

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, August 27, 2018- 8150 BARBARA AVENUE**

1. CALL TO ORDER 2. ROLL CALL:

The City Council of Inver Grove Heights met in regular session on Monday, August 27, 2018, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m.

Present were: Councilmembers Piekarski Krech, Bartholomew, Hark, and Perry; City Attorney Kuntz, City Administrator Lynch, Public Works Director Thureen, Community Development Director Gundlach, City Engineer Kaldunski, City Planner Hunting, and Community Development Support Specialist Fox.

Absent were: Recording Clerk Yourczek.

3. PRESENTATIONS:

There were no Presentations this evening.

4. CONSENT AGENDA:

- A. i. Minutes of August 6, 2018 Work Session Meeting Minutes.
- ii. Minutes of August 13, 2018 Council Meeting Minutes.
- B. **Resolution 18-172** Approving Disbursements for Period Ending August 22, 2018.
- C. Consider Approval of Temporary Liquor License – Church of St. Patrick.
- D. Consider Awarding Contract to Diversified Construction Midwest Inc. for VMCC/Grove Bathroom Remodeling Project.
- E. Consider Pay Request No 1 – West Rink Floor – West Rink Renovation Project – City Project 2017-1722.
- F. Consider Change Order No 1 – Dasher Board Package – West Rink Renovation Project – City Project 2018-1722.
- G. Consider Declaration of Property for Heritage Village Park (SG-2010-049 & SG-04273).
- H. Approve **Resolution (Tabled)** relating to the Development Contract, Storm Water Facilities Maintenance Agreement and related agreements for the plat of Scenic Hills.
- I. Approve **Resolution 18-173** relating to the Development Contract, Storm Water Facilities Maintenance Agreement and related agreements for the plat of Robert Curve Second Addition.
- J. Consider Pay Voucher No. 1 for City Project Nos. 2015-03 – 65th Street Reconstruction, 2017-03 – Watermain Improvements 65th Street Loop and 2017-24 – T.H. 3 Intersection Improvements for 65th Street.
- K. Consider Pay Voucher No. 3 for City Project No. 2015-09D – Broderick Boulevard Reconstruction, City Project No. 2017-21 – VMCC/Golf Course Parking Lots, City Project No. 2018-08 – Fire Station No. 2 Sewer and Water Improvements, and City Project No. 2018-11 – Fire Station No. 2 Fiber Optic Improvements.
- L. Consider Pay Voucher No. 1 for City Project No. 2017-09E – 93rd Street and Abigail Court Area Reconstruction.
- M. Consider Pay Voucher No. 1 for City Project No. 2018-04 – Arbor Pointe PUD Shared Street Light System Improvements for Street Light Removal (Phase 1).
- N. Consider Pay Voucher No. 1 for City Project No. 2018-08 – Fire Station No. 2 Sewer and Water Improvements and City Project No. 2018-11 – Conduit for Fire Station No. 2 Fiber Optic Improvements.
- O. Consider Change Order No. 1 for City Project No. 2018-08 – Fire Station No. 2 Sewer and Water Improvements and Conduit for City Project No. 2018-11 – Fire Station No. 2 Fiber Optic Improvements.
- P. Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 1, Engineer's Final Report, and **Resolution 18-174** Accepting Work for City Project No. 2018-09A – Crackseal.
- Q. Consider Pay Voucher No. 1 for City Project No. 2018-09B – Sealcoat.
- R. **Resolution 18-175** Receiving Bids and Awarding Contract for the Public Works Maintenance Facility HVAC Improvements.
- S. Consider **Resolution 18-176** Receiving Quote and Awarding Contract for the 2018 Raingarden Inlet Retrofits.

- T. Consider **Resolution 18-177** Accepting Proposal for Stormwater Review and Construction Observation. Services from Barr Engineering Co. for the Industrial Equities Development.
- U. Approve Promotion of Scott Gubash to Water Plant Operator.
- V. Personnel Actions.

City Administrator Joe Lynch requested to pull Agenda Item 4H and stated that this item was not ready for discussion this evening due to ongoing discussions and negotiations. The Agenda Item will be brought back at a future meeting.

He stated that Agenda Item 4V, Personnel Actions, had two changes to the Firefighters list.

Mayor Tourville suggested addressing Agenda Item 4V later in the meeting. City Administrator Lynch agreed.

City Administrator Lynch requested that they consider adding, under Mayor and Council Comments, setting a Special Session for Tuesday, September 4th, at 6:00 p.m. for consideration of the purchase of property located at 1805-60th Street East, known as the Gore Property.

Motion by Hark second by Perry to approve the Consent Agenda with the exception of Agenda Items 4H and 4V.

Ayes: 5
Nays: 0 Motion carried.

City Administrator Lynch stated that Agenda Item 4H will be scheduled on a future Agenda.

City Administrator Lynch stated that under Agenda Item 4V Personnel Actions, there is a list of Fire Fighters up for approval. Those listed are potential candidates that have gone through a process. He stated that one of them, Mr. Gustavo Culbeaux, has decided not to continue and due to that, his name can be removed. He stated that one other individual has cleared the background check but was not added at the time of the Agenda publication, please add Mr. Steve Povolny to the list.

Motion by Piekarski Krech second by Perry to approve Agenda Item 4V Personnel Actions.

Ayes: 5
Nays: 0 Motion carried.

5. PUBLIC COMMENT:
 There were no Public Comments.

6. PUBLIC HEARING:

7. REGULAR AGENDA:

I. COMMUNITY DEVELOPMENT:

A. CHRISTOPHER CHAVEZ; Consider a Resolution relating to a Variance from maximum fence height in the front yard and to allow a solid fence within the front yard. Resolution 18-178.

City Planner Allan Hunting stated that the Applicant is requesting a Variance from the fence requirements to allow a fence to be solid and taller than 42” in the front yard. The location of the property is the second lot in from the corner near 70th Street and 70th Court and stated that the fence is currently existing. He displayed the site plan of the property showing that the fence is approximately 24 feet in length along the north side, within the front yard, and ends about six feet from the curb. The fence is approximately 5’7”

high and consists of solid fencing with lattice at the top. He displayed photos of the fence from various views. He stated that the Applicant did submit an Application for the fence and that Planning reviewed it and informed the Applicant that it was too tall, and that solid fencing was not allowed in the front yard. He stated that the Applicant responded that he would consider his options and nothing further was heard. He commented that it had been discovered by Staff, who had done an inspection on some open fence Permits, that the fence was constructed without the Permit. He stated that Staff had raised some concerns with this request and that the Planning Commission did not find a practical difficulty and recommends denial of the request.

Councilmember Piekarski Krech asked if there was a fine if you have not filed for a Permit after the fact.

City Planner Hunting responded that the Permit fees are doubled when someone does the work without a Permit.

City Administrator Lynch stated that it's discretionary, sometimes they have enforced that and sometimes they have not.

Mayor Tourville asked if there were any site line issues.

City Planner Hunting responded that he did not believe there were any site line issues. It is six feet beyond the front property line with a boulevard of about 12 feet for a total of 18 feet back from the curb line to the fence. He commented that there would not be any traffic view concerns, but that they do consider the neighbors' views.

Councilmember Hark stated that he looked into how they define fence in their Code and asked if their definition of a fence was more restrictive than other Cities definitions. He stated that the Dictionary definition of a fence states that it is just an enclosure.

City Planner Hunting responded that it has been interpreted that if you are using some section that is identified as creating a boundary to try to define an area, that would be considered a fence. It doesn't have to be a complete enclosure like it has been interpreted over the years.

Councilmember Bartholomew asked if there would be a height limitation if they were to run a hedge along the location. He commented that you could run a 6-foot hedge in that area and it would have the same effect.

City Planner Hunting responded that there are no requirements for landscaping or hedges, but that a tree would have to be at least five feet from the property line. He stated that in this instance, the front of the house is 30 feet, they can have a fence with a maximum size of 42" high and that it has to be at least 75% clear for visibility through it.

Councilmember Hark commented that a shrub would not be an issue there.

City Planner Hunting responded that there are not any regulations on shrubs as they do not consider shrubbery a fence.

Councilmember Bartholomew asked if the Applicant had room to plant shrubs in front of the fence.

City Planner Hunting responded that the Applicant could have a six-foot high shrub but stated that the fence has already been constructed.

Christopher Chavez, 3462 70th Court East stated that if he were to plant bushes in the front of the fencing, they would have to be located on his neighbor's property.

Mayor Tourville asked Mr. Chavez why he wanted the Variance.

Mr. Chavez responded that it was to block the view and get privacy in their front yard. He commented that it looked more aesthetic than bushes and that they keep it clean. He commented that he didn't believe they could keep trees and shrubs as clean as they could a fence.

Mayor Tourville asked The Applicant what he thought a practical difficulty was.

Mr. Chavez asked for clarification on what would be considered a fence.

Councilmember Hark stated that they have to look at the definition of what a fence is, and that their definition uses the word partition. He suggested that they focus on what the definition is and then see if they can come up with a practical difficulty. He stated that he would like to try to find a way to allow this. He suggested that they may need to shorten the fence up or take the top section off.

Councilmember Bartholomew commented that it is a 31-inch difference from 46 to 77 inches. He suggested coming up with a compromise such as taking the lattice off the top and taking out some panels every so often, that way they can get closer to the 70% clear that is requested.

Mr. Chavez stated that it is 53 inches of solid fence with one-foot lattice at the top for a total of 63 inches.

Mayor Tourville asked if the entire length of the fence needed to be 42 inches.

City Planner Hunting responded that it would need to be 42 inches because it starts at the front of the house and the house is at the 30-foot point. He added that Staff went back to look at other front yard Variances and found three or four corner lots that had some solid material. He stated that the City Council approved a solid fence along the front yard of a home located across from the Community Center, off of 80th Street, and that they used General Practical Difficulty in that case as it was a noise attenuator, a safety barrier, and a trespass barrier. That has been used on other corner lots that have been located on a busy street.

Councilmember Piekarski Krech stated that all of his neighbors are in support of having the fencing there as it blocks some of the noise off of 70th Street.

Mayor Tourville asked if Mr. Chavez could make the panel closest to the street 42 inches and leave the rest at the higher height.

Mr. Chavez responded that it would not look as nice but that he could make it happen.

Councilmember Hark asked if having the fence helps with noise.

Mr. Chavez responded that it helps with the street and Fire Station noise.

Councilmember Piekarski Krech stated that she visited the site and looked at other homes with fencing in the area. She commented that while they are not located in the front of the house like this one is, this one seemed to be more off to the side.

City Planner Hunting displayed an aerial view of the property and suggested that they could state that it is not creating a visual impact from a front yard window because their home orients itself off of 70th.

Motion by Piekarski Krech second by Perry to receive all the correspondence that they have received regarding this item and add them to the file.

Ayes: 5

Nays: 0 Motion carried.

Mayor Tourville stated that one practical difficulty could be to consider that it is a County Road and the traffic, noise, and lights that come from that. He commented that he didn't think a chain link fence would do anything for the sound and noise. He added that it wouldn't look right to cut the first panel to a lower length and allow the rest to remain taller.

Councilmember Piekarski Krech stated that all of the neighbors have contacted them and were all in agreement that the fence should be there.

Motion by Hark second by Piekarski Krech to approve the Variance for Christopher Chavez to Consider Resolution 18-178 relating to a Variance from maximum fence height in the front yard and to allow a solid fence within the front yard with the practical difficulty being that it is located on a County Road and to consider the traffic, noise, and lights that occur as a result.

Ayes: 5

Nays: 0 Motion carried.

Councilmember Piekarski Krech stated that Mr. Chavez will still have to pay the Permit fee.

City Attorney Tim Kuntz stated that the Council packets dealing with this matter did not contain a Resolution of Approval because the Variance has to be memorialized and recorded. Due to that, there may be a Resolution at the next meeting that Council would ratify and set forth the reasoning so that it would be recorded.

B. IMH FINANCIAL CORPORATION; Consider a Resolution requesting an additional two year PUD extension for the Hannah Meadows Planned Unit Development. Resolution 18-179.

City Planner Hunting stated that the Applicant is requesting another extension for the Hannah Meadows Project, which is a 40-acre parcel located off of Highway 3 and 70th Street. He stated that back in 2015 the City Council approved a Preliminary PUD for a residential project that included approximately 40 single family homes, townhomes, and a future apartment building along Highway 3. The Applicant then requested a two-year extension which was approved by the City Council on the Consent Agenda.

He stated that Staff has not had a second extension request and that this raises the question of whether they should allow that to occur. He commented that since there hasn't been a development for this project yet, maybe it is time for this plan to lapse and let the Applicant come back by completing another Application. He stated that Staff did not make a recommendation and that there is an approval Resolution located in their packet because that is what Council had done in the past.

Joe Walsh, Vice President of Development for IMH Financial Corporation stated that he has been involved in the project for over a year. He commented that there was a buyer under Contract to purchase the property about a year ago but the buyer didn't come to fruition. He stated that it is not their intention to be the developer, but to market it to someone that would be interested in developing the project. He stated that the current plan is for 42 single family homes, 38 townhomes, and 200 apartments. The project has been on market since 2013 with numerous changes. They have adjusted the price and have CBRE marketing the project. He stated that the request is for an extension and that they believe there is value for the work that has been done to date.

Mayor Tourville stated that with Highway 3, MnDOT, and the ponding requirements, he wasn't sure the apartment building would work there. He commented that the single-family homes and some of the townhomes would work.

Councilmember Piekarski Krech stated that she was concerned about pushing it out further with construction happening next year as it could be a different plat once the construction has been completed.

Mr. Walsh stated that one of the interested parties is very fond of the plot. He commented that since the price has been adjusted they have had a higher level of interest than they have seen in the past.

Mayor Tourville commented that IMH would need to take a look and see what could fit there once all the improvements have been completed.

Mayor Tourville asked Attorney Kuntz if they were to stay in the current plat, and there is a lack of space, if the City could be held liable for not allowing them to build the 200-unit apartment building.

City Attorney Kuntz responded that the Preliminary Plat and Preliminary PUD approval gives them entitlement to walk-in with a final plat that matches the preliminary and get an approval. He stated that in response to the preliminary and final, the Ordinance changed with respects to setbacks or density, and that we are not liable for changes made before they made final approval.

City Attorney Kuntz asked City Planner Hunting what the zoning was if they do not have the Preliminary Plat or Preliminary PUD approval.

City Planner Hunting responded that zoning was approved with the Preliminary and that it is labeled R1C and R3C PUD. He stated that the Comprehensive Plan was changed to reflect those densities, and due to that, someone would have to amend the Zoning and the Comprehensive Plan if the plan changes drastically. He referenced a diagram of the proposed area depicting the single-family homes designation of R1C and stated that the remainder of the density falls under the R3C zoning.

City Attorney Kuntz asked if the PUD zoning only became effective if they get the final plan approved. He stated that the PUD depends on a plan, and if they do not have a final plan they cannot build.

City Planner Hunting responded that he was unsure if that condition was reflected in there. He stated that doing anything different than what is currently being proposed would trigger an amendment to the PUD and would have to come back before the City Council.

City Attorney Kuntz questioned, market aside, if there was any reason why under the current zoning they can't build what is displayed on the map that was shown.

City Planner Hunting responded that the regulations have not changed in regard to zoning. He was unsure of the stormwater regulation changes that could impact the overall plan.

City Engineer Tom Kaldunski stated that there is a new storm water Ordinance that was adopted in 2016. He commented that he would have to review it but thought the regional basins have not changed and that is what drives that large pond by the apartment complex. He stated that he did not believe there were any changes to the regional basins in Outlot F and D in the corner.

Councilmember Hark asked if Mr. Walsh were to market this property with the current plan, and a builder relies on those assertions, what the liability would be for the City.

City Attorney Kuntz responded that preliminary approval entitles the Applicant to be able to attain a final approval as long as it is consistent with the Preliminary Plan. He stated that the layout density, number of units, position of the roadway, and the regional basins, become fixed at the time of the preliminary because the final should mirror the preliminary. He added unless there is something that happened between 2015 and 2018 that shows that this would be unable to work from a layout standpoint.

Mayor Tourville questioned what would happen if some of the project elements, such as parking, would not work out due to MnDOT's plans and Highway 3. He commented that while he wanted this project to work, there may be some things that will not be under the control of the City.

Councilmember Piekarski Krech commented that they give them the extension so that they can keep marketing the property, or they start from scratch. She would rather give them the extension. She asked Attorney Kuntz if they had that much liability on a plat if something were to happen that the City didn't change.

City Attorney Kuntz responded that if the City did not make the change, the negative result of whoever did change it would not be our problem. He stated that the Preliminary Plat approval came with a number of conditions, one of which was getting MnDOT approval as the plat adjoins a MnDOT Highway. He stated that at the time of the preliminary they did not have MnDOT approval.

City Planner Hunting agreed that it would need the approval of MnDOT and the County. He commented that Dakota County states that the plat has all right of way it needs from both Agencies as it stands today. The design didn't change as it is going to the same place as in 2015.

City Engineer Kaldunski referenced a diagram that the developer had displayed during his presentation stating that the area in pink depicts temporary and permanent easements and were secured by MnDOT and Dakota County, the orange shaded area is permanent easements that were acquired through the same process. The dotted green line on the map shows the existing right of way.

Mayor Tourville commented that if one of the requirements is that the developer has to get approval from the County and the State, and if they do not get it, it would leave the City harmless, and that he has no problem extending. He asked Attorney Kuntz in their documentation on the preliminary, if it states that the developer has to get all the necessary requirements and right of way from the County and the State or if it was the Cities responsibility in reference to approving the plat. He commented that if the dotted line is MnDOT right of way, it shows that it is running through a building.

City Planner Hunting responded that it would have been existing and that all of the right of way has been acquired.

City Attorney Kuntz responded that it is not the Cities responsibility because the conditions of the PUD approval would have to be met to get to the final that must comply with the County and State requirements.

Mayor Tourville asked Mr. Walsh if he understood that it was his responsibility to go to the State and County.

Mr. Walsh responded that he thought the State and the County already granted the easements. He commented that in marketing the site they will use full disclosure.

Councilmember Piekarski Krech stated that due to the fact that the roundabout project in the area has not yet begun, she would move to approve to a two-year extension.

Motion by Piekarski Krech second by Bartholomew to approve IMH FINANCIAL CORPORATION; to Consider Resolution 18-179 requesting an additional two-year PUD extension for the Hannah Meadows Planned Unit Development.

Ayes: 5

Nays: 0 Motion carried.

II. PUBLIC WORKS:

C. CITY OF INVER GROVE HEIGHTS; Consider Authorizing Distribution of the Draft Fourth Generation Inver Grove Heights' Water Resources Management Plan (WRMP).

City Engineer Kaldunski introduced Diane Spector from Wenck and Associates and stated that Diane has been working with the Public Works staff on updating the Fourth Generation Water Resources Plan.

Diane Spector stated that this is an update to the Third Generation Plan that the City Council approved four years ago. This plan requires that all land within the Metro area be subdivided into watersheds and that each watershed develops its own Watershed Management Plan. She stated that Cities develop their own local plan that is consistent with the watershed plan. It should also contain information necessary for the City to manage its own storm water runoff and the water resources within the Community, which is also part of the Comprehensive Plan update. She stated that rules have changed to align the plan schedule so that it is a part of the Comprehensive Plan process. This process will allow them to revisit problems and issues and to update the list of projects that have been completed. She stated that City Staff revisited the Capital Improvement Program and the Implementation Plan and updated what is currently programmed and developed into an extensive list of potential future projects.

She stated that the largest part of the plan was updating the Hydrologic and Hydraulic models that represent the stormwater system. The latest system inventory data is now used with pipe, pond, and topographic information as well as Atlas 14 rainfall, which is information from a two-year storm event up to a 100-year storm event and is used for stormwater modeling and for the sizing of pipes and ponds. She stated that as a part of this modeling they have identified 63 potential minor high-water areas to watch in the event of a large rainfall. She noted that there were not any significant high water or flooding areas.

She stated that the next steps would be to authorize and work with Staff to release the draft plan to the following for a 60-day review:

- Lower Mississippi and Eagan-Inver Grove Heights WMO
- Metropolitan Council (advisory)
- City of Eagan (courtesy)

She stated that they would gain approval of the plan from WMOs (October-November 2018) with the final adoption of the plan in December 2018.

Councilmember Hark asked how often they update the Atlas 14 rainfall model.

Ms. Spector responded that the Atlas 14 is a rolling update. She stated that Noah does regions of the Country, and that there is no set period of time when it is updated. She stated that Atlas 14 has a much longer period of record and has more rainfall stations to capture data which is more accurate with the amount and intensity of rain.

Mayor Tourville asked City Engineer Kaldunski if this fit within the City's needs.

City Engineer Kaldunski responded that Wenck has done a very good job with the City and that their model meets the needs and expectations. He stated this is a very good report and it is one that they recommend the City Council authorize and approve. He stated that he will continue to work on the CIP and will go after grants with this information.

Councilmember Piekarski Krech asked if they were doing enough to recharge the aquifers.

Ms. Spector responded that there can always be more that can be done. She stated that deep aquifer recharge is different than surficial aquifer recharge. Surficial will help sustain the wetlands, streams, and lakes and that infiltration requirements help the surficial. She stated that the deep aquifer can take thousands of years to recharge, and anything done can help.

Motion by Hark second by Perry to approve to Consider Authorizing Distribution of the Draft Fourth Generation Inver Grove Heights' Water Resources Management Plan (WRMP).

Ayes: 5
Nays: 0 **Motion carried.**

8. MAYOR & COUNCIL COMMENTS:

City Administrator Lynch stated that he would like the City Council to consider meeting at 6:00 p.m. on September 4th to discuss and consider the purchase of property located at 1805-60th Street, known as the Gore property. He stated that the history of this property has been a nuisance, is currently out of compliance from a building code standpoint and is not certified for occupancy. He stated that they currently have a deal and a purchase agreement that has been drafted, but that they need the City Council to approve a Resolution authorizing Staff to proceed.

Councilmember Piekarski Krech asked if they have an end use. She commented that she doesn't want them amassing these properties and having them taken off the tax roll.

City Administrator Lynch stated that this is a single residential lot, similar to the property obtained and then sold at 5039 Brent Avenue. That is the intended purpose here. He stated that the building cannot be used in its present state and would need to be torn down. Selling it for future development would put the property with a taxable market value that pays property taxes.

Councilmember Piekarski Krech commented that they lost money on the sale of the Brent Avenue property and will lose money again.

City Administrator Lynch responded that they will lose the numerous nuisance calls that they have had over the years and the activity that has occurred there as well. He stated that the home does not currently fit in with the character of the neighborhood.

Councilmember Piekarski Krech commented about how much money they continually put into these and questioned if there was a way that the private sector could deal with this instead of the City having to act as a Realtor and lose money.

Mayor Tourville suggested they set a meeting for 6:00 p.m. on September 4th to discuss this issue.

Motion by Piekarski Krech second by Hark to approve a meeting to be held at 6:00 p.m. on September 4th to discuss this issue further.

Ayes: 5
Nays: 0 **Motion carried.**

Councilmember Piekarski Krech commented that this was the last City Council meeting before Inver Grove Heights Days and wanted to remind others of the events that will take place the weekend after Labor Day.

Mayor Tourville stated that there was an issue with the event website but that it has been corrected. The schedule of activities takes place on September 6, 7, 8, and 9th.

9. EXECUTIVE SESSION:

**Executive Session Pursuant to Minn. Stat. § 13D.05, Subd. 3(c)2 & 3:
Discuss Doffing Ave. Property Acquisition Related to Heritage Village Park for Property Located at:**

i. Hay – No address - 20-36500-31-05.
City Attorney Kuntz stated that there is a Minnesota Stat. § 13D.05, Subd. 3(c)2 & 3 which allows the City Council to go into an Executive closed-door session with the purpose of discussing offers and counter

offers relating to the purchase of real estate and to discuss non-public appraisal data. He stated that the City Council is being asked to avail itself of that Statute this evening and go into a closed-door session for the discussion of offers, counter offers, and non-public appraisal data relating to property known as the Hay property, which is owned by the Hay brothers. He stated that this is vacant property with tax parcel number 20-36500-31-050 and is located adjacent to the Heritage Park Property. He stated that they will be discussing offers and counter offers in respect to this vacant piece of property. This meeting will be taped, and the tape is kept to be sure that they will not wander into other areas of discussion. The City Council will at some point vote in an open session to deal with that property.

Motion by Piekarski Krech second by Perry to go into Executive Session at 8:13 p.m.

Ayes: 5

Nays: 0 Motion carried.

10. ADJOURN: