

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, FEBRUARY 25, 2013 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, February 25, 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, City Attorney Kuntz, Parks & Recreation Director Carlson, Community Development Director Link, Public Works Director Thureen, Finance Director Smith, Police Chief Stanger, Fire Chief Thill, and Deputy Clerk Kennedy

3. PRESENTATIONS: None.

4. CONSENT AGENDA:

- A. i) Minutes – February 11, 2013 Council Study Session
ii) Minutes – February 11, 2013 Regular Council Meeting
- B. **Resolution No. 13-17** Approving Disbursements for Period Ending February 20, 2013
- C. **Resolution No. 13-18** Approving Property Access Agreement with the Minnesota Pollution Control Agency
- D. **Resolution No. 13-19** Authorizing the City to Enter into an Agreement with Dakota County for Engineering, Highway Construction, Signal Revisions for County Project No. 56-10, Traffic Signal Agreement No. 13-01, City Project No. 2013-07
- E. **Resolution No. 13-20** Approving Joint Powers Agreement between Inver Grove Heights, Dakota County and West St. Paul for the Design and Construction of Traffic Signal Improvements at the Intersection of Babcock Trail (CSAH 73) and Mendota Road (CSAH 14) as City Project No. 2013-08
- F. Accept Resignation of Environmental Commissioner
- G. Approve 2013 EAB Work Plan for 2012-2014 Forest Bonding Grant
- H. Approve 2013-14 VMCC Ice Rates
- I. Renew Fairway Flyerz Discs, Inc. North Valley Disc Golf Operations Agreement
- J. Approve Donation Request from Inver Grove Heights Days Committee
- K. Personnel Actions

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

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT:

Duane Schiefelbein 8555 S. Robert Trail, opined that the storm water utility fee was unfair to those residents who are not served by City sewer or water services. His understanding was that the costs were removed from property taxes and set up as a separate fee to increase revenues from non-profits and businesses. He opined it did not make sense to charge residents that do not generate storm water and the sliding scale to calculate the fee should have gone down to zero (no fee). He stated he already pays for his well and septic systems and it is unfair to ask him to pay for somebody else's services.

Councilmember Piekarski Krech explained she did not have City services either but voted in favor of the storm water utility fee because she wanted all property owners to pay for what the City is mandated to do for storm water. She clarified that the fee is not for a septic system or for sewer, it is for storm water. She stated everyone generates storm water unless they have nothing on their property at all. The City is required by the federal government to meet certain criteria and standards and if the costs associated with that were included with property taxes there would be a number of people in the City that would pay nothing and those who were charged would pay more as a result. She noted the sliding scale for the fee

is structured so people pay for what they generate.

Mr. Schiefelbein reiterated his belief that the City should have given consideration to those who did not have City services. He stated 90% of his property is foliage and there is no runoff.

Mayor Tourville explained Mr. Schiefelbein's property was at the lowest end of the scale and he was being charged the minimum amount. He stated he understood the concern was less about the cost and more about the principal of the fee. He noted Council discussed implementing a storm water utility fee for almost five (5) years and finally moved forward with it after considering the fact that there were a number of properties in the City that generated storm water and were not paying for it.

Mr. Schiefelbein stated he still was not satisfied even though he was charged the minimum fee.

Mayor Tourville explained the sliding scale was not going to go down to zero because then they would be back to square one with some people paying more than their fair share because others were paying nothing.

Mr. Schiefelbein opined the City picked up enough additional revenue from the non-profit and commercial properties to offset the minimal fee he was charged. He stated he still did not understand why he was being charged and unless the City could demonstrate a benefit to his property he did not feel he should have to pay the fee. He suggested that the costs should go back to being recovered through the property tax system.

Mayor Tourville asked Mr. Schiefelbein if he thought it would be fair for everyone else in the City to pay for the storm water work that the City is required to do to comply with state and federal mandates as long as he did not have to pay anything.

Mr. Schiefelbein responded in the affirmative. He stated the fee was unfair because there was no direct benefit to him. He explained he pays more money for the maintenance of his sewer and well systems.

Mayor Tourville reiterated that the well and septic systems had nothing to do with the storm water utility.

Jim Brown questioned if the revenue collected from the storm water utility fee was set aside in a separate fund.

Mayor Tourville responded in the affirmative.

6. PUBLIC HEARINGS:

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

A. BILL KRECH; Consider a Resolution and Related Improvement Documents relating to a Conditional Use Permit to Exceed the Impervious Surface Maximum for property located at 9074 Alger Court

Mr. Link reviewed the location of the property. The applicant is currently constructing a new home on the property and has plans for an additional 3,100 square feet of hard cover. The request met the standard conditional use permit criteria of the ordinance and also complied with the more specific impervious surface conditional use permit criteria. Engineering staff has been working with the applicant on a storm water plan and custom grading agreement. Both Planning staff and the Planning Commission recommended approval of the request.

Councilmember Madden questioned if the applicant agreed with the conditions of approval.

Bill Krech, 7755 Argenta Trail, responded in the affirmative.

Motion by Mueller, second by Madden, to adopt Resolution No. 13-21 approving a Conditional Use Permit and Related Improvement Documents to Exceed the Impervious Surface Maximum for property located at 9074 Alger Court

Ayes: 5

Nays: 0 Motion carried.

B. CITY OF INVER GROVE HEIGHTS; Consider Resolution relating to a Variance to Allow an Accessory Structure 10 feet from the Front Property Line whereas 30 feet is required for property located at 8373 Alta Avenue

Mr. Link explained the request was for a variance from the front yard setback for an accessory structure. Ordinance requires a front yard setback of 30 feet and the structure being considered has a setback of ten (10) feet. The structure is a 10' by 12' storage shed that is already located in the northeast corner of the property. Staff became aware of the issue after a complaint was received. Planning staff determined the shed could be moved a little to the west in order to comply with the setback requirement and did not believe that the setback standards would preclude a reasonable use of the property. Both Planning staff and the Planning Commission recommended denial of the request.

Mayor Tourville stated there was a difference of opinion with respect to whether or not the structure could be moved to the west.

Mr. Link stated there was a slope to the property but staff believed the structure could be moved to the west in order to comply with the setback requirement.

John Gieske, 8373 Alta Avenue, stated the structure could not be moved to the west.

Councilmember Piekarski Krech questioned why it would not be possible to move the structure.

Mr. Gieske stated the structure would still be in violation of the setback requirement for the property line to the north. He explained if the structure could have been moved he would have done it a long time ago.

Mayor Tourville asked if the structure would be in violation of the setback requirement if it was moved to the west.

Mr. Link responded in the negative. He stated the required setback from the north property line was only five (5) to ten (10) feet and if the structure was moved 20 feet to the west it would still comply with that setback. He explained the most critical issue was the topography and moving the structure would require some grading. He noted the applicant believes that the slopes are too steep to be able to relocate the structure, even with grading.

Councilmember Mueller stated it looks like the property has a 40' drop as you move to the west.

Mr. Link explained that it does not drop that much at the proposed location for the structure.

Councilmember Mueller confirmed the setback from the northern property line would not be an issue.

Mr. Link reiterated the setback from the north would be ten (10) feet and the structure was currently at that distance, so the applicant would be able to move the structure directly to the west and still maintain the setback from the north.

Councilmember Piekarski Krech questioned how much right-of-way was there.

Mr. Link stated the road was very narrow.

Councilmember Mueller stated the gravel road was approximately the width of a car and a half and was crowded to the west because of the wash off the hill to the east.

Mr. Gieske stated there was a 40' drop from the level of the road down to his house and another steep slope to the west of his house that prevents him from being able to move the structure.

Councilmember Mueller stated he could only see the roof of the shed behind the six (6) foot high fence.

Mayor Tourville stated the big concern is with setting a precedent. He explained he looked at the property and it was difficult to determine if the slope would be too steep to the west because of the snow cover. He questioned why the applicant chose the current location of the shed.

Mr. Gieske explained the people he hired to build the shed chose the spot because they thought it was the only place it could go on the property.

Councilmember Bartholomew stated when he visited the property it appeared as though it would be feasible to move the structure but there was a lot of snow on the ground and it was hard to see the actual grade. He explained he believed staff's opinion that the structure could be moved given that the contour map shows a five foot drop to the proposed location. He suggested that the item be tabled until the spring so it will be easier to see the grade of the property. Then a final determination can be made as to whether or not it would be feasible to move the structure.

Mayor Tourville stated both parties could meet on the property in the spring, after the snow has melted, to determine if the structure could be relocated.

Mr. Gieske agreed to wait until the spring and stated he appreciated Council's consideration.

Motion by Madden, second by Piekarski Krech, to table consideration of the item until May 13, 2013 and to direct staff to extend the first 60 day deadline for another 60 days.

Ayes: 5

Nays: 0 Motion carried.

ADMINISTRATION:

C. CITY OF INVER GROVE HEIGHTS; Review and Discuss Draft Ordinance Regulating the Feeding of Deer

Mr. Lynch explained at a January work session the Council heard discussion and concerns about the current deer population and the feeding of deer in the City. Council directed staff to inform the community and advertise the intent to move forward with a proposed ordinance that would prohibit the feeding of deer in order to get as much feedback on the issue as possible.

Ned Hunter, 9836 Alaureate Ct., stated he and his wife feed the deer because they enjoy it. They like living in the country and enjoy watching the animals. He explained they only feed the deer enough to supplement their regular diet. He opined if they stop feeding the deer they will survive but it will be at the expense of private gardens, shrubs, and landscaping. He stated everyone recognizes the problem and agrees there are too many deer. He opined that the proposed ordinance would not address the problem of overpopulation because the deer are reproducing at an alarming rate. He suggested that all metro cities work together to solve the problem and opined the only humane solution would be to organize a controlled, mass slaughter of the deer.

Mayor Tourville explained 4-5 years ago the DNR spoke to many cities in the metro area about urban deer feeding. He stated the DNR made it very clear that residents were not doing the deer any favors by feeding them in urban areas because the deer become accustomed to it and take part. He noted the DNR also advised cities to adopt control measures because the feed on the ground created problems for the deer and made them more susceptible to disease. He explained there have been a number of car accidents involving deer and people in the urban residential areas have complained about the effects of the increased population. The DNR also linked the coyote population to the high volume of well fed deer in the City.

Councilmember Madden added that the DNR is also concerned with the introduction of chronic waste disease within the deer population. He suggested Council may want to consider limiting the ordinance to the urban areas of the City because that is where the majority of the problems seem to be concentrated.

Vance Grannis, Jr., 9249 Barnes Ave. E., stated he did not attend because he wanted to feed the deer. He attended because he does want to feed cardinals, chickadees, blue jays, quail, grouse, ring necked pheasants, and other birds. He opined that the proposed ordinance was too broad and would prohibit the feeding of birds and squirrels in addition to deer. He opined if his neighbors want to feed the deer they should be allowed to do so. The problem in the City is the overpopulation of deer and prohibiting feeding is not going to reduce the number of deer. He asked the Council to get answers to several questions before proceeding with the ordinance. He questioned what evidence the City had that feeding the deer caused the overpopulation problem and what evidence the City had that not feeding the deer would reduce the deer population. He also questioned what evidence there was to prove that not feeding the

deer would not cause the deer to eat even greater quantities of landscape plantings throughout the City. He asked what evidence the City had that the ordinance significantly restricting archery hunting did not cause an explosion of the deer population, and what evidence the City had that expanding archery hunting would not correct the deer problem more than a feeding ban. He opined that the proposed ordinance needed to be totally rewritten to change the overly broad approach to the issue of an overpopulation of deer.

Ken Nuorala, 3750 102nd St. E., stated he lived on a private street and two (2) sides of his property are state scientific nature areas and he has a heavy population of deer around his property. He explained he attended seminars on landscaping and there are shrubs and plants that deer will not eat, and there are various products one can spray on their vegetation to prevent deer from eating it. He noted fencing also works great to keep deer away from landscaping. He asked Council to take into consideration the areas in which they ban feeding because people who live on acreage and not in the urban area should be allowed to continue feeding if they choose.

Mayor Tourville most of the complaints have come from the urban, residential areas of the City. He stated the feeding ban is not intended as a mechanism to control the deer population. He explained the DNR has seen success with the lack of urban feeding because it allows the deer to be in their natural habitats in larger areas. He reiterated there are more coyotes coming into the urban area because they are following the deer. The premise was to educate people to help redirect the population out of the urban area.

Amy Hunting, 2645 96th St. E., opposed the proposed ordinance as written. She stated she moved here 13 years ago specifically because of the natural type of environment the city had to offer. She lives on a 3 acre lot that is heavily wooded. There is a variety of wildlife that lives in the wooded area and they love to watch the deer and other animals that come through their yard. She noted the deer would be there whether they fed them or not. She agreed it was not smart to have deer congregating in more densely populated, residential areas because of the hazards they can create. She suggested that the ordinance be rewritten to specify the urban areas where feeding would be prohibited, or to limit the feeding to lots that meet a certain size standard.

Mayor Tourville questioned if staff's interpretation of the ordinance was that it would also ban the feeding of birds and squirrels.

Mr. Lynch stated that was not the intent of the ordinance because that was not the direction received from Council.

Councilmember Piekarski Krech stated the part that struck her was the language pertaining to feeding on the ground "in a manner that attracts, or is designed to attract, or is likely to attract deer". She noted anyone who feeds birds will end up with feed on the ground that is likely to attract deer. She opined that sentence may need to be removed or reworded because there are many circumstances that could be construed as "likely to attract deer". She stated because the City is such a mix of urban and rural areas, the focus of the ordinance should be limited to urban residential areas and more education should be done to inform people about the dangers of urban feeding.

Willy Krech, 9574 Inver Grove Trail, stated when you are raised on a farm you have a natural inclination to want to help animals. He opined in the winter, when there is a lot of snow, there is nothing wrong with providing some food for the deer to help supplement their diet. He noted that his situation was different because he was on a 5 acre lot in a rural area of the City. He explained he could understand the need for regulations in the residential areas that have smaller lots and are more densely populated, but not in the rural areas.

Councilmember Madden stated his main concern was regulation within the urban area. He stated he would be in favor of excluding large lots with acreage that are in the rural areas.

Karen Taylor, 8815 River Heights Way, stated she was well versed on the deer situation in the City after dealing with the bow hunting ordinance a few years ago. She opined that the DNR was not aware of the full extent of the problem with the deer population in the City. She explained she quit feeding deer a few years ago because she decided it really wasn't in the best interest of the deer to spend the money to feed

them so their neighbors could hunt them. She noted she still feeds birds and it would be impossible to keep all of the bird seed off of the ground. She opined that the City's government should not have to regulate the feeding of deer.

Mayor Tourville stated the City became involved because of the large herds that have moved into the urban areas. He noted the DNR does not do any inspections or perform any control measures because in their opinion the City has done nothing to help itself control the problem.

Ruth Ann Rechtzigel, 10620 Courthouse Boulevard, opined the DNR is not always correct. She suggested signage could be put up on the roadways to warn drivers in the areas where the deer population is especially dense. She stated feeding wildlife is a hobby and people do it because they enjoy it.

Councilmember Madden stated the ordinance should be rewritten so the intent is to regulate the urban areas.

Councilmember Mueller suggested that the height regulations for bird feeders be removed and eliminating the language regarding feed that ends up on the ground.

Councilmember Bartholomew stated everyone seems to be in agreement that the focus should be on the urban areas because that is where the majority of problems and complaints originate. He added the focus should also be on intent because incidental feeding that occurs is not the same thing. He agreed that the height of the food vessel should not be the criteria. He opined the criteria should be intent. If someone is willingly and knowingly feeding the deer they should be educated about the issue and if the feeding does not stop then it should be considered as a violation.

Councilmember Madden stated the intent was to solve the problem in the urban area, not to limit the feeding of deer.

Councilmember Piekarski Krech stated the educational component is critical and could eliminate the need for an ordinance.

Mayor Tourville stated many people in the urban areas have said they will continue to feed the deer because there is nothing that prohibits them from doing it.

Mr. Lynch explained the City currently does not have any authority to respond to complaints of feeding because there is nothing in the City Code that prohibits the action.

Mr. Kuntz stated he has heard versions of the same ordinance debated in other communities. The reason there is a five (5) foot height requirement included is because it was usually put in at the request of those who did feed birds. The idea was to create a safe haven such that if the feeder was 5' 3" above the ground the ordinance did not apply and there was no question regarding interpretation and everyone would understand what the regulation was. If the Council directs staff to pursue the distinction between urban and rural there would also have to be direction regarding what those designations specifically mean because there are a number of different definitions that could apply. One of the reasons why other communities did not want to introduce the intent situation was the challenge or difficulty that came with trying to prove intent. The language "or is likely to attract deer" may be the main source of concern from those who feed birds and could be deleted.

Councilmember Madden suggested that the urban versus rural areas be separated out by zoning designations.

Councilmember Mueller stated the ordinance should be written such that a citation will be issued for a violation after three (3) complaints of deer feeding are received.

Mayor Tourville stated the complaints would have to be substantiated or verified in some way otherwise people will just file three (3) complaints so their neighbor receives a citation. There needs to be evidence that deer are actually being fed. He reiterated the intent is to focus on the problems in the urban areas.

Councilmember Bartholomew suggested that information from the DNR regarding urban feeding be placed on the City's website. He stated he supported the idea of mapping out the designated areas where feeding would be prohibited.

8. MAYOR & COUNCIL COMMENTS:

9. ADJOURN: Motion by Bartholomew, second by Mueller, to adjourn. The meeting was adjourned by a unanimous vote at 8:40 p.m.