

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, JUNE 14, 2016 -7:30 P.M.

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 Marvin Johnson at 7:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson and Councilors Betts and Grotting

ABSENT: Councilors McCoy and Spencer

STAFF: City Planner & City Administrator Mark Kaltsas, City Administrative Assistant Horner, City Attorney Vose

VISITORS: Jay Fogelson, Lynda Franklin

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 May 24, 2016 City Council Meeting.
- b. Approval of City Council minutes from the May 19, 2016 City Council Workshop.
- c. Approval of Accounts Payable; Checks Numbered 16174-16209 and 16219
 - a. For Information - Checks Numbered 16210-16218 are Payroll Checks.
- d. Approval of Sanitary Sewer and Lift Station Easement Agreement for Brown/Jacobsen.
- e. Approval of Time Extension Request to Record Minor Subdivision of the Property Located at 6485 Fogelman Road.

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

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

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

Grotting attended the following meetings:

- Planning Commission Meeting
- LMCC Meeting
- Highway 12 Coalition Meeting

- Scott Fix funeral

McCoy attended the following meetings:

Betts attended the following meetings:

- Highway 12 Press Conference at MPFC
- Fire Commission Meeting
- Highway 12 Coalition Meeting
- West Hennepin Chamber of Commerce Meeting

Johnson attended the following meetings:

- Scholarship Presentation at Orono High School
- Haven Homes Advisory Committee Meeting
- Two Northwest League of Cities Meetings
- Gillespie Center Volunteer Appreciation Luncheon
- Westonka Historical Society Meeting
- Police Commission Meeting
- Community Action Partnership Meeting
- Suburban Hennepin County Finance Committee Meeting
- City Council Work Session
- Orono Healthy Youth Meeting
- Land Use Advisory Committee Meeting
- Lake Independence Association Annual Meeting
- Highway 12 Press Conference at MPFC
- Sensible Land Use Coalition Meeting
- Senior Community Services Board Meeting
- Community Action Partnership Suburban Hennepin County Board Meeting
- American Legion Memorial Day program at Lewis Cemetery
- Orono High School Senior Scholarship Breakfast
- Fire Commission Meeting
- Maas-Kusske Eagle Scout presentation
- NLC mosquito webinar
- League of Minnesota Cities nominating committee phone conference
- Orono graduation
- Gene Ahlstrom funeral
- Wheelock Whitney funeral
- League of Minnesota Cities conference

Horner attended the following meetings:

- T.E.P. meeting
- West Hennepin Chamber of Commerce Meeting

Kaltsas attended the following meetings:

7. JAY FOGELSON (APPLICANT/OWNER) REQUEST THAT THE CITY CONSIDER THE FOLLOWING ACTION FOR THE PROPERTY LOCATED AT 4618 SOUTH LAKE SARAH DRIVE, INDEPENDENCE, MN (PID NO. 02-118-24-21-0005):

- a. **RESOLUTION 16-0614-01** – Approving a variance to allow a reduced side yard setback on the west side of the property which would permit a deck addition.

Kaltsas said this was coming from the Planning Commission. The City granted a variance for this property in 2008 to allow the expansion of the existing home on the property. The variance that was previously granted, allowed the expansion of the home along the west property line, utilizing the existing 3.4 foot setback. The variance allowed the expansion of the home up, allowing a second story, and out (to the north) for additional space. Those improvements were made to the home in 2014 and now the applicant would like to expand the home again.

The applicant would like the City to consider granting two variances to the property. The first variance requested would allow the construction of deck to the north of the home (lakeside) utilizing the existing setback of approximately 3.4 feet from the west property line. The deck is proposed to be constructed in line with the existing west wall of the home. The home and proposed deck are setback a significant distance from the OHWL and would not encroach into the shore land setback.

He said the second variance requested is to allow the expansion of the house and garage towards the east property line. The applicant would like to expand the house and replace the existing garage. The applicant is proposing to expand the house and garage by constructing a connected garage and addition between the existing home and new garage. The applicant is proposing to utilize the “east line” of the existing detached garage as the setback for the new structure. The proposed setback would be 1’-2” from the east property line. The current detached garage is setback approximately 1’-10” from the east property line.

The subject property is considered a substandard lot of record in accordance with the City’s Shoreland Ordinance Section 505.15.

505.15. Substandard lots. Lots of record in the office of the county register of deeds or registrar of titles prior to December 1, 1982, which do not meet the requirements of this section 505, may be allowed as building sites provided:

- (a) such use is permitted in the zoning district;*
- (b) the lot of record is in separate ownership from abutting lands, and can meet or exceed 60% of the lot area and setback requirements of this section; and*
- (c) all requirements of section 705 of this code regarding individual sewage treatment systems are complied with.*

Setbacks for properties located in the shore land ordinance are as follows:

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. The applicants are seeking a variance that exceeds the typical setback granted for properties in this area.
- b. Each property in this area is non-conforming and can require relief from certain setbacks. The City will need to determine if the requested variance is unique to this property.
- c. The character of the surrounding area is residential. The proposed single family home is in keeping with the City’s comprehensive plan.

The Planning Commission will need to determine if the requested variance meets the requirements for granting a variance. Several additional considerations that could be considered are as follows:

1. This lot was developed prior to the establishment of the setbacks in the current ordinance being adopted.
2. The adjacent property to the west received a variance to allow an addition (attached garage and bonus room) that has an 8 foot setback (10 foot variance) from the side yard setback.
3. The property to the east appears to meet the side yard setback of 18 feet.
4. The applicant currently has access to the lakeside of the home via an opening between the existing home and detached garage. This access is approximately 20 feet in width and allows for an open (non-covered) access to the remainder of the property. The proposed addition would significantly restrict access to the remainder of the property and would make it difficult to maintain the proposed structure or property from the applicant’s property without encroaching onto the neighbor’s property.

5. The building code requires a minimum of a 5 foot separation between a building and a property line (without making more onerous fire preventive building improvements). Based on this separation, the proposed building would potentially restrict the development of the adjacent property due to the limited setback.
6. The proposed configuration does not appear to be the only layout that could accommodate the applicants proposed improvements. It is possible that the garage addition could be shifted to the west to provide for a greater setback along the east property line. The City could consider requiring an increased setback along one side of the property to maintain a reasonable access to the lakeshore property.
7. The existing detached garage is located approximately 1'-10" from the east property line and can remain in its current location. The applicant could connect the existing detached garage to the existing home as long as all applicable setbacks are maintained. It appears that this connection would be possible without any variances. If this were to occur, the access to the back (lakeshore) property would be restricted.
8. The applicant will need to provide the City with an actual impervious surface calculation.
9. The applicant will need to provide the City with an engineered grading plan that depicts how the property will be graded so that no water is discharged onto the neighboring properties.
10. The home is connected to City sewer.

Staff is seeking direction and feedback from the Planning Commission relating to the proposed addition and requested variances. The variance along the west property line to allow the construction of the deck is consistent with the previously granted variance. The proposed expansion of the house and garage to the east will limit access to the lakeshore property and will make it difficult to maintain the new structure. The City has typically considered granting variances for non-conforming properties in this area. The City will need to determine if there is a hardship that warrants the requested variance and determine what a reasonable setback would be for the proposed expansion.

Kaltsas noted the City received comments from the neighboring property owner to the east. He stated that he was concerned with the proximity of proposed addition and spoke to that point at the public hearing. He was concerned that the close proximity of the proposed addition would negatively impact his property. He was also concerned with the impact to his property during construction noting that the proposed addition could not be constructed without construction encroaching onto his property. He recommended that the City consider an increased setback from the east property line.

Kaltsas said the Commissioners discussed the requested variance and asked questions of staff and the applicant. Commissioners asked staff if the fire code stipulated any setback requirements that should be noted. Staff discussed that the building code has a minimum setback requirement of 5 feet from a property line. Commissioners expressed concerns relating to the close proximity of the proposed addition on the east side of the property. Commissioners asked how the addition could be maintained without having to go on the neighboring property. Commissioners also discussed that the proposed addition would limit access to the rear of the property. Planning Commissioners discussed whether or not the addition could be located further to the west to provide for a larger setback. The applicant stated that moving the addition to the west would encroach on the front door of the home. Commissioners believed that the proposed addition to the east could not be

recommended for approval as proposed and asked the applicant to consider revising the plans and coming back with a proposal that addressed their concerns. Commissioners asked if they could separate the request and did recommend approval of the variance on the west property line to allow the construction of the proposed deck. The applicant will be bringing back a revised plan at the next Planning Commission Meeting for further review and consideration by the Planning Commission.

The Planning Commission recommended approval of the requested variance to allow a 3'-4" setback on the west property to allow the construction of the proposed deck 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 variance allows allow a 3'-4" setback on the west property line to allow the construction of the proposed deck. Any changes to the configuration of the deck as proposed or future expansion will require City Council approval through the variance review process.
3. The total impervious surface coverage for this property will not exceed 25% of the total lot area. The Applicant shall submit a survey which provides impervious surface calculations to the City.
4. The Applicant shall pay for all costs associated with the City's review of the requested variance.
5. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts.

Betts asked about the neighbors and any comments. Kaltsas said there were not any comments relating to the deck. He noted that the original variance for that had expired and the applicants came back with revisions. He said the neighbors on the east side are not in favor of the expansion as proposed.

Johnson asked if this was a special resolution. Kaltsas confirmed this was just a resolution for the deck. Vose agreed and said that for the second request the sixty day rule would be applied. Vose noted the applicant is agreeable to a sixty day extension if needed for the second request.

Motion by Johnson, second by Betts to approve Resolution 16-0614-01. Ayes: Johnson, Betts and Grotting. Nays: None. Absent: McCoy and Spencer. MOTION DECLARED CARRIED.

8. GERALD AND CHERYL WISE (APPLICANTS/OWNERS) REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY IDENTIFIED AS PID NO. 11-118-24-22-0003 IN INDEPENDENCE, MN:
 - a. **ORDINANCE 2016-07** – Approving the rezoning of the subject property from AG-Agriculture to RR- Rural Residential.
 - b. **RESOLUTION 16-0614-01** – Approving a minor subdivision to allow the subdivision of property into two lots.

This property is zoned AG-Agriculture, but guided RR-Rural Residential in the City's Comprehensive Plan. The applicant is seeking rezoning of the property to Rural Residential which would then allow the subject property to be subdivided. The City allows the subdivision of property in the rural residential zoning district in accordance with the requirements in the City's zoning ordinance. Kaltsas noted this rezoning is in accordance with the comprehensive plan.

Kaltsas said 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. Based on the rural residential lot provisions, the maximum number of lots this property could yield would be four (4). This number is only possible if all applicable requirements were met. It is not anticipated that this property could realize the maximum number of lots due to the unique topography and wetlands. One factor that was considered in reviewing the subdivision is the location of the wetlands on the property. The wetlands cover approximately one-half of this property in a manner that appears to limit the future development potential. 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) Maximum lot area 10 acres
- (c) *Minimum lot frontage on an improved public road or street:*

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

(e) *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.*

^b A waiver to permit lots with reduced frontage on a public right-of-way, neck lots or lots with no frontage on a public right-of-way but with frontage on a common driveway may be considered and granted or not granted. If granted, evidence must be provided that all standards established and defined in Section 510.05, Subdivision 20 of this zoning code are met: (Amended, Ord. 2010-06)

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

<u>Lot No.</u>	<u>Gross Acres</u>	<u>Upland Acreage</u>	<u>Frontage</u>	<u>Lot Frontage/Depth</u>
East Parcel	14.91 acres	3.96 acres	300.00 LF	1:4
West Parcel	5.02 acres	2.52 acres	361.04 LF	1:2

The proposed subdivision would create two new lots. The applicant has worked to develop the property in a manner that would respect the natural topography and wetlands and capture the best building site locations. The applicant considered a split of the property that would have created two nearly equal lots, but that configuration would impact potential views and usability of the east lot. The proposed configuration seems to provide for two lots that have good building sites and clean lot lines.

Access to both lots would be from CSAH 11. The County has reviewed the requested subdivision and provided the City with several comments. The applicant will need to comply with all applicable County comments. The County commented on the following aspects of the development:

1. There is an existing access to the property along the western property line. The County does not believe that this location has suitable site lines and is requesting that the applicant consider a shared driveway near the proposed division line between the east and west parcels.
2. The County is requesting an additional 17 feet of right of way for future trail and road expansion. This has been a consistent request from all properties and subdivisions along CSAH 11.
3. The County is requesting a drainage and utility easement from the existing 24" culvert beneath CSAH 11 to the wetlands.

Both lots will need to provide the requisite ten (10) foot perimeter drainage and utility easements as required by ordinance (Section 500.15, Subd.'s 1 and 2). The proposed development does not trigger the City's stormwater management requirements because there will not be an increase in new impervious surface.

The newly created lot will be required to pay the City's requisite park dedication fee. The requisite park dedication fee is as follows:

<u>Lot No.</u>	<u>Gross Acres</u>	<u>Park Dedication Amount</u>
East Parcel	14.91	Existing Parcel
West Parcel	5.02 acres	\$4,250

The total park dedication fee collected will be \$4,250. The park dedication fees will need to be paid prior to the City recording the subdivision.

Park dedication fee of \$3,500 per lot up to 4.99 acres,

plus \$750 per acre for each acre over 5 acres

Other Considerations:

1. The property is guided rural residential by the City's Comprehensive Plan. The proposed rezoning and subdivision is keeping with the intent and guidance provided by the Comprehensive Plan.
2. The applicant provided the City with the requisite percolation tests verifying that each lot can accommodate a primary and secondary septic site.
3. The applicant has prepared a wetland delineation for this property. All wetlands and their requisite buffers will need to be located within the drainage and utility easements.
4. The applicant is not proposing any additional public infrastructure as a result of this subdivision. 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

Kaltsas said the proposed rezoning and subdivision of this property appears to be in keeping with the vision of the comprehensive plan and with the character of the surrounding properties. The proposed lots conform to all applicable criteria for rural residential lots. Given the extensive wetlands on the property and its proximity to adjacent geographic features as well as the surrounding properties, there does not appear to be anything that the City would be preventing for future development. The proposed subdivision meets all of the applicable standards of the City's zoning and subdivision ordinance. Kaltsas said the City has not received any written or verbal comments regarding the proposed subdivision to permit a rural view lot.

Kaltsas said the Commissioners discussed the request and noted that the proposed subdivision appeared to meet applicable criteria. Commissioners recommended approval of the proposed rezoning and minor subdivision to the City Council.

Kaltsas said the Planning Commission recommended approval to the City Council, of the requested Rezoning and Minor Subdivision, with the following findings and conditions:

1. The proposed Rezoning and Minor Subdivision meets all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning and Subdivision Ordinance.
2. City Council approval of the Minor Subdivision is subject to the following:
 - a. The Applicant shall address all comments and applicable requirements pertaining to the proposed subdivision.
 - 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 Hennepin County transportation review comments and requirements.
 - d. The Applicant shall obtain all necessary City, County, PCA and other regulatory agency approval and permits prior to construction.

3. The Applicant shall pay the park dedication fees in the amount of \$4,250.
4. The Applicant shall pay for all costs associated with the City's review of the rezoning and minor subdivision.
5. The Applicant shall record the minor subdivision within six (6) months from the date of the City Council approval.
 - e. The applicant shall provide the City with all requisite drainage and utility easements. If a shared driveway is provided, the applicable easements shall be drafted and recorded as a part of the minor subdivision.

Johnson asked about the park dedication fee and said that it seemed steep for the little bit of acreage. Kaltsas said it was consistent to how it is applied. Betts said the wetland percentage was figured at a different percentage historically. Kaltsas said he would review the numbers. Vose stated it could be passed with item number three stating the park dedication fee would be dictated by city code.

Motion by Grotting, second by Betts to approve Ordinance 2016-07 Rezoning Property from Ag to RR. Ayes: Johnson, Betts and Grotting. Nays: None. Absent: McCoy and Spencer. MOTION DECLARED CARRIED.

There was discussion around shared driveways and access to the property. Vose said the County can limit access as it is a county road but we may reach out to them with comments. He said the city may impose restrictions and allow only one access as part of the subdivision ruling. Betts asked if the county came out to look at the site lines in regards to a shared driveway. Kaltsas said they thought the driveway could line up with the driveway across the street. He noted the culvert is low so they would need to extend the culvert and build up. Betts noted it could become an issue for the applicant if we required a shared driveway. Betts said since the County approved two different access points maybe the Council should go with that recommendation. Kaltsas said it does make sense to have the second driveway as long as the County allows it. Grotting asked if they could write in a requirement so that the driveway was elevated a bit to allow for better site lines onto County Road 11. Vose said it would be 2c and would state that if a shared driveway is planned it would require the easements to be followed as well as specific grading. Johnson asked if they should draft another resolution to be approved on the Consent Agenda.

Motion by Grotting, second by Betts to have Staff rewrite Resolution 16-0614-02 with suggested changes and put on the Consent Agenda at the next Council meeting. Ayes: Johnson, Betts and Grotting. Nays: None. Absent: McCoy and Spencer. MOTION DECLARED CARRIED.

9. ELECTRONIC CITY COUNCIL PACKETS – DISCUSSION ON PAPER PACKET REPLACEMENT

Betts stated she likes the electronic packets. Kaltsas said they could discuss further at a work session if need be as two council members are not present for the discussion tonight. Johnson joked that he did not object to the idea but he may have to go back to school to utilize it. Kaltsas noted Dropbox would be necessary for larger meetings that would be too big of a file to send via email.

10. OPEN/MISC.

Johnson asked about the agenda for the next meeting. Kaltsas said it was very light agenda. Johnson said he will be at a National League of Cities steering committee meeting in Kansas City. Kaltsas said he would let everyone know if there are plans to cancel the next meeting.

11. ADJOURN.

Motion by Betts, second by Grotting to adjourn at 8:25 p.m. Ayes: Johnson, Betts, McCoy, and Grotting. Ayes: Johnson, Betts and Grotting. Nays: None. Absent: McCoy and Spencer. MOTION DECLARED CARRIED.

Respectfully Submitted,

Trish Bemmels/ Recording Secretary