

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, OCTOBER 25, 2010 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, October 25, 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, and Recording Clerk Fox.

3. PRESENTATIONS:

4. CONSENT AGENDA:

Citizen Allan Cederberg requested that Item 4A, Minutes of October 11, 2010 Regular Council Meeting, be removed from the Consent Agenda.

Mayor Tourville removed Item 4J, Dakota County's 2011-2015 Capital Improvement Program, from the Consent Agenda.

Councilmember Grannis removed Item 4K, Resolution Accepting the Proposal of Braun Intertec for Geotechnical Testing Services for the 2011 Pavement Management Program on Inver Grove Trail from River Heights Way to Cahill Avenue, 90th Street East, 90th Court East, 100th Street East, Cloman Path and Conrad Avenue, from the Consent Agenda.

- B. Resolution No. 10-174** Approving Disbursements for Period Ending October 20, 2010
- C. Resolution No. 10-175** Approving the Certification of Delinquent Utility Bills
- D.** Pay Voucher No. 1 for City Project No. 2010-09C, Blaine Avenue Mill and Overlay
- E.** Pay Voucher No. 5 for City Project No. 2009-29, Well No. 9, Phase 2
- F.** Pay Voucher No. 5, for City Project No. 2010-09D, South Grove Urban Street Reconstruction – Area 5
- G. Resolution No. 10-176** Approving Amended Agreements dated October 25, 2010 for Sanitary Sewer to serve Praxair, Inc. from Clark Road
- H.** Final Compensating Change Order No. 1, Final Pay Voucher No. 1, Engineer's Final Report and **Resolution No. 10-177** Accepting Work for City Project No. 2010-14, 2010 Storm Water Facility Maintenance Program – Zone 2
- I. Resolution No. 10-178** Approving Special Assessment Deferral for City Project No. 2009-09D, South Grove Street Reconstruction – Area 4
- L. Resolution No. 10-181** Ordering the Preparation of a Feasibility Report for Storm Water Treatment Pond at 78th Street East and Concord Boulevard
- M.** Approve Request of the Inver Grove Heights Fire Department Relief Association to Raise the Retirement Benefit Level
- N. Resolution No. 10-182** Approving the Dakota County 2010 Community Funding Application for Waste Abatement Activities
- O.** Accept Donation to Inver Grove Heights Fire Department from Harold Michie
- P.** Approve 30-Day Suspension of Fire Fighter
- Q.** Approve Individual Massage Therapist License – Jessica Lee Hogan
- R.** Schedule Special Council Meeting on November 5, 2010 to Canvass Results of General Election
- S.** Personnel Actions

Motion by Madden, second by Piekarski Krech, to Approve the Consent Agenda**Ayes: 5****Nays: 0 Motion carried.****A. Minutes – October 11, 2010 Regular Council Meeting**

Mr. Cederberg stated the minutes should reflect that Item 7E was pulled from the agenda.

Motion by Madden, second by Klein, to amend the minutes of the October 11, 2010 Regular Council Meeting to reflect that Item 7E was pulled from the agenda.**Ayes: 5****Nays: 0 Motion carried.**

Mr. Lynch explained the minutes should not reflect that Item 7E was pulled because the agenda was revised and the item in question was not on the revised agenda.

Motion by Klein, second by Grannis, to remove the amendment to the minutes of the October 11, 2010 Regular Council Meeting.**Ayes: 5****Nays: 0 Motion carried.****J. Dakota County's 2011-2015 Capital Improvement Program**

Mayor Tourville asked Mr. Thureen to review the Capital Improvement Program.

Mr. Thureen explained Dakota County requested that the City pass a resolution in support of their proposed five-year CIP. He stated with the exception of Stage 3 of the C.R. 28 (80th Street) project, the projects listed on the attached resolution are the projects identified in Dakota County's draft CIP. He explained the projects shown and recommended are based on identified future needs. He noted that Stage 3 of the C.R. 28 project was added to the resolution to show the County how important the project is from the City's perspective.

Mayor Tourville clarified that the estimated costs of each project were unknown and there would be cost-sharing opportunities with the county.

Motion by Madden, second by Grannis, to adopt Resolution No. 10-179 Approving Dakota County's 2011-2015 Capital Improvement Program**Ayes: 5****Nays: 0 Motion carried.****K. Resolution Accepting the Proposal of Braun Intertec for Geotechnical Testing Services for the 2011 Pavement Management Program on Inver Grove Trail from River Heights Way to Cahill Avenue, 90th Street East, 90th Court East, 100th Street East, Cloman Path and Conrad Avenue**

Councilmember Grannis explained he would not vote in favor of hiring Braun Intertec to perform the testing.

Mayor Tourville suggested that future items dealing with Braun Intertec be placed on the regular agenda.

Motion by Klein, second by Madden, to adopt Resolution No. 10-180 Accepting the Proposal of Braun Intertec for Geotechnical Testing Services for the 2011 Pavement Management Program on Inver Grove Trail from River Heights Way to Cahill Avenue, 90th Street East, 90th Court East, 100th Street East, Cloman Path and Conrad Avenue**Ayes: 4****Nays: 1 (Grannis) Motion carried.****5. PUBLIC COMMENT:**

Ed Gunter, 6671 Concord Boulevard, stated the Concord Street project is nearing completion and

questioned when assessments would be levied.

Mr. Kaldunski explained an assessment hearing would be held in the first quarter of 2011. He noted the City received the final costs of the project from Dakota County approximately one month ago.

Mr. Gunter asked the Council to consider the possibility of having the light rail run through Inver Grove Heights. He suggested that the old City Hall location could be used as a station for pick-up.

Mayor Tourville indicated he would bring Mr. Gunter's suggestion to the committee and the City could also write a letter requesting consideration.

Mr. Gunter stated the City needs to be proactive in addressing transportation needs.

Allan Cederberg, 1162 East 82nd Street, stated he does not believe the King of Diamonds is abiding by the regulations of the adult use ordinance. He explained in 1993 the establishment had to cease adult entertainment at 1:00 a.m. and they now offer adult entertainment until 2:00 a.m. because they have a 2 a.m. liquor license. He stated the ordinance should be enforced.

Mayor Tourville clarified that Mr. Cederberg sent a letter to the City regarding this question on September 21, 2010 and received written responses from the City on October 7th, 2010 and October 20, 2010. He reiterated that in the City's response to his question staff indicated that the establishment is in compliance with the ordinance. He noted that the establishment applied for and obtained a license, from the State of Minnesota, which allows the sale of alcohol until 2:00 a.m.

Mr. Kuntz stated the King of Diamonds is not operating illegally. He explained the case law concerning adding an hour indicates that if the additional time frame does not in itself result in what the court has deemed a qualitative change, it is not an expansion of the non-conforming use. He stated the courts have indicated further that when the enlargement is negligible or inconsequential it does not warrant judicial interference with it in term of trying to prohibit it. He noted the City's explanation was based on the determination that the extension by one hour did not change or effect in any manner the physical area in which the non-conforming activity occurs and the change in activity was not qualitative. He stated the 1993 ordinance that was referenced did in effect make the facility in question a non-conforming use and their activity was understood to be coincident with the liquor establishment. Because the State allowed the extension of the liquor operation the City took the position that the additional hour is within their non-conforming use rights.

6. PUBLIC HEARINGS:

A. CITY OF INVER GROVE HEIGHTS; Consider Application of Edward Carlson dba Eddy's Bar & Grill for an On-Sale/Sunday Intoxicating Liquor License for premises located at 7537 Concord Blvd.

Ms. Teppen stated an application was submitted by Mr. Carlson for an On-Sale/Sunday Liquor License and the Police department reviewed the application and found no basis for denial. She explained the business has not yet opened and has not identified an anticipated opening date. She noted the applicant would need to provide proof of Worker's Compensation insurance prior to the issuance of the license.

Edward Carlson, applicant, indicated he was aware of the stipulation and was told by the State of Minnesota that he was not required to have Worker's Compensation insurance until he had employees.

Mr. Kuntz asked Mr. Carlson if he planned on opening his business before obtaining Worker's Compensation insurance.

Mr. Carlson responded in the negative.

Mayor Tourville asked the applicant to provide a seven (7) day notice of opening to staff.

Mr. Kuntz reiterated that administration is not going to issue the license until proof of coverage is received.

Mrs. Pam Carlson stated the insurance binder would be issued as soon as employees have been hired and the binder would be faxed directly to the clerk.

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

Ayes: 5

Nays: 0 Motion carried.

Motion by Klein, second by Grannis, to approve application of Edward Carlson dba Eddy's Bar & Grill for an On-Sale/Sunday Intoxicating Liquor License for premises located at 7537 Concord Boulevard with the conditions as stated.

Ayes: 5

Nays: 0 Motion carried.

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

A. CITY OF INVER GROVE HEIGHTS; Consider the Second Reading of an Ordinance regulating Outdoor Wood Burners/Boilers

Heather Botten, Associate Planner, stated the Council considered the first reading of the ordinance amendment on October 11th and the direction Council provided at that meeting was prohibit all future outdoor wood burners as well as the use of existing outdoor wood burners already located in the City. She noted the definition section of the ordinance was changed since the first reading and clarified that the proposed ordinance amendment would not regulate indoor wood stoves, fireplaces or fire pits.

Councilmember Piekarski Krech questioned why one of the findings listed in the ordinance say corn has the same toxicity level as wood smoke.

Ms. Botten stated the language could be changed.

Councilmember Piekarski Krech clarified that she wants the findings based on factual data and she has not seen any data that would support that finding.

Mayor Tourville suggested the finding that pertains to the toxicity level of corn be removed.

Councilmember Klein concurred with Mayor Tourville's suggestion.

Mr. Madden questioned what would happen if someone put a wood burner that was a separate structure inside of a home.

Ms. Botten responded it would be allowed because it was heating the structure the wood burner is in.

Mayor Tourville stated they are not designed for indoor use because of the way they are designed.

Mr. Kuntz suggested that finding number ten could be modified to say "when burned within an outdoor wood burner".

Councilmember Piekarski Krech reiterated her concern of not being able to back up the statement with factual data.

Mr. Kuntz suggested amending number ten to say, "In light of the significant harm wood smoke can present the City Council finds that the burning of other similar plant based materials pose a similar risk".

Mayor Tourville reiterated the importance of having evidence to support findings that are made in the ordinance.

Mr. Kuntz indicated the language, "when burned in outdoor wood burners" would be added to the end of his previous statement.

Robert Heidenreich, 11632 Akron Ave., stated he has an outdoor wood burner and has never had any complaints and is interested in maintaining property rights. He commented that if the Council bans outdoor wood burners they should ban all wood burners including fire pits and fire places. He stated those who burn responsibly should be allowed to continue and not penalized when they have invested money into their burner. He suggested limiting outdoor wood burners to lots greater than two acres and implementing an annual permit process.

Mayor Tourville stated things do change as the City grows and noted there have been many complaints, not just one.

Motion by Madden, second by Klein, to approve the second reading of an Ordinance regulating Outdoor Wood Burners/Boilers with number 12 being removed and number 10 being reworded.

Ayes: 5

Nays: 0 Motion carried.

B. CITY OF INVER GROVE HEIGHTS; Consider Third Reading of an Ordinance Establishing Minimum Requirements for the Regulation of Subsurface Sewage Treatment Systems and a Resolution Adopting for Publication a Summary of the Ordinance

Mr. Link explained this is the third and final reading of the Subsurface Sewage Treatment Systems ordinance. He stated there have been no changes made since the second reading. He explained they are required to adopt state and county regulations. He noted this would have no impact on existing septic systems that are currently in compliance with regulations.

Motion by Klein, second by Grannis, to adopt Ordinance No. 1219 Establishing Minimum Requirements for the Regulation of Subsurface Sewage Treatment Systems and Resolution No. 10-184 Adopting for Publication a Summary of the Ordinance

Ayes: 5

Nays: 0 Motion carried.

C. CITY OF INVER GROVE HEIGHTS; Consider the following Ordinance amendments:

- i) The first reading of an Ordinance regulating certain materials located in setback areas
- ii) The first reading of and Ordinance relating to driveways and permits and establishing City Code Title 10-5-2-D, regulating materials located in setback areas

Ms. Botten explained there are three ordinances and two of them are listed as one item. She stated the first ordinance is related to certain materials located in the setback areas. She reviewed the potential language that means no hard surface would be allowed within the five yard setback.

She stated the second ordinance relates to the permitting of driveways. She explained to protect the City's easement an ordinance is proposed that would require a permit to install or expand a driveway. She noted staff has discussed a \$25 processing fee.

She explained the third ordinance is a temporary ordinance pertaining to existing encroachments which are already in place and are technically illegal uses.

She stated staff recommended approval of the ordinance amendments as proposed and the Planning Commission also recommended approval on a 6-2 vote.

Councilmember Klein opined that eventually everything will be declared a non-conforming use.

Mayor Tourville stated sometimes non-conforming lots do not have a clear title and there are some mortgage companies that will not provide financing for the property as a result

Mr. Kuntz explained if the non-conformity relates to the primary use of the lot there could be some financing issues. He noted this relates to what is in a setback area.

Mr. Lynch noted the City does not have an inventory of those who are not in compliance.

Councilmember Klein asked if part of the City could be exempt until construction is finished.

Mr. Thureen explained the major issue was with people who had driveways encroaching over property lines and the City was not able to replace them after construction. He noted for street reconstruction projects if the City removes the driveway they need to replace it once the project is completed.

Councilmember Grannis explained he would be voting against the item because of the provision that would allow non-conformities to be grandfathered in. He agreed with the setback regulations and opined it

would be a mistake for the City to say all the non-conforming uses are now conforming uses.

Motion by Klein, second by Madden, to approve the First Reading of an Ordinance Regulating Certain Materials Located in Setback Areas, and an Ordinance relating to Driveways and Permits and Establishing City Code Title 10-5-2-D, Regulating Materials Located in Setback Areas

Ayes: 4

Nays: 1 (Grannis) Motion carried.

The City Council took a five minute break.

ADMINISTRATION:

D. CITY OF INVER GROVE HEIGHTS; Consider Resolution Approving Application to become a Yellow Ribbon Community in Dakota County

Mr. Lynch explained the City has been working throughout the year to obtain designation as a Yellow Ribbon community. He noted it has been and would continue to be a community-wide effort. He stated the next step would be to get the City's application approved by the state.

Mayor Tourville commented on events that were held, including a picnic for the families of those that served in the Red Bull Infantry. He noted the City is trying to get it certified in time for the Veterans Day celebration that will take place at the Armory.

Sara Martin, 8485 Corcoran Path, stated she has worked for the last five months on the City template. She explained if the City does not get the designation by November 11th it should be designated in the first quarter of 2011. She noted the City and community have worked together to develop an action plan.

Motion by Piekarski Krech, second by Klein, to adopt Resolution No. 10-183 Approving Application to become a Yellow Ribbon Community in Dakota County

Ayes: 5

Nays: 0 Motion carried.

E. CITY OF INVER GROVE HEIGHTS; Consider Change Order No. 15 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation Project

Ms. Teppen stated Change Order No. 15 is comprised of two items totaling \$4,093.

Councilmember Grannis questioned why the elevator inspector required the additional return air grilles.

John Love, BKV Group, responded that the reason was unclear. He explained the majority of the time they are not required. He noted the inspector would not approve this if the grills were not put in.

Councilmember Grannis asked Mr. Love to find out what the basis for the requirement was.

Motion by Klein, second by Grannis, to approve Change Order No. 15 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation Project

Ayes: 5

Nays: 0 Motion carried.

F. CITY OF INVER GROVE HEIGHTS; Consider Construction Change Directive No. 7 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation Project

Ms. Teppen explained staff has been meeting with the architect team to resolve the drainage problems on the Public Safety addition side. She stated additional work has been identified and would not exceed \$19,600. She noted they are looking to have the work completed by the end of November.

Councilmember Klein questioned how it would affect the entrance.

Ms. Teppen stated it would not affect the entrance. She explained the work would be done during off hours, on weekends, or other accommodations would be made.

Councilmember Grannis asked if Mr. Kuntz felt that \$19,600 would adequately cover the work.

Mr. Kuntz responded in the affirmative. He noted BKV has been notified in writing that by approving this construction change directive, the City does not waive its right to a claim against BKV relating to the issue of whether they are at fault for the conditions and circumstances which caused the City to order construction change directive number seven.

Councilmember Piekarski Krech opined that the money should come out of the project contingency fund.

Mayor Tourville asked if Mr. Thureen has provided input on the drainage issues.

Ms. Teppen indicated staff has been included in all of the conversations.

Motion by Klein, second by Piekarski Krech, to approve Construction Change Directive No. 7 for City Project No. 2008-18, Public Safety Addition/City Hall Renovation Project with the work funded via the Project Contingency

Ayes: 5

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

Councilmember Madden read a letter from the Fredericks.

Motion by Klein, second by Grannis, to receive letter from Paulette Frederick

Ayes: 5

Nays: 0 Motion carried.

Mr. Thureen stated they agreed to put the curb on the north side and received a call that it should be on the south side as well.

Councilmember Grannis stated one of the questions was why the curb was not put up to the property line.

Mr. Thureen explained changes could be made on the north side.

Mayor Tourville noted that is why it is temporary.

Councilmember Grannis stated some citizens have noticed cracks in the floor of the Public Safety Building and asked what is being done to address the problem.

Mr. Lynch responded staff's understanding is there is settling going on and the contractor will be filling the cracks on the second level. He stated on the base level they still need to figure out what happened. He noted they are in discussion about the responsibility and it has to be fixed to the City's satisfaction.

9. ADJOURN: Motion by Grannis, second by Madden, to adjourn. The meeting was adjourned by a unanimous vote at 9:55 p.m.