INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, MAY 12, 2014 - 8150 BARBARA AVENUE

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, May 12, 2014, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m. Present were Council members Bartholomew, Madden, Mueller and Piekarski Krech; City Administrator Lynch, Assistant City Administrator Teppen, City Attorney Kuntz, Public Works Director Thureen, Community Development Director Link, Finance Director Smith, Parks and Recreation Director Carlson, Chief Stanger, Chief Thill, City Engineer Kaldunski, City Planner Hunting, and Deputy Clerk Kennedy

3. PRESENTATIONS: None.

Mayor Tourville stated the applicant for Item 7D requested to be moved up on the agenda because he had to leave for work.

The Council agreed to consider Item 7D after Item 7B.

4. CONSENT AGENDA:

Allan Cederberg, 1162 E. 82nd St., requested that items 4F, 4G, and 4H be removed from the Consent Agenda.

A. i) Minutes – April 14, 2014 Regular City Council Meeting
ii) Minutes – April 21, 2014 Special City Council Meeting
iii) Minutes – April 28, 2014 Regular City Council Meeting

B. **Resolution No. 14-54** Approving Disbursements for Period Ending May 7, 2014

C. Agreement for 2014 Citizen-Assisted Lake Monitoring Program (CAMP)

D. Approve Custom Grading, Drainage and Utility Easement, and Stormwater Facilities Maintenance Agreements for 7929 Argenta Trail

E. Appoint Dan Helling as Interim Superintendent of the Utilities Division of the Public Works Department

I. Approve Contract with Inspec to Investigate Water Intrusion

J. **Resolution No. 14-58** Approving an Agreement relating to Certificate of Occupancy for Lot 1, Block 1, Schlomka First Addition

K. Schedule Public Hearing

L. **Resolution No. 14-59** Changing the Polling Location in Precinct #9

M. Personnel Actions

Motion by Bartholomew, second by Mueller, to approve the Consent Agenda

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

F. Resolution Accepting Proposal from American Engineering Testing (AET) for Geotechnical Testing Services for the 2015 Pavement Management Program

G. Resolution Accepting Proposal (IPO No. 21) for Engineering Services from Kimley-Horn & Associates, Inc. for Preparation of the Feasibility Report and other Engineering Services for City Project No. 2015-09D, Broderick Boulevard Reconstruction from 80th Street to Concord Boulevard

Motion by Madden, second by Bartholomew, to adopt Resolution No. 14-55 Accepting Proposal from American Engineering Testing (AET) for Geotechnical Testing Services for the 2015 Pavement Management Program

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

Allan Cederberg, 1162 E. 82nd St., questioned why the City did not receive more than one bid for the testing and engineering services.

Mr. Thureen explained four years ago the City established a technical consulting pool to provide staff with the flexibility to approach individual consultants for certain professional services. He stated with respect to Item 4G the recommended consultant was involved in previous work within Arbor Pointe and the College Trail project and were familiar with the history of the area. With respect to Item 4F staff selected American Engineering Testing because they had worked with the City on previous reconstruction projects.

Mayor Tourville stated bids were taken for the various professional services when the pool of consultants was established.

Councilmember Piekarski Krech noted the process of selecting from the consultant pool could only be used for contracts under a certain dollar amount.

James Loveland, VP of Arbor Pointe Master Association Board of Directors, encouraged the Council to approve Item 4G. He stated the Board had been increasingly asked by residents in the development to take action to get Broderick Boulevard reconstructed.

Motion by Madden, second by Bartholomew, to adopt Resolution No. 14-55 Accepting Proposal from American Engineering Testing (AET) for Geotechnical Testing Services for the 2015 Pavement Management Program and Resolution No. 14-56 Accepting Proposal (IPO No. 21) for Engineering Services from Kimley-Horn & Associates, Inc. for Preparation of the Feasibility Report and other Engineering Services for City Project No. 2015-09D, Broderick Boulevard Reconstruction from 80th Street to Concord Boulevard

Ayes: 5
Nays: 0 Motion carried.

H. Resolution Approving Assessment Agreement and Four Easement Agreements by and between the Minnesota State Colleges and Universities System (Inver Hills Community College) for City Project No. 2014-09D, College Trail Reconstruction and Barbara Avenue Partial Reconstruction

Allan Cederberg, 1162 E. 82nd St., stated the agreement would reduce the proposed assessment for the College by quite a bit. He questioned how the agreement would affect the assessment roll for the project and how the City would recover the difference between the proposed assessment and the amount agreed upon.

Mayor Tourville explained the City considered entering into the assessment agreement because State agencies do not necessarily have to pay assessments at all. In this instance the college agreed to pay a negotiated amount for the improvement project.

Mr. Thureen explained the college had the ability, per statute, to decide whether or not to participate. Staff calculated the proposed assessment based on City policy. During the project development process staff approached representatives from the college with a design that required fewer easements from the college, but overall was a more expensive design that required substantial retaining walls. After further discussion, staff proposed that the cost of the project could be reduced if the college granted easements to allow grading of the slopes to eliminate the need for the retaining walls. Additionally, the agreement would also grant the City easements over certain ponding areas for storm water management purposes. Considering the benefits gained by the City, staff felt the negotiated assessment amount was reasonable. He noted the total amount proposed to be assessed for the project would not change. The difference would be paid with Pavement Management funds.

Mayor Tourville opined the assessment agreement was a benefit to the City.

Councilmember Piekarski Krech reiterated that without the agreement the college could have paid nothing for the project.

Motion by Bartholomew, second by Madden, to adopt Resolution No. 14-57 approving Assessment Agreement and Four Easement Agreements by and between the Minnesota State Colleges and Universities System (Inver Hills Community College) for City Project No. 2014-09D, College Trail Reconstruction and Barbara Avenue Partial Reconstruction

Ayes: 5
Nays: 0 Motion carried.

5. PUBLIC COMMENT: None.

6. PUBLIC HEARINGS:

A. CITY OF INVER GROVE HEIGHTS: Assessment Hearing for 2012 Pavement Management Program, City Project No. 2011-08, 66th Street Improvements (Concord Boulevard to Swing Bridge Pier)

Mr. Kaldunski reviewed the project area and the improvements that were completed. He stated an informational meeting was held for the property owners proposed to be assessed. Two (2) property owners attended, Paul and Joe Harms. He noted a letter of objection was received from the Harms'. The total project cost was $599,561.82 and the City proposed to assess $246,404.64. The project costs were slightly higher than the engineer's estimate due to high bituminous costs and unforeseen rock excavation. The final assessments were adjusted by utilizing turn-back funds, water funds, and sewer funds to offset the costs of the additional rock excavation that was required to complete the project. The adjustments maintained the final assessments at or below the estimates outlined in the project feasibility report. The proposed final assessments were below the $1 per square foot special benefit ceiling recommended by the independent appraiser for commercial and industrial parcels.

Joe Harms, 4455 66th St. E., presented the Council with a request to reduce the cost of the proposed assessment for their property. The reduction was requested because the Harms' funded the extension of utilities to serve the marina in 1992 via a 300 foot line from Doffing Avenue along 65th Street. The extension was designed so the trunk line would service the lots that are proposed to be assessed. It was noted that the extension was built in 1992 because at that time it was not even an option to have utilities extended to the marina. He opined the utility extension that was completed as a part of the current project was only done to get service to the trailhead facility being constructed by the City and County. He requested that the water and sewer portion of his assessment be removed.

Councilmember Piekarski Krech questioned what was included in the overlay assessment.

Mr. Kaldunski stated the overlay assessment included all street improvements that were done to road. He noted Mr. Harms was given a credit in the amount of $8,129.74 for the additional rock excavation work. The proposed assessment for water and sanitary sewer improvements was $10,791.40. If the Council chose to remove the assessment for the water and sanitary sewer improvements the difference between the proposed assessment and the credit that was applied, $2,661.66, would be subtracted from the overlay assessment. The total assessment for the property would be $23,860.92.

Councilmember Piekarski Krech questioned if the property owner's contention was correct that their property did not benefit from the sewer and water improvements.

Mr. Kaldunski stated from an engineer's perspective the property did benefit from the sewer and water improvements. He noted that was ultimately a question to be answered by the City Council. He opined the proposed assessment was reasonable considering the utilities were extended past their buildable, commercial property.

Mayor Tourville stated in the past the Council had deferred portions of assessments until such time that the property is developed and utility connections are established.

Mr. Kaldunski noted the City was also reviewing a request to consider a senior citizen deferment.

Councilmember Piekarski Krech suggested deferring the water and sewer assessments until the lots are developed.

Motion by Piekarski Krech, second by Mueller, to receive letter dated May 6, 2014 from Paul Harms

Ayes: 5
Nays: 0 Motion carried.

Paul Harms, 4455 66th St. E., explained at the time the water and sewer line was installed to serve the marina the capacity was not sufficient to extend the utilities at the location that was used for the recent project. Two additional lateral lines had to be installed along 65th Street to get service to the marina. He reiterated they requested the reduction because they put in the lines to utilities to their property.
Mayor Tourville questioned if the line that was installed in 1992 served the two pieces of property in question.

Mr. Kaldunski stated that was a private system and he did not know if there were connections to serve the properties in question.

Mr. Harms stated they could connect through the water and sewer line that was installed in 1992.

Mr. Kuntz explained the Council could assess the total amount of $26,522.58 with the condition and understanding that the City attempt to reach an agreement with the Harms family to convert the utility assessment into a connection fee payable at the time of connection to the system. If an agreement was reached the remaining assessment for the road improvements would be certified to the County and the agreement would be recorded against the property.

Mr. Harms clarified the City would assess him for the road improvements now and the assessment for the utilities would be a connection fee payable at the time of development.

Mr. Kuntz replied in the affirmative.

Mr. Harms agreed to the option presented by the City Attorney to convert the proposed sewer and water assessment into a connection fee payable at the time of development of the property.

Motion by Bartholomew, second by Madden, to close the public hearing.

Ayes: 5
Nays: 0 Motion carried.

Motion by Madden, second by Piekarski Krech, to approve Resolution No. 14-60 adopting the Final Assessment Roll for 2012 Pavement Management Program, City Project No. 2011-08, 66th Street Improvements (Concord Boulevard to the Swing Bridge Pier) with the condition that the City try to reach an agreement with Paul Harms to defer the water and sewer assessments for PIN# 203650034181 and make them payable at the time of connection

Ayes: 5
Nays: 0 Motion carried.

B. CITY OF INVER GROVE HEIGHTS: Assessment Hearing for 2014 Pavement Management Program, City Project No. 2014-09D, College Trail Reconstruction and Barbara Avenue Partial Reconstruction

Mr. Kaldunski reviewed the proposed project area. He stated the project would be completed over the summer. He noted the City received favorable bids for the project and the Council would consider awarding a contract at a future meeting. A neighborhood informational meeting was held on April 30th and five (5) residents attended. The total estimated project cost was $3,521,442. The total amount proposed to be assessed was $1,065,959, roughly 30% of the total project costs. A benefit appraisal analysis was completed and the proposed assessment roll included the assessment caps recommended by the appraiser. The funding sources for the project included State aid, Pavement Management Fund, special assessments, a grant from Dakota County Soil and Water, water fund, and the sewer fund. He stated a majority of the property owners were proposed to be assessed $7,000, the cap recommended by the appraiser in the benefit analysis. He noted the parcels owned by Arbor Pointe Golf Club and the Lashenko Trust were proposed to be assessed at the equivalent of four (4) single family lots. Assessment agreements were reached with Inver Hills Family Housing and Inver Hills Community College. He stated in all instances the proposed assessments were at or below the recommended caps.

Alan Kellogg, 8275 College Trail, proposed that the interest start accruing upon completion of the project or on January 1, 2015.

Councilmember Madden agreed with the suggestion.

Jaime Roberts, Roberts Funeral Home, objected to the proposed assessment for parcel 32. He opined that the proposed assessment was disproportionate to the benefit received. He disagreed that the property value would increase by the amount proposed to be assessed. He explained over the last five (5) years his business averaged 50-65 events per year with a maximum of 40 cars in his parking lot at one time. He stated he has always welcomed others, including the City, to use the parking lot when it is not in use for one of their events, but noted its use as an annex parking lot for the community center had substantially increased. He added that the majority of the traffic along Barbara Avenue was city-related or public use not related to specific business at the funeral home. He stated his business was generally not subject to drive-by or drop-in business from customers. He reiterated that the project did not benefit his business or his property as much as it would benefit the other properties along Barbara Avenue with substantially higher usage.

Councilmember Piekarski Krech questioned if the proposed assessment for parcel 32 was calculated based on front footage. She also questioned if any consideration had been given to the other factors that were mentioned in terms of the use of the property by the City.

Mr. Kaldunski stated the assessment was calculated based on front footage according to the City's assessment. He noted other factors were not taken into consideration because the calculation was based on a mathematical formula.

Councilmember Mueller opined that the proposed sidewalk on the west side of Barbara Avenue would not directly benefit the Roberts Funeral Home property.

Mr. Kaldunski opined that the sidewalk would be used primarily by customers of the community center, with the exception of some of the larger events held at the funeral home.

Mayor Tourville questioned if parcel 32 would be assessed for the sidewalk.

Mr. Kaldunski stated all parcels along Barbara Avenue would share in the cost of the sidewalk.

Allan Cederberg, 1162 E. 82nd St., contended that the assessment for the funeral home was not calculated based on front footage. He argued it was calculated in the same manner as the single-family homes because the benefit analysis was conducted by the same appraiser for all parcels proposed to be assessed for the project.

Mayor Tourville stated all of the parcels proposed to be assessed for the project appeared on the assessment roll.

Mr. Kaldunski explained the benefit appraisal analysis contained separate reports for single-family residential properties, commercial properties, and institutional properties. In the analysis the appraiser concluded that the funeral home property could be assessed up to $1 per square foot. The assessment being proposed was less than the recommended cap.

Councilmember Piekarski Krech stated the benefit analysis did not take into account that the City contributes to extra wear and tear of the funeral home's private property for community use of city facilities.

Mr. Cederberg questioned how the funeral home's assessment was calculated.

Mr. Kaldunski stated the assessment was calculated, per City policy, based on front footage.

Cindy Goodwill, 8271 College Trail, questioned when the residents would have the opportunity to discuss the specific plans for the project.

Mr. Lynch stated the scope of the project and construction plans could be discussed when staff brought forth the bids to award a contract.

Mr. Kaldunski stated the City had received bids and could bring back the request to award a contract at Council's meeting on May 27th depending on the outcome of the assessment hearing.

Councilmember Madden clarified there would also be an opportunity to further discuss the proposed sidewalk and trail.

Mr. Thureen replied in the affirmative.

Mayor Tourville opined that the funeral home deserved a credit on their assessment because of the heavy use of their parking lot by the City and users of city facilities.

Mr. Lynch stated staff could look into potentially reducing the total by removing the costs associated with the sidewalk from the assessment. He noted there had been discussion in the past regarding potential relocation of the business. He explained if, at some point in time, the City were to enter into a purchase agreement for the property the remainder of the assessment would be eliminated.

Mayor Tourville stated if the assessment was elevated to begin with, the business would not have been dealt with fairly. He suggested staff meet with Mr. Roberts to see if anything could be worked out to bring down the cost of the assessment.

Councilmember Madden stated the traffic on this section of Barbara Avenue was almost entirely the result of City-related use. He opined he would also like to see what could be worked out to reduce the cost of the assessment for the funeral home's property.

Mayor Tourville questioned if the Council could approve the proposed assessments for the rest of the parcels on the assessment roll and delay levying the assessment against parcel 32.

Mr. Kuntz stated the Council could approve the assessment roll with the understanding that the assessment related to parcel 32 would be removed from the assessment roll and tabled for further discussion.

Councilmember Mueller questioned if a full reconstruction would be completed on Barbara Avenue.

Mr. Thureen stated a partial reconstruction would be completed.

Councilmember Mueller opined that the assessment for parcel 32 should be reduced significantly.

Mr. Thureen stated the Council also needed to provide direction regarding the date on which interest would begin to accrue.

Mr. Kuntz stated the Council should set a specific date and suggested January 1, 2015.

Councilmember Madden questioned what would happen if the project was not completed by that date.

Mr. Kuntz explained the assessments would be certified to the County and a specific date needed to be provided in order for the County to properly calculate the interest. He stated up until that date property owners would have the opportunity to pay the assessment without interest.

Councilmember Piekarski Krech suggested considering one year from the date the assessment roll was adopted. She stated the City normally did not levy assessments until after a project was completed and extending the time would give residents more flexibility to pay off the assessment without interest.

Ms. Smith noted that setting a date beyond January 1, 2015 would require the City to prepare multiple assessment rolls for the County because the first year interest rate would be different than the second year interest rate and would also be different from the third year interest rate. She stated the assessments typically have two (2) different interest rates, not three (3).

Mr. Kuntz explained the time period during which property owners would have the opportunity to pay the assessment without interest would run between now and November 15, 2014. He stated if property owners attempt to pay their assessment after November 15, 2014 the County would include the accrued interest costs through 2015. He noted statute stipulates that after November 15th payments need to include interest for the following year.

Councilmember Piekarski Krech stated she wanted to give people as much time as possible to pay off the assessment without interest.

Mayor Tourville stated if the project was approved the City should include information regarding payment dates in the assessment notices.

Mr. Lynch stated if the Council approved a date in May of 2015 the City will have created a 3rd payment because it would not coincide with the property tax due dates in place at the County.

Ms. Smith stated if the date was set as January 1, 2015 the first year interest rate would be identical to that of the remaining years. She noted in typical situations when interest begins to accrue 30 days after an assessment is levied and is payable during the following tax year, the first year interest rate is higher because it accounts for the months that had not been paid for. She recommended setting the date as January 1, 2015 to avoid multiple assessment rolls with County.

Councilmember Piekarski Krech stated she would rather set a date that would benefit the residents than the County.

Mayor Tourville suggested having interest start to accrue on May 1, 2015.

Allan Cederberg, 1162 E. 82nd St., referenced Minnesota Statute 429.021, Subd. 2 regarding notice requirements. He opined that the City was required to redo the notice for the project to comply with the provisions of the statute.

Mr. Kuntz stated the Council previously took action to combine the projects and identified the costs differently in the feasibility report. He noted the assessments were calculated separately to reflect the different project. The projects were bid together and joint assessment and improvement hearings would be held because the projects were combined.

Mayor Tourville stated the projects were combined to achieve an economy of scale.

Motion by Piekarski Krech, second by Mueller, to close the public hearing with the exception of discussion related to Parcel 32

Ayes: 5
Nays: 0 Motion carried.

Motion by Piekarski Krech, second by Madden, to approve Resolution No. 14-61 adopting the Assessment Roll for 2014 Pavement Management Program City Project No. 2014-09D, College Trail Reconstruction and Barbara Avenue Partial Reconstruction with an interest accrual start date of May 1, 2015 and the removal of Parcel 32 from the roll

Ayes: 5
Nays: 0 Motion carried.

Motion by Madden, second by Piekarski Krech, to table consideration of the proposed assessment for Parcel 32 until May 27, 2014

Ayes: 5
Nays: 0 Motion carried.

7. <u>REGULAR AGENDA:</u>

FINANCE:

A. CITY OF INVER GROVE HEIGHTS: Accept and Approve the Comprehensive Annual Financial Report for the Year Ended December 31, 2013, Management Letter and Other Required Report

Ms. Smith explained the Council was asked to accept and approve the Comprehensive Annual Financial Report, Management Letter, and the other required report for the year ending December 31, 2013. She stated this was the first year auditors from Abdo, Eick, and Meyers performed the audit. The City received an unqualified (clean) opinion for its financial statements, the highest form of assurance that can be issued by a certified public accounting firm. The auditors reviewed the reports and presented their findings to the

Council at the May 5th work session. A material weakness was noted and staff modified year-end procedures to address the issue going forward. She stated in response to a question raised at the work session the City's employment numbers were adjusted to match the number of w-2 forms that are issued each year. She noted a difference was expected between the total number of employees and the number of full time equivalents (FTE). She stated the

Councilmember Bartholomew thanked staff for making the necessary corrections on page 29. He commended the professionalism of the auditors. He added citizens could review the full report on the City's website.

Mayor Tourville thanked the Finance staff and the auditors for their work in preparing the reports.

Dian Piekarski, 7609 Babcock Trail, thanked Ms. Smith for answering her questions. She stated she had previously expressed concerns about the growth of culture and recreation services in the City and the ability to fund other services such as pavement management. She explained Ms. Smith was able to show her that the City was not growing exponentially in terms of employees and that the numbers had remained steady or decreased in the past few years. She stated she learned the same was also true of the operating expenses for many of the City's recreation programs. She noted she remained concerned about the growth of those programs in the future and the associated costs.

Motion by Piekarski Krech, second by Bartholomew, to accept and approve the Comprehensive Annual Financial Report for the Year Ended December 31, 2013, Management Letter, and Other Required Report

Ayes: 5
Nays: 0 Motion carried.

B. CITY OF INVER GROVE HEIGHTS: Consider Resolution Providing for the Sale of $2,295,000 General Obligation Tax Increment Refunding Bonds, Series 2014A

Steve Apfelbacher, Ehlers and Associates, reviewed the presale report. He recommended that the City consider soliciting bids to refinance two (2) existing issues that are outstanding. He explained the 2005A and 2005B bonds were used to finance the community center. He stated at this time both bonds were being repaid primarily by tax increment revenues from TIF districts 2-1 and 4-1. Given the forthcoming termination of the district it made sense to refinance both debt issues at this time. The presale report projected a savings of $240,000 net of all expenses and a future value savings of approximately $208,000 by refinancing both debt issues.

Councilmember Bartholomew questioned what the current rate was on the bond issues.

Mr. Apfelbacher stated the current rates were between 3% and 4%.

Motion by Bartholomew, second by Piekarski Krech, to adopt Resolution No. 14-62 Providing for the Sale of $2,295,000 General Obligation Tax Increment Refunding Bonds, Series 2014A

Ayes: 5
Nays: 0 Motion carried.

COMMUNITY DEVELOPMENT:

D. ANTHONY MICKELSON: Consider Resolution relating to a Variance to Allow a Six Foot Fence within the Front Yard of a Corner Lot located at 7413 Cloman Way

Mr. Link reviewed the location of the property. The request was for a variance for a six (6) foot privacy fence with a setback of 17 feet whereas ordinance requires a setback of 30 feet. He stated the reasons for the setback requirement were traffic visibility, to provide some uniformity of setbacks, and to address visual appeal and aesthetics within neighborhoods. Planning staff found that the fence was a typical accessory structure that was consistent with Comprehensive Plan and would not impede traffic. Planning staff could not identify anything particularly unique about the property and found there was no reason why the property could not be used in a reasonable manner without the variance. The Planning Commission and Planning staff recommended denial of the request because no practical difficulty was identified.

Councilmember Piekarski Krech questioned what the applicant could legally install without a variance.

Mr. Link explained the applicant could install a six (6) foot solid privacy at a 30 foot setback. An alternative option would be to install an opaque fence, not taller than 42".

Anthony Mickelson, 7413 Cloman Way, stated he wanted to build the fence to create an area to store his boat without it being seen from the road. He explained he had two (2) dogs that routinely barked at people walking by his house and the fence would limit their view of the front of his property. He noted his neighbors were supportive of the request. He stated he purchased his home last June and noticed a lot of other privacy fences on corner lots and did not anticipate it would be an issue to build his own fence. He displayed pictures of other similar fences that currently existed in his neighborhood that did not meet the setback requirements. He stated the practical difficulty was the ordinance deemed that corner lots were considered to have two (2) front yards and he wanted the fence in what he considered to be his side yard.

Mr. Link stated the property was considered to have two (2) front yards and in order to be consistent with the City Code the 30 foot setback would have to be maintained. He explained the applicant identified five (5) fences on similar properties at the Planning Commission. Staff reviewed the cases and found that three (3) of the fences were put up without obtaining a permit from the City, another was approved 25 years ago when there was a different interpretation of the ordinance. The fifth example was approved by staff because it complied with code regulations. He noted part of the difficulty was that the interpretation of the ordinance was dependent on the layout of the lots on the block. He stated a situation in which two (2) corner lots back up against each other with driveway access in opposite directions, the ordinance is interpreted that both properties have a side yard. In cases where two (2) corner lots have another lot in between them the ordinance is interpreted that both corner lots have two (2) front yards.

Mr. Mickelson stated his property line started 16 feet from the curb and the fence had to be set back 30 feet from the property line. He explained he understood the concern was that the fence may block traffic visibility at the corner. He noted that the area where he would place the fence was very long and he would situate the fence so as not to impede traffic views. He stated there was 37 feet from the proposed location of the fence to the curb. He argued that a precedent for similar fences on corner lots had already been set in the neighborhood. He provided additional examples of similar fences that were setback from the curb at shorter distances than what he proposed. He stated he tried to go through the process in the right way to obtain the required permit rather than installing the fence illegally.

Councilmember Piekarski Krech questioned how many of the fences referenced were legal.

Mr. Link stated out of the examples staff was aware of prior to the meeting there had been no complaints regarding the three (3) that were installed without a permit. He noted the code enforcement program was complaint based and staff was not proactively looking for violations of the ordinance.

Councilmember Piekarski Krech opined that everyone should be held to same standard. She stated either the ordinance needed to be changed or the City needed to make sure people were in compliance with the ordinance.

Mayor Tourville stated changes to the ordinance may be necessary because it was old and outdated.

Councilmember Bartholomew questioned what the distance would be from the curb to the fence.

Mr. Mickelson stated the fence would be 37 feet from the curb.

Councilmember Piekarski Krech questioned if there were any utility lines in the way.

Mr. Mickelson stated he had the property surveyed and there were no utility lines in the way.

Councilmember Mueller opined that the variance should be granted because the fence would not impede traffic visibility and the neighbors did not object.

Allan Cederberg, 1162 E. 82nd St., stated the Council recently granted a variance for a fence in the front yard for a property on 80th Street.

Councilmember Piekarski Krech stated they had to be able to identify a practical difficulty in order to grant

the variance.

Councilmember Bartholomew stated the applicant could plant shrubs or arborvitae on the property line that would potentially have a greater impact on traffic visibility than the proposed fence.

Mr. Link stated the applicant could install landscaping along right of way. He noted if placed right at the corner the vegetation could not exceed a certain height in order to maintain visibility.

Councilmember Bartholomew questioned when the City's interpretation of the ordinance changed regarding the determination of two (2) front yards.

Mr. Link stated he was unsure when the interpretation changed. He noted the ordinance was written quite vague.

Councilmember Bartholomew stated in this case he had difficulty interpreting the location as a front yard, other than the four-way stop.

Mayor Tourville stated it was hard to visualize whether there would be visibility problems or not. He opined he did not feel that the fence would cause a public safety issue and that it seemed as though the interpretation of the ordinance was stricter for corner lots. He suggested the practical difficulty was that the fence would allow for increased security on the property and the ability to store items out of sight lines.

Councilmember Bartholomew opined that the variance was warranted and suggested the practical difficulty was that the interpretation of the ordinance was arbitrary.

Motion by Mueller, second by Madden, to adopt Resolution No. 14-63 approving a Variance to Allow a Six Foot Fence within the Front Yard of a Corner Lot located at 7413 Cloman Way

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

C. BIAGINI PROPERTIES: Consider the following requests for property located at 8225 Argenta Trail:

i) Resolution relating to a Final Plat for a One Lot, Two Outlot Subdivision

ii) Resolution relating to a Preliminary and Final PUD Development Plan in the Northwest Area to allow a 9,400 Square Foot Building and related Improvements on the Property

iii) Ordinance Amendment Rezoning the property from P, Institutional to P/PUD, Institutional Planned Unit Development per the Northwest Area Overlay District

iv) Ordinance Amendment to allow a Crematorium, Columbarium and Mortuary as an Accessory Use to a Cemetery

Mr. Link reviewed the location of the property. He explained the site was currently a cemetery, originally established in 1975. The request was to allow the construction of a mortuary that would include a mausoleum, crematorium, chapel, gathering room, and dining area. The proposed plat to create the lot on which the mortuary would be located was just less than three (3) acres in size. The balance of the property would remain in an outlot which, by definition, would not be buildable. He stated because the property was within the Northwest Area there were certain special conditions that needed to be met. The first condition was that if the requests were approved there would be connection fees for water, sewer, and storm sewer in the amount of approximately $65,000. The second condition was that all development had to be by Planned Unit Development (PUD), which precipitated the rezoning request. Zoning ordinance currently allows mortuaries and crematoriums in the B-2, B-3, and B-4 zoning districts. The applicant requested that the zoning ordinance be amended to allow those same uses in the P district, provided they were part of a cemetery. He stated the proposal met the ordinance requirements for the Northwest Area with respect to impervious surface, maximum building square footage, natural and open space requirements, and general review standards. The applicant worked with the City Engineer to prepare a stormwater management plan that would fulfill the requirements in the Northwest Area. He stated access would be restricted on Argenta Trail and the access to the property would be on an internal road rather than on Auburn Path or Argenta Trail. In the Northwest Area there were parking restrictions that placed a maximum size on parking. The number of spaces allowed on the site would be 41 and the applicant requested 53. Ordinance requires that any space over 31 would require pervious paving

material. A public hearing was held before the Planning Commission. The main concerns of those opposed to the requests related to the location of crematorium within the zoning district, air emissions from the crematorium, and negative impacts on ground water. He explained the applicant testified in front of the Planning Commission that the green cemetery and crematorium were environmentally friendly, that the crematorium would not emit smoke or odor, and that a very large percentage of crematoriums are located on cemeteries. Planning staff recommended approval of the requests with four (4) conditions. The
Planning Commission also recommended approval of all aspects of the proposal, except the crematorium.

Councilmember Mueller questioned if the building would be located on Outlot A.

Mr. Link stated one lot would be subdivided for the mortuary and the balance of the property would remain an outlot. He explained the narrow strip of property was potential road right-of-way, not owned by City. He noted there were three different properties involved, owned by three separate entities.

Dick Biagini, Biagini Properties, stated one of the parcels was owned by Zion Church and the other parcel was owned by another Church. He clarified they were both separate parcels that were not related to the application that was submitted. He explained subdivision of the lot to create the 2.96 acre lot was proposed because graves were located on part of the lot. He stated everything else on the property would remain the same with the exception of the drainage improvements required by the City and the change to the access. He noted the outlots were created because they contained grave sites the sites could never be developed.

John Wendt, 8804 Argenta Trail, expressed opposition to the requests. He opined that a fundamental responsibility of government was to provide for the public health, safety, and general welfare of citizens. He stated that responsibility should be exercised when the Council made a decision regarding the proposed requests. He referenced a Minnesota Court of Appeals case related to Roselawn Cemetery and the City of Roseville. He stated in that case Roselawn also wanted to build a crematorium and requested that their property be rezoned by the City of Roseville. Both the trial court and Minnesota Court of Appeals upheld the City of Roseville's action to deny Roselawn Cemetery's request. He stated that Biagini Properties' request was not appropriate for a residential area. He noted the Court of Appeals acknowledged that a crematorium would emit certain toxin pollutants. He opined it was not incumbent on the City to prove that a health risk would manifest itself as a result of the crematorium. He explained he researched the proposed crematorium and found information on the applicant's website that acknowledged the potential for mercury emissions from the crematorium. He stated there were still too many questions and issues to ignore and opined the proposed crematorium would negatively impact the quality of life for the residents in the neighborhood. He encouraged the Council to deny the application to protect the public's health, safety, and welfare.

Linda Dehrer-Wendt, 8804 Argenta Trail, opined that approval of a crematorium in a residential neighborhood would impede her quality of life. She commented that a crematorium was a high intensity furnace that did not belong in the neighborhood. She expressed concerns regarding the emission of toxins from the proposed use. She stated many of the residents in the neighborhood would consider the crematorium to be a nuisance because people would be unable to enjoy their own properties. She stated crematory emissions were known to contain toxins and air pollutants at levels that would exceed air quality guidelines. She presented a information containing data related to pollution from fire-based cremation and the resultant carbon footprint. She stated the applicant had a right to expand and grow their business, but felt the property owners should be protected against the negative impact of a land use that was too intense for the surrounding neighborhood.

Mark Mueller, 1712 W. 82nd St., stated he was the personal representative for his mother's 40 acre estate. He explained the property was zoned for residential development and he had a letter of intent to develop at such time that utilities were extended to serve the property. He opposed the request for a crematorium in this particular neighborhood because it would impede future development and the extension of utilities.

Dave Jansen, 7985 Argenta Trail, stated he researched the issue and found that only a few cemeteries in the State had crematoriums onsite. He explained he had previously emailed his concerns to the Council.

He asked those in attendance who opposed the requests to raise their hands.

Mayor Tourville stated some of the residents he heard from were against the entire request and some were only opposed to the crematorium.

Mr. Jansen stated he was initially opposed to the crematorium and his concerns about the scope of the entire request had grown over time.

Councilmember Piekarski Krech noted the cemetery was already located on the property and would continue to exist whether the applicant's requests were approved or not.

Mr. Jansen stated he did not support any changes that would allow any use on the property beyond the use originally established in 1975. He opined that commercial development of any type would open the door for similar issues in the future. He noted he moved to Inver Grove Heights because it was the right mix of community, safety, and open space. He opposed commercial development in a residential area. He stated the neighborhood's traffic concerns had not been addressed and the residents still had environmental and noise concerns.

Matt Slaven, Briggs and Morgan, discussed the importance of transparency when dealing with land use issues. He opined that the process being followed was not a transparent way to go about the goal trying to be achieved. He argued that the developer was trying to use a backdoor method to place a commercial operation within a zoning district that would not otherwise allow it. He stated according to the City's zoning code a cemetery requires 40 acres of land and the current use appeared to be non-conforming. He explained if it was a legal non-conforming use that particular use was supposed to continue until the property had been consumed and the use was no longer viable on the property. He stated the residents and property owners in the area assumed the use on the subject property would remain that of a cemetery, not a commercial development. He opined it was not normal for a crematorium to be an accessory use to cemeteries in the State and would not satisfy the definition of an accessory use. He argued it would also create an expansion and intensification of the use of the property. He stated there was nothing to suggest that the services of the mortuary and crematorium would be limited to this specific cemetery. He added that the change requested would permit similar uses on P zoned property throughout the City and residents in the rest of the City were unaware of the proposed change. He encouraged the Council to take action to deny the applicant's requests.

Chris Wadzinski, 7834 Alberta Way, stated he was opposed to the request. He questioned where the toxins go when people are cremated and if there were control measures in place to capture the toxins. He opined trusting the State and the EPA to regulate the toxins and pollutants was not a guarantee of safety.

Tony Weber, 8225 Argenta Trail, stated his proposed operation would need to conform to all applicable State statutes and regulations. He explained the Minnesota Department of Health recommended the equipment that would be used to operate the crematorium. He also sought feedback from the environmental health division and the MPCA. He recognized that the biggest concerns related to the impact of the crematorium on the community. He reviewed the practices related to green burials and stated it was a simple and natural process. He contended nothing related to the green burial process would contaminate the ground water or soil. He outlined the differences between a green burial and a traditional burial. He stated a green burial involved no embalming and the use of biodegradable caskets or urns. He noted a green burial was meant to avoid anything that could not be reproduced. He argued that there had been a lot of misinformation relayed about the emissions from a crematorium. He reiterated they did not want the area to be polluted in any way. He noted he had a vested interest in making sure the air pollution was controlled and that the soil and water were not contaminated because he had family in the neighborhood. He reviewed the features of the cremation equipment and the technology that was in place to eliminate the risks associated with cremation. He explained the cremation unit had the ability to track the level of toxins or contamination being emitted from the stack while the equipment was in use. He provided statistical information related to carbon monoxide and particulate emissions from the cremation equipment. He noted the equipment operated without releasing smoke or odor. He stated there was a crematorium located in Eagan that was near residential development and the City of Eagan had received

no complaints about the operation.

Mayor Tourville questioned who would operate the mortuary and crematorium.

Mr. Weber stated he was the owner of the business and it would be operated by licensed morticians and funeral directors.

Councilmember Piekarski Krech how many bodies could be buried in the cemetery.

Mr. Weber estimated 10,000. He stated the plots were contiguous with two (2) feet of space between rows.

Councilmember Piekarski Krech questioned if they would only bury bodies that were cremated onsite at their facility.

Mr. Weber stated he could not guarantee that they would only bury remains that were cremated at their facility.

Mr. Kuntz questioned how many bodies were currently buried on the site.

Mr. Weber stated 29 were currently buried.

Mr. Kuntz questioned how many plots had been sold for future burials.

Mr. Weber stated 600 plots had already been sold.

Mr. Kuntz questioned if all of the pre-sold plots were being honored.

Mr. Weber replied in the affirmative. He noted they would be required to go through the green burial process.

Mr. Kuntz questioned if there had been any disputes related to payment for previously sold plots.

Mr. Weber replied in the negative.

Mr. Kuntz questioned what would happen if a customer did not agree to a green burial.

Mr. Weber stated the customer would have to make alternative arrangements at another facility.

Mr. Kuntz questioned if the 600 plots that had already been sold were included in the 10,000 burials that were estimated to fit on the site.

Mr. Weber replied in the affirmative. He noted only a few of the plots had not been sold by them.

Councilmember Piekarski Krech questioned how 10,000 would fit on the site.

Mr. Weber stated they used the same plotting plan reflected on the original 1975 plan in which the whole area was plotted for a cemetery.

Mr. Kuntz provided an overview of the history of the property. He explained in 2001 Gene Worrells approached the City with a plan to sell three (3) church lots without site plans or a buyer at that time. The lots were subsequently platted as outlots a, b, c, and d. He noted the City had a road easement over outlot d. The proposal was to re-plat outlot b. The concern was who would be responsible for the graves and the general thought was that outlots a and c would be sold for church use without grave sites.

Mr. Weber contended the whole area was plotted for grave sites.

Mr. Kuntz stated that was not reflected on the plat that was recorded with the County. He questioned if the business plan estimated how many cremations were projected to occur in which burial would not take place onsite.

Mr. Weber stated 95% would be buried on their property.

Mr. Kuntz questioned if there were plans to rent the assembly hall on the property to customers for other uses not related to burial or funeral services.

Mr. Weber stated that was not included in the business plan. He explained they were considering having

memorials after burials and the intent would be to offer full-service burial options.

Mayor Tourville questioned how many cremations would take place at the facility annually.

Mr. Weber stated the business plan projected 100 burials annually and they did not differentiate between burials and cremations. He estimated that a maximum of 100 cremations would occur at the facility annually.

Councilmember Piekarski Krech commented she did not know how the business would make money based on the projections in the business plan.

Steve Willwerscheid, Funeral Director, stated his business started offering the natural burial and cremation process in West St. Paul. He explained a green burial was environmentally friendly and cremation was not. He noted that a funeral home had to have an embalming room that met all of the requirements outlined in Minnesota Statute 149A. He noted the crematory aspect was completely separate from the funeral home portion. He stated there had been no discussion about a funeral home. He argued that a funeral home with an embalming room was not a part of the green burial process. He questioned if the request was for a funeral home to run a crematory or if the request was for a green burial site. He stated they were three (3) separate things and the buildings had to be constructed in such a way that they would remain separate. He noted there was a distinct difference, statutorily, between a funeral home, a crematory and a cemetery. He encouraged the City to look more closely at all three (3) aspects.

Ralph Taylor, 8834 Argenta Trail, stated he purchased a plot at the cemetery in 1985. He explained he wanted a conventional burial and was told by the new owner that he had to agree to a green burial if he wanted to keep his plot. He stated the owner had to abide by the statutory regulations for cemeteries and needed his consent to make changes. He opposed the request and asked the Council for help to protect his rights and resolve the issue.

Jamie Roberts, Roberts Funeral Home, stated the applicant would be the owner of the business but was not a licensed mortician. He questioned what the applicant's tax status would be for the development. He stated he was required to provide a certain number of parking spaces based on the capacity of his chapel. He questioned how many parking spaces the development would be required to have and if customers would be allowed to park on the grass.

Mr. Kuntz explained Minnesota Statute 306.14 states that the lands and property of a cemetery association are exempt from all public taxes and assessments. The owners of the cemetery lots may hold the lots exempt from taxation so long as the lots are used for a cemetery. No road or street shall be laid through the cemetery or any part of the lands of the association without the consent of the trustees. He noted the statute referenced did not exempt cemetery property owned or leased by a corporation, unless the corporation was non-profit.

Mayor Tourville clarified the buildings on the property for commercial use would not be exempt.

Mr. Kuntz questioned who would own the property.

Mr. Weber stated the property would be owned by the corporation, Prairie Oaks Memorial Eco Gardens.

Mr. Kuntz questioned who owned the corporation.

Mr. Weber indicated he was the sole owner of the corporation.

Mr. Kuntz questioned if the entity was a for profit corporation organized in Minnesota.

Mr. Weber responded in the affirmative.

Mayor Tourville questioned if the business would continue to perform green burials without a crematorium.

Mr. Weber responded in the affirmative.

Mr. Kuntz questioned if the proposed facility would have an embalming room.

Mr. Weber stated he did not want an embalming room but was statutorily required to have one.

Jerry Anderson stated he was the architect for the project. He explained the parking capacity was based on the occupancy of the entire building. He stated 42 parking spaces were included in the design as well as overflow parking in grass areas that would continue to be pervious.

Mr. Weber noted the chapel seated approximately 100 people.

Mr. Anderson stated the application and zoning requirements, in terms of the approval process, had been dictated by City in terms of its established application process. He noted the uses currently allowed in a P zoning district included churches, chapels, temples, and synagogues. He stated with the exception of the crematory, all other aspects of the operation could be viewed as a church.

Councilmember Piekarski Krech stated there was a big difference between a church and a funeral home.

Michael Tebbitt, 7920 Alberta Way, stated if the particulate matter emitted from the crematorium was as clean as the owner claims it is, there would be no need for a filter. He questioned what would happen when the amount of business increased beyond the projections in the business plan. He expressed concern that the proposed development would negatively impact the property values in the neighborhood.

The City Council recessed for five minutes.

Cindy Tebbitt, 7920 Alberta Way, questioned how many emails were received by the Council either for or against the project.

Mayor Tourville stated the Council received a lot of emails regarding the proposed development. He explained they did not make a hard copy of every email that was received. He noted the Council would receive some of the correspondence that was presented to them in hard copy form as part of the public record.

Mr. Jansen suggested that if the Council chose not to deny the request that they consider it as a conditional use. He reiterated the residents in the area would prefer no commercial development.

Councilmember Piekarski Krech stated it was an unfair to other businesses in B-2 or B-3 districts to have a similar business as an accessory use in the P zoning district. She opined the proposed use would be best located in a B-2 or B-3 zoning district and noted other businesses with similar uses were typically located on property zoned for business or commercial development. She stated she was not willing to rezone the area as commercial. She noted the City needed to have better idea of what has happened with the cemetery and what will happen with the plots that were previously purchased going forward. She questioned what would happen once the all the plots were filled and who would care for the cemetery if no association was in place.

Councilmember Bartholomew stated he was not in favor of rezoning the property to a B-2, B-3, or B-4 and could not support a PUD in the P district. He opined the proposal was for a more aggressive use of the property that belonged in a B-2, B-3, or B-4 zoning district. He agreed that the proposed development would have a negative impact on the surrounding area and felt that it did not fit in the neighborhood. He stated he would not support the proposed use on the property.

Councilmember Madden agreed that the proposed uses did not fit in the surrounding area and belonged in a commercial zoning district. He opined the property owners in area did not deserve to have such a use located next to their property. He stated he would not support the request because it did not belong in the P zoning district.

Councilmember Mueller stated he could not support the requests for the reasons already stated by the other members of the Council. He reiterated the accessory uses should be located in a business zoning district.

Mayor Tourville stated he was opposed to rezoning the property and did not believe the accessory uses fit in the current zoning district. He explained he supported the premise of a green cemetery, because the cemetery was a permitted use in the P zoning district.

Motion by Madden, second by Piekarski Krech, to receive the emails and correspondence included with the agenda item and presented at the meeting

Ayes: 5
Nays: 0 Motion carried.

Mayor Tourville noted that staff would need to prepare a resolution detailing the reasons for denial of the request and bring it back for Council action at the next regular meeting.

Mr. Kuntz stated if the item dealing with the amendment to the code (item iv) failed the remaining items would fail because they were all tied with a PUD plan to the other specific uses. On May 16th the first 60 days would expire and the City could unilaterally extend that period for another 60 days. The Council could also direct staff to prepare a resolution setting forth the reasons for denial as articulated by the individual council members.

Mayor Tourville stated to be fair to the applicant and the residents in the neighborhood action should be taken at this meeting.

Mr. Kuntz stated the Council could proceed with the motion to deny the requests and direct staff to prepare a resolution memorializing the findings of fact and reasons for denial of the land use requests.

Motion by Piekarski Krech, second by Mueller, to deny requests i – iv for property located at 8225 Argenta Trail for the reasons articulated by the Council and to direct staff to extend the 60 days beyond the May 16, 2014 deadline

Ayes: 5
Nays: 0 Motion carried.

E. CITY OF INVER GROVE HEIGHTS: Consider the First Reading of an Ordinance relating to Parking of Vehicles in the Front Yard

Mr. Hunting stated the issue had been discussed a number of times over several years at multiple work session. After reviewing several draft ordinances, Council directed staff to hold a public hearing with the Planning Commission. He summarized the proposed ordinance. He stated the ordinance was set up to allow parking of vehicles in the front yard on a hard surface such as bituminous, concrete, or pavers. Parking would be allowed on a driveway or a parking pad adjacent or contiguous to the driveway. No changes were proposed to side or rear yard regulations. He noted the ordinance would only apply to urban areas of the City, specifically the residential districts. Exceptions were included to coincide with the winter street parking bans. The ordinance would not prohibit parking anything in front yard it would only require that the vehicle be parked on a hard surface. The ordinance did not address issues with on-street parking. Several testimonies at the Planning Commission hearing suggested the inclusion of temporary parking provisions. The Planning Commission recommended that a temporary parking provision with a seven (7) day maximum be included in the ordinance. He asked for feedback from the Council regarding the language contained in section 2(b) related to the orientation of vehicles parked in the front yard. Planning staff recommended striking the specific language related to the orientation of vehicles.

Councilmember Madden opined if the language was removed the ordinance would not be addressing the problem.

Councilmember Bartholomew questioned if the language would prohibit someone with a three (3) bay garage from parking a vehicle on the driveway in an orientation that was parallel to the street.

Councilmember Piekarski Krech stated the language would apply to vehicles on parking pads that were separate from the driveway.

Mayor Tourville opined that the language in 2(b) was too restrictive. He stated if the language regarding orientation of the vehicles was removed the City would still accomplish the main goal of the ordinance.

Mr. Hunting stated it was a question of how restrictive Council wanted to be on orientation of vehicles. He stated allowing parallel and perpendicular orientations may provide residents with more maneuverability.

Councilmember Madden questioned how staff was going to enforce the seven (7) day temporary parking maximum.

Mr. Hunting stated staff would have to rely on the public to contact the City for enforcement.

Mr. Kuntz suggested that the Council think about the effective date of the ordinance for discussion during the second or third reading of the ordinance.

Councilmember Mueller stated the City needed to give people time to install pavers or parking pads before staff started enforcing the ordinance.

Mayor Tourville suggested an effective date of November 1st to coincide with the start of winter parking regulations.

Motion by Madden, second by Mueller, to approve the First Reading of an Ordinance relating to Parking of Vehicles in the Front Yard

Ayes: 5
Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

9. ADJOURN: Motion by Piekarski Krech, second by Mueller, to adjourn. The meeting was adjourned by a unanimous vote at 11:20 pm