decision has been made for which version of the ordinance amendment the Commission desires.

Robinson, Schumacher and Mayor Swadley prefer administrative review.

Scheel stated the public hearing will be in April.

10. Future agenda items.
Mobile vending ordinance; Landscaping point system amendment; 51 West USAA

11. **Adjournment.** Motion by **Robinson** to adjourn at 7:45 pm, seconded by **Majewski**. Motion carried unanimously.

Respectfully Submitted,

Michael P. Stacey