

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, OCTOBER 10, 2011 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL: The City Council of Inver Grove Heights met in regular session on Monday, October 10, 2011, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m. Present were Council members Grannis, Madden and Piekarski Krech; City Administrator Lynch, Assistant City Administrator Teppen, City Attorney Kuntz, Public Works Director Thureen, Parks and Recreation Director Carlson, and Community Development Director Link.

3. PRESENTATIONS:

4. CONSENT AGENDA:

Councilmember Grannis removed Item 4M, Resolution Approving Use of Eminent Domain to Acquire Real Property from Private Property Owner as required for Heritage Village Park Trail Improvements included in City Project No. 2011-08, from the Consent Agenda

- A. Minutes – September 26, 2011 Regular Council Meeting
- B. **Resolution No. 11-175** Approving Disbursements for Period Ending October 5, 2011
- C. Change Order No. 1 and Pay Voucher No. 1 for City Project No. 2011-09F, 65th Street Construction
- D. Change Order No. 1 and Pay Voucher No. 3 for City Project No. 2010-09I, Blaine Avenue Mill and Repave
- E. **Resolution No. 11-176** Accepting Individual Project Order No. 17D with Kimley-Horn & Associates, Inc. for Additional Construction Phase Services for City Project No. 2011-09D, South Grove Street Reconstruction Area 6
- F. Appoint Board Member to the Lower Mississippi River Watershed Management Organization
- G. **Resolution No. 11-177** and **Resolution No. 11-187** Accepting the Draft Feasibility Study, Authorizing Solicitation of Quotes, Accepting Quotes and Awarding Contract for City Project No. 2010-22, Ravine Pond Railroad Erosion Mitigation Project
- H. **Resolution No. 11-178** Calling for Hearing on Proposed Assessments and **Resolution No. 11-179** Declaring Costs to be Assessed and Ordering Preparation of Proposed Assessments for 2011 Pavement Management Program, City Project No. 2010-09I, Blaine Avenue (North Area) Full Depth Mill and Repave from Upper 55th Street to 50th Street
- I. Approve RFP for Massage Therapy Services at the VMCC/Grove
- J. Approve Contractor to Replace Domestic Hot Water Storage Tank at the VMCC
- K. Approve Purchase of New Ice Resurfacer
- L. Approve Grant for Heritage Village Park Wetland Restoration
- N. **Resolution No. 11-181** Approving Local Trail Grant Application for North Valley Park
- O. Approve Purchase of Vehicle Mounted Message Boards for Emergency Response
- P. Approve Temporary 3.2 Liquor License for Inver Hills Community College
- Q. **Resolution No. 11-182** Approving Mileage Reimbursement for City Administrator
- R. Personnel Actions

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

Ayes: 4

Nays: 0 Motion carried.

- M. Resolution No. 11-180** Approving Use of Eminent Domain to Acquire Real Property from Private Property Owner as required for Heritage Village Park Trail Improvements included in City Project No. 2011-08

Councilmember Grannis stated he removed the item from the consent agenda because it involved the use of eminent domain. He explained that eminent domain is a very powerful tool that governments have at their disposal and opined that it should not be used for this purpose.

Mayor Tourville explained that the City tried to purchase the property and could not reach an agreement with the property owner. He noted that the City has deadlines that need to be met with respect to the use of a grant funding received from the Minnesota DNR for construction of trail improvements.

Councilmember Madden stated the City made an honest effort to acquire the property through other means. He opined that he would have liked to avoid using eminent domain, but the City was left with no other solution to the problem.

Councilmember Piekarski Krech stated she would only support the acquisition because the property was not a homestead and was vacant land.

Motion by Madden, second by Piekarski Krech, to adopt Resolution No. 11-180 Approving the Use of Eminent Domain to Acquire Real Property from Private Property Owner as required for Heritage Village Park Trail Improvements included in City Project No. 2011-08

Ayes: 3

Nays: 1 (Grannis) Motion carried.

5. PUBLIC COMMENT:

Ed Gunter, 6671 Concord Boulevard, questioned when the assessments for the Concord Boulevard project would be mailed to affected residents.

Mr. Kaldunski explained the City did not receive the final invoice from the County in time to complete the assessment roll this fall. He stated the time frame was too compressed given the date by which assessments must be certified to the County. He noted the assessment hearing would likely be delayed until the spring of 2012 in order to avoid the accrual of excess interest charges.

6. PUBLIC HEARINGS: None.

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

- A. WALMART STORES, INC.;** Consider a Resolution amending the PUD approval to allow the store to remain open 24 hours on Thanksgiving Day

Mr. Link explained the applicant submitted a onetime request to allow for extended hours on the evening of November 24, 2011. The request is to allow the store to remain open 24 hours into the morning of Friday, November 25th. The parking lot lights would also remain on at full intensity for the same period. The approvals for Walmart have restrictions on hours of operation and hours the parking lot lighting remains on. Store hours are restricted to 7:00 a.m. to 11:00 p.m. daily, except for the Friday after Thanksgiving when the store is allowed to open at 5:00 a.m. The parking lot lighting is to be reduced after 11:10 p.m. each evening.

Mr. Link noted that Walmart submitted a similar proposal in October of 2009 and the City Council denied the request. In all commercial districts businesses are allowed to operate 24 hours unless specific conditions regulating hours are approved by the City Council. Walmart is unique in that it is located across the street from a residential neighborhood and as such the City Council imposed regulations on the hours of operation as well as the timing and intensity of the parking lot lights. If Walmart sought a permanent change to their hours of operation for the same timeframe in subsequent years, an application for an amendment to the PUD and Development Contract would need to be submitted and approved by Council.

Mr. Link noted that staff mailed notice of the meeting to 27 property owners, closest to the store, along Cheney Trail. Planning staff supported the onetime request for extended hours of operation provided there were no neighborhood concerns that could not be addressed.

Councilmember Madden stated the restricted hours of operation for Walmart were agreed upon after a long, arduous process at both the Planning Commission and City Council levels. He opposed the request to amend the hours because of his belief that the original conditions of approval should be honored.

Councilmember Piekarski Krech clarified that the Council previously approved an amendment to allow the store to open at 5:00 a.m. on the Friday after Thanksgiving.

Mr. Link confirmed that Council did previously approve the request to allow the store to open at 5 a.m. on the Friday after Thanksgiving.

Tim Peterson, Walmart Store Manager, stated the request is not to permanently allow the store to be open for 24 hours. He explained the request is based on a desire to address safety concerns for customers and employees during the annual "Black Friday" event. He stated many retailers open at 12:01 a.m. on the Friday after Thanksgiving. He explained that if the store was allowed to stay open for 24 hours on Thanksgiving, customers would be able to wait inside the store rather than line up in the parking lot before the store opening at 5:00 a.m. He reiterated that the main concern is to promote the safety of the customers and the employees during the annual sale event. He added that the extended hours of operation would also result in a 15% increase in sales.

Councilmember Piekarski Krech confirmed that the store would be open on Thanksgiving and would remain open through the Friday after Thanksgiving.

Ed Gunter, 6671 Concord Boulevard, noted when the same request was presented to the Council in 2009 the neighbors expressed concerns about noise and the parking lot lights. He opined that the request is not beneficial for employees because it limits the amount of time they can spend with their families on the holiday.

Councilmember Madden commented that a number of employees thanked him for not supporting the request in 2009 so they could have time off to spend with their families.

Mayor Tourville stated he agreed that the original conditions of approval should be honored. He noted that if the same request came back to the Council next year he may consider it because another major retailer would be open in the City and it would not be fair if the approved hours of operation were different.

Councilmember Piekarski Krech questioned if the Council needed to grant approval for Walmart to open at 5:00 a.m. on the day after Thanksgiving.

Mr. Link indicated that the previous change to the hours of operation to allow the store to open at 5:00 a.m. was a permanent approval.

Motion by Madden, second by Grannis, to adopt Resolution No. 11-183 denying an Amendment to the PUD Approval to Allow the Walmart Store to Remain Open 24 Hours on Thanksgiving Day

Ayes: 4

Nays: 0 Motion carried.

B. SPIRE FEDERAL CREDIT UNION; Consider a Resolution relating to a Preliminary & Final Plat, Preliminary & Final PUD Development Plan and Development Contract for Brentwood Hills Second Addition Property Located on North Side of Upper 55th Street, West of Blaine Avenue

Mr. Link explained the applicant is seeking reapproval of the Brentwood Hills townhome project, originally approved in 2006 as a 24 unit townhome project. The original owner constructed the first seven (7) units, installed utilities, landscaping, a stormwater pond, and the first lift of asphalt on the private drive. In 2007 the owner received approval for an amendment to the plat/plans for a reduced setback and property line adjustment. The owner never recorded the amended plat documents, the previous approvals expired, and the property went into foreclosure. Spire Federal Credit Union now owns the property and would like the plans that were originally presented to be reapproved. The applicant also submitted a Phase I site

restoration plan, which would act as an interim plan until the other phases of the project are built. The site restoration plan would be cost effective, would clean the property up, and would allow low maintenance natural vegetation to be planted on all undeveloped areas. The native grasses would be taller than six (6) inches, but would not contain weeds and would require maintenance. Both Planning staff and the Planning Commission recommended approval of the request.

Glenn Bergman, Attorney for Spire Federal Credit Union, stated the existing townhomes were built in accordance with the amended plat that was never recorded by the developer. Because the amended plat was never recorded, the existing units extend 20 feet outside of the lot lines, creating a title problem. He explained that they want to fix the title problem so the existing units are within the boundaries of the lots.

Mr. Kuntz explained that part of the approval includes releasing the property from some of the old agreements that existed under the original plat. The new plat conforms to the units that have been constructed. The bank has found an investment buyer that has agreed to install the final lift of asphalt prior to the new plat being recorded, to install the turf establishment on the vacant property, and to clean up various items on the property such as dirt and brick piles. He clarified that there is no expectation that the remaining units will be constructed any time soon. He stated the plat and stormwater maintenance agreements will be in place so the buyer will continue to maintain the pond.

Mayor Tourville asked if the third party buyer was also in agreement with the conditions of the resolution.

Mr. Bergman stated the buyer would be the signatory on all of the documents and confirmed that the documents were reviewed and the buyer has agreed to the conditions of the resolution.

Motion by Madden, second by Piekarski Krech, to adopt Resolution No. 11-184 relating to a Preliminary & Final Plat, Preliminary & Final PUD Development Plan and Development Contract for Brentwood Hills Second Addition Property located on North Side of Upper 55th Street, West of Blaine Avenue

Ayes: 4

Nays: 0 Motion carried.

C. IGH INVESTMENTS, LLC; Consider a Resolution relating to the Final Plat, Final PUD Development Plan and Development Contract for Argenta Hills 4th Addition

Mr. Lynch explained the applicant requested that the item be tabled.

Motion by Piekarski Krech, second by Madden, to table the item to the October 24, 2011 Regular Council Meeting

Ayes: 4

Nays: 0 Motion carried.

D. DAKOTA COUNTY PARKS DEPARTMENT; Consider the Second Reading of an Amendment to the City Code (Subdivision Regulations) relating to Allowing Subdivisions for the Creation of Public Land Subject to Administrative Approval

Mr. Link explained staff and the City Attorney modified some language to the proposed administrative subdivision ordinance by adding language to criteria #6 and #7 which clarifies that the resultant parcels must meet minimum lot size and width requirements unless they are exempt from such standards or a variance has been approved. Staff also researched the question posed by Mr. Willy Krech regarding his buildings and the setback from the property acquired by the County. The Assistant County Attorney informed Planning staff that all parties agreed to the location of the property line by the north building and that the building would be less than the required 40 feet from the property line. The property acquisition by the south building was adjusted so that it was at least 40 feet from the property line. Mr. Link noted that the drawings submitted to staff were consistent with the information provided by the County.

Motion by Piekarski Krech, second by Madden, to approve the Second Reading of an Amendment to the City Code (Subdivision Regulations) relating to Allowing Subdivisions for the Creation of Public Land Subject to Administrative Approval

Ayes: 4

Nays: 0 Motion carried.

E. CITY OF INVER GROVE HEIGHTS; Consider the Second Reading of an Ordinance Amendment to Chapter 10 of the City Code relating to Updates to the Floodplain Management District and Adoption of the New FEMA Floodplain Maps

Mr. Link stated no changes were proposed by staff for the second reading. He explained that all cities within Dakota County are required to adopt the new maps by December 2, 2011. The current maps for the City have not changed since 1980 and new flood data and topographic data were used to draw the new boundaries of the floodplain. The maps are used as part of the Flood Insurance program to determine the location of the floodplain. There is a federal requirement that flood insurance is mandatory if the insurable structure is in one of the high risk flood zones. Local government participation is mandatory for homeowners to be able to acquire the flood insurance.

Motion by Piekarski Krech, second by Grannis, to approve the Second Reading of an Ordinance Amendment to Chapter 10 of the City Code relating to Updates to the Floodplain Management District and Adoption of the New FEMA Floodplain Maps

Ayes: 4

Nays: 0 Motion carried.

PUBLIC WORKS:

F. CITY OF INVER GROVE HEIGHTS; Consider Resolution Prohibiting Parking on Portions of College Trail from Broderick Boulevard to Cahill Avenue

NO ACTION WAS TAKEN ON THIS ITEM

G. CITY OF INVER GROVE HEIGHTS; Consider Resolution Prohibiting Parking on Both Sides of the Trunk Highway 52 East Frontage Road from Inver Grove Trail to 117th Street East

Mr. Thureen explained the subject street was constructed by Mn/DOT as part of two City Projects, 2000-10 and 2008-08, and in the near future it will be turned over to the City. Once it is turned over it will be added to the City's Municipal State Aid street system. The street will need to be posted "No Parking" on both sides to meet Municipal State Aid standards. Staff received a complaint about cars being parked along the east side of the street by individuals accessing the DNR Scenic and Natural Area property. This will likely become a more frequent occurrence after the County extends the Mississippi River Regional Trail. Given the street width, the type of traffic utilizing the street, and the posted speed limit (45 mph), staff felt it would be prudent to install the "no parking" signage now.

Councilmember Piekarski Krech questioned if the County was going to do anything to address the issue.

Mr. Thureen explained that the DNR has control of the area and ultimately the plan would be to construct a trailhead at that location.

Mayor Tourville suggested that staff contact the DNR to see if the area could be made wider with some gravel.

Motion by Grannis, second by Piekarski Krech, to adopt Resolution No. 11-185 Prohibiting Parking on both Sides of the Trunk Highway 52 East Frontage Road from Inver Grove Trail to 117th Street East

Ayes: 4

Nays: 0 Motion carried.

H. CITY OF INVER GROVE HEIGHTS; Resolution Adopting the Final Assessment Roll for City Project No. 2008-13, Courthouse Boulevard Court Street Improvements

Mr. Thureen stated City Project No. 2008-13 was awarded to Bituminous Roadways, Inc. by the City Council on September 8, 2008 as part of the improvements agreed to with Inverpoint Business Park, LLC (United Properties Development). The final project cost was \$555,929.56. As part of the development contract, Inverpoint Business Park, LLC signed waiver of assessment appeal agreements for four (4) improvements totaling \$689,010. Three parcels are proposed to be assessed a total of \$488,462.98 as per the stipulations of the waiver agreements. An assessment term of 15 years at an interest rate of 4.8% is proposed for the project. The balance of the project cost will be funded by Northwest Area storm water fees because the City included an improvement for storm water purposes in the project because it was the most cost effective option.

Motion by Piekarski Krech, second by Grannis, to approve Resolution No. 11-186 Adopting the Final Assessment Roll for City Project No. 2008-13, Courthouse Boulevard Court Street Improvements**Ayes: 4****Nays: 0 Motion carried.****I. CITY OF INVER GROVE HEIGHTS;** Consider First Reading of an Ordinance Prohibiting the Use of Coal Tar-Based Sealer

Mr. Kaldunski explained the City is permitted by the MPCA to operate as a MS4 City. Those cities with permits have begun regular maintenance activities and observations on the storm sewer system. Regulatory agencies and cities have become concerned with coal tar based sealants used primarily on driveways. Coal tar based sealant is known to distribute polycyclic aromatic hydrocarbons, known carcinogens, into water. The MPCA has encouraged cities to adopt ordinances regulating the use of coal tar based sealants to reduce the presence of polycyclic aromatic hydrocarbons in pond sediments. Asphaltic based sealants are not proposed to be restricted by the ordinance.

Mr. Kaldunski stated the City has conducted routine maintenance on the storm water management facilities owned by the City. A testing program was established as part of the routine maintenance. To date the City has tested 12 storm water basins, three (3) of which were found to contain polycyclic aromatic hydrocarbons in the sediments.

Mr. Kaldunski explained the MPCA has established a grant program to assist communities with the management of polycyclic aromatic hydrocarbons. The program can be used to remove sediments with high levels of the carcinogen from the basins. The City identified two (2) pond dredging maintenance projects that may be eligible for grants. In order to apply for funding the City must adopt the proposed ordinance. The ordinance as proposed is based on the model ordinance developed by the League of Minnesota Cities.

Mayor Tourville noted this item was also discussed at the work session. He stated part of the program would also include education for citizens, retailers, and suppliers.

Motion by Grannis, second by Piekarski Krech, to adopt the First Reading of an Ordinance Prohibiting the Use of Coal Tar-Based Sealer**Ayes: 4****Nays: 0 Motion carried.****J. CITY OF INVER GROVE HEIGHTS;** Consider Second Reading of an Ordinance Adding Inver Grove Heights City Code, Title 9, Chapter 5, Section 9-5-13, Regarding Illicit Connections and Discharges to the Municipal Separate Storm Sewer System (MS4).

Mr. Kaldunski explained the City was asked to adopt an ordinance which regulates illicit discharges and connections to the storm sewer system. He noted that the ordinance would provide the City with options for enforcement of the proposed regulations.

Motion by Piekarski Krech, second by Grannis, to approve the Second Reading of an Ordinance Adding Inver Grove Heights City Code, Title 9, Chapter 5, Section 9-5-13, Regarding Illicit Connections and Discharges to the Municipal Separate Storm Sewer System (MS4)

Ayes: 4

Nays: 0 Motion carried.

ADMINISTRATION:

K. CITY OF INVER GROVE HEIGHTS; Consider First Reading of an Ordinance relating to Domestic Partnership Registration

Ms. Teppen explained that a few months ago domestic partnership registries received publicity in the local Pioneer Press and the City subsequently received some phone calls inquiring as to whether or not the City had an ordinance relating to domestic partnership registration. She stated because the City did not have such an ordinance, staff was directed by Council to bring a draft ordinance forward for consideration. She noted the proposed ordinance mirrors what other cities have adopted, except for the elimination of a provision which would allow domestic partners to register if one of the partners worked in the City.

Councilmember Piekarski Krech stated if the phrase “or work” was eliminated from the ordinance it would be redundant to include number eight (8) under the definitions Section, 11-11-2, because it would be “couples who reside”.

Mayor Tourville clarified that in order to register both people would have to live in the City.

Mr. Kuntz suggested that number eight (8) be left in the ordinance and that the language be changed to “both of whom reside”.

Councilmember Madden opined that this issue should be delayed until after the 2012 election when the results of the vote on the State marriage amendment are known.

Councilmember Piekarski Krech stated the marriage amendment pertains only to a certain type of couple. She stated the proposed ordinance would pertain to any type of couple and opined that she knows of several couples in the City that would benefit from the proposed ordinance. She stated the proposed ordinance would provide those couples who, for a number of reasons, would not or do not get married, with the ability to say that they are a committed couple. She opined that the proposed ordinance had nothing to do with what the State is considering.

Councilmember Madden commented on the article that was published in the newspaper and expressed concern that the proposed ordinance would be a step in that direction. He opined that he would have a problem with the ordinance if it is just a step towards a complete change to the laws or the morals of the State.

Councilmember Piekarski Krech stated she views it as an opportunity for couples to express a commitment to one another without being married.

Councilmember Madden stated one problem is that the ordinance can be interpreted in many ways.

Mayor Tourville stated he has received many comments both for and against the proposed ordinance. He noted one of the major concerns is that the issue is outside the purview of City government.

Motion by Grannis, second by Piekarski Krech, to receive information provided by OutFront Minnesota.

Ayes: 3

Nays: 0

Abstain: 1 (Madden) Motion carried.

Ted Trenzeluk, 7305 Bancroft Way, stated he opposed the proposed ordinance. He opined that the proposed ordinance would be legally irrelevant and tax dollars should not be used for something that is merely a symbol. He provided the Council with additional information from OutFront Minnesota which acknowledges that the legal impact of a domestic partner registry is very limited.

Motion by Piekarski Krech, second by Grannis, to receive information provided by Ted Trenzeluk**Ayes: 4****Nays: 0 Motion carried.**

Mr. Trenzeluk opined that the registry would provide no direct benefit from an insurance perspective, and the main purpose of this type of legislation is a salvo in the lead up to the constitutional amendment. He stated if the Council chose to move forward with the proposed ordinance he would personally notify every pastor in the City to inform them of the issue.

Arlene Desombre, 8679 Callahan Trail, stated she has been a teacher for 30 years and has seen the value of couples being married and the positive effect it has on the children.

Georgia Mueller stated she has lived in the City since 1973. She opined that the proposed amendment is about people being fiscally responsible. She stated that anything a City can do to encourage and help people obtain medical coverage will benefit society as a whole. She opined that the registration would provide people with documentation that could assist them in receiving medical coverage.

Mr. Lynch stated he received a call from Carolyn Krech who wanted it noted for the record that she was opposed to the proposed ordinance.

Councilmember Madden reiterated that he is 100% opposed to the ordinance.

Councilmember Grannis opined that the City should not be involved in something like this because it would have such a limited effect.

Mayor Tourville stated his understanding is that it is up to each individual provider whether or not to provide insurance coverage. If the insurance provider does not offer coverage for domestic partners it would not matter if they were registered.

Ms. Teppen confirmed that coverage is dependent upon how each individual policy is written.

Mayor Tourville suggested that the item be tabled until all five Council members were present. He asked staff to provide additional information regarding insurance benefits.

Motion by Madden, second by Tourville, to table the item to the October 24, 2011 Regular Council Meeting**Ayes: 3****Nays: 1 (Grannis) Motion carried.**

L. CITY OF INVER GROVE HEIGHTS; Consider Third Reading of an Ordinance Amending City Code Title 9, Chapter 5, Section 9-5-5 relating to Compliance Requirements for Land Alterations

Mr. Kuntz stated no substantive changes were made since the second reading.

Motion by Piekarski Krech, second by Grannis, to adopt Ordinance No. 1241 Amending City Code Title 9, Chapter 5, Section 9-5-5 relating to Compliance Requirements for Land Alterations**Ayes: 4****Nays: 0 Motion carried.**

M. CITY OF INVER GROVE HEIGHTS; Consider Third Reading of an Ordinance Amending City Code Title 4, Chapter 1, Article A, Section 4 relating to Types of Intoxicating Liquor Licenses and a Resolution Adopting Temporary On Sale Liquor License Fees

Mr. Kuntz explained the ordinance amendment would allow the City to issue temporary intoxicating liquor licenses and one day consumption and display permits to those organizations that qualify. He noted no changes have been made since the second reading.

Mayor Tourville clarified that the premise for the amendment was based on a request from St. Patrick's Church.

Mr. Kuntz acknowledged that this would allow greater flexibility for events hosted by certain organizations.

Motion by Piekarski Krech, second by Grannis, to adopt Ordinance No. 1242 Amending City Code Title 4, Chapter 1, Article A, Section 4 relating to Types of Intoxicating Liquor Licenses and Resolution No. 11-188 Adopting Temporary On Sale Liquor License Fees

Ayes: 4

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

Mayor Tourville reminded citizens about Fire Prevention week.

9. ADJOURN: Motion by Grannis, second by Madden, to adjourn. The meeting was adjourned by a unanimous vote at 8:35 p.m.