

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, JUNE 22, 2020 - 7:00 P.M. - 8150 BARBARA AVENUE.**

In Person Meeting and via Zoom

1. CALL TO ORDER:

The City Council of Inver Grove Heights met in regular session on Monday, June 22, 2020, both in person and via Zoom Video Conferencing. Mayor Tourville called the meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

2. ROLL CALL:

Present in Person: Mayor Tourville, Council Members Piekarski Krech, Bartholomew, Perry, and Dietrich; City Administrator Lynch, City Attorney McCauley Nason, City Clerk Kiernan, City Engineer Kaldunski, and Finance Director Hove.

Present Via Zoom Video Conferencing: Technology Manager Gade, Community Development Director Rand, City Planner Hunting, Assistant City Engineer Dodge, Fire Chief Thill, Public Works Director Thureen, Associate City Planner Botten, Parks and Recreation Director Carlson, City Attorney Kuntz, and MIS Technician Geiger.

3. PRESENTATIONS:

There were no Presentations.

4. CONSENT AGENDA:

- A. i Minutes from the May 11, 2020 City Council Meeting.
- A. ii Minutes from the June 1, 2020 City Council Work Session.
- A. iii Minutes from the June 8, 2020 City Council Meeting.
- B. Disbursements for Period Ending June 16, 2020. **Resolution 2020-118.**
- C. Consider Approval of Rental Licenses.
- D. Confirm and Approve Personnel Actions.
- E. Consider Approval of Individual Massage Therapist License for Magnum Terrazas with Health 1st Chiropractic.
- F. Consider Adoption and Approval of COVID-19 Preparedness Plan. **Resolution 2020-119.**
- G. Consider the following for property located in Outlot B, Robert Curve located at the intersection of Diffley Road and South Robert Trail: An Ordinance Rezoning the property from PUD, Planned Unit Development to B-3, General Business District. A resolution relating to a Major Site Plan Approval for the construction of a 5,000 square foot automobile repair center. A resolution relating to a Variance from minimum lot width standards. KIMLEY-HORN & ASSOCIATES – CASE NO. 20-13ZPV. **Resolutions 2020-120 and 2020-121. Ord. #1384.**
- H. Approve Trail Easement over the Drainage and Utility Easement at a New Home to be built at 6900 Alverno Court.
- I. Consider Pay Voucher No. 1 for City Project No. 2019-18 – Public Works Maintenance and Cold Storage Buildings Roof Replacement.
- J. Consider Final Compensating Change Order No. 1, Final Pay Voucher No. 1, Engineer's Final Report, and **Resolution 2020-122** Accepting Work for City Project No. 2020-09A – Crackseal.
- K. Consider Pay Voucher No. 1 for City Project No. 2019-09C – Cahill Avenue Mill and Overlay (Concord Boulevard too Inver Grove Trail).
- L. Consider **Resolution 2020-123** Accepting the MS4 Annual Report for 2019.
- M. Consider **Resolution 2020-124** Approving Settlement Agreement on City Project No. 2017-02 (NWA Trunk Watermain Improvements - 65th Street Loop (Phase II of 2015-12) Hwy 3 to Harmon Park) and Authorize Payment for Tree Removal.

Craig Hillegas, 6755 Arlene Avenue, referenced Agenda Item M and asked why a watermain was being placed when there isn't a street yet.

Mayor Tourville suggested pulling Agenda Item 4M for further discussion.

Motion by Perry second by Piekarski Krech to approve Agenda Items 4A through 4L with the exception of Agenda Item 4M.

Ayes: 5

Nays: 0 Motion carried.

Agenda Item 4M. Consider Resolution Approving Settlement Agreement on City Project No. 2017-02 (NWA Trunk Watermain Improvements - 65th Street Loop (Phase II of 2015-12) Hwy 3 to Harmon Park) and Authorize Payment for Tree Removal. Resolution 2020-124.

City Engineer Tom Kaldunski stated this is regarding the acceptance of an Agreement for a project that was done three years ago. The location is near Highway 3 where a looped watermain was installed, about a half mile away from where they would be building 65th Street. He displayed the tree inventory map of the project stating there were some trees taken out due to grade. He stated this is not related to the preliminary feasibility study that was brought before the Council in February. That item was tabled to July 15th and would be a request to extend the timeframe.

Motion by Bartholomew second by Perry to approve Agenda Item 4 M. Consider Resolution 2020-124 Approving Settlement Agreement on City Project No. 2017-02 (NWA Trunk Watermain Improvements - 65th Street Loop (Phase II of 2015-12) Hwy 3 to Harmon Park) and Authorize Payment for Tree Removal.

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC COMMENT:

There were no public comments.

6. PUBLIC HEARING:

7. REGULAR AGENDA:

Administration:

A. City Discipline Policy Review and Update.

City Administrator Lynch stated the Discipline Policy was previously discussed at a City Council Work Session. This is categorized as an Ordinance and has to go through a hearing process. The recommendation would be to reduce the number of meetings to adopt the change. This can be done in one, two, or the three required readings.

Councilmember Piekarski Krech asked if they had any feedback/participation and if all employees were aware of the changes. City Administrator Lynch responded they did not receive feedback from the Union Stewards. Employees are not made aware until the changes are made. He stated there is not a substantial change, but the ability to use all types of discipline depending on the severity of the act has been changed. That item was not clear in the past. He stated the City would now have the ability to go to a higher level of discipline up to and including termination.

Motion by Piekarski Krech second by Perry to move the first reading of the City Discipline Policy Review and Update with the understanding that the second reading would be the last reading and would take place at the next regular City Council meeting.

Ayes: 5

Nays: 0 Motion carried

City Administrator Lynch stated there is an accompanying Resolution approving the summary publication of that Ordinance. He requested action be taken to delay that until the July 13th meeting.

Motion by Piekarski Krech second by Perry to delay the publication until after the July 13th meeting.

Ayes: 5

Nays: 0 Motion carried.

B. Accept and Approve 2019 Comprehensive Annual Financial Report.

Finance Director Amy Hove discussed the 2019 Comprehensive Annual Financial Report stating that a presentation was given by Bonnie Schwieger from the Auditing Firm Abdo, Eick, and Meyers, at the June 8th meeting. She stated this is for approval of the financial statement.

Brad Falteysek from Abdo, Eick, and Meyers updated the Council via phone on the following information:

- Issued an unmodified/clean opinion on the Financial Statement.
- High level results of the report:
 - General Fund/Fund Balance: Has stayed within the policy and increased almost \$1 million dollars from the previous year.
 - Bond Funds: (Money set aside to pay the Debt Service requirements). Have enough resources to pay the requirements.
 - Capital Funds: There are a couple of deficits. With future revenue sources, those would be brought out of deficit balance.
 - Enterprise Funds: (Water, Sewer, Golf Course) Making sure operating receipts meet debt and disbursements.
 - Water: Meets those. Cash balance increased from 2018.
 - Sewer: Cash reserves have declined over the four years depicted. Still above minimum reserve, but is something to pay attention to going forward.
 - Golf Course: Broke even with disbursements. In 2018 there was a three-year special on golf course fees.

Mr. Falteysek stated they also look at compliance and if there is anything in different State Statutes that that State Auditor requires testing for. Those would be reported as a finding in the report. He stated they did not find any non-compliance with anything tested this year. He stated that the City also applies for the Certificate of Achievement for Excellence in Financial Reporting. This was received in 2018 for the 32nd consecutive year. It is an honor for the City to receive that. It will be applied for again in the 2019 report. Results would come in during the 2020 third quarter.

Mayor Tourville stated the report will be available for review on the City Website.

Councilmember Bartholomew thanked Finance Director Hove for her help and for taking the time to respond to his questions.

Motion by Bartholomew second by Perry to Accept and Approve the 2019 Comprehensive Annual Financial Report.

Ayes: 5

Nays: 0 Motion carried.

C. Approve 2020-2024 Capital Improvement Financing Plan.

Finance Director Hove stated this came before the City Council for the first time at the February 3, 2020 Work Session. Feedback was received and another Draft was brought to the June 1st Work Session. This is the final report.

Jessica Cook, Ehlers, stated the purpose of the Capital Improvement Financing Plan is to:

- Set priorities for the capital spending of the City.
- Show the financial impacts of that spending.
- Make sure it is affordable and meets the goals and needs of the City of reinvesting in the Community.

The Council identified the following four goals:

1. Fund the Capital Improvement Plan: Five-year plan. \$70 million dollars over five years. Includes the new maintenance facility in 2023.
2. Exceed funding for the Pavement Management Program. See what can be done to reconstruct more streets. There is an additional \$1 million dollars per year of funding for pavement management. It is funded by:
 - Increasing contributions from property tax.
 - Increasing contributions from the Host Community Fund. A ten-year projection was done on the fund and determined there was available cash to make that commitment to pavement management.
3. Make sure the debt levy for the Community remains at or below 15% of the total levy. This plan keeps it at 11.7% or less. There are two financings anticipated in the next five years:
 1. Collector Streets
 2. Maintenance Facility
4. Fund balance be at least 40% of the next years expenditures. The fund balance at the end of the year has to get the City through the next six months of operating until property tax revenue is received again. The plan is showing the General Fund Balance would be approximately 48%.

She stated in achieving the four broad goals, they measured the tax impact on a sample property, single family, owner occupied home valued at \$248,000.

- In 2021 that impact is an \$80.00 per year increase over what is paid this year. .22 cents a day.
- It declines. In 2023 it would be a \$66.00 annual increase. .18 cents a day.

One of the key assumptions in the plan is that General Fund Expenditures increase at 4% annually.

Ms. Cook acknowledged Staff stating it is a partnership effort. She commented that Mr. Lynch, Ms. Hove, Mr. Thureen, and Mr. Carlson were essential in putting the plan together and instrumental in its completion.

Mayor Tourville stated they could take a look at adapting this plan as revenues, income, and expenses are collected. Councilmember Bartholomew stated this sets them up for success in the upcoming years.

Motion by Bartholomew second by Perry to approve the 2020-2024 Capital Improvement Financing Plan.

Ayes: 5

Nays: 0 Motion carried.

Community Development:

D. GREG HUNDER - Consider a Resolution relating to a Variance to allow a detached accessory building to be 1,152 square feet in size whereas 1,000 square feet is maximum allowed for the property located at 3527 69th Street. Resolution 2020-125.

Associate City Planner Heather Botten stated the proposal is for construction of a 1,152 square foot accessory structure north of 69th Street and east of Clayton. The maximum size allowed in the R-1 District

is 1,000 gross square feet. The house on the property was built in 1965 and does not have an attached garage. The existing detached structure is in disrepair and would be removed and replaced with the new structure. The proposed structure would be set back behind the house but still in compliance with all setback requirements. She stated the property would be in compliance with the impervious surface maximums with the removal of the sidewalk in front of the house. The property is about 9,600 square feet in size.

She stated the City Council has reviewed the size of accessory structures for larger lots in the rural area. A larger structure appears to be a convenience to the homeowner and not dictated by unique circumstances on the property. Staff believes approving the variance could set a precedence for other size variance requests and does not believe there is sufficient rationale to support the request and recommends denial. She stated the Planning Commission recommended denial on a 6-3 vote due to lack of practical difficulty. Staff received an email today from a resident across the street who is in support of the request.

Greg Hunder, 3527 69th Street, stated the property configuration could be a possible practical difficulty. An attached garage has no limitation on size. Adding an attached garage to his house and moving it forward 33 feet, would free up 528 square feet of impervious surface which is part of the driveway. The garage could potentially be 24x68 feet, or 1,632 square feet and 60% larger than a coded detached garage. He stated the neighbor next door to him has a garage that is 28x48, larger than what is proposed.

Mayor Tourville asked if that garage was attached or detached. Mr. Hunder responded detached. Councilmember Piekarski Krech asked if the proposed building would match the home and how the size was determined. Mr. Hunder responded it would have the same siding color. Size went up to the setback.

Councilmember Piekarski Krech stated she has no problem with the request. Similar requests have been studied numerous times and she didn't see why they stay with 1,000 square feet as people use more. She stated her concern is with impervious surface and whether the building is pleasing to the neighborhood or not. If they can come up with a rationale, she did not have a problem.

Councilmember Bartholomew stated they could follow the lead from the Applicant that it is a challenge due to the size of the lot and the age of the building.

Mayor Tourville agreed with Planning Commission's recommendation. A lot of requests come asking for additional. He commented that putting items inside the structure rather than outside doesn't prove practical difficulty. Councilmember Bartholomew suggested, if willing, the Applicant may be able to set this aside and Council can determine an increase for an accessory building. Councilmember Piekarski Krech stated it has been done several times but never changes. She understood the rationale for not wanting to start a precedence.

Councilmember Bartholomew stated that it may be time to revisit the idea and come back with a more settled approach to accessory structure size. Mayor Tourville stated he would have no problem approving it with a message back. If setting it at 1,200, they may start seeing requests for 1,350. Councilmember Bartholomew responded the guiding principle would be impervious surface.

Councilmember Dietrich stated the Commission was split on the vote; it wasn't a full vote against. Mr. Hunder commented one of the Planning Commission members said they thought the practical difficulty could be the configuration of the houses with a non-attached garage.

Councilmember Bartholomew stated in the past they have discussed the idea of an administrative variance of about 10%. Mayor Tourville responded it was never finalized. For larger lots they have gone a little above to solve issues.

Mr. Hunder stated a building permit is not needed for a structure 200 square feet or less. If this was 1,000 square feet, he could put an additional 200 square feet or less without a building permit for a total of 1,200 feet. He stated if that is the Code, it is not enforced much. Mayor Tourville responded some of those have been reported and have had to be removed.

Mayor Tourville asked Associate City Planner Botten if they could have further discussions about the size. Associate City Planner Botten asked if they should look into all urban smaller lots or specifically ones that do not have an attached garage. Mayor Tourville responded all urban lots. Councilmember Bartholomew agreed with the need for further discussion and agreed with Councilmember Piekarski Krech's comment that 1,000 square feet is small and felt it could be moved up to 1,200.

Motion by Dietrich to approve Resolution 2020-125 relating to a Variance to allow a detached accessory building to be 1,152 square feet in size whereas 1,000 square feet is maximum allowed for the property located at 3527 69th Street and put on the short list to go back to the Commission and Planning with the practical difficulty being the one described.

Mr. Hunder stated the practical difficulty would be the configuration of the house with a detached garage. Attached garages are allowed to have another accessory structure, detached garages cannot. He stated another practical difficulty could be if it were to be put to the proposed side, the little space off the setback is not usable property. He stated he read property owners are entitled to utilize their property efficiently. This wouldn't be and he would like it to be.

City Attorney Bridget McCauley Nason stated practical difficulty is a term that is defined in State Statutes and means the property owner proposes to use that property in a reasonable manner not permitted by the Zoning Ordinance. The plight of the landowner is due to circumstances that are unique to the property not created by the landowner. The variance, if granted, will not alter the essential character of the locality. City Codes state in granting a variance the Applicant must demonstrate to the Council that those factors have been met with respect to the granting of the variance. It must be the result of a demonstrated undue hardship and not serve as a convenience to the Applicant. That includes the fact that the subject property can't be put to reasonable beneficial use unless the Variance is granted. She stated the plight of the landowner is due to circumstances unique to the property and not created by the landowner. The variance, if granted, will not alter the essential character of the locality.

She noted that page 397 of the packet includes conditions related for approval. She stated it does not specifically mention the impervious surface. Council may want to consider that as well with respect to the sidewalk mentioned earlier.

Councilmember Bartholomew stated the test would be that the Applicant is denied reasonable use of the property. He stated in order to move forward in a constructive manner, would be to not consider the variance, but instruct Staff to come back with proposals larger than 1,000. If approving this variance there will be others coming forward with similar requests. He stated his preference would be to move this through with something that states they are changing the Code to allow detached in the area for 1,200 square feet.

City Attorney McCauley Nason stated practical difficulties are somewhat in the eye of the beholder. The criteria is outlined in the Statute and Code and to the extent that the Council finds the practical difficulty test has been met subject to the following parameters:

- Use of the property
- Not solely an economic consideration
- Not a result of the landowners' actions on the property

She stated a variance is permitted in that situation. If there isn't a practical difficulty the motion would be to deny.

Councilmember Bartholomew stated he could make the practical difficulty work. This sets up for similar requests. Councilmember Dietrich agreed this needs to be discussed and on a short list.

Motion seconded by Piekarski Krech for discussion.

Mr. Hunder restated the practical difficulty being the property configuration. Attached garages versus detached. Attached garages allow for larger and additional storage space depending on the impervious surface allowed. He stated another difficulty would be if he built up to the 1,000 square foot size, the back of the property would have no practical use for him anymore. The amount requested is in the back where nobody would be able to see it.

City Administrator Joe Lynch stated a way to move forward would be for the Applicant to extend. The end of the 60-day period would be June 25th. This could be directed to go back to the Planning Commission for consideration of a change to accessory building sizes. Research can be done based on lot size, residential type, if it meets impervious surface, and other requirements. He stated this would go to the Planning Commission and back to the City Council if the Applicant is willing, otherwise the risk is that it could be denied. Mr. Hunder responded he was willing to wait.

Councilmember Dietrich asked Mr. Hunder if he was willing to wait. Mr. Hunder responded if there was a high possibility of denial, he was willing to wait.

Associate City Planner Botten stated if wanting to take action, it could be denied. If going back to review the current Ordinance and how it is written she believed if changed, it could be changed to 1,200 square feet. Then the variance would not be needed. She stated Mr. Hunder could risk getting the 3/5 vote. If denied, they would still review the Ordinance. If approved he can get his permit sooner than what it would take to go through the process. The process could take 6-8 weeks without any delays.

Mayor Tourville asked if it does not get changed and Mr. Hunder wants to come back and deal with another variance, if there was a time limit on the wait for a variance. Mr. Hunder thought it was six months.

City Attorney McCauley Nason stated there is a motion and second that needs to be dealt with. Regarding the discussion about extending out the decision-making deadline, the 120-day period expires on June 25th. If the Applicant wants to wait and have it tabled, the Applicant has to submit something in writing tonight that states extension of the application deadline under the 60-day rule, or a timeframe the Council believes necessary. She stated a failed vote is a denial. It is required to adopt written findings of fact to support that denial. Those voting against must articulate why.

Councilmember Piekarski Krech stated the Applicant would have to wait six months before he could apply for a variance.

Mr. Hunder suggested moving forward with the motion. Mayor Tourville asked if he wanted to table this item and sign a form giving permission for this to go back to the Planning Commission. Mr. Hunder responded he would still like to go with a vote. Associate City Planner Botten stated no matter what the vote is, this would still go to the Planning Commission for review.

City Attorney McCauley Nason stated that there is a prohibition on reapplying for a variance for a period of six months.

Councilmember Bartholomew commented the practical difficulty stated makes some sense in that the home is located in the center of the lot because it didn't have an attached garage.

City Attorney McCauley Nason stated there is not a six-month waiting period for a variance application. The six-month waiting period applies to applications for rezoning, which have been denied wholly or in part.

Ayes: 5

Nays: 0 Motion carried.

Mayor Tourville suggested by direction that this go back to the Planning Commission to look at size, area, and different criteria. The Planning Commission and Planning Staff can help with the criteria, they are not saying it should be 1,200 but could be a different figure. Councilmember Bartholomew requested solid methodology for the reason why and what they are protecting, be it impervious surface or to reduce other outbuildings on the lot. Councilmember Piekarski Krech agreed with the suggestion and stated it definitely has to meet impervious, the aesthetics of neighborhoods, and that the buildings have to conform to the house and be kept up.

Councilmember Piekarski Krech asked if this required footings. Associate City Planner Botten responded it does not, it could be a slab. It cannot have sheet metal siding but could do a pole construction if having vinyl siding on it.

E. SHAWN BRIGGS - Consider the following resolutions for property located at 9725 South Robert Trail:

- 1.) A resolution relating to a Conditional Use Permit Amendment to expand the ministorage facility with outdoor vehicle storage. Resolution 2020-126.**
- 2.) A resolution relating to a Variance to allow a fence height of eight feet whereas seven feet is maximum allowed. Resolution 2020-127.**
- 3.) A resolution relating to the Improvement Agreement, Storm Water Maintenance Agreement and Conservation Easement Agreement. Resolution 2020-128.**

City Planner Allan Hunting stated the request is to amend the existing Conditional Use Permit for full buildout. He referenced diagrams and indicated locations stating the amendment would include the landscaping. The center of the lot would be graded with a proper surface put in for additional outdoor storage, boats, RV's, and trailers. Another item that could happen would be that they could construct cold storage buildings as demand requires. He stated an additional area would be a climate control building constructed in the northeast corner of the site with additional landscaping installed at that time. There would be additional fencing. These developments would occur over time, there is no set times. He stated all plans have been approved by Staff, Planning, and Engineering. Details have been worked out. Staff recommends approval as presented.

Councilmember Piekarski Krech asked about Page 580, a storage area for vehicles until buildings are put in, referenced as buildings H through Q. City Planner Hunting responded over time cold storage will be constructed in the same area. Councilmember Piekarski Krech asked if there was any place on the property that would have outdoor storage. City Planner Hunting responded there would continue to be outdoor storage on the left side, along the western boundary, the northern boundary in the northwest corner, and one other location as depicted on the map.

Brian Briggs, stated Shawn Briggs and their Civil Engineer were in attendance. They are pleased to have developed what they have and expect that it is a great benefit for the Community and the neighborhood. He stated they have worked diligently with the neighborhood to come to a conclusion satisfactory to everyone.

Mayor Tourville asked where things stood with the conservation easement. Mr. Brian Briggs responded the documentation is for a 50-year term. Councilmember Dietrich asked City Planner Hunting if they have ever done a 50-year term before. City Planner Hunting responded no, this is unique easement area, if public they are in perpetuity, this is a private easement.

Grant Robbins, 9432 Tyne Lane stated he is present with his immediate neighbors, Victor Salamone and Rob Veldhuis and is representing 17 residential properties on Tyne Lane, with an estimated 58 residents.

The estimated market value is \$6.4 million dollars with a combined 287 years of property ownership. He stated the following request from Tyne Lane residents:

- Ask Council to approve the CUP Amendments for STOR Self-Storage.
- Share key components of the developer/resident agreement that brought them to support the Amendment of the CUP.
- Share the facts about what went wrong so this can be prevented from happening to another resident or developer.
- Provide an update on the Tyne Lane side of the project.

He stated there have been significant adjustments to the Phase 1 plan as follows:

- 8-foot cedar fence has been installed for the most part, for immediate roadway screening.
- Chain link gate in place that will have slats installed for screening.
- 10 additional maple trees have been planted for site screening and reforestation.
- Developer plans to remove chain link fence discussed in November.
- The conservation easement. Accepting of the 50-year term proposed.
- The easement was updated from the November version to include all trees in the easement area and not allow snow removal or storage in the conservation easement area.
- 18 Conifers have been planted for future development screening.
- 12 Deciduous trees have been planted on the north side of the pond.
- \$5,000 credit in legal City support from the City to the Developer to establish permit conservation easement. The Developer passed along that amount to the four primary affected residents in exchange for release to provide future site screening.

Phase 2 and 3 feedback as follows:

- Worked with Developer during Phase 2 and 3 Planning stages.
- Pole lights with a partial shield was installed. Developer agreed to install 350-degree shields (completed).
- Building lights were bright white LED that do not dim and illuminate bedrooms. Developer has installed shields to resolve the issue.
- Tall pole lights over residential property which required additional shielding (completed).
- At the eastern end of Phase 2 where vehicle storage would be, the edge was above the screening fence along the roadway. Residents requested movement of 23 mixed variety trees to an area between the future vehicle storage and residential property where screening would be required. Developer has agreed and completed the planned amendments.
- Currently no pole lights shown in Phase 2 or 3 photometric plans. It is important to the residents that all future lighting be lit in a way to hide bulbs and light from residential areas and is consistent with the plan submitted and approved by the Council today.
- Phase 3 climate and storage building to be built in the future will be directly adjacent to residential property and will not be screened at the time of construction. Residents highlight the following included in the submitted plans:
 - No exterior lighting on west, north, or east sides.
 - No windows or otherwise translucent surfaces that reveal light on the north wall.
 - Would like to see an appealing mixture of textures, natural colors, and earth tones that are appropriate for the adjacent residential property.

The following four items are important to residents in terms of the Conditional Use Permit Conditions:

- Conformance with the site plans submitted this evening and approved by Engineering.
- All parking lot and building lighting on site shall be downcast shoebox style and bulbs shall not be visible from property lines.
- Any rooftop and/or ground utility equipment shall be substantially screened on all sides from public view.
- The maximum building height for the climate-controlled storage building shall be 45 feet.

Mr. Robbins stated that non conformance with the Conditional Use Permit is how they ended up with problems and want to make sure the Council is aware of the conditions and supports them as the residents do.

He stated the neighbor's comments are as follows and are facts only:

- Initial plan submission, resident notification, Planning Commission meeting all went very smoothly. Residents support for the plans as submitted was noteworthy.
- City Council approved everything as submitted and as reviewed/supported by residents. The CUP was filed in Dakota County.
- The development team was surprised by a small amount of contamination in the septic system. Plans needed to change to address the issue. Residents were not notified of plan changes.
- The Assistant City Engineer approved more than 2.1 additional acres of trees to be cleared, a new 20,000 square foot future development area, stormwater pond changes within 12 inches of resident property, and steeper than standard slopes on all sides of the stormwater pond.
 - The employee was under respectful email pressure from the Developer.
 - The employee's approval and judgement were unsupervised as nobody within his reporting structure was familiar with the plan changes.
 - The residents identified all issues with the Conditional Use Permit.
 - City found the City employee approved grading and loss of the site screening that did not conform with the conditions of the Conditional Use Permit.
- Upon notification of all issues by residents, the City allowed work that was deemed in nonconformance with the CUP to continue for months.
- Repeated work hour violations went unenforced for months, even after residents notified the City. Residents were told to be responsible for dialing 911. Clear expectations, monitoring, and plans for enforcement were never communicated to residents.
- Lights were installed that were not compliant with City Code. Number of lights and conformance was not monitored or inspected.
- City presented a remediation plan to Council without resident support.
- Council did not vote to support the City plan.
- After countless Council meetings, residents found a path toward screening and lighting resolution when Council tabled City plans.
- Developer and residents have worked well together once issues with the CUP were confronted by the Council without additional support from the City.

Mr. Robbins displayed photographs of the Tyne Lane dry pond and stated it is the resident's opinion that the pond is acceptable from a stormwater perspective. He commented that Brian and Shawn have done a nice job with the plans as approved by the Engineer. Residents feel the pond creates a hazard to Tyne Lane residents and have made additional investments to address neighborhood safety. Six additional Conifer trees were placed on resident property abandoning use on their own property. He stated this will also continue on adjacent properties.

He thanked Shawn Briggs and Brian Briggs for their support. He listed the following resident requests:

- Approval of the CUP Amendment for STOR Self-Storage.
- Continuous conformance with the new CUP and conservation easement.
- Requesting a City meeting with Tyne Lane residents to ensure the stormwater pond is considered safe by all parties and no net resident funds are required.

He stated the residents of Tyne Lane would like to express their gratitude to the City Council. They would not have reached an acceptable screening resolution without the Council's support.

Steve Johnston, Civil Engineer, stated he met clients on the site prior to this meeting. The pond is holding water and has a slight rise where it is holding water and the outlet to the pond. He pointed out that the Contractor needs to get back out there to take out the rise so water drains out. He stated that the stormwater doesn't go into the infiltration basin until the vegetation is established. It is then modified with the stormwater being diverted into the infiltration basins. In fully developed condition, the rains would not have reached the dry pond, it would be contained in the infiltration basins.

Mayor Tourville suggested working with City Staff to make sure the lights and retainage of water are working correctly.

Councilmember Bartholomew asked who the neighborhood would reach out to if they believe there is a violation. City Administrator Lynch responded the Enforcement Agent is the Code Compliance Specialist. That would be the person who would handle conditions that were not met. If a portion of the operation is malfunctioning, it would be City Engineer Tom Kaldunski or Public Works Director Scott Thureen. If it is the building construction, location of units, or paving, that would be Community Development Director Heather Rand.

Mayor Tourville asked if a small informational sheet could be put together for the neighborhood and the developer with contact information. City Administrator Lynch responded they would get that information together.

Motion by Piekarski Krech second by Perry to approve SHAWN BRIGGS - Consider the following resolutions for property located at 9725 South Robert Trail:

- 1.) A resolution 2020-126 relating to a Conditional Use Permit Amendment to expand the ministorage facility with outdoor vehicle storage.**
- 2.) A resolution 2020-127 relating to a Variance to allow a fence height of eight feet whereas seven feet is maximum allowed.**
- 3.) A resolution 2020-128 relating to the Improvement Agreement, Storm Water Maintenance Agreement and Conservation Easement Agreement.**

Ayes: 5

Nays: 0 Motion carried.

F. COMMONBOND COMMUNITIES - Consider an Ordinance rezoning the property from A, Agricultural District to R-3C, Multiple Family District Planned Unit Development.

City Planner Allan Hunting stated the Applicant, Andy Hughes, would like to speak first regarding this item.

Andrew Hughes, Director of Acquisitions and Development for Commonbond, requested this Agenda Item be tabled until further notice. He understood there are concerns regarding access and traffic the development project may generate. Mr. Hughes suggested a period of two months so they have time to work with the County and City Staff on access issues. Councilmember Piekarski Krech asked if the first meeting in September would work. City Administrator Lynch stated that meeting would take place on September 14. Mr. Hughes agreed with the date.

City Attorney McCauley Nason stated it was noted that the first 60-day deadline is July 17th. The City can extend that out for an additional 60 days without needing it in writing from the Applicant. She stated she needed confirmation if the Applicant is requesting this be tabled outside of that time period. If so, something would be needed in writing granting the extension. If the proposal is to table it to within 120 days of application submission, then the information would not be needed.

Mayor Tourville requested that the City Attorney and Planning Staff work with the Applicant and determine if something is needed in writing.

Motion by Piekarski Krech second by Perry to table Agenda Item F. COMMONBOND COMMUNITIES - Consider an Ordinance rezoning the property from A, Agricultural District to R-3C, Multiple Family District Planned Unit Development at the request of the Applicant to the September 14, 2020 City Council meeting. If that timeframe is outside of the 120 days the City does receive in writing from the Applicant, consent to extend it to that timeframe. Applicant must provide written notice stating agreement and at their request.

Ayes: 5

Nays: 0 Motion carried.

Mayor Tourville stated the Applicant may want to schedule a neighborhood meeting versus making changes. Mr. Hughes responded they would like to meet with the neighbors.

Tomas Settell, 3417 78th Street East, handed out binders with information for the Council. He stated he is the Owner of Bee Elite Gymnastics Academy. He stated they have had a great relationship in partnering with the Grove. He commented due to Covid-19, there are some changes that are being proposed.

Mayor Tourville stated the item Mr. Settell is speaking about is not related to the topic just voted on. The item should have been brought up for discussion during Public Comment. He stated they would go on to the next Agenda Item and after, Mr. Settell could do a brief premise of what he has come to discuss.

Engineering:

G. Consider Resolution Accepting Stormwater Modeling Proposal for Regional Basin IGT-B-3 and Surrounding Drainage Area (89th Ct. and Concord Hills) from Barr Engineering. Resolution 2020-129.

City Engineer Tom Kaldunski stated this is for review of a proposal from Barr Engineering to do a stormwater study for Pond IGT-B-3. He displayed a photo of the location stating the water level has been rising on the pond. The basin is now above what was modeled at its 100-year elevation and higher than anticipated. He stated they would have Barr do a study to tell them what has taken place with the basin and what improvements could be done. The intent is to have the study done and have a plan of action to be able to make decisions based on professional stormwater consultants.

He stated they believe its affected by groundwater more than anticipated. The water has stayed at a certain level but higher than it was before. He stated this is for approval of the proposal. The timeline states if starting by June 9th, they are hoping to have a preliminary report by July 3rd. Mayor Tourville stated the agreement needs a correction on the date.

Councilmember Perry asked if anyone has gone out before June 5th of this year to look at the property. That is a long time for the resident to be contacting the City before anyone physically looks at it. City Engineer Kaldunski responded they had a lot of meetings on site, there were no meetings held this year. Staff has been sent out regularly to monitor elevations.

Carrie Shatek, 3905 89th Street East, stated she submitted photos with comments prior to the meeting. She read her comments stating that she has spoken at the last Council meeting and since then nobody has visited her home to see the water levels. She has not heard from anyone from the City or Council except for Councilmember Perry who she had emailed and heard from another Councilmember today. She reached out to City Engineer Kaldunski again to explain her question about today's Agenda item for engineering and was told that the trees were dying and being removed around hundreds of basins in the City/Twin Cities area. She commented that Mr. Kaldunski also said if nature caused the trees to die it is unlikely the City would take action on the tree removal.

She stated she has had to take her own action on the tree removal, costing thousands of dollars because the City Engineer has not responded to her inquiries over the past three years. She commented she didn't realize Mr. Kaldunski was a certified Arborist and researches other basins in the Twin Cities area. She had a certified Arborist come to her home to tell her the trees were drowning and has it in writing. Every tree in her backyard is gone. She stated the City of Inver Grove Heights has unlawfully taken her property from her. She commented that Mr. Kaldunski is not managing the stormwater plans for the City effectively. This has sat for three years and have been told the City has to prioritize projects.

She stated when she sent her items to the City Clerk, Rebecca Kiernan shared the details of Agenda Item 7G with her. She stated the timeline is incorrect and she was never contacted by Mr. Kaldunski on May 27th, 2020. She commented there are untruthful statements in the Agenda item timeline. It states that the shed has not flooded to his knowledge. As shown by pictures, the shed is almost flooded. She stated she will continue to speak until she is satisfied and has expected more in the three years, she has shared her concerns.

Ms. Shatek spoke regarding the photos she presented stating the one from 2017 shows a firepit in the backyard, the water is approaching and the peninsula picture is full of trees, with some trees underwater and dying. In the photo taken today, the trees are gone on the peninsula, the stamped concrete firepit had to be hauled out because it was completely underwater and destroyed. Thousands of dollars were paid by them to have the work done. Aerial photos of the area were displayed from 2012 to the next photo in 2017, and commented it shows the water level has significantly risen with the addition of the homes on the development behind their property.

Lori Illetschko, 3875 89th Street East, stated in 2010 when they moved in there was very little water. They had duck houses then, and now they are flooded. She stated she can submit pictures from 2010 to now and the water is tremendous. She commented that they noticed the increase when the development came in. She stated it is frustrating to see property disappear.

Mayor Tourville apologized on behalf of the City for the length of time. He suggested that Barr go out and visit with the neighbors so that information can be added. He asked if there have been new homes in the last few years. Ms. Shatek responded there have been about 15 or more homes but seven in the last two years. She stated there is another stormwater pond that is very close and has no increase or tree loss. She stated she is looking for the Council's help on this as she has struggled with the City Engineer. Her husband is stormwater certified through the U of M; they know there is a serious problem.

Mayor Tourville asked City Engineer Kaldunski if they could complete their work through the end of July. City Engineer Kaldunski responded the proposal states it could be done by July 3rd. Based off today's date, it would likely be done by the August 10th meeting. Mayor Tourville stated the scope of work should include speaking with the neighbors.

Councilmember Piekarski Krech asked if a date certain was needed. She stated she would rather have the job done correctly rather than set a date it needs to be completed by. Councilmember Dietrich asked what caused the delay and why there seems to be a sense of urgency now. City Engineer Kaldunski responded the delay began in 2017, they met again in 2019 when there were storms. All times they checked the basin during previous discussions it was below the 100-year elevation predicted in the stormwater model. He stated when called out there this year it was suddenly a foot or two more and has not gone down as quickly. The basin in the stormwater plan would have to rise another four feet before it finds a natural overflow point. The shed out there would be three feet under water at that time. They don't want it to get that high, once it gets beyond the 100-year flood, they would check to see what is taking place.

Mayor Tourville asked if any of the buildings were in a holding pond easement. City Engineer Kaldunski displayed an aerial photo and stated the house doesn't have an easement on it, the area west of it does. He responded the last home is going in Concord Hills right now. Over the years the homes going in have been in slow progression.

City Engineer Kaldunski displayed an excerpt from the stormwater management plan and stated they were expecting water where the blue is shown. The red line in the photo represents the 100-year flood plain elevation. The water has become higher than that and hasn't happened until this year. He pointed out the natural overflow point stating the water has to get up to a high elevation before it can overflow. He noted this is a DNR protected wetland and waterbody. They can't just go in and do things then. He stated he has contacted the DNR, Barr Engineering, and there is a timeline from Senior Engineering Technician

Mike Edwards to go out and take elevations. That was in 2020. He displayed a series of elevations that have been taken and shows a high-water mark of 894. In May it was 895.2 and went up a foot over the 100-year foot plain and that’s what flagged it. He stated it did get up to the 895.8 elevation and has been staying at that elevation even when they had over 2 inches of rainfall on June 18th.

Mayor Tourville stated the date of August 10th has been tentatively set up for this item to be discussed. There could be others in the area affected, he requested getting the word out. Action needs to be taken and apologized for the delay.

City Engineer Kaldunski displayed a drawing of the watershed that drains to the lake. He explained the location of the Concord Hills development and the area that drains to the basin. The rest of the drainage area goes out a different way. He stated he has a feeling this is influenced by something off site. Barr will help confirm that.

Ms. Shatek stated she was never contacted in 2019 about her property. They all have private septic systems. She commented that theirs was installed in 2011 and feel with the high-water levels their system may be compromised. She spoke of the development that began in 2013 and asked about Pioneer Engineering who worked with the City to approve the plans for Concord Hills. She asked if the plan was flawed at the time. She stated the water has continued to rise and questioned if she needed to purchase flood insurance as they do not know how high it is going to go.

Motion by second by to approve Resolution 2020-129 Accepting Stormwater Modeling Proposal for Regional Basin IGT-B-3 and Surrounding Drainage Area (89th Ct. and Concord Hills) from Barr Engineering with the item coming back before the City Council on August 10, 2020.

Ayes: 5

Nays: 0 Motion carried.

Other:

H. Consider adding the following two items to the July 6, 2020 Council Work session agenda for potential Council action:

- 1) Closed executive session pursuant to Minn. Stat. § 13D.05, Subd. 3(b), for confidential attorney-client discussion re Nichols’ inverse condemnation claim at 6302 Robert Trail S.**
- 2) Consideration of Resolution authorizing use of eminent domain for acquisition of certain real property interests in real property located at 6302 Robert Trail South.**

Motion by Piekarski Krech second by Perry to add the following two items to the July 6, 2020 Council Work session agenda for potential Council action:

- 1) Closed executive session pursuant to Minn. Stat. § 13D.05, Subd. 3(b), for confidential attorney-client discussion re Nichols’ inverse condemnation claim at 6302 Robert Trail S.**
- 2) Consideration of Resolution authorizing use of eminent domain for acquisition of certain real property interests in real property located at 6302 Robert Trail South.**

Ayes: 5

Nays: 0 Motion carried.

Mr. Tomas Settell, from Bee Elite Gymnastics Academy stated on July 6th he will be coaching gymnastics in the evenings. He discussed the following timeline and information:

- February 21st: Received an email from Recreation Coordinator Chelsea Swiggum discussing putting them in the brochure.
- Has worked with the City for 14 years at the Grove.

- A copy of the Parks and Recreation Brochure was sent to him on March 5th. In his section under the Junior Olympic Team program, it states a 12-month commitment from June 2020 through May 2021 and was approved by the Park and Recreation Department.
- On May 1st he spoke with Parks and Recreation Director Eric Carlson about how to reopen after Covid happened and sent his instructions about what they would do upon reopening.
- May 4th, he received an email from the Parks and Recreation Director stating he would like to speak with him.
- Phone conversation took place May 15th. He stated that was when he learned that he wanted to remove him from the space.

A transcript of the entire conversation was included in the binder material that was passed out to the Council.

- June 9th an email stated they had spoken on May 22nd. That date was incorrect it was actually May 15th.

He stated he was told he was being removed was so they could do social distancing for programs. With social distancing, the Fire Code states you can only have nine people in the space. Currently in the space, half is floor, half is trampolines. He stated nine people could easily go in that space without a problem if sharing the space.

He stated he sent Parks and Recreation Director Carlson a lengthy email requesting information to understand what programs they wanted to do. He mentioned the basketball gymnasium hasn't been used and is better space for social distancing. He stated he was asked to put together a plan about what it would look like to move his equipment out of the space. He commented to have Suddath move and store his items for 12 months would be \$19,192. Damages may occur with having to leave the space on such short notice.

He stated another option would be shipping containers at a cost of \$12,610, Sherlock Storage would charge \$20,000 for a year, and Inver Grove Storage charged \$16,224. He stated a lot of his clients would be hurt and damaged if he would be unable to open in the space he has been occupying as a tenant. He asked the City Council for consideration and help on solving this problem. He stated he plans on opening on July 6th.

Councilmember Dietrich questioned why he is being asked to vacate when he is bringing in revenue for the VMCC. Mr. Settell responded he has been there for 14 years. In the phone transcript, Parks and Recreation Director Carlson says, on Page 3, "I know this is a complete surprise and I apologize for that, I do know you have a business to run, and suggests he begin looking into a different location in which to run the business". Mr. Settell stated he was shocked; he has had a great relationship with the Grove. Moving the equipment would bankrupt him.

Councilmember Dietrich apologized and stated it was not her intention to run out businesses.

Mayor Tourville asked if both parties knew the conversation was being transcribed. Mr. Settell responded it is not required in the State of Minnesota and he had a witness. Councilmember Dietrich asked the City Attorney if that was true about recording. City Attorney McCauley Nason responded it depends on the context of the conversation. If one party consents to the recording then its legal.

Mr. Settell stated Sherry Mayer was on the phone with him and did identify her to the Park and Recreation Director at that time.

City Administrator Lynch stated Mr. Carlson has attempted to contact Tomas by email to set up a meeting for further conversation. To date he has been unsuccessful. He would be able to explain the plan the City has. He stated the City Council has challenged the City to come up with additional revenue generating space at the VMCC so they can continue to cover at least 86% of operating costs.

He stated Mr. Settell has an agreement with the City, not in writing, and calculates the revenue generated and gives the City a check. They rely on him to give the City the revenue. He stated he has been a good tenant and enjoyed the benefit. They are looking at the continued use of that space, which was handball and racquetball courts. They would like to turn that into physical fitness space to expand the fitness membership and/or programs. It is not immediate, but something they would like to discuss with Mr. Settell. He recommended returning the phone call so they can set up a meeting. He stated they would need to take the costs of moving into consideration.

Councilmember Dietrich asked when this information/plan would have come before City Council. City Administrator Lynch responded after they were able to have a conversation with Mr. Settell. He stated the open space has been discussed regarding the operation of the VMCC. City Council has authorized, and plans have been drawn up by Architects in the past as to how to reutilize the space.

Councilmember Dietrich asked if Councilmember Piekarski Krech was the only one privy to that information. City Administrator Lynch responded he meant the Mayor and Councilmember Piekarski Krech were around when the facility was first built and when the arrangement began with Bee Elite Gymnastics as well as the Architect renderings of reutilizing that space.

Councilmember Dietrich stated it was unfortunate that nobody knew about this. It is a business leaving the Community. City Administrator Lynch responded it was unfortunate that Mr. Settell took it that way, it was not stated that way. He stated the Parks and Recreation Director wanted to speak to Mr. Settell about changing the use of the space. Councilmember Dietrich responded that it is stated that way in the transcript. City Administrator Lynch responded Mr. Carlson did not know he was being transcribed. He recommends the Council let that meeting take place with Mr. Carlson. Councilmember Dietrich responded the Council would like to be privy to that. The way it has taken place so far, it is not in the Gymnastics School best interest to have that meeting take place without someone else present, such as a Councilmember or two. Mayor Tourville stated he does not want Council involved at least until they hold the meeting.

Mr. Settell stated Parks and Recreation Director Carlson did reach out to him, and that he himself has responded to all of his emails. He stated he was specifically asked to come up with a plan, but said initially Mr. Carlson wanted him out. He stated he asked Director Carlson specifically what programs needed to be expanded and the numbers, Director Carlson would never answer. He stated at that point he felt that Parks and Recreation Director Carlson lost integrity with him and in his communication, which is indicated in the books handed out to Council. He stated he was no longer comfortable working with Park and Recreation Director at this point and would like someone else to be there with him.

Eucharía Unamba, 7091 Blake Path, stated she has lived here since 2008 and has known Mr. Settell for about four years and has coached her kids. When she was told about the issues, she questioned what they would do. She asked the Council to help Mr. Settell out and retain his space.

Mark Blando, 8726 Alvarez Avenue, stated he has been a long time patron of Bee Elite Gymnastics and has two daughters who have been a part of the school, as has he as they also have programs for adults. He stated he is also an Attorney and specializes in claims against Government Entities. He is not representing the gym, but believes there is possible legal trouble if evicted on such short notice. It has been advertised that he is going to be there until next year.

Mr. Blando mentioned Ibukun Adedeji (IB) who came into the gym as a five-year-old kid and went onto the Junior Olympic team, and passed away unexpectedly a few years ago. He was an incredible athlete. His story has been carried on, and is a very important legacy to be able to maintain in Inver Grove Heights.

Samuel Adedeji, 1610 Skyline Path, Eagan, stated he knew Tomas when he was at an Eagan Gymnastics school over 15 years ago. He stated he was sad when he heard the news about why Mr. Settell was going to be present for this meeting. If the space is needed, time should be given to do that. He asked

that the Council take into consideration the lives of other people that depend on this. He stated his son made it into the Junior Olympics program and competed for two years. Unfortunately, his son later passed away from a congenital abnormality they knew nothing about. This school helps the development of the lives of young people. He asked that they continue to allow Bee Elite to use the facilities.

Jenny Shucard, 8905 Brunswick Path, stated Bee Elite Gymnastics is important to her family and the Community. Her daughters are aged 13 and 17, and herself, have found gymnastics classes at Bee Elite to be beneficial and in a convenient location. Prior to closing due to Covid, her daughters looked forward to attending weekly classes at the gym. She stated she looked forward to the adult gymnastic class as there are very few. Those classes caused her to exercise and focus on her overall health. Her daughters both enjoyed being a part of the Junior Olympics team and the confidence built through the Coach.

She stated her 14-year-old daughter was recently diagnosed with a serious auto immune disease and has been experiencing a heightened level of anxiety and depression as a result. She stated her healthcare team noted improvement in coping with her diagnosis shortly after she began taking gymnastics classes at Bee Elite and have encouraged her to continue to take classes. Since the closure, her daughter has lost her favorite outlet and coping mechanism. They look forward to the reopening of the Bee Elite Gymnastics Academy especially since there are no other gymnastics gyms in the area.

Ashley Lambrecht, 249 Richmond Street, expressed how important it was to keep Mr. Settell and his gym open at the Grove. Her seven-year old daughter has been in his class for over three years and looks forward to class every week. Prior to starting at Bee Elite, they struggled to find a class that would keep her interested. She stated Mr. Settell uses children's own mental and physical strengths to their advantage to help reach their goals and boost confidence. She stated losing the Bee Elite Gymnastics academy and Coach Tomas would be devastating to his students, parents, and the Community. When students left the gym last, they had planned on returning. She stated it was frustrating to register her child in a program advertising their commitment through May 2021.

Mayor Tourville stated a meeting is needed, Mr. Settell could bring whomever he wanted, and Park and Recreation Director Carlson would be there. He asked about their not being an agreement between the two parties on the space, everything there has a Contract. Mr. Settell responded the Agreement he has was verbal from 2006. There was no end date to the agreement. Every year they are listed in the book. He stated there is no written Contract other than the Contract listed in the brochure. They were under the impression it was year by year. Mayor Tourville stated that was not a written contract. Mr. Settell responded it is an implied written contract by the City.

Mayor Tourville stated this needs to be straightened out as soon as possible, Covid-19 cannot be used as an excuse to look into other options. He stated this was the first he was hearing about this. He commented that there are other programs that could be changed that the Council is unaware of.

Mr. Settell requested the Council extend a contract to him for a 12-year period so his clients wouldn't have to go through this again. He would appreciate a longer term rather than year by year. Councilmember Piekarski Krech asked if a set amount is paid each month. Mr. Settell responded he has been paying a percentage of gross. He stated no one has come to him asking for a set amount, or increase of money.

Mr. Settell stated he has to open on July 6th. March classes have people waiting to fulfill those classes and July registrants. Mayor Tourville responded they have other clients at the Grove and Community Center that have contracts that haven't been fulfilled either due to Covid-19.

City Administrator Lynch stated this could move forward as soon as Mr. Settell and Parks and Recreation Director Carlson can agree on a date and time to meet. Mayor Tourville suggested others be in attendance aside from the two.

8. EXECUTIVE SESSION:

9. MAYOR AND COUNCIL COMMENTS:

City Clerk Rebecca Kiernan stated she is going to be recording a video on absentee voting to let residents know how to absentee vote early. She stated there is no longer a need to have a witness for your own ballot.

10. ADJOURN:

Motion by Piekarski Krech second by Perry to adjourn the meeting at 10:00 p.m.

Ayes: 5

Nays: 0 Motion carried.

Minutes prepared by Recording Clerk Sheri Yourczek