

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, SEPTEMBER 28, 2009 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, September 28, 2009, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:30 p.m. Present were Council members Grannis, Klein, Madden, and Piekarski Krech; City Administrator Lynch, Assistant City Administrator Teppen, City Attorney Kuntz, Public Works Director Thureen, Parks & Recreation Director Carlson, Community Development Director Link and Deputy Clerk Rheume.

3. PRESENTATIONS:

A. Dakota Future Presentation

Bill Coleman explained that Dakota Future is a county-wide economic development organization primarily funded via the private sector. He discussed the Dakota Future Intelligent Community initiative and explained the mission is to link businesses, government and education to create and maintain a world class economic environment in Dakota County. He stated the organization has made it a goal to achieve designation as a top seven global "intelligent community" by 2012. He explained the Intelligent Community Forum is an annual international competition in which communities from around the world submit applications to receive the "intelligent community" designation. He further explained that an "intelligent community" is based on five key factors including: broadband deployment, knowledge work, digital inclusion, innovation, and marketing or advocating for Broadband Economy strengths. He reviewed the current intelligent community activities such as benchmarking, a broadband inventory assessment, and the DEED FIRST grant for the Information Technology workforce. He promoted two upcoming launch events for the Intelligent Community initiative.

Councilmember Klein clarified that "DCTC" refers to Dakota County Technical College. He asked Mr. Coleman to expand on the term "broadband".

Mr. Coleman explained that broadband is a term that refers to connection speed.

Cheryl Frank, Inver Hills Community College, discussed the involvement of Inver Hills and Dakota County Technical College in training technology workers.

Mayor Tourville commented that broadband access is extremely important to the economy and job growth.

4. CONSENT AGENDA:

Councilmember Madden removed item 4A, Minutes of September 14, 2009 Regular Council Meeting from the Consent Agenda.

Councilmember Klein removed Item 4E, Change Order No. 2 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation from the Consent Agenda.

Mayor Tourville removed item 4J, Consider Proposals for School Zone Safety Study, from the Consent Agenda.

- B. Resolution No. 09-179** Approving Disbursements for Period Ending September 23, 2009
- C.** Pay Voucher No. 2 for City Project No. 2007-17, Clark Road Extension Improvements
- D.** Pay Voucher No. 1 for City Project No. 2008-11, Southern Sanitary Sewer System, East Segment
- F.** Pay Voucher No. 1 for City Project No. 2008-22, Bohrer Pond Shoreland Protection Project
- G.** Change Order No. 3 for City Project No. 2009-09D, South Grove Urban Street Reconstruction, Area 4
- H. Resolution No. 09-180** directing the Planning Commission to hold a public hearing for a Comprehensive Plan Amendment and Rezoning relating to the Acquisition of Property Adjacent to

the Rock Island Swing Bridge

- I. Approve Mussel Survey for the Rock Island Swing Bridge Project
- K. Approve Additional Engineering Services for the Rock Island Swing Bridge Project
- L. Authorize Acknowledgement that the City allows the sale of alcoholic beverages until 2AM on Optional 2AM Liquor License Application for Kladek, Inc.
- M. Personnel Actions

Motion by Klein, second by Piekarski Krech, to approve the Consent Agenda.

Ayes: 5

Nays: 0 Motion carried.

- A. Minutes – September 14, 2009 Regular Council Meeting

Councilmember Madden corrected the last paragraph on page 2 to say it would not have a negative impact.

Motion by Klein, second by Madden, to approve the minutes of the September 14, 2009 Regular City Council Meeting with the change as noted

Ayes: 5

Nays: 0 Motion carried.

- E. Change Order No. 2 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation

Councilmember Klein questioned why the foundation insulation was not included from the beginning.

Ted Redmond, BKV, clarified that the details that called for below-grade insulation was for all occupied spaces, and the specifications also backed that up. He explained that a couple of the details did not clearly render that the insulation was for all occupied spaces and the final bid did not include all of the below-grade insulation.

Motion by Klein, second by Grannis, to approve Change Order No. 2 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation

Ayes: 5

Nays: 0 Motion carried.

- J. Consider Proposals for School Zone Safety Study

Mr. Thureen explained staff requested and received proposals from four consulting engineering firms with traffic and transportation expertise for a study of potential pedestrian safety improvements in the vicinity of the intersection of 81st Street East and Cahill Avenue. He stated based on the qualifications of the firms, the work plans presented in the proposals, and the proposed fees, staff recommended that the proposal from SRF Consulting Group, Inc. be accepted in the amount of \$8,000.

Doug Bernstein, 8383 College Trail, stated the intersection is dangerous and something needs to be done to improve its safety for pedestrians.

Motion by Madden, second by Grannis, to approve proposal from SRF Consulting Group, Inc. in the amount of \$8,000.00 for School Zone Safety Study

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT:

Jim Douglas, 8657 Callahan Trail, asked if a hearing had been set for the assessments for the work performed on Cahill Avenue.

Mr. Thureen responded that the hearing had not been set because staff has not received all of the final project costs.

6. PUBLIC HEARINGS: None.

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

A. SUSSEL CORPORATION; Consider resolutions for property located at 5924 Bradbury Court:

- i) Conditional Use Permit to allow impervious surface coverage to exceed 25%
- ii) Variance to allow the construction of a home addition that would exceed 30% maximum impervious surface coverage

Mr. Link reviewed the property location and noted this item has been tabled twice by the City Council to give the applicant additional time to identify a hardship. He stated the lot currently has 32% impervious coverage and the request would increase the coverage to 34%. He noted the Planning Commission and Planning staff recommended denial of the request due to lack of hardship.

Mike Russel asked if there were any updates regarding the status of the impervious surface coverage analysis being worked on by engineering staff.

Mr. Thureen stated staff presented the results of the analysis and provided recommendations from the engineering staff to the City Council at the earlier work session. He noted that this was only the recommendation of the engineering staff and the proposed changes would still need to be reviewed by planning staff. He stated the maximum impervious coverage for single-family properties would be 20%, R-1B properties would be allowed 25% impervious coverage and 30% impervious coverage is recommended for R-1C with an additional 5% available via a conditional use permit.

Mr. Link reiterated that engineering staff's recommendations still needed to be reviewed by planning staff. He explained that an ordinance would need to be drafted, reviewed by the Planning Commission, and then presented to the City Council for approval after three readings. He noted the entire process could take 3-4 months to complete.

Mr. Russel explained when the house was built in 1998 there were no impervious coverage restrictions and in 2002 the maximum allowable impervious coverage was changed to 30%. He questioned if the hardship could be that the 2002 ordinance made the property a non-conforming lot.

Mr. Kuntz responded that the City does acknowledge that certain improvements were in place when the ordinance was changed and those improvements were grandfathered in. He noted that this only applies to the existing or the replacement of existing improvements. He explained the City would allow the impervious coverage to remain at 32%, but that amount cannot be increased without the variance.

Mayor Tourville suggested it may be in the best interest of the applicant to wait for the proposed changes to take effect.

Mr. Link clarified that if the engineering staff's recommendations were followed the applicant would no longer need a variance. He stated a conditional use permit may be needed and that does not require a hardship.

Mr. Russell stated the City has very restrictive impervious coverage standards compared to those of other cities he has worked with. He indicated the applicant would wait to see what the changes to current standards would be.

NO ACTION WAS TAKEN ON THIS ITEM

B. TAMERA & MANOHAR SHINTRE; Consider Resolution regarding a Variance for a home occupation to have an entrance that leads outside of the home for property located at 6269 Bolland Trail

Mr. Link explained the applicant has requested permission to conduct a home occupation in their single family home, located in the R-1C district. He stated the owner plans to assemble kits of prepackaged food for Indian business travelers visiting the United States. He noted a permit from the Department of Agriculture is required because the home occupation includes the handling of food. He explained as part of the permit, the applicant is required to have a separate entrance that directly connects the assembly area to the outside. He stated the applicant is unable to meet the State's standards and those of the City Code. He explained the proposed home occupation would meet seven of the eight requirements in the City Code, and the applicant would meet the intent of the ordinance as there would be no customer traffic. He stated both planning staff and the Planning Commission recommended approval of the request with the hardship being the conflict between the City and the State regulations.

Councilmember Grannis suggested adding a condition of approval that no customer traffic would be allowed.

Councilmember Madden asked if the applicant agreed with the conditions.

Tamera and Manohar Shintre, 6269 Bolland Trail, stated they agreed with the conditions of approval and confirmed that there would be no customer traffic because business would be conducted online.

Motion by Madden, second by Klein, to adopt Resolution No. 09-181 approving a variance for a home occupation to have an entrance that leads outside of the home for property located at 6269 Bolland Trail with the condition added that no customer traffic is allowed.

Ayes: 5

Nays: 0 Motion carried.

C. JAMES BROWN; Consider Resolutions for property located at 1186 90th Street:

- i) Waiver of Plat to create two parcels from the existing one tax parcel
- ii) Variance to allow the lots to be less than the required 2.5 acre minimum
- iii) Variance to allow an accessory structure on a lot without a principle structure

Mr. Link stated the applicant is proposing to create two tax parcels to coincide with the existing legal descriptions from the current tax parcel. He explained the property was divided in the 1950's with almost all of the lots being less than two acres and the proposed waiver would create parcels of 1.68 and 1.95 acres in size. He stated the property is zoned E-1, Estate Residential, which requires a minimum lot size of 2.5 acres. He noted that a second variance would be required because there is an accessory structure on the lot to the north and a principle structure must be on a property before an accessory structure is allowed. He stated both planning staff and the Planning Commission recommended denial of the request due to lack of hardship. He explained the current lot is conforming and the property is not being deprived of a reasonable use. He further explained that creating two non-conforming lots would be contrary to the City's Zoning Ordinance, and the existing accessory structure does not have a driveway. He stated access to the property is achievable to the west and east via 90th Street, a private road. He explained the main access was designed to be an easement on the west side of the property and both segments of 90th Street do not meet minimum standards for clear width and height for fire emergency vehicles. He noted because emergency vehicle access is a main issue allowing more individual lots would add to the existing problem.

Councilmember Klein clarified that one of the previous owners combined the two lots.

Mr. Link responded that staff researched the history of the property and believes that the combination occurred in the 1970's. He noted that no record of the combination was located and the only record able to be located was that of the subdivision in 1950.

Councilmember Madden stated he was not in favor of the denying the applicant's request when there was no record of the combination occurring. He commented that there are a number of surrounding lots that are similar in size and the applicant should be allowed to do what he wants with his property.

Councilmember Piekarski Krech asked if the applicant purchased the property as one lot or two lots. She stated that she is not in favor of allowing lots smaller than two acres in this area because it is on a well and septic system, not a sanitary sewer system.

Councilmember Grannis noted that there are also a number of surrounding lots that are three or more acres in size.

Mayor Tourville reiterated that there is no record of the combination and that the parcels across from and behind the property are smaller in size.

Councilmember Piekarski Krech questioned what the official property description on the deed was.

Councilmember Grannis asked if the City Attorney's office could further research the combination of the parcels to determine whether or not it occurred.

Mr. Kuntz confirmed that could be further researched in the County records. He stated that the combination likely occurred within the County's tax record division and noted that a tax parcel cannot be split without the City's consent.

Jim Brown, 1186 90th Street, stated it was sold to him in 1984 as one lot with two parts.

Councilmember Piekarski Krech commented that the parcel was likely combined so the property owner would only pay homestead taxes.

Councilmember Madden stated there are four surrounding lots that would be similar in size and the two smaller parcels would fit into the neighborhood.

Mayor Tourville asked for further clarification of the emergency vehicle access issue.

Mr. Link explained the City Planner and the Fire Marshall inspected the private road and found that it does not meet the current code standards for emergency vehicles. They are still able to

Councilmember Grannis questioned if the other lots in the area meet the 2.5 acre requirement.

Mr. Link stated the area has a mixture of lots in that four of them are greater than 2.5 acres and four of them are smaller than 2.5 acres.

Councilmember Madden stated that in his opinion no variance is needed because there is no record proving that the combination occurred. He added that he does not see a problem with the small accessory structure because it adds aesthetic value to the property.

Jim Douglas, 8657 Callahan Trail, suggested tabling the item until the legal information is found. He stated the Council has to assume it was never combined if there are no records to the contrary.

Glen, 1252 90th Street East, asked if the easement was officially recorded. He displayed a documented showing an easement on the east side of Mr. Brown's parcel. He stated if this was recorded with the County he doesn't have a problem with it.

Mayor Tourville clarified that if staff thinks they need legal they will use Mr. Kuntz.

Motion by Madden, second by Klein, to table until October 12, 2009 to further research the combination of the two parcels.

Ayes: 5

Nays: 0 Motion carried.

The City Council took a five-minute recess.

Mayor Tourville stated Mr. Brown needs to agree to an extension of the application deadline.

Mr. Kuntz clarified that the first 60-day period would end on October 2nd.

Motion by Madden, seconded by Klein, to extend the 60 day application deadline to December 2nd.

Ayes: 5

Nays: 0 Motion carried.

D. CITY OF INVER GROVE HEIGHTS; Consider the Second Reading of a Zoning Code Amendment relating to exterior building materials in the rural zoning districts (A, E-1, E-2)

Mr. Link explained after discussion with the City Attorney the first draft of the ordinance was modified to only allow plastic-covered hoop structures. He noted the first draft allowed structures to be covered will all prohibited materials. He stated both planning staff and the Planning Commission recommended approval.

Motion by Madden, second by Grannis, to approve second reading of a zoning code amendment relating to exterior building materials in the rural zoning districts (A, E-1, E-2)

Ayes: 5

Nays: 0 Motion carried.

PARKS AND RECREATION:

E. CITY OF INVER GROVE HEIGHTS; Consider Request for Park Property Boundary Exception at 7907 Conroy Way E.

Mr. Kuntz explained the law states that the responsibility to remove an encroachment rests with both the person who placed it on the City's property and the persons who are successors in legal interest to the encroachment. He stated if the current landowner cause the encroachment to be placed on City property, that landowner is responsible for removal of the encroachment at the landowner's cost. He noted that if the current landowner claims the encroachment was placed on City property by a previous landowner the City must determine whether the current landowner possesses a legal interest in the encroachment sufficient to compel the current landowner to remove it. He reviewed two main factors that can be looked at to determine if the current landowner possesses a legal interest in the encroachment. He explained if the encroachment is attached to a permanent structure or object located on the current landowner's property, they may be deemed the successor in legal interest and can be required to remove the encroachment. He stated the City would need to review the current landowner's use of the encroachment in order to establish legal interest, including what the landowner has done to exercise control of the encroachment, such as maintenance of the object. He noted if the City cannot prove the legal interest of the current landowner the City cannot compel them to remove the encroachment. He summarized encroachment examples the City may encounter and how the City may be able to prove legal interest in each scenario.

Doug Renner, 7907 Conroy Way, stated he wants to resolve the encroachment issue and asked that the City consider selling him the piece of property containing the encroachment. He stated the encroachment area is approximately 136 square feet and he proposed to purchase approximately 550 square feet. He noted that section of the park is not widely used. He commented that this solution would benefit both parties because the City would no longer have to maintain that section of the park and the boundary would be clearly defined.

Mr. Carlson stated the Parks and Recreation Advisory Commission recommended denial of the request to sell the property. He explained their main concern was the establishment of a precedent for selling park property to deal with encroachment issues.

Councilmember Piekarski Krech stated that the City needs to be very firm on park property boundaries, but in this instance it seems that this could be property that the City does not have a specific use for.

Councilmember Grannis stated that encroachments on park property is going to be an on-going issue and he is also concerned with setting a precedent.

Mayor Tourville stated in this specific case, selling the park property would not negatively affect the park system because the City has no immediate use for the property. He opined that the City needs to deal

with each encroachment case on an individual basis. He suggested that the City enter into an agreement with the homeowner that would allow the encroachment to remain and would only need to be removed if the property is sold.

Mr. Grannis asked who would enforce the removal of the encroachment if the property is sold.

Mayor Tourville responded that the City Attorney could put that condition in the agreement.

Councilmember Piekarski Krech stated the original intent of defining the park property boundaries was to have the encroachments removed.

Councilmember Klein indicated he would be in favor of selling the property because the City has no use for it.

Mayor Tourville reiterated that he would also be in favor of selling in this case. He stated each encroachment case should be handled individually.

Mr. Carlson stated that three sample encroachment agreements had already been drafted by staff with the help of the City Attorney. He questioned if the fence remains in place if there was any liability to the City.

Mr. Kuntz responded in the affirmative.

Councilmember Piekarski Krech suggested that they find a way to sell the property so there is no liability to the City. She added that she also wants to make sure that people with improvements on City property are not getting out of paying taxes for those improvements. She suggested that staff develop a uniform way to clearly determine the value of the property without negotiation.

Councilmember Grannis stated the property owner who wants to purchase should pay for the appraisal.

Mr. Kuntz stated with respect to smaller parcels, the value may have to be determined on a case by case basis. He indicated staff would come back with some suggestions regarding the valuation process.

Mayor Tourville suggested Mr. Carlson determine a fair value for the property in this case.

Mr. Carlson stated that staff would first develop a process for valuation and bring that to Council for consideration.

NO ACTION WAS TAKEN ON THIS ITEM.

ADMINISTRATION:

F. ARBOR POINTE MASTER ASSOCIATION; Consider Request for Reimbursement of Boulevard Cleaning Expenses

Mr. Lynch explained a written request for reimbursement of boulevard cleaning expenses was received and subsequently denied. He stated the Arbor Pointe Master Association requested that the reimbursement request be placed on the Council agenda for reconsideration. He noted the cost is approximately \$2,100. Mr. Lynch stated the request was denied because the issue was not caused by the City on purpose.

Councilmember Madden stated the City planned to fix that road in 2008 and the residents wanted to wait. He added he did not see how the City is responsible for the debris that was removed.

Mayor Tourville commented on the assessment method initially being faulty at the time of the hearing in 2008 and noted that they did end up with some bad asphalt.

Jim Douglas, Arbor Pointe Master Association, stated the association does not agree that they should be responsible for the 20 cubic yards of asphalt that needed to be removed because it splayed from the roadway. He noted in previous years only two cubic yards of debris have had to be removed.

Mayor Tourville commented that Cahill Avenue is a public street used by a lot of people.

Councilmember Piekarski Krech stated that this would set a precedent and the Council needs to be very

clear on what the issue is and why this payment is being made.

Councilmember Madden stated that after hearing the association’s side of the request, and given the fact that bad asphalt was used, he would be in favor of reimbursement.

Mr. Kuntz stated if the reimbursement request is approved the precedent should not be considered by others to be a broad precedent, but rather the resolution of a contract dispute.

Motion by Tourville, second by Madden, to approve request of Arbor Pointe Master Association for Reimbursement of Boulevard Cleaning Expenses

Ayes: 4

Nays: 1 (Grannis) Motion carried.

G. CITY OF INVER GROVE HEIGHTS; Provide Direction on Citizen Request to Limit Number of Garage Sales/Flea Markets in Residential Neighborhoods

Mr. Lynch explained an email was received from a resident who lives next to a property that she believes conducts too many garage sales. He stated the City does not have regulations in place with respect to the number of garage sales that are allowed. He asked if the City Council would like to consider limiting the number of garage sales.

Councilmember Grannis stated he would be in favor of limiting the number of garage sales to three consecutive days and twice a year.

Councilmember Madden agreed and stated it is a reasonable request from the citizen.

Councilmember Piekarski Krech said garage sales usually start on Thursdays and end on Saturdays. She Noted some people are holding garage sales to stay in their homes.

Councilmember Grannis commented on regulating parking for home businesses.

Councilmember Klein asked staff if there have been a lot of complaints.

Mr. Lynch said this is the first contact he has received and indicated he was not sure if there had been any nuisance complaints. He stated staff would gather background information from surrounding communities and bring it back for more Council discussion at a work session.

NO ACTION WAS TAKEN ON THIS ITEM.

PUBLIC WORKS:

H. CITY OF INVER GROVE HEIGHTS; Consider Approval of Waiver Agreement and Resolution Cancelling Lateral Assessment Levied against the Lenertz Property and Authorizing Issuance of Refund for the Lateral Assessment Paid relative to City Project No. 2003-03

Mr. Thureen explained that this property is land locked and staff agreed it would not be appropriate to assess them for lateral at this time. He recommended the assessment be cancelled and the amount be refunded.

Motion by Madden, second by Klein, to approve waiver agreement and adopt Resolution No. 09-182 cancelling lateral assessment levied against the Lenertz property and authorizing issuance of refund for the lateral assessment paid relative to City Project No. 2003-03

Ayes: 5

Nays: 0 Motion carried.

I. CITY OF INVER GROVE HEIGHTS; Consider Resolution Approving a Purchase Agreement for Property known as Cameron Park

Mr. Kuntz explained that the business was located on Concord Street and the property was taken by the County to widen the street. He noted the business has temporarily relocated. He stated that the County

contacted the City and asked for help in finding a suitable site for relocation that was near the original property. He stated in May of 2009 the City received a letter inquiring about the sale of Cameron Park, a 1.3 acre site. He explained a resolution and a purchase agreement are being presented for approval. He stated the owner of the proposed business would enter into an agreement for the sale of the property at the appraised value of \$272,000. He reviewed the conditions of the purchase agreement and outlined all of the steps that would have to occur before the property is officially sold. He stated the City would have to determine that it no longer needs the park and a change to the Comprehensive Plan would also have to be considered. He noted that the City is not agreeing to the issuance of any of the permits by approving the purchase agreement.

Councilmember Klein asked if the storage building on the property was used by the parks department.

Mr. Lynch stated it is generally used by a number of City departments.

Councilmember Grannis asked whom the City obtained the park property from originally.

Mr. Kuntz responded that there were four separate deeds and a number of people were involved, some of which had the last name of Cameron.

Mayor Tourville asked if the City had to remove the building and its contents.

Mr. Kuntz explained the building does not have to be removed, but all the material need to be taken out.

Mayor Tourville commented that the January, 2010 dated seemed aggressive.

Mr. Kuntz explained that there could be an amendment to have that date extended.

John Cameron stated they have about a 24-month window to complete the relocation.

Mr. Kuntz asked if any of the dates have any effect on the obligations of the County.

Mr. Cameron responded in the negative.

Mr. Kuntz suggested leaving the January, 2010 date.

Motion by Madden, second by Klein, to adopt Resolution No. 09-183 approving a purchase agreement for property known as Cameron Park

Ayes: 5

Nays: 0 Motion carried.

ADMINISTRATION CONT.

J. CITY OF INVER GROVE HEIGHTS; Consider Voluntary Furlough Program

Ms. Teppen explained this voluntary program was put together per City Council direction and was reviewed at a study session.

Councilmember Klein asked if there was any response with the unions.

Ms. Teppen responded that the information had not yet been distributed to employees and she has not received any feedback from the unions.

Motion by Klein, second by Madden, to approve Voluntary Furlough Program

Ayes: 5

Nays: 0 Motion carried.

8. MAYOR AND COUNCIL COMMENTS:

David Lethert, 8485 Courthouse Boulevard, stated his request to have his property purchased by the City would be discussed in the executive session. He discussed his concerns regarding future noise from semi-truck traffic as well as safety issues associated with the increase in traffic. He noted he is also concerned that a trail may be installed on his property. He asked for help solving this problem.

Mayor Tourville stated the only thing the Council would do when they return from Executive Session is adjourn.

9. EXECUTIVE SESSION:

A. Discuss the Disposition of Property held by or of interest to the City.

10. ADJOURN: Motion by Madden, second by Klein, to adjourn. The meeting was adjourned by a unanimous vote at 11:34 p.m.