

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, APRIL 11, 2016 - 8150 BARBARA AVENUE**

1. CALL TO ORDER and 2. ROLL CALL

The City Council of Inver Grove Heights met in regular session on Monday, April 11, 2016, 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 and Fire Chief Thill.

3. PRESENTATIONS: None.

4. CONSENT AGENDA:

- A. i. Minutes of March 14, 2016 City Council Meeting Minutes
- ii. Minutes of March 28, 2016 City Council Meeting Minutes
- B. **Resolution 16-53** Approving Disbursements for Period Ending April 6, 2016
- C. Consider Interim Appointment of Park Superintendent
- D. Consider Interim Appointment of Park Maintenance Coordinator
- E. Consider Gambling Premise Permit for Spartan End Zone Club at 4455 66th St. E. **Resolution 16-54**
- F. Consider Extension of Current Franchise Ordinance with Comcast of St. Paul, Inc. **Resolution 16-55**
- G. Receive Quotes and Award Contract for Well House No. 3 Re-roofing
- H. Consider Resolution Accepting Proposal for Stormwater Construction Observation Services from Barr Engineering Co. for the Blackstone Ridge Development **Resolution 16-56**
- I. Resolution Accepting Proposal from Element Materials Technology for Construction Geotechnical Testing and Other Engineering Services for City Project No. 2015-13 – 70th Street Lift Station to Blackstone Ridge and for City Project No. 2015-16 – Trunk Utilities, Argenta Trail to Blackstone Ridge **Resolution 16-57**
- J. Resolution Accepting Proposal from Bolton & Menk for Final Design Services for City Project No. 2015-12 – 65th Street Loop, Construction Services for City Project No. 2015-13 – 70th Street Lift Station to Blackstone Ridge, and Construction Services for City Project No. 2015-16 – Trunk Utilities, Argenta Trail to Blackstone Ridge **Resolution 16-58**
- K. Personnel Actions

Motion by Bartholomew, second by Hark, to approve the Consent Agenda 4.A- 4K.

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT:

6. PUBLIC HEARINGS:

- A. i. Public Hearing to Consider **Ordinance No. 1312** Granting a Cable Communications Franchise for Qwest Broadband Services (d/b/a CenturyLink)
- ii. **Resolution 16-59** Regarding an Ordinance Granting a Competitive Cable Franchise to Qwest Broadband Services (d/b/a CenturyLink)
- iii. Cable Television Franchise Ordinance No. 1312 with Qwest Broadband Services (d/b/a CenturyLink)
- iv. **Resolution 16-60** Adopting and Approving for Publication the Summary and Title of Ordinance No. 1312.

The Public Hearing opened at 7:02 PM. Mayor Tourville stated a complete presentation was completed a week prior and asked Mr. Grogan for the highlights of the presentations.

Brian Grogan, NDC4 Legal Counsel with Minneapolis Law Firm of Moss & Barnett presented the item on the cable authority. The City of Inver Grove Heights is a member of the Northern Dakota County Cable Authority. He stated he previously presented this item at the April 4, 2016 Work Session so he was presenting on the highlights. He went through a power point presentation with the Council. Mr. Grogan discussed the Federal Cable Act and the importance of allowing competition as the franchising authority. The commission is requesting to extend the cable franchise on the renewal. This is creating CenturyLink and Comcast to be on a level playing field so they can both compete in the market place. The franchise agreements are exactly the same for CenturyLink and Comcast it's a 5 year franchise term the city has the unilateral right to extend the term 10 years if the city believes CenturyLink has fulfilled their obligation during their first 5 year period. Mr. Grogan went through the system build out and 2 year term of a minimum of 15% living units in the City. The company will have an excess if the 15 % of living units in the city. The build out will be monitored.

Mr. Grogan discussed the mosaic channel as shown it depicts the cable and public access channels. He discussed the channels set for public access. SD= Channel 31 and HR = Channel 1031. He discussed that the channels are in the contract as an obligation. Video on Demand is available. The financial burdens between the two companies are identical with the franchise fee and PEG fee. There are providing free services to schools and city. There is a full indemnification to the city if there is a challenge. Staff recommends approval of the franchise with CenturyLink. The commission unanimously approves the franchise. Each city must take action to approve the agreement.

Patrick Haggerty was present on behalf of CenturyLink.

Mayor Tourville discussed bundling. He stated the agreement is extended for one year for Comcast and five years for CenturyLink.

Councilmember Bartholomew stated the Council went through these items and the Resolutions for 1-2 hours at last work session meeting and that they have done their due diligence.

Mr. Haggerty stated they have cities that have approved 37th franchise agreement. We are the fourth member in Dakota County and 35 cities are currently active.

City Attorney, Mr. Kuntz instructed that the council take action on item 6Aii and before 6Aiii that the council suspend rules to consider a motion suspending the rules to have one reading instead of the three readings. The ordinance itself is item 6Aiii. and 6Aiv. is the summary of the Ordinance.

Jodi Miller, Executive Director of NDC4 thanked the Council and staff for their assistants. They are working on the Peg channels and deadline is April 30th. They will appear on channels on July 20, 2016. That is the benefit that they have two different platforms available to views on CenturyLink and Comcast.

Councilmember Piekarski Krech asked for her to explain what a mosaic is. Ms. Miller stated it's a picture with a picture of channels. All the town square television channels will appear on the mosaic, it's a picture to appear as a group. We are happy that there will be 7 channels HD channels and SD channels. You will be able to navigate on the channel that viewers will want to see. Also, news and sports programming will be viewable in their news and sports categories. Ms. Miller stated the commission office is available to viewers to ask questions.

Motion by Bartholomew, second by Hark, to close the Public Hearing at 7:21PM.

Ayes: 5

Nays: 0

Motion carried.

Motion by Piekarski Krech, second by Mueller, to approve the Resolution Regarding an Ordinance Granting a Competitive Cable Franchise to Quest Broadband Services d/b/a CenturyLink of Resolution No. 16-59.

Ayes: 5

Nays: 0 Motion carried.

Motion by Piekarski Krech, second by Bartholomew, to suspend the rules to accept the ordinance in one reading.

Ayes: 5

Nays: 0 Motion carried.

Motion by Piekarski Krech, second by Bartholomew, to approve Cable Television Franchise Ordinance No. 1312 with Quest Broadband Services d/b/a CenturyLink.

Ayes: 5

Nays: 0 Motion carried.

Motion by Piekarski Krech, second by Bartholomew, to approve Summary of Ordinance and Publication of Ordinance 1312.

Ayes: 5

Nays: 0 Motion carried.

B. Consider Application of City of Inver Grove Heights and Inver Wood Golf Course for an On-Sale/Sunday Intoxicating Liquor License and Amend the Existing Premise Liquor License to Include the Deck of the Location at 1850 70th Street E.

The Public Hearing opened at 7:38PM. City Clerk Tesser introduced the item. She stated the application in front of the council is to approve the on-sale Sunday liquor license it always amends the existing premise to include the deck of the location at 1850 70th Street. Clubhouse Superintendent, Matt Moynihan submitted the application and the Police Department conducted the background and found no basis for denial. The premise has been extended to the deck and the certificate of liability covers that area.

Mayor Tourville stated that the Council has been working on this item and discussed this in length at other council meetings. He stated the other days of the week have already been approved and that this is the follow up which must be a separate application.

Motion by Piekarski Krech, second by Mueller, to close the hearing at 7:22PM

Ayes: 5

Nays: 0 Motion carried.

Motion by Hark, second by Bartholomew, to approve the application for an on-sale Sunday liquor license application to amend the premise to include the deck.

Ayes: 5

Nays: 0 Motion carried

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

A. TOP RESTAURANTS (123 PASTA); Consider a Resolution 16-61 relating to a Variance from minimum parking standards for a sit down restaurant located at 6508 Cahill Avenue

Mr. Link, Community Development Director introduced the item to the council. He pointed out the location of the building on Cahill Ave. The request is for a variance for parking of the restaurant next to the Cahill Diner. This is a 40 seat sit down restaurant. The parking is short 13 parking spaces. The original approval was for a retail shopping center. Mr. Link stated retail has less parking requirements than restaurants do. In this case the parking requirement increase goes beyond what is available at the property. Mr. Link discussed the prior retail of Pizza Man. Mr. Link stated the owner of 1.2.3. Pasta tried to get Gator Investments, who owns Aldi approval to use their parking lot but the company was not interested in the arrangement. Applicant thereafter, made an application for variance. The purpose of the variance is to avoid business complaints regarding parking. The second purpose is to make sure the neighborhood has adequate parking. In some circumstances there is a shortfall of parking so people will park in a neighborhood which tends to hurt the vitality of the neighborhood.

Mr. Link stated in this case the parking restrictions can be reduced. The Cahill Diner serves breakfast but not dinner. 1.2.3.Pasta will serve dinner and not breakfast. Overlap is over the noon hour may have parking issues. Staff did go out to the location to look at the parking around the noon hour and feel that there's adequate parking. Napa Store does not need as many parking spaces as zoning requires. The zoning ordinance does not fit this particular situation. The situation is unique because of the different hours and peak times of the restaurants. Staff and the Planning Commission unanimously approve the variance.

Antonio Tettamanzi, 1.2.3. Pasta Owner, he is also an owner in St. Paul. He discussed that he is happy to be here and to get through the process. He had no questions for the Council.

Motion by Mueller second Piekarski Krech to approve Resolution 16-61 for the parking variance.

Ayes: 5

Nays: 0

Motion carried

B. NORTH AMERICAN TRAILER SALES; Consider a Resolution 16-62 relating to a Conditional Use Permit to allow the service of semi tanks, trucks, and trailers for site located at 6508 Clark Road

Mr. Link, Community Development Director stated that the property is located west of 52. The item will require 4/5 vote as it's a conditional use permit. The business is a semi truck and retail parts distributor and trailer dealer. They recently received approval to construct a new 82,000 square foot facility on the west side of Clark Road. The applicant is in need of some temporary space. He made arrangements with Mr. Watrud to rent out the existing building for a temporary basis. The conditional use permit (CUP) is for the interior of the building only. The parking is occurring on the property to the south. The application is consistent with the uses in the neighborhood.

Councilmember Piekarski Krech stated that the company was advised by their attorneys and stated they don't need a conditional use permit.

Mr. Link replied that the zoning ordinance is clear that the service of semi tanks, trucks and trailers, tires is a conditional use. It's noted that the city is in the process of changing that but currently the code reads that way. The proposed request meets the CUP criteria relating to the Comprehensive Plan and zoning consistency, compatibility with land uses, environmental impacts and public health and safety impacts. It is consistent with the zoning property, comp plan. The Planning Commission and Staff recommends approval.

Dean Dally, owner of North American Trailer was present. He asked if the Council had questions.

Councilmember Hark asked staff with the use is a temporary use of the land is but the CUP is a permanent conditional use permit. Mr. Link replied that ordinance doesn't provide any temporary uses and is listed as a permanent use only. Once North American Trailer moves out then the CUP continues with the building if another business wants to move in.

Councilmember Bartholomew stated that we are considering changing the use however to a permitted use. Mr. Link concurred. Councilmember Bartholomew stated we are not running into a conflict.

Councilmember Mueller asked if there will be issues with parking trucks in the backyard. Mr. Link stated it is allowed in the CUP and that they won't be parking any of their vehicles there but that it won't be a problem.

Shirley Pike, 11025 Courthouse Blvd. she discussed the additional CUP attached to the Watrud Property. She stated the property abuts her property. She stated the CUP devalues the parcel. She stated that the business doesn't need a CUP to service cars in the building. She stated that was per the recommendation of the attorney. Mr. Link stated the CUP is only for the interior side of the building but would not change the outside of the property. The property owner already has a CUP for open storage. Councilmember Piekarski Krech stated that the resident states they don't need a CUP for the business. Mr. Link stated that the city zoning ordinance is clear he further stated and that the CUP is worded in the type of service used which is service tank, trucks, trailers including equipment, parts and tires needs a CUP. Mrs. Pike asked why Mr. Watrud isn't request the CUP. Mr. Link stated the property owner or business owner can make an application for a CUP.

A motion was made to receive the Planning meeting minutes to be part of this request. The minutes are a draft and not final and if there is a change to the minutes than the council will be made aware of the changes.

Motion by Bartholomew, second by Mueller, to accept the Planning Commission meeting minutes (draft) as part of this request.

Ayes: 5

Nays: 0 Motion carried

Mayor Tourville direct to staff to provide an update in regards to the conflict of the property owners and abutting properties.

Motion by Bartholomew second Mueller to approve the Conditional Use Permit to include in the 1-2 Zoning.

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

C. BLACKSTONE RIDGE (JIM DEANOVIC); Consider a Resolution 16-63 relating to the Final Plat, Final PUD Development Plan, Development Contract and related agreements for the plat of Blackstone Ridge

Mr. Hunting, City Planner introduced the item. He stated the plat and site plan are consistent with the preliminary plans. The developer, Lennar Homes will plat the entire property at one time, but expects to construct the project in two phases. The first phase would consist of the southern half of the development from 70th street up to 67th Street. Engineering is waiting on a few part of the final plans before signing off. There are a number of agreements that deal with individual lots and encroachment agreements. Staff is finalizing the development agreements and Final plat and final PUD Development plans. Staff recommends approval of the plat.

City Attorney, Mr. Kuntz asked Council that if they approve the item we would ask that in a separate motion to authorize the City Administrator and Director of Public Works jointly to approve changes in the development contract that do not subsequently increase or decrease the city's responsibility or rights. The reason to consider this is the plats have a number of phases and there are four areas that they are discussing. One is the estimated cost of the overflow pipe, the estimated cost in the increase directional borings, the third is the city engineer to approve the final phasing plan and the fourth is the temporary phases with the sequencing of grading. Mr. Kuntz stated that there are four areas that are still in discussion. The nuisances will be worked out but they are engineering areas so we asked council to give direction to the staff to deal with on a staff level.

Jim Deanovich, the Developer stated that he appreciates staff bringing the loose ends together.

Motion by Bartholomew second Piekarski Krech to approve Resolution 16-63 of the final plat and direction to CA and PW Director to authorize the City Administrator and Director of Public Works to jointly approve changes in the development contract that do not subsequently increase or decrease the city's responsibility or rights

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

Councilmember Bartholomew asked to see the changes are they occur. Mayor Tourville asked Mr. Kuntz if we will see the final documents. Mr. Kuntz stated that its believed that the current holder of the property Mr. Deanovich and selected developer would like to finalize in 14-30 day timeframe. This is to quicken the process on the approval. If council wants it to come back then we can do that.

Councilmember Bartholomew I would like a communication on what is happening via email. Mr. Kuntz stated do you want it to come back to you for approval. Councilmember Piekarski Krech we want just the information. We want to clarify this in a direction. Councilmember Hark stated that they should communicate to the Council as they communicate with the developer. Mr. Deanovich stated this is very small changes. Councilmember Hark stated they wanted to stay in the loop and not change the efficiency. Council stated they want to be efficient and have communication. Mr. Kuntz stated that they want joint authority to make changes to the development contract as long as long at those changes don't decrease the city's rights and benefits or increase the city's liabilities. And those changes made be than communicated with Council.

Motion by Piekarksi Krech second Bartholomew to give final authority to City Administrator, Joe Lynch and Public Works Director, Scott Thureen in reference to items that won't increase our liability or decrease our rights.

Ayes: 5

Nays: 0 Motion carried.

II. PUBLIC WORKS:

D. Resolution 16-64 Accepting Withdrawal of Bid for City Project No. 2016-09D – 60th Street Area Reconstruction, City Project No. 2016-10 – 60th Street Area Utility Improvements and City Project No. 2015-12 (Phase 1) – NWA Trunk Watermain Improvements, 65th Street Loop (Argenta Trail to Babcock Trail)

Mr. Thureen, Public Works Director stated they opened the bids on April 1, 2016. Five bids were received. The low bidder was Max Steining Inc. They notified the City that there were errors in the bid and submitted a written request to withdraw their bid and have their bid bond released. Upon review by staff and city attorney they saw the substantial mistake. We are recommending that they approve the withdrawal of the bid. Staff will meet with representatives of the second low bidder to reduce the costs of the project that might in the end reduce the bid with that firm. Our intent is to come back to the council meeting and discuss the results of this conversation.

Mr. Thureen stated staff is asking to withdrawal the Steining bids. Mayor Tourville stated that we are not approving the bids as of yet. Mr. Thureen concurred.

Councilmember Hark asked if the lowest bid received is the estimates provided. Mr. Thureen stated no that the estimates are based on the feasibility study. We are using the feasibility cost assessment of \$2,122,000.

Mayor Tourville stated that some cities won't allow this but we have done a lot of work in the past years with this company. This is in good faith and could cause more problems than we would like so I support this.

Motion by Bartholomew second Mueller to accept the withdrawal of the bid of 2016-09D.

Ayes: 5

Nays: 0 Motion carried.

E. Resolutions Calling for Hearing on Proposed Assessments, Declaring Costs to be Assessed Resolution 16-65, and Ordering Preparation of Proposed Assessments for the 2016 Pavement Management Program, City Project No. 2016-09D – 60th Street Area Reconstruction Resolution 16-66.

Mr. Thureen, Public Works Director stated the resolution is calling for a scheduling of the hearing on the proposed assessment and declaring costs to be assessed. The hearing would be on May 9, 2016. We are looking for a total cost for the project at \$2,122,000 and assuming 20% assessment amount for the total project. We are moving this project forward and are hoping to get this done this year.

He mentioned that he was trying to get everything figured out and the conversation with the constructor will update them as well. If the council wants to rebid the project then we will revise this at the hearing date.

Councilmember Piekarski Krech asked can we legally rebid that if we give someone an unfair advantage. Maybe others want to negotiate to.

Mr. Kutnz stated the allegations that we are negotiating is a very serious one. He stated the context is that we are going out for an assessment hearing. This indicates that through the mail and published notice is \$7,500 per single-family parcel. If the project costs don't get to \$2,122,000 that assessment will be less than 20% which will negate the funding mechanism. Realizing that the second low bid together with the indirect costs (engineering, consulting, legal etc) with coupled with the current low bid would be an excess of \$2,122,000. Recognizing that, what the engineering staff is trying to accomplish is within the confines of the bid is identifying the compression of a couple of items. The quantity of units or allowances made in a lump sum number. But the city is not negotiating their unit rates because they cannot. They are entering into a good faith, understanding the confines of the agreement of the contract. What the spec allows what compressions can be made. The city can change those allowances. Mr. Kuntz stated he wants to dispel ideas that we are negotiating of rates. It's a unit quantity of the change in terms of the process.

Mr. Kuntz continued, that because it has to be mailed and public hearing if this exercise doesn't work because they didn't get to \$2,122,000 than Mr. Thureen will come back with Plan B or Plan C. If it doesn't work than we will cancel the assessment hearing. Because that tool will not work and is not less than 20%. Staff is working on it to see if they can't bring it down. If they can bring it down then they will award the contract but will change the order. There is no bilateral moving going on that's why there isn't negotiations going on.

Mayor Tourville stated if we negotiate than we have to send it out. Mr. Kutnz stated we are not negotiating. We are looking at unit changes not price changes. The unfortunately circumstances tonight is that we set the assessment hearing but we don't know the project costs.

Kelly Kaiser, 1053 59th Court and Nancy Bauer, 1800 60th Street. Ms. Bauer stated this is confusing. Ms. Kaiser stated it looks like we are guinea pigs of an unsustainable process. If the costs are too high to do the project. Ms. Kaiser stated we are wondering how this will all play out. We have the highest properties assessment in recent history.

Mayor Tourville stated you were one of the highest starting out. We are in a legal place now and need to follow it correctly.

Ms. Bauer asked if it's a combination of setting the date of May 9th and having the individual assessment amount set at \$7,500. Is that what the resolution would state.

Mr. Kuntz stated it's the notice of hearing for May 9th and to advertise in the notice to proposed assessment roll as of \$7,500.

Ms. Kaiser asked if the \$9,000 is out of the loop even if there is a special benefit. Mr. Kuntz stated if the Council passes what they are to decide on tonight than the assessment roll will be \$7,500.

Motion by Mueller second Piekarksi Krech to set the hearing on May 9, 2016 on proposed assessment Resolution 16-65 and declaring costs to be assessed and ordering the preparation of proposed assessments Resolution 16-66 for project 2016-09D.

Ayes: 5

Nays: 0 Motion carried.

F. Consider Resolution 16-67 Awarding Contract for the 2015 Capital Improvement Program, City Project No. 2015-13 – NWA Trunk Utility Improvements, Argenta District (70th Street Lift Station to Blackstone Ridge) and City Project No. 2015-16 – Trunk Utilities, Argenta Trail to Blackstone Ridge

Mr. Kaldunski, City Engineer introduced the item. He stated that council will need to approve the award of the contracts. He discussed the low bidder, EJM Pipe Services. They have been doing this work for a long time. Their bid is \$6,402,000.35. This is within the budget and all funding is through fund 511 and fund 512 and is generated by development fees and charges collected in the Northwest Area. He discussed the contractor and past businesses. The easements from the development of Blackstone Ridges went well. The second easement is being worked on but it is moving forward. It is recommended that the city adopted the attached resolution and award the contract to EJM Pipe Services for the City Project totaling 6,402,333.35.

Debra Band, 6660 Argenta Trail asked about the timing of the project.

Mr. Kaldunski stated the reward of the contract takes generally 10-14 days, they could start before May 1st. The project will go through to end of November.

Motion by Bartholomew second Piekarski Krech to approve Awarding Contract for the 2015 Capital Improvement Program, City Project No. 2015-13 – NWA Trunk Utility Improvements, Argenta District (70th Street Lift Station to Blackstone Ridge) and City Project No. 2015-16 – Trunk Utilities, Argenta Trail to Blackstone Ridge

Ayes: 5

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS

Mr. Lynch stated April 14th is the commission appreciation dinner. Jennifer Billings will be the guest speaker. This is a time to thank our volunteers for their time.

Town Hall Meeting is April 16th is an opportunity to meet and greet business. The Mayor and Mr. Link will discuss business development. I will give an overview on the budget and finances. Jennifer Gale will be present on some of the chamber and city will be working on including Arbor Pointe, signage and vacancies occurring.

Mr. Thureen stated that the city received a Freshwater Award acknowledging our stormwater management means for the NWA. It recognizes preserving natural features, inflowtration and erosion

Councilmember Mueller asked about Argenta Trail and Akron Ave. Mr. Thureen stated we are working on plans for the final designs; we are close to 90 % plans. The county is in the process of acquisitions, some

with second offers. We are waiting from County staff to see if they will return at the end of April otherwise if not, it will be the first meeting in May with a final recommendation.

Mayor Tourville stated we want a joint meeting to work together with the county and City of Rosemount and City of Inver Grove Heights. If we were working in connection with anyone else but at least we have a meeting. Mayor Tourville stated he won't vote until that happens. The council agreed.

9. EXECUTIVE SESSION

A. Frank Rauschuot, 6840 Dixie Avenue Property. Executive Session Pursuant to Minn. Stat. § 13D.05, Subd. 3(c)(3).

There will be no vote on this property. I asked that a motion be complete on the statute authority identified.

Motion by Piekarski Krech second Hark to proceed to the closed session per said MN Statute.

B. For Preliminary Consideration of Allegations Against an Individual Subject to City Council Authority per MN Statute 13D.05 Subd. 2(b)

Mr. Kuntz stated that the individual person was identified as Police Chief Stanger. This is preliminary consideration of an allegation. No vote will be made at that time.

Motion by Tourville second Bartholomew to proceed to the closed session per MN Statute.

9. ADJOURN: Motion by Piekarski Krech, second by Bartholomew to adjourn. The meeting was adjourned by a unanimous vote at 9:40PM.