

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, SEPTEMBER 23, 2013 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Monday, September 23, 2013, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m. Present were Council members Bartholomew, Madden, and Mueller; City Administrator Lynch, Assistant City Administrator Teppen, City Attorney Kuntz, Public Works Director Thureen, Finance Director Smith, Parks and Recreation Director Carlson, Chief Stanger, Fire Chief Thill, and Deputy Clerk Kennedy.

3. PRESENTATIONS:

4. CONSENT AGENDA:

- A. Approve Therapeutic Massage Business License
- B. **Resolution No. 13-126** Approving Disbursements for Period Ending September 13, 2013
- C. Approve Custom Grading Agreement for Lot 2, Block 1, Orchard Trail (Mihm) 1578 86th Ct.
- D. Approve Custom Grading Agreement for Lot 1, Block 1, Wildwood Ranch Estates (Lemieux) 8688 Alvarado Court
- E. Final Compensating Change Order No. 3, Final Pay Voucher No. 2, Engineer's Final Report, and **Resolution No. 13-127** Accepting Work for City Project No. 2012-09B, Sealcoating
- F. **Resolution No. 13-128** Accepting Proposal and Awarding Contract to American Engineering Testing for Geotechnical Construction Testing Services for City Project No. 2012-07, Bohrer Pond Northwestern Pre-treatment Basin Restoration
- G. **Resolution No. 13-129** Accepting Proposal and Awarding Contract to Braun Intertec for Geotechnical Construction Testing Services for the 2013 Pavement Management Program, City Project No. 2013-09C, Mill and Overlay
- H. Final Compensating Change Order No. 2, Final Pay Voucher No. 2, Engineer's Final Report, and **Resolution No. 13-130** Accepting Work for City Project No. 2012-15, Sediment Removal from Basin at 79th and Blanchard Way
- I. Personnel Actions

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

Ayes: 4

Nays: 0 Motion carried.

5. PUBLIC COMMENT:

Allan Cederberg, 1162 82nd St. E., stated he would like to discuss assessments. He presented the Council with a copy of Minnesota Statute 429.061.

Motion by Mueller, second by Bartholomew, to receive the information.

Ayes: 4

Nays: 0 Motion carried.

Mr. Cederberg questioned where the special assessments were coming from for city project 2013-09C.

Mr. Thureen explained the feasibility study for the project identified the properties that would benefit from the improvements. Those properties identified in the feasibility study were proposed to be assessed for the project. The feasibility study also contained a preliminary assessment roll for the project.

Mr. Cederberg clarified there was an assessment roll for the project.

Mr. Thureen stated a preliminary assessment roll was prepared.

Mr. Cederberg questioned if another assessment would be levied for the geotechnical testing services.

Mr. Thureen responded in the negative. He stated the preliminary assessment roll was based on an estimate of total project costs. The geotechnical services were included as a component of the total project costs.

Mr. Cederberg referenced Minnesota Statute 429.061 regarding assessment procedure. He opined that the appraisal for the project did not comply with the statute, specifically the provision to “calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece or parcel of land, without regard to cash valuation”. He stated the appraiser did not look at every property proposed to be assessed and based the appraisal recommendation on a random selection of properties recently sold in the area. He opined that process did not meet the statutory requirement.

Mayor Tourville asked the City Attorney if any applicable laws were broken with respect to the City’s assessment policy and procedure.

Mr. Kuntz responded in the negative.

Councilmember Bartholomew stated the City would not knowingly do anything that would violate statute. He noted the City Attorney provided the opinion that all applicable laws, policies, and procedures were followed.

6. PUBLIC HEARINGS: None.

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

A. MG INVER GROVE, LLC; Consider the following actions for property located on Lot 3, Block 1 Argenta Hills:

- i) An Amendment to the Zoning Ordinance to allow Veterinary Clinic: Small Animal as a Conditional Use in the B-4 Shopping Center District
- ii) A Resolution relating to a Conditional Use Permit to allow a Veterinary Clinic on Lot 3, Block 1, Argenta Hills

Mr. Link stated the property was located west of Target. The owners of the commercial buildings had been working with a veterinarian specializing in animal dermatology. The property is zoned B-4 and the ordinance does not allow veterinary clinics in that particular zoning district. He noted veterinary clinics were allowed in all other zoning districts. The B-4 zoning district did allow pet stores which demonstrated a consistency to allow animal use businesses. Staff did not find any negative impacts of the proposal. Both Planning staff and the Planning Commission recommended approval of the requests.

Greg Munson, MG Inver Grove LLC, stated this would be the first tenant in the main street shops. He explained the business would be new to Inver Grove Heights and one of the main referral sources for the private practice was Inver Grove Heights Animal Hospital. He noted the applicant discovered the space during a broker tour sponsored by Progress Plus. He stated the applicant intended to make a 10 year commitment to the space. The Planning Commission raised a question related to the disposal of animal waste. In this type of practice the animals typically are not at the facility for lengthy periods of time. If any issues did occur they would be resolved between the landlord and the tenant.

Councilmember Madden pointed out there would be no overnight stays at the facility because there no kenneling or boarding services provided.

Mr. Munson stated the clinic was a highly specialized practice. No boarding of animals would occur.

Councilmember Bartholomew stated a condition of approval was included that there would be no outdoor pens or runs at the facility.

Councilmember Mueller clarified no restrictions were proposed for the hours of operation.

Mr. Munson stated there were no restrictions proposed and the applicant intended to be open during regular business hours.

Motion by Madden, second by Mueller, to adopt Ordinance No. 1269 amending the Zoning Ordinance to allow Veterinary Clinic: Small Animal as a Conditional Use in the B-4 Shopping Center District and Resolution No. 13-131 approving a Conditional Use Permit to allow a Veterinary Clinic on Lot 3, Block 1, Argenta Hills

Ayes: 4

Nays: 0 Motion carried.

B. FLINT HILLS RESOURCES; Consider Resolution relating to a Major Site Plan Approval for property located south of 3180 117th Street

Mr. Link reviewed the location of the property. The project consisted of a three-story office building of more than 140,000 square feet. It would also include a parking lot with approximately 550 stalls. The applicant estimates an additional 300 vehicles per day would be added to the existing private drive that goes up to 117th Street. Because 117th Street will become a county road in the near future, the county required a traffic study be conducted within 12 months of the issuance of a building permit to determine the amount of traffic and the impacts on 117th Street. Within 24 months of issuance of a building permit the applicant would be responsible for any necessary improvement to 117th Street that is caused by the increased traffic. The criteria of the zoning ordinance had been met and engineering found the plans acceptable. A development contract and stormwater maintenance agreement would be brought back to the City Council for approval in the near future. Both Planning staff and the Planning Commission recommended approval of the request.

Councilmember Mueller questioned who paid for the lights and traffic signal at Clark Road.

Mr. Thureen stated Clark Road was a City project and the interchange was a State project. The signals were installed as a part of the interchange project and the City paid its share based on the State's cost share policy.

Mayor Tourville questioned if the applicant agreed with the conditions of approval.

Mark Murphy, Flint Hills Resources, responded in the affirmative.

Motion by Madden, second by Bartholomew, to adopt Resolution No. 13-132 relating to a Major Site Plan Approval for property located south of 3180 117th Street

Ayes: 4

Nays: 0 Motion carried.

C. 160 INVESTMENTS (ARGENTA HILLS 8th ADDITION); Consider the following resolutions for property located north of Amana Trail and west of Addisen Court:

- i) A Preliminary and Final Plat approval of Argenta Hills 8th Addition including Development Contract, Storm Water Maintenance Agreement and related documents
- ii) A Preliminary PUD Amendment for Argenta Hills and Final PUD Development Plan for Argenta Hills 8th Addition
- iii) A Vacation of certain drainage and utility easements within the plat of Argenta Hills, 5th and 7th Additions

Mr. Hunting stated the Argenta Hills project was located along Highway 3, on the north side of Amana Trail. The 8th Addition was expected to be the second to the last of the residential phases. He provided a historical summary of the development. The original project was a combination of residential and commercial. In 2007 the development was approved with 153 residential units and over 400,000 square feet of commercial space. In 2010 there was an amendment to the residential phase whereby the number of units in the northeast corner of the development was reduced from 60 to 45. In 2012, in response to market demands, the townhouse component was changed to 39 detached single-family units. The current

proposed change was primarily driven by a revised County requirement for more interconnection with local streets. The main revision involved removal of two (2) cul-de-sacs to connect a street that would eventually continue north for future local connection routes. The 8th Addition included 38 single-family lots, with a combination of public roads and a private road. He noted there were a series of outlots either owned by the City for stormwater purposes or open space to be maintained by the association. He stated a couple of the outlots would be set up for future development. He explained as the development went through the platting process over several different phases, some overlap of easements occurred. A portion of the request involved the vacation of those easements and a rededication on the 8th Addition plat. The applicant requested flexibility with respect to the width and length of the driveways, and several corner setbacks. The project would still comply with the overall open space and landscaping requirements. The roads would be a minimum of 28 feet wide with parking along one side. Planning staff recommended approval of the applications as proposed.

Councilmember Mueller questioned how many outlots were in the development. He questioned if they were going to be maintained by the City.

Mr. Hunting stated there were more outlots than would normally be seen in a development. In order to meet the open space requirements for the overall development, the numbers of disturbed and undisturbed lots have to be tracked. He noted they have worked with the developer to identify the outlots in a more permanent fashion so it will be easier to track as the development nears completion. He explained the City would own and maintain some of the outlots because they contain stormwater ponds. The open space outlots would be owned and maintained by the Association.

Councilmember Mueller questioned if all the lots were buildable.

Mr. Hunting replied in the affirmative.

Mayor Tourville clarified that the outlots reserved for stormwater facilities would remain outlots forever.

Mr. Hunting stated that was correct.

Mr. Kuntz stated one of the items presented for approval was the development contract and a couple of changes were proposed. On page 32, a listing of various developer improvements, the second to the last item referred to stormwater facilities and it included the irrigation system to be built on Outlot G. The clarification needed to be made that this particular irrigation system would be privately operated and maintained on Outlot G even though the City was the designated owner of the outlot. On page 35 there was a recitation of a monetary obligation of the developer to pay certain fees connected with those lots that were not built. The amount to be inserted on page 35 under item 1G is \$168,210. On page 37 under item 6 there was a blank with respect to the number of new lots in the development. There would be 37 new lots in the 8th Addition subject to the park dedication fee of \$4,011 per lot. On page 38 under item 13 there was a discussion of the homeowner's association. Each of the subdivisions within Argenta Hills are subject to a homeowner's association and it is clear that the responsibility for expenses related to maintenance of the private road (Outlot D) will be spread out amongst the lots adjoining Outlot D. The change being made is to identify lots 1-9 as subject to that responsibility, not lots 1-10. On page 41 under paragraph 18, subpart 11 there is recitation to the irrigation maintenance agreement for Outlot G. A correction was needed to reflect that the homeowner's association would perform maintenance on the system. On page 44 the amount of \$106,000 needed to be inserted for the engineering inspection fee.

Mayor Tourville questioned why none of the numbers had been inserted on page 43.

Mr. Kuntz stated the developer and the engineering department were still reviewing the line items.

Mayor Tourville questioned if the development agreement would come back for Council approval.

Mr. Kuntz stated the Council was asked to approve the development agreement with the understanding that Exhibit F would be completed by the Public Works department.

Jacob Fick, 160 Investments, stated the Argenta Hills project had been very well received. He explained they had been working with staff to address an issue related to Alverno Avenue, the north-south collector street that runs along the west side of the 8th Addition plat. He stated the road was a City collector street

and they requested staff consider due compensation for the upsizing of the roadway because they were being asked to dedicate an 80 foot wide right-of-way versus a typical 52 foot wide right-of-way, and were being asked to build a road that is 40 feet wide versus a normal 28 foot wide road. He explained the wider road was not a required to service the development. He requested that staff consider compensating the developer for the extra land and right-of-way costs to build the larger road. He stated they understood their obligation to construct the road and were willing to pay for the costs to build a typical street. He added they also understood staff's position that there was no identified funding source to handle such a request. He requested Council direct staff to meet with the developer to come up with an equitable plan to compensate the developer for the additional costs associated with the enlarged roadway.

Mr. Lynch explained the City requested that Alverno Avenue be constructed with additional width and right-of-way because it will be a collector street. Similar to when utilities are installed and a developer is asked to upsize a pipe, consideration is typically for the cost to install a larger product. Staff's current position is that the roadway is a developer-borne cost. If directed by the Council, staff would continue to work with the developer to reach agreement on what the compensation, if any, should be and in what form.

Mayor Tourville questioned if the issue was directly related to the items being considered on the agenda.

Mr. Fick stated his understanding was that Alverno Avenue was a part of the 8th Addition plat and a required component of the development contract. If the items were approved as proposed they would be bound by the development contract to construct the road at their expense. He stated their argument is that it is a disproportionate impact on their site compared to what they would normally be required to do. He requested that Council add a condition to the plat requiring staff to meet with them to discuss an equitable solution.

Mr. Kuntz stated more dialogue was needed between the City and the developer in order to get some information regarding the issue. He explained it was unclear what the developer was asking the City to do and what they ultimately sought. The development contract, as written, stipulates that the developer will construct the road at their expense. If the developer is unsure whether or not they want to agree to the terms of the development contract it is unclear what the City will have approved or accomplished by moving forward with action items on the agenda. He stated the City would not release the plat until the development contract is signed and until it is determined who will be responsible for paying for the road. He suggested if the developer wanted to engage in discussions with the City regarding the terms of the development contract, it would be appropriate to table consideration of the items on the agenda until an agreement is reached.

Councilmember Mueller stated he did not want to hold the project up because the construction season was ending. He questioned if the developer had an idea of the amount of compensation they desired.

Mr. Fick stated they did not have final cost estimates for the project. He explained they did not want to delay the project by tabling the items. He noted it would ultimately be a policy issue for the City.

Councilmember Bartholomew stated it would be difficult to approve if no dollar figure was known.

Mayor Tourville questioned if the development contract could be written to provide the City and the developer with the latitude to continue negotiations regarding Alverno Avenue.

Mr. Fick questioned if it would be possible to draft the contract in manner similar to what was done with respect to some of the fees the developer was required to pay the City. He stated everyone agreed that the road needed to be built, it was simply a matter of cost.

Mr. Kuntz stated it would not be feasible to rewrite the contract to satisfy both parties when the numbers are unknown. A discussion between both parties would need to occur first to determine what percentage the developer wanted the City to pay.

Mayor Tourville questioned if every road constructed in the Northwest Area would be paid for 100% by each developer.

Mr. Thureen explained Alverno Avenue was a very small segment of what would eventually be a very large collector street system in the Northwest Area and developer-borne costs would likely be the City's position going forward unless another funding source could be identified.

Mr. Lynch stated this decision would set the policy and practice of the City for the future collector systems in the Northwest Area.

Mr. Fick stated they did not like being forced into a decision, but needed the project to move forward.

Mr. Kuntz questioned why the issue could not be tabled until the next regular meeting to allow for discussion.

Mr. Fick stated it was too late in the construction season to delay the project. He questioned if the issue regarding Alverno Avenue could be separated out from the development contract.

Mr. Kuntz questioned if part of the County's approval of the plat was that Alverno Avenue had to be constructed.

Mr. Hunting responded in the affirmative.

Mr. Kuntz stated the road had to be on the plat and could not be separated out.

Mr. Fick stated the size of the road was not dictated by the County. The City dictated the size of the road based on their transportation plan.

Mr. Kuntz reiterated more discussion was needed between both parties to try to resolve the issue.

Councilmember Mueller reiterated his concerns related to delaying the project.

Mayor Tourville stated a discussion had to occur because the issue was not just how much the developer wanted. He explained the City may still make the decision that the developer needs to pay for 100% of the costs.

Councilmember Mueller opined the process needed to be expedited so the developer could make a decision to proceed with the project or not.

Mr. Fick stated he understood the City's position but requested that staff reconsider.

Mayor Tourville opined the options were to approve the requests tonight with the development contract as proposed, or to table until the next regular meeting to allow for further discussion between staff and the developer.

Mr. Fick questioned if the development contract could be revised at a later date if it was approved by Council as proposed. He stated that way they could still have discussions with staff and move forward with the project. He acknowledged that the outcome may still be the same following more discussion with staff.

Mayor Tourville stated development contracts had been amended in the past. He noted the issue of precedence was a major component of staff's position. He clarified that the developer did not want the items tabled and they understood that they ran the risk of no changes being made to the development contract.

Mr. Fick stated they did not want the item tabled and they understood the risk involved.

Mr. Kuntz suggested approving the items with the development contract as proposed and making a separate motion to direct staff to meet with the developer to discuss the matter and report back to the Council at the next regular meeting.

Mr. Fick noted the development contract could be revised at a later date if an agreement was reached.

Motion by Mueller, second by Madden, to adopt Resolution No. 13-133 approving a Preliminary and Final Plat for Argenta Hills 8th Addition including Development Contract, Storm Water Maintenance Agreement and related documents, Resolution No. 13-134 approving a Preliminary PUD

Amendment for Argenta Hill and Final PUD Development Plan for Argenta Hills 8th Addition, and Resolution No. 13-135 approving a Vacation of Certain Drainage and Utility Easements within the Plat of Argenta Hills, 5th and 7th Additions with the changes as noted by the City Attorney

Ayes: 4

Nays: 0 Motion carried.

Motion by Mueller, second by Madden, to direct staff to meet with the developer to discuss the issue related to the construction of Alverno Avenue and to report back to the Council by the next regular meeting

Ayes: 4

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

Councilmember Bartholomew stated he was pleased to hear that progress had been made on the Darvan Acres issue.

9. EXECUTIVE SESSION:

Mayor Tourville stated the Council would meet in executive session to discuss pending litigation.

Mr. Kuntz stated that the Council was meeting in executive session subject to attorney-client privilege.

10. ADJOURN: Motion by Madden, second by Mueller, to adjourn. The meeting was adjourned by a unanimous vote at 8:44 p.m.