

**MINUTES  
OF THE REGULAR MEETING OF THE  
EDINA CITY COUNCIL  
HELD AT CITY HALL  
OCTOBER 14, 2013  
7:00 P.M.**

**I. CALL TO ORDER**

Mayor Hovland called the meeting to order at 7:11 p.m.

**II. ROLL CALL**

Answering rollcall were Members Bennett, Brindle, Sprague, Swenson and Mayor Hovland.

**III. MEETING AGENDA APPROVED**

**Member Bennett made a motion, seconded by Member Swenson, approving the meeting agenda.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**IV. CONSENT AGENDA ADOPTED**

**Member Swenson made a motion, seconded by Member Sprague, approving the consent agenda, as follows:**

**IV.A. Approve regular, closed session, and work session meeting minutes of October 1, 2013**

**IV.B. Receive payment of the following claims as shown in detail on the Check Register dated October 3, 2013, and consisting of 24 pages; General Fund \$328,559.33; Police Special Revenue \$792.00; Working Capital Fund \$517.30; Art Center Fund \$2,563.32; Golf Dome Fund \$596,357.84; Aquatic Center Fund \$39.56; Golf Course Fund \$21,735.95; Ice Arena Fund \$7,938.51; Edinborough Park Fund \$27,884.78; Centennial Lakes Park Fund \$3,707.80; Liquor Fund \$161,072.63; Utility Fund \$37,991.09; Storm Sewer Fund \$16.02; PSTF Agency Fund \$2,548.40; Payroll Fund \$3,602.55; TOTAL \$1,195,247.96 and for receipt of payment of claims dated October 10, 2013, and consisting of 31 pages; General Fund \$487,886.57; Pedestrian and Cyclist Safety \$2,501.19; Working Capital Fund \$222,800.11; Art Center Fund \$3,683.95; Golf Dome Fund \$678.99; Aquatic Center Fund \$5,125.48; Golf Course Fund \$14,832.94; Ice Arena Fund \$44,457.74; Edinborough Park Fund \$22,924.94; Centennial Lakes Park Fund \$1,964.25; Liquor Fund \$261,082.83; Utility Fund \$457,683.20; Storm Sewer Fund \$49,123.92; PSTF Agency Fund \$4,431.34; Centennial TIF District \$39,395.51; Grandview TIF district \$3,612.71; TOTAL \$1,622,185.67**

**IV.C. Authorize to participate in 2014-2015 Fuel Consortium**

**IV.D. Request for Purchase – Contract for City Facility Refuse and Recycling Collection for 2014-2015 awarding the bid to the recommended low bidder, Waste Management, at \$31,138.00**

**IV.E. Accept Traffic Safety Reports of August 7, 2013, and September 4, 2013**

**IV.F. Request for Purchase – Wexford Road Storm Sewer Improvement – ENG 13-21NB, awarding the bid to the recommended low bidder, G.L. Contracting at \$21,548.40**

**IV.G. Approve Engineering Services – Flood Protection and Clean Water Improvement Study**

**IV.H. Approve Human Rights and Relations Commission Request for Training**

**IV.I. Adopt Resolution No. 2013-15 Approving the Submittal of Portions of the I-35W/I-494 Interchange Improvement Project for Consideration by the State of Minnesota 2013 Corridors of Commerce Program**

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**V. SPECIAL RECOGNITIONS AND PRESENTATIONS**

**V.A. GOING THE EXTRA MILE DAY – PROCLAIMED**

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Mayor Hovland read in full a proclamation declaring Extra Mile Day to be November 1, 2013, in the City of Edina. **Member Brindle made a motion, seconded by Member Swenson, approving proclamation declaring Extra Mile Day 2013.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland  
Motion carried.

**VI. PUBLIC HEARINGS HELD** – Affidavits of Notice presented and ordered placed on file.

**VI.A. SPECIAL ASSESSMENTS**

**VI.A.i. AQUATIC WEEDS IMPROVEMENT NO. AQ-13 – RESOLUTION NO. 2013-88 ADOPTED**

Water Resources Coordinator Adler presented the assessment roll for City-administered aquatic weed control service upon request by homeowners. She displayed a map of the areas of improvement for Arrowhead Lake, Indianhead Lake, and Minnehaha Creek Mill Pond, and presented the assessment roll for 36 Arrowhead Lake residents to be \$228.63 per house (a reduction of 40% from 2012); for 33 Indianhead Lake residents to be \$175.27 per house (a reduction of 56% from 2012); and, 63 Minnehaha Creek Mill Pond properties to be \$120.79 per house (comparable to prior years). She explained the reduced costs were due to a competitive bid process and the amount of work was comparable and as effective as in prior years.

**VI.A.ii. TREE REMOVAL – IMPROVEMENT NO. TR-13 – RESOLUTION NO. 2013-89 ADOPTED**

Public Works Director Olson presented Code Section 1055 that called for the removal of diseased trees and described the process to identify diseased trees, property owner notification, and options for removal. Mr. Olson presented the assessment roll for two properties: 4018 West 44<sup>th</sup> Street to be assessed \$1,908.80; and, 3316 West 56<sup>th</sup> Street to be assessed \$1,209.20 for diseased tree removal, which included an administrative fee.

**VI.A.iii. WEED MOWING IMPROVEMENT NO. WD-13 – RESOLUTION NO. 2013-90 ADOPTED**

Mr. Olson reviewed the Code requirement for maintenance of vegetation and the process used to notify the property owner to comply. If compliance was not gained, the weeds were cut by Park Maintenance staff and the cost assessed. Mr. Olson presented the assessment roll for 16 properties that would be certified to the County Assessor for collection in addition to an administrative fee. He indicated that in 2012, eight to nine properties used this service.

**VI.A.iv. 50<sup>TH</sup> & FRANCE MAINTENANCE IMPROVEMENT NO. M-13 – RESOLUTION NO. 2013-91 ADOPTED**

Mr. Olson presented the assessment roll for 23 properties within the 50<sup>th</sup> and France maintenance area that would be assessed \$0.6848 per square foot, a slight decrease over 2012. He explained staff worked daily with the business owners and met monthly with the Business Association to address work tasks. It was noted that a meeting had been held relating to potential improvements to parking ramp aesthetics.

**VI.A.v. GRANDVIEW BUSINESS DISTRICT MAINTENANCE IMPROVEMENT NO. G-13 – RESOLUTION NO. 2013-92 ADOPTED**

Mr. Olson presented the assessment roll for 24 properties within the Grandview Business District to be assessed \$0.148 per square foot, comparable to the assessment in 2012.

**VI.A.vi. TRACY AVENUE ROADWAY IMPROVEMENTS – IMPROVEMENT NO. BA-368 – RESOLUTION NO. 2013-93 ADOPTED**

Assistant Engineer Millner presented results of the 2012 Street Reconstruction Survey. He stated staff would address the survey results, look for common themes, and determine how to improve services. The Council asked staff to consider signage to inform residents of a central contact and telephone number should there be a question or concern and to improve electronic communications.

Mr. Millner displayed a map of the improvement area and presented the costs for the Tracy Avenue roadway improvements totaling \$141,368.62 with an MSA Fund contribution (street, signals, lights,

landscaping) of \$593,488.36 and total project cost (including utilities) of \$1,576,225.00. The City's contribution towards utility costs was \$882,901.58 (56% of the total project). The assessment cost was \$141,368.62 or \$4,283.90 per Resident Equivalent Unit (REU). It was noted this assessment was a 0% reduction from the estimated assessment of \$4,284.85. Mr. Millner described the use of MSA funds and maintenance funds for designated roadways that carry a higher level of traffic. Mr. Millner indicated that boulevard restoration had a two-year warranty and would be addressed in the spring while still under the warranty period.

***VI.A.vii. COUNTRYSIDE NEIGHBORHOOD ROADWAY IMPROVEMENT – IMPROVEMENT NO. BA-385 – RESOLUTION NO. 2013-94 ADOPTED***

Mr. Millner displayed a map of the improvement area and indicated that six letters of objection had been received and provided to the Council. He presented the costs for the Countryside Neighborhood roadway improvements totaling \$1,318,847.09 with a total project cost (including utilities) of \$2,514,488.82. The City's contribution towards utility costs was \$1,195,641.73 (48% of the total project). The assessment cost was \$1,318,847.09 or \$11,369.37 per Resident Equivalent Unit (REU). It was noted this assessment was 8% lower than the estimated assessment of \$12,359.68.

***VI.A.viii. ARCTIC WAY – IMPROVEMENT NOS. BA-386 – RESOLUTION NO. 2013-95 ADOPTED***

Mr. Millner displayed a map of the improvement area and presented the costs for the Viking Hills project, noting there were five assessment districts. The street cost for all districts totaled \$679,905.30 with a total project cost (including utilities) of \$1,056,405.09. The City's contribution towards utility costs was \$376,499.79 (36% of the total project).

Mr. Millner displayed a map of the improvement area and stated the assessment cost for Arctic Way was \$312,802.16 or \$6,951.16 per Resident Equivalent Unit (REU). It was noted this assessment was 9% lower than the estimated assessment of \$7,600.00.

***VI.A.ix. GLACIER PLACE – IMPROVEMENT NO. BA-400 – PUBLIC HEARING AND RESOLUTION NO. 2013-96***

Mr. Millner displayed a map of the improvement area and stated the assessment cost for Glacier Place was \$62,511.06 or \$6,251.11 per Resident Equivalent Unit (REU). It was noted this assessment was 11% lower than the estimated assessment of \$7,000.00.

***VI.A.x. GLEASON COURT – IMPROVEMENT NO. BA-401 – RESOLUTION NO. 2013-97 ADOPTED***

Mr. Millner displayed a map of the improvement area and stated the assessment cost for Gleason Court was \$140,986.53 or \$6,294.04 per Resident Equivalent Unit (REU). It was noted this assessment was 19% lower than the estimated assessment of \$7,812.50 because soil corrections were not needed.

***VI.A.xi. POLAR CIRCLE – IMPROVEMENT NO. BA-402 – RESOLUTION NO. 2013-98 ADOPTED***

Mr. Millner displayed a map of the improvement area and stated the assessment cost for Polar Circle was \$55,632.46 or \$6,181.38 per Resident Equivalent Unit (REU). It was noted this assessment was 24% lower than the estimated assessment of \$8,111.11 because soil corrections were not needed. Mr. Millner stated new notices would be mailed due to a one-dollar error in the assessment notice.

***VI.A.xii. VERNON COURT AND VERNON HILLS COURT – IMPROVEMENT NO. BA-403 – RESOLUTION NO. 2013-99 ADOPTED***

Mr. Millner displayed a map of the improvement area and stated the assessment cost for Vernon Court and Vernon Hills Court was \$107,973.09 or \$6,624.12 per Resident Equivalent Unit (REU). It was noted this assessment was 31% lower than the estimated assessment of \$9,631.90 because soil corrections were not needed. Mr. Millner explained that townhomes and duplexes pay a portion of an REU.

***VI.A.xiii. VALLEY ESTATES NEIGHBORHOOD ROADWAY IMPROVEMENT – IMPROVEMENT NO. BA-387 – RESOLUTION NO. 2013-100 ADOPTED***

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Mr. Millner displayed a map of the improvement area and stated the assessment costs for Valley Estates Neighborhood was \$618,342.65 with a total project cost (including sidewalk and utilities) of \$1,210,094.28. The sidewalk along Creek Valley School cost \$10,091.32 and was paid from the PACS Fund. The City's contribution towards utility costs was \$581,660.31 (48% of the total project). The assessment cost was \$618,342.65 or \$7,274.62 per Resident Equivalent Unit (REU). It was noted this assessment was 19% lower than the estimated assessment of \$8,930.97 due to a competitive bidding environment, and soil corrections were not needed.

Engineer Houle explained why the ratio of utility costs per project differed.

### ***VI.A.xiv. RICHMOND HILLS PARK NEIGHBORHOOD ROADWAY IMPROVEMENT – IMPROVEMENT NO. BA-388 – RESOLUTION NO. 2013-101 ADOPTED***

Mr. Millner displayed a map of the improvement area and stated one letter of objection had been received from Normandale Court. He presented the costs for the Richmond Hills Park Neighborhood roadway improvements totaling \$1,767,689.72 with a total project cost (including utilities) of \$4,797,354.04. The City's contribution towards utility costs was \$3,029,664.32 (63% of the total project). The assessment cost was \$1,767,689.72 or \$10,337.37 per Resident Equivalent Unit (REU). It was noted this assessment was 23% lower than the estimated assessment of \$13,400.00 due to a competitive bidding environment.

The Council stated the residents were most concerned with this project. The concerns were the quality of work including curb cuts, cracks in the surface, and sinking of the roadway. Mr. Millner stated the contractor was brought in to address the areas of settlement and agreed to make the corrections and continue monitoring the project even beyond the one-year warranty period. He stated staff would draft an extended warranty agreement for the contractor's signature. With regard to the quality of the topsoil used for restoration, Mr. Millner stated it met typical construction practices and Mn/DOT's specifications.

Mr. Houle explained that as asphalt breaks up, chunks could be washed into nearby ponds. Staff would inventory those areas and prepare a plan to include in a future CIP to address inlets into the lake and how to dispose of that material.

Environmental Engineer Bintner explained stormwater inlets and basins were inspected on a five-year rotating basis and 20% had been inspected this year.

Mr. Millner and City Manager Neal answered questions of the Council relating to other projects completed by this same contractor; competitive bid laws and control over who works on a project; and how to improve water quality of the lakes. Mr. Neal indicated engineering staff could look at what was known about Melody Lake, assess records from the construction project, and return with a recommendation where Melody Lake should move in the hierarchy of projects.

Mayor Hovland opened the public hearing at 7:08 p.m.

### Public Testimony

Richard Borland, 5004 Yvonne Terrace, addressed the Council.

Karen Roach, 5048 Richmond Drive, addressed the Council.

Jean Wikoff, 6305 Hillside Road, addressed the Council and submitted a letter of objection.

Jordan Mauer, 5009 Normandale Court, addressed the Council and submitted a letter from Dale and Marci Lorge of 5012 Normandale Court.

James Ostlund 6309 Hillside Road, addressed the Council.

Grant Johnson, 5004 Normandale Court, addressed the Council and submitted a letter of objection.

John Crabtree, 5408 Oaklawn Avenue, addressed the Council.

**Member Swenson made a motion, seconded by Member Sprague, to close the public hearing.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Mr. Houle stated in 2005, the Special Assessment Policy was finalized, and it was determined 100% of street construction cost could be assessed to the benefitting property. At that time, the Council decided the City would fund curb and gutter costs and that the costs of the utilities would be spread across the entire City. In 2011, it was again reviewed and the Council came to the same analysis.

Attorney Knutson stated for this type of assessment, the City had to show the value of the property increased by at least the cost of the assessment. He explained the total value of the property might have fallen, but the value of the project resulted in it falling less. Mr. Knutson stated it was not feasible to appraise individual parcels prior to the project without tremendously raising the cost of the project. Mr. Neal asked if one of the parties had the burden of proof to demonstrate that the increase in valuation had been made. Mr. Knutson stated presumption under the law was that the assessment roll was correct and the benefit was there.

The Council noted a professional company was used in 2005 to evaluate the Special Assessment Policy to prove there was increase in valuation, and the Council's decision to cover the curb and gutter costs was due to the great increase in project costs, objections to aesthetics, and desire to address the needs of storm water management and pavement longevity.

Mr. Neal reviewed funding options, noting Edina's tax rate was lower than neighboring communities because it does not charge everyone for street capital improvements. Rather, Edina charged benefitting properties, including tax-exempt properties, for the base charge of the roadway improvement.

With regard to variability in the numbers, Mr. Houle explained the estimate was based on past history of unit prices and staff found some contractors put more costs towards utility projects. He stated during the recession the City received very competitive bids, but in the past year only three or four bids were received. Mr. Houle explained the benefit of having like-sized lots within a project area and clarified that the stormceptor improvements for Melody Lake were borne by the City's Utility Fund and not assessed.

Mr. Millner stated he was not aware of work that was redone on Kent Avenue but if required, it would be at the contractor's cost. With regard to plow curb damage, he explained the plow might take the oil off the pavement at the crown but it does not cause damage to the roadway. Mr. Millner explained that CenterPoint Energy's work to weld joints caused a delay of about one week, but the contractor worked on another area of the neighborhood so it had not resulted in additional costs. Mr. Houle stated the sequencing of work with utility companies was the responsibility of the contractor.

Mr. Houle addressed the Council's questions relating to assessment methodology based on REUs and benefits of reduced pavement widths including lower stormwater treatment, project and maintenance costs, and traffic calming. He explained that saw cuts were made about every 30 feet and sealed to prevent meandering cracks and staff would assure the sealant had remained within the cuts. Mr. Houle stated when the neighborhoods were prioritized for roadway projects, utilities were also analyzed to determine the need for replacement. Because the Richmond Hills neighborhood was older and had more watermain breaks and sewage blockages, it was replaced. Mr. Houle stated the Countryside project cost

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had to do with the lot-to-pavement ratio, the density of the neighborhood, and nothing to do with the utility project.

**Member Sprague introduced and moved adoption of Resolution No. 2013-88, levying special assessments for Improvement No. AQ-13 Aquatic Weeds; Resolution No. 2013-89, levying special assessments for Improvement No. TR-13 Tree Trimming; Resolution No. 2013-90, levying special assessments for Improvement No. WD-13 Weed Mowing; Resolution No. 2013-91, levying special assessments for public improvements; Resolution No. 2013-92, levying special assessments for public improvements; Resolution No. 2013-93, levying special assessments for public improvements; Resolution No. 2013-94, levying special assessments for public improvements; Resolution No. 2013-95, levying special assessments for public improvements; Resolution No. 2013-96, levying special assessments for public improvements; Resolution No. 2013-97, levying special assessments for public improvements; Resolution No. 2013-98, levying special assessments for public improvements; Resolution No. 2013-99, levying special assessments for public improvements; Resolution No. 2013-100, levying special assessments for public improvements, and; Resolution No. 2013-101, levying special assessments for public improvements.** Member Swenson seconded the motion.

The Council considered whether to remove the Richmond Hills project to allow time for staff and contractors to address the issues. Mr. Houle stated there was a timeframe to certify assessments to Hennepin County, staff was already addressing issues with the contractor, and the contractor had been responsive. In addition, the contractor had agreed to sign an extension of the warranty. Mr. Knutson stated if not certified by November 4, 2013, payments would not be received in 2014 and the City would remain obligated to make debt service payments for the bond used to finance the project, which could result in additional costs to tax payers. The Council emphasized the importance of the contractor making correction in the Richmond Hills project during this construction season.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

### ***VI.B. CERTIFICATION OF DELINQUENT UTILITIES IMPROVEMENT NO. DU-13 – RESOLUTION NO. 2013-102 ADOPTED***

Finance Director Wallin presented certification of delinquent utilities per Statute 444.075 and City Code. He described the notification process for utility accounts with balances over \$50 and delinquent 30 days or longer. It was noted customers had opportunity to pay overdue balances up until November 15, 2013. A \$30 administrative fee would be added and assessed for one year at 6.5% interest. Mr. Wallin noted the assessment roll included 444 Edina properties, six that received St Louis Park utility service. Two Edina properties received Richfield utility services pursuant to agreements between the cities and one was included on the delinquent list. Mr. Wallin reported that in September, 688 properties were sent notices for a total of \$435,558. He compared that number to previous years. It was noted the final delinquent list would be attached to the draft resolution and sent to Hennepin County for certification.

Mr. Knutson answered questions of the Council related to the City's ability to charge an administrative penalty and advised that use of the word "fee" would be more appropriate as it covered the City's costs.

With regard to one large delinquency, Mr. Wallin explained this was the first time this property would have delinquent utilities certified. Mr. Neal stated if directed, this property owner could be informed of the City's intent to take extraordinary means to collect, including disconnection of services. Mr. Wallin stated the majority of the delinquencies were residential properties, many being chronic in using this means to pay utilities.

Mayor Hovland opened the public hearing at 9:17 p.m.

Public Testimony

No one appeared to comment.

**Member Sprague made a motion, seconded by Member Brindle, to close the public hearing.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**Member Swenson introduced and moved adoption of Resolution No. 2013-102, authorizing the certification of delinquent utility charges to the Hennepin County Auditor, as revised to change the word "penalty" to the word "fee."**

Member Sprague seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

***VI.C. PUBLIC HEARING CONTINUED FROM OCTOBER 1, 2013 – RESOLUTION NO. 2013-82 AND RESOLUTION NO. 2013-83 ADOPTED – PRELIMINARY PLAT AND FRONT YARD SETBACK VARIANCE, 6609 BLACKFOOT PASS; GREAT NEIGHBORHOOD HOMES, INC. ON BEHALF OF DOUGLAS JOHNSON***

Mr. Knutson stated this was a quasi-judicial decision to apply the facts to the law and determining whether it met the standards of the ordinance. If determined the ordinance standards were met, the courts indicate it should be approved. Mr. Knutson stated the court wanted objective standards in the ordinances and indicated if the minimum standards were met, it must be approved. The Council would be the judge whether the standards were subjective.

Community Development Director Presentation

Community Development Director Teague presented the request of Great Neighborhood Homes, on behalf of Douglas Johnson, to subdivide the property at 6609 Blackfoot Pass into two lots. The existing house would be torn down and two new houses built on the new lots. The new house on Lot 1 would be located generally where the existing house was located. To avoid large oak trees and steeper slopes, the house on Lot 2 would be located toward the street in an area away from the adjacent house to the south.

Mr. Teague stated that within this neighborhood, median lot area was 27,131 square feet, median lot depth was 183 feet, and median lot width was 146 feet. Both of the proposed lots would meet those median requirements. He displayed a map of the subject site depicting required setbacks and buildable area. It was noted that a subdivision (preliminary plat) to create two new lots and front yard setback variance from 100 feet to 45 feet for proposed Lot 2 would be required to accommodate this request.

Mr. Teague advised that the Planning Commission recommended denial of the Preliminary Plat, on a vote of 6-2, based on the subjective finding that the proposed subdivision would be out of character with the neighborhood and inconsistent with the goal of the Comprehensive Plan to preserve neighborhood character.

Mr. Teague stated the plat met all minimum standards. Slopes exceed 18%, and not more than 25% of that slope area could be disturbed. He stated the buildable areas were within that 25% threshold. He described the two building pads, noting both were located to disturb as little as possible. Additionally, the proponent was suggesting a ten-foot preservation easement along all lot lines, and staff suggested it be expanded to include some slope areas and mature trees. He noted that pulling the proposed house to the street would increase separation of the existing house to the south.

Mr. Teague presented variance criteria and staff's findings. The criteria was met as the practical difficulties were a result of steep slopes and location of mature trees, circumstances not caused by the applicant.

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Another condition was an extra right-of-way along Cheyenne Trail, resulting in an additional area of setback and separation. Mr. Teague stated staff found the 45-foot setback variance was generally within the character of the neighborhood as it contained varying setbacks, noting the location of a 42-foot setback and a 45-foot setback. Mr. Teague noted the location of three lots less than 30,000 square feet, which were smaller than proposed with the two new lots. In addition, to minimize impacts of pulling the house forward, the proponent had agreed to a maximum ridgeline of 35 feet when the Code would allow 40 feet in height.

### Proponent Presentation

Scott Busyn, Great Neighborhood Homes representing the proponent, presented a two-lot subdivision request for 6609 Blackfoot Pass, noting it could be accomplished without a variance but it was felt the variance would result in a better subdivision. He described the setting of Indian Hills as having a mix of wooded lots as well as open lots, both large and small sized houses, with none being the same. Mr. Busyn then described the subject site as being overgrown. He presented their goals for the subdivision and construction of two custom houses within a natural opening in the forest. Mr. Busyn stated they had successfully redeveloped 6808 Cheyenne Circle that had a similar wooded setting. He reviewed the steps taken to engage the neighborhood and site plan revisions based on that input.

In response to inquiry by the Council, Mr. Busyn presented information related to the soil borings and indicated the borings identified buildable soils in the area of the proposed building pads if the variance was approved. Mr. Busyn stated if the Lot 2 house was built without the variance, more aggressive retaining walls would be needed. With the forward-positioned building pad, the retaining walls would be fewer and shorter. Mr. Busyn agreed this was a challenging site and stated they would work with engineers to submit a stormwater management plan as part of this process.

Mayor Hovland reopened the public hearing at 9:58 p.m.

### Public Testimony

William Wilkowske, 6621 Cheyenne Trail, addressed the Council and displayed a video presentation.

Kristin Wilkowske, 6621 Cheyenne Trail, addressed the Council.

David Frauenshuh, 6401 Indian Hills Road, addressed the Council.

Tara Dev, 6804 Cheyenne Trail, addressed the Council.

Dean Swanson, 6617 Cheyenne Trail, addressed the Council.

Harry Joslyn, 6718 Indian Hills Road, addressed the Council.

Charles Ledder, 6709 Cheyenne Trail, addressed the Council.

Susan Brunn, 6601 Blackfoot Pass, addressed the Council.

Mary Swanson, 6617 Cheyenne Trail, addressed the Council.

Paul Shoemaker, 6820 Cheyenne Trail, addressed the Council.

Christopher Johnson, 5308 Highwood Drive West, addressed the Council.

Kay Laaksonen, 6404 Indian Hills Road, addressed the Council.

Douglas Johnson, proponent at 6609 Blackfoot Pass, addressed the Council.

Bert Ledder, 6709 Cheyenne Trail, addressed the Council.

Pat Kreuziger, 6705 Cheyenne Trail, addressed the Council.

Tim Keane, attorney representing residents of Indian Hills, addressed the Council.

At the inquiry of the Council, Ms. Kreuziger stated her preference for the building pad to be closer to the street.

**Member Swenson made a motion, seconded by Member Sprague, to close the public hearing.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Mr. Knutson explained the role of the Comprehensive Plan, as it related to this application, was a guide for drafting official controls (zoning ordinance and subdivision ordinance). The requirements of the Comprehensive Plan should find their way into those two ordinances.

The Council addressed the issues raised during public testimony related to disturbing slopes and standard for buildability of the lot without variances. Mr. Knutson noted construction could occur on anything dependent upon the depth of pilings, and the ordinances do not address types of soil and buildability. He stated a condition could be placed on the plat to require an analysis of stormwater and buildability of the soils.

Mr. Teague stated a condition could be added prior to final plat approval to submit a plan that would improve drainage and channel it away from the property to the south, directing it towards the street through retaining walls and/or swales. He stated if approved, the conservation easement area and drainage would be worked out prior to final plat consideration. Mr. Teague indicated with regard to safety, engineering staff was comfortable with the driveway locations as proposed.

The Council noted the proponent's calculations were used to establish median lot area, width, and depth. Mr. Teague stated an error in the original submittals was corrected and staff was now comfortable with the median calculations as presented. He explained the difference between a median calculation and an average calculation, noting the two proposed lots were larger than the neighborhood median. The Council addressed the public's suggestion that "neighborhood" be more narrowly defined; however, there were five lots within 500 feet of the subject site that were smaller in size than the two lots as proposed. With regard to the number of trees that might be removed, it was mentioned that if a variance was not approved, the area of Oak Savannah would fall within the building pad and be impacted. Mr. Teague explained that if the subdivision was approved, a condition could be placed to walk the site with the land owner and establish (trees worth inclusion) within a preservation easement.

The Council noted that if the two-lot subdivision was approved based on subjective criteria, without the Lot 2 variance, the building pad would be 60 feet from Ms. Kreuziger's house as opposed to 120 feet with the variance. With the variance, the setback would be 45 feet from the property line and 65 feet back from Cheyenne Trail. The two houses across the street were 42 feet and 45 feet back from Cheyenne Trail.

With regard to water pooling on Lot 2, Mr. Teague stated that would be addressed under new regulations. An engineer was required to design a storm water plan for review by the City Engineer at the time of building permit.

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The Council reviewed the areas included within the conservation easement to preserve the slopes, Oak Savannah, and 100-year old oak, and agreed it should extend along the property line of Lots 1 and 2, as well as surrounding the proposed house location. Mr. Teague stated the intent of the ten-foot easement would be to preserve existing vegetation. The Council reviewed the wording of conditions within the resolution.

**Member Sprague introduced and moved adoption of Resolution No. 2013-82, approving a Preliminary Plat at 6609 Blackfoot Pass, based on the following findings:**

- 1. The proposed Plat meets all required standards and ordinances for a subdivision.**
- 2. The subdivision would meet the neighborhood medians for lot width and depth and area.**

**And subject to the following conditions:**

- 1. The City must approve the Final Plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.**
- 2. Prior to issuance of a building permit, the following items must be submitted:**
  - a. If required, submit evidence of Nine Mile Watershed District approval. The City may require revisions to the preliminary plat to meet the District's requirements.**
  - b. A curb-cut permit must be obtained from the Edina Engineering Department.**
  - c. Utility hook-ups are subject to review of the City Engineer.**

**Grading and drainage plans specific to any proposed house would be reviewed at the time of building permit, and shall be subject to review and approval of the City Engineer.**

**Drainage from any new home, garage, or driveway would have to be directed to the street and shall not allow any additional drainage onto the property to the south of the subject property.**

- d. The applicant work with the City Forester in regard to tree preservation and removal of Buckthorn.**
- 3. Park dedication fee of \$5,000 must be paid prior to release of the Final Plat.**
- 4. Drainage for construction of the new homes shall be directed away from adjacent property toward the street to greatest extent possible. Drainage plans for individual homes would be subject to review and approval of the City Engineer at the time of building permit approval.**
- 5. A 10-foot preservation easement must be established along the lot lines to preserve the vegetation areas along the streets and along the north and south lot lines; and a preservation easement shall be established in accordance with the staff rendering shown at A14, and to assist with drainage and runoff from the site.**
- 6. Trees removed for construction of a home on Lot 2 shall be replaced in accordance with a landscaping plan to be approved by City staff.**

Member Swenson seconded the motion.

Members Sprague and Swenson and Mayor Hovland acknowledged the Council needed to work within the ordinance and while the 500-foot rule might create certain unintended consequences at the edge of neighborhoods that was the ordinance at this time. In addition, the Council needed to consider objective standards rather than subjective standards.

Member Brindle stated the basis of her decision would be what was best for the property as well as residents within the neighborhood. Member Bennett stated she would like the issues addressed as soon as possible including the 500-foot criteria that had been written in the 1970s-1980s. Member Bennett stated she could not support the subdivision as she found the lot contained characteristics described in the ordinance related to susceptibility of erosion, flooding, use as ponding area, and potential disturbance of slopes. In addition, she found other considerations including concern as to buildability of Lot 2, based on soils, without a variance.

Ayes: Sprague, Swenson, Hovland

Nays: Bennett, Brindle

Motion carried.

Member Swenson introduced and moved adoption of Resolution No. 2013-83, approving a Front Yard Setback Variance at 6609 Blackfoot Pass based on the following findings:

1. The proposed building pad has been located on the site to cause the least amount of impact on the site's mature trees and slopes.
2. The proposed building pad for Lot 2 would be located farther away from the existing home at 6705 Cheyenne Trail, than would a Code compliant home.
3. Conservation easements would be located over the steep slopes and mature oak trees.
4. An additional 10-foot wide conservation easement was proposed along the north, west, and south lot lines to preserve the wooded feel of the lot.
5. The applicant is also agreeable to not construct a home to maximize the height allowed by Code. He would limit the total building height to 35 feet, when the Code would allow a home to be 40 feet tall to the ridge line of the home.
6. The proposal meets the required standards for a variance because:
  - a. The practical difficulty unique to the property is caused by the large mature oak trees and slopes on the east half of Lot 2 where a Code compliant building pad would be located. These are natural conditions not caused by property owner.
  - b. The requested variances are reasonable in the context of the immediate neighborhood. There are two homes with similar front yard setbacks at 6621 and 6624 Cheyenne Trail.
  - c. There is 18-20 feet of green space in the right-of-way of Cheyenne Trail, which would result in a 65-foot setback from the edge of the paved roadway.

And subject to the following conditions:

1. Prior to issuance of a building permit, the following items must be submitted:
  - a. If required, submit evidence of Nine Mile Watershed District approval. The City may require revisions to meet the District's requirements.
  - b. A curb-cut permit must be obtained from the Edina Engineering Department.
  - c. Utility hook-ups are subject to review of the City Engineer.
  - d. Grading and drainage plans specific to any proposed house would be reviewed by the time of building permit, and shall be subject to review and approval of the City Engineer. Drainage from any new home, garage or driveway would have to be directed to the street.
  - e. The applicant work with the City Forester in regard to tree preservation and removal of Buckthorn.
2. Any new home on Lot 2 would be limited to a ridge line height of 35 feet.
3. A 10-foot conservation easement must be established along the lot lines to preserve the vegetation areas along the streets and along the north and south lot lines.
4. A slope and tree conservation easement must be placed over the large oak trees and slope areas to be preserved by moving the home toward the street.

Member Sprague seconded the motion.

The Council acknowledged that the subdivision had been approved and the variance would preserve the legacy of the lot and create separation between the proposed house and Ms. Kruziger's house.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

***VI.D. PUBLIC HEARING – RESOLUTION NO. 2013-103 ADOPTED – PRELIMINARY PLAT AND VARIANCES, 5820 BROOKVIEW AVENUE; AKARE COMPANIES LLC ON BEHALF OF JOHN PETERSON***

Community Development Director Presentation

Mr. Teague presented the request of AKARE Companies, LLC on behalf of John Peterson to subdivide property at 5820 Brookview Avenue into two lots. The existing house would be torn down and two new houses built on the new lots. A subdivision, lot width variances from 75 feet to 50 feet for each lot, and lot area variances from 9,000 square feet to 6,711 square feet for each lot would be required to

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accommodate this request. He reviewed the median lot sizes, noting the proposed lots would be close to medians but a bit short in lot area. It was noted the two lots were subdivided as 50-foot lots but combined when the house was constructed. Mr. Teague reviewed the locations of like variances that had been approved and variance criteria.

The Council noted an easement had been vacated, which created additional depth. It was pointed out Code required that median governs when the dimensions in an area were larger; however, they do not govern when the medians were lower than the lot minimums.

Mr. Teague reviewed the September 25, 2013, consideration of the Planning Commission and indicated it recommended approval of the Preliminary Plat on a vote of 8-1 based on the findings and conditions as contained in the staff report. He stated staff also recommended approval of the request.

Mr. Teague stated if the variance was approved, the Council could impose a condition that any properties to be built upon would be subject to Code changes going into effect January 1, 2014, that included lowered height. He described the upward sloped topography, noting that would be reviewed once a building plan was submitted.

### Proponent Presentation

Rob Eldridge, AKARE Companies, LLC and Ridge Creek Custom Homes, displayed pictures of the Fairfax neighborhood depicting new construction on 50-foot wide lots. He stated their first objective was to build a house that fit the neighborhood and not maximize square footage.

Mayor Hovland opened the public hearing at 11:46 p.m.

### Public Testimony

Noah Everist, 5817 Oaklawn Avenue, addressed the Council.

John Peterson, proponent at 5820 Brookview Avenue, addressed the Council.

John Raichert, 5116 Indianola Avenue, addressed the Council.

Sheila Peterson, proponent at 5820 Brookview Avenue, addressed the Council on behalf of her neighbor, George Raichert at 5816 Brookview Avenue.

### **Member Swenson made a motion, seconded by Member Sprague, to close the public hearing.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Mr. Knutson advised that if the Council supported approval of the variance, it could attach a condition that the lots meet the requirements of the building standards that would become effective on January 1, 2014.

### **Member Brindle introduced and moved adoption of Resolution No. 2013-103, approving a Preliminary Plat with Variances at 5820 Brookview Avenue based on the following findings:**

- 1. Except for the variances, the proposal meets the required standards and ordinance for a subdivision.**
- 2. The subdivision would meet the neighborhood medians for lot width and depth and nearly meet the median area.**
- 3. The proposal would restore the property back to the form of the original plat, which included two lots.**
- 4. The proposal meets the required standards for a variance because:**

- a. The practical difficulty unique to the property was caused by the existing size of the property which was two times the size of every lot on the block. This is caused by the original property owner, who combined two lots into one.
- b. The requested variances are reasonable in the context of the immediate neighborhood. The existing lot is both larger and wider than most properties in the area, including nearly every lot on the block. The proposed subdivision would result in two lots more characteristic of the neighborhood.
- c. If the variances were denied, the applicant would be denied a use of his property, a 50-foot wide lot, which is common to the area. In addition, the applicant would be denied a subdivision with variances that has been previously approved by the City, including the same request for a subdivision with variances that were approved right across the street in 2011.

And subject to the following conditions:

1. The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.
2. Prior to issuance of a building permit, the following items must be submitted:
  - a. Submit evidence of Minnehaha Creek Watershed District approval. The City may require revisions to the preliminary plat to meet the District's requirements.
  - b. A curb-cut permit must be obtained from the Edina Engineering Department.
  - c. Utility hook-ups are subject to review of the City Engineer.
  - d. Grading and drainage plans specific to any proposed house would be reviewed at the time of building permit, and shall be subject to review and approval of the City Engineer. Drainage from any new home, garage, or driveway would have to be directed to Brookview Avenue.
  - e. The requirements of Ordinance No. 2013-09 scheduled to go into effect on January 1, 2014 shall be applicable to the subject lots.

Member Sprague seconded the motion.

The Council asked questions of staff relating to 30% lot coverage on lots less than 9000 square feet that could result in a footprint of slightly larger than 2,000 square feet on each lot. Member Bennett stated she appreciated the public testimony received; however, could not support the variance as she found it had not met the hardship requirement since a house could be built upon without a variance. The Council acknowledged the support of neighbors for this request and intended builder, the request respected the character of the neighborhood on both sides of the block, it would not approve something that was not common in this neighborhood, and the hardship was caused by the original owner who combined two 50-foot platted lots into one lot.

Ayes: Brindle, Sprague, Swenson, Hovland

Nays: Bennett

Motion carried.

#### **VII. COMMUNITY COMMENT**

No one appeared to comment.

#### **VIII. REPORTS / RECOMMENDATIONS**

##### **VIII.A. PROPOSALS FOR SPORTS DOME, OUTDOOR REFRIGERATED RINK AND PAMELA PARK IMPROVEMENTS – APPROVED TO MOVE FORWARD**

Park and Recreation Director Kattreh reviewed the history of this consideration and need for a sports dome in Edina. She presented the following options for consideration: Sports Dome Option C – 250-foot width; Sports Dome Option C – 250-foot width with 200-foot x 85-foot outdoor ice sheet and East Arena improvements; and, Pamela Park Field and Parking Renovations, including artificial turf field.

Ms. Kattreh stated staff recommended Option C. She described building elements of the covered rink and dome with a connection to the East Arena. She then displayed an aerial view depicting Option C, noting it would take over the playground and gazebo spaces so they would have to be relocated. She presented

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sports dome facts and pro forma highlights, noting with priority scheduling fees it would take just 693 hours to break even.

Ms. Kattreh then presented facts relating to the outdoor refrigerated rink followed by Pamela Park athletic field needs. She displayed an overhead view of Pamela Park and described the master plan to renovate fields and also a mill and overlay to the south, west, and north parking lots.

Ms. Kattreh reviewed the project summary: sports dome only at \$6,370,000; sports dome and outdoor rink at \$10,378,600; and, Pamela Park improvements at \$2,777,000 for a total of \$13,155,600. The cost for a shelter building and path system at Pamela Park would add \$600,000. She recommended proceeding with the development of plans and specifications for a sports dome and outdoor refrigerated rink at the Braemar Arena site and field renovations and improvements at Pamela Park. Staff also recommended staff proceed with the development of a finance plan to fund capital construction and annual operating needs of the projects at Braemar Ice Arena and Pamela Park.

Mr. Neal stated he had briefed the Council previously of two basic financing vehicles: authority as the HRA to issue lease revenue bonds; or, a general obligation bond that would require a special referendum. He stated the Council could also table consideration or direct staff to discontinue this project. Mr. Neal stated staff supported moving this project forward, if supported by the Council. If funded by HRA lease revenue bonds, project design would be completed by the end of the year and the project constructed by December of 2014. If funded by a general obligation bond and referendum, the design would not begin until after the referendum and be completed in May of 2014 with construction completed by the fall of 2015. It was noted a referendum was estimated to cost \$50,000 to \$75,000 to host.

The Council acknowledged that the need for fields was determined ten years ago, needs had outgrown the City facilities, this project had been thoroughly vetted and would be a key strategy to increase participation in youth sports program, a key strategy of the Braemar complex, supported cost recovery goals, self funded future capital improvements, benefited field utilization, and had resident support. The Council asked staff to look at opportunities to meet broader (cradle to grave) recreational needs beyond scheduled events.

Ms. Kattreh answered questions of the Council relating to geothermal heating options that would lower carbon footprint of the dome and give ability to utilize energy stored from ice making to heat the dome during winter months; however, it would take 20-30 years to realize a positive return on investment. The Council indicated support to ask the Energy & Environment Commission to review the opportunity to build efficiency improvements.

Mr. Neal addressed past projects that had been funded through HRA lease revenue bonds and indicated the City's borrowing capacity under State Statute was about \$300 million, which was 3% of its estimated market value. He explained the debt service requirement for this project would add 5-7% to the tax levy or an additional \$60-75 per year for a median single-family house of \$400,000 during the 20-year payback. Mr. Neal answered questions of the Council and indicated that with either funding vehicle, it would be additive to the City's CIP and not bump any other projects. The Council acknowledged staff's recommendations total \$13,155,600 and the City's general fund was about \$30 million so in terms of scale, the projects approached almost half of the City's general fund.

Ms. Kattreh used a map to point out unprogrammed space in Pamela Park if the project moved forward, which had been a concern expressed by neighbors at the 2009 Park Board public hearing.

The Council considered past projects funded through referendum, acknowledging this project was a deferred need and this state-of-the-art facility would allow Edina to be competitive with other communities to attract young families. In addition, it would improve Pamela Park, which was currently

underutilized. The Council agreed this was a large project but the City's AAA bond rating would not be endangered by making this investment. The Council thanked the associations that have stepped forward to commit to contracts that would make this project a success. **Member Swenson made a motion, seconded by Member Sprague, directing staff to proceed with the development of plans and specifications for a sports dome and outdoor refrigerated rink at the Braemar Arena site and field renovations and improvements at Pamela Park including an environmental path and new shelter building, and to develop a finance plan to fund capital construction and annual operating needs of the projects at Braemar Ice Arena and Pamela Park, to be funded by HRA lease revenue bonds.**

Member Bennett stated due to the magnitude of the project, she would be comfortable taking Option 2 to a referendum or cafeteria referendum that gave voters separate votes to match facilities to desires of the voters to pay for them. However, she could not support the motion as it approved the use of HRA lease revenue bonds for funding.

Ayes: Brindle, Sprague, Swenson, Hovland

Nays: Bennett

Motion carried.

**VIII.B. ORDINANCE NO. 2013-10 – ADOPTED - REGARDING CHAPTER 9 LIQUOR**

Manager Neal stated there was currently a limitation on the number of On Sale Intoxicating Liquor Licenses a business could hold and the proposed ordinance would remove that limitation. The Council discussed the ordinance and support of removing the limitation. **Member Sprague made a motion to grant First Reading to Ordinance No. 2013-10 amending the Edina City Code concerning liquor. Member Brindle seconded the motion.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**Member Sprague made a motion, seconded by Member Brindle, to reconsider granting First Reading to Ordinance No. 2013-10 amending the Edina City Code concerning liquor.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**Member Sprague made a motion to grant First and waive Second Reading adopting Ordinance No. 2013-10 amending the Edina City Code concerning liquor. Member Brindle seconded the motion.**

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**VIII.C. RESOLUTION NO. 2013-104 ADOPTED – ACCEPTING VARIOUS DONATIONS**

Mayor Hovland explained that in order to comply with State Statutes; all donations to the City must be adopted by Resolution and approved by four favorable votes of the Council accepting the donations. **Member Bennett introduced and moved adoption of Resolution No. 2013-104 accepting various donations.** Member Swenson seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**IX. CORRESPONDENCE AND PETITIONS**

**IX.A. CORRESPONDENCE**

Mayor Hovland acknowledged the Council's receipt of various correspondence.

**IX.B. ENERGY & ENVIRONMENT COMMISSION ADVISORY COMMUNICATIONS: COMPREHENSIVE PLAN CHAPTER 10 CARBON REDUCTION GOAL – Received**

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**IV.C. MINUTES:**

- 1. PARK BOARD MINUTES, SEPTEMBER 10, 2013**
- 2. HERITAGE PRESERVATION BOARD MINUTES, SEPTEMBER 10, 2013**
- 3. ARTS & CULTURE COMMISSION MINUTES, SEPTEMBER 26, 2013**

Informational; no action required.

**X. AVIATION NOISE UPDATE** – Received

**XI. MAYOR AND COUNCIL COMMENTS** – Received

**XII. MANAGER’S COMMENTS** – Received

**XIII. ADJOURNMENT**

There being no further business on the Council Agenda, Mayor Hovland declared the meeting adjourned at 1:27 a.m.

Respectfully submitted,

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Jane M. Timm, Deputy City Clerk

Minutes approved by Edina City Council, November 4, 2013.

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James B. Hovland, Mayor

Video Copy of the October 14, 2013, meeting available.