

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, JULY 6, 2021 –6:30 P.M.
Public Works Garage & Virtual

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, Betts, and Grotting
ABSENT: McCoy
STAFF: City Administrator Kaltsas, Assistant to Administrator Horner
VISITORS: Sofia Lykke, Attorney with Kennedy & Graven; Diane Pangal, Justin Fincher; Elmer Schefers; Donovan DesMarais; Jerry Wise; Nathan Kirkpatrick; and others. All attended virtually.

4. ****Consent Agenda****

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council Minutes from the June 15, 2021, Regular City Council Meeting.
- b. Approval of Accounts Payable; (Batch #1 Checks Numbered 20551-20553, Batch #2 Checks Numbered 20554-20562, batch #3 Checks Numbered 20563-20584).
- c. Approval of Large Assembly Permits:
 - i. Wedding at 7297 County Road 6 – July 24, 2021.
 - ii. Charity Fundraiser at Twin City Polo Grounds – August 1, 2021.
- d. PSCWMO – Proposed Annual Budget and Member Assessments (for information).
- e. 2nd Quarter Building Permit Report (for information).

Motion by Betts, second by Grotting to approve the Consent Agenda. Ayes: Johnson, Spencer, Grotting and Betts. Nays: None. Absent: McCoy. None. Abstain. None. MOTION DECLARED CARRIED.

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- Planning, LMC Conference, virtual

Grotting attended the following meetings:

- Planning

McCoy attended the following meetings:

- Absent

Betts attended the following meetings:

- Planning

Johnson attended the following meetings:

- Planning
- Northwest League of Cities
- NLC Small Cities-Virtual
- LMC conference-Virtual
- WHCC
- KARE 11 t.v. interview
- Legislative update with Rep. Hertauss and Senator Osmek

Horner attended the following meetings:

- BKV architect meeting and Rochon
- Planning
- Administrative Asst Interviews

Kaltsas attended the following meetings:

- Planning
- Administrative Asst Interviews

7. PUBLIC HEARING: Consideration of Conduit Bond Issuance.

Attorney Sofia Lykke was present virtually to introduce the resolution and background on this bond. The City has no obligation to repay these bonds-no liability to the City.

The Public Hearing was opened for up to a \$30 million bond. This is tax exempt up to \$10 M and taxable after that. This is in Brooklyn Park to construct a charter school owned by Friends of Spero. Johnson asked who else was funding this bond. Lykke replied Independence is the only one. She clarified these are not bank qualified although they will be tax exempt, with a small taxable amount. Spencer noted it is a tuition free school.

Diane Pangal, Executive Director of Spero provided background on Spero Academy. There are 150 students focusing on kids with special needs. They have a very dedicated staff.

Justin Fincher of JBVang was introduced and thanked Independence for this opportunity.

Grotting asked how they got the name Spero. Pangal said it means Hope and was founded by Frasier. They split from Frasier to start their own. Spero is the Latin term for 'hero'.

Motion by Spencer to close the Public Hearing, second by Grotting.

Motion by Spencer, second by Betts to approve RESOLUTION 21-0706-01: Considering approval of Conduit Bond Issuance for Spero Academy. Ayes: Johnson, Spencer, Betts and Grotting. Nays: None. Absent: McCoy. Abstain. None. MOTION DECLARED CARRIED.

8. Elmer Scheffers (Applicant/Owner) is requesting the following actions for the property located at 3590 Independence Road (PID No. 12-118-24-32-0003) in the City of Independence, MN:

- a. **ORDINANCE NO. 2021-04:** Considering approval of Rezoning from AG- Agriculture to RR-Rural Residential in accordance with the Comprehensive Land Use Plan.
- b. **RESOLUTION 21-0706-02:** Considering approval of Preliminary and Final Plat for a 3-lot subdivision of the subject property.

Elmer Scheffers (Applicant/Owner) is requesting the following actions:

- a. Rezoning from AG-Agriculture to RR-Rural Residential in accordance with the Comprehensive Land Use Plan.
- b. Preliminary Plat for a 3-lot subdivision of the subject property.
- c. Final Plat for a 3-lot subdivision of the subject property.

Property/Site Information:

The property is located on the east side of Independence Road, just north of Pete Drive. There is an existing home and a detached accessory structure located on the property. The house is accessed off of Independence Road. The property is a combination of rolling hills, tillable acreage and wetlands. The property has the following characteristics:

Property Information: 3590 Independence Road

Zoning: *Agriculture*

Comprehensive Plan: *Rural Residential*

Acreage: *±24.34 acres*

The applicant approached the City about the possibility of subdividing the subject property to realize several additional lots. The City has had multiple conversations with the applicant regarding the layout, number of lots and access to the proposed lots. The applicant has prepared a preliminary plat and is seeking Rezoning, Preliminary and Final Plat approval for a three (3) lot subdivision to be known as Scheffers Hills Subdivision. The proposed subdivision would split the existing 24 acre parcel into three lots. There is an existing home located on the north edge of the property just off of Independence Road. The existing home would remain in the after condition and be located on one of the three lots.

Rezoning

Rezoning this property is consistent with the City's 2030 and 2040 Comprehensive Plan. There are several lots in close proximity to the subject property which are similar in nature to the proposed lots.

Site Plan

The City allows the subdivision of property in the rural residential zoning district if it can be shown to meet all applicable criteria of the ordinance. The City's applicable standards are further defined as follows:

Subd. 3. Density. Lots of record in the rural residential district may be divided or subdivided into the following maximum number of lots, said maximum number to include the lot for any existing dwelling unit or other principal use: (Amended, Ord. 2010-01)

<u>Area of Lot of Record</u>	<u>Maximum Number of Lots Permitted</u>
7.5 acres or less	One
7.6 through 12.5 acres	Two
12.6 through 17.5 acres	Three
17.6 through 22.5 acres	Four
22.6 through 27.5 acres	Five
27.6 through 32.5 acres	Six
32.6 through 37.5 acres	Seven
37.6 through 42.5 acres	Eight
42.6 through 47.5 acres	Nine, plus one addn. lot for every five addn. acres of land.

In addition to the maximum lot density, the City has the following standards pertaining to Rural Residential lots.

530.03. Physical Standards.

Subd. 3. Physical standards. All lots and construction thereon must meet the following physical standards:

(a) *Minimum lot area* ^a 2.50 acres buildable land

(b) *Minimum lot frontage on an improved public road or street: Lot*

<u>area</u>	<u>Minimum frontage</u>
2.50 – 3.49 acres	^b 200feet
3.50 – 4.99 acres	^b 250feet
5.00 – 10.00 acres	^b 300feet

(c) *Lot depth. The ratio of lot frontage to lot depth must be no more than 1:4.*

^a A lot must be a minimum of 2.50 acres buildable land with a demonstrated capability to accommodate two on-site waste disposal systems. Buildable land must be contiguous and not separated by streams, wetlands, slopes in excess of 10% or other physical impediments.

A more detailed breakdown of the proposed individual lots is as follows:

Block 1	Area	Upland Acreage	Frontage	Lot Frontage to Lot Depth
Lot 1	15.6 acres	5.3 acres	811 LF	1:1

Lot 2	3.17 acres	2.5 acres	481/286 LF	1:1.5
Lot 3	5.57 acres	2.5 acres	531 LF	1:1

The applicant has prepared a preliminary plat and site plan that shows the proposed lots, applicable building setbacks, possible home site locations and all requisite easements. The two new lots would be connected to the City's sewer (force main) located on Independence Road. Each of the homes would have to install an individual connection to the existing sewer line. The City identified several issues relating to the proposed subdivision that are further described as follows:

- The applicant and City discussed access to the proposed lots at length. Staff recommended that the applicant provide access to the lots off of Pete Drive rather than Independence Road. The site lines on Independence Road are compromised in the vicinity of the proposed lots and potential driveways. In addition, if the lots were laid out in the current configuration, the new property owners would likely want to use Pete Drive for access to the principal structure and or accessory structures. The issue with Pete Drive access is that Pete Drive does not meet the City's current gravel road standards for the road and right of way widths. The existing road is approximately 12 feet wide, and the existing right of way is 33 feet. The City requires new roads to be 26 feet wide and right of way of 66 feet. The City recommended that the applicant provide an additional 33 feet of right of way on the subject property and reconstruct a fully compliant Pete Drive.
- The applicant has agreed to construct the new section of road and provide the City with the requested road easement for the length of the property. The City would only require the construction of the additional road width up to a point where the existing wetland makes further expansion prohibitive (see below). This would provide for an improved section of Pete Drive up to the point where the additional driveways (traffic) would access/use the public road. The widened section of road would be blended back into the existing road as it narrows to the east. The City does maintain Pete Drive beyond the wetlands to the east. Construction of a widened road section through the wetland will be challenging and expensive. The neighboring property owner has recently reached out to the City to inquire about vacating a portion of Pete Drive. Staff will review this request further and may present additional information at the meeting.
- The applicant would like the City to credit a portion of the proposed Pete Drive right of way/easement towards the upland portion of the property. This credit would allow the proposed lots to meet the applicable 2.5-acre minimum lot size. The City's current ordinance excludes right of way in the lot area for this type of subdivision.

500.57. Lots.

Subd. 1. Location. Lots may have no less than 200 feet of frontage on a street or road, except lots fronting on the terminus of a cul-de-sac shall have no less than 50 feet of frontage, and must meet minimum width requirements at the building setback line.

*Subd. 2. Size. Lot size requirements for divisions and subdivisions shall be governed by the zoning code or section 705, or both. **All dimensions and lot area shall exclude right-of-way.***

Staff is seeking direction from the City relating to the possibility of crediting the applicant for a portion of the additional (33 feet) Pete Drive right of way/easement? If the City does not allow the additional

right of way to be credited towards the upland portion of the property, the northern property line would need to be adjusted. This could potentially limit the future subdivision of the Lot 1, Block 1 (currently has ~5.3 acres of upland).

- There are several significant wetlands located on this property which make the subdivision more difficult. The applicant and the City have reviewed the location and boundaries of the wetlands on this property. A wetland delineation has been completed and approved by the state, watershed and City. The applicant will be required to maintain the requisite wetland buffer around the wetlands.
- When the City installed the sewer on Independence Road it estimated the potential subdivision of properties located along the sewer line. It was estimated that this property could realize up to 4 lots (see attached exhibit). Each new sewer connection will be subject to the sewer assessment fee and all applicable connection charges.

The proposed lot configuration takes advantage of the best possible home locations on the southern portion of the property. Access to Pete Drive provides for a better solution to access for both properties given the limited site lines and topography along Independence Road. The properties to the east on Pete Drive have the potential to redevelop in the future. There are currently three parcels located to the east of the wetland. It is possible that the properties to the east could subdivide in the future depending on their ability to bring Pete Drive up to a full City street.

Engineering

The City has reviewed the proposed road expansion plans for Pete Drive and found them to be compliant with applicable standards. The City will require the developer to enter into a development agreement relating to the proposed road improvements, park dedication fees and sewer connection fees. The individual lots will be required to apply for and be granted a grading permit at the time of building permit application. At that time the City will review the individual lot grading.

Park Dedication

The proposed subdivision is subject to the City's park dedication requirements. The park dedication requirements are broken down as follows:

Park dedication fee \$3,500 per lot up to 4.99 acres, plus \$750 per acre for each acre over 5.

Lot 1 includes the existing home and will not be subject to additional park dedication fees. Lot

2 – 3.17 acres = \$3,500

Lot 3 – 5.57 acres = \$3,500 + 428 (\$3,928)

The total amount of the park dedication is \$7,428 for the two (2) new lots.

Planning Commission Discussion/Comments:

Planning Commissioners reviewed the request and asked questions of the applicant and staff. Commissioners concurred that access to the proposed lots would be off of Pete Drive. Commissioners noted that the

proposed layout was based on trying to accommodate the best home building sites. It was confirmed that each of the proposed lots would be able to connect to City sewer. Commissioners discussed that the additional right of way for Pete Drive would normally be split between the properties on either side, but in this case, there is not an option to go to the south due to the wetland. Commissioners recommended approval of the proposed subdivision with the findings and conditions included in this report and the resolution.

Neighbor Comments:

The City has received several questions and comments from adjacent property owners. Adjacent property owners had questions relating to the road improvements, number of lots and access. Neighboring property owners wanted to ensure that the proposed homes and associated traffic would not impact Pete Drive in a way that negatively impacts their respective properties.

Recommendation:

The Planning Commission recommended approval of the requested rezoning, preliminary plat and final plat subject to the developer entering into a development agreement with the City. The following findings and conditions should be considered by the Council:

1. The proposed Rezoning and Preliminary and Final Plat meet all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. City Council Approval of the Preliminary and Final Plat is subject to the following:
 - a. The Applicant shall address all comments and applicable requirements pertaining to the development.
 - b. The Applicant shall make all revisions requested in the staff report, by the Planning Commission and City Council.
 - c. The Applicant shall comply with all applicable regulations and conditions prescribed by Pioneer Sarah Creek Watershed Management Commission.
 - d. The Applicant shall enter into a development agreement with the City for this development.
 - e. The Applicant shall provide a letter of credit or acceptable form of security as established by the development agreement for all public improvements associated with this development.
3. The Applicant shall pay the park dedication fees in accordance with the terms defined in the Development Agreement.
4. The Applicant shall pay the applicable sewer assessment and connection fees.
5. The Applicant shall pay for all costs associated with the City's review of the rezoning, preliminary and final plats.
6. The Applicant shall record the final plat and associated documents with Hennepin County within six (6)

months of approval of the City Council approval.

Spencer asked for total park dedication fees, Kaltsas said \$7428.

Motion by Spencer, second by Johnson to approve ORDINANCE 2021-04: Considering approval of Rezoning from AG-Agriculture to RR-Rural Residential in accordance with the Comprehensive Lane Use Plan. Ayes: Johnson, Spencer, Grotting and Betts. Nays: None. Absent: McCoy: None. Abstain. None. MOTION DECLARED CARRIED.

Motion by Betts, second by Spencer to approve RESOLUTION 21-0706-02: Considering approval of Preliminary and Final Plat for a 3-lot subdivision of the subject property. Ayes: Johnson, Spencer, Grotting and Betts. Nays: None. Absent: McCoy. Abstain. None. MOTION DECLARED CARRIED.

9. Donavan DesMarais (Applicant) and Jerry Wise (Owner) are requesting the following actions for the property located at the northeast corner of CSAH 11 and Woodhill Drive (PID No. 01-118-24-34-0010) in the City of Independence, MN:

- a. **RESOLUTION 21-0706-03:** Considering approval of Preliminary and Final Plat for a proposed subdivision of the subject property to create four (4) new lots (3 would have lakeshore on Lake Sarah).

Donavon DesMarais (Applicant) and Jerry Wise (Owner) are requesting the following actions:

- a. Preliminary Plat for a proposed subdivision of the subject property to create four (4) new lots (3 would have lakeshore on Lake Sarah).
- b. Final Plat for a proposed subdivision of the subject property to create four (4) new lots.

Property/Site Information:

The property is located at the northeast corner of CSAH 11 and Woodhill Drive. There is a non-conforming detached accessory structure located on the property. There are several wetlands on the property, and it has lake frontage on Lake Sarah.

Property Information: PID No. 01-118-24-34-0010

Zoning: *Rural Residential*

Comprehensive Plan: *Rural Residential (S-Shoreland Overlay)*

Acreage: ~10

The applicant is asking the City to consider approving preliminary and final plat for a new four (4) lot subdivision on the subject property. Earlier this year, the City reviewed a concept plan for this development and provided feedback to the applicant and staff relating to the proposed development. The applicant has now prepared a more detailed submittal for the requested actions. The City is being asked to consider the following actions:

1. Preliminary Plat approval.
2. Final Plat approval.

The City has reviewed this plan and provided review comments to the applicant. The property is currently zoned RR-Rural Residential and is also located within the S-Shoreland Overlay zoning district adjacent to Lake Sarah. The City allows properties zoned S-Shoreland and have access to sanitary sewer, to be subdivided into 1-acre minimum lots as long as all applicable requirements can be satisfied by the applicant. The applicable requirements that stipulate the number of lots generally relate to the minimum road frontage (200 LF – for lots less than 3.49 acres), minimum shoreline frontage (100 LF) and minimum width at the building setback line (100 LF).

505.13. Zoning provisions.

Subd. 1. *General.* The following standards shall apply to all proposed developments and subdivisions within the shoreland district of the protected waters listed in subsection 505.05. Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than those set forth herein, then the more restrictive standards shall apply.

Subd. 2. *Lot standards.*

	Unsewered Areas			Sewered Areas		
	NE Waters	RD Waters	Tributary Streams	NE Waters	RD Waters	Tributary Streams
Lot Area	2.5 acres	2.5 acres	2.5 acres	1.0 acre	1.0 acre	1.0 acre
Water frontage and lot width at building line	200 ft	200 ft	200 ft	125 ft	100 ft	100 ft
Structure setback from ordinary high water mark	150 ft	100 ft	100 ft	150 ft	100 ft	100 ft
Structure setback from roads and highways	85 ft from centerline or 50 ft. from right-of-way, whichever is greater					
Structure height limitation	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft
Maximum lot area covered by impervious surface	25%	25%	25%	25%	25%	25%
Sewage system setback from ordinary high water mark	150 ft	75 ft (RR) 150 ft (AG)	75 ft (RR) 150 ft (AG)	125 ft	75 ft	75 ft

Proposed Lot Details:

Lot No.	Lot Area	Lot Width at OWHL	Lot Width at Setback	Frontage
Lot 1	2.0 acres	142 LF	~120 LF	137 LF
Lot 2	2.8 acres	107 LF	~115 LF	137 LF
Lot 3	3.2 acres	129 LF	~125 LF	137 LF
Lot 4	2.12 acres	N/A	N/A	139 LF/619 LF

A detailed review of the storm water, grading, wetlands and infrastructure details has been completed by the City. The following comments should be considered by the City:

1. There is no grading being proposed as a part of the subdivision.
 - a. Each lot will be individually graded at the time a building permit is pulled.

- b. Each lot will be individually connected to City sewer at the time a building permit is pulled.

As a result, there are no overall development concerns relating to grading, utilities or stormwater.

2. A wetland delineation has been completed for the property. The applicant is proposing to contain the wetlands and the requisite buffer within a newly established drainage and utility easement. The establishment of the D&U easements surrounding wetlands and wetland buffers is required and consistent with established City standards.
 - a. It should be noted that Lot 3, Block 1 has approximately 5 feet of clear access from the main portion of the lot to get to the lake side of the property. In addition, the applicant would have to cross the wetland in some manner to access the lake. As a result of these conditions, it is recommended that the developer be required to provide perspective buyers with information relating to the lot limitations. The City has prepared information relating to Lot 3 that will be required to be recorded against the property.
3. The applicant has identified the potential home sites for each lot along with the prescribed building setbacks.
4. The proposed subdivision creates a total of 4 lots: 3 with shoreland access to Lake Sarah. The City requires a minimum lot public road frontage of 200 LF per lot. This property has approximately 1169 LF of total frontage on Woodhill Drive and CSAH 11. The City can waive the minimum frontage requirement per lot if the following criteria is satisfied.

^b Lots must have no less than the specified minimum frontage respectively on a right-of-way, provided that the city council may waive the requirement if the following conditions are met:

- (1) The applicant submits and the city council approves a development plan encompassing all land under the control of the applicant.*
- (2) The development plan must demonstrate that vehicular and pedestrian access, as well as emergency and public vehicular access can be provided to each lot in the development plan.*
- (3) The applicant must enter into a private road agreement that meets the criteria of subsection 510.05, subdivision 70 of this Code as well as additional conditions deemed necessary by the city council to protect the health, safety and welfare of the occupants of the lots within the development plan.*

The proposed layout appears to create a more advantageous configuration due to access for all lots coming off of Woodhill Drive versus CSAH 11. During the review of the concept plan, Council and Planning Commission noted that access for all lots off of Woodhill Drive would better serve the proposed properties. Hennepin County has also indicated that an additional access onto CSAH 11 would not likely be approved. One key aspect of this consideration is that the property has the requisite length of frontage to support all four proposed lots. The City would therefore be waiving the frontage requirement for each individual lot, but not the reduction of total frontage required to realize the lots.

5. The proposed layout is somewhat impacted by the existing detached accessory structure located on Lot 2, Block 1. This structure is not considered a legal structure as there is no principal structure located on this property. It is recommended that the City require the developer to enter into an agreement and require an escrow deposit of \$5,000 that would stipulate that there shall be no use of the building until such time as a new

principal home building permit is pulled and construction commences on the structure. It should further be noted that this structure is shown to meet all applicable building setbacks in the proposed condition.

6. There is a second existing detached accessory structure located on Lot 2, Block 1 near the shoreline. This shed is also considered to be an illegal structure as there is no principal structure on the property. In addition, the maximum size of a detached accessory structure located within 100 feet of the OHWL of the lake is 120 SF. The City will verify the size of this shed which will need to comply with all applicable requirements.
7. The proposed lots would be connected to the City's sanitary sewer system. The type of connection to the public sewer line will need to be further reviewed and considered by the City at the time a building permit is pulled. It has been noted by the City that the invert elevation of the existing public sewer may dictate additional restrictions for the elevations of the proposed homes.
8. There is one existing connection to the sanitary sewer serving the existing detached accessory structure. This connection can be used for one of the proposed lots. The three new and additional lots would be subject to applicable connection fees in addition to the initial assessment fee of \$9,550 per lot.
9. As historically has been done along County Road 11, Hennepin County is requesting additional right of way for future trail and road expansion. The existing road right of way is 80' along this property. This means that the County would like an additional 10' for future road expansion. In addition, the County is recommending that the City consider requiring a 10' wide easement that could be used for a future trail. There is a proposed 10' wide drainage and utility easement that will also need to include trail language if required by the City. The County's right of way request has been consistently applied to all recent subdivisions along CSAH 11.
10. The City's current park dedication fee is \$3,500 per lot (less than 4.99 acres).

The proposed subdivision of this property is generally in keeping with the existing Rural Residential zoning district. The proposed lots would be similar in nature and character to the surrounding properties. Lots along Woodhill Drive range in size from approximately .5 acre to 2 acres.

Planning Commission Discussion and Recommendation:

Commissioners reviewed the requested plat and asked questions of staff and the applicant. Commissioners noted that while the layout did not meet the requirements pertaining to road frontage, the overall property had adequate frontage which would distinguish this property from other properties requesting reduced frontage. Commissioners discussed the existing detached accessory structure. Commissioners wanted a condition added to the resolution that clearly noted that the existing building does not have any existing conditions which will be grandfathered by the approval of this subdivision. In particular, Commissioners noted that no accessory dwelling unit has been approved for this structure and any use of the structure would have to meet all applicable requirements of the City. Commissioners also discussed the limited access to the water on Lot 3. It was noted that the City will provide language pertaining to the restrictions on water access and grading and filling of the wetlands and wetland buffers. Commissioners recommended approval of the preliminary and final plat with the conditions and findings contained within this report and the resolution.

Recommendation:

The Planning Commission recommended approval of the applications for a preliminary and final plat with the

following findings and conditions:

1. The proposed preliminary and final plats meet all applicable conditions and restrictions stated in Chapter V, Section 500, Subdivisions, in the City of Independence Zoning Ordinance.
2. Approval of the Preliminary and Final Plat is subject to the following:
 - a. The Applicant shall address all comments made within this report and recommended by the Planning Commission.
 - b. The Applicant will allow the inspection of the existing building by the City's Building Inspector. Any building code requirements that were not permitted by the City shall be corrected and brought into compliance with applicable building codes.
 - c. The Applicant shall enter into an agreement with the City and provide a \$5,000 escrow relating to the use and removal of the two detached accessory structures located on Lot 2, Block 1. The agreement will stipulate conditions of use and or modification of the existing structures.
 - d. The Applicant shall revise the plat to include the additional 10 feet of right of way and 10' trail easement for the future trail and road expansion as requested by Hennepin County.
 - e. The Applicant shall provide prospective buyers with the Letter of Information Pertaining to the Lake Sarah Hill Subdivision as prepared by the City and attached hereto.
 - f. There is one existing connection to the sanitary sewer serving the existing detached accessory structure. This connection can be used for Lot 1 or 2, Block 1. The three new and additional lots would be subject to all applicable connection fees in addition to the initial assessment fee of \$9,550 per lot. The \$9,550 shall be paid by the developer prior to recording of the final plat.
 - g. The Applicant shall pay the City's current park dedication fee of \$3,500 per lot (less than 4.99 acres). This The \$3,500 per lot shall be paid by the developer prior to recording of the final plat.
3. The existing detached accessory structure is not an approved accessory dwelling unit. Any use of the structure is subject to all applicable ordinances of the City of Independence.
4. The Applicant shall pay for all costs associated with the City's review of the requested preliminary and final plat.
5. The Applicant shall record the final plat and associated documents with Hennepin County within six (6) months of City Council approval.

There was discussion. Kaltsas reiterated all 4 lots would be connected to city sewer, so they'd pay the connection fee and all sewer related fees. There would be 4 park dedication fees to total \$14,000 and an escrow would be required. Kaltsas spoke to Hakanson regarding filling of wetland/buffer. Lot 3 has a wetland that crosses the lake frontage. Planning suggested we provide a letter of notice to future buyers. The only way to cross lot 3 wetland is to build a bridge. Around the pond it's very narrow and buffer would need to be maintained. Johnson said very important for this to be recorded/noted. This is above the OHW.

Donavan DesMarais affirmed Marks accurate explanation. He asked what is unique to this lot? Kaltsas said it's above the OHW is above so there's no impact permitted. DesMarais asked about snowmobiling in this area. Kaltsas said there are no

snowmobile restrictions. Spencer said restricted to filling or mowing. As long as there's a boardwalk they're fine. Grotting-is this a disclosure requirement for lot 3? Kaltsas confirmed it was.

Jerry Wise was present and asked what if any restrictions there are on the use of the shed once it's closed? He still has a lot of stuff in there. Also, it's being used for weekly AA meetings. Donovan gave us the okay to continue using it. Spencer said we wouldn't proactively allow illegal use of this.

Spencer agreed with the \$5,000 escrow and confirmed it is refundable. Would like a time-frame on this. Maybe 1-2 years to make this in conformance?

Motion by Spencer, second by Johnson to approve RESOLUTION 21-0706-03: Considering approval of Preliminary and Final Plat for a proposed subdivision of the subject property to create four (4) new lots (3 would have lakeshore on Lake Sarah). Ayes: Johnson, Spencer, Grotting and Betts. Nays: None. Absent: McCoy. Abstain. None. MOTION DECLARED CARRIED.

10.Nathan and Molly Kirkpatrick (Applicants/Owners) are requesting the following action for the property located at 2485 County Road 90 (PID No. 15-118-24-44-0003) in the City of Independence, MN:

- a. **RESOLUTION 21-0706-04:** Considering approval of a variance to allow a reduced side yard setback to add a screen porch to the south side of the existing home on the subject property.

Nathan and Molly Kirkpatrick (Applicants/Owners) are requesting the following action:

- a. A variance from the side yard setback to add a screen porch to the south side of the existing home on the subject property.

Property/Site Information:

The subject property is located at 2485 County Road 90. The property is on the west side of County Road 90 and just north of the intersection of County Road 90 and Pagenkopf Road. There is an existing home on the subject property.

Property Information: **2485 County Road 90**

Zoning: *Rural Residential*

Comprehensive Plan:

Rural Residential Acreage:

1.01 acres (43,995 square feet)

Discussion:

The applicant is seeking approval to construct a screen porch on the south side of the existing home. The applicant approached the City about the potential to encroach into the side yard setback along the south property line. The existing home is currently located approximately 31 feet off of the south property line. The City requires a side yard setback of 30 feet for properties zoned RR-Rural Residential. The proposed screen porch addition would encroach into the side yard setback approximately 19.5 feet. The house is not perfectly parallel to the south property line and the subsequent variance would allow a 20-

foot encroachment.

The resulting variance to the side yard setback would be 20 feet. The required setbacks for properties zoned RR-Rural Residential are as follows:

Front Yard Setback:

Required: 85 feet from centerline or 51 feet
from the ROW Existing: 143 feet from
centerline

Rear Yard Setback:

Required: 40 feet
Existing: 136 feet

Side Yard Setback (South

Side): Required: 30
feet

Existing: 31 feet

Proposed: 10 feet (variance of 20 feet)

There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a variance.

520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*
- (b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;*
- (c) the variance, if granted, will not alter the essential character of the locality.*

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)

Subd. 3. The City Council shall not grant a variance to permit a use that is not

allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)

520.23. Conditions and restrictions. The board of adjustments may recommend, and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)

Consideration of the criteria for granting a variance:

- a. Residential use of the property is consistent with the Rural Residential District.
- b. Many of the surrounding properties do not appear to be in compliance with all applicable principle or accessory structure setbacks.
- c. The character of the surrounding area is residential. The proposed screen porch addition is generally in keeping with the residential uses on properties in the surrounding area.

There are several additional items that could be considered by the City:

1. Staff discussed alternative options for locating the screen porch in compliance with applicable setbacks with the applicant. The applicant noted that the general interior configuration of the home would best support the proposed porch location. The proposed porch also is in line with the west (rear) of the existing home. The applicant has provided additional information relating to the existing conditions that are relevant to the variance request. The applicant recently began construction on a new inground swimming pool to the rear of the house. The potential location of the swimming pool was limited due to the existing septic mound, main power line and existing trees (see attached diagram prepared by applicant).
2. The applicant could locate a detached accessory structure on this property in the general location of the proposed screen porch and meet applicable setbacks (15 feet).
3. The adjacent property to the south is located approximately 19' from the shared property line.
4. The applicant discussed the encroachment with the neighboring property owner and they have provided a letter in support of the requested variance.

Ultimately the City will need to find that the criteria for granting a variance have been met by the applicant. The lots in this area are somewhat smaller (1 acre versus 2.5) than the typical rural residential property in the City. The existing home was located against the south property line setback. Due to the configuration of the house on the property and the interior layout there are some limitations to add this type of addition without impacting function of the existing structure/use. The setback of the proposed screen porch from County Road 90 and the natural screening and buffering that exists between this and the surrounding properties appear to help mitigate the potential

impacts.

Planning Commission Discussion:

Commissioners reviewed the request and asked questions of staff and the applicant. Commissioners discussed in detail the reason for needing a variance and asked why the proposed screen porch could not be located in the rear yard versus the side yard. Commissioners discussed the pool and it was confirmed that construction was under way with the pool and that could no longer be moved. The applicant noted that there are several other restrictions in the yard that caused the pool to be located in the current location. Commissioners discussed that there were several layers of information that when combined and considered together, could meet the criteria for granting a variance. Commissioners recommended approval of the requested variance with the findings and conditions noted herein.

Public Comments:

The City has received written correspondence from the adjacent property owner in support of the requested variance (see attached).

Recommendation:

The Planning Commission recommended approval of the request for a variance with the following findings and conditions.

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The City finds that the criteria for granting a variance have been satisfied by the applicant. Specifically, the City finds the following:
 - a. Residential use of the property is consistent with the Rural Residential District. The applicant is seeking a variance to allow a screen porch addition to be added onto the existing home.
 - b. The alignment of the proposed porch with the rear of the home and the proposed building architecture and exterior finishes appears to mitigate some of the potential impacts resulting from the addition.
 - c. The location of the septic mound, existing trees, power line and utilizes and interior layout of the home all combine to necessitate the requested variance.
 - d. The character of the surrounding area is residential. The proposed screen porch addition and would be in keeping and consistent with the surrounding uses found in this neighborhood.
3. The variance will permit a 20-foot reduction (from 30 feet to 10 feet) to the south side yard setback to allow the proposed screen porch to be added onto the existing

structure as depicted on the site plan and building plans attached hereto as Exhibit A. Any modification changes or alteration to the structure that does not meet applicable setbacks in the future would require additional review and approval in the form of a variance.

Spencer mentioned Planning Commission did a great job and agrees with them as to why this just can't be omitted. Kaltsas said Planning wants to revisit how variances are laid out, such as the criteria used.

It was confirmed the original house was built in 1962 and Betts noted that alone could be a hardship because he had nothing to do with this size. Nathan Kirkpatrick came on and assured that he would maintain the character of the neighborhood. Johnson said we appreciate the extra comments provided to staff today because helpful. Spencer agreed their remodel looks beautiful. Grotting commented on number of breaches that have happened in the area, and trying to find the hardship, other than the layering.

Motion by Betts, second by Grotting to approve RESOLUTION 21-0706-04: Considering approval of a variance to allow a reduced side yard setback to add a screen porch to the south side of the existing home on the subject property. Ayes: Johnson, Spencer, Grotting and Betts. Nays: None. Absent: McCoy. Abstain. None. MOTION DECLARED CARRIED.

11.City Council Pay Discussion

Betts said she felt we need to be commensurate with other cities. This would have to be done prior to the City election in November. Johnson suggested some Councilmembers in other cities get reimbursed for every single meeting and conference. Betts said there is a lot of time preparing for each City, and would like to see the Administrator coming up with a formula so we're viewed as employees. Spencer mentioned other commissioned residents' such as Joe Baker with PSCWMC and the Planning Commissioners. Just a way to tell them thank you. Spencer suggested a voter question on the City ballot, and Johnson said he'd like to keep it more low-key. Grotting suggested a public hearing. Kaltsas said Cities' Councils make these decisions. Johnson said years ago we changed the mayor term from 2 years to 4 years. Spencer suggested we have the Administrator budget for it. Kaltsas said he'd check to see if we needed to have a special resolution to do this.

Motion by Spencer, second by Betts to allow the City Administrator to budget for a pay increase for the Councilmembers and other appointees. Ayes: Johnson, Spencer, Grotting and Betts. Nays: None. Absent: McCoy. Abstain. None. MOTION DECLARED CARRIED.

Johnson mentioned to Council the state small cities road fund was only approved for 1 year again. Senator Osmek will attend our next Council meeting.

Motion by Betts, second by Spencer to adjourn at 8:53 p.m. Ayes: Johnson, Grotting, McCoy, Betts, and Spencer. Nays: None. Absent: None. None. Abstain. None. MOTION DECLARED CARRIED.

Respectfully Submitted,
Beth Horner/ Recording Secretary