

**INVER GROVE HEIGHTS CITY COUNCIL MEETING  
MONDAY, SEPTEMBER 14, 2015 - 8150 BARBARA AVENUE**

**1. CALL TO ORDER and 2. ROLL CALL**

The City Council of Inver Grove Heights met in regular session on Monday, September 14, 2015, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m. Present were Council members Bartholomew, Hark, Mueller and Piekarski Krech; City Administrator Lynch, City Attorney Kuntz, Community Development Director Link, City Clerk Tesser, Parks and Recreation Director Carlson, Finance Director Smith, Public Works Director Thureen, Police Chief Stanger and Fire Chief Thill.

**3. CONSENT AGENDA:**

- A.** (i) Minutes of July 27, 2015 Regular City Council Meeting  
(ii) Minutes of August 24, 2015 Regular City Council Meeting
- B. Resolution No. 15-137** Approving Disbursements for Period Ending September 8, 2015
- C.** Consider Approval of Veteran's Memorial Community Center Phase 2 & 3 Interior Signage
- D.** Consider Pay Voucher No. 8 for City Project No. 2014 – 09D- College Trail Street Reconstruction and Barbara Avenue Partial Street Reconstruction and 2014-06 Blaine Avenue Retaining Wall Replacement Improvements
- E.** Consider Pay Voucher No. 4 for the 2015 Capital Improvement Program, City Project No. 2015 -10 – NWA Truck Utility Improvements, Argenta District (Alverno to Blackstone Vista Development) and City Project No. 2015-11 – NWA 70<sup>th</sup> Street Lift Station, Argenta District
- F.** Receive Proposals and Accept Quote for the Purchase of the 70<sup>th</sup> Street Pressure Reducing Valve (PRV) Station Vault and Equipment
- G.** Receive Proposals and Accept Quote for Installation of the 70<sup>th</sup> Street Pressure Reducing Valve (PRV) Station
- H.** Approve Release of Improvement Agreement (Dakota County Document No. 2972310) for Property Located at 6360 and 6370 Concord Boulevard
- I.** Approve Easement Encroachment Agreement for Landowner Improvements with City Easement for Property Located at 7598 Bennett Court (Lot 11, Block 1, Orchard Heights 2<sup>nd</sup> Addition)
- J.** Municipal State Aid Street System Adjustments
- K.** Resolutions Calling for Hearing on Proposed Assessments and Declaring Costs to be Assessed and Ordering Preparation of Proposed Assessments for City Project No. 2009-01 – TH3 and Future 80th Street/Amana Trail Intersection Improvements
- L.** Approve Amendment to Proposal for Professional Services from SRF Consulting Group, Inc for the Pine Bend Area Arterial Connector Study
- M.** Consider Resolution Receiving Public Works Maintenance Facility Evaluation and Recommendations Report, Authorizing Preparation of a Request for Proposals for Preliminary Design and Authorizing an Appraisal for the Adjacent Property
- N.** Consider Contractor for VMCC Drainage Issues
- O.** 30 Day Suspension of Firefighter
- P.** Personnel Actions
- Q.** Consider Approval of Administrative Services Coordinator

**Item 4O. was pulled by Councilmember Hark.**

**Motion by Bartholomew, second by Hark, to approve the Consent Agenda 4.A- 4.Q, 4O. was pulled.**

**Ayes: 5**

**Nays: 0          Motion carried.**

Item 4O. was discussed at length. Councilmember Hark had a concern regarding the city code. The city code reads that the Fire Chief makes a decision regarding staff suspension and then the decision is brought forward to the council for approval weeks later. Councilmember Hark would like staff to look at amending the language. Fire Chief Thill agreed that the city code procedure is confusing and she will look at amending the ordinance.

Mr. Lynch discussed that staff met regarding the amendment to the ordinance. The language should read no more than 10 days, not more than 10 days.

**Motion by Hark, second by Piekarski Krech, to approve the 4O and for staff to review the suspension language of the ordinance.**

**Ayes: 5**

**Nays: 0      Motion carried.**

Councilmember Mueller commented on the language in the minutes regarding Athlos from July 27, 2015 Pages 3-5. Mr. Mueller stated that Councilmember Bartholomew declared that monies should be in kind but that wasn't remarked. Mr. Lynch replied that the web stream will be reviewed for accuracy but cautioned the council that the minutes are not meant to be verbatim. Mr. Lynch stated that the minutes are meant to summarize discussion.

**Motion by Mueller, second by Piekarski Krech, to look at updating pages 3-5 of the July 27, 2015 Council minutes.**

**5. PUBLIC COMMENT:**

Davis Onken, 6333 Dan Way, commented on the condition of the street and supports Dawn Way street improvements.

Gwen Brummund 6565 Dawn Way, commented on the condition of the street and supports Dawn Way street improvements.

Sharon and Melvin Smith 3890 65<sup>th</sup> St E., commented on the condition of the street and supports Dawn Way street improvements.

Mayor Tourville discussed the petition process with residents and to view other roads that are on the upcoming street improvement list to see how their street compares against the other listed streets. Mayor Tourville asked Mr. Thureen to get back to Sharon Smith regarding whether in the past, Dawn Way was a county road.

Allan Cederberg, 1162 East 82<sup>nd</sup> St questioned the renewal process on the 2AM Liquor License renewal. Mr. Lynch discussed at length the state's process of the 2AM Liquor License process. Mayor Tourville asked staff to work with Mr. Cederberg on his inquires and directed Mr. Cederberg to talk to the state regarding the 2AM liquor license approval process.

**6. PUBLIC HEARINGS:** None.

**7. REGULAR AGENDA:**

**COMMUNITY DEVELOPMENT:**

- A. DAVID VOLKERT: Consider Resolution 15-142 Relating to a Variance to allow a handicap ramp 20 feet from the front property line whereas 24 feet is required for property located at 3252 72<sup>nd</sup> Street**

Tom Link, Community Development Director presented on the regular agenda item. Mr. Link stated that the applicant is requesting a variance to allow an uncovered handicap ramp 20 feet from the front property line whereas 24 feet is the required setback. The principal structure setback for front yards is 30 feet; the property does not meet the front yard setback requirements reducing the amount of space allowed for a

ramp encroachment. The zoning ordinance allows certain encroachments such as uncovered ramps to be no closer than 24 feet from the front lot line.

Mr. Link stated that there are two entrances to the property, the other alternative doesn't work well because of topography and simply, there's no room. The front yard is the only option for the ramp. The ramp doesn't have any adverse impacts on neighboring properties. Furthermore, federal ADA requirements ask for the city to make reasonable modifications in cases like these. Planning staff and Planning Commission unanimously approve the variance.

David Volkert, a friend of the resident, who also will be building the ramp, spoke to the council and asked for the variance fee to be waived. Mr. Volkert declared that he connected with a volunteer group called Lakeville Yellow Ribbon Network. He stated that this group of men build ramps for Veterans and charge nothing to the person in need. The funds come from the Metropolitan Council for Independent Living (MCIL). The funds are extremely limited. Mr. Volkert asked the council to consider waiving the cost for the variance. Mr. Volkert stated that the cost of building the ramp is as high as the cost of the variance.

Mayor Tourville expressed concern that if fees were waived for the variance than it could set precedence. Mr. Link concurred that precedence could be set. Councilmember Mueller asked for the cost. Mr. Volkert stated that the cost is \$246.00.

Mayor Tourville asked Mr. Volkert if fees have been waived in other cities. Mr. Volkert stated yes, a number of cities have including Columbia Heights and Lakeville, both of these cities waived building permit fees as well. Mr. Volkert stated he has not had to obtain a variance in the past. Mr. Link suggested they calculate the variance fee based on the length of staff time and recording fees. Councilmember Bartholomew expressed his concern of setting precedence. Mayor Tourville asked staff to look at actual staff cost and reimburse the remaining amount to the applicant. Mr. Link reminded the council that the recording of the variance from the county may take some weeks.

**Motion by Bartholomew, second Hark, to approve the variance with the caveat of first looking at the cost of staff time and reimbursing the applicant the remaining amount.**

**Ayes: 5**

**Nays: 0            Motion carried.**

**B. BERIA LUTHERAN CHURCH: Consider Resolution 15-143 relating to a Variance to allow a monument sign with a zero foot setback whereas 10 feet is required for property located at 9308 Rich Valley Boulevard.**

Tom Link, Community Development Director introduced the property. The church came to the city for a new sign, upon further research staff found that the sign was not on church property but was on the county's right of way. Mr. Link stated that what happened was that when the property was platted in 2001 for an expansion the county took additional right of way. No one was aware at the time that the sign was on the right of way property, hence, the need for this variance. The county will not allow any encroachments in the right of way and therefore would not approve the special exception for the sign. The sign has to be placed in the front boulevard between the parking lot and roadway. It will not meet the required 10 foot setback. If not approved, the sign would have to be in the parking lot. Staff and the Planning Commission recommend approval of the variance.

**Motion by Piekarski Krech, second Mueller to approve the sign variance.**

**Ayes: 5**

**Nays: 0            Motion carried.**

- C. ATHLOS ACADEMIES: Consider the following requests for property located at 9725 South Robert Trail (tabled from council meeting on July 27, 2015):**
- a) A Resolution relating to a Comprehensive Plan Amendment to change the land use designation of the property from LI, Light Industrial to P/I, Public Institutional.**
  - b) An Ordinance Rezoning the property from I-1, Limited Industry to P, Institutional.**

Mr. Link introduced the item and gave a brief background on Athlos Academies. Mr. Link explained that the land use destination would go from industrial to public institutional and requires at 4/5 vote of the city council. The second part to this is an ordinance amendment to change to ordinance from industrial to institutional. Mr. Link stated this item was before the city council on July 27, 2015 and at that time it was tabled to explore a couple of things, first payment in lieu of taxes and second is the question of access and traffic safety. On the traffic safety issue the applicant hired a consultant to do a Traffic Impact Study. The report was included in the council packet. The report states that there are poor traffic conditions at the proposed intersection of the site driveway at Robert St. The study discusses mitigating measures such as: adding a light signal, changing the peak hours of the light signal at S Robert Tr/Diffley Rd, adding a right turn lane, adding some additional signage and adding a police officer to assist with traffic control.

Mr. Link added that the applicant, staff and representatives from MnDOT met together to discuss the proposed site. The letter from MnDOT outlining their recommendations was included in the council packet. The letter stated that a right turn lane into the site would be required and that a left turn lane in the site be required by the City. The Engineering Department reviewed MnDOT's letter and agreed with the findings.

Mr. Link stated a police officer control of the intersection would be recommended, one to two officers during the peak hours of the day. The city's Police Chief Larry Stanger does not agree with this recommendation. The department does not offer these types of services nor does Chief Stanger feel that it's safe for his officers to direct traffic on a highway.

Mr. Link concluded in this brief background that the council is asked to make two determinations, the comprehensive plan amendment and rezoning of the ordinance. Item D. of the agenda is a resolution to approve the major site plan, which cannot be approved if Item C is denied. The Site Plan has been modified to provide additional setback on the north and the west. Mr. Link stated the Planning staff recommends denial of the request based on the information provided in the council memo dated July 27, 2015. The Planning Commission recommends approval of the request based on the desire to have reinvestment in the property, additional jobs, and the institutional zoning being an appropriate land use in the neighborhood. If the council approves Item C. (a) and (b) then both the Planning staff and the Planning Commission recommend approval.

City Administrator, Mr. Lynch introduced a brief summary on the payment in lieu of taxes (PILOT). Because of extenuating circumstances staff and the applicant have not had a chance to meet to discuss payment in lieu of taxes. Mr. Lynch recommended council table this part of the decision. In general the property is tax evaluation is commercial property and the city receives approximately \$15,000 in city's portion of taxes and we receive approximately \$32,000 in fiscal disparities which is a revenue sharing program, money gets paid into a pool and gets redistributed to the communities based on need and we're a net contributor and we lose money but we get \$32,000 back on this piece of property because its a commercial property. Mr. Lynch stated that the overall number of monies collected is \$15,000 in taxes or \$47,000 in total depending on your viewpoint.

Mr. Lynch recapped on the concerns of the council including loss of tax revenue to a tax exemption property and loss of revenue. The council was interested in exploring PILOT. The applicant came back with an offer for the city to use its indoor and outdoor fields. Both parties have discussed options, if the council would like to go further with this we would look into length of time, what the numbers would look

like etc. Mr. Lynch explained, that beforehand, the land use question should be discussed by the council for consideration since it requires a 4/5 vote. Mr. Lynch stated that further monies, attorney time and staff time will be used to go further with exploration of the PILOT and recommended that the council consider the land use question.

Councilmember Bartholomew asked about the fiscal disparities calculation. Mr. Lynch replied that payment of the \$32,000 is paid to the county and redistributed to the city. Councilmember Bartholomew asked if the redistribution is put into the fund and then returned back. Mr. Lynch stated the \$32,000 is the portion the city receives back.

City Attorney, Mr. Kuntz, reviewed what payment in lieu of taxes is. He explained it is in goodwill and is not required. It's to reduce the impact of a tax exception status. The city cannot require it as a condition of land use approval. The council cannot unilaterally impose it as a requirement before granting the approval. However, the applicant can volunteer to pay a PILOT and can memorialize that in way of a contract. Mr. Kuntz, gave a brief summary on what occurred on the July 27<sup>th</sup> council meeting. He stated that they have been corresponding with the entity that would possess and operate the school but not the entity that will own the land. The applicant was asked to come forward with a proposal that could be outlined to the city council, the proposal as of Friday is as follows: the entity would pay \$105,000 in a lump sum payment at the time the building permit is requested for construction and the entity would make available the indoor and outdoor turf area, rent free for 25 years. Mr Kuntz stated that the thought process had been by the applicant to pay the 2016 taxes and the exemption would start in 2017.

Mayor Tourville stated the council needs an agreement including the MnDOT's piece. If the city council states that it doesn't matter what the agreement says, that the council doesn't want to change the comprehensive plan than we don't need to go further with the other pieces.

The applicant's attorney, Paul Rogosheske, presented to the council and explained the funding received from the state is based on per attending child. He recapped the funding package or PILOT provided to the council. He further discussed improvements to the intersection; MnDOT's recommendation for improvements could cost as much as \$800,000 to \$1 million dollars. He discussed options of paying up front or incrementally paying over years. He explained that they will bond for the cost of the school and field. Mr. Rogosheske discussed the benefits of a charter school and what it brings to the community including children, parents and an additional 100 jobs.

Resident, Matthew Harmoning, 7618 Addisen Path expressed concern of the charter school using tax payer money and pulling out of the community.

Ken Feldman, chairman of the Athlos Academies Board responded to the residents comment, he added that the school is not a taxing district and is funded through state aid. The state aid comes from the individual's state income taxes. Further, the monies provided are based on number of children in the school.

Councilmember Piekarski Krech asked why Inver Grove Heights is the place they're looking at opening this type of school. Mr. Feldman replied that based on studies of population growth and land available they believe they can come up with the numbers of students. He further added that he helped open the Math and Science Academy in Woodbury, MN. It has had a waiting list larger than the school's population since the day it opened.

Resident and Founder/Director of Athlos Academies, Claude, Alliaire, 5975 Blackberry Trail, presented to the council and expanded on how a charter school would benefit the community.

Mayor Tourville explained that the school would be located in Inver Grove Heights but would be within ISD 196. Further he stated, coordination and more discussion would be had between Athlos Academies and ISD 196. Mayor Tourville summarized that the two issues are PILOT and Transportation.

Councilmember Piekarski Krech stated that the site for transportation is unfathomable. Based on the reports given, she doesn't see the state putting a traffic light at 143 and Robert St. She further expressed concern over children, pedestrian, and bicycle safety.

Councilmember Bartholomew expressed a philosophical concern over change of the comprehensive plan land use designation. Further he stated, if we rezone the property to public institutional we are not getting another light industrial property. The city has a limited amount of industrial property. Mr. Rogosheske discussed the positives of the redevelopment of the property, 100 new jobs, intersection improvements and community benefits. Councilmember Bartholomew commented on balancing the risk. Aaron Carroll, the architect of the Athlos project discussed the traffic modifications and their dedication to improving the intersection to make it safe and not require a traffic control officer out on the street directing traffic. Mr. Rogosheske also stated that they will take over the building after six years which is a state law. Mr. Carroll, touched on the population study discussed and stated that they have large support in the community to provide this alternative. He also declared that the risk is minimal with the increase of need and desire for this type of school. He expressed that they are held to a higher standard than public schools because if we fail, then students will leave. Mr. Carroll stated we have to retain students.

Mayor Tourville commented on the importance of the transportation safety piece. Councilmember Hark stated that for him the intersection improvement isn't a main concern because it will get worked out when children's safety is involved. He discussed positives in the ways of competition and choice, but he feels protecting the tax base is important especially long-term. He concurred with the need of industrial property in the city.

Mr. Rogosheske asked for the opportunity and time to come back to the council again with a package deal.

Resident, David and Gina Samuelson, 9468 Tyne Lane, expressed their concern of buses, number of students dropped off and picked up and field use at night.

State Representative, Joe Atkins, 2463 78<sup>th</sup> Street, expressed his support of the charter school and gave a character support of those involved with the school whom he has known for a long period of time. He asked about the useful life of the building that lies vacant on the property. He sees it as a negative value on the city not a positive value. Mr. Atkins also discussed the possible industrial uses that could go in that property and the possible dissent from neighbors. Further, he added that there's greater risk if the building resides empty and could end up becoming a redevelopment issue. He finds that the more viable option is the charter schools and asked that the council allow Athlos to bring forward their PILOT.

Councilmember Mueller stated that he can't see downgrading a commercial property.

**Motion by Mueller, second Pierkarski Krech second the motion to approve the resolution of denial for the land use change.**

**Ayes: 2**

**Nays: 3 (Tourville, Hark and Bartholomew) Motion denied.**

Councilmember Bartholomew asked Councilmember Mueller to reexamine the comment made by Mr. Rogosheske to allow the applicant to come to the council with a benefit package for over a 30 year period. Further that the package would be in response to the off set of taxes and the fiscal disparities. Councilmember Hark stated he is in favor of hearing the applicant out. Mayor Tourville stated that the traffic safety measures have to be met but he was also in favor.

City Attorney, Mr. Kuntz stated that the motion is to approve the resolution of denial for the reasons stated in the resolution, for the motion to pass it has to be simple majority.

Further, Mr. Kuntz alerted council that if the vote is for the item to be tabled that the Item D, the Site Plan review will not have a storm water facilities agreement, and other related agreements to be executed between the parties and the city for the September 28, 2015 meeting. Mr. Kuntz emphasized the time deadline of two weeks on land use decisions, deadline is October 6th. Mr. Kuntz stated that the applicant can request an extension.

**Motion by Hark, second Bartholomew to table the item until the council meeting of September 28, 2015.**

**Ayes: 3**

**Nays: 2 (Piekarski Krech and Mueller) Motion carried.**

**D. THE CHARTER SCHOOL FUND (ATHLOS ACADEMIES);** Consider a Resolution relating to a Major Site Plan Review for the construction of a 90,000 gross square foot school building along with other property improvements for property located at 9725 South Robert Trail.

This item was tabled until September 28, 2015.

**Motion by Piekarski Krech second Bartholomew to table the item until the council meeting of September 28, 2015.**

**Ayes: 4**

**Nays: 1 (Mueller) Motion carried.**

**ADMINISTRATION:**

**G. CITY OF INVER GROVE HEIGHTS; Consider Property Exception Requests for Bow Hunting.**

City Administrator, Joe Lynch introduced the item and gave a brief background on the Bow Hunting ordinance. The exception requests must be received by September 1<sup>st</sup> for consideration and all applications are presented to the city council at the same time by council request. Mr. Lynch pointed out specific parts of the 5-6-1 ordinance language 2. (a) and 2. (c). The item reads a. There shall be no shooting or discharge of any bow and arrow with three hundred feet of any residential or commercial structure. The other item reads c. There shall be no shooting or discharge of any bow and arrow within two hundred feet of any public street or private roadway. A map of each property was brought forward for the council to view.

There were four applicants, each applicant was present to discuss reason, explanation, permission and signed authorizations.

Applicant 1- Gary Lusso, property address: Merrimac Island

Applicant 2- James and Lora L Krech, 2585 2<sup>nd</sup> St E and Arlan & Dianne Olson, 2615 62<sup>nd</sup> St E.

Applicant 3 – Richard and Patricia Standt, 6050 Cahill Ave E.

Applicant 4 – Rob & Lynn Illetschko, 8920 89<sup>th</sup> CT E.

Mr. Lynch stated that staff recommends that all applicants' request for exception be denied. Reasons for denial include:

1. Lack of access for public safety if accident or need for response. (Applicant 1)
2. After interpretation and consideration of buffer and setback area required, three requests result in an area that is not safe for anyone to hunt.
3. Two applications do not have all ordinance signatures as required.
4. It's apparent, based upon interpretation and better understating of the regulations, there is no reasonable need to hunt in areas that are not already included in the allowed hunting area.

Applicant 1- Gary Lusso, discussed that he owns the island and bought the island three weeks ago. He stated there is a Washington County sheriff boat on the river in case of an emergency response. He stated that he has disabled friends that would like to be able to bow hunt deer and turkeys. He explained to the council that the deer need to be vetted and that their population is sizable this year. Mayor Tourville commented that the purpose of the ordinance is to lessen the deer population in the area.

Applicant 2- James and Lora L Krech, discussed with the council that in 2013 and 2014 they hunted and have had no safety issues. Mr. Lynch indicated that there is a small spot where hunting can be done on the property. In the past the applicant had up to 11 deer. He stated his neighbors asked him to apply for the bow hunting permit to reduce the size of the deer population. Councilmember Bartholomew stated that two signatures are required for the application to be approved.

Applicant 3 – Richards and Patricia Standt, presented to the council that he owns the buildings that are measured in the 200ft building structure. He stated that last year he had 16 deer. In the hunting area, they would be hunting towards the hill on the west side.

Applicant 4 – Rob and Lynn Illetschko presented to the council. He stated that the deer are out of control on his property with more than 30 counted. The resident discussed hunting and safety precautions. The applicant has signatures of all the abutting properties. Councilmember Bartholomew commented that according to the map there is no area to hunt if the ordinance is followed but agrees that the applicant should be able to hunt there.

Councilmember Piekarski Krech asked how we justify the 300ft where the two properties don't have that distance. Mayor Tourville stated that staff should look at changing the ordinance language to 300ft allowed for residential structures owned by the property owner. Councilmember Piekarski Krech agreed that the ordinance should be 300ft from another property owners' structure but not their own structure.

Mayor Tourville added that the council can approve Applicant #1 and #2 tonight since those fit within the guidelines of the ordinance.

**Motion by Tourville second Bartholomew to approve Applicant #1 and Applicant #2 with the caveat that Applicant #2 provides the signed authorization for all abutting properties.**

**Ayes: 5**

**Nays: 0**

**Motion carried.**

Mr. Kuntz stated the council is adding to the ordinance language that if the shooter owns the residential structure then the shooter may hunt deer within 300 feet of the structure or if the shooter has received consent from the person who owns the structure on the property. Further, he summarized the council's discussion that the council would like staff to amend the ordinance and accept the ordinance in the first

reading. Mayor Tourville asked about how this would be noticed within the time allotted. Mr. Lynch asked who was the intended audience of the public hearing since the application deadline was September 1. Mayor Tourville stated he is being over reactive with the notice to the public. Councilmember Piekarski Krech stated that the ordinance is only for the deer season and it expires Dec 31. Mr. Kuntz stated that it could be noticed in the paper regarding an ordinance change in the next couple of weeks. Mr. Kuntz stated alternatively council can put it on the council agenda and not publicly notice. Council directed staff to table the decision on Applicant #3 and #4 and directed staff to amend the changes to the ordinance for the next council meeting.

**8. MAYOR & COUNCIL COMMENTS:**

The emergency management table topic discussion will be on Tuesday, October 6, 2015.

**9. ADJOURN:** Motion by Piekarski Krech, second by Bartholomew to adjourn. The meeting was adjourned by a unanimous vote at 10:10p.m.