

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, MAY 10, 2010 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, May 10, 2010, 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, Finance Director Lanoue, Chief Kleckner, and Deputy Clerk Rheume.

Mayor Tourville asked Chief Kleckner to provide an update regarding the accident that occurred in the evening on May 7th.

Chief Kleckner explained there was a very serious crash involving two squad cars that were responding to a medical call. He stated the two squad cars collided at 65th Street and Cahill Avenue, and two officers and one civilian employee were injured. He noted that one of the officers was released from the hospital and the other was still in the hospital recovering from his injuries.

3. PRESENTATIONS:

A. Present 2009 CAFR

Ms. Lanoue explained that each year the City contracts with an independent Certified Public Accounting Firm to audit the City's Comprehensive Annual Financial Report. She stated Kern, DeWenter, Viere, Ltd. performed the audit for the 2009 CAFR and issued an unqualified (clean) opinion. She noted an unqualified opinion is the highest form of assurance a Certified Public Accounting Firm can issue. She explained an Auditor's Management Letter and Reports on Compliance with Government Auditing Standards and Legal Compliance were also included with the CAFR.

Ms. Lanoue provided an overview of the key components of the 2009 CAFR. She noted the only bond issued last year was for the Public Safety Addition/City Hall Renovation project. She stated the City's net assets increased by \$5 million dollars and the year ended with a surplus in the General Fund. She explained the auditor's did note a significant deficiency due to a lack of segregation of accounting duties. She stated the CAFR will be submitted to the Government Finance Officers Association for the Certificate of Achievement for Excellence in Financial Reporting. She noted this would be the 24th year that the City has participated in the program.

Steve Wischmann, Kern, DeWenter, Viere, Ltd. explained his firm is responsible for providing an opinion on the City's financial statements. He stated his firm found the City to be in compliance and issued an unqualified opinion. He explained there were no findings to be reported with respect to the legal compliance areas. He noted that the City has one of the most efficient processes out of the 25 cities he works with.

Councilmember Klein asked about the City's delinquent tax collection.

Mr. Wischmann stated a portion of the audit looks at the amount of delinquent taxes the City collects. He explained the City of Inver Grove Heights is the first city he has worked with where the number of delinquent taxes declined from the prior year's numbers.

Councilmember Klein asked about the City's reserve funds.

Mr. Wischmann stated the City's General Fund reserve is in the recommended 35-50% range.

Motion by Klein, second by Madden, to receive

Ayes: 5

Nays: 0 Motion carried.

B. Proclamation – National Public Works Week May 16-22, 2010

Mr. Thureen stated this is part of a nationwide effort to recognize staff involved in the Public Works field.

Motion by Madden, second by Piekarski Krech, to adopt Resolution No. 10-71 Proclaiming May 16-22, 2010 National Public Works Week.

Ayes: 5

Nays: 0 Motion carried.

4. CONSENT AGENDA:

Mayor Tourville removed Item 4G, Resolution Approving Sod Replacement and Seeding Agreement with NSP/Xcel Energy for City Project No. 2010-09D – South Grove Urban Street Reconstruction Area 5, from the Consent Agenda.

Councilmember Piekarski Krech removed Item 4I, Approve Contract for Lawn Care Services related to Nuisance Abatement, from the Consent Agenda.

- A.** Minutes – April 26, 2010 Regular Council Meeting
- B. Resolution No. 10-65** Approving Disbursements for Period Ending May 5, 2010
- C.** Pay Voucher No. 11 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation
- D.** Change Order No. 3 and Pay Voucher No. 4 for City Project No. 2008-11, Southern Sanitary Sewer System, East Segment
- E. Resolution No. 10-66** Approving Withdrawal from Regional Mutual Aid Association
- F.** Hire Contractor for Tree Inventory of Right-of-Way Trees in the Urbanized Area of Inver Grove Heights
- H. Resolution No. 10-67** Approving a Stipulation for Award and Order and a Permanent Drainage and Utility Easement between Dayton Holding, Inc. (IGH Parcel No. 24) and City of Inver Grove Heights in connection with District Court File No. 19HA-CV-08-742, Relative to City Project No. 2003-03
- J.** Accept Proposal for Street Patching Services
- K. Resolution No. 10-68** Accepting Individual Project Order No. 12E to Kimley-Horn & Associates, Inc. for Additional Final Design Services for the 2010 Pavement Management Program, Urban Street Reconstruction – City Project No. 2010-09D, South Grove Area 5 Water System Design
- L.** Personnel Actions

Motion by Madden, second by Klein, to approve the Consent Agenda

Ayes: 5

Nays: 0 Motion carried.

- G.** Resolution Approving Sod Replacement and Seeding Agreement with NSP/Xcel Energy for City Project No. 2010-09D – South Grove Urban Street Reconstruction Area 5

Mayor Tourville stated the item would be brought back at a later date as more information is needed.

No Action Taken

- I.** Approve Contract for Lawn Care Services related to Nuisance Abatement

Councilmember Piekarski Krech stated this was discussed at the work session and she would vote against the item unless other information is obtained by staff.

Councilmember Grannis stated he would be willing to table the item until the other information is received.

Mayor Tourville clarified that tabling the item would not delay the abatement of any existing nuisances.

Mr. Link responded that staff would continue to use the person they have been using up to this point for abatement. He noted it would take approximately a month for the item to be brought back to the Council for consideration.

Motion by Grannis, second by Piekarski Krech, to table the Contract for Lawn Care Services related to Nuisance Abatement to June 14, 2010

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT:

6. PUBLIC HEARINGS:

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

A. JAMES BROWN; Consider the following requests for property located at 1186 90th Street:

- i) A Rezoning from E-1, 2 ½ Acre Estate Residential to E-2, 1 ¾ Acre Estate Residential
- ii) Waiver of Plat to divide the existing tax parcel into two lots
- iii) Variance to allow an accessory structure on a lot without a principle structure

Mr. Link stated staff met with the applicant on site to look at the condition of the private roads. He explained a review of the roads on each side of the property was conducted and it was determined that the road on the west side does not meet the minimum clear width and height requirements. He stated it was determined that the road on the east side of the property has only a short distance at the north end that does not meet the minimum clear width and height requirements. He noted a good portion of the length of the road to the east is open and clear. He stated the Fire Marshal indicated that while there is a minimum width and height that needs to be clear to meet fire code, the requirement is not intended to be enforced retroactively. He explained unless there is an obvious obstruction or another building is added to the road, the road and vegetation clearing is not required automatically. He stated in this instance the eastern road is sufficient in width and the city can accept this road in its current condition. He noted some tree trimming would be required with a permit for any new homes on the road. He explained the western road would require tree trimming, tree removal, and road widening if any new homes were to use this road for access.

Mr. Link stated the City Attorney's office conducted a review of the road easements that exist along both the private roads on the east and west sides of the applicant's property. He explained a 60 foot wide private road easement exists along the west side leading to a public street connection to Highway 3, and on the east side a 33 foot wide easement exists over only a portion of the property. He stated the recorded easement extends only to the north 52 feet of the applicant's property and there does not appear to be an existing access easement over the remainder of the applicant's property on the east side. He noted this includes the area where the existing driveway to the house lies. He explained if Council approves the request a condition of approval would be that the applicant show evidence that an easement exists for the balance of the eastern property line through a title commitment or other means. He stated if no easement exists, prior to recording of the waiver of plat the applicant would be required to obtain an easement at least 33 feet in width, granting an access easement. He further explained that if the waiver of plat is approved, the Council must also approve that access to the new lot can be via private driveway. He stated City Code requires all newly created lots to have at least 30 feet of frontage along a street and a private driveway does not satisfy the requirement, except when specifically approved by Council.

Mr. Link explained that a rezoning would create a spot zoning situation that would not be consistent with the Comprehensive Plan. He stated the uses in both the E-1 and E-2 districts are the same and the spot

zoning issue would be by map only and not by use because the intent of the two districts is very similar. He stated both Planning staff and the Planning Commission recommended denial of the requests because of the spot zoning issue and the inconsistency with the Comprehensive Plan. He noted an email was received from a neighboring property owner expressing opposition to the applicant's request.

Motion by Madden, second by Piekarski Krech, to receive letter from Glenn Stoerzinger

Ayes: 5

Nays: 0 Motion carried.

Jim, Anawanda Path, questioned how many instances of spot zoning there were in the area. He stated it was his understanding that all lots in an E-1 zoning district were 2.5 acres or greater. He expressed concerns regarding spot zoning and stated he does not want a precedent to be set in the City. He stated he wants to see the larger lots retained and not broken into smaller lots for more development.

Mr. Link responded the particular neighborhood being discussed is zoned E-1. He stated there are varied lot sizes in the neighborhood.

Glenn Stoerzinger, 1252 90th St. E., stated the house currently on the applicant's lot was built in 1977 with the condition that the property be zoned E-1, and the legal description of the lot describes one lot. He opposed the applicant's request because no hardship has been identified to justify the need for a variance. He opined that approval of the spot zoning request would be inconsistent with the Comprehensive Plan. He stated that seven (7) of the ten (10) parcels that abut the applicant's property are 2.5 acres or larger. He explained that approval of the request would also establish a precedent for future requests of a similar nature.

Councilmember Grannis stated he was contacted by an individual regarding a social gathering, hosted by the applicant last fall, at which council members were present. He explained the individual questioned if a council members attendance at a gathering, where free food and beverages were provided, would effect a council member's ability to vote on the issue.

Mr. Kuntz reviewed the anti gift law. He stated if the council member does not have a financial interest in the property in question, the council member would be allowed to vote on the issue.

Mayor Tourville confirmed that none of the council members held a financial interest in the applicant's property.

Jim Brown, 1186 90th Street, wanted the record to reflect that at a previous meeting one of his neighbors spoke in favor of his request. He noted that Mr. Hunting also indicated that others had called to support the request.

Councilmember Grannis stated he agreed with staff and the majority of the Planning Commission that there was no hardship to justify the variance.

Councilmember Madden stated he would be support the request with the hardship being that the existing barn does not have a driveway, is oriented towards the existing house and is situated such that in order to conform to the minimum lot size, the lot boundary would separate the house from the barn.

Mayor Tourville stated he would support the request because of the existence of different sized lots in the area.

Councilmember Piekarski Krech stated she would not support the request because she does not want to create more small lots and because of the questions regarding the access easement and potential lack thereof.

Motion by Madden, second by Klein, to adopt Ordinance No. 1210 Rezoning the Property from E-1, 2 ½ Acre Estate Residential to E-2, 1 ¾ Acre Estate Residential, Resolution No. 10-69 Approving the Waiver of Plat to Divide the Existing Tax Parcel into Two Lots, and Resolution No. 10-70 Approving a Variance to allow an Accessory Structure on a Lot without a Principle Structure

Ayes: 3

Nays: 2 (Grannis, Piekarski Krech) Motion carried.

B. WADE AND JESSICA SHORT; Consider a Variance to eliminate screening of rooftop mechanical equipment on new commercial building for property located at 9332 Cahill Avenue.

Mr. Link stated staff met with the applicant's contractor to discuss rooftop screening. He explained that staff made the recommendation to screen the equipment on three sides, leaving the east side unscreened. He stated that the screening would only have to be up to the height of the shorter units, not extending to the height of the larger unit. He noted that the type of material used for screening would be up to the applicant. He explained the contractor indicated that the applicant did not want to move forward with staff's recommendation and instead proposed to paint the mechanical units blue with no screening. He stated the property does not have any special conditions that make it unique and the applicant is not being denied reasonable use of the property. He explained that approval of the variance could set a precedent for future developments and the requirement of mechanical unit screening. He stated staff does not believe the variance criterion have been met and therefore recommended denial of the request, as did the Planning Commission.

Wade Short, 9332 Cahill Avenue, opined if the equipment was painted it would blend in and not be visible.

Councilmember Klein questioned if camouflage could be considered screening.

Mr. Kuntz responded that painting is not screening.

Mayor Tourville stated because the applicant cannot come up with a hardship they need to be willing to compromise with staff.

Councilmember Piekarski Krech asked if they could amend the original screening requirement.

Mr. Kuntz indicated that the ordinance states it shall be screened 100% from the view of the public.

Councilmember Piekarski Krech questioned if staff was going to cite those that are not in compliance with the ordinance. She opined that she would rather see screening that is aesthetically pleasing.

Mr. Link explained that staff makes reasonable attempts to ensure that rooftop and ground mounted mechanical equipment is screened.

Mayor Tourville stated notice should be sent out to those that are not in compliance with the screening requirements.

Councilmember Madden reiterated that painting is not screening and expressed concerns with setting a precedent for future developments.

Councilmember Klein stated the problem is the visibility from Highway 52, which is only one side.

Mr. Link stated the difficulty is with how to administer this. He explained the easiest way to look at it is with the building elevation plans.

Councilmember Piekarski Krech asked if there are sight line parameters that staff uses to determine compliance with the ordinance requirement.

Mr. Link stated it is a judgment call and staff relies on the architect's plans for elevations.

Mayor Tourville suggested putting screening on the side facing Highway 52/55 and painting the unit blue. He stated after the work has been completed it should come back to the Council to determine if the equipment is adequately screened.

Motion by Tourville, second by Klein, to require screening on the side of the building that faces Highway 52/55 (the west side of the building) and painting the mechanical equipment blue, subject to final review by the City Council subsequent to the completion of the work to determine if the equipment is adequately screened

Ayes: 5

Nays: 0 Motion carried.

The City Council took a 5 minute recess.

C. CITY OF INVER GROVE HEIGHTS; Consider Interim Ordinance relating to Open Wood Burning Furnaces

Mr. Kuntz stated on April 26, 2010 City staff presented the City Council with materials concerning various aspects of open wood burning furnaces, including property line and structure setbacks, minimum stack heights and seasonal burning restrictions. He explained that after reviewing the materials and discussing the issues, the City Council instructed staff to prepare an ordinance establishing a moratorium on the further construction of open wood burning furnaces in the City for a period of 12 months to permit additional study of the potential regulation of such furnaces.

Councilmember Piekarski Krech asked if open wood burning furnace was the correct terminology or if they should be referred to as outdoor wood burning furnaces.

Mr. Kuntz responded that the accepted terminology appears to be open wood burning furnace.

Councilmember Piekarski Krech stated she would like to have at least two readings of the ordinance before approving it.

Motion by Madden, second by Klein, to approve the First Reading of an Interim Ordinance relating to Open Wood Burning Furnaces

Ayes: 5

Nays: 0 Motion carried.

ADMINISTRATION:

D. CITY OF INVER GROVE HEIGHTS; Consider the following Actions:

- i) Third Reading of an Ordinance Amending Title 5, Chapter 4, of the City Code relating to Animal Control
- ii) Consider Resolution and Table Setting Forth License Fees, Administrative Service Fees and Permit Fees

Ms. Teppen stated that in response the discussion on April 26, 2010 City Council meeting, staff revised the animal ordinance. She explained that the definition of "owner" was revised to reflect its application to all animals, the definitions of "running at large", "run at large", "at large", and "under restraint" were revised to effectively address the problem of animals running freely in the City while still permitting animal to be off of their owner's property if they are effectively controlled by their owner, the intent that veterinarians and police department dogs are exempt from dog licensure requirements was clarified, and a provision containing exceptions to the requirement that animals be under restraint and not running at large was created. She stated an amendment to the City Fee Schedule is also required to reflect the biennial dog license fees and related penalty fees, potentially dangerous and dangerous dog registration fees, biennial kennel license fees, animal redemption fees, license transfer fees, and dog identification tag fees.

Councilmember Madden clarified that an animal running on their owner's property is not considered to be "at large" on that property.

Mr. Kuntz stated his office received a suggestion regarding a minor change associated with the definition of "proper enclosure". He explained the definition relates only to "potentially dangerous" or "dangerous dogs", and the suggested change is to substitute the terms "potentially dangerous" or "dangerous dog"

wherever the word animal appears in the definition of “proper enclosure”.

Motion by Madden, second by Grannis, to adopt Ordinance No. 1211 Amending Title 5, Chapter 4, of the City Code relating to Animal Control with the suggested change to the definition of “proper enclosure” and Resolution No. 10-72 and Table Setting Forth License Fees, Administrative Service Fees and Permit Fees

Ayes: 5

Nays: 0 Motion carried.

E. CITY OF INVER GROVE HEIGHTS; Consider the First Reading of an Ordinance relating to Background Investigation Authorization

Mr. Kuntz explained the police department is authorized to have access to the Bureau of Criminal Apprehension (BCA) criminal history data only to perform duties that are required by law, which do not include municipal employment or licensure. He stated in order to have legal authority to conduct the background checks for other reasons, such as city employment and licensure, there must be law authorizing them. He noted that a clarification should be made to reflect all regular part-time, regular full-time, and seasonal/temporary employment.

Jim, Anawanda Path, stated in his line of business they conduct background checks on existing employees and asked if the City followed the same practice.

Mayor Tourville responded that all employees undergo a background investigation prior to employment.

Councilmember Grannis suggested adding language that would allow background investigations to be conducted on current employees, not just new hires.

Mr. Kuntz indicated language could be added to allow checks on current employees.

Motion by Piekarski Krech, second by Madden, to approve the First Reading of an Ordinance relating to Background Investigation Authorization with the suggested changes.

Ayes: 5

Nays: 0 Motion carried.

PUBLIC WORKS:

F. CITY OF INVER GROVE HEIGHTS; Resolution Authorizing the City of Inver Grove Heights to enter into Agreement No. 92316 for Railroad Crossing Signals with Mn/DOT and the Union Pacific Railroad Company

Mr. Thureen stated the agreement defines the cost share responsibilities for the installation and maintenance of railroad crossing signals at the intersection of Upper 71st Street East and the tracks at the Union Pacific Railroad Company. He explained that Mn/DOT is willing to pick up half of the City's cost, and the City's estimated share, \$21,004.40, would be funded from the Host Community Fund.

Councilmember Klein opined that the improvements were unnecessary at this particular crossing and that the money could be better spent elsewhere.

Mayor Tourville stated the crossing has been identified as needing safety improvements and likely carries a higher liability risk.

Councilmember Grannis noted this crossing could be used as bargaining chip in future negotiations with the railroad regarding the opening and closure of crossings.

Motion by Piekarski Krech, second by Grannis, to adopt Resolution No. 10-73 Authorizing the City of Inver Grove Heights to enter into Agreement No. 92316 for Railroad Crossing Signals with Mn/DOT and the Union Pacific Railroad Company

Ayes: 4

Nays: 1 (Klein) Motion carried.

8. MAYOR & COUNCIL COMMENTS:

9. EXECUTIVE SESSION:

A. Collective Bargaining Update

B. Qwest Negotiations

10. ADJOURN: Motion by Madden, second by Grannis, to adjourn. The meeting was adjourned by a unanimous vote at 10:25 p.m.