

**INVER GROVE HEIGHTS CITY COUNCIL MEETING  
MONDAY, JANUARY 28, 2013 - 8150 BARBARA AVENUE**

**CALL TO ORDER/ROLL CALL** The City Council of Inver Grove Heights met in regular session on Monday, January 28, 2013, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m. Present were Council members Bartholomew, Madden, Mueller, and Piekarski Krech; City Administrator Lynch, Assistant City Administrator Teppen, City Attorney Kuntz, Parks & Recreation Director Carlson, Community Development Director Link, Public Works Director Thureen, Finance Director Smith, Police Chief Stanger and Deputy Clerk Kennedy

**3. PRESENTATIONS:**

**A. SSP Relay 4 Life**

Ms. Jaime Ross, Co-Chair of South St. Paul Area Relay 4 Life, thanked the City Council for their past support of the event. The 2013 Relay 4 Life will be held on August 9<sup>th</sup> starting at 6:00 pm at Lincoln Center Elementary School in South St. Paul. She stated the fundraiser is for residents in the South St. Paul area, including Inver Grove Heights, West St. Paul, and any other surrounding communities that do not host their own relay. She explained the 2013 relay would be the 9<sup>th</sup> annual event and the goal is to raise \$100,000 or more. In the past 8 years the relay has raised over \$900,000. A kickoff event is scheduled on February 21<sup>st</sup> from 6:45-8 pm at Central Square in South St. Paul.

**B. Future of Our Parks – Parks & Recreation System Plan**

Mr. Carlson stated at their last meeting in January the Parks and Recreation Advisory Commission reviewed a draft of the needs assessment. The “Park Champions” group, comprised of approximately 15 residents, met for the first time. Participants are of varying age and live in a variety of locations within the City. He noted the group was very excited to begin the process and to help the Parks and Recreation Advisory Commission develop the system plan for the future.

**4. CONSENT AGENDA:**

Citizen Allan Cederberg requested that Item 4B be removed from the Consent Agenda.

Councilmember Piekarski Krech removed Item 4F from the Consent Agenda.

- A.** i) Minutes – January 14, 2013 Council Study Session  
ii) Minutes – January 14, 2013 Regular Council Meeting

**C.** Final Compensating Change Order No. 2, Final Pay Voucher No. 3, Engineer’s Final Report, and **Resolution No. 13-09** Accepting Work for City Project No. 2010-09H – South Grove Sod Repair Project

**D.** Approve Purchase of GPS Surveying

**E.** Approve the 2013 Seasonal/Temporary Compensation Plan

**G.** Personnel Actions

**Motion by Madden, second by Bartholomew, to approve the Consent Agenda**

**Ayes: 5**

**Nays: 0      Motion carried.**

**B. Resolution Approving Disbursements for Period Ending January 23, 2013**

Allan Cederberg, 1162 E. 82<sup>nd</sup> St, questioned what the disbursement for the purchase of a trailer in the amount of \$93,500 was for and when it was approved by Council.

Ms. Smith explained the disbursement related to a capital equipment purchase that was approved for 2012.

Councilmember Piekarski Krech explained the purchase was approved as part of the budget.

Ms. Smith noted the list of capital equipment items is also brought back to Council prior to the items actually being purchased.

**Motion by Piekarski Krech, second by Madden, to adopt Resolution No. 13-10 approving Disbursements for Period Ending January 23, 2013**

**Ayes: 5**

**Nays: 0      Motion carried.**

**F. Approve 2012 Pay Equity Report**

Councilmember Piekarski Krech questioned if the City was in compliance or if the report still had to be submitted.

Ms. Teppen explained the City was found in compliance based on the tests that were run by the State of Minnesota on their proprietary software that is developed specifically for pay equity purposes. She noted 80% was the threshold for compliance.

Mayor Tourville confirmed the State requires the City to submit the information for the pay equity report.

**Motion by Piekarski Krech, second by Madden, to approve the 2012 Pay Equity Report**

**Ayes: 5**

**Nays: 0      Motion carried.**

**5. PUBLIC COMMENT:** None.

**6. PUBLIC HEARINGS:**

- A. CITY OF INVER GROVE HEIGHTS;** Consider Establishing a Special Minor Watershed Management Tax District Designated as the Orchard Trail Watershed District
- B. CITY OF INVER GROVE HEIGHTS;** Resolution Ordering City Project No. 2011-15, Orchard Trail Storm Water Improvements as a Water Management Facility Pursuant to Minnesota Statutes Section 103B.245
- C. CITY OF INVER GROVE HEIGHTS;** Resolution Ordering the Project, Authorizing and Approving Plans and Specifications for the 2012 Capital Improvement Program, City Project No. 2011-15 Orchard Trail Storm Water Improvements

Mr. Thureen stated items 6A, 6B, and 6C all related to the same project. He suggested that the Council conduct all three (3) public hearings at the same time.

The Council agreed to conduct all three (3) public hearings at the same time.

Mr. Kaldunski explained the project involves the completion of a number of storm water facilities in the Orchard Trail Development. The development started in 2006 and many of the improvements were initiated but not finalized by the developer. The special tax district would generally be defined by the plat for Orchard Trail, containing 32 lots in the subdivision. If the district is established the project would have to be ordered under the requirements of Minnesota Statute 103B.245 in addition to the process to order a project that would be assessed under the guidelines of Minnesota Statute 429. The proposed improvements include pond excavation to the original grades, deposition of dredged material on Outlot A, rain garden and infiltration basin construction, erosion control, restoration, storm sewer repairs, and other appurtenances as outlined in the feasibility study. He reiterated the storm water improvements would be done to meet the original requirements of the development agreement. The total estimated project cost is \$314,700. The amount proposed to be funded via the special tax district levy is \$139,000. He explained a funding plan was developed after Council received input from property owners at a study meeting. In addition to the special tax district levy, the funding plan includes \$96,000 via special assessments and a City contribution in the amount of \$79,700. An assessment of \$3,000 per lot was recommended. The appraisal analysis recommended an assessment cap of an amount up to \$4,200. The taxes in the special district would be calculated based on property valuation and would decrease annually as the undeveloped lots in the development are built out. A 10 year term was recommended for both the assessments and the

special tax district. He noted residents would have the option of paying off the assessment before the term was expired. He reviewed the tentative project schedule. Bid openings would be scheduled for early May with a construction bid award in late May. Construction would begin in late May or early June and would be completed in 2013. The assessment hearing would be held after project completion, in approximately a year.

Councilmember Piekarski Krech questioned why parcel 13, a small sliver, was left out of the district.

Mr. Kaldunski responded the property owner to the North was encroaching onto the small piece of property, thereby creating an outlot he purchased from the developer to ensure that he could continue to use the improvements he placed on the property.

Councilmember Piekarski Krech confirmed the individual combined the outlot with the rest of his property.

Mr. Lynch stated the outlot was combined with the Lethert property to the North and was not a separate parcel.

Councilmember Piekarski Krech asked Mr. Kaldunski to explain the logic behind the decision to fund the project with a special tax district and assessments.

Mr. Kaldunski explained the decision was based on Council direction received over the course of several study sessions. The original plan was to fund the entire project via the establishment of a special tax district with a 15 year term. Based on feedback received from the neighborhood, the desire to save on interest costs, and to provide an opportunity for residents to pay off a portion of the cost before the expiration of the term, Council directed staff to pursue the use of both funding mechanisms.

Councilmember Piekarski Krech stated she wanted to confirm the rationale behind the decision. The goal was to maximize what the City could do to help and minimize the impact on the residents.

The City Council opened all three (3) public hearings.

Greg Lafrance, 8646 April Ct, stated he was concerned with the costs of the improvements, the impact on the resale value of homes within the development, the value of the homes after the improvements have been completed, and the visual appeal of the rain gardens. He explained the amount of hard scape in the development was minimal compared to the amount of open acreage and Mr. Kaldunski previously stated that the neighborhood was setting the bar in terms of these standards. He opined the storm water was already being handled properly in the development and referenced documentation that the storm water would be contained within the development except for the instances in which a 100-year rainfall event occurs. He was also concerned that the project was based on the specifications of a development agreement that was 10 years old. He opined there was no proof that the existing rain gardens in the City had actually improved water quality. He stated it was unfair to burden residents with additional taxes and questioned why the project was necessary at this point in time.

Mayor Tourville asked Mr. Kuntz to provide a brief recap of the events surrounding the developer's default on their letter of credit.

Mr. Kuntz explained when the Orchard Trail development was platted the City required of the developer a letter of credit for an amount equal to 125% of the estimated cost of the improvements, including street and pond improvements. The letter of credit was posted by the developer in accordance with the terms of the development agreement and was reduced over time as certain improvements were completed. At some point the developer did not perform or did not finish the required improvements. Lakeland Financial defaulted on the letter of credit in the midst of the downward slide of development across the state during the economic downturn. He noted Lakeland Financial also defaulted on 33 other letters of credit that were issued to cities across the metropolitan area. All 33 holders of the letters of credit made claim on the bank. Lakeland Financial went through a bankruptcy proceeding, as did the bank that owned it. He explained that is why at this time there is no letter of credit to back up the developer's obligations.

Mayor Tourville stated the City did seek legal counsel to determine what, if anything, could be done to get the outstanding improvements completed.

Mr. Kuntz stated the City made claim in bankruptcy court and began litigation with respect to forcing the holder of the remaining lots to abide by the terms of the development agreement. All avenues were explored to force the developer to complete the requisite improvements and to force the bank to pay.

Mayor Tourville reiterated the City did everything in their power to help resolve the issue. He asked Mr. Kaldunski to respond to the question regarding the effectiveness of rain gardens.

Mr. Kaldunski explained rain gardens are designed in such a way as to promote the infiltration of the first ½" of rainfall in a residential area. He stated a sand mix is used consisting of 80% sand and 20% compost and the City has worked with the County and the SWCD to develop the rain garden program. He noted there are currently over 50 in the City and to the best of his knowledge they are all functional. The City is responsible for maintenance repairs of the rain gardens. He explained the rain garden improvements were proposed to be located generally on City right-of-way or easements to address maintenance issues.

Councilmember Bartholomew asked Mr. Kaldunski to address the concern that the water does not leave the property and that there is no need for the project.

Mr. Kaldunski stated the northwest third of the development flows to the northwest and the rest of the development flows to the southeast. Eventually both areas do reach the Marcott chain of lakes. The boundary of the northwest area runs right along the edge of the development. In 2006 when the plat was being developed the storm water standards for the northwest area were not in place. The Orchard Trail development was one of the first projects to have higher levels of treatment and storage of the water. The design criteria were intended to hold back the water and keep it on site. He noted generally the water does stay on site unless extreme runoff is experienced. With respect to water quality, all of the basins and rain gardens included in the project are intended to let the ground water soak into the soils and will help clean the ground water. He noted he knows the rain gardens in the City are performing because they have built a number of infiltration basins that work quite well. He noted that usually people notice the items related to aesthetics rather than the actual functionality of the infiltration basins.

Mayor Tourville stated the Council has received comments from residents that there are no storm water or water quality issues in the development and that there is no need for the project. He explained staff's response has been that the storm water on site needs to be dealt with and it also needs to be dealt with to handle not just one storm, but a wet period that may take some of the storm water off site. He reiterated the proposed improvements were part of the original design for the development.

Mr. Kaldunski confirmed the intent was to meet the original standards set forth in the development agreement.

Elizabeth Niemioja, 8658 Applegate Way, asked the Council to not order the project because it was premature and to tweak the plans to find a way to distribute the cost of the project more evenly across the development. She stated not all of the lots are developed. She questioned how the current residents could be assured that they would experience a fair tax distribution when the valuation of the undeveloped lots was significantly less than the properties that were already developed. She noted the residents in the neighborhood have waited a long time to have the project completed and an extreme situation would have to occur in order to need all of the improvements proposed. She opined that the City did not adequately protect the residents from the outset of the project and was reactive to the situation only when things went bad. She asked the Council to consider the fact that many of the residents already paid money that they thought was intended to complete the improvements. She asked the Council to slow down and rethink the project before placing a burden on residents to pay more than their fair share for a project that does not seem absolutely necessary.

Mayor Tourville asked staff to explain how the undeveloped lots would be charged for the project.

Mr. Lynch explained the financing proposal resulted from many Council discussions and input from residents in the neighborhood. He stated staff originally proposed funding the entire project via the creation of a special tax district in which all properties would be taxed based on valuation. The plan took into account a five year period in which all of the remaining lots would be developed. This was meant to help the developed, higher value properties reduce their payment over the term of the district as other

properties were fully developed. The feedback from residents was that they wanted the ability to pay off the cost at a time of their choosing rather than having to pay over the course of the entire term of the district. From there the recommendation was made to split some of the costs between the taxing district and special assessments as it would afford residents the opportunity to pay off the assessment at any time they were able. He reiterated the tax district is based on valuation and takes into account the fact that there are undeveloped lots. He acknowledged that the undeveloped lots would pay less to start, but once constructed would pay an amount commensurate with the value of the lot.

Dan Melling, 1884 86<sup>th</sup> Ct. E., stated the scope of the project is larger than it needs to be at this point in time. He recognized that the neighborhood had responsibility to get the project completed satisfactorily but took issue with the fact that the storm water improvements have not deviated from the original plan and no additional evaluation was done. He stated the rain gardens only filter water for the first half inch of rain and opined that they would not protect water quality in the event of a 100 year rainfall and were only for day-to-day rainfall. He opined that because the storm water does not leave the development the rain gardens are only filtering water that travels a short distance into basins where it will rest until it filters into the soil. He explained he did not understand why the City would pay for a rain garden to filter water that was only going to travel 30 feet. He noted other rain gardens in the City were located near culverts that flow to the river. He stated if his tax dollars were going to be put towards rain gardens he would rather they be applied to an area with a culvert that drains into the river because he would see a benefit in improved water quality in the river. He expressed concern regarding the ongoing maintenance costs of the rain gardens. He opined the project could be scaled back and completed for half the cost.

Councilmember Piekarski Krech questioned how often 100 year rain events occur.

Mr. Kaldunski explained the 100 year event was somewhat of a misnomer because that type of rainfall event is defined by a probability equation which states there is a 1% chance of the event happening annually. The 100 year event is a six (6) inch rainfall. He noted people need to keep in mind that the State is in the midst of a historic drought and the basins are currently able to infiltrate all of the water that gets to them, however there will come a time when the basins will get wet and start holding more water. He explained in terms of water quality, statistically rain gardens that treat the first ½ inch of rain are capturing and treating 80% of the rainfall in any given year. The rain garden treats the water that goes into the development's ground water system which is where residents have their private wells. He noted if drought conditions continue the private wells may experience issues and the infiltration of water would help sustain water levels.

Councilmember Mueller questioned if the rain gardens could be removed from the project.

Mr. Kaldunski stated Council could choose to remove the rain gardens. He noted the original plat also included conditions for the new homes that would be constructed which called for the installation of rain gardens in conjunction with driveways. He explained he was in favor of the rain gardens being implemented as part of the project because in water resources planning the issues that are generally discussed pertain to water quality. The rain gardens would do more to protect the quality of Marcott Lake and the amount of water the rain gardens would treat would make them very effective because the closer they are to the source of the water the more effective they are in capturing pollutants. He reiterated regulations are shifting more and more towards water quality measures.

Councilmember Mueller asked if the City treated the streets in the development with as much sand and salt as gets used on 80<sup>th</sup> Street or Boyd Avenue in the winter.

Mr. Kaldunski stated in his estimation the amounts would be comparable.

Pete Wagner, 1532 86<sup>th</sup> Ct. E., stated he has lived in the area since he was a kid and the land on which the development is located used to be a farm field with several ponds. He opined the project should be delayed because a number of lots in the neighborhood have yet to be developed and it would make more sense to incorporate water treatment measures once the homes are built. He suggested that the project be put off because he does not feel there is a water problem in the development.

Allan Cederberg, 1162 82<sup>nd</sup> St. E., opined the feasibility report should not have been approved on the

Consent Agenda.

Councilmember Piekarski Krech stated Council followed standard protocol in accepting the feasibility report and scheduling the public hearing to consider ordering the project. She noted there would be no sense in holding a public hearing if the project was not feasible.

Mayor Tourville added the Council is able to schedule public hearings on the Consent Agenda.

Mr. Kuntz stated Council called for the hearing on December 10<sup>th</sup> and proper notice was given to hold the public hearing on January 28<sup>th</sup>.

Mr. Cederberg stated in order to assess for an improvement project four (4) criteria need to be fulfilled. He questioned where the feasibility report was for the project.

Councilmember Piekarski Krech stated the feasibility report was accepted by the Council at the December 10<sup>th</sup> meeting and Mr. Kaldunski was in possession of a copy of the report.

Mr. Cederberg questioned if the project had been reviewed by the Planning Commission.

Mr. Thureen stated it was brought before the Planning Commission to formally add the project to the Capital Improvement Program and to determine if the project is consistent with the City's Comprehensive Plan. He explained the Planning Commission found that the proposed project was consistent with the Comprehensive Plan.

Mr. Cederberg questioned if a public improvement hearing was held.

Councilmember Piekarski Krech stated the Council was in the midst of the hearing at that moment.

Mr. Cederberg questioned if the hearing was the assessment hearing.

Mayor Tourville responded in the negative. He reiterated that Mr. Kaldunski previously explained the assessment hearing would be held after the project was complete and the final costs were known.

Mr. Cederberg stated it would be very difficult to prove that the project increased the market value of the properties. He opined that the City use the market value that is listed on property tax statements.

Mayor Tourville explained the City was not in charge of setting market values for property. State statute defines market value and how it is calculated. The County is responsible for assigning market values.

Mr. Cederberg stated assessments require a 4/5 vote and questioned if Council was aware of that fact.

Mr. Kuntz corrected Mr. Cederberg and explained that a 4/5 vote was required to order the non-petitioned project. The assessments, once levied, only require a 3/5 vote.

Mr. Cederberg questioned if the estimated payments included interest.

Mr. Lynch explained the estimated annual watershed tax represented what each property, at its respective market value, would pay over time. He noted there would also be assessments in addition to the watershed tax. He stated a 3% interest rate was proposed.

Mr. Cederberg opined the residents in the development are being asked to pay multiple times for the project.

Jim, 8690 Applegate Way, stated he was the newest resident in the development and when he researched the history of the issue he found that the City had been after the developer for years to finish the project and was unable to get anything resolved. He opined the project could wait because there was no immediate runoff. He questioned why no federal funding or grant money was received for the project as part of the Clean Water Act. He questioned why the City was not proposing to donate any of the materials for the rain gardens as was done in past projects. He asked the Council to wait a few years and reassess the need for the project once the development is fully built out.

Councilmember Piekarski Krech explained the City was installing the rain gardens.

Mayor Tourville clarified as part of the South Grove project some neighborhoods voluntarily participated in the rain garden program and contributed to a fund to pay for the rain gardens themselves.

John Mills, 2019 86<sup>th</sup> Ct. E., stated his main concern related to the City's participation in the project. He opined the City was not contributing anything to the project except for using City employees to complete the engineering, administration, and legal parts of the project.

Mr. Lafrance stated historically the filtration in the area has already done its job because Marcott Lake was one of the cleanest lakes in Dakota County. He explained numerous drainage ponds have been constructed in the neighborhood since the outset of the development. He opined the system was already doing its job without any additional rain gardens.

Mayor Tourville noted historically there was no development on the land which contributed to the water quality of Marcott Lake.

Ms. Niemioja stated most of the homes have been in the development for 4-5 years and the most recent tests of Marcott Lake confirm the quality of the water is still very high.

**Motion by Madden, second by Piekarski Krech to close the public hearing**

**Ayes: 5**

**Nays: 0      Motion carried.**

Councilmember Piekarski Krech stated the issue had been discussed by Council for the past four to five years and it was not something that was just brought up. She explained she was extremely concerned with water quality and at some point something needs to be done to resolve the problem and complete the improvements. She stated standards were created for the area and those standards need to be met. She noted if the City stopped taking letters of credit from developers all development in the City would stop. The City legally followed the procedures set in place for development and the circumstances that led up to the developer's default were a bizarre occurrence. She reiterated the City needed to step in to solve the issues in the development.

Mr. Bartholomew agreed that something needed to be done to meet the standards that were created for the development. He questioned whether or not it would be prudent to wait to complete the project or if anything would change after 12 or 24 months from a financial perspective.

Mr. Kaldunski stated when discussions began regarding completion of the project ten (10) lots were undeveloped. Since that time two (2) of the lots are under construction. He noted he also has had discussions with the owners of six (6) out of the remaining eight (8) lots and they are in various phases of the construction process. He stated his belief was that all of the remaining lots would be developed in the next 3-5 years, if not sooner. The financial analysis predicted two (2) lots would be developed per year. He explained the basins that have existed for a long time have all been identified as existing wetlands and with the 1991 Wetlands Conservation Act the community has to do its due diligence to preserve adjacent wetlands. He noted wetlands could be impacted in a number of different ways and the reason the original plan was approved and the developer was allowed to put the storm water basins over the wetland areas and use the volume for storage was because there was a commitment made to protect those wetlands. If the project is not completed some of the wetlands will not receive the level of protection that they should.

Mr. Bartholomew asked Mr. Kaldunski if he thought it was critical to complete the project at this juncture.

Mr. Kaldunski stated completion of the project was critical in order to adequately protect the wetlands.

Mr. Bartholomew questioned if waiting 12 or 24 months to complete the project would gain anything or if it would be harmful.

Mr. Kaldunski stated although it is hard to quantify he would expect that the wetlands would be damaged if the project was delayed 12 months or longer. He reiterated in order to follow the standards set forth in the 1991 Wetlands Conservation Act, the prudent thing to do would be to complete the project.

Mayor Tourville questioned if the Council could consider doing the project in phases if they first established the special subwatershed management tax district. He stated this would provide an opportunity to hold off on installing the rain gardens until the remaining lots are developed. He commented he did not foresee the development flooding in the near future and overflowing onto the adjacent land. He noted there may be some benefit to dredging the ponds to provide some protection for the additional homes that would be built.

Mr. Kaldunski stated if the special tax district was established pieces of the project could be completed and if other things needed to be done in the future a feasibility study could be done and the improvements could be added at that time.

Councilmember Piekarski Krech stated another concern is that the costs of the project will only increase if they wait.

Mr. Kaldunski stated the numbers that were being discussed were based on current pricing. He noted another option would be to direct staff to put the project out for bid to see what the actual numbers come in at and then consider moving forward with the project at a later date. He anticipated construction costs would start to increase in the near future.

Ms. Niemioja reviewed the numbers from the original letter of credit posted in 2004. The grading and erosion control, street grading and drainage cost \$120,000. The cost for retaining walls was \$20,000. The storm sewer and storm water ponds were \$130,000. Infiltration features for specific lots were \$30,000. The total was \$300,000, not including administrative fees.

Mayor Tourville stated he would be in favor of establishing the special tax district in order to look at improvements that are needed going forward. He opined he was not sold on the rain gardens being necessary for a rural development. He explained it may be a good idea to allow the remaining lots to develop and see what is needed at that point in time. He agreed it would be beneficial to perform some dredging and pond maintenance. He noted he was also concerned with increasing construction costs.

Mr. Kuntz stated the three (3) funding sources that were set up have some sort of allocation to balance it. The way the financial consultants have set up the tax district was intended to allow the absorption of new homes into the district. The City did not assign certain improvements to be funded by special assessment and certain improvements to be funded via the special tax district. Those were just two mechanisms by which the whole project was to be funded. If proposed improvements are going to be removed from the overall scope of the project some analysis is necessary to determine how that will affect the funding sources. He suggested that the Council consider establishing the tax district and directing staff to put the project as proposed out to bid with the rain gardens as an alternate bid. The Council would then have an itemized number in the alternate bid to assist with the decision on whether or not to move forward with the project.

Mayor Tourville stated the Council would have real numbers associated with the project. He questioned if it would be beneficial to separate other improvements into alternate bids in addition to the rain gardens.

Mr. Kaldunski explained there are other items related to the overall storm water volume such as excavation of the large basins, storm sewer repairs, and erosion control. He stated it would be easy to set up if Council directed staff to take care of the things that got damaged and the volume issues related to storm water flood management as the base bid and then have alternate bids for the rain gardens.

Mayor Tourville stated the items that need to be fixed or repaired should be bid separate from the basins and the rain gardens.

Mr. Melling questioned if there would be additional opportunities for public input if the project was put out for bids.

Mr. Kuntz stated the bids would be brought back to another public meeting, but there would be no notice requirements as it would not be a public hearing.

Councilmember Piekarski Krech stated citizens always have an opportunity to speak at any public meeting.

Mayor Tourville stated staff could notify the neighborhood of when the meeting would be held to review the costs of the project.

The Council agreed staff should notify the neighborhood.

**Motion by Madden, second by Bartholomew, to adopt Ordinance No. 1261 Establishing a Special Subwatershed Management Tax District Designated as the Orchard Trail Subwatershed District Pursuant to Minnesota Statutes Sections 103B.201 to 103B.251 for Land in the City of Inver Grove Heights Contained within the Lower Mississippi River Watershed**

**Ayes: 5**

**Nays: 0      Motion carried.**

**Motion by Piekarski Krech, second by Madden, to table items 6B and 6C to the May 13, 2013 Regular Council Meeting**

**Ayes: 5**

**Nays: 0      Motion carried.**

**Motion by Piekarski Krech, second by Madden, to adopt Resolution No. 13-11 authorizing staff to prepare plans and specifications, seek bids, and prepare alternate bids as directed for City Project No. 2011-15, Orchard Trail Storm Water Improvements**

**Ayes: 5**

**Nays: 0      Motion carried.**

**7. REGULAR AGENDA:**

**COMMUNITY DEVELOPMENT:**

**A. CAROL FETZER;** Consider a Variance to Allow Construction of a Porch Addition 7 Feet from the Property Line Whereas 10 Feet is required for property located at 2612 Borden Way

Mr. Link stated the applicant has proposed the construction of a porch addition over an existing deck. The deck is setback seven (7) feet from the south property line. Ordinance states that an open deck requires a setback of five (5) feet. Once the deck is enclosed a setback of ten (10) feet is required. Planning staff recommended approval of the variance with the rationale that the property was a corner lot that creates some limitations since the structures have to be set back from two (2) front yards, and the request was a typical residential addition. Planning Commission recommended denial of the request as they could not identify a practical difficulty and felt there were other options available on the property. He noted if the variance was approved staff recommended imposing a condition that the property owner combines the two (2) lots because the house straddles the lot line. He stated it was a simple administrative process that could be completed with Dakota County.

Councilmember Madden stated it appears as though the house next door has the same problem with the lot line running through the middle of the property.

Mr. Link explained the others in the neighborhood could have already been combined into single tax parcels.

Councilmember Piekarski Krech stated the issue should be looked into further. She explained she understood the Planning Commission's perspective, but was not prepared to ask the property owner to relocate a deck that already existed.

Councilmember Madden stated the addition would not negatively affect the neighbors.

Mayor Tourville asked if the property owner understood the condition of approval to combine the lots.

The applicant responded in the affirmative.

**Motion by Piekarski Krech, second by Madden, to adopt Resolution No. 13-12 approving a Variance to Allow Construction of a Porch Addition 7 Feet from the Property Line Whereas 10 Feet is required for property located at 2612 Borden Way**

**Ayes: 5**

**Nays: 0      Motion carried.**

**B. EVAN MOLDE;** Consider a Resolution and Related Improvement Documents for a Conditional Use Permit to Exceed the Impervious Surface Requirements in the Shoreland Overlay District for a Parking Lot Addition for property located at 6240 Carmen Avenue

Mr. Link stated tenants of the warehouse are expanding their production area and with that have added an additional loading dock that blocks approximately six (6) parking spaces. The proposal is to add parking on the east side of the structure to make up for the spaces that were lost. The impervious surface on the property would increase slightly from 44% to 46%. Planning staff found the request met the conditional use permit criteria and recommended approval. The Planning Commission also recommended approval.

Councilmember Piekarski Krech questioned if any comments were received from the DNR.

Mr. Link responded in the negative.

Mayor Tourville asked the applicant if he understood and agreed with the proposed conditions.

The applicant responded in the affirmative.

**Motion by Piekarski Krech, second by Mueller, to adopt Resolution No. 13-13 approving a Conditional Use Permit to Exceed the Impervious Surface Requirements in the Shoreland Overlay District for a Parking Lot Addition**

**Ayes: 5**

**Nays: 0      Motion carried.**

**C. HALLBLADE TRAILER SALES;** Consider a Resolution relating to an Appeal of a Staff Interpretation of the Zoning Ordinance Pertaining to Allowing an Outdoor Retail Sales Lot on property located South of Tractor Supply

Mr. Link reviewed the location of the property. He stated the applicant his proposing to expand his sales lot to the new location just south of Tractor Supply. He explained there is a disagreement between the applicant and City staff on how to interpret the ordinance and whether or not the proposed use is allowed. The applicant appealed staff's interpretation. The applicant's interpretation is that the trailer sales operation is general retail with outdoor storage, similar to Tractor Supply, and that the use is allowed. The Planning Commission agreed with the applicant's interpretation on a 5-3 vote. One of the rules of ordinance interpretation is that you use the most definite and specific use. In this case Planning Staff found "general retail" to be very broad and thought a more appropriate use as defined by the ordinance was "open sales". The trailer sales would meet the definition of open sales. Planning staff did not believe the proposed use was similar to that of Tractor Supply, and instead would be more akin to that of auto sales because of the type of use. When considering the use as open sales, staff did not believe the use was allowed and found it to be a prohibited. He explained staff believes their interpretation is consistent with previous City Council rulings. In approving the conditional use permit for the current operation in 1998 the use was identified as "open sales". The conditional use permit was for open sales and open storage. In 2003 the City Council amended the Arbor Pointe ordinance to delete auto sales, boat and marine sales, and outdoor equipment rental. All uses that staff found to be similar to trailer sales. In 2005 the property was rezoned to B-3. He noted it was not a typical B-3 zoning because the City Council had concerns about many of the uses that are allowed in B-3 as they did not believe the uses were consistent with the Arbor Pointe neighborhood. An agreement was entered into between the City and the property owner at that time which specifically identifies the uses that are allowed and those that are prohibited. There were more than five dozen uses in the standard B-3 zoning district that are not allowed on this B-3 property. Some of the uses that are allowed on a typical B-3 but are not allowed on this property include: auto sales, boat and marine sales, home improvement outdoor sales, building materials sales, outdoor garden sales, auto uses, and open sales. In 2005 the City approved Tractor Supply on the property to the north. One of the conditions of approval was that the outdoor storage and the display area not be allowed

along the highway. He explained the City has always seen the Arbor Pointe neighborhood as being unique because of its access, visibility, and it has been termed a gateway to the City from the south. The language in the ordinance references high intensity, quality retail with an attractive visual appearance.

Vance Grannis Jr, 9249 Barnes Ave, stated the applicant was not Hallblade Trailer Sales. They are the prospective buyer of the property. He explained he represented the owners of the property, Walter and Wilfred Krech. His clients took exception to the statement made by staff that “retail general has always been interpreted to mean retail sales and inventory located within a building”. He opined that statement was not true and the clearest example was Tractor Supply, which is under the same restrictions that apply to the property in question. He explained without the Krech’s knowledge the zoning on the property was changed from standard B-3 and placed into the Arbor Pointe PUD. When Tractor Supply came before the Council to build on the property to the north the Krech’s raised the question of how the rezoning occurred without their knowledge. The minutes of that meeting reflect Mr. Krech’s request for the property to be zoned B-3 and the Council’s condition that they did not want car sales or fast food restaurants on the property. Mr. Krech agreed and Council changed the zoning back to B-3 with the agreement that was referenced by Mr. Link. He noted all of this was done so Tractor Supply could open their store. He contended that Tractor Supply has the same outdoor sales that staff determined to be a prohibited use. He explained the Krech’s were not asking for the property to be rezoned, they were asking that the zoning that was applied to the Tractor Supply store be used for this case so the property can be sold. The Krech’s cannot sell the property until the prospective buyer can be certain that the use will be allowed. He noted the Planning Commission indicated that the Council was hoping for a higher use than trailer sales, but nobody has been able to define what that higher use would be. He stated the property has been for sale for at least 15 years, has been actively marketed by different realtors, and no one has been able to find a buyer other than Mr. Hallblade. He opined the definition staff is relying upon is unconstitutionally vague because nobody is able to tell the property owners what it means and it is open to arbitrary interpretation. He added they do know that the B-3 outdoor sales language was used by Tractor Supply for the neighboring property to the north and that language should be upheld. He asked Council to also consider that the new business would bring 5-10 new employees to the City and has plans to expand once it opens. The result will be that thousands of new people will be visiting the area where a number of businesses are hurting and would welcome more customers. He noted this would be a benefit to the whole community because the proposed business is the largest trailer sales business in the State and they have a lot of customers. He asked that the Council uphold the Planning Commission’s recommendation and determine that the proposed use is allowed under the ordinance.

Councilmember Madden questioned how many trailers would be displayed and where they would be stored on the property.

Mike Hallblade, owner of Absolute Trailer Sales, stated in the winter months they have approximately 200 to 250 trailers. A lot of them are stacked and stored in a staging area. He opined it was not a lot different than what Tractor Supply was doing because they display 20 foot high outdoor storage rack systems and trailers outside of the store. He explained the appeal of the property is the opportunity to expand the operation.

Councilmember Madden agreed with the statement regarding Tractor Supply. He asked if the intent would be to store the trailers on the property in a neat and orderly fashion.

Mr. Hallblade responded in the affirmative. He stated that is part of the reason why the property he wants to purchase is so perfect. The topography is flat and conducive to an organized display.

Councilmember Piekarski Krech stated Mr. Hallblade has cleaned up his existing property a lot and the topography makes product display difficult.

Councilmember Madden reiterated the proposed use was not much different than that of Tractor Supply.

Mayor Tourville clarified that staff had a document that listed the uses that were and were not allowed in the special zoning district.

Mr. Link stated there was a legal agreement between the property owner and the City that specified the different uses that were allowed. The agreement was a condition the City imposed when the property was rezoned to B-3.

Mayor Tourville asked if all of the parties involved signed the legal document.

Mr. Link responded in the affirmative. He explained Mr. Krech asked for the property to be rezoned to B-3 and the Council reviewed the list of allowable uses in a B-3 district and discovered a number of uses they did not feel were appropriate for the property. As a condition of approval of the rezoning the agreement was executed. He noted exhibit B in the Council's packet included the acceptable uses and exhibit C detailed the specific prohibited uses.

Councilmember Madden stated there was a clause under the list of acceptable uses that stated, "acceptable uses also included uses determined to be substantially similar to those uses listed above pursuant to the procedures and requirements set forth in the Inver Grove Heights City Code". He opined the proposed use should be considered to be substantially similar to that of Tractor Supply.

Councilmember Piekarski Krech stated her recollection was that the rezoning was granted in large part because it was originally taken away as part of the Arbor Pointe ordinance.

Willy Krech, 9574 Inver Grove Trail, explained when Concord Street was extended it went through the property where he had his equipment stored, zoned B-3, and in return they took the Krech farm market land that was also zoned B-3. He stated he could have placed his rental yard or done anything he wanted on that property. He recalled that the land was always zoned B-3 until it somehow was included in the Arbor Pointe PUD. He explained an out of court settlement was reached to restore the zoning on the property back to B-3 and the only conditions that were imposed were that there be no fast food restaurants and no car sales or repair business. He stated the proposed use for the trailer sales would be beneficial to have in the City and nobody else is interested in the property. The problem is the property was set up as a B-3 construction yard with outside storage because that is what was moved from the other property and that is what was already there with the farm market. He noted the property was too expensive for him to retain and it would be beneficial to sell to a party that was interested in developing the land.

Mayor Tourville stated the whole argument centers around interpretation. He read the specific prohibited uses and stated he did not see auto sales listed.

Mr. Link stated the document that was signed by Mr. Krech had 65 uses that are allowed in a typical B-3 and are not listed on the document. Auto sales are one of those uses. He reiterated there are more than five (5) dozen uses allowed in B-3. What was agreed upon between the City and Mr. Krech is that five (5) dozen of the uses allowed in B-3 would not be allowed on the property. Auto sales is not listed as an acceptable use in exhibit B of the Council packet.

Mayor Tourville clarified that auto sales did not appear on the list for acceptable uses, nor did it appear on the list of prohibited uses.

Mr. Link explained any use that is not listed in the zoning ordinance is considered to be prohibited.

Mr. Grannis stated the discussion regarding auto sales was irrelevant. He explained when the agreement was drafted it was written in a way to permit Tractor Supply to open and operate in the City with outside sales. Now his client is being told that the same agreement prohibits outside sales. The intent at the time the ordinance was changed was to allow Tractor Supply to open. He noted there is nothing in the agreement that states trailer sales are not allowed. He opined it was widely known that Tractor Supply would have outdoor sales and that was considered retail. He reiterated his sentiment that it was incorrect to say the City has always defined retail as only in a building because it is not in the ordinance. He stated the proposed use would not be any different than what is occurring on the neighboring property, covered by the same agreement.

Mayor Tourville questioned if a precedent would be set for the B-3 district if the Council determined the use was similar.

Mr. Kuntz stated the agreement was recorded against the property. The applicant had previously come to the City to request that the property be removed from the Arbor Pointe PUD and restored to a B-3 zoning designation. When the City approved the rezoning request it was with the condition that the applicants enter into an agreement which outlined the acceptable and prohibited uses on the property. He referenced definition 1.7 on the second page of the agreement, which refers to general prohibited uses, and states, "general prohibited uses means all uses in B-3, except acceptable uses". Section 4.2 on the third page states, "the landowner contracts and agrees with the City and does hereby impose a restriction on the property and declares that the property will never be used for a general prohibited use". Section 1.6 states "the specific prohibited uses are everything that is listed on exhibit C". He explained all parties involved agree that auto sales is not the question because there is no debate that trailer sales is not the same as auto sales. It is not a question regarding exhibit C because that is merely a list of all the specific prohibited uses, on which trailer sales is not identified. He explained the way the agreement reads is that in order for a use to be allowed it has to be in the acceptable uses. In the B-3 zoning district there are a number of uses, one of which is something called an "open sales lot". By the definition of "general prohibited use", because it is not listed as an acceptable use it becomes a prohibited use. That is the reason why the applicant is arguing that the operation would be retail with open storage, because that designation is on the list of acceptable uses, and they feel their use would be the same as Tractor Supply. Planning staff's argument is that when they look at the Tractor Supply operation and compare that to the existing trailer sales operation they do not look the same. Because a B-3 use is an open sales lot, and because that use clearly is not listed in the agreement, it is a general prohibited use. The property owner claims their use would be retail with open storage because their operation would be the same as Tractor Supply.

Mayor Tourville confirmed if the use is not on the list of acceptable uses, it is prohibited.

Councilmember Madden stated that was true unless the use was substantially similar to an acceptable use.

Councilmember Piekarski Krech questioned how Tractor Supply was designated.

Mr. Link explained Tractor Supply is permitted retail with a conditional use permit for outdoor storage.

Mayor Tourville asked if Mr. Hallblade would have to apply for a conditional use permit for outdoor storage.

Mr. Link responded in the affirmative.

Mr. Grannis reiterated that Tractor Supply was not just B-3, it is zoned B-3 with the very same agreement being discussed.

Councilmember Bartholomew concurred with the Planning Commission's finding that the proposed use would be retail with outdoor storage. He stated the neighboring property has the same operation and he did not see anything wrong with allowing the proposed use on the property. He supported the appeal.

**Motion by Bartholomew, second by Madden, to adopt Resolution No. 13-14 by the City Council as the Board of Adjustment and Appeals Determining the Interpretation of the Agreement Restricting Land Uses as it Relates to Exhibit B regarding Acceptable Uses**

**Ayes: 5**

**Nays: 0      Motion carried.**

**8. MAYOR & COUNCIL COMMENTS:**

**9. EXECUTIVE SESSION:**

**A. Discuss Collective Bargaining**

**10. ADJOURN:** Motion by Mueller, second by Madden, to adjourn. The meeting was adjourned by a unanimous vote at 10:55 p.m.