

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, MAY 13, 2013 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, May 13, 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 Administrator Teppen, City Attorney Kuntz, City Planner Hunting, Public Works Director Thureen, Finance Director Smith, Chief Stanger, and Parks and Recreation Director Carlson

3. PRESENTATIONS: None.

4. CONSENT AGENDA:

Councilmember Bartholomew removed Item 4C from the Consent Agenda.

Mr. Thureen requested Item 4G be removed from the Consent Agenda.

A. Minutes – April 22, 2013 Regular City Council Meeting

B. Resolution No. 13-51 Approving Disbursements for Period Ending May 8, 2013

D. Approve Custom Grading, Fill and Encroachment Agreements for Lot 7, Block 1, Orchard Trail 1595 86th Court East

E. Approve Easement Encroachment Agreement for Landowner Improvements within City Easement for Property Located at 7533 Alpine Court (Lot 2, Block 3, Argenta Hills 2nd Addition)

F. Agreement for 2013 Citizen-Assisted Lake Monitoring Program (CAMP)

H. Resolution No. 13-53 Approving Compromise Agreement and Settlement Stipulation, Order and Judgment between ABE Investments, LLC and the City of Inver Grove Heights relating to City Project No. 2001-12

I. Approve 2012 Business Survey

J. Accept Donation to Inver Grove Heights Police Department

K. Personnel Actions

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

Ayes: 5

Nays: 0 Motion carried.

C. Accept and Approve Comprehensive Annual Financial Report for the Year Ended December 31, 2012 and the Auditor's Communications Letter and Reports on Compliance with Government Auditing Standards and Legal Compliance

Councilmember Bartholomew reviewed the corrections that were made to Auditor's Communications Letter. On page 27 of the financial analysis there was discussion that public safety was high compared to similar cities. The finance director corrected those numbers and the analysis now reflects that Inver Grove Heights Public Safety is more in line with cities similar in size. He thanked the Finance Director for working with the Council to answer questions and applauded the Finance department for all of their work in preparing the CAFR.

Motion by Bartholomew, second by Madden, to accept and approve Comprehensive Annual Financial Report for the Year Ended December 31, 2012 and the Auditor's Communications Letter and Reports on Compliance with Government Auditing Standards and Legal Compliance

Ayes: 5

Nays: 0 Motion carried.

G. Resolution Approving Improvement Agreement and Storm Water Facilities Maintenance Agreement for Povolny Specialties Company located at 7350 Courthouse Boulevard

Mr. Thureen provided an explanation of the changes that were made to the agreements. The easement incorrectly contained the word “utilities” and was subsequently stricken from the both agreements and the corresponding resolution.

Mike Povolny, 7350 Courthouse Boulevard, stated he missed the meeting at which the item was originally approved. He expressed concerns regarding the cost he incurred for the storm water easement as it is not related to his construction project. He opined that the City classified him as a developer when he is simply constructing an addition to an existing business. He explained the City requested the easement for future development to the east of his property. He questioned if the City would pay the costs associated with the easement because he felt it did not benefit his business.

Mayor Tourville questioned what the cost was.

Mr. Thureen explained Mr. Povolny was referring to the legal costs associated with drafting the agreements.

Mr. Kaldunski stated there was a cash escrow deposit for the contract. The applicant provided a \$5,000 cash escrow and the costs associated with the preparation of the agreements and engineering inspections would be taken from the escrow fund. Any remaining funds after all expenses have been paid would be refunded to the applicant.

Mr. Povolny stated he was willing to pay the engineering fees, but did not feel he should pay the legal costs for the easement agreement because it did not benefit his property. He noted he agreed to donate the easement to the City, including approximately an acre of wetlands.

Mayor Tourville questioned if the applicant was being charged differently than other applicants had been in the past.

Mr. Thureen stated the applicant was not being charged differently in terms of the fee and the fee structure. He explained the easement request would be asked of anyone in a similar situation in order to keep the storm water system whole. He stated the opportunity to obtain the easement arose in the midst of the applicant’s construction project.

Mayor Tourville expressed concern regarding precedent if the City pays the legal fees.

Councilmember Piekarski Krech questioned if the easement was related to the applicant’s project or if the building precipitated the need for an easement.

Mr. Thureen stated the water from the applicant’s property would discharge to the wetland on the west side of the property and from an engineering standpoint would be required for the project. The easement on the east side of the property would be requested from any developer because of the elevation and drainage information they have for the property. He noted the City would not want anything constructed, either by the applicant or by a future developer, within the easement on the east side because the area is required for storm water storage.

Mr. Povolny reiterated that the easement on the east side of his property was not required for his project.

Councilmember Piekarski Krech if the City has paid the legal and recording costs in the past for other projects in which easements were obtained.

Mr. Kuntz stated the City typically passes the recording fees onto the property owner.

Mr. Povolny questioned how much the legal fees would be for the drafting of the easement documents.

Mr. Thureen stated the easement over the wetland on the west side of the property was required for the applicant’s project because that is where the storm water discharges.

Mr. Povolny stated he did not need to agree to the 20’ drainage easement on the east side of his property in order to complete his project.

Mr. Thureen stated the easement provides the City with access and they would be required to restore the property to original its condition after any work is completed.

Mr. Povolny questioned if the requirement for the City to restore the property was documented in the agreement.

Mr. Kuntz explained the easement provides the City with the right to restore the property. It does not contain language that imposes upon the City the obligation of restoration. He stated language could be added to the agreement to that effect.

Councilmember Piekarski Krech clarified if the applicant tears up the land within the easement, the applicant is required to restore it. If the City does work within the easement, the City would be responsible for restoration.

The Council agreed to add the suggested language regarding restoration of the property within the easement.

Mayor Tourville suggested that the City set the escrow at \$4,000 and agree to pay the filing fees for recording the easements.

Motion by Piekarski Krech, second by Mueller, to adopt Resolution No. 13-52 Approving Improvement Agreement and Storm Water Facilities Maintenance Agreement for Povolny Specialties Company located at 7350 Courthouse Boulevard, to set the escrow at \$4,000, and direct that the City pay all document recording fees

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT:

Allan Cederberg, 1162 82nd St. E., questioned what the details were of the settlement agreement with the architect and the contractor for the City Hall project. He specifically inquired about the total amount the City received in the settlement and how the money would be utilized.

Mayor Tourville stated staff would provide an answer in writing regarding the amount of the settlement agreement. He explained no decisions had been made regarding the utilization of the funds and the final decision would be made by the Council at a future date.

Mayor Tourville asked staff to review the quiet zone requirements for the railroad and the cost to the City.

6. PUBLIC HEARINGS: None.

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

A. JOHN GIESKE; 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. Hunting stated the item was previously tabled at the February 25th Council meeting to allow staff time to meet with the applicant on site after the snow had melted. He explained the variance request was for an accessory structure that requires a 30 foot setback from the front property lines and is currently at a setback of 10 feet. The City Engineer, Building Official, and Planning staff met with the applicant on site and found that the topography would not have an impact on the placement of the structure and it could be relocated in order to meet setback requirements. He noted the applicant would likely need to cut into the slope, similar to what was done to place the structure in its existing location. It would not have an impact on the slope or grade to the west. He referenced case law that was found pertaining to after the fact variances and explained one of the issues Council could consider is whether the benefit to the City would outweigh the cost burden to the applicant to move the structure.

John Gieske, 8373 Alta Avenue, stated the primary reason he placed the shed in its current location was aesthetics. He explained the fence allows only the top of the roof of the structure to be seen.

Councilmember Piekarski Krech questioned if the structure was a slab on grade.

Mr. Gieske responded in the negative. He stated it would be difficult to move the structure and it would damage his black top.

Councilmember Bartholomew questioned when the building was constructed.

Mr. Gieske stated the accessory building was constructed approximately four years ago.

Councilmember Bartholomew asked if the applicant was aware of the setback requirements when the building was constructed.

Mr. Gieske stated he was not aware of the setback requirements at the time of construction.

Mayor Tourville stated the City does not want people to disregard setback requirements. He opined that the City would not gain anything from requiring the applicant to move the structure. He stated it would not be an easy structure to move and allowing it to remain in its current location would not negatively affect neighboring properties.

Councilmember Mueller stated in order to move the structure the applicant would have to completely tear it down. He agreed that a mistake was made but felt it was not intentional and that the City would not gain anything by relocating the structure. He suggested that the applicant be allowed to keep the structure in its current location.

Councilmember Piekarski Krech questioned if the variance remained with the property or if it would cease at such time that the structure was removed.

Mr. Hunting stated the variance was specific to the structure and would become null and void if the structure was taken down.

Councilmember Bartholomew opined that the applicant made an honest mistake and agreed there would be no benefit to the City in requiring the structure to be relocated.

Mr. Hunting suggested that a condition could be added that if the existing structure is taken down or damaged it would have to be reconstructed in a location that would meet setback requirements.

Mayor Tourville stated the condition would be redundant because it is already a requirement in City Code.

Allan Cederberg, 1162 82nd St. E., stated the garage on the property did not meet setback requirements either. He suggested that the applicant be allowed to keep the shed in its current location until the applicant no longer owns the property. He questioned why the garage setback was not addressed at the same time.

Councilmember Mueller stated the garage was not included in the variance request and the discussion was not pertinent to the item being considered.

Motion by Bartholomew, second by Mueller, to adopt Resolution No. 13-54 approving 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

Ayes: 5

Nays: 0 Motion carried.

B. BRIAN & JULIE LEHMAN; Consider an Ordinance Amendment to Allow Dog Grooming as a Conditional Use in A, Agricultural and E-1, Estate Residential Zoning Districts

Mr. Hunting explained the request is for a pet grooming business to be conducted out of the applicant's garage on the lower level. The zoning ordinance would have to be amended in order to approve the request because the type of use is not permitted in residential zoning districts. Commercial uses related to animals are allowed in the Commercial or Agricultural zoning districts. The use would not be considered a home occupation because the applicant has proposed to have outside employees and a separate entrance. He noted the type of use is not comparable to what the code identifies as home occupations. Concerns such as noise, parking, additional traffic, and hours of operation were all raised

with respect to the request. Staff's opinion was that the proposed use would be a full commercial operation and therefore should be operating out of a commercial zoning district because the use does not fit in a residential area. He explained if the ordinance amendment was approved the applicant would still have to apply for a conditional use permit and go through the public hearing process in front of the Planning Commission.

Julie Lehman, 1123 105th St. E., stated her business proposal was not accurately depicted and reviewed some of the proposed business parameters. She explained the proposal was for a small dog grooming business in the lower level of their home with an average of five (5) dogs per day and a maximum of seven (7). The business services would not include doggy daycare, kenneling, or retail sales. Grooming would be by appointment only, Monday through Friday from 8 am to 5 pm. Clients would be limited to one (1) to two (2) dogs at a time. She opined the traffic would be comparable to that of an in-home daycare or beauty salon. She requested that Council consider approving the proposed business as an interim use to ensure it is acceptable to the neighborhood. She opined the proposal was for a viable business that would add value to the community.

Councilmember Bartholomew questioned what length of time the applicant would feel was appropriate for an interim use permit.

Ms. Lehman proposed 36 months with an option to renew at the end of that period.

Councilmember questioned if there were any concerns with the septic system being able to handle the animal hair.

Brian Lehman, 1123 105th St. E., responded in the negative. He explained they would have a flow meter installed and testing done to make sure they would not be exceeding the system's capabilities.

Councilmember Bartholomew questioned if the proposal was to operate seven (7) days per week.

Mr. Lehman stated the proposal is to operate Monday through Friday from 8 am to 5 pm by appointment.

Councilmember Bartholomew questioned if the applicant's goal was to eventually relocate the business to a commercial store front.

Mr. Lehman responded in the affirmative.

Councilmember Bartholomew questioned how the cost to renovate their home compared to leasing a commercial space.

Mr. Lehman stated the cost would be significantly more to lease a space versus operating from their home. He reiterated the idea is to keep the business small with the intention of transitioning to a store front in the future.

Councilmember Bartholomew questioned if a license was required to perform dog grooming services.

Mr. Lehman responded in the affirmative and noted all three (3) employees were licensed.

Rich Brown, 105th St. E., opposed the request because the area is residential not commercial. He opined the ordinance amendment would increase traffic on the dead end street and it would not enhance the property values in the neighborhood.

John Wendt, 1111 105th St. W., opposed the ordinance amendment. He referenced concerns regarding increased traffic and the precedent that would be set. He stated there were alternative locations in the City that were available for the applicant's business. He explained he does not want his quiet, residential neighborhood disturbed.

Councilmember Piekarski Krech questioned the description of a dog grooming facility and the maximum number allowed in the facility at a time. She stated most dog grooming businesses would not fit within the parameters outlined in the ordinance amendment. She expressed concern with the applicant's statement that the dogs would not be taken outside at all.

Ms. Lehman stated it is general protocol to not let the dogs outside when they are at a grooming shop

because if they get loose or run it presents a liability issue for the business.

Councilmember Mueller stated he would consider an interim use permit for one (1) or two (2) years and at the end of that time period the applicant would have to relocate the business to a commercial store front. He questioned if the applicant was aware of Dakota County Open to Business program.

Ms. Lehman stated the intent was to start the business in their home to build a customer base and then transition to a retail space. She noted they would consider a two (2) year interim use permit and questioned if they would have the chance to renew the permit after that time period.

Councilmember Mueller stated his preference would be that the permit would not be allowed to be renewed. After the two (2) year period had elapsed he would like to see the business move to retail space.

Councilmember Madden expressed concern with setting a precedent for future requests in residential districts.

Councilmember Bartholomew questioned if the applicant would agree to a condition that there be no signage in the neighborhood.

Ms. Lehman responded in the affirmative.

Councilmember Bartholomew stated he also had a concern with the animal not being allowed to eliminate outside.

Mayor Tourville stated the biggest concern within the neighborhood is the traffic. He opined he took issue with the business being in a residential area. He did not agree with allowing the business as an interim use because it would not address the concerns of the neighborhood.

Dan Melling, 1884 86th Ct. E., stated he would appreciate having a place near his home to get his dog groomed. He opined the applicant should be afforded the opportunity to earn a living and stated their acreage provided more than enough space to operate a small home business.

Councilmember Madden stated he had a problem with allowing a commercial operation in a residential area and setting a precedent in the E-1 district.

Councilmember Bartholomew stated it is important for people to understand that everyone has the right to have businesses but the neighborhood concerns have to be taken into account. He opined there were enough safeguards in place to address the neighborhood concerns and allow the operation in this particular case.

Mayor Tourville stated the problem is that the change would affect the whole city, not just this neighborhood.

Councilmember Piekarski Krech stated the issue would be much easier if it qualified as a home business.

Councilmember Mueller stated the additional employee was an issue and the number of dogs per day. He encouraged the applicant to look into the Open to Business program.

Motion by Madden, second by Piekarski Krech, to adopt Resolution No. 13-55 denying an Ordinance Amendment to Allow Dog Grooming as a Conditional Use in A, Agricultural and E-1, Estate Residential Zoning Districts and to receive the written correspondence related to the item

Ayes: 4

Nays: 1 (Bartholomew) Motion carried.

C. JOE AMUNDSON (J&B AUTO SALES); Consider Resolution and related Documents relating to a Conditional Use Permit Amendment to Expand the Automobile and Off Highway Vehicle Sales Lot on the property located at 6360 Concord Boulevard

Mr. Hunting stated there was an existing conditional use permit for an auto sales lot on the property with a limit of 12 vehicles. The request is to convert the entire site into an auto sales lot by removing the

restaurant building from the site. The improvement and storm water facilities maintenance agreements address removal of the building, site grading, and installation of a rain garden along the east property line. Staff and the Planning Commission recommended approval of the request.

Councilmember Piekarski Krech questioned if the applicant agreed with the conditions set forth in the resolution.

Joe Amundson, 6360 Concord Boulevard, responded in the affirmative.

Motion by Piekarski Krech, second by Mueller, to adopt Resolution No. 13-56 and related documents approving a Conditional Use Permit Amendment to Expand the Automobile and Off Highway Vehicle Sales Lot on the property located at 6360 Concord Boulevard

Ayes: 5

Nays: 0 Motion carried.

D. CITY OF INVER GROVE HEIGHTS; Consider the following actions regarding Ordinance allowing Urban Chickens:

- i) Third Reading of an Ordinance Amendment to Allow Chickens in Single Family Residential Areas
- ii) Approve Resolution Adopting a License Fee for Urban Chickens
- iii) Approve an Ordinance Amendment to the Zoning Ordinance Allowing Chickens in the E-2, R-1A, R-1B, R-1C, and R-2 Zoning Districts

Mr. Hunting explained staff incorporated the changes that were directed during the second reading of the ordinance. The E-2 zoning district was removed and included with the Agricultural and E-1 zoning districts to allow chickens with no restrictions. Language in the application section was modified to eliminate confusion. The section addressing housing of the chickens was clarified to reflect the intent that the chickens be contained within a run or fenced in area. The maximum number of chickens allowed was increased to six (6) and the late fee was removed with respect to licensure. Violations of the ordinance would be a petty misdemeanor. Staff recommended the license fee be set at \$25 and that no pre-inspection be required.

Councilmember Piekarski Krech questioned if the standard “chickens shall not be kept inside a dwelling” included garages.

Mr. Hunting stated the term “dwelling” is interpreted as the principal structure on the property. He noted the sentence previously stated “chickens shall not be kept inside a dwelling or garage” and the word “garage” was removed per Council direction.

Mary T’Kach, 7848 Babcock Trail, suggested not imposing a license fee and instead offering a one-time registration option for residents that would provide an opportunity to offer a more proactive, educational component in conjunction with registration. She explained the registration would serve as a comprehensive mailing list the City could use to share information.

Motion by Mueller, second by Madden, to adopt Ordinance No. 1265 to Allow Chickens in Single Family Residential Areas, Resolution No. 13-57 Adopting a License Fee for Urban Chickens, and Ordinance No. 1266 Amending the Zoning Code to Allow Chickens in the E-2, R-1A, R-1B, R-1C and R-2 Zoning Districts

Ayes: 5

Nays: 0 Motion carried.

ADMINISTRATION:

E. CITY OF INVER GROVE HEIGHTS; Consider the Third Reading of an Ordinance Regulating the Feeding of Deer

Ms. Teppen explained staff included the requirements discussed by Council at the second reading. She reviewed the changes that were included as subparts d & e of Section 5-10-2 which identified the

exclusions from the definition of feeding deer.

Councilmember Madden opined staff did a great job putting the ordinance together and incorporating the changes that were directed by Council and feedback from citizens.

Motion by Madden, second by Piekarski Krech, to adopt Ordinance No. 1267 Regulating the Feeding of Deer

Ayes: 5

Nays: 0 Motion carried.

PUBLIC WORKS:

F. CITY OF INVER GROVE HEIGHTS; Consider Resolution Ordering the Project and Receiving the Bids for City Project No. 2011-15, Orchard Trail Stormwater Improvements

Mr. Lynch reminded the Council that the public hearing was previously held and the Council had already determined the need for and feasibility of the proposed improvements. The item presented for consideration relates to receiving bids and determining whether or not to proceed with the project at this time.

Mayor Tourville explained the City applied for a grant for the project and it has not yet been determined whether the grant will be awarded.

Mr. Kaldunski stated at the public hearing in January the City Council gave specific direction to staff to prepare a plan and solicit bids. He explained staff's recommendation was that Council delay awarding a contract until the outcome of the grant application is known. The project was designed in accordance with the feedback received during the public hearing, most notably the request to update the plans from the 2004 design. He reviewed the updates to the design including changes to the engineered soil that would be utilized to promote better filtration, new planting palates and seeding mixtures to utilize native plant materials, and installation of drain tiling and valving to allow operation and maintenance of the filtration systems during different moisture conditions. He reiterated staff applied for a MPCA grant and notification of award is anticipated in mid-July. He stated bids could be held until September 5th to allow for a decision to be made regarding the grant. The grant would provide 50% of construction costs. A review of the regulations that required the stormwater improvements was conducted. Completion of the proposed improvements would bring the City into compliance with five (5) major regulations, the two (2) most important of which were the 1991 Wetland Conservation Act and the City's 2003 Stormwater Pollution Prevention Plan. Staff contacted the Dakota County Soil and Water Conservation District to review the regulations as they pertained to this specific project. The information received indicated that the existing wetlands that were delineated before the development must be preserved and protected per the original plan, and that the City must ensure the runoff from the development is pretreated before it is discharged into an existing wetland. He noted Council should be aware of the fact that the infiltration features are intended to make sure water drains into the soil before a design event occurs. He explained the way the rain gardens and basins were designed allows approximately 50% of the rain that falls in a given year to be captured through infiltration. As a result the larger basins remain at the normal water levels that were designed in the original hydrologic analysis and have a full storage volume to be able to handle back to back 100 year flood events. He summarized the bids that were received for the project. The low bid was submitted by Sunram Construction in the amount of \$368,244. He stated this amount was significantly higher than what was estimated in the feasibility study primarily because the plans were designed to meet today's standards whereas the original feasibility study was based on the designed standards in place at the outset of the project. If the City was successful in obtaining the grant the cost of the project would be less than what was originally estimated in the feasibility study. It was recommended that Council authorize staff to retain the bids until September 5th.

Mr. Thureen clarified that staff did recommend that the project be ordered under Minnesota Statutes 103B and 429 and that the three (3) lowest bids be retained until September 5th.

Councilmember Mueller questioned how many lots remained unsold.

Mr. Kaldunski stated they were all at various stages of development. Of the original 11 lots that remained, two (2) have been built on and the plans for one (1) were just approved. The remaining eight (8) lots have all started the process and submitted plans to be developed.

Mayor Tourville clarified if certain components of the project were removed or not ordered it would jeopardize the City's chances of receiving the grant from the MPCA.

Mr. Kaldunski responded in the affirmative and stated the intent of the grant was to assist in building green infrastructure.

Mayor Tourville questioned how the grant would be applied to the project if it was awarded to the City.

Mr. Kaldunski explained that would be a Council decision after the amount of the grant was determined.

Councilmember Mueller clarified the assessments would be cheaper if the grant was awarded.

Mr. Kaldunski responded in the affirmative.

Councilmember Bartholomew stated the SWCD identified minimum requirements and it seems that the City's design has proposed to go above and beyond the minimum standards.

Mr. Kaldunski stated the project would meet the requirements that the City, State, and Lower Mississippi Watershed have adopted and did not generally exceed the SWCD requirements. The review done by the SWCD was specific to water quality standards. The other, more critical components relate to high water marks and flood elevations and should be included in the project to ensure that the normal water levels are where they were assumed to be in the original design.

Councilmember Bartholomew clarified that was based on the City's assessment.

Mr. Kaldunski stated it was based on the opinions of the engineering consultants.

Dan Melling, 1884 86th Ct. E., stated a number of things have changed since the January 28th meeting in terms of the design and the engineering of the project. He noted the public wanted to be involved in the process from start to finish. He stated no information was presented regarding the three (3) separate bids that were ordered by the Council.

Mr. Kaldunski stated the project was bid in four schedules (A, B, C, and D). The bid for Schedule A involved cleaning of the large basins to the north and the removal of silt fences at a cost of approximately \$72,000. Schedule B was for the outlot rain gardens and Schedule C was for the right-of-way rain gardens at a cost of approximately \$132,000. Schedule D, approximately \$23,000, was for an outlot rain garden near wetland A that was separated because an underdrain could not be installed and required a slightly different design.

Mayor Tourville stated the information could be provided to interested residents.

Councilmember Piekarski Krech noted all of the information was available on the City's website as part of the online agenda packet.

Elizabeth Niemioja, 8658 Applegate Way, stated she did not feel there was a lot of citizen input in the design of the plan. She explained the focus should be on the minimum requirements that are necessary for the development and the residents should not be held to the same standards as the developer. She opined it may not be necessary or beneficial to dredge the ponds (Schedule A) at this point in time.

Mayor Tourville questioned if the City was legally obligated to do anything in the development.

Mr. Kuntz stated permits were issued assuming a plan would be completed. The City would allow the houses to be built assuming some level of stormwater control under federal and state statutes. When the City granted the permits it also approved a plan that would meet the development standards at that time. He explained to the extent that the plan is not done somebody had to complete it.

Mayor Tourville stated there is a difference between ensuring design standards are met and being legally required to complete the project. He opined the solution may be that the residents want nothing done and in turn agree to sign an agreement to not hold the City responsible if anything occurs within the

development.

Mr. Thureen explained in all of the rural developments that are landlocked the City looks at a couple of different events to determine the critical condition for a flood elevation on terminal basins. The Northwest area and all of the rural area, from 2006-2008, were dealt with in terms of modeling efforts. The City looked at a series of events, based on the recommendation of water resources consultants, the back to back 100 year 24 hour storm event and the 100 year 10 day snow melt event. The events are used to determine which would provide the higher flood elevation on a water body. The vast majority of the areas modeled had a higher flood elevation from the 100 year 10 day snow melt event. The Orchard Trail development had a higher flood elevation from the back to back 100 year 24 hour storm event. He noted there were a lot of unknowns involved because one cannot predict how much rain will have occurred during the course of a year before the big event hits. Therefore one does not know what the water elevations of the terminal basins will be at the time of the event. The proposed plan is conservative by design. He explained in this particular neighborhood, given the elevations the homes are being constructed at, if the design is exceeded there may be one (1) or two (2) homes that actually suffer physical damage to the structure. The majority of the damage would occur on the adjacent properties because of overflows. He stated all of the features included in the design are needed to meet the calculated flood level of the terminal basins. He explained going to a reduced standard would be a major policy issue for the City.

EJ Juers, 1925 86th Ct. E., stated this was a tough issue because he did not want to be the person to undermine a plan that could prevent someone's home from being flooded or washed away. He admitted he did not know all of the inputs into the models that were used to design the project and explained his main purpose was to ask questions and raise concerns to ensure the project was completed correctly and equitably in a manner that would protect the homes and the environment.

Mayor Tourville opined the City would be foolish not to proceed with the project if the grant is awarded.

Mr. Juers stated one of his concerns was the first phase of the project which involved dredging of the Northwest Basin. He questioned if that would affect the City's chances of receiving the grant.

Mr. Kaldunski stated the MPCA was aware of the plan to dredge the ponds in order to restore the original design grade. When the ponds were originally built they were left 2-2.5 feet above grade and studies of the soil borings showed better infiltration of the basins would be achieved if the original design grade was restored. He noted the work was considered a green infrastructure improvement because it would improve the infiltration basin.

Mr. Juers questioned how any grant funds would be applied to the bottom line of the project.

Mayor Tourville stated the Council would make a decision if and when the grant is awarded.

Mr. Juers questioned if there had been any discussion with respect to the maintenance of the rain gardens and how the ongoing costs would be funded.

Mr. Thureen explained the City maintains the rain gardens in the public right-of-way. Funding would be provided from a combination of storm water utility fees and the General Fund.

Mr. Juers questioned how the existing rain gardens in the City were performing.

Mr. Kaldunski stated there were approximately 50 rain gardens located in the City. He stated they were all functioning properly and he was unaware of any that were holding water. He noted a few had minor erosion issues and plants that washed out. The issues were all addressed through routine maintenance. Councilmember Piekarski Krech asked for clarification on what Council was being asked to do.

Mr. Thureen explained the Council was being asked to order the project under Minnesota Statute 103B to allow the special stormwater taxing district to be used as a funding mechanism, and also ordering the project under Chapter 429 to allow special assessments to be used as a funding mechanism.

Councilmember Piekarski Krech confirmed the recommendation was also to retain the three (3) lowest bids until after the status of the MPCA grant application is known.

Mr. Melling questioned how the residents could be guaranteed an opportunity to come before the Council and voice their opinions about the funding of the project.

Councilmember Piekarski Krech stated they are trying to move the process forward so if a grant is awarded the Council can look at the project with actual numbers in hand.

Mayor Tourville stated once the numbers are known the item would have to come back to the Council to make a decision regarding award of a contract. He stated the neighborhood would be notified when the issue was placed on a Council agenda.

Mr. Thureen explained the Council was not taking action on the bids for the project at this time. He noted if they decide to advance the project after the information regarding the grant is known, they would have the flexibility to award any or all of the four schedules that were included in the bid.

Motion by Piekarski Krech, second by Madden, to adopt Resolution No. 13-58 Ordering City Project No. 2011-15 as a Water Management Facility pursuant to Minnesota Statutes Section 103B.245, Resolution No. 13-59 Ordering Improvements and Receiving Bids for the 2012 Capital Improvement Program City Project No. 2011-15, and Resolution No. 13-60 Retaining the Three Lowest Bids for City Project No. 2011-15 – Orchard Trail Stormwater Improvements

Ayes: 5

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

Ms. Teppen stated Commission interviews and appointments would be held on May 20, 2013 at 7:00 p.m.

9. ADJOURN: Motion by Piekarski Krech, second by Bartholomew, to adjourn. The meeting was adjourned by a unanimous vote at 9:35 p.m.