

**INVER GROVE HEIGHTS CITY COUNCIL MEETING MINUTES
MONDAY JUNE 24, 2019 at 7:00 p.m.**

1. CALL TO ORDER

The City Council of Inver Grove Heights met in regular session on Monday, June 24, 2019, in the City Council Chambers. Mayor Tourville called the meeting to order at 7:00 p.m.

2. ROLL CALL

Present: Councilmembers Bartholomew, Perry, and Dietrich; City Administrator/Interim Deputy Clerk Lynch, City Attorney Kuntz, Community Development Director Rand, Public Works Director Thureen, City Engineer Kaldunski, Parks and Recreation Director Carlson, Associate City Planner Botten and Police Chief Chiodo.

Absent: Council Member Piekarski-Krech

3. PRESENTATIONS

There were no presentations.

4. CONSENT AGENDA

- A. i. Minutes from the May 28, 2019 Council Meeting.
ii. Minutes from the June 3, 2019 Council Worksession.
- B. **Resolution 19-108** Approving Disbursements for Period Ending June 18, 2019.
- C. Pay Application No. 7 for 2014-10 Fire Station 2.
- D. Consider Change Order No. 8 and Pay Voucher No. 12 for City Project No. 2015-09D – Broderick Boulevard Reconstruction, City Project No. 2017-21 – VMCC/Golf Course Parking Lots, City Project No. 2018-08 – Fire Station No. 2 Sewer and Water Improvements, and City Project No. 2018-11 – Fire Station No. 2 Fiber Optic Improvements.
- E. Consider Approval of Plans and Specifications and Soliciting Bids for HVAC Improvements in the Lap Pool at the VMCC/Grove.
- F. Consider Approval of a Contract with HKGI for Concept Plans for South Valley Park Improvements.
- G. Consider Pay Voucher No. 11 for City Project No. 2015-09D – Broderick Boulevard Reconstruction, City Project No. 2017-21 – VMCC/Golf Course Parking Lots, City Project No. 2018-08 – Fire Station No. 2 Sewer and Water Improvements, and City Project No. 2018-11 – Fire Station No. 2 Fiber Optic Improvements.
- H. Consider Final Compensating Change Order No. 6, Final Pay Voucher No. 8, Engineer's Final Report, and **Resolution 19-109** Accepting Work for City Project No. 2016-09D – 60th Street Area Reconstruction, City Project No. 2016-10 – 60th Street Area Utility Improvements, and City Project No. 2015-12 (Phase 1) – NWA Trunk Watermain Improvements, 65th Street Loop (Argenta Trail to Babcock Trail).
- I. Consider Change Order No. 4 and Pay Voucher No. 8 for City Project Nos. 2017-03 – Watermain Improvements, 65th Street Loop and 2017-24 – T.H. 3 Intersection Improvements for 65th Street.
- J. Consider Change Order No. 2 for City Project No. 2018-09D – Atwater Path Pavement Replacement and Stormwater Improvements, City Project No. 2018-09F – 55th Street and 55th Street Court Reconstruction, and City Project No. 2017-07 – HVP Site Borrow Placement.
- K. Consider **Resolution 19-110** Approving a Temporary Easement Agreement at 1690 Atwater Path for City Project No. 2018-09D – Atwater Path Pavement Replacement and Stormwater Improvements.

- L. Approve Comment Letter to Dakota County for its 2020-2024 Capital Improvement Program (CIP).
- M. Source Land Capital – Case No. 19-14ZPD – Approve action to Table the request to July 22, 2019 relating to the following requests for property located at 6477 South Robert Trail:
 - a. An Ordinance rezoning the property from A, Agricultural to R-1C/PUD, Single Family Planned Unit Development.
 - b. A Resolution relating to a Preliminary Plat for a 66-lot subdivision to be known as Windsor Ridge.
 - c. A Resolution relating to a Preliminary Planned Unit Development for Windsor Ridge.
- N. Consider Approval of Individual Message Therapist License for Yanyan Rinta at the Sunny Asian Message, 5798 Blackshire Path.
- O. Approve a **Resolution 19-111** approving the development contract, storm water facilities maintenance agreement and related agreements for the Lakefield Veterinary Clinic located at 7109 and 7131-7135 Cahill Avenue.
- P. Personnel Action.

Motion by Bartholomew second by Dietrich to approve the Consent Agenda.

Ayes: 4

Nays: 0 Motion carried.

5. PUBLIC COMMENT

There were no public comments.

6. PUBLIC HEARINGS

A. Public Hearing to Consider Resolution Adopting Final Assessment Roll for Property Located at 5465 Babcock Trail for the 2019 Pavement Management Program, City Project No. 2019-09F – 55th Street Court/55th Street Reconstruction. Resolution 19-112.

City Engineer Tom Kaldunski stated this item is the tabled action on the assessments for the Gas Station on the 55th Street project. Conversations have been had with the property owner about the assessments for the small business. He stated terms have been negotiated with the property owner giving a slight reduction, like what has been done with other small businesses on neighborhood projects. A 15-year term has been proposed to spread out the assessment payments. Per policy there is a 5.15% interest rate. He stated the property owner had some questions about the interest rate, which is a Council policy decision, not a staff decision. He stated a similar reduction for business assessments has been done in the past by those who have asked for a reduction, this would be in the same range. He asked the Council if they wanted to reduce the interest rate from 5.15% to 4.15%, which is the amount the business owner has requested. The City Attorney has reviewed the request and stated that it is a policy decision.

Sayyad Hussein, 5465 Babcock Trail, thanked the City Council for negotiating the assessment. He stated that his only request from the letter he had received from Steve was about reducing the interest rate to 4.15%.

Mayor Tourville stated they have been lower than 5% on a couple of projects and agreed with 4.15%.

Councilmember Bartholomew asked how lowering it affected the others in the area. He asked if all of the interest rates would be at that rate or just the business.

City Administrator Joe Lynch responded it would be just this one. He stated the reason they set the assessment interest rate is to cover our costs. They try to increase it by 2% over the borrowing rate. For this project that is 3.3% and 3.5%. He stated there are legal, engineering, administrative, and financing costs to consider.

Councilmember Bartholomew stated he would like to see it at 4.15%, but the policy is to recover costs and handle administration. He commented it would be wrong to reduce it for one assessment and not the others.

Mayor Tourville responded he was only looking at it because of the amount of the assessment.

Councilmember Perry stated the amount was reduced to \$26,000, down from the original \$40,000.

Councilmember Dietrich asked if the breakeven for the City is at 5.15%.

City Administrator Lynch responded there is not a breakeven, it is to cover costs. He stated we bond for these projects and carry the costs until the assessments are paid.

Mr. Hussein stated this is the only business that is being charged that kind of money.

City Administrator Lynch responded that he understood. He stated it is a policy decision for the City Council, which can raise or lower the interest amount.

Councilmember Bartholomew stated he wanted to stay at 5.15% to be equitable to the other assessment holders.

Motion by Perry second by Dietrich to close the Public Hearing at 7:08 p.m.

Ayes: 4

Nays: 0 Motion carried.

Motion by Bartholomew, second by Dietrich to approve the assessment with the 5.15% interest rate for Public Hearing to Consider Resolution 19-112 Adopting Final Assessment Roll for Property Located at 5465 Babcock Trail for the 2019 Pavement Management Program, City Project No. 2019-09F – 55th Street Court/55th Street Reconstruction.

Ayes: 4

Nays: 0 Motion carried.

7. REGULAR AGENDA

PARKS

- A. Consider Approval of Contract with Dahn Construction for Phase II Improvements to Heritage Village Park.**

Parks and Recreation Director Eric Carlson stated this item is for the approval of a contract with Dahn Construction for the next phase of development of Heritage Village Park. He began with background of the area and stated in 1999 the City acquired railroad property with the intent of establishing a vision to celebrate the community's history, heritage, and reconnect to the Mississippi River. The first Heritage Village Park Master Plan was developed in 2004 and has been updated a few times over the years.

He stated in 2010 the City received approval from the MPCA to begin using the former railroad property for recreational purposes after remediating the site. For the last 20 years the City has worked diligently to acquire over 25 properties along Doffing Avenue to help reduce the risk of flooding with the intent of constructing a park. The City closed on the final piece of property to be a part of Heritage Village Park. He stated the City has engaged with many partners such as Federal, State, County, non-profits, and private businesses to advance the development of the park. Dakota County constructed a segment of the Mississippi River Regional Trail through the park. That trail is a 26-mile recreational trail from St. Paul to Hastings. Recently the City opened up an off-leash dog park for both residents and dogs to enjoy.

He stated the City has been using Heritage Village Park to try to spur development in the area. There has been approximately \$30 million dollars of public investment along Concord Boulevard and involves:

- Heritage Village Park
- Concord Boulevard
- Mississippi River Regional Trail
- Swing Bridge Park and Trailhead

The intent is to have public investment drive and spur private reinvestment in the area.

He stated the Economic Development Authority (EDA) is involved with the following:

- Property acquisition outside of the park along Concord Boulevard.
- Financing.
- Coordination of the redevelopment.

The plan anticipates a tax base increase of between 300% and 1,200% when it comes to maturity. A six-fold increase in residential properties and a four-fold increase in commercial square footage. The goal is to attract new businesses and create jobs in the area.

He displayed the most current version of the Master Plan for Heritage Village Park and stated the discussion would be about potentially awarding a contract to Dahn Construction for the next phase. He stated there were two bid packages to choose between.

The first is Phase II Bid Package A and includes:

- 53 car parking lot (with additional ADA stalls).
- Trails to connect Heritage Village Park to Swing Bridge Park.
- Historical interpretation at Swing Bridge Park.
- Site utilities, lighting, stormwater, landscaping, etc.
- Complete grading and environmental remediation by importing approximately 80,000 cubic yards of clean fill bringing the elevation of the improvements above the flood elevation of 701.
- Park would be completely graded and ready for future improvements.

He stated bids were received for the project in May. The engineers estimate was \$1.9 million dollars and there is a low bid from Dahn Construction for \$1.5 million dollars that includes the Alternate.

He stated the second bid package – Phase II Bid Package B includes:

- Single trail connection.
- Park would not be completely graded and would need additional work before future improvements could be constructed.
- Will need a change order for grading on the LSS property.

Some grading would be completed, but not raised to 701 elevation. He stated future grading would have to be completed if Council wanted to move forward with other park improvements.

He stated bids for Bid Package B was \$428,000 with the engineer's estimate with the low bid coming from Dahn Construction for \$293,000.

Parks and Recreation Director Carlson stated the recommendation is for Bid Package A with the Alternate for approximately \$2.5 million dollars. Because of the amount of fill acquired from street projects, they are able to reduce the volume of borrow from when it went out to bid to now. It went from 44,000 cubic yards to 25,000 cubic yards. He stated they spoke with Dahn Construction about changing the grade of borrow to something less expensive but still workable for the project. That changed the price from \$9.70 a cubic yard down to \$5.84 a cubic yard for the first 25,000 cubic yards. Based on the engineers estimate, they believe that is how many cubic yards would be needed to finish the grading plan. He stated if more is needed it would cost \$8.96 per cubic yard for anything over 25,000 cubic yards. This change saves the project about \$280,000 if the numbers are accurate.

He stated the Council is being asked to approve a contract for \$1.5 million dollars, the full amount. This would be back before the City Council on July 8th with a change order for a volume reduction and the change in cost of the two different borrowed products. This would be an approximate \$280,000 savings from the contract the Council may approve this evening.

Councilmember Bartholomew stated that looking at the low bid of \$1.573 million, and looking at a total cost of \$2.765 million, he commented that Parks and Recreation Director Carlson stated the total cost would be \$2.5 million dollars. He asked what the \$1.573 million dollars was going to purchase relating to the expenses shown on the balance sheet.

Parks and Recreation Director Carlson responded the \$1.573 million dollars is the bid number submitted by low bidder Dahn Construction that includes the assumption of needing 44,000 cubic yards of borrow. Since the project specifications were put together, more borrow was received than anticipated and reduced the amount of borrow needed down to 25,000 cubic yards. He stated based on 25,000 cubic yards of borrow at \$5.84, they would be spending \$146,000. He stated that they would be asking the City Council for approval of a change order on July 8th of \$280,800 bringing the contract from \$1,573,149 down to \$1,292,349. The difference being the \$280,800.

Councilmember Bartholomew wanted to clarify what was being requested and stated that the \$1.573 million dollars would take care of the remainder of the dog park site, work utility, topsoil, borrow, and additional parking. This does not consider amounts for interpretation, property acquisition, or the shelter and restrooms.

Parks and Recreation Director Carlson responded the contract consists of the amounts he has shown.

Councilmember Bartholomew commented they are looking for funding necessary for other items such as the remainder of the dog park, interpretation, property acquisition, streets, construction observation, and contingency.

Parks and Recreation Director Carlson responded what that meant for the remainder of the dog park is they have already approved contracts with contractors for that, but it is work the City hasn't paid for yet. The property acquisition are items the Council has approved, the \$600,000 is an estimate, not an exact number. There is approximately \$170,000 out of the park project to help fund some of the dirt work going on in the park from the street project. \$84,000 is the number Dakota County is working on for the historical interpretation.

Councilmember Bartholomew commented that the \$1.5 million dollars isn't buying everything that is in the expense line items.

Parks and Recreation Director Carlson stated the items located in the next column are items the Council is not approving this evening. If the Council elects to do Bid Package A along with the Alternate, this would set us up to be able to consider doing the other items in the future. He stated if they are able to do them in 2020, there is quite a bit of work to be done to find revenue sources. There are some suggestions, but nothing set in stone. The only certainty is the \$250,000 left over from the 2019 ELF Grant from Dakota County. Other numbers at this point are fictitious numbers.

Mayor Tourville stated the Council asked for bids on infrastructure and fill. The other items will come before the Council. The portion squared off include items we are getting, the parts for 2020 are not a part of Bid Package A.

Councilmember Bartholomew agreed that was the point he was trying to make.

Parks and Recreation Director Carlson stated there are people in attendance to speak on this item. He stated if the Council votes on Bid Package A, it doesn't mean an inclusive playground is coming to town at this point.

Mayor Tourville commented if they do not do Bid Package A and take a look at the 2020 items, a lot of items can't be done because the infrastructure isn't in place.

Parks and Recreation Director Carlson responded that was correct. If they are interested in doing other improvements, in 2020 or another year, they would have to accomplish Bid Package A first.

Parks and Recreation Director Carlson stated in conclusion, staff and the Parks and Recreation Commission recommend the Council award Bid Package A with the Alternate to Dahn Construction for \$1,573,149.30 with the funding package discussed. He stated they would process a change order at the July 8th meeting to reflect the change in volume and the change in price of the borrow that would save the City \$280,800.

Parks and Recreation Director stated that if approved by the Council, it prepares for future improvements that may include:

- Inclusive Playground
- Shelter/Restroom
- Historical Interpretation
- Splash Pad
- Amphitheater
- Others

He stated that the Parks and Recreation Commission recommended approval on an 8-0-1 vote.

Councilmember Dietrich asked if there was a reason behind the abstention.

Parks and Recreation Director Carlson responded he did not know the reason.

Councilmember Bartholomew commented that his concern was with a big fluctuation in bids. There is the lowest bid, the next bid is \$200,000 higher, all the way up to \$2 million. He asked if staff and Director Carlson were comfortable with the low bid.

Parks and Recreation Director Carlson responded that they are. He stated they have had extensive conversations with Dahn Construction. They have been very forthcoming and have worked with the City to try to change some of the numbers to be more affordable. He stated he and staff are comfortable that Dahn understands the project, have the resources to complete the project successfully, and that we will be happy with the end product.

Councilmember Bartholomew stated the change order makes it more desirable.

City Attorney Tim Kuntz asked Parks and Recreation Director Carlson for clarification about if the Council approves Bid Package A and the Alternates, then it can also proceed to reject Bid Package B.

Parks and Recreation Director Carlson responded yes, the Council should reject Bid Package B.

Katie Hill, 4501 Audrey Avenue, supports Bid Package A. She commented this can be seen as an investment, from a financial and practical perspective and how it would benefit the City. It will allow people of all abilities to come together. She stated she frequents Madison's Playground which is an all-inclusive park in Woodbury. She commented she did a vehicle count each time she has gone there and has counted over 85 vehicles each time during the weekday. She stated the last time she visited there she asked families what City they resided in and if the park was the reason for the visit. She shared the results of those questions as follows:

- 11% of the people live in Woodbury.
- 89% live in other cities.
- 76% visited weekly or frequently.
- 24% were new to the park or visited infrequently.
- 47% were from 20 miles away or further.
- 53% were within 20 miles.
- 79% traveled to Woodbury that day specifically because of the park.

She stated that she goes to that park specifically three times a month. Each time she waits to do other things while in that area, she may go to the grocery store across the street from the park, go shopping, or go out to eat. She commented that is a portion of money that she spends in another City because of that destination. She stated that building this playground in Heritage Village Parks brings a much-needed attraction to that part of Inver Grove Heights. The park will aid the potential for growth, and surrounding businesses to thrive.

Niki Barker, 7647 Bowman Court, stated the last time she spoke to the City Council she highlighted the barriers she faces as a disabled mom. Most areas that are designed for families or children are not accessible. She stated it makes one feel like an afterthought and not inclusive. She commented that she doesn't feel this is about an individual, group, family, or specific disability. It's about the City and what it truly means to be inclusive. It can show the commitment to everyone in the community and say we value everyone. She commented that Heritage Village Park speaks to our past, honoring where we came from. To her the playground speaks to the future, who we want to be, the legacy we leave, not only important for those that need it like herself, but for Inver Grove itself, as a way of bonding people together and bonding the community.

Steve Cook, 9250 Inver Grove Trail, stated he supports the Council adopting Bid Package A. He stated the park is on the map with Heritage Village Park, the dog park, and other things that are in the area. He commented that a lot of people are using the area and getting attention to use the area. He stated they should keep moving forward with the development of the area to make it more of what people might want to use it for as the City goes forward.

Kathryn Bauer, 6895 Cain Avenue, stated she is proudly in support of Heritage Village Park and this bid package. She commented this proposal will invest in our past, present, and future. It will tie together our railroad history, river, early villagers, and bring new generations to the river and to where Inver Grove began. She stated the inclusive playground is a place where all can play together. It incorporates creative design and community involvement. She commented development at the river is needed, not only for future generations, but also to help people understand where the City came from and where it is going. She stated the historical display will blend with green space, which we need more of in our lives. She commented that this would be a place for family gatherings, to enjoy the outdoors, and gather together.

Mayor Tourville asked for a schedule.

Parks and Recreation Director Carlson responded with the anticipated schedule as follows:

- July 24, 2019 Council awards contract for Phase II
- July – October 2019 Construction of Phase II improvements
- November 2019 City seeks reimbursement from County ELF Funds (\$600,000)
- Winter 2019/2020 City develops plans and specs for playground/shelter
- March 2020 City opens bids for playground/shelter
- April 2020 Council awards contract for playground/shelter
- May – July Construction of playground/shelter

He stated there is currently none of the funding that would be needed to support the envisioned improvements in 2020. If able to acquire financing and revenues, then potentially there would be projects for consideration in 2020.

Mayor Tourville stated operational costs for Option A or B are minimal. There would be maintenance and ongoing annual costs if the other projects happen, but with this phase it adds very little.

Parks and Recreation Director Carlson agreed it was minimal.

Councilmember Bartholomew commented that Bid Package A was the best alternative to get the infrastructure in place and then tackle remaining problems as they arise and have funding. He stated Bid Package B could set them up for a much larger expense. He stated he believes in the park and that he was on the Citizen Park Commission in 2003.

Motion by Bartholomew second by Perry to Approve Bid Package A with the Alternate and Reject Bid Package B and Approval of Contract with Dahn Construction for Phase II Improvements to Heritage Village Park.

Ayes: 4

Nays: 0 Motion carried.

7. REGULAR AGENDA (cont.)

COMMUNITY DEVELOPMENT

B. Consider Approval of the Second and Final Reading of a Proposed Amendment to Inver Grove Heights City Code Title 4, Chapter 12, Section 1 (4-12-1) to Permit Sampling of Cigars and Pipe Tobacco.

City Attorney Kuntz stated the first reading of the Ordinance was held on June 10th. This is the second reading. The only change from the first reading was to add the sentence “no person shall consume alcoholic beverages on the premises of the tobacco products shop”.

He stated to recap, the current City Code prohibits the sampling of tobacco products within the City and any tobacco products shop. This Ordinance would create an exception to that and allow the sampling of premium cigars and pipe tobacco in a tobacco products shop subject to a variety of conditions that were explained at the previous meeting. He stated the exception would only apply to someone who is selling premium cigars. He stated at the last Council meeting there was a discussion about dealing with the Ordinance in two readings rather than three. In order to do that we would need to suspend the rules and would need the entire Council to unanimously vote. He commented that with one member missing, they are not able to do that this evening.

Mayor Tourville stated they would vote on the second reading and would have to wait to vote on the third reading when all Councilmembers are present.

Lee Hutton, 9080 Buchanan Trail, attorney and husband of the owner stated that his understanding at the last meeting is that they didn’t do the second or third reading because they had to be divided and that all Councilmembers would be here. Unfortunately, this delays them considerably, and financially cripples the business. He stated they haven’t been able to do buildouts or anything because they had to wait for this day. He commented he was disappointed, especially when they are already licensed by Dakota County. He understood this is a formality for Inver Grove, but they want to come into the community, and this would put them into the next month which means they lose contracts. He commented they were bringing

the Minnesota Vikings in and they had people coming from the State of Minnesota to see the business. Now those have to be cancelled. He commented he is optimistic this can be done within 30 days.

Councilmember Bartholomew stated there was no will of the Council at the time to suspend or to take a second reading. The Council was going to take a second and possibly suspend the rules at this meeting, there was no guarantee that there would have been five unanimous this evening. He stated that five Councilmembers are needed to suspend the rules.

Mr. Hutton asked when the next date would be.

Mayor Tourville stated there is a Worksession on July 1st and asked if this could be put to that meeting. He stated they have taken up official business at some Worksessions to take a look at convenience.

City Attorney Kuntz stated the Ordinance calls for consideration at regular Council meetings. If considering it at a special meeting the Council would have to suspend the rules and consider it at a special meeting. He stated the Ordinance calls for three meetings at three regular City Council Meetings.

Mayor Tourville asked if they would have to suspend the rules at the July 1st meeting, or suspend the rules now to have it at the Worksession.

Councilmember Bartholomew asked if a special meeting could be considered as a regular meeting.

City Attorney Kuntz responded that it would continue to be in the status of a special meeting, but the third reading could be at a special meeting if at that meeting you suspended the rules to allow that.

Mayor Tourville commented it gives an additional week and could do it on July 1st versus July 8, 2019.

City Attorney Kuntz responded yes, but the Council will not be able to vote on July 1st unless there are five votes to suspend the rules.

Mayor Tourville suggested holding off on that idea and asked if they could do the second reading this evening.

City Attorney Kuntz responded yes.

Motion by Bartholomew second by Dietrich to approve the Second Reading of the Proposed Amendment to Inver Grove Heights City Code Title 4, Chapter 12, Section 1 (4-12-1) to Permit Sampling of Cigars and Pipe Tobacco.

Mr. Hutton commented that they are very anxious to get started. He asked for clarification on what is being done and commented that the City Council approved the second reading this evening, which leaves the third and final reading on July 1, 2019.

Motion by Bartholomew second by Perry to call for a Special Meeting to consider the Third Reading of the Proposed Amendment to Inver Grove Heights City Code Title 4, Chapter 12, Section 1 (4-12-1) to Permit Sampling of Cigars and Pipe Tobacco on July 1st at 6:00 p.m.

Mayor Tourville stated they would need to make sure they have five Councilmembers in attendance because they would need to suspend the rules.

City Attorney Kuntz responded they would make a motion to suspend the rules and if that passes unanimously, the Council would make a motion for the third reading.

Ayes: 4

Nays: 0 Motion carried.

C. Kenton and Rosalyn Miller – Case No. 19-21; Consider a Resolution relating to a Variance to allow a six-foot-high fence to be located 25 feet from the front property line whereas 30 feet is required for property located at 5824 Blackberry Trail. Resolution 19-113.

Associate City Planner Heather Botten stated the request is for property located along Blackberry Trail in a single-family residential neighborhood. The request is for a five-foot variance to allow a six-foot privacy fence to be located 25 feet from the front property line where 30 feet is the required setback for fences taller than 42 inches. She stated within the front yard setback, you are allowed to have a fence 42 inches or shorter. The reason for the Code requirement is for visibility purposes along the road, for driveways, and to maintain the aesthetics from neighboring views and the street. She stated that staff believes the proposed fence would not have an adverse effect on the neighborhood, the location is located within a wooded area and may not be visible from the road in some places. This property has a larger than average right of way. The location of the fence would still be located about 35 to 43 feet from the actual road itself. She stated there is no impact for the neighboring properties to exit or enter their driveways. Staff supports this variance request with the condition listed in the Resolution. She stated that at their public hearing, the Planning Commission made a motion to approve but the motion failed on a 3-5 vote. No further actions were taken.

Kent Miller, 5824 Blackberry Trail, stated that he built the home in 1996. He asked to extend the front end of the fence on both ends five additional feet, which is different than the present Code. He thanked Councilmembers Bartholomew, Dietrich, and Perry, for visiting and responding to his calls. He stated the woods extend beyond where he would extend the fence and the fence would not be visible from the road as long as leaves are on the trees. He stated along the road his property slopes downward from the road, the culvert is five to six feet at the low point where the fence is going to be. The top of the fence would barely reach the top of the road. He stated the neighbors do not have any problems with the fence.

Mayor Tourville stated he drove by the property and commented the six-foot fence didn't seem to have any traffic barriers or vision issues. He commented the biggest issue is that the neighbors are the ones that would have to look at it.

Michael Wise, 5834 Blackberry Trail, stated he is in favor of the fence and has no problem with it. He urged the City Council to move forward with the request.

Councilmember Bartholomew stated he agreed with staff's recommendation to grant the variance with the condition listed in the report and the practical difficulty as defined.

Motion by Bartholomew second by Perry to approve the Variance with the Condition Listed and the Practical Difficulty as Defined for Kenton and Rosalyn Miller – Case No. 19-21; Consider a Resolution 19-113 relating to a Variance to allow a six foot-high fence to be located 25 feet from the front property line whereas 30 feet is required for property located at 5824 Blackberry Trail.

Ayes: 4

Nays: 0 Motion carried.

D. Mark Engen – Case No. 19-25CV – Consider the following Resolutions for property located at 9255 Courthouse Boulevard:

- a. A Conditional Use Permit to exceed the maximum impervious surface on the property. Resolution 19-114.**
- b. A Variance to allow two accessory structures on the property whereas one is the maximum allowed. Resolution 19-115.**

Associate City Planner Botten stated the request is for property located at 9255 Courthouse Boulevard. It is in a residential neighborhood across from the new fire station. She stated the Applicant is requesting a Conditional Use Permit for an additional 4,862 square feet of impervious surface above the maximum amount. She stated the Applicant installed the impervious surface unaware of the Code requirements. The Zoning Code allows for an expansion or additional amount of impervious surface with a Conditional Use Permit request. That amount is based on lot size, 10% of the lot size, the additional 4,862 is within that Conditional Use Permit allowance. She stated that engineering staff has been working with the Applicant to comply with stormwater and grading requirements. The Applicant has agreed to give the City an easement over the natural basin on the property in lieu of installing a raingarden or some other stormwater feature.

She stated the Applicant is asking for an after the fact variance to allow a second detached accessory building on the property. The Zoning Code allows for lots less than five acres in size in the E1 District to have one detached accessory building, lots over five acres in size are allowed to have two detached accessory buildings.

Councilmember Bartholomew asked what the maximum size of the one detached allowed in the E1 District.

Associate City Planner Botten responded it was 1,600 gross square feet.

Associate City Planner Botten stated staff does not believe the request satisfies the variance criteria as there is a currently an attached garage on the property and one detached structure that is 1,400 square feet. Approving the variance could set a precedence for lots less than five acres in size. Staff and the Planning Commission are recommending denial of the Variance. Planning Commission and Staff support the Conditional Use Permit.

Councilmember Perry asked for the square footage for the second accessory structure.

Associate City Planner Botten responded it was about 400 square feet.

Mark Engen, 9255 Courthouse Boulevard, stated he is asking for the Conditional Use Permit and displayed a draft and showed where it was located and the distance of the water flow and the amount it can hold. He commented it was a significant area that holds a lot of water and disappears quick. He stated the second issue is that he has a shed he got from his neighbors, the Carlson's. He commented that since it was fine on their land, he thought it would be fine to have on his.

Councilmember Bartholomew stated it would be difficult to come up with a practical difficulty for the second structure. The recommendation for the variance failed at the Planning Commission and staff is recommending against allowing a variance for this. He stated the Statute is clear on the size of a secondary structure and how many are allowed.

Mayor Tourville asked how large the Carlson property was.

City Administrator Lynch responded the property was purchased for the fire station and was 11.6 acres.

Mayor Tourville stated the Carlson's could have multiple secondary buildings based on acreage. He stated that he didn't have any problems with the Conditional Use Permit.

Mr. Engen responded he added a firepit. He stated he was told he could go up to 28 and is only asking for 21. He stated if approved, he is looking at making the driveway wider with a concrete driveway. He stated if the accessory building has to go, he will work something out.

Mayor Tourville asked what the square footage was of the accessory building Mr. Engen currently has.

Associate City Planner Botten responded the detached one is 1,400 square feet.

Mayor Tourville stated the City has done variances for sizes of accessory buildings keeping them at one. They have done variances in order to make them work on property. An additional building creates a much bigger problem.

Councilmember Bartholomew stated if any other improvements are done on the driveway based on size to make sure to get the Permit.

Mr. Engen responded he has been in discussion with Associate City Planner regarding that.

Motion by Bartholomew second by Perry to approve the Conditional Use as described by Staff and the report for Mark Engen – Case No. 19-25CV – Consider the following Resolutions for property located at 9255 Courthouse Boulevard: (a) A Conditional Use Permit to exceed the maximum impervious surface on the property. Resolution 19-114.

Ayes: 4

Nays: 0 Motion carried.

Motion by Bartholomew second by Perry to Deny the Variance for Mark Engen – Case No. 19-25CV – Consider the following Resolutions for property located at 9255 Courthouse Boulevard: (b) A Variance to allow two accessory structures on the property whereas one is the maximum allowed. Resolution 19-115.

Ayes: 4

Nays: 0 Motion carried.

City Attorney Kuntz stated that within the Council packets there is a Resolution of denial which echoed the reasons given by the Planning Commission and Staff. The motion is the adoption of that and there is still a Resolution.

Councilmembers Bartholomew and Perry agreed.

Mr. Engen asked how long he had to get rid of the shed.

A response was heard off camera and microphone stating that removal would have to be in 60 days.

Councilmember Dietrich asked if the Council could look at the estate lots that are 2.5 acres or more and revisit those Codes and the impervious surface.

Community Development Director Heather Rand stated they were looking at getting that in front of the Planning Commission first to get input and dialog. After, it would be brought back to the City Council.

Councilmember Dietrich asked if there was a date for the Planning Commission meeting.

Community Development Director Rand responded they would be looking at occupation revisions for estate lots. This item regarding impervious surfaces could be discussed in August. She stated she understands the request is asking to look into and review estate lot regulations.

Associate City Planner Botten clarified that it is not a public hearing, the second meeting in July is discussion for the Planning Commission to discuss home occupation Ordinances in the E1 and Agricultural lots. There would probably be a lot size minimum with that discussion. She stated discussions about impervious surfaces and accessory buildings on lots greater than 2.5 acres, which would also be E1 and Agricultural lots, would be at the first meeting in August. It would not be a public hearing, just discussion, and then brought before the City Council for discussion.

8. MAYOR AND COUNCIL COMMENTS

Mayor Tourville stated the next meeting is July 1st, Worksession at 6:00 p.m.

City Administrator Lynch stated City Hall will be closed on Thursday, July 4th.

Councilmember Perry asked when people would have to register with the City for Night to Unite.

City Administrator Lynch responded he would get that information out to her as soon as he can.

Mayor Tourville stated Night to Unite is currently open and application must be made by July 31st to be a part of the schedule.

9. EXECUTIVE SESSION

Pursuant to Minn. Stat. § 13D.05, Subd. 3(b) and pursuant to the Attorney-Client privilege, a closed door Executive Session for discussion with the Attorneys representing the City relating to the pending litigation matter of City of Inver Grove Heights vs. William P. Nichols and Cynthia Nichols, Dakota County District Court File No. 19HA-CV-18-1122; and related imminent claims of inverse condemnation pertaining to Project No.'s 2017-24 and 2017-03.

City Attorney Kuntz stated Minn. Stat. § 13D.05, Subd. 3(b), recognizes the Attorney-Client privilege as does the Common Law of the State. The Attorney-Client privilege allows the Attorney representing the client to speak to the client in privacy. He stated in the instance of the City Council, that gathering between the Council and the Attorney's representing the City can take place in an Executive or closed-door session. That is what is being suggested this evening with regard to the pending litigation matter of the City of Inver Grove Heights versus William and Cynthia Nichols which is in eminent domain condemnation action brought into Dakota County District Court under File #19HA-CV-18-1122. He stated also incident to that discussion are related claims dealing with the same improvement project claims that are pending and imminent and have been advocated by the landowners dealing with inverse condemnation pertaining to those same project numbers identified, Project Nos. 2017-24 and 2017-03. He stated we are asking the City Council to have a closed-door session to meet with regards to pending litigation and imminent litigation dealing with the pending eminent domain matters as well as the inverse condemnation claims. He stated present at the closed-door session would be Councilmembers Tourville, Bartholomew, Perry, and Dietrich, City Administrator, Director of Public Works, City Engineer, City Attorney Kuntz, Attorney Pete Michael from the City Attorney's Office. He asked that the Council make a Motion to move to Executive closed-door session for the reasons indicated under the authority of the Statutes and Common Law indicated.

Motion by Perry second by Bartholomew to adjourn into Executive Session at 8:23 p.m.

Ayes: 4

Nays: 0 Motion carried.

Minutes prepared by Recording Clerk Sheri Yourczek.