

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
TUESDAY, NOVEMBER 12, 2013 - 8150 BARBARA AVENUE**

CALL TO ORDER/ROLL CALL The City Council of Inver Grove Heights met in regular session on Tuesday, November 12, 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, Public Works Director Thureen, Finance Director Smith, Parks and Recreation Director Carlson, Chief Stanger, and Deputy Clerk Kennedy

3. PRESENTATIONS:

A. Inver Grove Heights Royalty

Dale Henniger, President of Inver Grove Heights Scholarship Program, explained on Saturday, September 7th the Inver Grove Heights Scholarship Program crowned its 7th Royal Court. There were 13 candidates and six (6) were chosen to represent the City throughout the next year. He noted the Inver Grove Heights Princess, Kacie Bartholomew, was unable to attend.

Kelsey Stout introduced herself as Miss Inver Grove Heights.

Audrey Wulfig introduced herself as Junior Miss Inver Grove Heights.

Valerie Marlowe introduced herself as Junior Princess.

Natalie Taufen introduced herself as Little Miss Inver Grove Heights.

Chloe Patnaude introduced herself as Little Princess.

Ms. Stout stated in the past year a new float was introduced to the program. Since May the float had been in nine (9) parades and received two (2) awards. At the Eagan Fun Fest Parade on July 4th the program won the "Youth Salute" award and at the Cottage Grove Monster Bash Parade the program received 2nd place for "most creative float". She presented the Council with two (2) pictures of the award-winning floats.

Each member of the Royal Court introduced their family members in attendance.

Mayor Tourville thanked the girls and their parents for all the time and effort they put into being ambassadors for the City at numerous events.

Mayor Tourville read the Veterans Day Proclamation the City received from the Governor at the annual celebration held at the National Guard Armory. He stated the City was honored to host the program and thanked City staff, members of the Veterans Bureau, and the Police and Fire departments.

Councilmember Madden stated the staff did a fantastic job and he really appreciated the event as a veteran himself.

4. CONSENT AGENDA:

Councilmember Mueller removed Item 4D from the Consent Agenda.

Councilmember Piekarski Krech removed Items 4F and 4O from the Consent Agenda.

Councilmember Bartholomew removed Item 4K from the Consent Agenda.

A. Minutes of October 28, 2013 City Council Meeting

B. Resolution No. 13-157 Approving Disbursements for Period Ending November 6, 2013

C. Resolution No. 13-158 Approving a Storm Water Maintenance Agreement for the Storm Water Features to be constructed as part of a CUP on property located at 9209 Chapman Court

E. Pay Voucher No. 7 for City Project No. 2006-08, Asher Water Tower Replacement

- G.** Change Order No. 1 and No. 2, Final Compensating Change Order No. 3, Final Pay Voucher No. 1, Engineer’s Final Report and **Resolution No. 13-160** Accepting Work for City Project No. 2013-03, Regional Basin SP-27 Stormwater Facility Repairs
- H.** Approve Encroachment Agreement for Lot 7, Block 2, Argenta Hills 4th Addition (7542 Auburn Court)
- I.** Approve Custom Grading Agreement for Lot 5, Block 1, Hatchard Estates (9162 Dalton Court)
- J.** **Resolution No. 13-161** Authorizing Execution of the Declaration of Conditions and Restrictions related to the State Forest Bonding Grant upon certain City Parks and other City Property
- L.** **Resolution No. 13-163** Calling for a Public Hearing on the Modification to TIF District 2-1
- M.** **Resolution No. 13-164** related to Deficit Pooling in TIF Districts
- N.** Approve 2014 Proposed Convention and Visitors Bureau Budget
- P.** Personnel Actions

Motion by Madden, second by Piekarski Krech, to approve the Consent Agenda

Ayes: 5

Nays: 0 Motion carried.

D. Resolution Approving Demolition Contract – 8195 Babcock Trail

Councilmember Mueller questioned why the City did not know about the hazardous materials prior to its purchase.

Mr. Link explained an environmental investigation was done before the City acquired the property. He noted this particular item pertained to the interior of the building. He stated typically this type of analysis is not performed until just prior to demolition.

Councilmember Mueller stated the cost to do the analysis should have been built into the purchase price.

Mr. Link stated the analysis usually cannot be done before the property is acquired because the building is still occupied. The purpose of the work is to give the contractor an idea as to how to demolish the building.

Mr. Lynch stated this is the typical process that has been followed in other acquisitions and reiterated the investigation is usually not done until after acquisition because it can be an inconvenience to the seller. He noted the City was obligated to perform the analysis and the cost was included in the demolition contract.

Councilmember Piekarski Krech suggested for future acquisitions the City could hold an escrow for the extra costs associated with the interior environmental investigation.

Mr. Lynch the City does hold an escrow amount if a land contamination is suspected. He stated this was a typical cost of business for acquisition of a property and a demolition. He noted the seller would most likely not agree to pay for those costs.

Mayor Tourville questioned if it would be possible to put together a cost estimate for any additional work that would be done outside of the acquisition so Council would be aware of those potential costs up front.

Mr. Link responded in the affirmative.

Motion by Madden, second by Bartholomew, to adopt Resolution No. 13-159 approving a Demolition Contract for 8195 Babcock Trail

Ayes: 5

Nays: 0 Motion carried.

F. Pay Voucher No. 1 for City Project No. 2012-07, Bohrer Pond NW Pre-Treatment Basin

Councilmember Piekarski Krech stated she received several comments that it appeared as though more was being filled in than excavated at the site.

Mr. Thureen stated excavation work was definitely being conducted. He explained the material was being disposed of in the upland area to keep the project costs down. He noted a second contractor was also cleaning out the largest storm sewer that enters the area because it was half full of sediment.

Motion by Piekarski Krech, second by Madden, to approve Pay Voucher No. 1 for City Project No. 2012-07, Bohrer Pond NW Pre-Treatment Basin

Ayes: 5

Nays: 0 Motion carried.

K. Resolution Approving Transfers to Golf Course in 2013

Councilmember Bartholomew explained money was being transferred from two (2) different funds to reduce a cash deficit in the Golf Course Fund. He stated he understood this was being done to eliminate having to do a one-day transfer at the end of the year for accounting purposes. He supported the transfer because it made sense and he encouraged transparency in the process. He noted he would not support any future transfers to cover operational losses. He opined it was incumbent upon everyone to improve the operations at the golf course to avoid future losses.

Motion by Madden, second by Mueller, to adopt Resolution No. 13-162 Approving Transfers to Golf Course in 2013

Ayes: 5

Nays: 0 Motion carried.

O. Resolution Approving the Dakota County 2014 Community Funding Application for Waste Abatement Activities

Councilmember Piekarski Krech expressed concern that the same thing was done every year. She questioned if the Environmental Commission was involved in the process. She opined that there was more the City could be doing than just the boiler plate program. She stated the Environmental Commission could be much more valuable if they had more tasks assigned to them. She added the City should be at the forefront of waste abatement, recycling, and green initiatives because of the presence of the landfill.

Motion by Madden, second by Bartholomew, to adopt Resolution No. 13-165 approving the Dakota County 2014 Community Funding Application for Waste Abatement Activities

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT: None.

6. PUBLIC HEARINGS:

7. REGULAR AGENDA:

COMMUNITY DEVELOPMENT:

A. MARY T’KACH; Consider Resolution relating to a Variance to allow a Seven Foot High Fence along the Front Property Line whereas 42 Inches is the Maximum Height within the Front Yard for property located at 1987 80th Street

Mr. Link reviewed the location of the property. He explained the City zoning code states that fences in the 30 foot front yard setback area cannot exceed 42 inches in height and they must be 75 percent open. The requirement is in place primarily to preserve visibility for motorists or emergency vehicles and also for aesthetics and visual appeal so there are no tall fences located right up against the street. The applicant proposed two (2) fences. The first would be a solid wood fence, 66 feet long and seven (7) feet tall,

located along the right of way. The second would also be a solid wood fence, 18 feet long and seven (7) feet tall, setback five (5) to ten (10) feet from the right of way. Planning staff recommended denial of the request because they could not find anything particularly unique about the property. There are many properties that front an arterial street or are located across from uses that generate a lot of traffic. He noted the applicant had other options available as the fences could be moved back farther onto the property. The size of the variance was large and staff was concerned with setting a precedent and the potential negative impact on the neighborhood to have a number of tall fences up along the road. The Planning Commission also recommended denial due to lack of a practical difficulty.

Mary T'Kach, 7848 Babcock Trail, stated she proposed a staggered design for the fence to make it more aesthetically pleasing. She explained the purpose was to reduce the noise coming from 80th Street as a result of the increased truck and vehicular traffic to service the development occurring to the West of her property and the traffic at the community center. She stated she was looking to make the house more livable and noted the home did not have air conditioning so the windows could not simply be closed during the summer months to reduce the noise. She noted the home was constructed in 1949 and had 32 additional feet of setback from the main road. A number of years ago the County acquired the extra frontage in order to widen the road. She stated if that had not happened there would have been plenty of room to meet the setback requirements. She clarified that the fence would be a minimum of 12 feet from the sidewalk. She explained the idea was to have the fence setback far enough from the sidewalk, and heavily landscaped to avoid a stockade impact.

Mayor Tourville clarified the applicant was seeking a buffer from the noise and lights generated by the traffic.

Ms. T'Kach responded in the affirmative.

Mayor Tourville stated he was unable to come up with an example of another place in the City where a similar request would be allowed in the front yard.

Ms. T'Kach noted last year the Council approved a variance for a fence on a corner lot. The fence was put up on what was technically considered to be the front yard. She stated the variance was granted because of the traffic on that road.

Mayor Tourville stated the situation was not the same because the home was situated on the lot in such a manner that the fence actually ran along the side yard of the property.

Ms. T'Kach stated she was unsure how many people would make requests similar to hers.

Councilmember Mueller suggested installing a berm in front of a 42 inch fence.

Ms. T'Kach stated she would still need a variance because the fence had to be 75 percent open. She noted a chain link fence would do nothing to mitigate her problem. She added that she attempted to plant spruce trees to minimize the noise and block the light and it did not work.

Mayor Tourville questioned if the applicant would be allowed to put in a seven foot high hedge.

Mr. Link stated he was not aware of any regulations related to landscaping.

Councilmember Madden stated he was concerned with setting a precedent.

Ms. T'Kach stated she was running out of options to mitigate the noise and make the property livable.

Councilmember Piekarski Krech questioned if they would have similar issues with other homes along 80th Street.

Mayor Tourville opined he could not figure out a way to approve the variance in this instance because nothing similar had been approved for anyone else in a front yard.

Ms. T'Kach stated she was trying to do something to maintain the value of the property.

Councilmember Mueller suggested looking into installing a berm. He stated there were not as many streets in the City that get more traffic than 80th Street.

Councilmember Madden reiterated that he did not want to set a precedent for the whole City that the Council would allow solid fencing in front yards. He added he could not find a practical difficulty to justify the variance.

Councilmember Bartholomew stated the difficulty was that the neighboring properties would also want to do the same thing if given the opportunity.

Mayor Tourville reiterated the best solution for the front yard may be landscaping or a berm.

Motion by Madden, second by Bartholomew, to adopt Resolution No. 13-166 denying a Variance to allow a Seven Foot High Fence along the Front Property Line whereas 42 Inches is the Maximum Height within the Front Yard for property located at 1987 80th Street

Ayes: 5

Nays: 0 Motion carried.

B. WALMART STORES, INC.; Consider Resolution Amending PUD Approval to allow the Store to Remain Open 24 Hours on Thanksgiving Day

Mr. Link stated an identical request was approved by Council in 2012. Walmart currently has restrictions on the hours the store can be open. The restrictions are 7 am to 11 pm with the exception that they can open at 5 am on the day after Thanksgiving. The applicant requested a one-day extension of the store hours to allow the store to remain open an additional six (6) hours. Rather than closing at 11 pm on Thanksgiving the store would remain open all the way through Thanksgiving Day. He noted if the store remained open the parking lot and store lights were remain on through the night. Planning staff was not aware of any other retail business in the City that had similar restrictions on the hours of operation. Staff recommended approval of the request.

Councilmember Madden stated similar requests were denied in the past and the only reason he supported the request now was in the interest of fairness because Walmart's competitors did not have the same restrictions imposed upon them. He stated he did not agree with the store being open on Thanksgiving.

Councilmember Piekarski Krech clarified that Walmart would not be closed at all on Thanksgiving.

Luke Nordquist, Walmart Store Manager, stated the store would be open on Thanksgiving no matter what. If the request was not approved the store would still be open on Thanksgiving until 11 pm.

Councilmember Piekarski Krech stated her major issue with the request was that when the terms with Walmart were negotiated it was agreed that it would not be a 24 hour store. She explained if the other stores were going to be open all day on Thanksgiving she would support the request in the interest of fairness.

Mayor Tourville stated things have changed since the Walmart terms were originally negotiated and the request was to change the hours on one specific day. He opined he would not make the value judgment of where people should or should not be on Thanksgiving because that was an individual decision. He noted in past years people complained because the Inver Grove Heights location was not open the same hours as other Walmart stores. He stated he did not hear any complaints from the neighborhood when it was allowed last year.

Councilmember Piekarski Krech stated if the PUD was going to be similarly amended in the future Walmart should go through the formal process to make a permanent change.

Councilmember Madden suggested Walmart look into a permanent change for subsequent years. He stated he only supported the request because things have changed in the market and denying the request would create an unfair advantage for Walmart's competitors.

Mr. Link stated it was Walmart's choice as to whether they wanted to make annual requests or if they wanted to pursue a permanent change to the restrictions set forth in the PUD. He noted staff did notify the neighbors of the request and no comments were received.

Motion by Mueller, second by Madden, to adopt Resolution No. 13-167 Amending PUD Approval to allow the Store to Remain Open 24 Hours on Thanksgiving Day**Ayes: 4 (Bartholomew, Mueller, Madden, Tourville)****Nays: 1 (Piekarski Krech) Motion carried.****C. CITY OF INVER GROVE HEIGHTS; Consider Second Reading of an Ordinance Amendment to Allow Vertical Axis Wind Turbines as a Permitted Use in the A, E-1, an E-2 Districts**

Mr. Link explained current City Code regulations allowed wind turbines as a conditional use in four (4) zoning districts. The proposed ordinance would allow vertical axis wind turbines as a permitted use in three (3) zoning districts, A, E-1, and E-2. He stated there were four (4) small neighborhoods within the City that were zoned E-2. The minimum lot size in the E-2 district is 1.75 acres. The proposed ordinance provides for a maximum height of 52.5 feet, the same as what is currently allowed for church spires, towers, poles, monuments, smoke stacks, and other similar structures. The maximum height is typically 35 feet and, by zoning code, those types of structures are allowed to increase the height by 50 percent. Planning staff recommended approval of the ordinance. The Planning Commission previously recommended denial of the ordinance amendment as proposed.

Councilmember Madden questioned if current City Code regulations would permit the interested party to have vertical axis wind turbines on his property.

Mr. Link stated current regulations would allow any kind of wind turbine, including vertical axis wind turbines, as a conditional use.

Councilmember Madden opined the Planning Commission had a good point in that it didn't seem necessary to adopt an ordinance for one specific person or one specific piece of property. He stated it did not make sense to him why this was being done when only one (1) request had been submitted. He noted he may be willing to consider it in the future if there was more interest or demonstrated need for the proposed changes.

Mayor Tourville stated he received several emails from individuals who were concerned with the maximum height.

Councilmember Mueller stated the turbines could generate electricity for the interested party.

Councilmember Madden noted the property owner could still put up the turbines if he obtained a conditional use permit. He expressed concern with the height of the vertical axis turbines and opined he did not want to see them all over the City.

Mr. Link explained Mr. Grannis requested an ordinance amendment for vertical axis wind turbines to be allowed as a permitted use with certain restrictions and performance standards. He noted the changes would apply equally to all properties within each of the three (3) zoning districts proposed.

Vance Grannis, Jr., stated he felt it was a hardship to allow the vertical axis turbines only as a conditional use. He explained he knows of others in the City who expressed interest in using the turbines at such time that the ordinance is amended to allow them as a permitted use. He noted the City had no means to regulate the wind turbines via the conditional use process under the current ordinance. The proposed amendments would at least provide the City with conditions to regulate the use. He stated it was more expensive to go through the conditional use permit application process.

Mr. Link stated the conditional use permit application fee ranged from \$250 to \$1200 depending on the type of application.

Councilmember Bartholomew stated he supported the proposed ordinance amendment and felt there were plenty of safeguards in place to ensure the structures would not be littered throughout the City. He noted similar structures of the same height were currently allowed in areas that met the setback requirements. He stated the ordinance was drafted with rules that would provide for a number of individuals to install vertical axis wind turbines, not just one specific property owner. He suggested the permitted use be limited to the A and E-1 zoning districts only and the E-2 district should continue to be

allowed as a conditional use.

Councilmember Piekarski Krech agreed with removing E-2 as a permitted use. She stated not all of the structures would be built to the maximum allowed height and they would be sized according to the property because people will want to save money by constructing the smallest tower possible. She opined this would be a part of staff's overall plan to update the City's current energy ordinances.

Motion by Piekarski Krech, second by Bartholomew, to approve the Second Reading of an Ordinance Amendment to Allow Vertical Axis Wind Turbines as a Permitted Use in the A and E-1 Districts

Ayes: 4 (Bartholomew, Mueller, Piekarski Krech, Tourville)
Nays: 1 (Madden) Motion carried.

PUBLIC WORKS:

D. CITY OF INVER GROVE HEIGHTS; Consider Resolutions Establishing Utility Rates for 2014

Mr. Thureen presented utility rate recommendations for 2014. The proposed rate increases for water and sanitary sewer follow the recommendations of the 2012 rate study update prepared by Ehlers and Associates. The rate increase for water was proposed to be 2 percent and the increase for sanitary sewer was proposed to be 3.5 percent. Storm water utility rates would remain unchanged for 2014.

Motion by Piekarski Krech, second by Mueller, to adopt Resolution Nos. 13-168, 13-169, and 13-170 Establishing Utility Rates for 2014

Ayes: 5
Nays: 0 Motion carried.

ADMINISTRATION:

E. CITY OF INVER GROVE HEIGHTS; Consider the Second Reading of an Ordinance Amending Inver Grove Heights City Code Title 4, Chapter 11, Sections 4-11-5(F) and 4-11-7(A) Regarding Payment of a Background Check Investigation Fee by Solicitors and the Grounds for Revocation, Suspension, or Denial of a License or Certificate of Registration

Ms. Teppen stated no changes were made to the proposed ordinance since the first reading.

Motion by Mueller, second by Bartholomew, to approve the Second Reading of an Ordinance Amending Inver Grove Heights City Code Title 4, Chapter 11, Sections 4-11-5(F) and 4-11-7(A) Regarding Payment of a Background Check Investigation Fee by Solicitors and the Grounds for Revocation, Suspension, or Denial of a License or Certificate of Registration and to waive the requirement for a third reading

Ayes: 5
Nays: 0 Motion carried.

F. CITY OF INVER GROVE HEIGHTS; Consider Request for a Special Bow Hunt Outside the Established Bow Hunting Boundaries

Mr. Lynch stated the current ordinance regulations do not contain provisions that allow for exceptions to the established bow hunting boundaries.

Mr. Kuntz explained the ordinance provides for bow and arrow use within a geographic portion of the City designated on a map attached to the ordinance. Because the ordinance incorporates the map, any changes to the adopted boundaries would require an ordinance amendment.

Mayor Tourville questioned if the first reading of an ordinance amendment could be held at this meeting and then have changes made to the map prior to the second reading at the next regular Council meeting.

Mr. Kuntz stated that is a process that could be initiated by the Council.

Mayor Tourville stated the request involves an urban area with a large amount of land with a high population of deer and something should be done to control the herd. He opined there was a huge safety factor involved with this request because a number of the deer had been hit by cars along Blaine Avenue and this might be an opportunity to address the problem.

The Council agreed to consider the proposed changes as a method of population control.

Mayor Tourville stated the Police Department would have to inspect the proposed area to ensure it was safe for hunting prior to any changes being adopted.

Councilmember Piekarski Krech questioned if the map needed to be changed or if language could simply be added that would provide for exceptions with Council approval.

Mr. Kuntz stated that alternative was available to the Council. He suggested adding a sunset provision for the first reading which allowed for the map to be altered temporarily (for 2013) to include the area being requested. He noted the ordinance would not be codified because the approval would expire at the end of the year and it would force those who requested the amendment to come back to the Council in 2014 for subsequent approval in advance of the hunting season. This would also provide the City with an opportunity to see how the program would work.

Mayor Tourville stated he supported the City Attorney's suggested alternative versus a permanent change to the map.

Mr. Lynch clarified that no hunting would be allowed in the proposed area until such time that the Council adopted the ordinance amendment as discussed.

Chief Stanger stated he communicated with the DNR about the issue and was informed that the DNR was aware of the area in question and did not impose any restrictions beyond what was already established by local ordinance. The state-wide bow hunting season was open through December 31, 2013. He noted the Police Department would inspect the proposed area from a safety perspective prior to the next regular Council meeting.

Motion by Mueller, second by Piekarski Krech, to approve the First Reading of an Amendment to the Bow Hunting Ordinance with language added to reflect the sunset provision as suggested by the City Attorney

Ayes: 5

Nays: 0 Motion carried.

8. MAYOR & COUNCIL COMMENTS:

9. ADJOURN: Motion by Bartholomew, second by Mueller, to adjourn. The meeting was adjourned by a unanimous vote at 8:45 p.m.