

INVER GROVE HEIGHTS CITY COUNCIL MEETING MINUTES**Monday, September 23, 2019 at 7:00 p.m.****1. CALL TO ORDER**

The City Council of Inver Grove Heights met in regular session on Monday, September 23, 2019, in the City Council Chambers. The Pledge of Allegiance was recited. Mayor Tourville called the meeting to order at 7:00 p.m.

2. ROLL CALL

Present were: Mayor Tourville, Councilmembers Piekarski-Krech, Bartholomew, and Dietrich; City Administrator/Interim Deputy Clerk Lynch, City Attorney Kuntz, Community Development Director Rand, Police Commander Otis, and Police Chief Chiodo. Absent: Councilmember Perry.

3. PRESENTATIONS

There were no presentations.

4. CONSENT AGENDA

- A. i. Minutes from the August 26, 2019 Regular Council Meeting.
- ii. Minutes from the September 9, 2019 Regular Council.
- B. Disbursements for Period Ending September 18, 2019. **Resolution 19-175.**
- C. Approve Group Insurance Plans, Rates, and Contribution Amounts.
- D. Request approval of the Pay Application #10 to Jorgenson Construction for Project 2014-10 Fire Station #2 New Construction.
- E. Request approval of the authorized Change Orders #7, #8, and #9 for Project 2014-10 Fire Station #2 New Construction.
- F. Request approval for the Fire Chief to contract with LVC Companies to install electronic door access system for Project 2014-10 Fire Station #2 New Construction.
- G. Request approval to proceed with work in Change Order #10 for Project 2014-10 Fire Station #2 New Construction.
- H. Consider Approval of Proposal with US Aquatics for Consulting Services for the Replacement of the Pool Filtration and Chemical Feed Systems.
- I. Jaeger Construction – Case No. 19-36CA; Approve a resolution relating to a Conditional Use Permit to add two additions onto the existing Inver Grove Ford auto sales building. Property located at 4725 South Robert Trail. **Resolution 19-176**
- J. William Krech – Case No. 19-35SPD; Approve the Final Plat, Final PUD Development Plan, Development Agreement and related agreements for the plat of Amberwood. Property located at 2001 120th Street. **Resolution 19-177.**
- K. City of Inver Grove Heights. Approve resolution authorizing staff to enter into a Professional Services Agreement with Kimley Horn to prepare an update to the Northwest Expansion Area Alternative Urban Areawide Review (AUAR). **Resolution 19-178**
- L. Human Trafficking Task Force Joint Powers Agreement. **Resolution 19-179.**
- M. Consider Pay Voucher No. 3 for City Project No. 2015-03 – 65th Street Construction (between T.H. 3 and Argenta Trail) and City Project No. 2018-03 – NWA Trunk Watermain Improvements, 65th Street Loop (Phase IV of 2015-12) from Agate Trail to Alverno Lane.
- N. Consider Pay Voucher No. 10 for City Project Nos. 2017-03 – Watermain Improvements, 65th Street Loop and 2017-24 – T.H. 3 Intersection Improvements for 65th Street.
- O. Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 5, Engineer's Final Report, and Resolution Accepting Work for City Project No. 2017-09E – 93rd Street and Abigail Court Area Reconstruction. **Resolution 19-180**
- P. Consider Pay Voucher No. 2 for City Project No. 2018-09D – Atwater Path Pavement Replacement, City Project No. 2018-09F.
- Q. Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 1, Engineer's Final Report and Resolution Accepting Work for City Project No. 2019-10, Raingarden Inlet Retrofits. **Resolution 19-181**
- R. Consider Resolution Separating City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard to Inver Grove Trail) and Establishing one Additional Project: City Project No. 2019-09F. **Resolution 19-182**

- S. Approve Custom Grading Agreement and Permanent Drainage, Utility and Stormwater Ponding Easement for 10895 Barnes Avenue (Outlot C, Sunvilla).
- T. Consider a Resolution Accepting Quote for Utility Televising Services on City Project No. 2019-09D, 64th Street Area Improvements. **Resolution 19-183**
- U. Personnel Actions.

Motion by Bartholomew, seconded by Dietrich to approve the Consent Agenda.

Ayes: 4

Nays: 0 Motion carried.

5. PUBLIC COMMENT

None

6. PUBLIC HEARING

None

7. REGULAR AGENDA

ADMINISTRATION

A. Consider Request for Inver Grove Brewing to Grant an Extended Premises Permit of the Existing Liquor License Sales Area to a Designated Outdoor Area, September 29, 2019

City Administrator Joe Lynch stated the request is for an extended Premises Permit for Inver Grove Brewing for an event taking place on September 29, 2019. A tent will be set up by a professional company following all required codes. Food cooked inside of the building, beverages, and alcohol will be for sale as well as games, activities, and live music. He stated the applicants have provided the Insurance Certificate and a diagram of the parking lot. The Fire Marshal and Police Department have approved the planned events and Staff recommends approval of the Permit.

Motion by Piekarski-Krech, seconded by Dietrich to approve the Request for Inver Grove Brewing to Grant an Extended Premises Permit of the Existing Liquor License Sales Area to a Designated Outdoor Area, September 29, 2019.

Ayes: 4

Nays: 0 Motion carried.

B. Consider Request for Mississippi Pub to Grant an Extended Premises Permit of the Existing Liquor License Sales Area to a Designated Outdoor Area, October 3-4, 2019 and October 5, 2019.

City Administrator Lynch stated the request is for an extended Premises Permit for Mississippi Pub for October 3, 4, and 5, 2019. The applicant has provided the Insurance Certificate and a diagram of the parking lot. The Fire Marshal has approved the plans and staff recommends approval of the request. He stated the Police Department would like to give their own report on the request.

Police Commander Josh Otis stated the Police Department has taken on additional responsibilities in the absence of the City Clerk. Included in those responsibilities is reviewing the Ordinance for an extension. He stated the extension calls for not dropping below the required number of parking spaces. The Mississippi Pub is allowed 40 parking stalls, the required number is 38 parking stalls. He displayed a diagram of the parking lot and stated the tent area and extension area would cover eleven parking stalls bringing their required limit below forty. He stated Mississippi Pub has a service area that is a part of the Marina, but not a part of the business. Per the Ordinance, dropping below the required number of stalls, the request cannot be approved by the Police Department and must go before City Council.

Joe Harms, 4455 66th Street East, River Heights Marina and Mississippi Pub, displayed a diagram of the site plan from 2005 that depicts the area known as the “service area”. He stated they currently

do not do service work in that area; it is used for additional parking if other spaces are full for the Pub. They also use parking spaces along the shoreline. He stated they have adequate parking on the property.

Councilmember Bartholomew asked what type of surface the service area had and if there was currently parking on it. Mr. Harms responded there is millings on it and there are cars parked on it. Councilmember Piekarski-Krech asked if barriers would be placed in the area for parking. Mr. Harms responded the area allows for two more rows for parking and that he has never had issues with anyone being blocked in.

Police Commander Otis stated there would be 27 additional parking spaces that could be created in the service area which would cover the 11 spots that are being covered up. Mayor Tourville asked that the parking spaces be identified for those coming to the events.

Mr. Harms stated they would be doing an event for the Best Foundation on Thursday, a Bean Bag Tournament on Friday to raise funds for Soldier's 6, and Saturday is the Oktoberfest.

Motion by Piekarski-Krech, seconded by Bartholomew to approve the Request for Mississippi Pub to Grant an Extended Premises Permit of the Existing Liquor License Sales Area to a Designated Outdoor Area, October 3-4, 2019 and October 5, 2019 and use the service area to make up for the loss of parking spaces.

**Ayes: 4
Nays: 0 Motion carried.**

C. Consider Approval of the Second Reading of the Amendment to the Liquor Ordinance, City Code Title 4, Chapter 1, Section 10(B) Relating to Payment of License Fees

City Administrator Lynch stated this is the Second Reading of the Amendment to the Liquor Ordinance. It is a change requesting that all fees be due upon initial application or renewal. Prior to this it was allowed for one-half payment for license fees. He stated all license holders have been notified of this change and no feedback has been received.

Motion by Dietrich, seconded by Piekarski-Krech to approve the Second Reading of the Amendment to the Liquor Ordinance, City Code Title 4, Chapter 1, Section 10(B) Relating to Payment of License Fees.

**Ayes: 4
Nays: 0 Motion carried.**

ADMINISTRATION

D. Consider Approval of Motor Vehicle Sales Business License Application

City Administrator Lynch stated this is an Application to assume the motor vehicle sales business license currently held by Inver Grove Auto. Mr. Thomas Steinmueller is seeking Application for motor vehicle sales for this business at this location. He stated the background investigation revealed no basis for denial of the license. Staff recommends the application of transfer.

Thomas Steinmueller and Cheryl Lange, 6591 Concord, introduced themselves.

Motion by Bartholomew, seconded by Dietrich to approve the Motor Vehicle Sales Business License Application.

**Ayes: 4
Nays: 0 Motion carried.**

COMMUNITY DEVELOPMENT**E. Update on the STOR Development Project (9725 Robert Trail)**

Community Development Director Heather Rand stated at the last City Council meeting residents from Tyne Lane spoke regarding this project adjacent to their properties. The project is for an indoor storage facility estimated to be completed later in the fall. Residents have concerns about the screening. She stated that herself, Public Works Director Scott Thureen, and Legal Counsel met with residents and then reviewed files from the project and MPCA directives to the project engineers. She stated things have changed with the project and that some directives due to a former abandoned septic system changed the layout of stormwater ponds and resulted in the clearing of additional trees. About .3 of an acre of additional tree coverage has been cleared. Staff has completed 3D graphic modeling to determine where additional trees should be replaced by the Developer. She stated they are waiting for additional information from the development team and need more time before a plan goes to the neighborhood and the City Council. Once it comes before the City Council the development contract will have to be amended so the Developer would be required to bring back additional screening that has been removed on the site.

She stated she was recently notified by the neighborhood regarding construction noise. There are claims that some are arriving to the site before 7:00 a.m. and working after 7:00 p.m. She stated the Chief Building Official has the capacity to warn of the unacceptable behavior and has spoken with the General Contractor. She stated a resident sent her a video that shows there were trucks idling on the site before 7:00 a.m. When the General Contractor was notified of this, they stated they are not working before that timeframe, but agreed they did have trucks idling. She stated most of the trucks on site this morning came into the site to get off Robert Street. She stated the General Contractor has said they would work to fine those that begin work prior to 7:00 a.m. Ms. Rand stated there were also some trucks that got lost and went through the neighborhood, those were told to find a more appropriate route.

She stated she has visited the site and the topography could be a challenge for screening purposes. The goal is to bring back the Amendment to the Development Contract to the City Council by October 14th.

Grant Robbins, 9432 Tyne Lane, gave the City Council some handouts and referenced an aerial view of the site. He stated he represents the interests of Tyne Lane's 17 residential properties with approximately 58 residents. He gave the following timeline from their point of view:

- December 2018 – Residents notified by mail about Planning Commission and City Council meetings.
- December 18, 2018 - Planning Commission meeting was held with Tyne Lane residents in attendance. The Planning Commission recommended and was supported by the residents to approve the project.
- January 2019 – Project came before the City Council. The City Council approve a Conditional Use Permit and additional plans.
- February 5, 2019 – Conditional Use Permit was recorded in Dakota County.
- February through late May 2019 – Several significant plan changes were approved by the Assistant City Engineer that are not permitted under the Conditional Use Permit.
- May 28, 2019 to Present – There has been substantial tree removal, grading, and stormwater system installation on site before and after the 7:00 a.m. and 7:00 p.m. work hours. In conflict with the Conditional Use Permit work continues this afternoon and evening.
- August 22, 2019 – He had a teleconference with City Staff, Barr Engineering, the Developer, and the Developers Civil Engineer to discuss grading plans, stormwater, and specifications. At this meeting he requested documentation and drawings from the Planning Commission's December 18th meeting.
- August 26, 2019 – He received copies of the Planning Commission drawings that were in direct conflict with what was happening on-site. He was referred to the City Engineer with any questions. He contacted Engineer and was told he was unfamiliar with the site plans. He stated

himself and two neighbors attended the first City Council meeting and advised the Council of their concerns with the plans.

- September 4, 2019 – The City Administrator provided updated demolition drawings of the site that confirms that 63% of the trees were removed versus the 37% approved.
- September 5, 2019 – Meeting with Scott Thureen, Heather Rand, Tim Kuntz, and 17 residents from Tyne Lane to go over non-conformances. Residents requested for the second time that work stop east of the roadway due to the non-conformances.
- September 6, 2019 – Police Officers, and ten warnings were provided to the Contractor about work hours. Verbal warning was given to those on site and to the General Contractor.
- September 9, 2019 – Attended City Council meeting again and gave an update, requested work stop east of the site.
- September 13, 2019 – Written notification was received that the City confirms site grading and screening is not in compliance with the Conditional Use Permit and work continues on the site.
- September 23, 2019 – Discussions took place between the City and the Developer. Residents were provided with an update that suggested the October 14th City Council meeting to discuss an appropriate plan approval. Work begins on site at 5:59 a.m. numerous times were listed for a truck driving on Tyne Lane and others arriving to the site prior to 7:00 a.m. Residents attend City Council meeting.

Mr. Robbins displayed the site grading plan dated November 19, 2019 and the site grading plan approved on May 24, 2019 that includes new excavation and regrading of the site and preparation of a future industrial development site that the Developer designed and graded at the Developer's own risk. He stated the new location had substantial changes to Stormwater Pond No. 1, the north pond, which was redesigned and moved closer to the resident's property. Stormwater Ponds No. 2 and No. 3 were added to take additional stormwater volume. He stated there were three areas on site that were regraded with removal of all native trees and drainage provided for the stormwater ponds. He stated a secondary roadway was constructed and faces directly into a resident's property on Tyne Lane.

He displayed a photo of Stormwater Pond No. 1 and stated the closest point was moved 50 feet east where trees were removed and closer to properties on Tyne Lane. The future development location moved ponds closer to homes. He displayed a landscape plan from December 5, 2018 and stated the areas in yellow are existing trees and vegetation to remain and the only roadway in and out of the construction site is surrounded by mature trees. He displayed a graphic obtained from the Developer and listed the actual numbers versus the planned numbers. Aerial photos of the site were displayed.

He stated the following requests by residents:

- Implement full stop work on site immediately due to repeated significant violation of work hours.
- All work east of the roadway on site stop indefinitely until one of the following two happen:
 - ◆ Developer begins to return site to the Conditional Use Permit specified conditions, including regrading to the original plans and replanting all 146 mature trees that were removed.
 - ◆ City Council approves an Amendment to the site plans that is endorsed by the residents of Tyne Lane.

Mr. Robbins stated he emailed a video to the Council of a six-minute segment of the Planning Commission meeting where the Developers present the plans.

Community Development Director Heather Rand stated the Developer has been asked to provide plans for the additional screenage by the end of the week. Once received, and the approach is mutually agreed upon, they would reach out to Tyne Lane residents and schedule a meeting. Then it would be brought to the City Council at the October meeting.

Mr. Robbins stated that residents have heard workers on site describing how this is the resident's problem that this work is being done, it's like airplane noise.

Community Development Director Rand stated the Chief Building Official had a conversation with the Developer today regarding this and the contractor. The contractor and the Developer are responsible for the subs (the truck drivers). She stated the Chief Building Official needs definitive proof before he can shut the site down. The video given by residents this far shows trucks idling, which they can do. A video of trucks backing out, making noise, doing construction activity would be proof. She stated residents have been instructed to call the Police, which gives documentation and the message that the behavior isn't appropriate.

Councilmember Bartholomew asked if it were possible to have a Building Inspector on site at 7:00 a.m. or earlier. Community Development Director Rand responded she would check on it. Councilmember Piekarski-Krech suggested a Patrol in the area.

Victor Salamone, 9436 Tyne Lane, stated it is disrespectful how they feel as residents and new residents to the area. He commented this felt like "tattle tailing" when the Developer already knows the rules. The neighborhood has put in numerous hours regarding this topic, nothing is happening, and the construction continues. He stated he has a lot of respect for staff and the Council but doesn't feel he as a resident is getting it in return.

Councilmember Piekarski-Krech asked where the septic system and well would be going. Community Development Director Rand responded the building would not have water and septic. There would be a small entry point where a small building would be connected to water and sewer. She was not sure of the location but would check. Councilmember Piekarski-Krech stated she didn't recall having that added. Community Development Director Rand stated the former office building had septic and the MPCA determined that must be closed. That is where plans changed. She stated the pond overlapped with the former septic system and Engineering staff re-engineered additional ponds around it. Ms. Rand stated she would prefer Engineering speak more about this issue. City Administrator Lynch stated the MPCA determined it was contaminated and they couldn't use the soil for the pond to retain water, so they created ponds in different areas. There is a small building that would receive sewer and water and it was in the plans and approved with water on the west side with sewer on the east side.

Mr. Robbins displayed a photo of the area and stated core samplings were taken where the pond was going to be and discovered drainage would not be enough for stormwater. That is what caused the additional tree removal and creation of three stormwater ponds. He stated they shouldn't blame it on the stormwater pond, the Developer changed the plans at their own risk and removed trees and redesigned the stormwater ponds to three instead of one. That change directly harmed the residents of Tyne Lane.

Councilmember Dietrich stated there is a lack of trust and calm is needed to regroup and determine how to go forward. She asked Community Development Director Rand what could take place tonight, so the residents are not disturbed further. Community Development Director Rand responded she is recommending what was recommended earlier, which is City staff continue to negotiate with the Developer so they can come back before the Council with an amended Development Agreement that would include additional screening for the .3 acres of additional trees that were cleared.

Mr. Robbins stated he quoted the Developers numbers. The Developer agreed to a plan that was approved and said 37% of all the trees on site would be removed. 67% of the trees were removed, which is 1.9 additional acres of trees, 146 mature trees. He stated every day that it takes to get additional action, the site gets farther and farther from the Conditional Use Permit. In three weeks, this plan will be done to the Developer's liking. He stated their request is to stop the work east of the roadway until this is sorted out or until the City Council either approves a different plan or the Developer goes back to the original plans.

Mayor Tourville stated the legal question would be if the City has the right to change the plan from one to another. City Attorney Kuntz responded the January plans approved by the Council as part of

the CUP had a condition that final plan set approved and listed must be in substantial conformance to the final plans. He stated the judgment of the Engineering and Planning Department in reviewing the plans, were that the final plans were in conformance except for the grading plan as it affected screening. He stated regarding the trees, the percentages deal with a canopy analysis versus a significant tree analysis. The Tree Preservation Ordinance deals with significant trees before you can trigger an obligation for reforestation. He stated there is a question about 37% and 63% and how many significant trees they are speaking about. There was a canopy analysis looking at the covered area. Engineering and Planning Staff believe that the final plans are in substantial conformance with the Conditional Use Permit except for the grading plan as it affected screening that is why they are trying to come up with a substitute screening program.

He stated in response to City liability and authority, one aspect is the fact that the plan set was approved and found its way into the Development Contract between the City and the Developer. It says the Developer shall build according to the plans approved. He stated what is being suggested by the Community Development Director Rand is to proceed with where we are and see if a substitute screening plan can be negotiated. He stated the trees are gone, so the question remains about screening and dealing with the Developer.

Mayor Tourville stated they would have to speak with the Developer and the neighborhood and come to an agreement. This would come back to the City Council on October 14th.

Councilmember Piekarski-Krech asked what the recourse was if a Developer does something like this and what would happen if a negotiated settlement could not be reached. She asked if there was something monetary. City Attorney Kuntz responded they didn't say they can't replace the trees. He stated the grading has affected the screening and they are requesting a reasonable substitute for the damage caused by it. Mayor Tourville stated engineering signed off on it. He stated they can hold them to the hours of 7:00 a.m. to 7:00 p.m. and have someone there to make sure. Councilmember Piekarski-Krech asked if there shouldn't be a fine and if it falls under nuisance.

Mr. Robbins stated the resident's, City, and Developer's litigation risk is going up every day. He commented that it is in everyone's best interest to stop work east of the roadway tomorrow morning. He stated residents understand they can't replace 146 trees, but they can start with 1.9 acres instead of .3. If it is at the lower number, residents would not feel they get back to conformance. He stated there was no allowance for a future development location in the plans submitted and approved and that it was created and graded by the Developer. He stated any plan the neighborhood would approve would be for that location to be gone and regraded back to original grading specifications. He stated the south side of the north pond was 50 feet farther south to maximize future development opportunities for the Developer. He stated residents are open to a substitute plan such as 1.9 acres of protection through fencing and trees, including not eliminating three stormwater ponds, and includes removing the grading done to set up for future development. He displayed photos of an area that cannot be screened. His suggestion is to get the work east of the roadway stopped and consider the items spoken about previously.

Mr. Salamone stated if he had a pool, he would have to put a three-foot fence around it. Mayor Tourville responded that was not the only thing you need to do with a pool, you could also put a hard cover on it. Mr. Salamone stated the pond is eight feet deep and was supposed to be designed dry. Community Development Director Rand responded the pond was not connected to other pipes yet so there is water in it. From a rainfall it would have water in it for 24 hours. Mr. Robbins stated where it sits now, the water would be seven feet away from resident property and five feet deep in the center.

Mayor Tourville stated there are engineering and screening questions. He asked staff to look into the 7:00 a.m. to 7:00 p.m. work timeframe.

Police Chief Melissa Chiodo stated she didn't want to overpromise and underdeliver to the community. She stated she would have a conversation with Community Development Director Rand about this. She stated a call like this would go through Dispatch and not get delivered to Police if

they see this as a civil issue. The violation of the Ordinance would be a Misdemeanor, which would be a priority three call and may not have a squad visit. She didn't want the community to feel devalued, but there are things the Police would need to work on, on their end regarding this matter.

Community Development Director Rand stated staff would continue to work with the Developer, come up with a plan, work on the Amendment, meet with residents, and bring this back to the City Council on October 14th or shortly after.

Councilmember Bartholomew asked this to be a priority to the Chief Building Inspector regarding the time violations. Community Development Director Rand responded she would.

8. EXECUTIVE SESSION – CLOSED DOOR SESSION

Pursuant to Attorney-Client Privilege and Pursuant to Minn. Stat. § 13D.05, Subd. 3(b) a closed Executive Session to discuss the lawsuit of City of Inver Grove Heights vs. GS Truck & Trailer Repair LLC and GS Transport Express LLC.

City Attorney Tim Kuntz stated under the common law doctrine of Attorney-Client privilege and pursuant to Minn. Stat. § 13D.05, Subd. 3(b), the City Attorney can meet with the City Council in a closed-door Executive Session to discuss ongoing litigation. He stated the request is for the Council to make a Motion to go into a closed-door Executive Session to address the pending litigation with the City of Inver Grove Heights versus GS Truck & Trailer Repair LLC and GS Transport Express LLC. Pursuant to the common law doctrine and the Statute referenced the request is for the Council make a Motion to move to a closed-door session to discuss the lawsuit referenced.

Motion by Piekarski-Krech, seconded by Bartholomew to approve Pursuant to Attorney-Client Privilege and Pursuant to Minn. Stat. § 13D.05, Subd. 3(b) a closed Executive Session to discuss the lawsuit of City of Inver Grove Heights vs. GS Truck & Trailer Repair LLC and GS Transport Express LLC.

Ayes: 4

Nays: 0 Motion carried.

9. MAYOR AND COUNCIL COMMENTS

Mayor Tourville stated they need to set the following two meetings:

- October 14th at 5:00 p.m. for follow up to City Administrator Joe Lynch's review.
- October 28th at 5:00 p.m. for Vision and Mission with Department Heads, Staff, and the City Council.

Motion by Piekarski-Krech, seconded by Dietrich to approve the meetings as described.

Ayes: 4

Nays: 0

10. ADJOURN

The meeting was adjourned at 8:24 p.m.