

**INVER GROVE HEIGHTS CITY COUNCIL MEETING  
MONDAY, FEBRUARY 8, 2021 - 7:00 P.M. - 8150 BARBARA AVENUE**

**\*\*In Person Meeting and via Zoom Video Conferencing (Hybrid Meeting)\*\***

**1. CALL TO ORDER:**

The City Council of Inver Grove Heights met in regular session on Monday, February 8, 2021, via In Person and Zoom Video Conferencing (Hybrid Meeting). Mayor Bartholomew called the meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

**2. ROLL CALL:**

Present In Person: Mayor Bartholomew, Council Members: Piekarski Krech, Dietrich, Murphy, and Gliva; City Clerk Kiernan, Community Development Director Rand, City Attorney McCauley Nason, and Fire Chief Thill.

Present via Zoom Video Conferencing/Phone: Information Technology Manager Gade, City Planner Hunting, Associate Planner Botten, and Public Works Director Thureen.

**3. PRESENTATIONS:**

There were no Presentations.

**4. CONSENT AGENDA:**

- A.**
  - i.** Minutes from the January 4, 2021 City Council Work Session.
  - ii.** Minutes from the January 11, 2021 City Council Meeting.
- B.** Disbursements for Period Ending February 2, 2021. **Resolution 2021-25**
- C.** Consider Approval of Rental Licenses.
- D.** Consider Approval of Personnel Actions.
- E.** Consider Approval of a Federal Grant Policy.
- F.** Consider Approval of a **Resolution 2021-26** relating to a Variance to allow a monument sign setback 50 feet from centerline of Courthouse Boulevard for property located at 9260 Courthouse Boulevard. Dakota County Smart Center Case No. 21-56V.
- G.** Consider Approval of Settlement Stipulation to Conclude the Dalsin Eminent Domain Acquisition for City Project No. 1702-29 (Highway 3 and 65th Street W Improvements).
- H.** Consider Approval of **Resolution 2021-29** Authorizing Easement Acquisition for City Project 2021-01 - NWA Trunk Utility Improvements for Future Projects of Argenta Trail (CPN 2016-04, CPN 2016-05) and 70th Street (CPN 2015-08).
- I.** Accept the Body Worn Camera (BWC) Audit Conducted by Minnesota Security Consortium as Required by MN Statute 13.825 Subd 9(c).
- J.** **Resolution 2021-30** Approving Joint Powers Agreement (JPA) with Dakota County for the Feasibility Study and Preliminary Engineering for City Project No. 2016-17 - 117th Street Reconstruction and Modernization.
- K.** Consider **Resolution 2021-31** Accepting Engineering Services Proposal from Stantec for Watermain System Analysis for City Project Nos. 2022-09D and 2023-09D - Dawn Way North and South Neighborhood Street Improvements.
- L.** Consider Approval of the Wetland Replacement Plan submitted by Dakota County for CSAH 26 Reconstruction. **Resolution 2021-32**

Mayor Bartholomew stated Staff requested pulling Agenda Item 4C.

**Motion by Dietrich second by Gliva to approve the Consent Agenda with the exception of Agenda Item 4C.**

**Ayes: 5**  
**Nays: 0**      **Motion carried.**

**Agenda Item 4C. Consider Approval of Rental Licenses.**

Community Development Director Heather Rand stated this item is for the approval of three licenses for rental establishments. Staff would like more time to review two. Staff recommends approving the Rental License for:

- 7452 Bolton Way: Boris Makhlin

Staff requests to continue/table for consideration at the February 22, 2021 meeting the Rental Licenses for:

- 6930 Crosby Avenue: Jacob Mildon
- 7008 River Road: Cassie Verch

City Attorney McCauley Nason stated Council could make one Motion to approve issuance of the Rental License to the 7452 Bolton Way property and continue License Applications for 6930 Crosby Avenue and 7008 River Road properties to the next regularly scheduled Council meeting on February 22<sup>nd</sup>.

**Motion by Dietrich second by Gliva to approve issuance of the Rental License to the 7452 Bolton Way property and to table License Applications for 6930 Crosby Avenue and 7008 River Road properties.**

**Ayes: 5**  
**Nays: 0**      **Motion carried.**

**5. PUBLIC HEARING:**

**A. Consider Approval of New Additional Business Owner, Craig Alois Kristof, Old World Pizza.**

City Clerk Rebecca Kiernan stated this item is for consideration and approval of a new additional Business Owner, Craig Alois Kristof, for Old World Pizza located at 5660 Bishop Avenue. He has gone through change of ownership and will change their On-Sale Wine Liquor and Strong Beer License to an On-Sale and Sunday Liquor License. This also changes the degree of liquor. Applicant has paid appropriate fees and provided necessary documentation for the ownership change. The Police Department conducted a background investigation and found no basis for denial for the ownership change.

Councilmember Dietrich asked for a description of how the Liquor License changes. City Clerk Kiernan responded they currently have a strong wine and strong beer license; they are looking to change it to hard liquor sales.

Applicant, Mr. Kristof, stated the only reason they are applying is because there have been requests from customers for other drinks.

**Motion by Piekarski Krech second by Gliva to close the Public Hearing at 7:08PM**

**Ayes: 5**  
**Nays: 0**      **Motion carried.**

**Motion by Piekarski Krech second by Murphy to approve New Additional Business Owner, Craig Alois Kristof, Old World Pizza.**

**Ayes: 5**

**Nays: 0      Motion carried.**

**6. REGULAR AGENDA:**

***Community Development:***

**A. UNITED PROPERTIES - Consider the following resolutions for property located on Courthouse Boulevard, west of Barnes Avenue:**

- 1) A Resolution relating to a Preliminary and Final Plat, Improvement Agreement, and related agreements for Inverpointe Business Park Second Addition. Resolution 2021-33**
- 2) A Resolution relating to a Conditional Use Permit to allow manufacturing and assembly on Lot 1, Block 1, Inverpointe Business Park Second Addition. Resolution 2021-34**

City Planner Allan Hunting stated United Properties has made application for the second building. A diagram of the original approved site plan was shown, depicting five buildings. Building #1 has been constructed on the far east side. They will now be constructing the second building. He stated this building was part of the original first phase approval in 2008. At that time, one lot was created for the two middle buildings. He stated United is requesting subdivision platting to divide it in half, so each building will be on their own lot.

He stated the site plan is consistent with the original from 2008. Architecture would be the same as the first building. The request includes a Conditional Use Permit to allow manufacturing and have the ability to have tenants who want to do light manufacturing similar to what has occurred in the first building. He stated the second building is just a spec building, approximately 107,000 square feet. Staff recommends approval of the Application as presented.

Mayor Bartholomew asked for an explanation of light manufacturing. City Planner Hunting responded it could be small assembly, where they assemble small parts of what they sell, and then transfer out.

Connor McCarthy, Development Manager, United Properties, stated the company is excited to continue the growth and development of their business park at Inverpointe.

Mayor Bartholomew asked Mr. McCarthy if they were in agreement and understood all conditions in the Resolution for Preliminary and Final Plat. He asked if they were in agreement with the Resolution requesting the Conditional Use Permit for manufacturing. Mr. McCarthy responded yes to all.

Councilmember Gliva requested information about the location for those that may not know. City Planner Hunting displayed the site plan stating it is off of Courthouse Boulevard Court, Highway 55 is on the north, and Barnes Avenue is to the east. The architecture is similar to the existing building. The building will face with front doors facing the highway, loading dock doors would be internal.

Councilmember Murphy asked for light manufacturing examples from Mr. McCarthy. Mr. McCarthy responded one example of what they are trying to accomplish here, for example, is with Simpsons Strong-Tie. The company manufactures nuts, bolts, and construction plating products. Another example of products where manufacturing has been a component is medical manufacturing with plastic mold injections. They have also worked with clients who have done audio visual manufacturing and production in their space. He stated a portion of their space is used for production, with the other portion used to warehouse the products and then eventually ship them out.

**Motion by Piekarski Krech second by Dietrich to approve UNITED PROPERTIES - The following Resolutions for property located on Courthouse Boulevard, west of Barnes Avenue:**

- 1) A Resolution relating to a Preliminary and Final Plat, Improvement Agreement, and related agreements for Inverpointe Business Park Second Addition. Resolution 2021-33**
- 2) A Resolution relating to a Conditional Use Permit to allow manufacturing and assembly on Lot 1, Block, 1, Inverpointe Business Park Second Addition. Resolution 2021-34**

**Ayes: 5**

**Nays: 0      Motion carried.**

**B. BUILDERS LOT GROUP/EAGLES LANDING- Consider the following for property located at 2655 70th Street; (tabled from December 14, 2020)**

- 1) A Resolution relating to a Preliminary Plat for an 11-lot single family development to be known as Eagles Landing,**
  - 1) A Resolution relating to a Preliminary Plat for an 11-lot single family development to be known as Eagles Landing, Resolution 2021-35**
  - 2) A Resolution relating to Variances from the minimum lot size and width standards. Resolution 2021-25**

Associate Planner Heather Botten stated the request is located north of 70<sup>th</sup> Street and west of North Valley Park. The item was tabled by the City Council at the December 14, 2020 meeting for the Applicant to have additional communication with the neighborhood along Booth Avenue. The property is 4.95 acres in size and Zoned R-1C Single Family Residential. It is guided for LDR (Low Density Residential) the designation allows for a density of up to four units an acre. She stated the proposed development is at 2.2 units per acre complying with the land use designation.

She stated the Applicant is proposing a 50-foot-wide right of way for the development off of 70<sup>th</sup> Street. The access would not be constructed on park property, it would access the 70<sup>th</sup> Street right of way, a public street connection to 70<sup>th</sup> Street is required. The park entrance would connect off the new road. She stated there is an infiltration basin located in the northeast corner of the property of the development. The infiltration basin is designed for a 100-year storm event and would not produce a higher flow rate than what current exists on the property today.

She stated the proposed development complies with R-1C standards relating to setbacks and impervious surface requirements. The Developer requests variances from the minimum lot area for Lots 2, 3, and 4 of Block 2, and minimum lot width variances for Lots 5 and 6, Block 1. She stated the number of lot size variances has been reduced from the original submittal of six requests down to three. The two lots that require variances for lot width, have been increased from 65 feet wide, to 70- and 77-foot lot width.

Associate Planner Botten stated the Developer has held two additional Zoom meetings with the neighborhood. At their first neighborhood meeting on January 14<sup>th</sup>, a plan was presented with 13 lots that did not require any variances but would have a greater impact to this proposed property. A majority of the neighborhood preferred the original request in front of Council this evening. They are back to what was submitted to the Council on December 14<sup>th</sup> but added an outlot over the infiltration basis. There are still 11 lots for homes, including the existing house, and then 10 new home sites. She stated to clarify the Applicant's narrative, the numbers referenced for lot sizes do not include the existing house. Staff continues to support the request as they did in December.

Councilmember Piekarski Krech asked about the entrance and how it would work for safety and traffic flow. She asked if there was enough room for people to come out. Associate Planner Botten responded Staff believes what is being proposed is an improvement over what currently exists. It does not currently meet City road standards. It will be wider than it is today. She stated there would be a stop sign coming out of the park entrance onto Bovey Trail, with another stop before entering onto 70<sup>th</sup> Street.

Councilmember Piekarski Krech asked if would be a full intersection with left and right turns and how many cars there could be before backing up into the park. Associate Planner Botten responded the access to 70<sup>th</sup> would be similar to what it is today for the full intersection. She responded about stacking up stating from 70<sup>th</sup> to Bovey Trail they would stay stopped at the park entrance until clear. Councilmember Piekarski Krech stated the way it is now with snow and ice, looks a bit close for stacking and people coming in and out. Associate Planner Botten responded she did not know the number, but the Applicant would have to meet all safety guidelines required for access points.

Melvin Moore, stated at the last Council meeting it was recommended they go back and consult with neighbors to reach an agreement with their concerns. Two subsequent meeting were held with neighbors. A plat was presented that did not need variances, spoke of the impact of the plat on the site, and how this plat could minimize some of the impacts. He stated the neighbor's comments were incorporated into the plat before Council. Some comments were:

- Making adjustments to lot sizes. *They did.*
- The infiltration basin. *Believes their concerns were covered.*
- Concerns about stop signs. *Discussed with the neighbors where those stop signs would go and would be in compliance with City Code.*

He stated before Council are adjustments made due to neighbor concerns. They reduced the number of lots and variances from the previous plat.

Mayor Bartholomew asked about the flow of traffic in and out. He asked if there would be a traffic study before final. Mr. Moore responded a traffic study has been provided to Staff.

Mayor Bartholomew asked about information in the packet that is titled "Application Submittal" that deals with lots 8, 9, and 10, and would consider home designs of split entry/trilevel, or rambler to ease some of the site lines. He asked if that was still under consideration, resolved, or something that comes with the final plat. Mr. Moore responded builders that have been identified for the site were requested to consider those constraints. There is an agreement from those builders that they would put up a model/spec home that would not hinder the future homeowner's choice.

Kirk Lindberg, 7090 Black Path, stated he has been very involved in the Inver Grove Heights pickleball Community for four years. He was one of three people that was in attendance on February 13, 2019 when repurposing the old tennis courts into pickleball courts. He thanked the City Council, Staff, and employees who supported the development of a thriving pickleball Community in the City. This includes putting lines on existing tennis courts, providing an indoor facility that is the envy of many in the Twin Cities, building and maintaining new courts at North Valley and Salem Hills Parks, and helping to promote the sport. He stated pickleball brings many people together from many backgrounds, ages, skill levels, and locales. The sport brings together exercise, competition, social opportunities, and fun. It is easy to learn, difficult to master. He stated he has the largest circle of friends in pickleball, which is the most important gift of all.

He stated the North Valley courts are always in use during the summer. It is not uncommon to see the six courts full of 24 players and people waiting to play. It is one of the most used amenities the City has

invested in. He stated pickleball is the fastest growing sport in the Country and is in need of expansion. The sport also has critics, particularly those that live near courts. There has been vocal opposition to the sounds of pickleballs and paddles. He stated it is often the loud voices of a few whose homes are in proximity of the courts that have silenced the joy.

He commented he lives a few blocks from North Valley and uses the courts every day, weather permitting. They continued to play until the nets were taken down in November. He stated it would be a shame and would hate to see the investment the City has made at North Valley and the Community of hundreds that have been built around it, be curtailed or taken away for the sake of a handful of new homes. He stated it is certain that whoever lives in those new homes will appear in front of the Council to complain of the noise. It is no different than Fleming Airport that was built in 1939 in the middle of farm fields, when people-built homes with backyards facing the fence only to later complain frequently about airplane noise.

Mr. Lindberg stated even if continued use of existing courts is allowed, it is doubtful the plans to build additional courts, which will be needed, on space already designated for this purpose will come to fruition. He commented there is a concern about access, the same road to visit the park will be used for the new homes. He stated this was specifically built to access park amenities where people are biking or walking. When the courts are busy, the parking lot is full, and cars are parked all along the road. He stated it is not only those homes using the park access road, it is the mailman, garbage trucks, Amazon, UPS, construction vehicles. Adding more traffic, whose destination is not a park, could be a big problem.

He stated on a daily basis he crosses 70<sup>th</sup> Street, which is a four lane 45 mph or more road. There is not a crosswalk marked. More traffic would be a safety concern. He asked the Council to take into consideration what the City has already built and invested in, the future plans for pickleball amenities in the City, the popularity and importance to the Community at large, and the safety of those using park facilities. He asked what the value was of all these things they face losing, versus the benefit of adding a few new homes at this specific location. He urged the Council to do whatever they can by preventing these homes from being built or instituting new Ordinances or Agreements that prevent homeowners from taking action against the City if the new homes are allowed to be built right next door to a beloved City park. He asked this to not be another City who let a few vocal homeowners ruin something wonderful, but to take a proactive stand for the good of the Community while they have the opportunity.

Matt Krumrie, 6914 Booth Avenue, stated he was in attendance on behalf of the neighbors along Booth Avenue. Since the last time this was discussed in December, the neighbor's presented why they oppose the Eagles Landing development. Those concerns included the use of the park road for an entrance, increased traffic on 70<sup>th</sup> Street, total number of homes proposed in the development, lot size of the homes, number of variances given to approve the development, questions on water drainage and a retention pond, concerns about future complaints about pickleball noise, parking, and general park use activity. He stated at the December meeting Council recommended further discussion with the Developer to come to an agreement and to discuss their results at the next meeting, which is tonight. He commented this has been an educational experience and that he and the neighborhood have learned a lot.

He stated progress has been made since the last meeting. They feel they have been put in a unique situation of having to agree to a ten-home development where they can work with the Developer, or face the other option of having 13 to 22 homes going in. It seems they are being forced to make a decision, agree to this, and have choices, or fight this and face the potential for more homes, losing

trees, and having a retaining wall. They feel like they should not have to feel backed into this situation. Several neighborhood meetings have been had about this development, words such as "threatened", "bullied", and "forced" are words that come up. He stated they feel they do not have a choice, if not choosing the ten-home option, this would be pushed through with 15 or more homes and nothing the neighborhood could do about it. He commented those are not exact words, but are words used by City Planning and residents in the neighborhood.

He stated the neighborhood was also encouraged by the City Planner to send an email approving this. He thought it odd to say they approve when they are trying to work with the Developer and City Council to determine a resolution. He stated there are things being done that have raised red flags with the neighborhood and should be addressed at a different time. Throughout the process what was a contentious relationship with the Developer has improved to a back and forth, and a give and take. They have worked with the Developer and his team to come to an agreement on certain things. For example: The Developer is offering each homeowner eight trees to be planted in their backyards to help replace trees being taken down. Also, to have the models built on the west side. It was agreed to move a couple of the homes to the east.

Mr. Krumrie stated the Developer has put together a list of things they are willing to do, which has been a big step since the last meeting. As a resident of the City, he hates to see more green space be developed. Not just here, but throughout the City. He liked the fact this City is not Woodbury or Eagan and the green and open space here and hopes that it can be preserved in the future. He stated he was proud of how his neighborhood has worked together on how to best move forward with this project. If approved, he hopes they can continue to work with the Developer and the City in an agreeable fashion that works for all.

Mayor Bartholomew asked for more information about the letter he was requested to send. Mr. Krumrie responded the Assistant City Planner requested the neighborhood send a note or letter saying they approve and are in agreement to this. Mayor Bartholomew asked if he was not in agreement. Mr. Krumrie responded they are in an interesting position; they want to see it stay green space. They are willing to work with the Developer to come to an agreement. None of them want to send a letter saying they agree to this, they felt discussion was better than having to document it.

Mayor Bartholomew stated he was concerned about the issues regarding noise and wanted further discussion with the Developer and Staff about measures taken and to let everyone know there is noise there. He stated there are also comments and issues about parking, use of the park entrance and exit out of the park when the park is at full capacity, and after the load of the new homes.

Associate Planner Botten responded about park usage and existing parking stating when former Parks and Recreation Director Eric Carlson was here, he told her there was sufficient parking at North Valley Park for the pickleball courts. Some of the parking is further north, people may have to walk a bit further. She commented people seem to park along the road instead of using the spaces further away. She stated if using the parking spaces along the road instead of the park, access going right out to 70<sup>th</sup> Street would have a break in the access to get onto the public street before getting onto 70<sup>th</sup>/County Road. She stated spacing and stacking will not be an issue as they would be moved further from 70<sup>th</sup> and would stop at the stop sign to the new public street before getting onto 70<sup>th</sup>. It is hopeful people will use the parking spaces further north. If parking is an issue in the park, the item should be brought up with the Parks Department or the City to look at adding additional parking in the area. No parking is proposed on the private property they are currently looking at. She stated former Parks Director Carlson has said the City was not interested in acquiring any of the Applicant property for additional park property or parking.

Mayor Bartholomew stated this item is preliminary, if there are any further concerns, they can still be addressed and there is time to make sure parking is in order. Associate Planner Botten responded that was correct, this is preliminary. Her understanding was the City was not looking at acquiring any of the Applicants property for additional park property.

Mayor Bartholomew stated to keep in mind parking and do whatever they can to increase capacity or make sure they are doing it as efficiently as possible. Associate Planner Botten stated the Applicant's revised tree preservation plan would show landscaping along the easterly border to help with noise mitigation.

Councilmember Murphy asked if there was both a right and left turn lane going onto 70<sup>th</sup> Street when exiting the park onto the public street. Associate Planner Botten responded it would be how it is today, there is right, left, or straight. She was unsure if the County would be wanting a right turn lane on 70<sup>th</sup> into the park. Councilmember Murphy stated he was questioning the new road and if there was a right and left turn lane. Associate Planner Botten responded when leaving the park onto the new road, they could turn right into the development or left to get onto 70<sup>th</sup>.

Tim Netzell, Attorney for the Developer, stated they have taken a look at the potential noise issues and are aware of them. They would make sure people coming into the new area are fully aware and not surprised by any potential noise issues. The first notice would be with the initial Purchase Agreement, there would be an Addendum that specifically talks of the park's location, pickleball courts, and the potential for noise. They will also be recording some sort of Declaration that would run with the property in perpetuity that notes the park is there and the potential noise issue. He stated they would make every effort to make sure that nobody comes to the project without sufficient knowledge of the potential for noise issues.

Mayor Bartholomew stated when this comes back as a final plat, they want to be certain that kind of agreement is going to be addressed and everyone is aware of the noise factor. He urged Mr. Netzell that when it comes to the final plat to have good strong language addressing the noise issue. Mr. Netzell responded the preliminary Declaration already contains language disclosing this, they will make sure it is in the final version and submitted to the Council for approval.

Councilmember Dietrich asked if the noise study has been submitted. Associate Planner Botten responded Staff has not received the noise study. Councilmember Dietrich asked when the noise study would be done. Mr. Moore responded they reached out to Legal Counsel about noise studies for the project. They were told by Counsel they were not obligated to bring forth a noise study because they were not the source of the noise. They were told the City/Park should be cautious as there is precedence at the Legal level that suggests if there is noise, the noise needs to be mitigated at the source. He stated they cancelled the noise study as it was not theirs to do.

Councilmember Dietrich stated she would like to hear from the Attorney and the implications that could arise from that. Mr. Netzell responded the reference made by Mr. Moore was the standard nuisance arguments that have arisen through various Courts throughout the Country and the nuisance can only be mitigated by the property the nuisance originates. He stated there is also substantial Case Law that indicates a person coming to a nuisance is not allowed to raise the issue as a defense to mitigate the noise issue later. There is long standing precedence saying someone cannot come to the pickleball courts and in the future complain about them. He stated they would do everything in their power to put everyone on notice of these issues before they have an interest in the real estate and before purchasing property.



Councilmember Dietrich asked if there was Legislation in place or a Statute. Mr. Netzell responded it is Nuisance Law that states a pre-existing condition is there and someone coming to the pre-existing condition does not have standing to object to the condition.

Councilmember Dietrich stated she heard from one resident who stated Staff was not courteous working with them. To her that is a big concern. She has heard it in other Departments as well. She would like to discuss this further on a different evening.

Mayor Bartholomew asked about nuisance noise and the understanding and City position on it. City Attorney McCauley Nason responded the Resolution contains reference to a noise study that is now not going to be done. If Council looks to approve the Resolution it should be with the removal of the requirement for the noise study.

City Attorney McCauley Nason responded about the noise itself stating the Developer's Attorney has indicated advance notice will be provided referencing there is a park and pickleball courts next door. It is a Buyer Beware situation. She stated a buyer may say they did not realize the scope of pickleball or the scope of noise but would be aware of the location next to the pickleball courts. She stated the Developer is trying to mitigate the sound with tree plantings. She suggested if buying a home there, maybe consider different building materials, different types of roof, ceilings, walls, windows, doors, like one would do in an airport protection zone area where there is a lot of airplane noise. It would be up to the purchaser as to whether or not they want to make that investment in their home to mitigate a potential for noise.

Mayor Bartholomew asked what the existing hours of the park were and when the hours are to play pickleball. Community Development Director Rand responded it would likely close down at 10:00 p.m. The play is during daylight hours.

Mr. Krumrie stated there is notice of the pickleball courts for the buyer, he asked if there was notice for the future. In four or five years when there is the potential to add another pickleball court because it was not there at first. Mayor Bartholomew responded anytime there would be an expansion of a facility/park, there would be a Public Hearing and those items would be discussed at that time. City Attorney McCauley Nason responded she would have to look into further if there was a solid legal claim related to additional noise generated by a pickleball court. It is not uncommon, pickleball is a growing sport, courts have been added to other Cities in existing parks, such as Eagan and Apple Valley. More courts mean more noise.

Community Development Director Heather Rand stated it was great residents were here in support of pickleball. She was not aware of anything the Council could do; they cannot make commitments of the future. She suggested for a future meeting having the Interim Parks and Recreation Director address the issue or put it in a Friday update to include what their plans are for the immediate future. Mayor Bartholomew suggested keeping this at the forefront, the noise is an issue, always has been, but there may be a chance for expansion in the park if there is area. This should be well known to everyone.

Councilmember Piekarski Krech stated they are planning to build spec houses now, if they are not built with noise insulation in them, that could become a real issue. Mr. Moore responded they have had conversation with the builders who are potentially building here. They have gone further than saying buyer beware and have printed off material relating to pickleball and making it part of the Addendum the home buyers receive. He stated the builders are putting in windows that mitigate. The spec homes will be built further away. Those homes were designed as a condition to the existing homeowners

since they back up to the homes on Booth Court. There would be other homes between those and the pickleball court. He stated the spec homes should be the greatest insulated homes on site.

Mayor Bartholomew asked if a requirement could be put in within the preliminary and final plat, that homes are soundproofed with a higher-grade material. Community Development Director Rand responded Staff would look into that and see if it is a legal requirement.

Mayor Bartholomew stated the plan is to be soundproofed and use the best quality standard in material. He asked that be maintained through the project up to the final plat. The City will check to see if there is any verbiage that can be put in place to make sure it happens. Mr. Moore agreed.

Councilmember Murphy referenced Condition #3 and asked how the City would know these disclosures were given or signed. In his experience it is not always followed through. Mr. Moore responded they are being added as a part of the Purchase Agreement, it is also being recorded with the Deed. If the property is sold, the homeowner would have the same disclosure. Mr. Netzell responded that was the intent. The language disclosing the pickleball noise will be included with the Declaration filed with the County. It will be a document in the chain of title. He stated they would continue to follow up and make sure the Purchase Agreement with the Builders they sell to includes the disclosure and will be a part of the standard provision included with the buyers. The first level of homeowners would have the Disclosure in their Purchase Agreement and Declaration. Subsequent homeowners would have it in the Declaration.

Councilmember Dietrich asked if the document could be provided to the Council for peace of mind. Mr. Netzell responded they could provide the proposed Declaration and notice with Addendum they intend to have attached to the Purchase Agreement.

Steve Soltau, Builder's Lot Group, stated they are looking at this like there is concern the development will somehow be threatening to the pickleball courts, in reality it is to the contrary. They believe the people who move to the development will look to the park as an amenity, something they are moving to. Park proximity is a positive thing for this development. He stated Builders and prospective buyers appreciate and are moving to the amenity. He commented noise is more prevalent in warmer climates where homes are less insulated and have single pane windows. There is noise with a softball game, frisbee golf, and picnic's, that activity is viewed as a positive thing and believes there be very little problem with bringing this development within proximity to the park.

Mayor Bartholomew stated pickleball is unique and the noise generated from it is not frisbee or softball, but loud. The Council is listening to residents and users of the park, so the park does not get overlooked. He agreed it was a beautiful amenity, they are trying to make sure with full disclosure that all understand the noise level they are moving into.

Joan Robertson, address unspecified, called in stating she has experienced something similar to this in a more personal way. She was involved in a potential purchase of a home in Eagan. She commented she understands the Developer and Builders are offering a Declaration and notice of ways to make the pickleball court well known. From her perspective this was something to help the Developer and Builders. She understands there could be building materials to help mitigate noise. From personal experience she signed a Purchase Agreement for a home in Eagan, when going to the home in April they were shocked by the noise coming from a gun range that had just opened on the other side of the wooded area behind their home.

She stated people could have told them there was a gun range there. They were not prepared for the noise and were lucky to be able to get out of the Purchase Agreement. The concern she has is that

people can be told there is a pickleball court there, put it in legal documentation, but unless they have lived near one before, it may be a very different and emotional experience than just being told "we told you so". She stated if the Developers and Builders can protect themselves by Declaration and Addendums, the City has an obligation if it is true the source of the noise or nuisance, means the responsibly party. She asks the Council to proceed with a noise study to find out where the City stands and the commitment to people moving in. She commented that a noise study is something the City should do.

Mr. Lindberg stated he heard mention of significant contention with pickleball courts in Apple Valley, he believes the pickleball courts lost out. He stated his Dad put the first PUD Development in Inver Grove Heights, there were conditions and a Conveyance included. He knows there were people who bought homes that were built there that never received a copy of those conditions or the Conveyance. He spoke of the pickleball courts stating there were two sets of tennis courts that were removed to build the pickleball courts. The existing set of pickleball courts were built where the first set of tennis courts were. The other set of tennis courts were removed, there is a big area left purposefully so additional pickleball courts could be built there. He stated the big concern is that the noise was at one level when they bought their homes but increasing it could be a serious issue.

He stated another thing they have requested for the courts is lighting so they could play into the evening hours. He gave an example of a place in Florida where there is a facility along the water, about four or five homeowners shut it down. This is happening all over the Country. He stated this is an opportunity to try to prevent something like that from happening here.

Clark Nelson, 7121 Bovey Avenue, lives two blocks away from the pickleball courts. He stated he can hear it from his home two blocks away. It does not bother him, but if sitting outside, it will be annoying. He stated besides the noise, he did not hear a response about the foot traffic in the area. If kids are living in the new homes and want to cross that road, it would be dangerous, with 45 miles per hour traffic. He stated cars come fast. He asked if there was a plan or mitigation for kids crossing the road. Mayor Bartholomew responded it was a County Road and asked Staff if the County has done anything. Associate Planner Botten responded the County reviewed the Applicant's preliminary plat. This development would not cross over 70<sup>th</sup> Street to get to the park. She has not heard of any pedestrian bridges. Mayor Bartholomew asked if the under-road access was still open. Associate Planner Botten responded yes. Public Works Director Scott Thureen responded he did not have the traffic study to the development available. He was not aware the County had any concerns about pedestrian/vehicle interactions at this segment.

Mayor Bartholomew suggested keeping the County in the loop regarding pedestrian traffic and to accentuate the pathway underneath 70<sup>th</sup> Street. He stated these are all good points to keep in mind and ensure they are resolved before final plat.

City Clerk Rebecca Kiernan stated four letters have been received and forwarded to the Council with regards to this project:

Mary and Allan Egging, 6824 Booth Avenue  
Brett and Joyce Phares, 6938 Booth Avenue  
Kirk Lindberg, 7090 Blake Path  
Wayne Ogorek, 3790 Cuneen Trail

**Motion by Gliva second by Piekarski Krech to accept the emails as described by the City Clerk into the Record.**

**Ayes: 5**

**Nays: 0      Motion carried.**

Mayor Bartholomew requested channels stay open with Staff, the Developer, property owners, adjacent property owners, and the pickleball group. He stated he was ready for the preliminary plat and would support it. He understands the variances and would support them. The advantage is getting a smaller development, this is a good start, a good preliminary point, he can support.

Councilmember Murphy stated knowing they would be receiving more information he would be comfortable making a Motion for both Resolutions.

**Motion by Murphy second by Piekarski Krech to approve BUILDERS LOT GROUP/EAGLES LANDING- Consider the following for property located at 2655 70th Street; (tabled from December 14, 2020)**

**1) A Resolution relating to a Preliminary Plat for an 11-lot single family development to be known as Eagles Landing,**

**1) A Resolution relating to a Preliminary Plat for an 11-lot single family development to be known as Eagles Landing, Resolution 2021-35**

**2) A Resolution relating to Variances from the minimum lot size and width standards. Resolution 2021-25**

City Attorney McCauley Nason stated the Motion to approve the Resolution approving preliminary plat does not include the requirement for the noise study to be submitted at the time of final plat approval.

Mayor Bartholomew stated they want to get the noise study. He asked by direction for a noise study, or to look into a noise study and have input by the time of final plat. Community Development Director Rand responded it could be looked into and back to Council for further direction.

Councilmember Piekarski Krech asked what happens if it comes back saying noise is atrocious and other issues. There would be nothing they could do to change it. City Attorney McCauley Nason stated the pickleball supporters are saying noise could be an issue and that it could be used to impact pickleball court usage. She responded about the Apple Valley reference stating in that instance the result was reduced pickleball hours and noise barriers installed by the City on the pickleball courts. For City owned courts, the City would have to install noise barriers on the courts themselves. She asked what the purpose of the noise study would be, what would it tell them, and what would they do with the information. She responded about the Developer stating they cannot mitigate offsite; they can mitigate onsite. Further direction would be needed from Council about the noise study and what it intends to do with it.

Councilmember Murphy stated he is a firm believer in not impacting the pickleball courts. The noise is going to be there. The homeowners would be made aware of the noise. He commented he was missing the issue, the noise is going to be there, he asked what a study would do. Mayor Bartholomew agreed and stated they need to understand the responsibilities of the City and what can be done to mitigate any future complaints.

Mayor Bartholomew asked Councilmember Piekarski Krech if she would be fine without the noise study. Councilmember Piekarski Krech responded she seconded the Motion to get it on the table. The noise study was taken out of the Developer's portion. Mayor Bartholomew stated as a City they need to be cognizant of the noise and mitigate what they can.

Councilmember Piekarski Krech stated the issue is with those that want to enjoy the amenity knowing it could change their ability to use the facility. She was unsure how to memorialize that enough so it cannot be changed. She stated people play pickleball seven days a week, 14 hours a day, there will not be any quiet time. Mayor Bartholomew stated he did not believe they could stop the development in the area because there is a park there.

Councilmember Dietrich asked if there were any assurances, they can give residents that would be in black and white. City Attorney McCauley Nason responded one of the challenges is the property is zoned for residential development. This plan requires variances, if Council determines the variances are not warranted, there are no practical difficulties, and rejects the plat because it requires variances, if a subsequent plat complies with all zoning and subdivision requirements the Council has to approve it. She stated regardless of the fact that the pickleball courts and noise exist, the City cannot use that to stop development that is in conformity with the City Code. They could run the risk of an Inverse Taking Claim because it would deny the Developer the right to use the property.

Mayor Bartholomew stated the noise is there, will always be there, and to be cognizant and do as a City what they can.

Councilmember Gliva thanked the City Attorney for the information and stated as a Councilmember she wanted to be cognizant of the fact they are following zoning and not denying Developers to come in where they have made changes. If following the rules, she has a hard time not seeing that side.

**Ayes: 5**

**Nays: 0      Motion carried.**

Mayor Bartholomew urged the Developer, Staff, and the public to stay involved and work towards a good conclusion and product as it comes forward for a final plat.

The City Council took a short break at 8:40 p.m. Council was back in session at 8:44 p.m.

***Fire:***

**C. Consider Approval for Fire Department to make application for Staffing for Adequate Fire and Emergency Response (SAFER) Grant.**

Fire Chief Judy Thill requested approval for the Fire Department to apply for the SAFER Grant. If successful it allows for the hire of nine full time operational Staff. The SAFER (Staffing for Adequate Fire and Emergency Response) Grant opened today and closes March 12<sup>th</sup>. The Grant falls under the Federal Emergency Management Agency (FEMA). This Grant shows up once a year, last year it came up in May. Last year they were not successful so they would like to apply for the same Grant again this year.

She stated this is a Federal Hiring Grant created for Fire Departments to enhance safety by adding needed full-time Staff to their ranks. It is a three-year Grant program that pays for wages and standard benefits that include health, life insurance, Pension, Fair Labors Standards Act (FLSA) overtime, for three full years for any full time Fire Fighters. The City would be required to pay for anything beyond that over the three-year period, including any overtime beyond the FLSA, and the cost of Uniforms and gear, whether hiring from within or in stock. She stated last year one significant change was made last minute, in the past there has always been a City match. This year there is no City match for this Grant.

She stated last year the Grant would have only been for wages for a first year Fire Fighter carried through all three years. That meant for the Officer position, the City would have had to make up the difference between the Officer and Fire Fighter wages in all three years. The City would have had to pay cost of living and step increases for years two and three in all positions. She stated in speaking with the FEMA Representative last week, this has also changed. They are now allowed to apply for actual costs of Fire Fighters and Officers as well as cost of living and step increases for each of the three years. The bad news is it opens it up to more applications and is more competitive than last year. Out of the thousands of applications in a typical year, only 200-300 are awarded funds.

Fire Chief Thill stated they do not hire a Grant writer; she writes the Grant. This year she received feedback from someone who is a Grant writer. She also received feedback from the scorers last year, which will help make improvements on this year's Grant. She stated once the Grant is done, she has time to submit it to someone who has expertise in the area, and has written and scored the Grants, to look it over before submittal. This costs the City nothing.

She stated the Department today consists of 54 Paid on Call Fire Fighters who help make up the Duty Crew with three operational full time Shift Captains. A three-person Duty Crew serves the City 24 hours a day 365 days a year. With three operational Shift Captains, there is only one on duty at any point and time. They work 24 hour shifts and rotate those shifts. Three people cover 24/7 365 days. When those Captains are on vacation or personal leave, they try to supplement at all times with Paid on Call Acting Company Officers to try to save on overtime. She stated they have six full time Administrative Staff, three are filling in for the Duty Crew on a regular basis. They want to try to get away from that as they are not doing the jobs there hired to do. In addition to that role, it makes for a very long day when filling in at 6:00 and having to stay until 10:00. They have full time Administrative Staff consisting of:

1. Fire Chief
2. Assistant Chief. Oversees the entire operations. Including response trucks, training, Station, equipment.
3. Fire Operations Supervisor. Coordinates Duty Crew scheduling, regular and recruit fire training, maintaining Licenses and Certifications.
4. Fire Inspector. Inspects thousands of existing commercial, retail, and multi family buildings. Much of which has not been inspected in over 10 years.

The four maintain their Fire and Medical Certifications so they can continue to respond for calls as needed. The Fire Marshal and Support Specialist each have different certifications, but do not respond to calls.

Fire Chief Thill currently stated the Duty Crew consists include of one full time Operational Shift Captain and two Paid on Call Fire Fighters. The Grant would allow them to add a second Duty Crew. One Duty Crew would have a full time Captain, a full time Fire Fighter, and a Paid-on Call Fire Fighter. The other would have a full time Lieutenant, a full time Fire Fighter, and a Paid-on Call Fire Fighter. They would still have two positions for Paid on Call but would put one Paid on Call position on each Duty Crew.

Adding a second Duty Crew:

- Would increase safety for Fire Fighters and those who live and work in the City. Currently there is one Duty Crew on shift at any one time. If the call is more serious, the one Duty Crew would do all jobs by themselves until someone from the Station, Mutual Aid, or the Ambulance arrives. She stated last year they had two fatal fires and five fires. All but one of those five were rescue situations where they knew there was a victim inside.

A single Duty Crew has a driver, Officer and Fire Fighter. The driver initially runs the hose and runs the pump to provide water to the two people fighting the fire. They fight the fire, find victims, and pull victims out often before a truck from a close station or mutual aid shows up to help. She stated it is not only a lot of work and stress on those two people, but a lot of responsibility.

She stated the Duty Crew is in attendance this evening, two are recruits in training. Due to the increasing time commitments for being Paid on Call Fire Fighter, safety issues such as higher rates of cardiac, cancer, PTSD, and the normal dangers of being struck by vehicles, injured in a fire, contracting an illness such as COVID from a patient, it is getting harder to recruit and retain Paid on Call Fire Fighters who do all this in their spare time.

A second Duty Crew would:

- Help stabilize the Paid-on Call Staff, lessening risks, time commitments, and intrusion on their personal lives.
- Allow widening of the recruitment area. Presently a seven-minute drive time is required from their home to the closest Fire Station.
- Allows to expand to ten minutes and reach into West St. Paul and South St. Paul which have a completely career Fire Department. She stated they often receive applications from there, but they are beyond the seven minutes required.
- Allow to maintain the high level of service as the City continues to grow, especially in the northwest area.

She stated the Fire Department has done a good job of keeping costs low for residents by maintaining as many Paid-on Call Fire Fighters as they can. By having so many Paid-on Call Fire Fighters they have been able to provide a full-service public safety agency at a fraction of the cost of other Departments. Adding nine would not change that. I would add a large amount of money to the budget in year four but would still primarily be a Paid-on Call Fire Department. This gives them three Shift Captains, and the nine, for twelve totals. She stated maintaining as much Paid-on Call Fire Fighters as possible, they would be able to maintain the cost efficiency they have enjoyed for the past 64 years.

Fire Chief Thill stated receiving this Grant would eliminate the need to ask for future funds for full time Staff out of their regular budget. For costs, they are looking for wages and benefits for six full time Fire Fighters and three full time Lieutenants. These have not been graded by the City Compensation Classification System. The starting point would be the same as a first year Police Officer, equivalent to a first year Fire Fighter. The Lieutenant would be between the present Captain and entry level Fire Fighter.

She stated it is estimated the Grant would be worth an average of \$1 million dollars a year for a total of \$3 million for three years. Last year they requested \$2.8 million from the Grant, that was without the cost of living, step increases, and difference for Lieutenant. If successful in receiving the Grant, there is a 180-day hiring period before the Grant kicks in, beginning the Grant in early 2022. The City would be required to take over the \$1 million plus costs in 2025 if the positions were made permanent. If successful in receiving the Grant, Council would need to take two actions:

1. Make a decision to accept or turn the Grant down if offered to the City. If Council does not accept the Grant, FEMA goes to the next Fire Department in line.
2. If the Grant is accepted, in year three the Fire Department would have to come back before the Council and ask if the Council wishes to make the positions permanent. If not, the positions end there. If approved, they go on as regular employees moving forward.

Fire Chief Thill stated they realize this is a large amount of money and a big step for the City. They are an essential public safety service in the City that has significant risks. She stated they have provided cost efficiency for 64 years because of running with so few full-time people. There is a national recruitment retention crisis, and it is not going to get better. She stated the second Duty Crew was needed this year, which is why they applied for the Grant last year. They did not receive the Grant then and have continued to "make do". They cannot continue like that forever. She stated they respectfully request approval to apply for the Grant at this time.

Mayor Bartholomew asked what stage she was in with the Grant writing. Fire Chief Thill responded about 80-90% done. He asked if this was scheduled for a Work Session to discuss long term and what the comfort level was in waiting until then and applying after. Fire Chief Thill responded it is in March, if discussing at a Work Session it would be to have an Agency come in and do a Staffing Study. If that is the case, they would lose the Grant. Mayor Bartholomew asked about the cost for the nine being about \$1 million dollars a year. At year four the request would be for a General Fund Levy of \$1 million dollars. Fire Chief Thill agreed, stating it would be \$1 million plus.

Councilmember Murphy shared information he thought helpful:

- There are 853 Cities in Minnesota.
- Four are over 100,000 population.
- 790 are less than 20,000 residents.
- 53, Inver Grove Heights included, are somewhere between 20,000 and 100,000 residents.

He stated the need to act our size and lead by example. Businesses and residents look to public safety and schools to help decide if they are coming to the City. He commented there was a recent report by the International City Managers Association that the average City over 10,000 residents have 1.5 Fire Fighters per 1,000. It is up from 1.4 in 1946. It has not changed in a long time. He stated they are currently less than ½ full time per 1,000. He stated in three years if they have to cross a bridge with the budget, he feels it is a small price to pay.

Mayor Bartholomew stated it is a big lift. In year four they would be looking for roughly \$1.25 million dollars ask to the Levy increase. They would have to go to the taxpayers and state the need to increase the General Fund Levy by that amount or they would lose what they have relied on. He suggested possibly breaking it into parts, questioning if going this route, do they start increasing the General Levy for the Fire Department by increments of \$400,000 a year so by year four they have the budget. He suggested this be something that could be discussed. He fears when getting to year four they do not know who would be on Council, it could all go away. He does not want to get into the path where they are moving ahead with nine more full time Fire Fighters, but the ask will be to the General Levy and he fears there will not be the buy-in from residents or the Council.

Mayor Bartholomew stated he was not sure what would happen in four years and was not sure if getting the Grant was the right thing to do. He cautioned everyone that the cost would be very difficult to support with the tax base and the needs for other Departments, such as the need for FTE's, increase for infrastructure needs, equipment for other Departments as we grow, and needs for the other side of Public Safety.

Councilmember Piekarski Krech stated the last time she voted against this because the City did not have the guarantee there would not be any City money involved initially. She agreed it was a big chunk to add to the budget. They could apply for the Grant and look at where they are at and how to absorb it into a budget if that is what chosen. This allows to apply for a Grant, and if coming up with something different in between they could always turn it down. She stated she would vote for applying for it. She suggested serious study be done and look at what to do, how, and convince the Community if going to a full time Fire Department.

Fire Chief Thill stated the Work Session in March would be to determine if Council would want the Fire Chief to find a Consultant to do a study. The wait time in hearing back about the Grant could be six months, last year it was about seven or eight months to hear back. She stated she would have to ask how long a study might take but would find out and get the information to the Council in March.



Mayor Bartholomew stated if they receive the Grant and decide they do not want it, that is the wrong course to take, he stated he hopes they do not get in that position. Turning down a Federal Grant could make it more difficult in the future to receive one.

Councilmember Dietrich stated in 2019 the Council took a little over \$1 million dollars from the General Fund and put it into the VMCC. There are other companies that want to run that valuable resource for them. She has been a proponent to having that go out to bid. She stated there is money available and does not know if the general public knows that. She appreciated all information given and agrees for the need to act like the size City they are and growing. She is in support of the application and is hopeful they receive this for the City.

Councilmember Gliva stated as a finance person, it worries her a bit in three years. She would be a huge component to trying to determine what they can do. Public Safety is high on her list for the City and residents. They are at a time where Police and Fire are very important. She stated you cannot get money you do not ask or apply for. The challenge for the Council would be how to get it paid for going forward. She stated she would be up for the challenge of figuring this out and is in favor of applying.

**Motion by Murphy second by Gliva to approve the Fire Department to make application for Staffing for Adequate Fire and Emergency Response (SAFER) Grant.**

**Ayes: 5**

**Nays: 0      Motion carried.**

***Legal:***

**D. Consider Approval of Conflict Prosecution Contract.**

City Attorney Bridget McCauley Nason stated for consideration there is a Contract for Conflict Prosecution Services between the City and the Law Firm of Dougherty, Molenda, Solfest, Hills & Bauer. There are times when the Office has a conflict of interest to serve as the City's Prosecuting Attorney. A situation has arisen where there is a need for a Conflict Prosecution Attorney to review a case for potential Criminal Charges. This case involves a City Employee as the suspect. Based on this and in previous interactions their office has informally handled Conflict Prosecution Referrals. That is how all Prosecuting Attorney offices for the various Law Firms that provide Prosecution Services to the Cities in Dakota County handle it. She stated her Firm has handled Conflict Prosecution matters on behalf of other Law Firms and have referred out cases.

She stated based on the high-profile nature of the matter and to ensure full compliance with any required Legal requirements related to the Conflict Prosecution matter, she reached out to the Dougherty/Molenda Law Firm to see if they would be willing to serve as the Conflict Prosecutor for the current and future matters. They have indicated they would and have worked with them to prepare this Contract. She stated the City Council is asked to consider approval of the Conflict Prosecution Contract. This would be for future situations until the Contract is terminated by either the Dougherty/Molenda Law Firm or the City. That firm serves as the Conflict Prosecutor for the City. The Conflict Prosecutor would be involved when in the determination of the City's Prosecuting Attorney, a conflict of interest exists that precludes their office or whoever the City Prosecuting Attorney is from handling that matter. She stated if Council does not wish to proceed with approval of the Contract, she would seek direction of the regarding which Law Firm or other entity she should approach with respect to engagement of Conflict Prosecution services.

Mayor Bartholomew stated when looking at the scope of services and the fees, he asked how they line up with the fees her office currently charges. City Attorney McCauley Nason responded the fees are the same. Mayor Bartholomew asked if this Firm has been used in the past. City Attorney McCauley Nason responded yes, the Firm has provided Conflict Prosecution services in the past and the City has had situations arise where Conflict Prosecutors have been required based on who is involved in the case.

Mayor Bartholomew asked if they are asking for a formal document because there was not one formally. City Attorney McCauley Nason responded the past Conflict Prosecution referrals have been handled informally between her office and the other Conflict Prosecuting Authorities within the County. She stated it may not be entirely necessary but based on the high-profile nature and significant matter that needs to be reviewed for Conflict Prosecution referral. It was her determination that the appropriate cause of action would be to have a formal Contract that clearly indicates that this Law Firm has the authority under Statute to serve as the City's Conflict Prosecution Firm and to have the Council make that determination and approval that this would be the firm reviewing the pending matter and any future Conflict Prosecution matters until the Council chooses to end the Contract.

Councilmember Gliva stated to confirm this is Minnesota Statute the Council needs to have these services provide. It is not a matter of approving one Attorney or another firm. City Attorney McCauley Nason responded the Contract itself references Minnesota Statute 44.87 Sub. 3. That Statute says Cities such as Inver Grove Heights, has the responsibility to have all Gross Misdemeanors, Petty Misdemeanors, and Misdemeanor offenses prosecuted by a City Attorney. In some Cities the County Attorney is Statutorily required to provide those prosecution services. The City is required to hire or enter into a Contract with the County Attorney to provide such prosecution services. The City is required by Statute to do so.

Councilmember Piekarski Krech stated when she was Mayor, they had two Law firms. LeVander Gillen did the Corporate and Grannis Hauge did the Prosecution. There were two separate Attorney's on it all of the time. Then LeVander Gillen took over everything. She stated that is why another is needed; they cannot deal with Conflict of Interest.

Councilmember Dietrich stated the City Attorney has used terms such as "a situation has arisen" and a "current matter". She asked what the current matter was. City Attorney McCauley Nason responded at this time the City is required to retain a Law Firm to serve as a Conflict Prosecutor to review a matter for a charging decision following completion of an investigation by the Savage Police Department into an allegation related to an incident from 2018 in which a City Employee has been identified as a suspect involving a potential charge of Misdemeanor Fifth Degree Assault. Information provided to the City, public information, has been provided to the Council. The investigation has been completed and she has been advised that is it time a Prosecuting Attorney review the matter to make a decision about whether or not criminal charges will or will not be brought.

Councilmember Dietrich stated for full transparency for residents she has been asked about this and will reference the Pioneer Press article from December 30, 2020, which is public information. The article was titled "Inver Grove Heights will be parting ways with its City Administrator Joe Lynch". Lynch has been in charge of leading this City since 2006 but in 2019 he was suspended for violating a Respectful Workplace Policy. He is now under investigation by the Savage Police Department in accusation of a Fifth Degree Assault. She stated that is to clear up question's residents have asked her about.

**Motion by Piekarski Krech second by Gliva to approve a Conflict Prosecution Contract.**

**Ayes: 5**

**Nays: 0      Motion carried.**

## **7. PUBLIC COMMENT:**

Kelly Kayser, 1953 59<sup>th</sup> Court East, stated she has received a reply from the City and signed by the Mayor in response to the question she posed during Public Comments at the last regular City Council meeting. She is disappointed by the non-answer. The literal components of her question were answered in a circular fashion. The essence of the questions she has posed since mid-October have not been answered. She is aware the entirety of the investigative report is not public information. She has no interest in reading it. Her focus has always been the circumstances of which the investigation was initiated.

She stated the report explains how the email author learned her message was shared with the Council. She asked if that meant the City ensured the employee was notified in compliance with Minnesota Statute 13055 Sub. 2 & 4. That Statute specifies acceptable methods for notifying the subject of a possible data breach. The information made public suggests someone present at the Executive Session in September 2019 may have spoken directly to the author after the meeting which in turn led her to contact the Mayor.

She stated she was also asked to clarify the rules of confidentiality referred to in the second part of her question. It seems the City already knows there is no Statute specific to closed meetings. The Open Meeting Law, Minnesota Statute 13D, notes the exceptions in which a closed meeting can be conducted. The label closed meeting is a clear indication that confidentiality is a factor. She stated if there are conditions under which Executive Session attendees are able to share what happened in a closed meeting, she would like the City to specify what they are.

She stated the fact that a person's actions do not violate a State Statute does not guarantee the action is ethical or serving the best interest of the City, employees, or residents. The City's response concluded by saying a "desire to be transparent and responsive through the willingness to answer questions to the extent allowed by State Statute". She stated she posed her questions in an effort to shine a light on aspects of the investigation that appeared suspect. As a resident with limited access to details she is unable to pursue unanswered questions directly. She hopes elected Officials will follow through and get to the bottom of those concerns. Virtually every question asked was returned by not answering them at all. She stated a transparent response would have left her feeling that no stone had been left unturned. Something that could have been done without revealing private information. She wanted assurance the investigation was not manipulated in any way. She was put off and given the run around for three months. She commented she was questioned about what she meant by confidentiality.

Ms. Kayser stated the Mayor told Councilmember Dietrich in December that looking into Mr. Lynch's role in the investigation was not going away. It looks like it has gone away. She stated Mr. Lynch has fashioned a favorable exit package for himself despite being the repeated subject of negative newspaper articles about the City over the last couple of years. What is not going away is the roughly \$42,600 in Legal fees charged to the City for the investigation and written reprimand in Ms. Shefchik's personnel file. She stated in order to be just, rules must be applied fairly. She has no confidence that was the case in this situation. She hopes the City would do better in the future.

## **8. EXECUTIVE SESSION:**

**9. MAYOR AND COUNCIL COMMENTS:**

Councilmember Murphy stated in an earlier meeting he had made reference to the Council and Staff investigating the EDA model.

**Motion by Dietrich second by Gliva to adjourn the meeting at 9:27 P.M.**

**Ayes: 5**

**Nays: 0      Motion carried.**

Minutes prepared by Recording Clerk Sheri Yourczek