

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, APRIL 22, 2013 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, April 22, 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, Community Development Director Link, Public Works Director Thureen, Finance Director Smith, Parks and Recreation Director Carlson, and Deputy Clerk Kennedy

3. PRESENTATIONS: None.

4. CONSENT AGENDA:

Mayor Tourville removed Item 4J from the Consent Agenda.

Councilmember Madden removed Item 4O from the Consent Agenda.

- A. i) Minutes – April 1, 2013 Council Study Session
ii) Minutes – April 8, 2013 Regular Council Meeting
- B. **Resolution No. 13-41** Approving Disbursements for Period Ending April 17, 2013
- C. Pay Voucher No. 1 for City Project No. 2006-08, Asher Water Tower Replacement
- D. Change Order No. 2, Final Compensating Change Order No. 3, Final Pay Voucher No. 3, Engineer's Final Report and **Resolution No. 13-42** Accepting Work for City Project No. 2010-41, T.H. 3 Turn Lanes at Autumn Way
- E. Approve Easement Encroachment Agreement for Landowner Improvements within City Easement for Property Located at 8255 College Trail
- F. Approve Custom Grading Agreement and Indemnification Agreement for 10130 Adam Avenue
- G. **Resolution No. 13-43** Approving and Ratifying the Submittal of a Grant Application for a TMDL Storm Water Grant with Minnesota Pollution Control Agency (MPCA) for City Project No. 2011-02, Concord Boulevard Basin at 78th Street
- H. **Resolution No. 13-44** Approving and Ratifying the Submittal of a Grant Application for a TMDL Storm Water Grant with Minnesota Pollution Control Agency (MPCA) for City Project No. 2011-15, Orchard Trail Storm Water Improvements
- I. **Resolution No. 13-45** Approving and Ratifying the Submittal of a Grant Application for a TMDL Storm Water Grant with Minnesota Pollution Control Agency (MPCA) for City Project No. 2013-03, SP 27 Storm Water Facilities Repairs
- K. Accept and Approve Proposal from Braun Intertec Corporation for Street Geotechnical Exploration for the Five Year Pavement Management Program Plan
- L. Approve Purchase of Indoor Sweeper for Veterans Memorial Community Center
- M. Approve Joint Powers and Easement Agreement with Dakota County for the Construction of Trailhead Facilities on City Property Located at 4465 66th St
- N. Approve Turf Care Products in the Park System for 2013
- P. Approve 2013-2014 Collective Bargaining Agreement with Law Enforcement Labor Services (LELS), Local 84
- Q. **Resolution No. 13-47** Approve the 2012 Budget for the Economic Development Authority Fund
- R. Approve Amended Joint Powers Agreement with Dakota County for Purpose of Establishing a Pharmaceutical Drug Disposal Program
- S. Approve Appointment of Assistant Fire Chief to Full Time, Permanent Status

T. Personnel Actions**Motion by Madden, second by Piekarski Krech, to approve the Consent Agenda****Ayes: 5****Nays: 0 Motion carried.**

J. Accept Quotes and Approve Proposal from SEH, Inc. for a Wetland Delineation Report for City Project No. 2012-07, Bohrer Pond Northwestern Pre-Treatment Basin Restoration

Mayor Tourville stated he would abstain from voting.

Motion by Madden, second by Bartholomew, to accept quotes and approval proposal from SEH, Inc. for a Wetland Delineation Report for City Project No. 2012-07, Bohrer Pond Northwestern Pre-Treatment Basin Restoration**Ayes: 4****Nays: 0****Abstain: 1 (Tourville) Motion carried.****O. Consider Naming of Park Land**

Jim Huffman explained the reason the Parks and Recreation Advisory Commission proposed the name Swing Bridge Park was because a number of artifacts were collected from Dakota County that represent the history of the Rock Island Swing Bridge and the proposed name would tie into the display of the artifacts.

Mr. Carlson stated the proposal recommended by the Parks and Recreation Advisory Commission was related specifically to the 17 acres surrounding the Rock Island Swing Bridge. The recommendation is to designate the 17 acres as Swing Bridge Park. He explained a recommendation would be brought forward in the future for the separate area now known as Heritage Village Park.

Councilmember Piekarski Krech opined that Heritage Village Park is such an overused name and she would like to see a name that is more indicative of Inver Grove Heights.

Mayor Tourville clarified the County facilities would be part of Swing Bridge Park.

Mr. Carlson explained the County facilities would be located within the park. The City would own the land and the County would own some of the facilities. He stated a maintenance and ownership agreement would be presented to Council in the near future.

Motion by Madden, second by Piekarski Krech, to adopt Resolution No. 13-46 Approving Name of Park Land**Ayes: 5****Nays: 0 Motion carried.****5. PUBLIC COMMENT:**

Vance Grannis Jr., 9249 Barnes Avenue, stated April 22nd was Earth Day and questioned what the Council and the City were doing to protect the planet. He explained he would like to be able to brag in the future that Inver Grove Heights is the "greenest" City that is the most forward thinking in terms of promoting energy saving technologies. He stated in order to achieve that goal the City needed to update its current ordinances to recognize those technologies. He suggested that the Environmental Commission be tasked with making recommendations to the Council as far as what the City could do to encourage residents and developers to utilize energy saving technology. He noted an existing ordinance contained a problem with respect to wind technology because it was written many years ago when the City was dealing with the large wind turbines on a 200 foot pole. There is now a different type of wind turbine, called a vertical axis, which is mounted on a light pole and is much smaller in scale. The vertical axis model is designed in such a manner that birds will not fly into them and they are completely quiet. In Cook County the ordinance was

changed to accommodate a vertical axis. He requested that the City update its current regulations to make it easier and less expensive to install a vertical axis wind turbine. He offered to draft an ordinance similar to what was adopted in Cook County.

Mayor Tourville clarified the ordinance would be amended to add the vertical axis model as an option in addition to the larger wind turbines.

Mr. Grannis confirmed the ordinance would be amended to reflect a simpler procedure to deal with the smaller, vertical axis model because they do not need the requirements and regulations that would apply to the larger models. He asked the City Council to refer the ordinance amendment to the Planning Commission. He noted he would provide the City Attorney with a copy of his draft ordinance for review and comment prior to the Planning Commission meeting.

Mayor Tourville suggested that staff prepare the information to take it to the Planning Commission.

Mr. Grannis stated staff has had the information for over a year and has not had the time to research the issue and bring it forward for consideration.

Councilmember Madden stated he would like a lot more discussion on the issue because of concerns about fitting the structures in with current building and zoning regulations.

Councilmember Bartholomew questioned what barriers exist in the current City Code that would prevent someone from installing a vertical axis turbine.

Mr. Grannis stated the vertical axis turbine required a conditional use permit, was limited to certain areas of the City, and required extensive setbacks.

Councilmember Bartholomew questioned if any other cities in the metro area have regulations that would allow vertical axis turbines.

Mr. Grannis stated they are allowed in St. Paul and was not aware of any others.

Councilmember Piekarski Krech opined the City did need to be more proactive in keeping the City Code up to date to allow residents and businesses to take advantage of the technologies that are available to them.

Councilmember Madden suggested that staff prepare the information and bring it to a work session for discussion. He stated he does not want to rush into anything without discussing the information.

Councilmember Bartholomew clarified the intent was to provide the information to staff to move it through the system and onto the Planning Commission as quickly as possible.

Mayor Tourville stated staff may want to discuss the information with Council during a work session before taking it to the Planning Commission.

Motion by Mueller, second by Piekarski Krech, to receive the information submitted by Mr. Grannis and to direct staff to place the item on an upcoming work session agenda for discussion

Ayes: 5

Nays: 0 Motion carried.

Joe Harms, 4455 66th St., stated he would be curious to know how much time and money was invested into the Mendota Heights Par 3 Golf Course maintenance proposal. He opined there are many more important issues that need to be addressed in the City. He questioned why the rezoning of parcels along 66th Street was not completed prior to a project being started. He stated he received approval in 1991 for a street and alley vacation that is still not reflected on the certificates of title for both pieces of his property. He questioned why the issue still had not been addressed by staff.

Mr. Lynch stated he had been working with the City Attorney to address Mr. Harm's concerns regarding the street and alley vacation.

Mr. Kuntz stated the necessary information was submitted to Dakota County and he would follow up to determine why it was not reflected on the certificates of title.

Terry Piper, Commander of VFW Post 295 in South St. Paul, invited the Council and residents of the City to attend the annual Memorial Day parade and service at Oak Hill Cemetery. He discussed the Veterans of Foreign Wars State Commander's mission and read a letter detailing the State Commander's "Ride for Healing" project. The event was chosen as a fundraiser for the Vietnam Education Center in Washington D.C. As part of the event, Vietnam Veterans will be recognized throughout the State. The week-long event will begin on Memorial Day at the Minnesota State Capitol and will culminate on June 1st in the Brainerd Lakes area. Four (4) teams of motorcycle riders will travel through the four (4) corners of the State and stop at VFW Posts along their journey to Brainerd. Community events will be held to honor and thank Vietnam Veterans. The South St. Paul VFW will host an event on May 29th from 2:45 to 3:45 as the caravan rides through. He invited the community and all Vietnam Veterans to attend the ceremony.

Mayor Tourville thanked the VFW and stated the information would be posted on the City's website.

6. PUBLIC HEARINGS:

A. CITY OF INVER GROVE HEIGHTS; Public Hearing to Order City Project No. 2013-09E, 2013 Pavement Management Program – Henry Avenue Bituminous Pavement Removal and Replacement

Mr. Kaldunski stated the project was a joint effort with the City of South St. Paul. The portion of the project in Inver Grove Heights would affect two (2) properties, one (1) owned by Xcel Energy and one (1) owned by Frattalone's Dawn Way Landfill. It was proposed that 75% of the project costs be assessed. He noted he had been in contact with the owners of the two (2) properties proposed to be assessed.

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

Ayes: 5

Nays: 0 Motion carried.

Motion by Madden, second by Bartholomew, to adopt Resolution No. 13-48 Ordering City Project No. 2013-09E, 2013 Pavement Management Program – Henry Avenue Bituminous Pavement Removal and Replacement

Ayes: 5

Nays: 0 Motion carried.

B. CITY OF INVER GROVE HEIGHTS; Consider Approval of Temporary On-Sale Intoxicating Liquor License for St. Patrick's Catholic Church, 3535 72nd St. E.

Ms. Kennedy explained St. Patrick's Catholic Church applied for a temporary on-sale intoxicating liquor license in conjunction with their annual fall festival on September 13th, 14th, and 15th. She stated similar licenses had been issued to the Church for past events and no issues were experienced. She noted a certificate of liquor liability insurance would be provided prior to the event.

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

Ayes: 5

Nays: 0 Motion carried.

Motion by Madden, second by Bartholomew, to approve Temporary On-Sale Intoxicating Liquor License for St. Patrick's Catholic Church Annual Fall Festival on September 13, 14, and 15, 2013 for property located at 3535 72nd St. E.

Ayes: 5

Nays: 0 Motion carried.

7. REGULAR AGENDA:**ADMINISTRATION:****A. CITY OF INVER GROVE HEIGHTS;** Consider Second Reading of an Ordinance Regulating the Feeding of Deer

Ms. Teppen explained the proposed ordinance was revised as per Council direction at the regular meeting on April 8th. The map was updated to expand the deer feeding zone to include areas to the west of Inver Grove Trail and to the north along the Mississippi River. She explained staff discussed the question of enforcement with respect to both the deer feeding and chicken ordinances. It was determined that the police would enforce the regulations related to the feeding of deer and the code compliance specialist would enforce the regulations for chickens.

Mayor Tourville questioned why that determination was made.

Mr. Lynch explained the enforcement of the deer feeding regulations would be occasional, while enforcement of the chicken regulations would be of a more personal nature and would require site inspections by someone with knowledge of and familiarity with zoning code regulations. He stated enforcement of the deer feeding regulations would require site observations that could be handled by the Police department.

Councilmember Bartholomew questioned if any additional comments had been received from the public with respect to the map or the revisions that were made to the draft ordinance.

Ms. Teppen responded in the negative.

Councilmember Piekarski Krech stated she was confused regarding Section 5-10-2, 2(b) and 2(c) because one is a provision for a height requirement and the other is a provision for keeping feed in a feeder.

Mr. Kuntz explained on the first page of the ordinance, subparts a, b, and c are each exceptions that are stated in the disjunctive to mean either/or.

Councilmember Bartholomew questioned how the issue of individuals who want to feed birds from the ground would be addressed. He stated there are some birds that need to be ground fed because they won't eat from a feeder. He suggested implementing language that would allow birdseed mixtures, fruits, grains, vegetables and nuts on the ground, but not in excess of two (2) pounds. An amount small enough so that it will not attract deer but would take care of the individuals that want to feed small animals and birds from the ground.

Mr. Kuntz stated a statement to that effect could be added as another exception.

Councilmember Madden agreed it should be added.

Councilmember Bartholomew stated he heard concerns from several residents regarding vegetation that has died off or been killed by frost. He suggested both examples be added as exceptions to the prohibition section that would not be violations of the ordinance. He questioned if the exceptions listed in 5-10-3 were necessary given that they applied to agencies outside of the City's jurisdiction.

Mr. Kuntz recommended that the section remain in the ordinance because there are instances in which the agencies identified would have to abide by the regulations set forth by local ordinance.

Mayor Tourville outlined the contents of the map and identified the designated "no feeding" zones.

Ms. Teppen noted the map would be posted on the City's website.

Mr. Kuntz reviewed the two (2) additional exceptions that were discussed by Council. The first would relate to vegetation that is left in place after it has died or after a frost. The second related to leaving or placing on the ground of not more than four (4) pounds of feed, grains, vegetable, fruits, nuts, etc.

Amy Hunting, 2645 96th Street, stated she felt the ordinance was very clear and well done. She thanked the Council for taking all opinions into consideration.

Mayor Tourville stated some residents along Inver Grove Trail were not in favor of being added into an area in which feeding would be allowed because they have had issues with illegal bow hunting and residents felt allowing the deer to be fed would send the wrong message.

Councilmember Bartholomew opined the intent is not to promote deer feeding. He noted deer feeding already happens and the regulations would merely confine it to specific areas within the City.

Motion by Piekarski Krech, second by Madden, to approve the Second Reading of an Ordinance Regulating the Feeding of Deer with the changes as noted.

Ayes: 5

Nays: 0 Motion carried.

COMMUNITY DEVELOPMENT:

B. CITY OF INVER GROVE HEIGHTS; Consider the Second Reading of an Ordinance Amendment to Allow Chickens in Single Family Residential Areas

Mr. Hunting explained the ordinance would allow chickens in single family residential areas whereas they are currently allowed only in Agricultural and E-1 districts without restrictions. He noted the proposed ordinance would have no impact on the existing zoning districts where chickens are allowed. Council reviewed the proposed ordinance on April 8th and directed staff to make several changes. The notification requirement was changed so only the directly abutting properties would be notified. The language with respect to licensing was modified to spell out the specific criteria. Licensure was set up as an administrative process and a section was added, in conjunction with the notification process, which would trigger a Council review if a directly abutting neighbor submitted an objection to the proposed license within the specified time period. All applications would be reviewed by staff, including a site inspection of the applicant's property. He explained the maximum number of chickens allowed was set at five (5). Tractor Supply was contacted for information regarding their purchase policy and it was determined that their company-wide policy required chickens to be purchased in groups of six (6) to deter customers from purchasing individual chicks solely for use as a pet.

Mayor Tourville stated his recollection was that Council had previously agreed to raise the maximum to six (6).

Councilmember Madden agreed that the number should be increased to six (6).

Mr. Hunting stated the language prohibiting chickens being kept in a garage was removed to address issues with inclement weather. References to building code compliance for the coops were also removed, although the coops would still have to be reviewed for zoning code compliance. The requirement for daily cleaning of the coop was modified to reflect that the area needed to be maintained in healthy and clean conditions. With respect to license fees, staff checked with the cities of Eagan and Farmington as each city recently implemented a licensure process for chickens and it was found that the permit range from \$50 to \$100. He noted the process in each of the cities was more extensive than what is proposed in the Inver Grove Heights draft ordinance, although both did include similar site inspection requirements. The fee would be a Council decision.

Councilmember Piekarski Krech questioned if staff had a suggestion for the fee.

Mr. Hunting explained staff had briefly discussed the license fee, but had not had a chance to break down the cost that would be involved in terms of staff time to process and review applications. He noted the fee would be dependent on Council's policy decision regarding site inspections.

Councilmember Piekarski Krech opined no site inspection was needed prior to license approval unless a complaint was received.

Councilmember Mueller agreed site inspections should be done only a complaint basis.

Councilmember Piekarski Krech suggested the requirement to keep the chickens in the coop or the run at all times be modified to require that the chickens be confined on the premises.

Mr. Hunting stated the proposed ordinance did not include a minimum or maximum size for the run. He explained the intent is for the chickens to be required to be fenced in or contained in an area. The area could be the entire backyard. The proposed ordinance included a ten (10) foot setback from property lines.

Councilmember Bartholomew stated an email was received requesting that Council consider allowing chickens, without a permit, in the E-2 and R-1A zoning districts. He noted he would be in favor of permitting chickens in the E-2 district.

Councilmember Piekarski Krech questioned why the City chose to not allow chickens in the E-2 and R-1A zoning districts.

Mr. Hunting stated they were excluded from the E-2 and R-1A districts because it was felt that those were smaller areas that had much more of a residential use than Agricultural or E-1 properties.

Councilmember Piekarski Krech questioned the address requirements of the license application section. She stated the address of the real property owner should be the same as the person applying for the permit. She suggested the requirement prohibiting construction of the “coop or run prior to time of construction of the principal structure” should be changed to “prior to the time of occupancy of the principal structure”.

Mayor Tourville stated some cities have had issues with rental properties and that is why the application asks for the address of the real property owner. The intent is to prevent a renter from keeping chickens without the property owner’s knowledge or consent.

Councilmember Piekarski Krech suggested that the licensing provision related to a late fee charge be removed.

Councilmember Mueller questioned if a fee would be required for renewal of a license.

Ms. Kennedy stated licenses would be issued in two year periods. After a license expires a new license would need to be obtained for the corresponding fee.

Mayor Tourville suggested \$25 as a starting point for the fee.

Councilmember Mueller questioned how much a dog license costs.

Ms. Kennedy stated a dog license cost \$12 if the dog was spayed or neutered and \$20 if the dog was unaltered.

Councilmember Bartholomew questioned if roosters and adult males were the same.

Councilmember Piekarski Krech stated a rooster was an adult male chicken, but one could have an adult male chicken that is not a rooster if it has been caponized.

Councilmember Bartholomew suggested violations of the ordinance be changed to a petty misdemeanor.

Mr. Kuntz stated the issue was ultimately a Council decision. He explained a petty misdemeanor does not allow any court to impose jail time. Punishment would be in the form of a fine.

The Council agreed to make violations of the proposed ordinance a petty misdemeanor.

Jill Sampson, 8660 Ann Marie Trail, stated she was in favor of the proposed ordinance and demonstrates that the City has a better understanding of urban chickens. She requested that Council consider permitting chickens in the E-2 district without a license and no limit on the maximum number. She stated it would be nice if the chickens were allowed to be outside of the coop or run.

Councilmember Piekarski Krech questioned what the minimum lot size was for an E-1 property.

Mr. Hunting stated the minimum lot size for an E-1 property was 2.5 acres. For an E-2 property the minimum was 1.75 acres and R-1A was 40,000 square feet.

The Council agreed to permit chickens on E-2 properties without a license.

Councilmember Piekarski Krech stated the language in condition G, number (8), was confusing because it implied that the run also needed to have a roof.

Mr. Hunting stated that was not the intent and clarified the run did not have to be roofed.

Councilmember Piekarski Krech questioned if “directly abutting” was the same as contiguous.

Mr. Hunting stated the normal notification process refers to abutting properties. He noted the word contiguous could be added for purposes of clarification.

Mayor Tourville clarified no additional notification, beyond the application, would be required if an applicant’s property directly abuts City property.

Motion by Piekarski Krech, second by Bartholomew, to approve the Second Reading of an Ordinance Amendment to Allow Chickens in Single Family Residential Areas with the changes as noted.

Ayes: 5

Nays: 0 Motion carried.

C. PAUL BUTE; Consider a Resolution relating to a Variance to allow a 2,400 Square Foot Accessory Structure on a Lot Less than 5.0 Acres in Size for Property Located at 10016 Barnes Avenue

Mr. Link reviewed the location of the property. The property is 4.39 acres in size and the ordinance states lots under five (5) acres cannot have an accessory building exceeding 1,600 square feet. The variance is a request to construct an accessory building 2,400 square feet in size. The lot was created in the early 1970’s and at that time the City’s definition of lot size for zoning purposes included the road easement. In 2002 the City changed the definition of lot size to exclude the road easement; therefore the property became recognized as less than five (5) acres. With the change to the definition the size of the accessory structure became restricted to 1,600 square feet. The practical difficulty relates to the change in the City’s ordinance which altered the definition of lot size. The proposed accessory structure would fit well in the neighborhood as there are other structures similar in size and it would not negatively impact any surrounding properties. Both Planning staff and the Planning Commission recommended approval of the variance.

Councilmember Piekarski Krech questioned if all of the lots in the development were reduced in size because of the definition change.

Mr. Link stated he was unsure how the definition change affected the other properties in the development. He noted the applicant’s property was unique because it was a corner lot and had a road easement removed along two (2) sides of the property.

Dave Fleischhaker, 10300 Brent Avenue, stated he was a neighbor of the applicant and he did not object to the variance request.

Motion by Piekarski Krech, second by Madden, to adopt Resolution No. 13-49 relating to a Variance to allow a 2,400 Square Foot Accessory Structure on a Lot Less than 5.0 Acres in Size for property located at 10016 Barnes Avenue

Ayes: 5

Nays: 0 Motion carried.

D. MICHAEL & RUTH NEWBAUER; Consider a Resolution relating to a Variance to allow a New Home 20 Feet from the Front Property Line whereas 30 Feet is required for property located at 7930 Blanchard Way

Mr. Link reviewed the location of the property. The request is for a variance from the front yard setback to allow for the construction of a home. He noted the property has a somewhat unusual configuration. The property was platted in 1988 and has never been built on. Two (2) similar variances were approved in the past, however construction never occurred and the variance lapsed. The practical difficulty was related to the topography of the lot as the property drops off approximately 25 feet in the back, down to a wetland or

a pond. The buildable area is further reduced by a conservation easement held by the City over the slopes. The purpose of the conservation easement was to protect the steep slopes from runoff and erosion. Moving the house forward to the 20 foot setback mitigates the impact of the construction on the slopes. The proposed house would be a typical size for a residential property it would not be out of character in the neighborhood, and would be consistent with the comprehensive plan. The three (3) lots to the north were also granted variances from front yard setbacks prior to construction. Staff recommended approval of the variance with the practical difficulty being the topography of the lot and the precedent set by approval of similar variances for the property in the past. Planning Commission also recommended approval of the variance.

Karen Eichstadt, 7936 Blanchard Way, stated her house was located on the north side of the applicant's lot. She expressed concerns regarding problems experienced in the development. She stated the lots in the development look flat from the front, but are extraordinarily steep in the back and the 25 foot drop is almost vertical. She explained her property seems to shift and move and has not completely settled even though her house was constructed in 1994. The majority of the shifting and movement occurs on the south side of her lot. She stated their retaining walls have been fixed repeatedly and the ravine widened last fall after trees were removed in conjunction with drainage work on the pond. As the snow melted she observed a large break off of land that dropped three (3) feet off her property. Her main concern was that the proposed construction of the house would cause more significant shifting of the hill and affect the stability of the neighboring properties. She stated there has been no answer in terms of what would happen if the neighbors on either side experience significant erosion issues during construction of the home. She explained her intent was to prevent problems to her property before they occur.

Mayor Tourville asked Mr. Thureen if he had any suggestions from an engineering perspective. He opined the applicant cannot start digging the foundation and cause the neighbors house to collapse.

Mr. Thureen explained building code contains requirements pertaining to preparation of the lot to construct the foundation of the home. He stated the City Engineer has a site visit scheduled to look at the lot and the neighbors' concerns. He noted the project that was done on the pond has not been completed. Work will resume on the project once weather permits.

Ms. Eichstadt stated the building code and engineering specifications are meant to protect the home that is being built. She opined they would not protect the adjoining lots from being damaged.

Mayor Tourville stated the building and engineering specifications are in place to protect everyone. He explained he did not think the City would allow a house to be built without thinking about the impact on neighboring properties.

Mr. Link explained the question that was raised at the Planning Commission was would the City assure the neighbors there would be no damage and would the City accept liability. The response to those questions was no. The City has two (2) sets of regulations in place to protect both the applicant and the neighbors. Engineering regulations related to stormwater and erosion control, and a State building code requirement for an analysis of the soils. He explained when a building permit is pulled for a residence that is located on or near steep slopes the applicant is required to provide an engineering analysis of the soil and the soil's ability to support the structure. The footings and foundation have to be designed and approved by a professional engineer. The applicant would be required to comply with both regulations.

Ms. Eichstadt stated the type of damage that could occur to her home was not covered by homeowner's insurance and the City could not allow something like this to happen and assume someone else would take care of it and bear the responsibility. She reiterated she was trying to be proactive to mitigate the damages.

Mayor Tourville stated the applicant would be taking on the responsibility for damages that occur because of the construction on his property.

Mike Newbauer, applicant, stated his lot was the only one in the neighborhood that has a 2:1 slope from the top to the bottom and already has a gabion wall at the bottom. He explained he sat down with

engineering and planning before the lot was purchased and they saw no problem with constructing a home on the lot. He noted there was a tremendous amount of brush and grass clippings along the neighbor's property line that could also cause erosion issues.

Mayor Tourville stated there has been an issue with dumping on the empty lot.

Mr. Newbauer stated he has tried to clean the property up and put a stop to the dumping because the whole neighborhood knows it is happening.

Mayor Tourville questioned if the applicant could legally build on the lot.

Mr. Link responded the applicant could legally build with a variance.

Mayor Tourville clarified similar variances had been granted for other properties in the neighborhood.

Mr. Link stated that was correct.

Mayor Tourville asked the applicant if his contractor and engineer felt the home could be constructed safely.

Mr. Newbauer explained the footings of the house would be deeper than normal and more strength was added to the garage structure. He stated he has done everything that is required and researched all of the issues being discussed before he purchased the lot.

Ms. Eichstadt stated Mr. Newbauer has done a good job of trying to clean up the property and prevent dumping.

Carol Ferry, 7924 Blanchard Way, expressed concern regarding the stability of the property and the potential erosion that could occur as a result of construction. She stated the existing gabion walls on her property lose rocks every year and felt construction could cause the walls to be less stable than they already are.

Councilmember Piekarski Krech questioned who originally installed the gabion walls.

Ms. Ferry stated the builder who originally constructed the home in 2005. She provided pictures to demonstrate the steepness of the slope behind and next to her property.

Mayor Tourville opined the applicant wants to protect his investment just as much as the neighbors want to protect theirs and will likely do everything possible to prevent and protect against erosion.

Ms. Ferry presented photos of the erosion control measures at the base of her property. She explained the stakes that were put in place to mark the conservation easement have significantly shifted over time and the tarps are bulging with dirt that has eroded and washed away from her property above.

Mayor Tourville questioned if the erosion tarp was installed by the City.

Mr. Thureen stated that was perimeter erosion control that was installed as part of the original grading. Lots 11-14 were graded later than the other lots in the development and a land alteration permit was issued to facilitate the grading plan. Once the steep slope was graded it needed to have something in place to catch the runoff until the turf was established. He noted the control that was put in place did a good job of serving its purpose. He stated the tarps should have been removed a long time ago, when the slope was established because they no longer serve any purpose. Removal of the tarps would be the responsibility of either the builder or the property owner at that time.

Mayor Tourville questioned if the City would remove the tarps if the builder could not be located.

Mr. Thureen stated staff should be able to contact the party responsible and request removal.

Mayor Tourville stated if staff could not locate the responsible party the City should take the tarps out when the project on the pond is completed in the spring.

Ms. Ferry questioned what would prevent additional runoff and erosion once the tarps were removed. She stated she is concerned about the stability of the slope.

Mr. Link stated the City's responsibility is to assure that the City's regulations with respect to storm water and erosion control are met. The City also has the responsibility to see that the necessary engineering is done on the footings and foundation of the house and that the soil is able to bear the load of the weight of the house. Beyond those items it is the responsibility of the applicant and his contractor to make sure the project goes ahead in a reasonable manner.

Councilmember Piekarski Krech questioned what if the neighboring properties are disturbed in the course of digging the foundation for the new home.

Mr. Link stated if the project was not in compliance with the City's storm water regulations or the building code, then the City had the authority to do something.

Councilmember Piekarski Krech clarified if the City allows a house to be constructed and the neighbor's house falls into the ravine that would not be the City's responsibility.

Mr. Link explained if the construction was consistent with the engineered plans submitted to the City, then the City fulfilled the extent of its obligation. The City relies on the engineering of the building plans prepared by the applicant's contractor. The City does not engineer the house or the footings or any portion of the project.

Mayor Tourville stated the issue would become a civil matter because the applicant had the project engineered and constructed to specifications by a contractor. He opined the applicant is aware of the responsibility he bears in terms of making sure the project does not cause problems on any of the properties.

Ms. Ferry questioned if it would be possible to delay issuance of a building permit until a soil analysis is completed.

Mr. Link stated the building code requires that the foundations and footings be designed by a Minnesota licensed structural engineer and that they be designed considering the material of the soils, height of the slope, slope gradient, the load intensity, and the erosion characteristics.

Mayor Tourville confirmed the applicant would have to do all of those things up front, prior to issuance of a building permit. He asked if the applicant intended to comply with the requirements set forth.

Mr. Newbauer stated he had to get the original soil borings from the surveyor.

Councilmember Piekarski Krech questioned if the applicant would have to get current soil borings done on the property.

Mr. Link stated he would obtain an answer from the Chief Building Official.

Mr. Newbauer stated the borings were done when the neighbor's house was constructed in 2004.

Mayor Tourville stated the applicant's contractor or engineer would need to perform new borings to determine the current condition of the soil.

Mr. Newbauer stated he would get new borings done if that was a stipulation of the building permit.

Mr. Link reiterated if there are problems beyond the extent of the State building code or City ordinances it would become a civil matter between the property owners.

Councilmember Piekarski Krech stated she is also concerned by the fact that variances were granted for the same property in the past and a home was never constructed.

Mr. Link stated the City's regulations and the building code are more demanding and sophisticated now than they were in 1998 and 2003 when the other variances were approved.

Councilmember Bartholomew confirmed the question in front of the Council was whether or not the variance should be approved. The next step would be for the property owner to apply for the building permit. That process has best practice requirements and stipulations in place with respect to what the property owner must do to obtain the building permit. He stated once the property owner has met and fulfilled the best practice requirements he would be issued a building permit.

Mr. Newbauer clarified he would be required to meet all of the requirements of the State building code and City ordinances.

Mayor Tourville responded in the affirmative.

Mr. Newbauer stated he wants to do everything possible to ensure no damage is done to anyone's property.

Motion by Bartholomew, second by Mueller, to adopt Resolution No. 13-50 relating to a Variance to allow a New Home 20 Feet from the Front Property Line whereas 30 Feet is required for property located at 7930 Blanchard Way

Ayes: 5

Nays: 0 Motion carried.

E. CITY OF INVER GROVE HEIGHTS; Consider an Ordinance Amendment Rezoning Three Parcels from I-1, Limited Industry to P, Institutional located along 66th Street at the Intersection of Doffing Avenue

Mr. Link reviewed the location of the properties, currently zoned industrial (I-1). The ordinance amendment would rezone the three (3) parcels to institutional (P) to make the parcels consistent with the current zoning of other City park property, the comprehensive plan, and the future trailhead of the Mississippi River Regional trail. He acknowledged that the rezoning should have been addressed earlier and stated it was an oversight on the part of the Planning staff. He noted there have been a number of instances, both for developments and City projects, where rezoning has been left until the end once all of the details and pieces have fallen into place. Planning staff recommended approval of the rezoning request to be consistent with the City's plans and the intended use of the property. The Planning Commission also recommended approval of the request.

Motion by Bartholomew, second by Madden, to adopt Ordinance No. 1263 Rezoning Three Parcels from I-1, Limited Industry to P, Institutional located along 66th Street at the Intersection of Doffing Avenue

Ayes: 5

Nays: 0 Motion carried.

ADMINISTRATION:

F. CITY OF INVER GROVE HEIGHTS; Consider First Reading of an Ordinance Amending City Code Section 4-7-13 relating to Designated Trade Area Expenditures

Ms. Kennedy explained the item was previously discussed at the April 1st Council work session. Staff was directed to prepare an ordinance amendment that would clarify the language specifically related to trade area expenditure requirements. The amendment would not change the requirement or the intent of the ordinance.

Councilmember Piekarski Krech suggested adopting the ordinance in one reading because the proposed change was not substantive in nature.

Motion by Piekarski Krech, second by Madden, to adopt Ordinance No. 1264 Amending City Code Section 4-7-13 relating to Designated Trade Area Expenditures and to waive the requirement for three (3) readings of the ordinance

Ayes: 5

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

9. ADJOURN: Motion by Mueller, second by Piekarski Krech, to adjourn. The meeting was adjourned by a unanimous vote at 9:45 p.m.