



PLANNING COMMISSION MEETING AGENDA
REGULAR MEETING
TUESDAY OCTOBER 15, 2019

7:30 PM Regular Meeting

1. Call to Order
2. Roll Call
3. Election of Officers
4. Approval of Minutes:
 - a. July 16, 2019 Planning Commission Meeting
 - b. August 20, 2019 Planning Commission Meeting
 - c. September 17, 2019 Planning Commission Meeting
 - d. October 1, 2019 Planning Commission Meeting
 - e. October 1, 2019 City Council Meeting Minutes (For Information Only)
5. **PUBLIC HEARING:** John Hilbelink (Applicant/Owner) requests that the City consider the following action for the properties located at 5062 Perkinsville Road, Independence, MN (PID No.s 24-118-24-13-0005 and 24-118-24-13-0006):
 - a. A minor subdivision to allow a lot line rearrangement to move the existing line between the properties. The rearrangement would create “equal” properties on Perkinsville Road.
6. **CONCEPT PLAN REVIEW:** The City will discuss the concept plan and provide informal feedback relating to the proposed subdivision of the property located at 2236 South Lakeshore Drive. The proposed subdivision would create 28 single-family lots which includes the existing residence.
7. **PUBLIC HEARING:** A proposed text amendment to the City of Independence Ordinances as follows:
 - a. Chapter 5, Section 530.01, Subd. 3 Accessory Uses – Considering an amendment to the maximum height of an accessory structure. The City will discuss increasing the permitted height of detached accessory structures.

8. Open/Misc.

9. Adjourn.

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, JULY 16, 2019 – 7:30 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Gardner at 7:30 p.m.

3. ROLL CALL

PRESENT: Commissioners Thompson, Gardner and Dumas
STAFF: City Administrator Kaltsas, Administrative Assistant Horner
ABSENT: Commissioner Palmquist
VISITORS: Lynda Franklin, Jan Gardner, Bob Volkenant

4. APPROVAL OF MINUTES:

- a. June 18, 2019 Planning Commission Meeting
- b. July 2, 2019 City Council Meeting Minutes (For Information Only)

Motion by Thompson, to approve the June 18 Planning Commission Minutes, second by Dumas. Ayes: Thompson, Gardner and Dumas. Nays: None. Absent: Palmquist. Abstain. None. Motion Approved.

5. **PUBLIC HEARING:** George and Linda Betts (Applicants) request that the City consider the following action for the properties identified by (PID No.s 14-118-24-34-0003 and 14-118-24-34-0007) and located at 6050 Pagenkopf Road and 2465 Becker Road in Independence, MN:

- a. A minor subdivision to allow a lot line rearrangement to adjust the east west property line separating the properties to the north.
- b. A conditional use permit to allow the existing detached structure to be used as an accessory dwelling unit on the 6050 Pagenkopf Road property.

Kaltsas said there are two subject properties involved in the applicant's request. Both properties are located at the intersection of Pagenkopf and Becker Roads. There is a residential structure located on each property. 6050 Pagenkopf Road has two additional detached accessory structures. The City allows accessory dwelling units as a conditional use in both Rural Residential and Agriculture zoning districts. The intent of the ordinance was to allow for "mother-in-law" type units to be located within the principle structure or within a detached accessory building. The applicants have two properties with a residential structure located on each property. The applicants have historically used the residential structure located on the 2465 Becker Road property as a "mother-in-law" unit. It is apparent that the structure was constructed as a secondary dwelling due to the location of the structure, the lack of an independent access, the subordinate size of the second structure and the proximity of the structure to the principle residence on 6050 Pagenkopf Road. The applicants would like to adjust the east/west property line separating the two properties to the north to capture the secondary residential structure as an accessory dwelling unit on the 6050 Pagenkopf Road property. This lot line rearrangement would allow the 2465 Becker Road property to be developed with a new principle residential structure.

The existing accessory dwelling unit is comprised of two bedrooms, a bathroom, a kitchen, dining and family room area. In order to allow an accessory dwelling unit, the applicant will need to demonstrate that they meet all

applicable criteria for granting a conditional use permit. The City has criteria broadly relating to Conditional Use Permits and then more focused criteria relating specifically to accessory dwelling units.

An accessory dwelling unit must meet the following criteria:

Subd. 2. "Accessory Dwelling Unit." A secondary dwelling unit that is:

- (a) Physically attached to or within a single-family dwelling unit or within a detached^a accessory building that has a principal structure on the parcel; and*

- (b) **The applicant is proposing to utilize the existing detached accessory dwelling unit. Subordinate in size to the single-family dwelling unit; and***

The proposed accessory dwelling unit would be subordinate in size to the single-family dwelling unit.

- (c) Fully separated from the single-family dwelling unit by means of a wall or floor, with or without a door; and*

The proposed accessory dwelling unit would be separated from the single-family home.

- (d) Architecturally compatible with the principal structure (using materials, finishes, style and colors similar to the principal structure); and*

The proposed accessory structure is existing and somewhat architecturally similar to the principal structure. The structure has siding and architectural features that complement the principle home on the property.

- (e) The lesser of 33% of the above ground living area of the principal structure or 1,200 square feet, and no less than 400 square feet; and*

The principal structure has 3,306 square feet of above ground space not including the basement. 33% of 3,306 square feet equals 1,091 square feet. The applicant is proposing to include the existing detached accessory structure which is a total of 1,100 square feet. The proposed square footage would be close (would round up 9 SF) to equal to the permitted maximum number of square feet.

- (f) Not in excess of the maximum square footage for accessory structures as permitted in this code; and*

The maximum accessory structure size for properties zoned RR-Rural Residential is 2% of the buildable (upland) lot area. In the after condition, the subject property would be 2.93 acres. This would allow a total of 2,552 SF of accessory structures to be constructed on the property. There are two existing detached accessory structures comprised of 830 SF and 200 SF which total 1,030 SF. With the additional 1,100 SF of the existing accessory dwelling unit added to the total square footage (2,130), the subject property would comply with applicable standards.

- (g) Has permanent provisions for cooking, living and sanitation; and*

The existing accessory dwelling unit has permanent provisions for cooking; living and sanitation.

- (h) Has no more than 2 bedrooms; and*

The existing accessory dwelling unit has two bedrooms.

- (i) *Limited to relatives of the homesteaded owner occupants or the homesteaded owners of the principal structure. The total number of individuals that reside in both the principal dwelling unit and accessory dwelling unit may not exceed the number that is allowed by the building code; and*

The applicant is proposing that the accessory dwelling unit be occupied solely by family members.

- (j) *Uses the existing on-site septic system^b or an approved holding tank; and*

The existing detached accessory dwelling unit on the 2465 Becker Road property has an existing on-site septic system that is in working condition. The applicant is asking the City to consider allowing the existing detached accessory unit to continue to utilize the existing system rather than connecting to the septic system serving the principle residence. The City can condition approval of the CUP on this condition. If considered by the City, it is recommended that the condition stipulate that the accessory dwelling unit be connected to the principle system upon sale or transfer of the property.

- (k) *Respectful of the future subdivision of the property and the primary and secondary septic sites. The City may require a sketch of the proposed future subdivision of a property; and*

The subject property cannot be further subdivided and the location of the existing accessory dwelling unit to the north of the existing home would not impede the ability to subdivide the property or locate a secondary septic site if standards were changed in the future.

- (l) *In compliance with the adopted building code relating to all aspects of the dwelling unit.*

The existing detached accessory dwelling unit meets all applicable building codes.

^a *On lots less than 2.5 acres, the accessory dwelling unit must be attached to the principal dwelling unit or located/constructed within an existing detached accessory structure that meets all criteria of this section.*

^b *The existing on-site septic system will be required to be inspected by the City to ensure compliance with all applicable standards. Any system that does not meet all applicable standards shall be brought into compliance as a part of the approval of the accessory dwelling unit.*

The existing detached accessory dwelling unit has historically been used as an “mother-in-law” unit of the principle residence located on 6050 Pagenkopf Road. The historic use of the property and the relationship of the existing accessory dwelling unit to the principle structure would not change if the property line was adjusted to the north. The remaining property located at 2465 Becker Road would be required to meet all applicable standards. A primary and secondary septic system will be required to be verified on the 2465 Becker Road property in the after condition.

2465 Pagenkopf Road

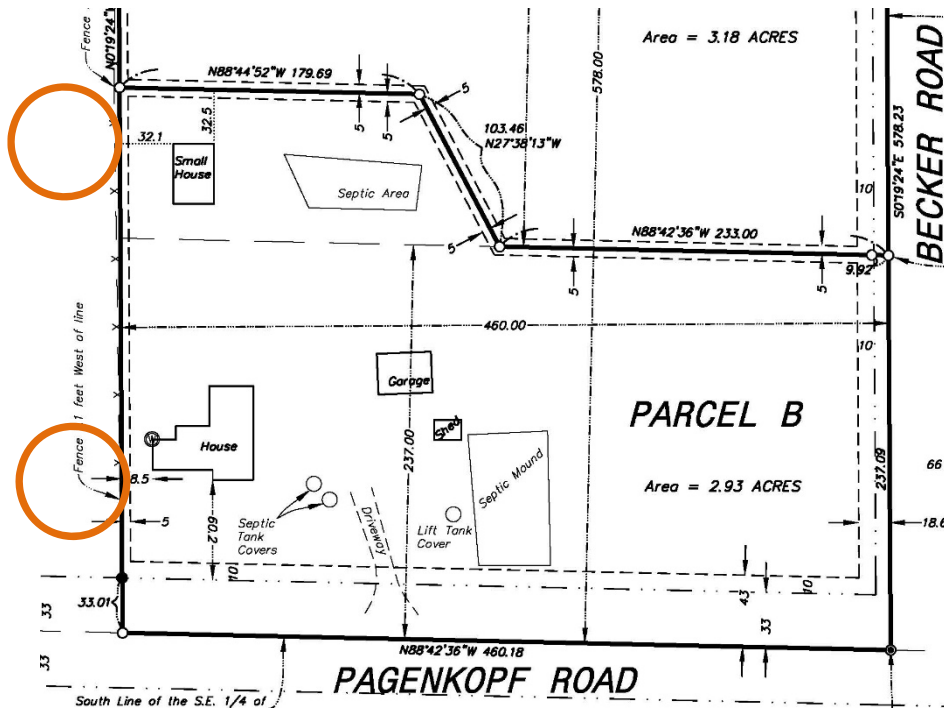
Minimum Lot Size Required: 2.5 acres

Minimum Lot Size Proposed: 3.18 acres

Road Frontage Required: 200 LF

Road Frontage Proposed: 578 LF

The 6050 Pagenkopf Road property will need to comply with applicable standards in the after condition. The applicant is proposing to adjust the north property line so that the existing accessory dwelling unit meets the applicable side yard setback of 15 feet (proposed 32.5 feet). The existing residential structure and the detached accessory dwelling unit do not currently meet the requisite rear yard setback standard of 40 feet. As such, they are considered legal non-conforming structures (front yard for both properties is considered Becker Road).



As proposed, the existing detached accessory dwelling unit appears to meet all applicable criteria established in the zoning ordinance with the exception of using the septic system for the principle structure and meeting the rear yard setback (existing condition). The 6050 Pagenkopf Road property has the capacity to accommodate the additional detached accessory structure square footage. In addition to the requirements for allowing an accessory dwelling unit, the City has additional criteria which need to be considered for granting a conditional use permit. The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

Consideration for the proposed conditional use permit should weigh the impact of moving the lot line to allow the existing accessory dwelling unit to be located on the 6050 Pagenkopf Road property. The historic use of both properties will essentially remain the same in the after condition. The applicant has used the detached accessory dwelling unit as a "mother-in-law" apartment since it was originally constructed. The Becker Road property will become an available buildable lot. The location of the existing accessory dwelling unit and its compliance with most applicable standards would allow the City to consider approval of the conditional use permit. The proposed minor subdivision to allow a lot line rearrangement can only be considered at this time if the City recommends approval of City of Independence

the conditional use permit for the detached accessory dwelling unit. The City will need to find that the accessory dwelling unit meets the requirements and criteria for granting a conditional use permit.

Should the CUP to allow an accessory dwelling unit be recommended for approval by the Planning Commission, it is suggested that the following conditions be noted by the City:

- The 6050 Pagenkopf Road property has a fully compliant septic system. The applicant will need to provide verification that the 2465 Becker Road property can accommodate a primary and secondary septic system.
- Upon the sale or transfer in title or ownership of the 6050 Pagenkopf Road property, the existing detached accessory dwelling unit shall be connected to the principle residence septic system.
- The applicant is proposing to dedicate the requisite drainage and utility easements to the City for both properties. The City will require that the applicant deed the easements to the City.
- The proposed accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit and possibly a variance following all applicable procedures.

Kaltsas said Staff is seeking a recommendation from the Planning Commission for the requested conditional use permit and minor subdivision with the following findings and conditions:

- A. The proposed conditional use permit and minor subdivision request meets all applicable conditions and restrictions stated in Chapter V, Section 500, Subdivisions and Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
- B. The conditional use permit will be issued subject to the following Conditions:
 1. The existing accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit and possibly a variance following all applicable procedures.
 2. Upon the sale or transfer in title or ownership of the 6050 Pagenkopf Road property, the existing detached accessory dwelling unit shall be connected to the principle residence septic system.
- C. Prior to the City Council placing the Conditional Use Permit into effect, the applicant shall provide the City with the following items:
 - The applicant will need to provide verification that the 2465 Becker Road property can accommodate a primary and secondary septic system.
 - The Applicant shall provide, execute and record the requisite drainage and utility easement with the county within six (6) months of approval.
 - The Applicant shall pay for all costs associated with the City's review of the requested conditional use permit and subdivision.
 - The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

George Betts noted the parcel is next to there land and the home has rented out to relatives since 1993. They would like it included in their lot and stated water runs from their home to the other home. The second home has it's own septic. New access would be through Betts property.

Gardner noted this was a minor lot rearrangement. Dumas asked if the septic would stay in the other parcel. Betts said with the line rearrangement it would be on the Bett's property. There is also a culvert under the road. Lynn Betts said it has not happened before as it was not allowed. She noted it also allows sale of the property without the house on it.

Dumas asked if the septic would be ok for 2 more bedrooms. Kaltsas said it was a modern system with room for an additional module so it would be able to accommodate 2 more bedrooms.

Thompson asked if there was anything in the City ordinance that compels straight lot lines. Kaltsas responded no. He said it is encouraged as it makes sense but there is nothing requiring straight lines. Thompson said it would make sense for future owners to have a straight lot line. George Betts said they did not put a straight line as they wanted the new parcel to have more acreage.

Public Hearing Open

No comments.

Public Hearing Closed

Motion by Dumas to approve (a) A minor subdivision to allow a lot line rearrangement to adjust the east west property line separating the properties to the north and (b) a conditional use permit to allow the existing detached structure to be used as an accessory dwelling unit on the 6050 Pagenkopf Road property; for the properties identified by (PID No.s 14-118-24-34-0003 and 14-118-24-34-0007) and located at 6050 Pagenkopf Road and 2465 Becker Road in Independence, MN.; second by Volkenant. Ayes: Gardner, Thompson, Volkenant and Dumas. Nays: None. Absent: Palmquist. Abstain. None. Motion Approved.

6. Preliminary Discussion Regarding a proposed text amendment to the City of Independence Ordinances as follows:

- a. Chapter 5, Section 510.05, Definitions and 530 Zoning District Provisions – Considering an amendment to the several definitions relating to permitted land uses in various districts and to consider amendment of permitted, accessory and conditional land uses in each district.

Kaltsas said based on issues that continue to surface relating to the City's allowable uses in the Agriculture and Rural Residential zoning districts, Council has directed the Planning Commission to review several definitions and relating lands uses in the zoning ordinance. The City currently has two primary zoning districts; AG-Agriculture and RR-Rural Residential. The City has established the following permitted, accessory and conditional land uses within each district:

530.01. - Agricultural District established.

Subd. 1. *Purpose.* The agricultural district is established for the purpose of promoting continued farming of agricultural lands.

Subd. 2. *Permitted uses.* The following uses are permitted in the Agricultural District:

- (a) Agriculture and horticulture;
- (b) Feedlots and poultry facilities;
- (c) Farm drainage and irrigation systems;
- (d) Forestry;
- (e) Public recreation;
- (f) Single-family dwellings

Subd. 3. *Accessory uses.* The following accessory uses are permitted in the Agricultural District:

- (a) Private garages for single-family dwellings,
- (b) Home occupations operated in accordance with subsection 515.09 of this zoning code;
- (c) Fences;
- (d) Detached agricultural storage buildings, barns, or other structures, accessory to an existing single-family dwelling and subject to the following criteria:
- (e) Retail sales, on a seasonal basis of agricultural and horticultural products grown on the premises by a person who occupies the premises as a principal residence, provided that the applicant apply for and receive an administrative permit from the city prior to commencing any sales of products. All applications shall meet and comply with all of the following standards:
- (f) Aeration or decorative windmills provided the following performance standards are satisfied:

Subd. 4. **Conditional uses.** The following conditional uses may be permitted in the Agricultural District, by action of the city council pursuant to subsections 520.09, 520.11 and 520.13.

- (a) Accessory dwelling units;
- (b) Riding stables;
- (c) Bunkhouses;
- (d) Farrieries;
- (e) Detached agricultural storage buildings, barns, or other accessory structures that exceed the size limitations of subdivision 3(d) of this subsection;
- (f) Kennels;
- (g) Local government buildings;
- (h) Churches;
- (i) Cemeteries;
- (j) Extraction;
- (k) Essential services;
- (l) Temporary use of a mobile home or camper as a dwelling unit during construction of a permanent dwelling for a period not to exceed six calendar months;
- (m) Wind energy conversion systems (WECS);
- (n) Commercial indoor storage in existing farm buildings, provided:
- (o) Guest houses and non-rental guest apartments;
- (p) Commercial golf courses;
- (q) Telecommunications towers approved pursuant to section 540 of this Code;
- (r) Forestry products processing, provided that:
 - (1) The operation of the conditional use must be on a lot that is being used as an occupied single-family dwelling;
 - (2) The lot upon which the conditional use is operated must be not less than ten acres in area;
 - (3) The area devoted to the conditional use, including buildings, parking, storage area, and all related uses may not exceed 15,000 square feet or 12 percent of the size of the lot, whichever is smaller, subject to existing accessory building standards.
- (s) Polo grounds.
- (t) Catering business, provided that:
 - (1) The business is subordinate to the principal use of the property as a residence;
 - (2) No materials, equipment or parts used in the business may be stored on the premises other than within the dwelling unit or accessory structure;

- (3) No signs relating to the business may be visible from the exterior of the dwelling unit or accessory structure except signs that are permitted under subsection 550.09, subdivision 2 of this zoning ordinance;
- (4) No exterior alterations may be made to the dwelling unit to accommodate the business except those alterations customarily found with the dwelling units on lots of similar size within the district;
- (5) No traffic shall be generated by the business beyond what is reasonable and normal for the area in which it is located;
- (6) The hours and days during which the business is conducted on the premises is limited so as not to unreasonably interfere with the residential character of the surrounding areas;
- (7) No over the counter retail sales may occur on-site.

The City has identified several land uses and associated definitions that have recently come into question. The question essentially pertains to the use of a property for a business that includes the permitted land use, but also includes a closely associated use of the property for off premise sales/service, etc. The City has historically permitted Agriculture, Horticulture and Forestry in both the AG and RR zoning districts. The definitions are as follows:

Subd. 3. "Agriculture." The use of land for the growing and/or production of field crops, livestock, and livestock products for the production of income including, but not limited to, the following:

- (a) Field crops, including: barley, soybeans, corn, hay, oats, potatoes, rye, sorghum and sunflowers.*
- (b) Livestock as defined in subsection 510.05, subdivision 44.*
- (c) Livestock products, including: milk, butter, cheese, eggs, meat, fur and honey.*

Subd. 34. "Forestry." The cultivation and management of forests or woods located on the premises, including: felling and trimming of timber; transportation of timber and timber logs, pulpwood, cordwood and similar products; sawing of logs into lumber and similar operations.

Subd. 42. "Horticulture." The use of land for the growing or production of fruits, vegetables, flowers, cultured sod and nursery stock, including ornamental plants and trees, for the production of income.

Staff would like to discuss the permitted, accessory and conditional land uses within both the AG and RR zoning districts. In addition, staff would like to discuss the definitions of Agriculture, Horticulture and Forestry. In order to provide some framework around this discussion, staff offers the following considerations:

1. The City currently does not define any specific Interim Uses within any zoning district. Allowed interim uses should be provided for each district similar to permitted, accessory and conditional uses. Some of the land uses that the City often considers could be reassigned from a permitted or conditional use to an interim use. If this were to occur, the City should give consideration to whether or not the investment relating to the land use (i.e. commercial buildings for a riding stable) would be taken away if the use were to no longer be permitted.
2. The City should review all permitted, accessory and conditional uses and determine if there are now uses that should be reassigned (i.e. forestry as a permitted use in RR should maybe be an Interim Use or not permitted). Should any of the permitted uses be reassigned to conditional or interim uses and should any of the conditional uses be reassigned to permitted?
3. The City should clarify the intent of the Agriculture, Forestry and Horticulture. It has historically been interpreted by the City (since the ordinance amendment in 1993) that these land uses excluded boutique industry businesses that also had "offsite" operations. The City could continue to allow

these uses in one or both of the zoning districts but enhance the definitions to specify that offsite operations are not permitted. An example of possible language changes is as follows:

- a. **"Agriculture."** *The use of land for the growing and production of field crops, livestock, and livestock products, defined as follows:*

"field crops" shall mean barley, soybeans, corn, hay, oats, potatoes, rye, sorghum and sunflowers;

"livestock" shall be defined as provided in subsection [510.05](#), subdivision 44, and;

"livestock products" shall mean milk, butter, cheese, eggs, meat, fur, honey, or similar products involving only light, on-site processing.

"Forestry." *The cultivation and management of forests or woods located on the premises, including the felling and trimming of timber and associated light production such as cutting or sawing of timber into rough lumber, but not including the sale and transportation of finished lumber from the premises or the storing or stockpiling of such lumber.*

"Horticulture." *The use of land for the growing, production and sale of fruits, vegetables, flowers, cultured sod, nursery stock, or ornamental plants and trees. Such term shall not include the operation of a commercial nursery, landscaping business or similar enterprise involving 3 or more employees.*

4. Staff reviewed several surrounding communities' ordinances to determine how or if this issue was being addressed in similar cities. One common thread in the cities of Minnetrista, Orono and Medina was the use of a wide-array of zoning districts. Independence essentially has two zoning districts AG-Agriculture and RR-Rural Residential. As a result of having more zoning districts, cities are able to more closely prescribe land uses that are compatible with surrounding and like properties. Independence could evaluate the existing zoning districts and possibly establish zoning overlay districts and or sub zones within the two districts.
5. It is not intended that Planning Commission will provide a recommendation relating to the information presented in this report at this meeting. Staff would like to begin a discussion relating to the issues that are outlined herein and obtain feedback from the Planning Commission. It is anticipated that any amendments to the zoning ordinance will require an iterative process that will take several meetings realize. Please review the list of permitted, accessory and conditional uses for both the AG and RR zoning district for discussion at the meeting.

Gardner said when there are new property owners it may be the opportunity to start these kinds of things. He said right now we are just playing catch-up. Kaltsas provided an example of a new housing development which has a distinctly different look than a 10 or 12 acre parcel with historic buildings and would it be compatible with surrounding properties. Kaltsas noted the number of commercial riding stables in the City and if that should be memorialized with the land as far as the commercial aspect. He said it could also be an interim permit that doesn't automatically transfer with a new owner.

Thompson asked if one of the premises was trying to make sense of new housing developments sitting in rural residential areas. Kaltsas said other cities classify many more land use categories than Independence does. He noted the City has very broad land use definitions. Dumas said if someone puts in a commercial barn when they sell it would obviously be to the same type of buyer who wants to use it in the same commercial manner. Volkenant asked if someone could get an amendment for a CUP like an IUP. Kaltsas said they could but it would be hard to require that.

Volkenant asked how many IUP's were active. Kaltsas said there was one and it is expired. He said it is a tool that is not defined but needs to be defined like CUP's are. Thompson agreed the zoning needs to be defined. Gardner asked about the history of the interim use permits. Kaltsas said cities were allowed to define CUP use and put a clause in that the CUP ended with the sale of the property. It was determined that was not allowed and the CUP runs forever with the property. Cities then developed the IUP so a date or event could be established to eliminate the IUP as determined.

Kaltsas noted there is discussion on adding districts with the new comp plan. He said it may be necessary to add a fourth district such as sewer residential. Thompson noted there could be a housing development next to a hobby farm and what would happen when the hobby farm sold. Volkenant agreed that terms need to be further defined. Volkenant asked if rezoning could be part of the 2040 Comp Plan and if there was a date for the next Comp Plan meeting. Kaltsas said Met Council needs to agree with the density and then a date can be scheduled. Thompson said the Ag district is huge and the work done on what's conditional has been very good. Rural Residential is a broad spectrum but needs more rules. Kaltsas said historically we have a set of rules for rural residential that applies to five-acre lots. Kaltsas said if Planning agreed he would go to the City Council. It would be a good time to look at this since they are not done with the Comp Plan yet.

7. Conditional Use Permit Enforcement Update

Kaltsas noted the CUP's highlighted in pink were recommended for revocation. All others on the list are either in compliance or revoked. Kaltsas said current CUP's were reviewed to make sure they were all in compliance. Two cell phone towers have been brought up to compliance. Kaltsas said we are on letter five and all letters are sent via certified mail. The resolutions are being attached via pdf to the CUP spreadsheet.

Volkenant asked if a lot more come in how will staff be able to manage them. Kaltsas said there are not too many now as there were in the early years. Kaltsas said he would update the Planning Commission bi-annually on the CUP list.

6. Open/Misc.

5. Adjourn.

Motion by Thompson, second by Volkenant to adjourn at 9:21 p.m.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, AUGUST 20, 2019 – 7:30 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Gardner at 7:30 p.m.

3. ROLL CALL

PRESENT: Commissioners Palmquist, Gardner and Volkenant
STAFF: City Administrator Kaltsas, Administrative Assistant Horner
ABSENT: Commissioners Palmquist and Dumas
VISITORS: Lynda Franklin, Nate Sleck, Scott Ficek, Laura Dwyer, Corey Oeffling, Tyler Stevenson, Curtis Marks, Michael Sharratt,

4. APPROVAL OF MINUTES:

- a. July 16, 2019 Planning Commission Meeting
- b. July 30, 2019 City Council Meeting Minutes (For Information Only)

No quorum for minutes available. Moved to next meeting.

7. **PUBLIC HEARING:** Laura Dwyer (Applicant/Owner) requests that the City consider the following action for the properties located at 5215 and 5175 Sunset La. (PID No. 01-118-24-31-0002 and 01-118-24-42-0028) in Independence, MN:

- a. A Minor Subdivision to consider a lot line rearrangement for the properties located 5215 and 5175 Sunset Ln. The lot line rearrangement would allow for a portion of the property currently attached to 5175 Sunset Ln. to be combined with 5215 Sunset Ln.

Kaltsas said the applicant is seeking a minor subdivision to allow a lot line rearrangement that would allow the property located at 5215 Sunset Lane to capture a “strip” of land directly adjacent and currently belonging to the property located at 5175 Sunset Lane. The 30-foot-wide piece of property appears to have been attached to the 5175 Sunset property to provide access to the western portion of the property along the lakeshore. There is an existing low area between the house on 5175 Sunset Lane and the lake frontage which can restrict access to the shoreline in wet years. The subject 30-foot-wide strip of land has historically been maintained by the owners of 5215 Sunset Lane. The two property owners have worked out an agreement that would allow the property to be combined with 5215 Sunset Lane. In exchange for the sale of the property, the owners of 5215 Sunset Lane would grant an access easement back to the owners of 5175 Sunset Lane.

5215 Sunset Lane is considered a legal non-conforming lot by the City. The minimum lot size for sewered properties located in the Shoreland Overlay district is one acre. In addition, the property located at 5215 Sunset Lane received a side yard and front yard setback variance in 2017 to allow the expansion of the existing home. Should the City approve the minor subdivision, the existing home would come into conformance with the requisite side yard setback. The 5175 Sunset Lane property is a legal property. Staff has reviewed the request and offers the following information for consideration by the Planning Commission:

1. The lot line rearrangement does not appear to impact either property or create any additional non-conformities.
2. The side yard setback of the existing home on the 5215 Sunset Lane property would be conforming in the after condition.
3. Both properties are connected to City sewer.
4. The minor subdivision would clean up both properties and align with the historical use and maintenance of the properties.

Staff is seeking a recommendation from the Planning Commission for the requested minor subdivision to allow a lot line rearrangement with the following findings and conditions:

1. The proposed minor subdivision to allow a lot line rearrangement request meets all applicable conditions and restrictions stated Chapter V, Sections 500 and 510, Planning and Land Use Regulations and Zoning, in the City of Independence Zoning Ordinance.
2. The Applicant shall pay for all costs associated with the City's review of the requested minor subdivision.
3. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Palmquist asked if this would only benefit the 5175 easement that runs with the land. Kaltsas said that was correct.

Public Hearing Open

Motion by Palmquist to close the Public Hearing, second by Volkenant.

Public Hearing Closed

Gardner confirmed there no comments received by neighboring properties.

Motion by Volkenant to approve a Minor Subdivision to consider a lot line rearrangement for the properties located at 5215 and 5175 Sunset Ln. The lot line rearrangement would allow for a portion of the property currently attached to 5175 Sunset Ln. to be combined with 5215 Sunset Ln. (PID No. 01-118-24-31-0002 and 01-118-24-42-0028) in Independence, MN; second by Palmquist. Ayes: Gardner, Palmquist and Volkenant. Nays: None. Absent: Thompson and Dumas. Abstain. None. Motion Approved.

8. **PUBLIC HEARING:** Sharratt Design & Company (Applicant) and Curt Marks (Owner) request that the City consider the following action for the property identified by (PID No. 28-118-24-14-0006) and located at 7220 Turner in Independence, MN:

- a. A Conditional Use Permit and Variance to allow an accessory dwelling, an accessory structure larger than 5,000 SF and taller than the principal structure.

Kaltsas said the property owner currently has an existing home with large barn and indoor riding arena on the subject

property. The City granted a conditional use permit in 2018 to allow use of the property for a commercial riding stable. The property owner is now interested in constructing a new detached accessory structure on the property that is larger than 5,000 SF, is taller than the principle residence and houses an accessory dwelling unit.

The owner would like to construct a new detached accessory structure for personal use as a multipurpose recreation building. The proposed building would be a multi-story building comprised of approximately 6,000 SF on the first floor and 3,000 SF on the second floor. The building would have a garage, game room, accessory dwelling unit, office, kitchen and other similar and associated recreation space. All accessory structures greater than 5,000 SF require a conditional use permit. In addition to the limitation on building size, the City regulates the maximum height of detached accessory structures. The maximum height of a detached accessory structure shall not exceed the height of the principle structure. The property owner currently has an existing home with large barn and indoor riding arena on the subject property. The City granted a conditional use permit in 2018 to allow use of the property for a commercial riding stable. The property owner is now interested in constructing a new detached accessory structure on the property that is larger than 5,000 SF, is taller than the principle residence and houses an accessory dwelling unit.

The existing home on the property is two story home with a mean height of 24 feet (total height of 28). The applicant would like the City to permit the detached accessory building to have a mean height of 28 feet (total height of 36 feet). In order for the applicant to construct a building higher than that which is permitted, the City will need to consider a 4-foot 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;
- 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) 26 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. The applicant is proposing to use the property in a manner consistent with the Agriculture Zoning

District. The City is currently working on revising the ordinance to provide a method for permitting detached accessory structures that exceed the height of the home.

- b. The effect of the requested variance will be somewhat mitigated as a result of the size of the property as well as its relationship to surrounding properties.
- c. The character of the surrounding area is agriculture. The proposed detached accessory building is generally, in keeping with the City's comprehensive plan.

The applicant would also like to utilize a portion of the detached accessory structure for an accessory dwelling unit. The City allows accessory dwelling units as a conditional use in the Agriculture zoning district. The intent of the ordinance was to allow for "mother-in-law" type units to be located within the principle structure or within a detached accessory building. In order to allow an accessory dwelling unit, the property owner will need to demonstrate that they meet all applicable criteria for granting a conditional use permit. The City has criteria broadly relating to Conditional Use Permits and then more focused criteria relating specifically to accessory dwelling units. An accessory dwelling unit must meet the following criteria:

Subd. 2. "Accessory Dwelling Unit." A secondary dwelling unit that is:

- (a) Physically attached to or within a single-family dwelling unit or within a detached accessory building that has a principal structure on the parcel; and the applicant is proposing to locate an accessory dwelling unit within the proposed detached accessory building.
- (b) Subordinate in size to the single-family dwelling unit; and the proposed accessory dwelling unit would be subordinate in size to the single-family dwelling unit as only a portion of the proposed detached accessory building would be used as an accessory dwelling unit.
- (c) Fully separated from the single-family dwelling unit by means of a wall or floor, with or without a door; and the proposed accessory dwelling unit would be separated from the single-family home.
- (d) Architecturally compatible with the principal structure (using materials, finishes, style and colors similar to the principal structure); and the proposed accessory structure would have an architectural character that is consistent with the agricultural use of the property.
- (e) The lesser of 33% of the above ground living area of the principal structure or 1,200 square feet, and no less than 400 square feet; and the principal structure has approximately 4,500 square feet of above ground space not including the basement or garage. 33% of 4,500 square feet equals 1,485 square feet. The applicant is proposing to construct approximately 1,150 square feet of accessory dwelling unit. The proposed layout of the bedrooms, bathroom and kitchen is somewhat unique due to the multi-purpose use of the detached accessory structure. The City will need to consider the proposed layout and determine if it meets the intent of the accessory dwelling unit ordinance. Historically, the City looked to establish a clear separation or distinction between the ADU and the remaining finished or unfinished space in the detached accessory structure.
- (f) Not in excess of the maximum square footage for accessory structures as permitted in this code; and there is no maximum accessory structure size for properties zoned AG-Agriculture and larger than 10 acres in overall size.
- (g) Has permanent provisions for cooking, living and sanitation; and the proposed accessory dwelling unit has permanent provisions for cooking; living and sanitation.
- (h) Has no more than 2 bedrooms; and the proposed accessory dwelling unit has one bedroom.

- (i) Limited to relatives of the homesteaded owner occupants or the homesteaded owners of the principal structure. The total number of individuals that reside in both the principal dwelling unit and accessory dwelling unit may not exceed the number that is allowed by the building code; and the applicant is proposing that the accessory dwelling unit be occupied solely by family members.
- (j) Uses the existing on-site septic system or an approved holding tank; and the applicant will likely need to increase the size of the existing on site-septic system to accommodate the additional bedroom. The City will need to evaluate the proposed structure in more detail should the City grant approval of the ADU.
- (k) Respectful of the future subdivision of the property and the primary and secondary septic sites. The City may require a sketch of the proposed future subdivision of a property; and the subject property cannot be further subdivided at this time due to the zoning and permitted land use.
- (l) In compliance with the adopted building code relating to all aspects of the dwelling unit. The proposed detached accessory dwelling unit will need to meet all applicable building codes. On lots less than 2.5 acres, the accessory dwelling unit must be attached to the principal dwelling unit or located/constructed within an existing detached accessory structure that meets all criteria of this section. The existing on-site septic system will be required to be inspected by the City to ensure compliance with all applicable standards. Any system that does not meet all applicable standards shall be brought into compliance as a part of the approval of the accessory dwelling unit.

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

The City should consider the following issues/points during their review of the requested actions:

The City is considering amending the ordinance to provide a mechanism for allowing accessory structures that are taller than the principle structure. The property owner is proposing to develop a structure that appears to be designed to have an agricultural theme utilizing materials and colors that will be compatible with character of the area. The property owner has noted that they intend to construct a new principle structure on the property in the near future. The new principle structure will be larger than the existing home on the property and establish a better sense of proportionality between the structures on the property. The location of the proposed structure and its relationship to surrounding properties will help to mitigate the potential impact of the taller and larger detached accessory structure. In addition, there is a larger stand of existing trees that would further screen the proposed structure from surrounding properties.

The proposed accessory dwelling unit does not appear to meet the historic interpretation of the ADU ordinance. The City will need to consider how the proposed bedroom and kitchen relate to the remaining space within the detached accessory structure. There could be a concern relating to the structure being misunderstood as a second residential home as a result of the size, interior space and more traditional garage space. Typically, the City has reviewed ADU's that are fully delineated within a detached accessory structure and therefore clearly subordinate to the use of the detached accessory structure. Staff is seeking direction from the Planning Commission relating to the proposed detached accessory structure. For context and discussion, the City would allow a finished detached accessory structure with similar features to that which is proposed without the full kitchen and bedrooms. Bathrooms, recreation space, bar, etc. would all be permitted without a conditional use. The City has typically distinguished an accessory dwelling unit from an accessory structure by whether or not there are bedrooms and or a kitchen stove/oven.

Staff is seeking a recommendation from the Planning Commission pertaining to the request for a conditional use permit and variance with the following findings and conditions:

- a) The proposed conditional use permit and variance request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
- b) The conditional use permit will include the following conditions:
 - 1. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
 - 2. The existing accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit and possibly a variance following all applicable procedures.
 - 3. The accessory dwelling unit is limited to relatives of the homesteaded owner occupants or the homesteaded owners of the principal structure. The total number of individuals that reside in both the principal dwelling unit and accessory dwelling unit may not exceed the number that is allowed by the building code.
- c) The 4-foot variance will allow the detached accessory building to have a maximum height of 28 feet as measured in accordance with City standards.
- d) The Owner will be required to meet all applicable standards relating to the on-site septic system for the proposed detached accessory structure.
- e) The applicant shall pay for all costs associated with the review and recording of the resolution.

Kaltsas noted a few public comments were submitted that were concerned with the size and interior space appearing to be more like a second home on the property. There was some concern this would be used in the future for a commercial business.

Gardner asked about the elevation difference of the roofs. The primary residence is one-story. Marks stated he spoke with several neighboring residents and they were fine with the building. He said there would be no parties and only family entertaining at the location.

Palmquist asked Kaltsas if there was a concern of the historical interpretation related to the riding stable. Kaltsas said it was not a concern. He said this application is for a new space and it would be hard to define what is the accessory dwelling unit versus the recreational space as there is no separation. Other properties that are defined have a door as a barrier separating the sides and creating the distinction. Kaltsas said there could be a baseline mechanism to be able to check against in future inspections with the CUP. Volkenant asked about proposed changes regarding height requirements. Kaltsas said language is being constructed looking at having a design committee review applications based on unique criteria.

Public Hearing Open

Marks said he spoke with the neighbors and would have them write letters of support if needed.

Motion by Palmquist to close the Public Hearing, second by Volkenant.

Public Hearing Closed

Motion by Palmquist to approve a Conditional Use Permit and Variance to allow an accessory dwelling structure larger than 5,000 SF and taller than the principal structure with the addition of no commercial events to be allowed and applicant (Curt Marks) will provide an exhibit to the CUP box for the property identified by (PID No. 28-118-24-14-0006) and located at 7220 Turner in Independence, MN:: second by Volkenant. Ayes: Gardner, Palmquist and Volkenant. Nays: None. Absent: Thompson and Dumas. Abstain. None. Motion Approved.

9. **PUBLIC HEARING:** Gregory Hamman (Applicant/Owner) requests that the City consider the following action for the property identified by (PID No. 16-118-24-33-0002) and located at 2460 CSAH 92 N in Independence, MN:

- a. A variance to allow an accessory structure to exceed the height of the principle structure.

Kaltsas said the applicant would like to construct a detached accessory structure on the property. There is currently an existing home located on the property. The City regulates the total square footage permitted for detached accessory structures using a formula. The formula allows a property owner to construct an accessory building which does not exceed 2% of the upland square footage of the property. In this particular case the City has determined that the upland portion of the property is 2.71 acres. Based on this determination, the total allowable square footage for a detached accessory structure is 2,361 (2.71 acres -118,048 sf * .02 = 2,361).

The applicant is proposing to construct a 2,000 square foot detached accessory structure which is less than the maximum size permitted. In addition to the limitation on building size, the City regulates the maximum height of detached accessory structures. The maximum height of an accessory structure shall not exceed the height of the principle structure. The height of an accessory structure shall not exceed the height of the principle structure. The height of the principle and accessory structure shall be measured in accordance with the definition provided in this ordinance, Section 510.05, Subdivision 10.

The existing home on the property is a rambler with a mean height of 16 feet. The applicant would like the City to permit the detached accessory building to have a mean height of 19 feet. In order for the applicant to construct a building higher than that which is permitted, the City will need to consider a 3-foot variance. The applicant is proposing to locate the building to the east of the principle structure. The elevation of the proposed accessory building is approximately 2 feet lower than the elevation of the principle home. The applicant has noted that the

proposed detached accessory structure would be located in a manner that would limit its visibility in relation to the existing home on the property. The proposed accessory structure is proposed to meet applicable building setbacks (15-foot side yard, 40-foot rear yard setback). The applicant has noted in his narrative that the proposed detached accessory structure would have an 8/12 roof pitch versus a lower pitch. It was noted that the steeper pitch will provide a nicer aesthetic appearance.

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. The applicant is proposing to use the property in a manner consistent with the Rural Residential District. The City is currently working on revising the ordinance to provide a method for permitting detached accessory structures that exceed the height of the home.
- b. The effect of the requested variance will be somewhat mitigated as a result of the size of the property as well as its relationship to surrounding properties. The character of the surrounding area is agriculture. The proposed detached accessory building is generally 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.

Staff is seeking a recommendation from the Planning Commission for the requested 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 3-foot variance will allow the detached accessory building to have a maximum height of 19 feet as measured in accordance with City standards.
3. The proposed building cannot be used for a commercial business or storage.
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.

Palmquist clarified the three-foot variance is the only request. Kaltsas stated that was correct.

Public Hearing Open

Nathan Sleck stated he is a neighbor at 2485 CSAH 92N and he has no problem with this request.

Motion by Palmquist to close the Public Hearing, second by Volkenant.

Public Hearing Closed

Motion by Palmquist to approve a variance to allow an accessory structure to exceed the height of the principle structure for the property identified by (PID No. 16-118-24-33-0002) and located at 2460 CSAH 92 N in Independence, MN; second by Volkenant. Ayes: Gardner, Palmquist and Volkenant. Nays: None. Absent: Thompson and Dumas. Abstain. None. Motion Approved.

10. **(TO BE CONTINUED TO SEPTEMBER 17, 2019) PUBLIC HEARING:** Anita Volkenant (Applicant/Owner) requests that the City consider the following actions for the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006):

- a. An amendment to the existing interim use permit previously granted on the property.

Kaltsas noted that there would not be a quorum for voting due to Volkenant likely needing to recuse herself and asked Volkenant if she was going to recuse herself and if she was in agreement that this item would be continued to the September meeting. Volkenant agreed and recused herself from the discussion.

Motion by Palmquist to continue Volkenant hearing at the September 17, 2019 meeting.

6. Open/Misc.
5. Adjourn.

Motion by Palmquist, second by Volkenant to adjourn at 8:35 p.m.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, SEPTEMBER 17, 2019 – 7:30 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Gardner at 7:30 p.m.

2. ROLL CALL

PRESENT: Commissioners Dumas, Gardner and Volkenant
STAFF: City Administrator Kaltsas, Administrative Assistant Horner
ABSENT: Commissioners Thompson and Palmquist
VISITORS: Derek and Jillian Minor, Mike and Peggy King, Bob Volkenant, Curt Walter, Ian Villaril, Keith Triplett, Tim Falde

3. Election of Chairman and Vice Chairman Due to Change in Membership

Moved to next meeting.

4. APPROVAL OF MINUTES:

- a. July 16, 2019 Planning Commission Meeting
- b. August 20, 2019 Planning Commission Meeting
- c. September 3, 2019 City Council Meeting Minutes (For Information Only)

No quorum for minutes available. Moved to next meeting.

5. **(CONTINUED FROM AUGUST 20, 2019 MEETING) PUBLIC HEARING:** Anita Volkenant (Applicant/Owner) requests that the City consider the following actions for the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006):

- a. An amendment to the existing interim use permit previously granted on the property.

No quorum available. Moved to next meeting.

6. **PUBLIC HEARING:** R. Michael and Margaret King (Applicants/Owners) request that the City consider the following actions for the property located at 2365 County Road 92 N., Independence, MN (PID No. 20-118-24-11-0002):

- a. A variance and minor subdivision to allow the creation of a rural view lot. The property is an original quarter, quarter section with the exception of a small piece of property that was taken by Wright Hennepin Electric for their substation. The variance would allow the subdivision of property for a rural view lot that is less than 40 acres.

Kaltsas said the subject property is located south of Hwy. 12 on the west side of County Road 92 N. There is an existing home and an accessory building located on the property. The property has upland pasture, mature trees and wetlands. The applicants approached the City about the possibility of subdividing their

property to create a rural view lot. The property is zoned Agriculture. The City does not allow the subdivision of property zoned Agriculture with the exception of lot line rearrangements and rural view lot splits. The overall property does not meet the minimum 40-acre requirement to realize a rural view lot subdivision; however, the property has not previously been subdivided for the purpose of creating any additional lots. The City has an additional provision that allows properties that were originally subdivided into a quarter-quarter section and not further subdivided to be deemed a 40-acre parcel for purposes of determining rural view lot eligibility. Wright Hennepin Electric has a substation located in the northeast corner of the property that appears to have taken a small piece of the original quarter-quarter section. The applicant would like the City to consider granting a variance to allow the subdivision of property in the Agriculture zoning district that does not meet the minimum 40-acre lot size. The applicant is proposing to subdivide a 10-acre parcel from the overall property. The newly created lot would be located along the north property line. The newly subdivided property would be accessed via a private driveway easement that would provide access from County Road 92 N into the site on the existing driveway that serves the existing residence. Based on the information provided and a site visit, the proposed lot would appear to accommodate the development of a single-family home meeting all requisite requirements. The proposed property would have the following detail:

Min. Lot Size Required to Subdivide:
40 Acres

Existing Lot Size:
38.95 Acres (original quarter-quarter sect.)

Min. Lot Frontage Required:
300 Lineal Feet

Lot Frontage Proposed:
280 Lineal Feet

Min. Upland Acreage Required:
2.5 Acres

Upland Acreage Proposed:
8.32 Acres

Min. Lot Frontage to Lot Depth Required:
1:4

The proposed Parcel 2 would meet all applicable criteria of the City's zoning ordinance with the exception of the minimum lot frontage (300 LF required/280 LF proposed). The applicant could meet the minimum lot frontage; however, the shape of the lot would become skewed rather than square. The overall width of the lot with the exception of the utility property is proposed to be 350 LF. The City can provide direction relating to whether or not the line should be adjusted to provide for the 300 LF of frontage. The remainder property with the existing home and accessory structures would not be negatively impacted as a result of the proposed subdivision. The proposed property line for the new parcel would not create any non-conformities or reduced setbacks relating to the remainder property, the existing home or accessory buildings.

The City has standards for granting a variance which need to be considered prior to making a recommendation relating to the application. The standards established by the City require the applicant to demonstrate that the requested variance does not create a situation that is not in keeping with the character of the surrounding area. In addition, the applicant must demonstrate that the requested variance is unique to the subject property. The standards for granting a variance are as follows:

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 standards for granting a variance:

- a. The applicants are proposing to use the property as residential which is consistent with the AG-Agriculture Zoning District.
- b. The properties created by the subdivision are similar in nature and character to the surrounding properties. There are existing properties located along County Road 92 N. that range between 5 and 40 acres plus.
- c. The character of the surrounding area is mixed residential/agricultural and guided for long term agriculture.

The City’s current comprehensive plan guides this area for long term agriculture. The City will need to determine if the proposed subdivision is in keeping with the intent of the City’s comprehensive plan of the requested variance to allow the subdivision of the property must be found to be unique to this property. The City could find that because the parcel has not benefited from the subdivision of a rural view lot in the past, that it could consider this property to be an original quarter-quarter section. Due to the large area of the City and the number of properties, it is difficult to determine if this situation is wholly unique to this property but believes that there are very few properties impacted by a utility similar to this situation.

The City will need to determine if the unique characteristics of this property are distinctive and discernable from other conditions on similar properties. The property will be accessed via a private driveway easement utilizing the existing driveway from County Road 92 N. Proposed Parcel 2 will need to accommodate the requisite primary and secondary on-site septic system locations. The proposed subdivision does not currently provide for the requisite drainage and utility easements along all property lines. These easements would need to be provided to the City should the application be approved.

The proposed Parcel 2 would be required to pay the City's park dedication fee. For this property, the park dedication fee amount is \$3,500.00. This fee will need to be paid prior to recording the subdivision. Park dedication fee \$3,500 per lot up to 4.99 acres, plus \$750 per acre for each acre over 5.
10 acres = \$7,250

The Planning Commission will need to determine if the requested variance to allow the subdivision of the property meets the requirements for granting a variance. Staff is seeking a recommendation from the Planning Commission for the requested variance and minor subdivision with the following findings and conditions:

1. The proposed variance and minor subdivision request meet all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, and Chapter V, Section 500, Subdivisions, in the City of Independence Zoning Ordinance.
2. The Applicant shall provide to the City verification that proposed Parcel 2 can accommodate a primary and secondary septic site.
3. The Applicant shall provide, execute and record the requisite drainage and utility easement with the county within six (6) months of approval.
4. The Applicant shall pay the park dedication fees in the amount of \$7,250 prior to the applicant receiving final approval to record the subdivision by the City.
5. The Applicant shall pay for all costs associated with the City's review of the requested variance and subdivision.
6. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Dumas said he agreed with the proposal. Volkenant asked the distance between the driveway and proposed lot line. Kaltsas said it was about 75 feet or so. Gardner said there was no compelling reason to skew the line.

Public Hearing Open

Motion by Volkenant to close the Public Hearing, second by Dumas.

Public Hearing Closed

Motion by Dumas to a variance and minor subdivision to allow the creation of a rural view lot. The property is an original quarter, quarter section with the exception of a small piece of property that was taken by Wright Hennepin Electric for their substation. The variance would allow the subdivision of property for a rural view lot that is less than 40 acres for the property located at 2365 County Road 92 N., Independence, MN (PID No. 20-118-24-11-0002), second by Volkenant. Ayes: Gardner, Palmquist and Volkenant. Nays: None. Absent: Thompson and Dumas. Abstain. None. Motion Approved.

7. **PUBLIC HEARING:** AT&T (Applicant) requests that the City consider the following action for the property located at 3310 County Line Road, Independence, MN (PID No. 07-118-24-33-0004):
- a. A conditional use permit to allow the colocation of new cellular antennas on the existing wireless tower located on the subject property.
 - b. A variance to allow a second accessory structure on the property and the reduction of the requisite 40-foot rear yard setback.

Kaltsas said the property is located on the east side of County Line Road, just north of TH 12. The property is comprised of the existing church building and parking lot, open space and wetlands. The applicant is seeking an amendment to the existing conditional use permit, site plan approval and variance to allow new antennas and to be located on the existing telecommunications tower and a new accessory structure to be located at the base of the tower. There is an existing Conditional Use Permit which was granted by the City in 2001 approving the site plan to allow the tower to be installed. In 2013, the City approved an amendment to allow Verizon Wireless to locate new antennas and accessory equipment building on the property. In 2014, the City granted approval to AT&T to allow the colocation and site plan for new antennas on the existing tower. AT&T did not install the antennas that were approved.

The applicant is again proposing to install new antennas on the existing tower as well as locate the associated equipment at the base of the tower. Given the proposed improvements, an amendment to the conditional use permit is required.

520.09 Subd. 8. If a conditional use permit holder wishes to alter or extend the operation or to change the conditions of the permit, the city will evaluate the permit holder's compliance with the existing permit conditions. Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued requires an amended conditional use permit. An amended conditional use permit application must be administered in a manner similar to that required for a new conditional use permit.

The City has criteria relating to the location (setbacks), site improvements and landscaping for new telecommunications tower development. In this case, the tower already has a conditional use permit. The location and setbacks for the existing tower were approved by the initial conditional use permit. There are several factors that should be considered relating to the site plan approval and variance:

1. The applicant is proposing to install new base equipment that is located within a fenced area at the base of the tower. The equipment would be located within a steel cabinet and the generator would be mounted to a pad on the ground, but otherwise not enclosed. The previous proposal (2014 and approved by the City) proposed to locate the equipment within a prefabricated equipment shelter similar to that used by Verizon on this site. Verizon Wireless has an approximate 300 SF equipment shelter which houses all of the requisite base equipment and a generator already on the property. Staff would like direction from the City relating to whether or not all of the proposed equipment and generator should be located in a prefabricated building similar to that Verizon already has on the property? In either case, the proposed cabinet is considered an accessory structure that would count as a second accessory structure on the property.
2. The applicant is proposing to remove some of the existing landscaping and add additional landscaping to the site. The location of the proposed equipment does not currently impact any of the surrounding properties. In the future, the subject property and adjacent property to the east could be redeveloped. It is

recommended that an additional 4 Spruce trees be added to the north and east fence lines to further screen the proposed base equipment.

3. The City will need to grant a variance from the rear property line to allow the location of the equipment cabinet. The applicant is noting the proposed equipment cabinet would be located 9'-7" from the rear property line. The location of the existing tower would likely not allow for any structure to meet the requisite setback. The City granted a similar variance in 2013 to allow the Verizon structure to be located within the requisite 40-foot setback.

4. The plans do not indicate that there will be any exterior lighting added to the site as a result of the proposed improvements. All lighting will need to comply with the City's lighting ordinance. The applicant will need to provide the City with lighting cut sheets indicating a cut-off type fixture along with verification that the proposed lighting does not spill over the existing property lines.

5. The plans do not label the height of the proposed fence. This should be noted on the plans. It appears that the proposed fence will tie into the existing fence already located on the property.

6. The plans do not show the existing gravel driveway. It is anticipated that access to the proposed equipment will be via the existing driveway access. This should be confirmed on the plans.

7. The proposed new antennas would be located below the height of the existing Verizon antennas. The Verizon antennas are located at a height of 181 feet. The proposed AT&T antennas would be located at a height of 172 feet.

The City can grant a variance if it determines that it meets the criteria for granting a variance as established by ordinance. The criteria for granting a variance are as follows:

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) Any amendment to an existing CUP must meet the same requirements established for granting a new CUP. The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

The existing tower has a conditional use permit. The new antennas will be located just below those approved for Verizon Wireless. The proposed equipment cabinet and generator are not consistent with the existing enclosed equipment shelter used by Verizon on this site. Enclosing the proposed ground equipment and generator inside of a building would be consistent with the plans approved for the Verizon Wireless equipment shelter. Landscaping will further mitigate the impacts of the proposed equipment shelter. It should be noted that the existing and adjacent properties to the south, east and north are guided for Urban Commercial by the City's 2030 Comprehensive Plan. In the existing zoning district, telecommunication towers are permitted as a conditional use. Resulting traffic, noise, and other measurable impacts should not be incrementally amplified as a result of the proposed new antennas and associated base site improvements. The Planning Commission will need to determine if the requested amendment to the conditional use permit, site plan and variance meet all of the aforementioned conditions and restrictions.

Staff is seeking a recommendation from the Planning Commission for the request for an amendment to the conditional use permit, site plan approval and variance. Should the Planning Commission make a recommendation to approve the requested actions, the following findings and conditions should be considered:

1. The proposed conditional use permit amendment, site plan review and variance meet all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
3. This amendment approves nine (9) new antennas, site improvements (as indicated on the approved site plan, attached to this report as Exhibit B) and associated base equipment.

4. Prior to consideration by the City Council, the applicant shall provide the City with the following items:

- a. Written information demonstrating the need for the tower at the proposed site in light of the existing and proposed wireless telecommunications network(s) to be operated by persons intending to place telecommunications facilities on the tower.
- b. A copy of relevant portions of a lease signed by the applicant and property owner(s), requiring the applicant to remove the tower and associated telecommunications facilities upon cessation of operations on the leased site, or, if a lease does not yet exist, a written agreement to include such a provision in the lease to be signed.
- c. A landscape plan with the requested landscaping indicated in the staff report.
- d. A revised site plan showing the existing driveway and proposed access.

Dumas asked if the size and type of generator. He wondered why it was not enclosed. Woelters, AT&T Representative, said that due to technology changes it is not necessary to enclose in a cabinet. He said he would be surprised if it caused any problems. Woelters noted these are mandatory back-up systems. He noted AT&T could always be given the option to remove the generator.

Gardner said this last application was when the size of the building was being discussed. Kaltsas noted Verizon on Highway 12 has a unit with opaque fencing and reforestation. Kaltsas said the church is trying to keep this one more isolated on the property. Woelters pointed out FEMA backups etc. He said if Council was specific with what is needed and then AT&T will get it right.

Gardner asked if there would be a problem with the trees. Kaltsas said there is a minimum size of 6 feet and an additional four trees is recommended. Volkenant said she would do a minimum of 8 feet because they will be 5 feet wide. Dumas said he would recommend a sound proof enclosure for the generator. Either one enclosure or two separate enclosures. Kaltsas said they work on the options for shielding with the contractor.

Public Hearing Open

Motion by Gardner to close the Public Hearing, second by Volkenant.

Public Hearing Closed

Motion by Volkenant to approve a conditional use permit to allow the colocation of new cellular antennas on the existing wireless tower located on the subject property and a variance to allow a second accessory structure on the property and the reduction of the requisite 40-foot rear yard setback; also noting an additional four evergreen trees and sound enclosure for the generator for the property located at 3310 County Line Road, Independence, MN (PID No. 07-118-24-33-0004), second by Dumas. Ayes: Gardner, Palmquist and Volkenant. Nays: None. Absent: Thompson and Dumas. Abstain. None. Motion Approved.

8. **PUBLIC HEARING:** A proposed text amendment to the City of Independence Ordinances as follows:

- a. Chapter 5, Section 530.01, Subd. 3 Accessory Uses – Considering an amendment to the maximum height of an accessory structure. The City will discuss increasing the permitted height of detached accessory structures.

Gardner noted this item would be continued until the October 1st meeting due to lack of quorum. Kaltsas outlined the main points so those Planners present would have background on the proposal.

Kaltsas said Staff has determined that it is possible to establish a “Review Committee” that would likely be comprised of several members of the Planning Commission and City Council to review requests for accessory structures that exceed the maximum height permitted in the zoning ordinance. Details of the “Committee” makeup will be considered and approved by Council and will likely include 2 Planning Commissioners and 1 Council Member. The intent would be that the “Committee” would meet once a month if needed. The cost of an application would be nominal, and no public hearing would be conducted. Staff has been working with the City’s attorney to develop a draft ordinance for consideration by the Planning Commission.

The draft considers establishment of several specific criteria which must be satisfied prior to consideration by the “Committee”. If a proposal meets the criteria, the “Committee” will have the ability to review and approve an increased building height or if not approved recommend that the applicant apply for a variance. Any application that does not meet the initial criteria would have the option of applying for a variance.

Staff would like Planning Commissioners to review the proposed draft language and provide discussion and feedback at the meeting. The base criteria can be adjusted and or amended as directed. Staff offers the following initial criteria for consideration and discussion by the Planning Commission: An accessory structure may exceed the height of the principle structure if the accessory structure meets all applicable criteria of the Section and the following conditions are met:

- (1) Building plans containing any proposed accessory structure with a height exceeding that of the principle structure must be submitted to the City in advance of work to confirm compliance with this Section.
- (2) The City Council may establish an Accessory Building Height Review Committee to review building plans submitted for any proposed accessory structure with a height exceeding that of the principle structure to ensure compliance with the following:
 - a. On properties that are 2.5 acres or less, the proposed accessory structure must be located to the rear of the principle structure.
 - b. The proposed accessory structure must be detached and separated by a minimum distance of 75 feet from the principle structure.
 - c. The proposed accessory structure must meet the principle structure setbacks from all property lines.
 - d. All abutting property owners have consented to the proposed accessory structure on forms provided by the City.

It is not intended that Planning Commission will provide a recommendation relating to the information presented in this report at this meeting.

Original Discussion on Accessory Building Heights:

In 2013 the City updated the accessory structure ordinance to establish a more proportional relationship between the amount of detached accessory structure square footage allowed on a property and the size of the property. In practice, the new ordinance has worked well and there have been no variances granted relating to the size of a detached accessory structure since the amendment. One area of the ordinance that was changed at the same time was the maximum height permitted for detached accessory structures.

The City has received concerns and comments from property owners relating to the maximum height permitted. The City has also granted two (2) variances relating to the maximum height of detached accessory structures. The general concern is that the maximum height permitted varies based on the height of the principal structure. If a resident has a single-level home, the maximum height of a detached accessory structure is limited to the single-level home height. This causes some issues for residents with larger properties that would like to have a larger detached accessory structure but have a single level home.

Staff has looked at the permitted heights of accessory structures from surrounding communities. It should be noted that not all communities allow as large of a detached accessory structure as the City of Independence. Staff would like to further discuss the maximum permitted height of detached accessory structures with the Planning Commission.

The City's current ordinance states the following: The height of an accessory structure shall not exceed the height of the principle structure. The height of the principle and accessory structure shall be measured in accordance with the definition provided in this ordinance, Section 510.05, Subdivision 10. In application of the ordinance over the past 5 years, the City has consistently had requests for detached accessory structures that have heights (measured to the midpoint of the roof) in the 20-25-foot range. Many of the single-level homes measure closer to 17-20 feet in height measured to the midpoint of the roof. This typically leaves single-level property owners with an issue when considering building a detached accessory structure. When the City considered the height in 2013, there was a general consensus that detached accessory structures should be proportional and subordinate to the principle structure on the property. In order to help achieve the subordinate relationship, the maximum height of the detached accessory structure was limited. Due to the wide array of property size, building architecture and other factors, many of the proposed detached accessory structures do not have a significant relationship with the principle structure.

9. Open/Misc.

10. Adjourn.

Motion by Volkenant, second by Dumas to adjourn at 8:30 p.m.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary

MINUTES OF A SPECIAL MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, OCTOBER 1, 2019 – 6:00 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Gardner at 6:00 p.m.

2. ROLL CALL

PRESENT: Commissioners Dumas, Gardner and Volkenant
STAFF: City Administrator Kaltsas
ABSENT: Assistant to Administrator Horner, Commissioner Thompson
VISITORS: Bob Volkenant, City Attorney Vose

6. **(CONTINUED FROM AUGUST 20 AND SEPTEMBER 17, 2019 MEETINGS) PUBLIC**

HEARING: Anita Volkenant (Applicant/Owner) requests that the City consider the following actions for the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006):

- a. An amendment to the existing interim use permit previously granted on the property.

Kaltsas said the City granted an interim use permit (IUP) in April of 2019 to allow the continued use of horticulture on the subject property. The IUP was approved subject to a settlement and stipulation agreement which further detailed the conditions of the IUP approval. One of the conditions related to the two hoop houses located on the property. The agreement included the following provisions relating to the hoop houses on the property:

There are currently two temporary hoop houses situated on the Property (the "Hoop Houses"). Volkenant and PVG agree that the Hoop Houses will be utilized for Horticultural Purposes, and the City consents to the continued use of the Hoop Houses on the Property for Horticultural Purposes. Volkenant and the City further agree as follows:

- (i) Volkenant shall be allowed to maintain the temporary plastic covering on the 30X1 00 Hoop House year-round.
- (ii) Between November 1 and December 1 of each calendar year, Volkenant shall be allowed to install the temporary plastic covering on the 20X80 Hoop House that is currently situated on the Property;
- (iii) Between July 1 and July 30 of each calendar year, Volkenant shall remove the temporary plastic covering from the 20X80 Hoop House that is currently situated on the Property; and
- (iv) Volkenant shall not install any additional temporary hoop house structures on the Property without prior City review and approval.

The current agreement requires the applicant to remove the temporary plastic covering from the 20 x 80 hoop house between the dates of July 1 and July 30. The applicant is now asking the City to consider allowing the temporary plastic covering to remain on the 20 X 80 hoop house year-round. There are several key considerations relating to the proposed amendment to the interim use permit that should be noted and further considered by the City.

1. The City regulates the total square footage of detached accessory structures on a property. The subject property would allow for a total of 3,306 SF (165,315 SF x 2%). The applicant currently has the following detached accessory structures on the property totaling 3,457 SF:

- a. Garage: 600 SF
- b. Garage #1: 270 SF
- c. Garage #2: 420 SF
- d. Barn & Lean-to: 881 SF
- e. Shed: 736 SF
- f. Lean-to: 550 SF

In addition, the applicant has the following hoop houses totaling 4,600 SF:

- a. Hoop House #1: 3,000 SF (300' x 100')
- b. Hoop House #2: 1,600 SF (20' x 80')

The total square footage of detached accessory structures on the property is 8,057 SF. This total is more than twice the allowable square footage of 3,306 SF. The square footage of detached accessory structure exceeds the allowable amount permitted on the property. All of the permanent detached buildings are existing and considered legal-non conforming.

The two hoop houses (greenhouses) on the property were constructed in the last 5 years without approval from the City. The applicant noted that they believe the structures to be temporary and considered agricultural buildings which would not require a building permit. The City does not differentiate between temporary and permanent structures in the zoning ordinance and the hoop houses are considered permanent accessory structures. City will need to find that it should permit more than double the allowable square footage on the property and the buildings are adequately mitigated so as to not take away from the reasonable use and enjoyment of the surrounding properties.

The City has criteria relating to interim use permits. One of the criteria of an interim use permit is that it meets the standards for granting a conditional use permit. The following criteria have been established for both an interim use permit and conditional use permit:

- 1. The use is deemed temporary and the use conforms to the development and performance standards of the zoning regulations.
- 2. The date or event that will terminate the use can be identified with certainty.
- 3. Allowing the use will not impose additional costs on the public if it is necessary for the public to take the property in the future.
- 4. The user agrees to any conditions that the city council deems appropriate for allowing the use.
- 5. The use meets the standards set forth in subsection 520.11 governing conditional use permits.

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

- 1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
- 2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
- 3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.

4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city from pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

The City will need to determine if the requested interim use permit amendment meets all of the aforementioned conditions and restrictions. Along with the initial IUP approval, the applicant did prepare a site plan which proposed screening of the property from Drake Drive. A copy of the site plan is attached to this report. Staff is seeking a recommendation from the Planning Commission pertaining to the request for an amendment to the interim use permit with the following findings and conditions:

1. The proposed interim use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The horticulture use of the property shall be subject to all conditions provided for and further detailed in the attached Exhibit A (Settlement and Stipulation Agreement) with the following amendment:
 - a. Volkenant shall be allowed to maintain the temporary plastic covering on the 30X1 00 Hoop House year-round.
 - b. Volkenant shall be allowed to maintain the temporary plastic covering on the 20 X 80 Hoop House year-round.
 - c. Between November 1 and December 1 of each calendar year, Volkenant shall be allowed to install the temporary plastic covering on the 20X80 Hoop House that is currently situated on the Property;
 - d. Between July 1 and July 30 of each calendar year, Volkenant shall remove the temporary plastic covering from the 20X80 Hoop House that is currently situated on the Property; and
3. The applicant shall pay for all costs associated with the City's review and processing of the requested amendment to the interim use permit.

Palmquist asked for clarification on if the settlement agreement could go away but the IUP would go forward. Vose said the agreement was to set out the terms and conditions but ultimately the City Council would determine final approval. This was due to the settlement agreement being defined before the Public Hearing on the IUP approval.

Motion by Dumas to open the Public Hearing, second by Palmquist.

Public Hearing Open

Bob Volkenant questioned the time spent on this and why it was back in front of the Commissioners. Kaltsas said the original IUP and settlement were approved with the conditions listed today so that was all approved as is with no change made to agreement. It has to amended through this process.

Anita Volkenant said as the owner of the property she would be open to any questions and reiterated that the Council passed the original agreement. She said the amendment request process was originally started

in June. Volkenant said the covering had to be removed in July and replaced in November with the original agreement. She said it was a waste as the plastic is not reusable and has to be discarded every year.

Motion by Palmquist to close the Public Hearing, second by Dumas.

Public Hearing Closed

Motion by Palmquist to approve an amendment with conditions noted by report to the existing interim use permit previously granted on the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006); second by Dumas. Ayes: Gardner, Palmquist, Dumas. Recuse: Volkenant. Nays: None. Absent: Thompson. Abstain. None. Motion Approved.

7. Adjourn.

Motion by Gardner, second by Palmquist to adjourn at 6:14 p.m.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, OCTOBER 1, 2019 –6:30 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 Johnson at 6:30 p.m.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, Betts and Grotting
ABSENT: Assistant to Administrator Horner, Councilor McCoy
STAFF: City Administrator Kaltsas, City Attorney Vose
VISITORS: None

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 September 17, 2019 Regular City Council Meeting.
- b. Approval of City Council Minutes from the September 12, 2019 City Council Workshop.
- c. Approval of Accounts Payable; Checks Numbered 19133-19160 (Check 19132 was voided).
- d. Approval of Election Judges for the 2019 Election.
- e. Large Assembly Permit for an Event to be Held on the Property Located at 7075 US Highway 12 on October 12, 2019.

Motion by Betts, second by Grotting to approve the Consent Agenda. Ayes: Johnson, Grotting, Betts and Spencer. Nays: None. Absent: McCoy. 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 Commission Meeting
- Pioneer Sarah Creek Watershed Meeting
- Lynn Nadasdy Memorial Service

Grotting attended the following meetings:

- Pioneer Sarah Creek Watershed Meeting
- Planning Commission Meeting
- LMCC meeting with Mediacom

McCoy attended the following meetings:

Betts attended the following meetings:

Johnson attended the following meetings:

- Sensible Land Use Committee Meeting
- Orono Healthy Youth Meeting
- Lynn Nadasdy Memorial Service
- Delano School Board Meeting
- Orono School Board Work Session
- National League of Small Cities Conference Call Meeting
- Senior Community Services Board Meeting
- Community Action Partnership Meeting

Horner attended the following meetings:

Kaltsas attended the following meetings:

- Several meetings with residents on the Otten Development
- Several meetings with residents on road conditions on Klaers Drive
- Met with Architectural Firms on City Hall remodel

7. R. Michael and Margaret King (Applicants/Owners) request that the City consider the following actions for the property located at 2365 County Road 92 N., Independence, MN (PID No. 20-118-24-11-0002):

- a. RESOLUTION NO. 19-1001-01 – considering a variance and minor subdivision to allow the creation of a rural view lot. The property is an original quarter, quarter section with the exception of a small piece of property that was taken by Wright Hennepin Electric for their substation. The variance would allow the subdivision of property for a rural view lot that is less than 40 acres.

Kaltsas said the applicants approached the City about the possibility of subdividing their property to create a rural view lot. The property is zoned Agriculture. The City does not allow the subdivision of property zoned Agriculture with the exception of lot line rearrangements and rural view lot splits. The overall property does not meet the minimum 40-acre requirement to realize a rural view lot subdivision; however, the property has not previously been subdivided for the purpose of creating any additional lots. The City has an additional provision that allows properties that were originally subdivided into a quarter-quarter section and not further subdivided to be deemed a 40-acre parcel for purposes of determining rural view lot eligibility.

Wright Hennepin Electric has a substation located in the northeast corner of the property that appears to have taken a small piece of the original quarter-quarter section. The applicant would like the City to consider granting a variance to allow the subdivision of property in the Agriculture zoning district that does not meet the minimum 40-acre lot size. The applicant is proposing to subdivide a 10-acre parcel from the overall property. The newly created lot would be located along the north property line. The newly subdivided property would be accessed via a private driveway easement that would provide access from County Road 92 N into the site on the existing driveway that serves the existing residence. Based on the information provided and a site visit, the proposed lot would appear to accommodate the development of a single-family home meeting all requisite requirements. The proposed property would have the following detail:

Min. Lot Size Required to Subdivide:
40 Acres

Existing Lot Size:
38.95 Acres (original quarter-quarter sect.)

Min. Lot Frontage Required:
300 Lineal Feet

Lot Frontage Proposed:
280 Lineal Feet

Min. Upland Acreage Required:
2.5 Acres

Upland Acreage Proposed:
8.32 Acres

Min. Lot Frontage to Lot Depth Required:
1:4

Min. Lot Frontage to Lot Depth Proposed:
1:4

The proposed Parcel 2 would meet all applicable criteria of the City's zoning ordinance with the exception of the minimum lot frontage (300 LF required/280 LF proposed). The applicant could meet the minimum lot frontage; however, the shape of the lot would become skewed rather than square. The overall width of the lot with the exception of the utility property is proposed to be 350 LF. The City can provide direction relating to whether or not the line should be adjusted to provide for the 300 LF of frontage. The remainder property with the existing home and accessory structures would not be negatively impacted as a result of the proposed subdivision. The proposed property line for the new parcel would not create any non-conformities or reduced setbacks relating to the remainder property, the existing home or accessory buildings.

The City has standards for granting a variance which need to be considered prior to making a recommendation relating to the application. The standards established by the City require the applicant to demonstrate that the requested variance does not create a situation that is not in keeping with the character of the surrounding area. In addition, the applicant must demonstrate that the requested variance is unique to the subject property.

The standards for granting a variance are as follows: 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 standards for granting a variance:

- a. The applicants are proposing to use the property as residential which is consistent with the AG-Agriculture Zoning District.
- b. The properties created by the subdivision are similar in nature and character to the surrounding properties. There are existing properties located along County Road 92 N. that range between 5 and 40 acres plus.
- c. The character of the surrounding area is mixed residential/agricultural and guided for long term agriculture.

The City’s current comprehensive plan guides this area for long term agriculture. The City will need to determine if the proposed subdivision is in keeping with the intent of the City’s comprehensive plan. The requested variance to allow the subdivision of the property must be found to be unique to this property. The City could find that because the parcel has not benefited from the subdivision of a rural view lot in the past, that it could consider this property to be an original quarter-quarter section. Due to the large area of the City and the number of properties, it is difficult to determine if this situation is wholly unique to this property but believes that there are very few properties impacted by a utility similar to this situation. The City will need to determine if the unique characteristics of this property are distinctive and discernable from other conditions on similar properties. The Planning Commission recommended approval of the requested variance and minor subdivision with the following findings and conditions:

1. The proposed variance and minor subdivision request meet all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, and Chapter V, Section 500, Subdivisions, in the City of Independence Zoning Ordinance.
2. The proposed subdivision meets the criteria for granting a variance due to the following findings:
 - a. The resulting rural view lot is in keeping with the character of the surrounding area.
 - b. The existing property has not realized any previous subdivision that resulted in an additional buildable lot.

3. The Applicant shall provide to the City verification that proposed Parcel 2 can accommodate a

primary and secondary septic site.

4. The Applicant shall provide, execute and record the requisite drainage and utility easement with the county within six (6) months of approval.
5. The Applicant shall pay the park dedication fees in the amount of \$7,250 prior to the applicant receiving final approval to record the subdivision by the City.
6. The Applicant shall pay for all costs associated with the City's review of the requested variance and subdivision.
7. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Johnson said he appreciates the easement with the driveway. Betts noted the wider driveway and Kaltsas said it was a 15' easement. Johnson asked about maintenance responsibility and Kaltsas said that is put in place with three or more properties.

Motion by Spencer, second by Grotting to approve RESOLUTION NO. 19-1001-01 – considering a variance and minor subdivision to allow the creation of a rural view lot. The property is an original quarter, quarter section with the exception of a small piece of property that was taken by Wright Hennepin Electric for their substation. The variance would allow the subdivision of property for a rural view lot that is less than 40 acres for the property located at 2365 County Road 92 N., Independence, MN (PID No. 20-118-24-11-0002) Ayes: Johnson, Grotting, Betts and Spencer. Nays: None. Absent: McCoy. MOTION DECLARED CARRIED.

8. AT&T (Applicant) requests that the City consider the following action for the property located at 3310 County Line Road, Independence, MN (PID No. 07-118-24-33-0004):

RESOLUTION NO. 19-1001-02 – considering a conditional use permit amendment to allow the colocation of new cellular antennas on the existing wireless tower located on the subject property and a variance to allow a second accessory structure on the property and the reduction of the requisite 40-foot rear yard setback.

Johnson noted this would not be heard tonight as the applicant needed more time to work on some open items.

9. Anita Volkenant (Applicant/Owner) requests that the City consider the following actions for the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006):
 - a. **RESOLUTION NO. 19-1001-03 – considering an amendment to the existing interim use permit previously granted on the property.**

Kaltsas said the City granted an interim use permit (IUP) in April of 2019 to allow the continued use of horticulture on the subject property. The IUP was approved subject to a settlement and stipulation agreement which further detailed the conditions of the IUP approval. One of the conditions related to the two hoop houses located on the property. The agreement included the following provisions relating to the hoop houses on the property:

There are currently two temporary hoop houses situated on the Property (the "Hoop Houses"). Volkenant and PVG agree that the Hoop Houses will be utilized for Horticultural Purposes, and the City consents to the

continued use of the Hoop Houses on the Property for Horticultural Purposes. Volkenant and the City further agree as follows:

- (i) Volkenant shall be allowed to maintain the temporary plastic covering on the 30X1 00 Hoop House year-round.
- (ii) Between November 1 and December 1 of each calendar year, Volkenant shall be allowed to install the temporary plastic covering on the 20X80 Hoop House that is currently situated on the Property;
- (iii) Between July 1 and July 30 of each calendar year, Volkenant shall remove the temporary plastic covering from the 20X80 Hoop House that is currently situated on the Property; and
- (iv) Volkenant shall not install any additional temporary hoop house structures on the Property without prior City review and approval.

The current agreement requires the applicant to remove the temporary plastic covering from the 20 x 80 hoop house between the dates of July 1 and July 30. The applicant is now asking the City to consider allowing the temporary plastic covering to remain on the 20 X 80 hoop house year-round. There are several key considerations relating to the proposed amendment to the interim use permit that should be noted and further considered by the City.

1. The City regulates the total square footage of detached accessory structures on a property. The subject property would allow for a total of 3,306 SF. The applicant currently has the following detached accessory structures on the property totaling 3,457 SF:

- a. Garage: 600 SF
- b. Garage #1: 270 SF
- c. Garage #2: 420 SF
- d. Barn & Lean-to: 881 SF
- e. Shed: 736 SF
- f. Lean-to: 550 SF

In addition, the applicant has the following hoop houses totaling 4,600 SF:

- a. Hoop House #1: 3,000 SF (300' x 100')
- b. Hoop House #2: 1,600 SF (20' x 80')

The total square footage of detached accessory structures on the property is 8,057 SF. This total is more than twice the allowable square footage of 3,306 SF. The square footage of detached accessory structure exceeds the allowable amount permitted on the property. All of the permanent detached buildings are existing and considered legal-non conforming.

The two hoop houses (greenhouses) on the property were constructed in the last 5 years without approval from the City. The applicant noted that they believe the structures to be temporary and considered agricultural buildings which would not require a building permit. The City does not differentiate between temporary and permanent structures in the zoning ordinance and the hoop houses are considered permanent accessory structures. City will need to find that it should permit more than double the allowable square footage on the property and the buildings are adequately mitigated so as to not take away from the reasonable use and enjoyment of the surrounding properties.

The City has criteria relating to interim use permits. One of the criteria of an interim use permit is that it meets the standards for granting a conditional use permit. The following criteria have been established for both an interim use permit and conditional use permit:

1. The use is deemed temporary and the use conforms to the development and performance standards of the zoning regulations.
2. The date or event that will terminate the use can be identified with certainty.
3. Allowing the use will not impose additional costs on the public if it is necessary for the public to take the property in the future.
4. The user agrees to any conditions that the city council deems appropriate for allowing the use.
5. The use meets the standards set forth in subsection 520.11 governing conditional use permits.

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

The City will need to determine if the requested interim use permit amendment meets all of the aforementioned conditions and restrictions. Along with the initial IUP approval, the applicant did prepare a site plan which proposed screening of the property from Drake Drive. A copy of the site plan is attached to this report. Staff is seeking a recommendation from the Planning Commission pertaining to the request for an amendment to the interim use permit with the following findings and conditions:

1. The proposed interim use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The horticulture use of the property shall be subject to all conditions provided for and further detailed in the attached Exhibit A (Settlement and Stipulation Agreement) with the following amendment:
 - a. Volkenant shall be allowed to maintain the temporary plastic covering on the 30X1 00 Hoop House year-round.
 - b. Volkenant shall be allowed to maintain the temporary plastic covering on the 20 X 80 Hoop House year-round.
3. The applicant shall pay for all costs associated with the City's review and processing of the requested amendment to the interim use permit.

Vose explained the amended IUP does not allow the applicant to get out of the original settlement agreement. Betts asked about the hoop house and once a freeze hits. Volkenant said the current style is temporary and not re-usable and the one she will put on will be a much higher grade and last 5-7 years. Grotting disagreed with the legal opinion as this was a request for further change after a negotiated agreement with the City. Betts said maybe there should be different applications for structures like this that are more than temporary. Vose said some cities spell out the types of structures that don't count against structure space. He noted Independence does not differentiate structures.

Spencer said he is concerned that if this approved is it backward engineering that hoop houses are not accessory structures. What if someone comes in and wants to put up a huge hoop house for horses. He noted the City has already been through a big legal process with the original settlement. Vose said that someone may come in and argue that this is not fair. He noted the facts are never truly identical. Spencer said if these structures don't count then someone can come in and say they want a pole barn in addition to their hoop house. Spencer said the agreement was put in place to deter people from putting up these hoop houses all over. Vose said the answer may be that anything temporary or permanent count. Spencer said the applicant has been waiting too long for an answer. Grotting said Council gave them answer originally and now it is back in front of them. Johnson said he was disappointed when he saw this application coming in so quickly after the agreement.

Volkenant said she didn't want to open a can of worms, but she needs to order the plastic in order to put it on by November. Grotting asked if there was anything else other than this issue that is not in the agreement that also needs to be looked at.

Motion by Grotting, second by Johnson to approve RESOLUTION NO. 19-1001- 03 for an amendment to the existing interim use permit previously granted on the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006) Ayes: Johnson, Grotting and Betts. Nays: Spencer. Absent: McCoy. MOTION DECLARED CARRIED.

10. Open/Misc.

11. Adjourn.

Motion by Spencer, second by Grotting to adjourn at 7:42 p.m.

Respectfully Submitted,

Trish Gronstal
Recording Secretary

City of Independence

Request for a Minor Subdivision to Allow a Lot Line Rearrangement on the Properties Generally Located at 5062 Perkinsville Road

<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	October 15, 2019
<i>Applicant:</i>	John Hilbelink
<i>Owner:</i>	John Hilbelink
<i>Location:</i>	5062 Perkinsville Road

Request:

John Hilbelink (Applicant/Owner) requests that the City consider the following action for the properties located at 5062 Perkinsville Road, Independence, MN (PID No.s 24-118-24-13-0005 and 24-118-24-13-0006):

- a. A minor subdivision to allow a lot line rearrangement to move the existing line between the properties. The rearrangement would create "equal" properties on Perkinsville Road.

Property/Site Information:

The properties are located on the north side of Perkinsville Road and just west of the intersection of Perkinsville Road and South Lakes Shore Dr. The eastern property has an existing home and the western property has a detached accessory structure. The property has the following characteristics:

Property Information: 5062 Perkinsville Road (PID No. 24-118-24-13-0005)

Zoning: *RR-Rural Residential*

Comprehensive Plan: *RR-Rural Residential*

Acreage: Before – 1.00 acres
 After – 2.65 acres (*Proposed Tract B*)

Property Information: Unassigned Address (PID No. 24-118-24-13-0006)

Zoning: *RR-Rural Residential*

Comprehensive Plan: *RR-Rural Residential*

Acreage: Before – 4.30 acres
 After – 2.65 acres (*Proposed Tract A*)

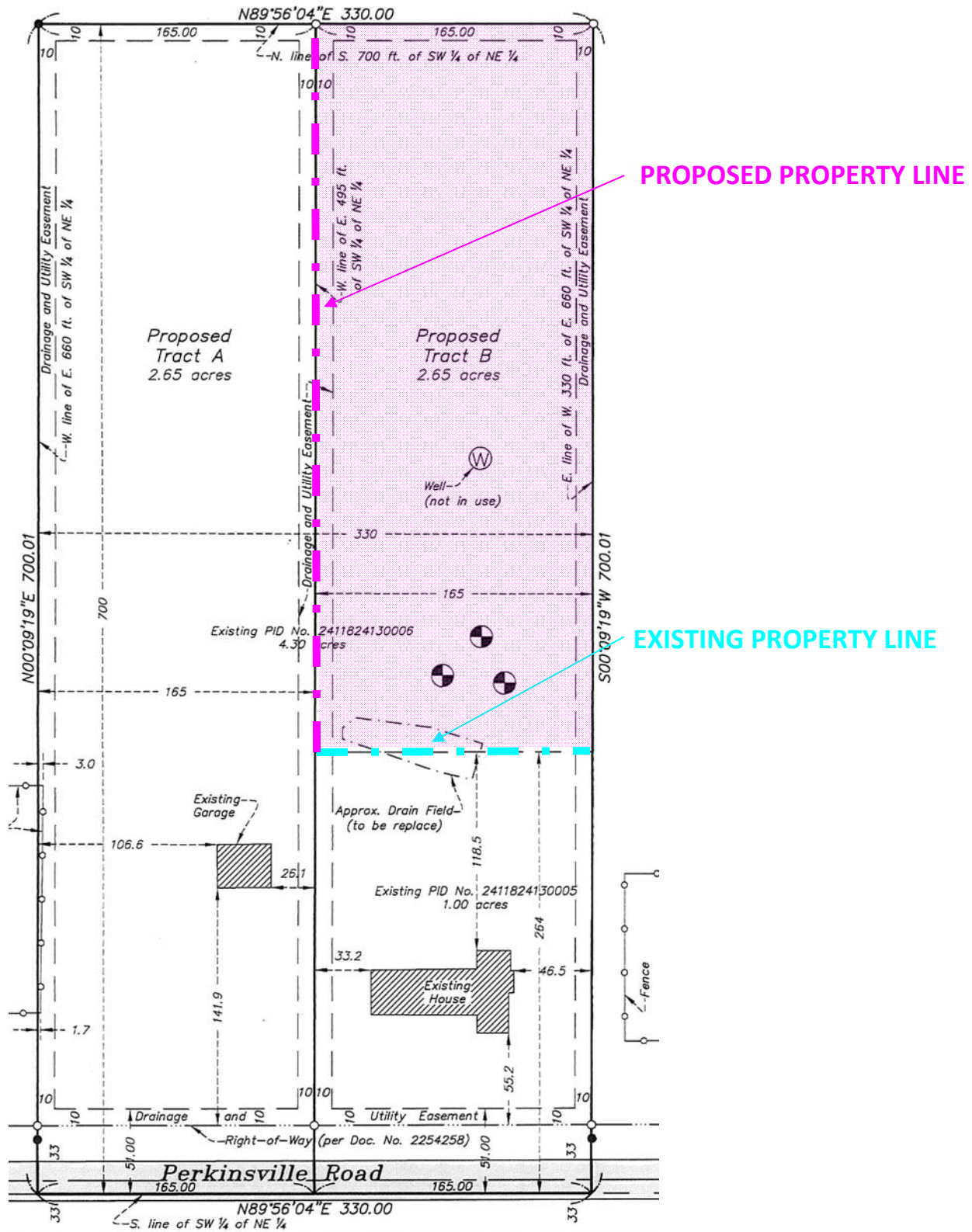


Discussion:

The applicant is seeking a minor subdivision to allow a lot line rearrangement that would expand the 5062 Perkinsville Road property by approximately 1.65 acres and reduce the property identified by PID No. 24-118-24-13-0006 by the same. The applicant owns both of the subject properties. The common property line that is currently located to the north of the 5062 property would be “straightened” to create to equal properties.

Both properties are considered to be legal non-conforming lots of record. Both properties have approximately 165 feet of frontage on a public right of way. The minimum frontage required by ordinance is 200 LF for the smaller parcel and 250 LF for the larger parcel. In addition, detached accessory structures are not permitted on a property without a principal structure (residence). In the before and after conditions both properties would meet all applicable structure setbacks. The proposed after condition would not create any new non-conformities relating to setbacks, property size or road frontage minimums.

The applicant is in the process of updating the existing septic system that serves the eastern parcel (existing residence). In reviewing the possible locations for a new septic system, it was identified that the



best location would be located on the adjoining property. Even though both properties are under the same ownership, the City notified the Applicant that a permanent easement would need to be provided and recorded across the adjoining property if the septic site was going to be located on the adjacent property. Based on this discussion, the Applicant is seeking a minor subdivision to rearrange the property lines to accommodate a new septic site on the same property as the existing residence.

Staff has reviewed the request and offers the following information for consideration by the Planning Commission:

1. The lot line rearrangement would create two equal lots that are in keeping with the general configuration and size of the adjacent lots.
2. No new non-conformities would be created, and the legal non-conforming/conforming status of each respective property does not change in the before or after conditions.
3. There is an existing detached accessory structure located on the western parcel that is proposed to remain in the after condition. While the non-conforming condition of the property is not being intensified as a result of the minor subdivision, staff is seeking direction from the Planning Commission and City Council pertaining to this non-conformity.
4. The City did suggest that the Applicant consider connecting the existing home to the City's sanitary sewer line located at the intersection of South Lake Shore Drive and Perkinsville Road. The Applicant did review this possibility and decided to move forward with replacing the existing on-site septic system. There are several challenges to connecting at the closest location due to the pipe being a force main.
5. The Applicant would be providing the City with the requisite perimeter drainage and utility easements for both properties.
6. The proposed Tract A is a buildable lot of record in both the before and after conditions.

Neighbor Comments:

The City has not received any written or verbal comments pertaining to the request for a lot line rearrangement.

Recommendation:

Staff is seeking a recommendation from the Planning Commission for the requested minor subdivision to allow a lot line rearrangement with the following findings and conditions:

1. The proposed minor subdivision to allow a lot line rearrangement request meets all applicable conditions and restrictions stated Chapter V, Sections 500 and 510, Planning and Land Use Regulations and Zoning, in the City of Independence Zoning Ordinance.

2. The Applicant shall pay for all costs associated with the City's review of the requested minor subdivision.
3. City Council approval of the requested minor subdivision shall be subject to the Applicant providing and executing the requisite drainage and utility easements.
4. The Applicant shall record the subdivision, easements and City Council Resolution with the county within six (6) months of approval.

Attachments:

1. Application
2. Survey (Before and After Conditions Shown on the Same Survey)



PLANNING APPLICATION

Case No. _____

Type of application

- ☐ Standard ☐ Staff Approval ☐ Plan Revision ☐ Amended ☐ Reapplication
- ☐ Rezoning ☐ Conditional Use Permit ☐ Variance ☐ Ordinance Amendment ☒ Subdivision
- ☐ Preliminary Development Plan ☐ Interim Use Permit ☐ Comprehensive Plan Amendment
- ☐ Final Development Plan ☐ Final Site & Building Plan ☐ Other _____

Site Location— Additional addresses on back and legal description attached

Property address 5062 Perkinsville Rd

PID

2411824130006
2411824130005

Proposal -Full documentation must accompany application

Lot line Rearrangement to adjust the two lots to be
conforming, at 2.65 acres per Lot. Rather than
1 acre and 4.3 acres

Applicant

Name John Hilbelink Email john.hilbelink@gmail.com

Address 5062 Perkinsville Road, Independence, MN 55359

Phone 612-300-7832 Additional phone/contact _____

Printed Name _____ Signature [Signature]

Owner Information (if different from applicant)

Name _____ Email _____

Address _____

Phone _____ Additional phone/contact _____

Printed Name _____ Signature _____

Office Use Only

Date 9/6/2019 Application Amount 1,250 Check # 1161 Accepted By [Signature]

Escrow Paid 750~ Check # 1161 Date Accepted by Planner _____

City of Independence

The Independence City Code was established to protect both current and future residents from the negative impacts of improper development and to ensure a positive future for the city. The land use application review is the mechanism that allows the city to examine proposed uses to ensure compatibility with the surrounding environment, natural or otherwise. It is important to understand that a proposed use may be acceptable in some circumstances, but unacceptable in others— all applications are reviewed on a case-by-case basis.

Minnesota State Statute 15.99 requires local governments to review an application within 15 days of its submission to determine if an application is complete and/ or if additional information is needed to adequately review the subject request. ***To ensure an expedited review, applicants shall schedule a pre-application meeting with the City Planner/ Administrator at least one week prior to submittal.*** Most applications have a review period of 60 days, with the City's ability to extend an additional 60 days if necessary due to insufficient information or schedule.

Application for Planning Consideration Fee Statement

The City of Independence has set forth a fee schedule for the year 2019 by City Ordinance. However, projects of large scope that include two or more requests will be required to provide a larger deposit than the resolution sets forth as set by the City Administrator. The fees collected for land use projects are collected as deposits. All invoices associated with each land employ application will be billed to the applicant within 30 days upon receipt by the City for each project. The City of Independence often utilizes consulting firms to assist in the review of projects. The consultant and City rates are noted on the current fee schedule. By signing this form, the applicant recognizes that he/ she is solely responsible for any and all fees associated with the land use application from the plan review stage to the construction monitoring stage through to the release of any financial guarantee for an approved project. If a project is denied by the City Council or withdrawn by the applicant, the fees associated for the project until such denial or withdrawal, remain the applicant's responsibility.

I UNDERSTAND THE FEE STATEMENT AND RESPONSIBILITIES ASSOCIATED WITH THIS LAND USE APPLICATION:

Applicant Signature: 

Date: September 5th 2019

Owner Signature (if different): _____

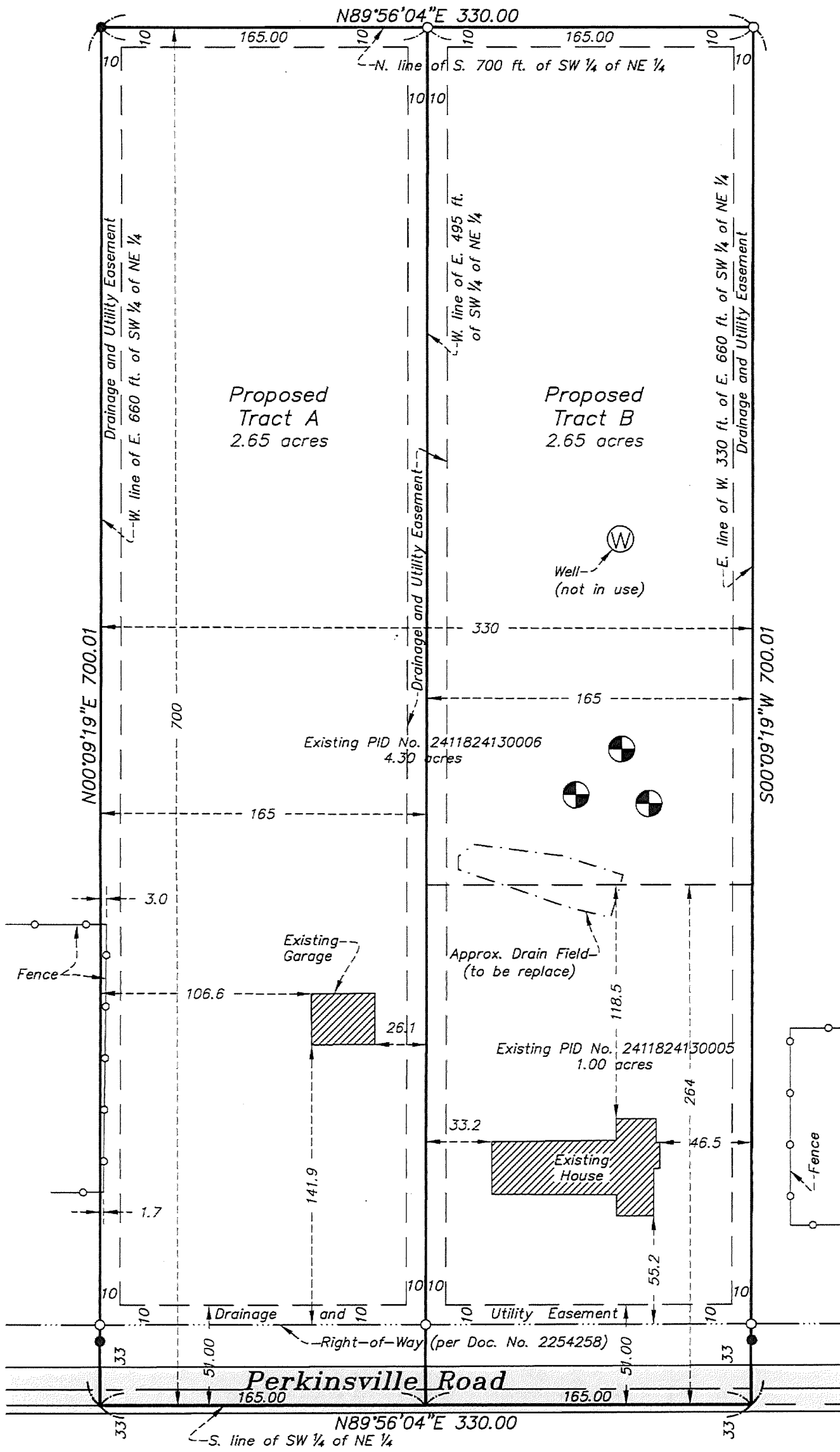
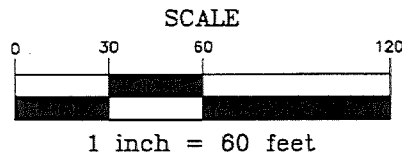
Date: _____

Certificate of Survey

Legend

- Found Iron Monument
- Set Iron Monument (LS 48328)
- Soil Boring

Prepared for:
John Hilbelink



Bearings based on assumed datum. Note: Current well in service located within existing house (per client).

Existing PID No. 2411824130006 (Doc. No. T05517796)
The West 330 feet of the East 660 feet of the South 700 feet of the Southwest Quarter of the Northeast Quarter, Section 24, Township 118, Range 24, except the East 165 feet of the South 264 feet thereof, according to the recorded plat thereof on file and of record in the office of the Register of Titles, Hennepin County, Minnesota.

Existing PID No. 2411824130005 (Doc. No. T05517796)
The South 264 feet of the West 165 feet of the East 495 feet of the Southwest Quarter of the Northeast Quarter of Section 24, Township 118 North, Range 24 West of the 5th principle meridian, Hennepin County, Minnesota.

Proposed Tract A
The West 165 feet of the East 660 feet of the South 700 feet of the Southwest Quarter of the Northeast Quarter of Section 24, Township 118, Range 24, Hennepin County, Minnesota.

Subject to an easement for drainage and utility purposes, over, under and across the west 10 feet, the north 10 feet and the east 10 feet thereof and also the north 10 feet of the south 51 feet thereof.

Subject to the easement described in Document No. 2254258, dated April 18, 1992, and of record in the Office of the Register of Titles, Hennepin County, Minnesota.

Proposed Tract B
The West 165 feet East 495 feet of the South 700 feet of the Southwest Quarter of the Northeast Quarter of Section 24, Township 118, Range 24, Hennepin County, Minnesota.

Subject to an easement for drainage and utility purposes, over, under and across the west 10 feet, the north 10 feet and the east 10 feet thereof and also the north 10 feet of the south 51 feet thereof.

Subject to the easement described in Document No. 2254258, dated April 18, 1992, and of record in the Office of the Register of Titles, Hennepin County, Minnesota.

SCHOBORG
LAND SERVICES
INC.

763-972-3221
www.SchoborgLand.com

8997 Co. Rd. 13 SE
Delano, MN 55328

I hereby certify that this certificate of survey was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

Kelly L. Brouwer
Kelly L. Brouwer

Date: August 2, 2019 Registration No. 48328

Job Number: 8912
Book/Page: LL
Survey Date: 7/26/19
Drawing Name: hilbelink.dwg
Drawn by: DMS
Revisions:

City of Independence
Concept Plan Review for a Proposed 28 Unit
Subdivision on the Subject Properties Generally Located
at 2236 South Lake Shore Drive and to be Known as Bristol Shores

<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	October 15, 2019
<i>Applicant:</i>	OP Fund 5, LP (The Excelsior Group)
<i>Owner:</i>	Clifford L. Otten Trust
<i>Location:</i>	2236 South Lake Shore Drive

Request:

OP Fund 5, LP (Applicant) and Clifford L. Otten Trust (Owner) request that the City consider the following review/discussion for the property located at 2236 South Lake Shore Dr. (PID No. 24-118-24-11-0012) in Independence, MN:

- a. Concept plan review relating to the proposed subdivision of the subject property. The concept plan proposes 28 single-family sewerer residential lots.

Property/Site Information:

The property is located on the north side of Perkinsville Road and in-between South Lake Shore Drive and County Road 19. The property has frontage on Lake Independence and is comprised primarily of agriculture land. There are two homes on the subject property along with several detached accessory buildings. The property is comprised of densely wooded areas, wetlands and tillable acreage.

Property Information: **2236 South Lake Shore Drive**
Zoning: *Agriculture (S-Shoreland Overlay)*
Comprehensive Plan: *Rural Residential*
Acreage: ~48 acres



Discussion:

The applicant originally came forward to the City in May of 2018 with a concept plan for a 96-unit subdivision. The applicant has now submitted a new concept plan for a 28-unit subdivision based on the discussion and direction provided to the applicant by the City during the process. The applicant is now asking the City to again consider and provide feedback relating to a new concept plan for the proposed subdivision of the subject properties. A concept plan allows the City the opportunity to initially review the proposed subdivision and provide feedback and comments to the applicant prior to the submittal of any formal applications for the development of the property.

The City has discussed the potential subdivision and current 28-unit development with the applicant. In addition, upon receipt of the current submittal, the City sent a letter to surrounding residents offering an opportunity for them to individually meet with the City to discuss the plan and provide feedback and general comments relating to the subject property and its development. A more detailed account of the comments and discussion is provided later in this report.

In order for the City to ultimately consider approval of a plan similar to the proposed concept plan, the following steps would be required:

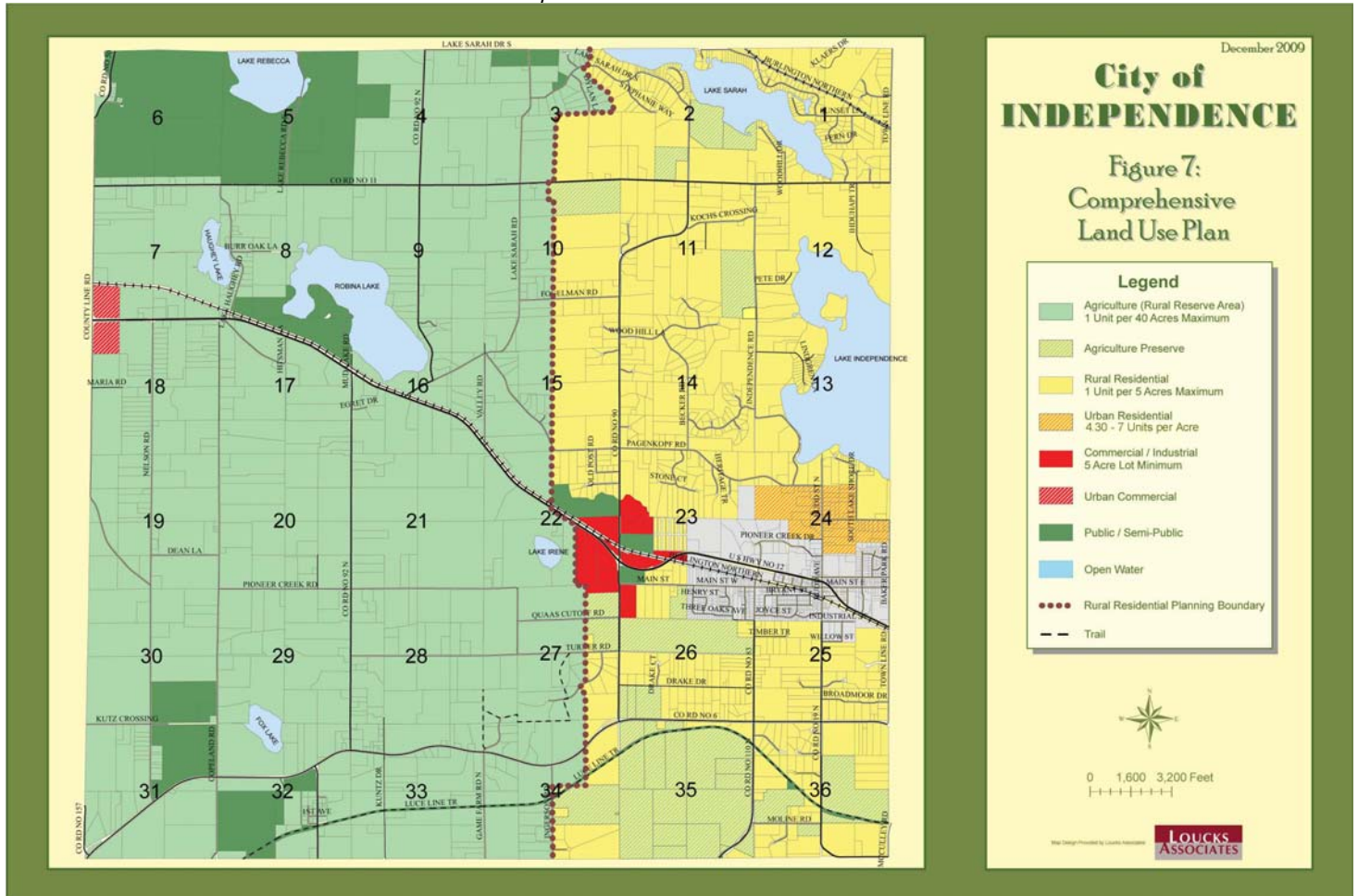
1. Amend the Comprehensive Plan.
 - a. This would change the guided land use from RR-Rural Residential to something that allows a sewer density that would be more than 1 unit per 5 acres.
2. Prepare and adopt an ordinance amendment which would allow for the new land use designation of sewer density on the portion of the property outside of the S-Shoreland Overlay District. The City would develop the standards for the new zoning district. Standards would include minimum lot size, minimum building setbacks, design standards, minimum home square footage, accessory structure standards and setbacks, landscaping requirements and all other similar and related standards pertaining to development within the zoning district.
3. Rezone the property to the new zoning district.
4. Consider Preliminary Plat approval.
5. Consider Final Plat approval.

Comprehensive Plan/Rezoning

The City's adopted 2030 and proposed 2040 plan identify this property as Rural Residential with limited sewer service. The rural residential designation allows for a general development density of 1 unit per 5 acres. The portion of the property that is located within the Shoreland Overlay zoning district could potentially be developed in accordance with the requisite shoreland standards. These standards generally allow for property within the shoreland overlay (1,000 feet from the OHWL) to be developed as one (1) acre lots. The City has noted that the property is currently served by the existing sanitary sewer which runs along two sides of the property (South Lake Shore and Perkinsville Road). The City has stated that an

amendment to the Comprehensive Plan will need to occur after final approval of the 2040 Comprehensive Plan. This plan is still in the process of being reviewed and approved. The City will ultimately need to determine how this parcel is guided moving forward.

2030 Comprehensive Land Use Plan

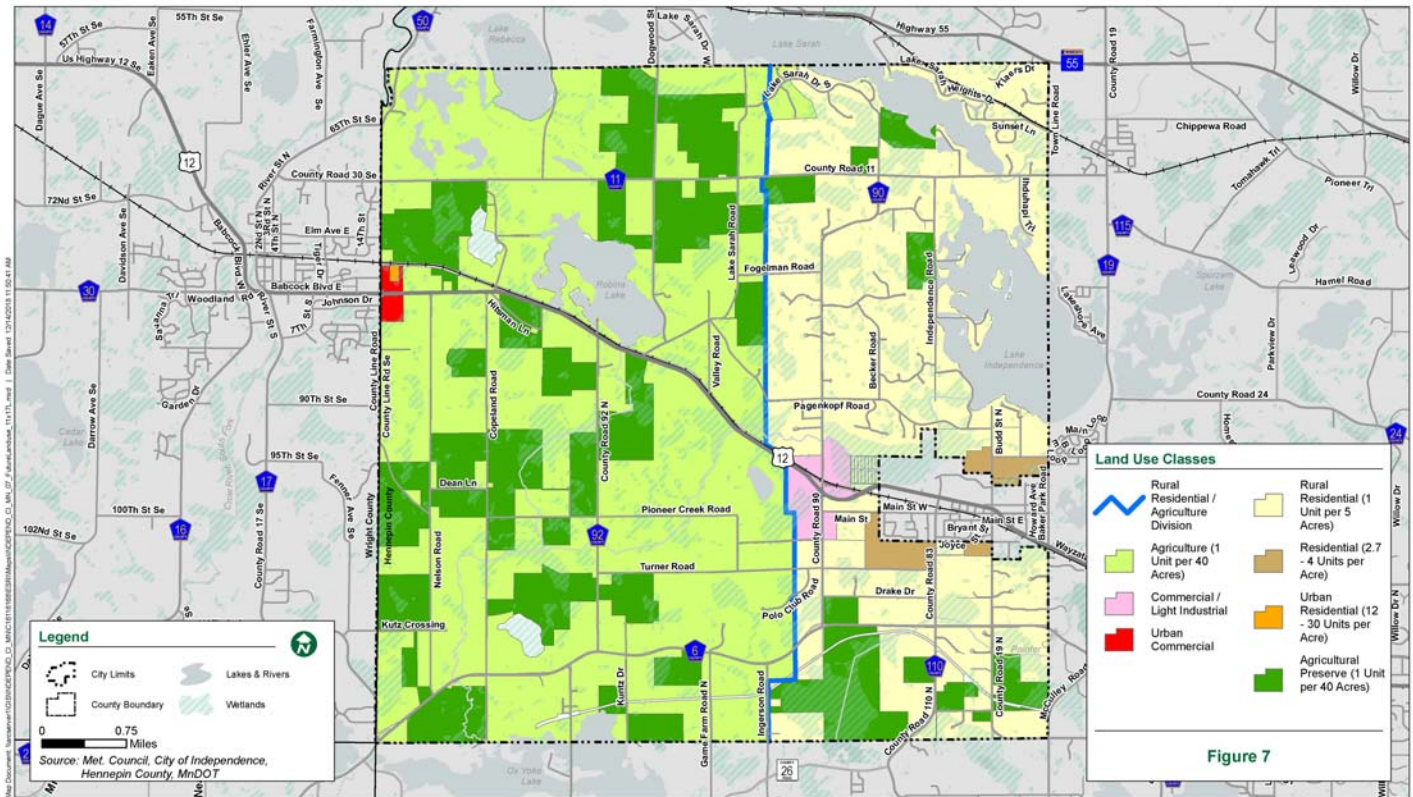


DRAFT 2040 Comprehensive Land Use Plan



2040 Comprehensive Plan
Independence, MN

Future Land Use
December 2018



Proposed Subdivision Concept Plan

The applicant has prepared a concept plan for review by the City. The City has preliminarily reviewed this plan and provided initial comments and feedback to the applicant. One of the initial questions asked by the City was how many lots could be developed on the property based on the current guidance of the property. The current guided designation would allow this property to be rezoned to Rural Residential with a portion of the property falling under the S-Shoreland Overlay (all property within 1,000 feet of the OHWL of Lake Independence). In order to determine the actual number of lots permitted under current zoning, a property layout would need to be prepared. There are approximately 26 acres located within the area governed by the S-Shoreland Overlay. The number of lots that this area would yield is likely between 18-22 lots given the lakeshore, existing topography and configuration of the property covered by the overlay district. For the remaining 22 acres the number of lots that could be developed would be governed by the Rural Residential standards shown below. 22 acres could yield 4-5 lots depending on the exact acreage remaining land. The total number of lots that could be realized on this property utilizing the current zoning standards is estimated to be between 20-30.

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.

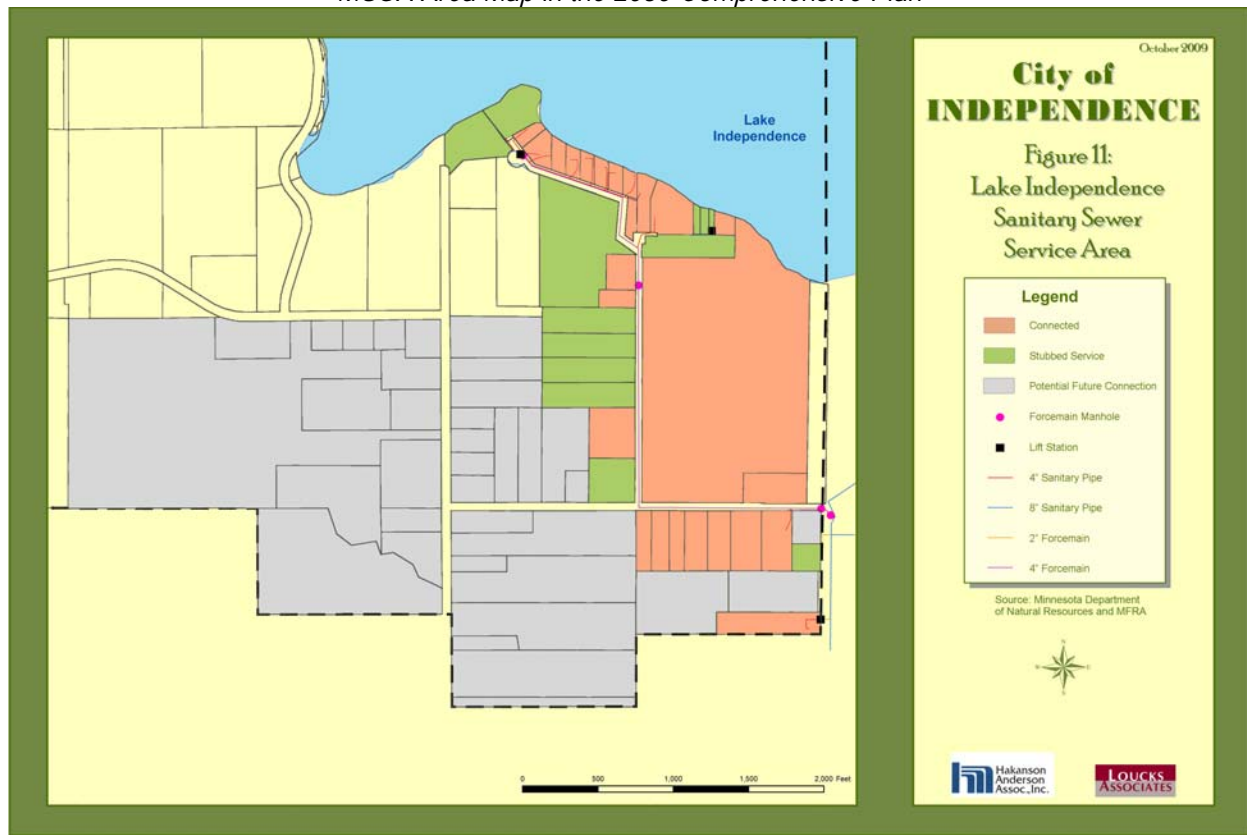
Concept Plan Considerations:

The City identified the need to determine if there was potential and physical sewer capacity to accommodate a development of this type. In addition, the City noted that traffic on County Road 29 and Perkinsville Road should be further evaluated to understand potential development impacts.

The City conceptually reviewed the existing sewer system and met with the Metropolitan Council relating to the possibility of developing this property. The Metropolitan Council noted that there is a limited regional system capacity until 2020 when upgrades to the regional lift station (LS 63) will be online. It was generally acknowledged by the Metropolitan Council that property was included in their future sewer area and was also included in the Metropolitan Urban Service Area (MUSA) in the City's 2030 Comprehensive Plan. The relatively low density (less than 3 units per acre) of the proposed subdivision could present a challenge to gaining approval by the Metropolitan Council and will need to be further evaluated should the project move forward. Review of the City's sanitary sewer system identified the potential capacity to service the proposed subdivision. Some upgrades and or system improvements would likely be necessary for this development to occur.

The City also completed a traffic analysis pertaining to the potential impacts of the development of the property based on a 96-unit development. Generally, the traffic analysis found that there was capacity on CSAH 29 and Perkinsville Road to accommodate development of this parcel. Any development of this property would have potential traffic impacts to Perkinsville Road and County Road 29. The City will have to further evaluate the potential traffic impacts should the development of this property move forward.

MUSA Area Map in the 2030 Comprehensive Plan



The initial review of the subdivision contemplates a high-level review only of the proposed concept development plan. A detailed review of the storm water, grading, traffic impacts and infrastructure details will be completed prior to consideration of any future applications. The City does not formally approve or deny a concept plan. The concept plan review will provide direction and comments to the applicant for their use during the preparation of future applications. The following comments should be considered by the City:

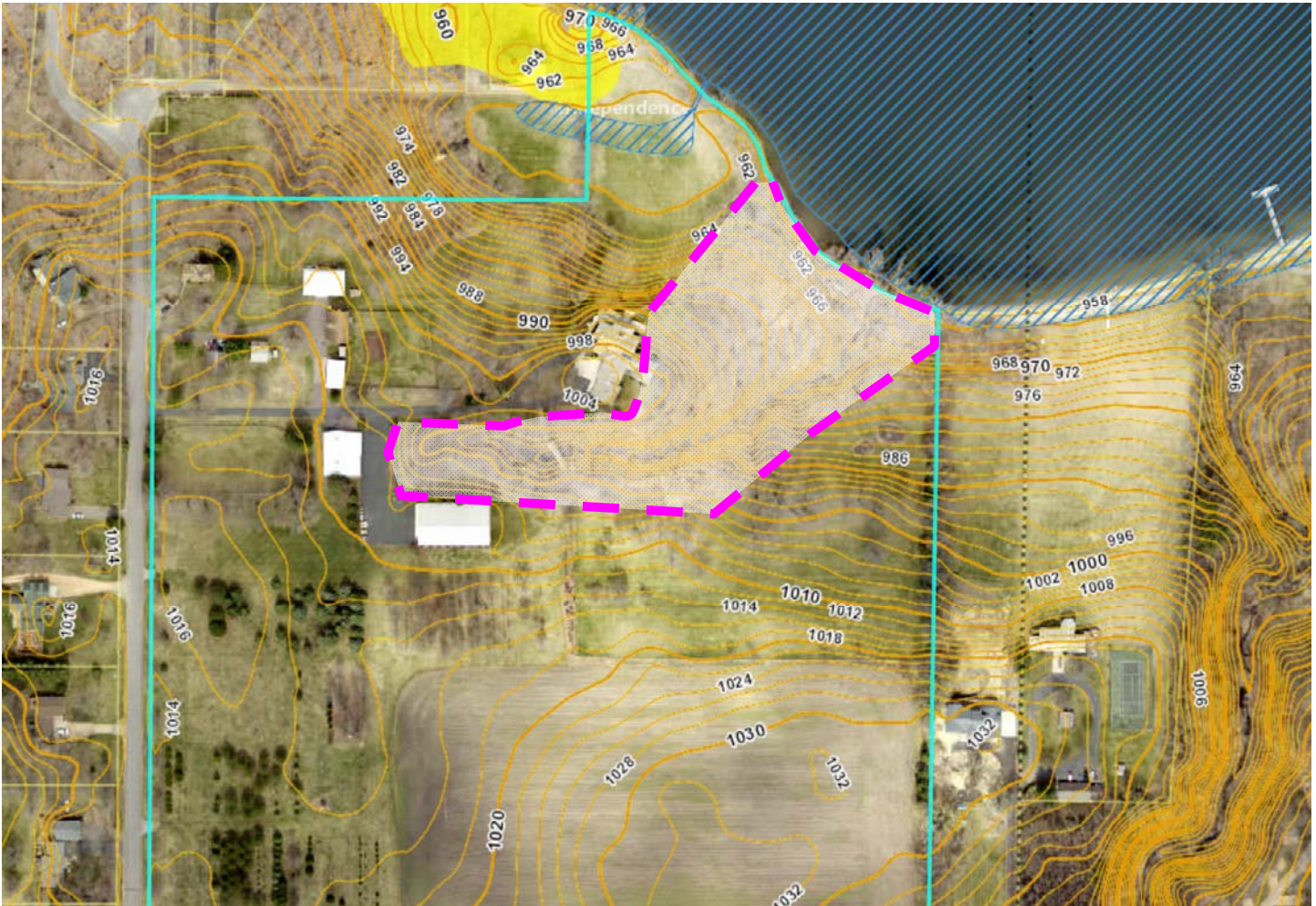
1. The initial plan reviewed by the City identified lots that would have direct access onto South Lake Shore Drive. The City noted that access to any development should occur via an internal access road that comes off of Perkinsville Road. The applicant revised the concept plan to show lots with access only from a new internal loop road. The City noted that a development of this size would need to have two points of access into the development and a second road connection onto South Lake Shore is proposed.
2. The proposed concept plan indicates six lots with riparian access (frontage or access) on Lake Independence. Any lot directly abutting the lake would need to comply with applicable shoreland overlay standards. The shoreland overlay requires a minimum lot size of 1 acre and a minimum shoreland lot width of 100 linear feet. The subject property has approximately 700 linear feet of shoreline on Lake Independence. One of the proposed lots would have a narrow 30-foot-wide

access. Additional review relating to slopes, bluffs and general grading of the proposed riparian lots would be required if the develop moves forward.

3. The proposed layout shows that those lots with direct shoreland would be developed so that the homes could be located at the top of the existing slope. This is preferable to previous layouts where the proposed building pads were located closer to the lakeshore which would have likely had significant impacts to the existing topography and vegetation.
4. All of the proposed lots (it is understood that one is labeled at .99) would be a minimum of 1 acre in size and connected to City sanitary sewer.
5. The City initiated and completed a traffic study relating specifically to this concept development plan (see attached traffic study). The traffic study looked at the potential impacts of an approximate 100-unit development on the intersection of Perkinsville Road and County Road 19. The study considered the development of this property into typical single-family homes. Traffic counts were taken on County Road 19 and Perkinsville Road to establish some baseline traffic data. It should be noted that the study only considered the impacts of the development of the subject property and not any future development/redevelopment of the surrounding area. The primary focus looked at the impacts during peak am and peak pm traffic hours. The study found that that peak hour traffic impacts would be minimal based on the level of service currently identified at the intersection. It was indicated in the study that the level of service at the key intersection would be no less than a "B" in the fully developed condition. The City would want to further investigate the impacts of this development on the surrounding areas should further consideration be sought by the applicant. One point that should be noted is that the study considered all of the proposed lots to be typical single-family homes. Should the City consider a "senior villa" type product, the potential number of peak am, and pm trips would likely decrease.
6. The surrounding area has a mixture of lot types, sizes and densities. A quick analysis of the approximately 21 surrounding (abutting) properties indicates that the average lot size is close to 1.5 acres with the smallest property being 0.2 acres. The nearby properties located on Lake Independence (within 1,000 feet of the subject property) also range in size with the average lots size being approximately 0.5 acres. The approximate net density of the abutting properties is approximately .75 units per acre.
7. The proposed development would preserve a buffer and open space area along Perkinsville and South Lake Shore Drive. This area could be bermed and planted to help screen the proposed development from the surrounding properties. More development of this area/berming/planting would be needed if this development were to move forward.
8. The City and Watershed have standards relating to storm water management and water quality. The City would work to ensure that any development of this property would meet all applicable standards relating to storm water management and water quality. Due to the unique nature of this property and the fact that the applicant is asking the City to consider allowing for reduced lot standards for a portion of the property, increased or enhanced water quality management of the stormwater associated with this development could be requested.

9. The subject property has a significant natural feature that consists of a wooded “ravine” that runs from west to southeast through the northern portion of the property. This natural feature should be further defined and potentially preserved by any development of this property.

Natural Resource Area



10. The proposed concept subdivision would be subject to the City's park dedication requirements. No park land dedication is shown on the concept plans. The City should provide feedback relating to possible park dedication on the subject property. The City may want to incorporate a trail and/or sidewalk within the development and to the east to provide access to Baker Park. Discussion relating to park dedication should be provided by the City. The standard park dedication requirement of \$3,500 per lot would otherwise be applicable to all newly developed lots.

Individual Neighbor Discussion:

As noted earlier in this report, the City met or talked with approximately 10 neighboring property owners in more detail about the proposed development. These meetings provided a great deal of insight, concerns and recommendations relating to the development of this property. The following summary of the comments and discussions is provided for consideration by the Planning Commission and City Council. There may have been additional comments or questions asked during the meetings that is not summarized below and was unintentionally not included.

Stormwater:

1. There is a general concern expressed by many of the residents pertaining to stormwater quality and runoff from the existing property and any future development. Lake Independence is currently an impaired water body. Any development of the property should be carefully reviewed to ensure that water quality is improved.
 - a. It was noted that there is a significant amount of water that runs off of the property to the west and also directly off the property into the lake on the north in several areas.

Traffic:

2. There is a general concern expressed by many of the residents pertaining to increased traffic on both South Lake Shore and Perkinsville Road.
 - a. Many comments were made relating to the speed of vehicles traveling on Perkinsville Road and that there are limited site lines to the west when turning onto or off of South Lake Shore.
 - b. Many comments were provided relating to the poor visibility and difficulty with turning onto or off of CSAH 29 from/onto Perkinsville.

Density/Layout/Lakeshore:

3. Questions were asked relating to why the City would consider allowing an increased number of units on the property rather than what is permitted by the current zoning ordinance. There was some discussion that this property is somewhat unique due to the fact that sanitary sewer borders two sides of the property and its proximity to the lake. The City has generally found that it is beneficial to require the development of sewer lots within close proximity to lakes.
 - a. Several comments were made relating to the character of the surrounding properties and that the proposed lots were generally smaller than the properties on Perkinsville and a part of South Lake Shore that is directly adjacent.
 - b. Concerns were expressed relating to the two lots that directly adjoin South Lake Shore and whether or not they could be eliminated and or moved so that there is a continual buffer along the entire South Lake Shore frontage.

- c. A general comment was made that the proposed development has 2-5 more lots than what would be acceptable.
- d. Many comments were provided relating to the desire to minimize the number of potential docks on Lake Independence. It was asked if multiple docks could be installed on the Lake and whether or not any of the lakeshore properties would have common access. It was noted that the City did not regulate the number of docks, but that the intent of the current design would be to have no common access lots.

Natural Resource Preservation:

- 4. Comments were made regarding the existing vegetation and topographical features of the site and how/if they would be preserved. It was noted that the City does not have specific tree preservation requirements, but clear cutting of properties is not permitted. The City also discussed the possibility of including other measures that could preserve trees, slopes, ravines, etc. within the development.
- 5. There were comments made relating to the existing nursery trees located on the property and whether or not some could be preserved.

Sanitary Sewer:

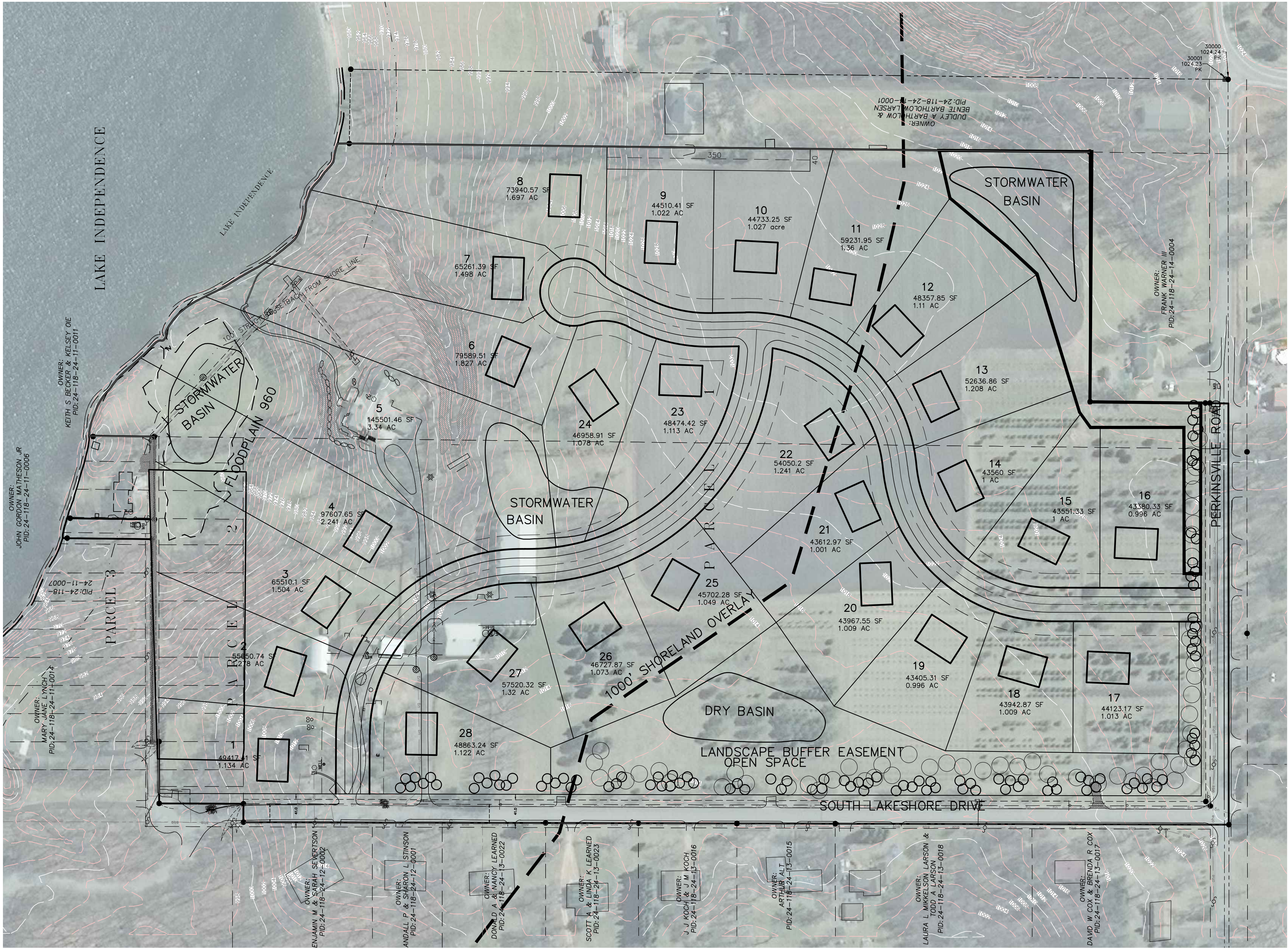
- 6. Questions were asked regarding any potential impacts or costs to the City or residents relating to additional connections being added to the sanitary sewer. It was noted that the City would likely require an update to the existing lift station located on the property to accommodate the proposed development.

Recommendation:

The applicant is seeking feedback from the Planning Commission and City Council pertaining to the concept plan for a 28-lot development. No formal action can be taken by the City on the concept plan. There are many steps that will need to be taken for any development of this property to occur. The adoption of the 2040 Comprehensive Plan will likely not be completed until Spring of 2020.

Attachments:

- 1. Application
- 2. Concept Site Plan



SITE DATA:

GROSS AREA: ±48 ACRES

EXISTING ZONING: RURAL RESIDENTIAL
EXISTING GUIDE PLAN: RURAL RESIDENTIAL

PROPOSED ZONING: PUD
PROPOSED GUIDE PLAN: TBD

SHORELAND OVERLAY DATA:
LAKE INDEPENDENCE IS A RECREATIONAL DEV. LAKE (RD)

RD REQUIREMENTS:
LOT AREA: 1 ACRE
LOT WIDTH: 100' AT FRONT SETBACK AND LAKE FRONTAGE
STRUCTURE SETBACK FROM OHW: 100'

PROPOSED SHORELAND OVERLAY LOTS:
LOT AREA: MINIMUM 1 ACRE
LOT WIDTH: 100' AT FRONT SETBACK AND LAKE FRONTAGE
STRUCTURE SETBACK FROM OHW: 100'

PROPOSED NON SHORELAND OVERLAY LOTS:
WIDTH: 100'
AREA: 1 ACRE
FRONT SETBACK: 25'
REAR SETBACK: 25'
SIDE SETBACK: 15' CORNER, 7.5' INTERIOR

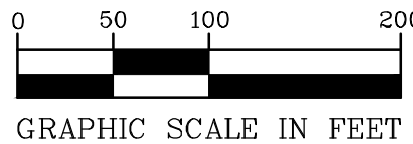
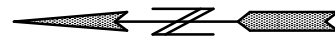
PROPOSED OPEN SPACE: ±6.95 ACRES

TOTAL LENGTH CENTERLINE: 2,625

PROPOSED LOTS: 28
EXISTING HOME: 1
LAKE LOTS (EXCLUDING EXISTING HOME): 5
REMAINING LOTS: 22

STORMWATER MANAGEMENT REQUIREMENTS

- MAINTAIN FLOW RATES FOR 2,10 AND 100 YEAR STORMS
- ABSTRACT 1.1" STORMWATER GENERATED BY NEW IMPERVIOUS SURFACE BIOFILTRATION
SOIL AMENDMENT (0.5" CREDIT OVER AMENDED AREA)
PRESERVE NATURAL AREAS (0.5"CREDIT OVER CONSERVATION AREA)
EXCESS WETLAND BUFFER (0.5" CREDIT OVER EXCESS BUFFER AREA)
- NO INCREASE IN TOTAL PHOSPHOROUS AND TOTAL SUSPENDED SOLIDS



City of Independence
Consideration to Amend City's Zoning Ordinance

To: Planning Commission
From: Mark Kaltsas, City Planner
Meeting Date: September 17, 2019

A proposed text amendment to the City of Independence Ordinances as follows:

- a. Chapter 5, Section 530.01, Subd. 3 Accessory Uses – Considering an amendment to the maximum height of an accessory structure. The City will discuss increasing the permitted height of detached accessory structures.

UPDATE:

Accessory Structure Height

Staff has determined that it is possible to establish a “Review Committee” that would likely be comprised of several members of the Planning Commission and City Council to review requests for accessory structures that exceed the maximum height permitted in the zoning ordinance. Details of the “Committee” makeup will be considered and approved by Council and will likely include 2 Planning Commissioners and 1 Council Member. The intent would be that the “Committee” would meet once a month if needed. The cost of an application would be nominal and no public hearing would be conducted. Staff has been working with the City’s attorney to develop a draft ordinance for consideration by the Planning Commission. The draft considers establishment of several specific criteria which must be satisfied prior to consideration by the “Committee”. If a proposal meets the criteria, the “Committee” will have the ability to review and approve an increased building height or if not approved recommend that the applicant apply for a variance. Any application that does not meet the initial criteria would have the option of applying for a variance.

Staff would like Planning Commissioners to review the proposed draft language and provide discussion and feedback at the meeting. The base criteria can be adjusted and or amended as directed. Staff offers the following initial criteria for consideration and discussion by the Planning Commission:

⁴ An accessory structure may exceed the height of the principle structure if the accessory structure meets all applicable criteria of the Section and the following conditions are met:

- (1) Building plans containing any proposed accessory structure with a height exceeding that of the principle structure must be submitted to the City in advance of work to confirm compliance with this Section.
- (2) The City Council may establish an Accessory Building Height Review Committee to review building plans submitted for any proposed accessory structure with a height exceeding that of the principle structure to ensure compliance with the following:
 - a. On properties that are 2.5 acres or less, the proposed accessory structure must be located to the rear of the principle structure.
 - b. The proposed accessory structure must be detached and separated by a minimum distance of 75 feet from the principle structure.
 - c. The proposed accessory structure must meet the principle structure setbacks from all property lines.
 - d. All abutting property owners have consented to the proposed accessory structure on forms provided by the City.

It is not intended that Planning Commission will provide a recommendation relating to the information presented in this report at this meeting.

Original Discussion on Accessory Building Heights:

In 2013 the City updated the accessory structure ordinance to establish a more proportional relationship between the amount of detached accessory structure square footage allowed on a property and the size of the property. In practice, the new ordinance has worked well and there have been no variances granted relating to the size of a detached accessory structure since the amendment. One area of the ordinance that was changed at the same time was the maximum height permitted for detached accessory structures. The City has received concerns and comments from property owners relating to the maximum height permitted. The City has also granted two (2) variances relating to the maximum height of detached accessory structures. The general concern is that the maximum height permitted varies based on the height of the principal structure. If a resident has a single-level home, the maximum height of a detached accessory structure is limited to the single-level home height. This causes some issues for residents with larger properties that would like to have a larger detached accessory structure but have a single-level home.

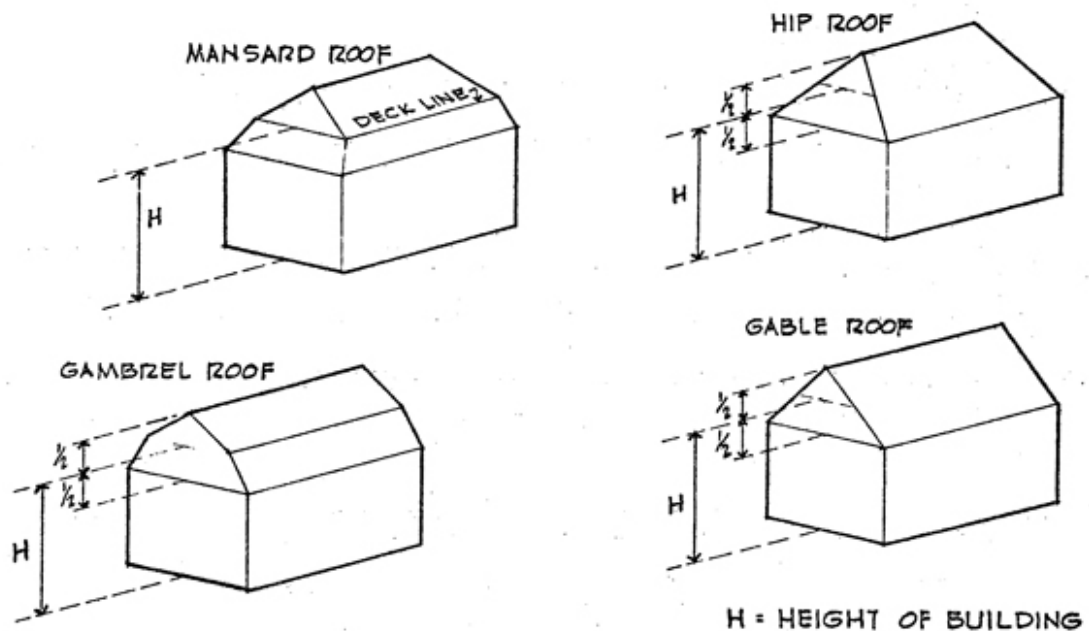
Staff has looked at the permitted heights of accessory structures from surrounding communities.

City Accessory Structure Comparison Table	
Jurisdiction	Height
Independence	height of principle structure
Winsted	1 story/16 feet
Delano	20 feet or height of principal***
Waconia	20 feet***
Minnetrista	height of principal structure
Mound	height of principal structure
Mayer	17 feet
Maple Plain	1 story/16 feet***
Victoria	24 feet/12 feet
Watertown	12 feet
* Cannot be located in front yard	
** Over 1,000 requires CUP	
*** Measured to Peak of roof	

It should be noted that not all communities allow as large of a detached accessory structure as the City of Independence. Staff would like to further discuss the maximum permitted height of detached accessory structures with the Planning Commission.

The City's current ordinance states the following:

³ The height of an accessory structure shall not exceed the height of the principle structure. The height of the principle and accessory structure shall be measured in accordance with the definition provided in this ordinance, Section 510.05, Subdivision 10.



In application of the ordinance over the past 5 years, the City has consistently had requests for detached accessory structures that have heights (measured to the midpoint of the roof) in the 20-25-foot range. Many of the single-level homes measure closer to 17-20 feet in height measured to the midpoint of the roof. This typically leaves single-level property owners with an issue when considering building a detached accessory structure.

When the City considered the height in 2013, there was a general consensus that detached accessory structures should be proportional and subordinate to the principle structure on the property. In order to help achieve the subordinate relationship, the maximum height of the detached accessory structure was limited. Due to the wide array of property size, building architecture and other factors, many of the proposed detached accessory structures do not have a significant relationship with the principle structure.

ORDINANCE NO. ____.

**AMENDING SECTION 530 AND 530 OF THE INDEPENDENCE CITY CODE
RELATING TO ACCESSORY USES**

**THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, HENNEPIN COUNTY,
MINNESOTA, ORDAINS:**

SECTION 1. The Independence City Code, Chapter IV, Section 530 is revised to include the following:

530.01. - Agricultural District established.

Subd. 1. *Purpose.* The agricultural district is established for the purpose of promoting continued farming of agricultural lands.

Subd. 2. *Permitted uses.* The following uses are permitted in the Agricultural District:

- (a) Agriculture and horticulture;
- (b) Feedlots and poultry facilities;
- (c) Farm drainage and irrigation systems;
- (d) Forestry;
- (e) Public recreation;
- (f) Single-family dwellings

Subd. 3. *Accessory uses.* The following accessory uses are permitted in the Agricultural District:

- (a) Private garages for single-family dwellings,
- (b) Home occupations operated in accordance with subsection 515.09 of this zoning code;
- (c) Fences;
- (d) Detached agricultural storage buildings, barns, or other structures, accessory to an existing single-family dwelling and subject to the following criteria:
 - 1. No accessory building or structure shall be constructed on any residential lot prior to the time of construction of the principal building to which it is accessory.
 - 2. Accessory buildings or structures of 120 square feet or less are exempt from the total square footage.
 - 3. The total square footage of all accessory structures on an individual property shall not exceed the following standards:

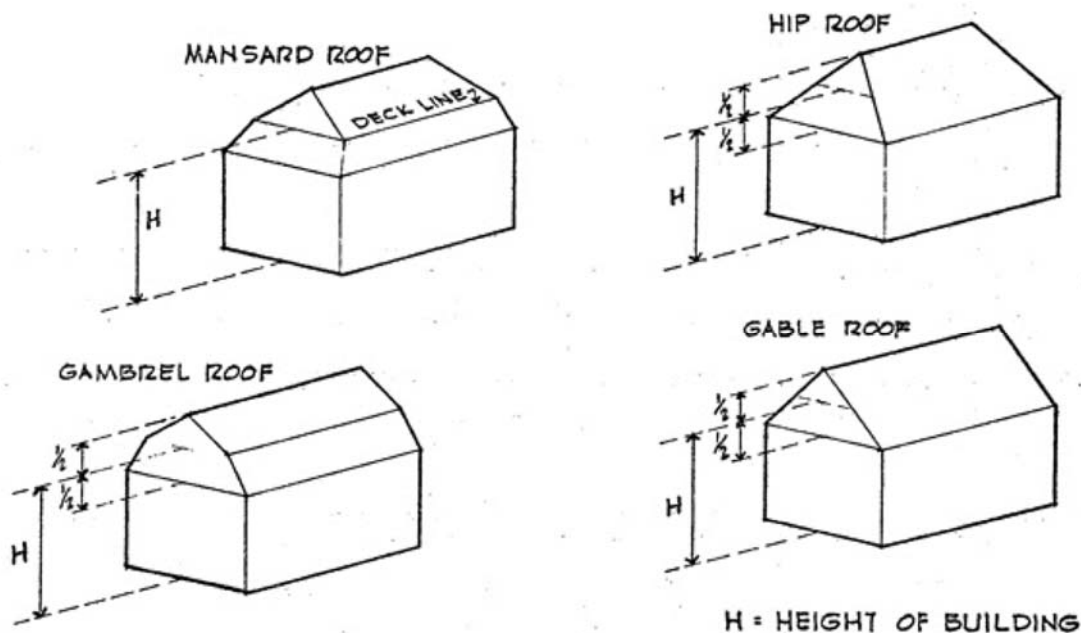
	Lots of record	Building Size ¹
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(1)	2½ acres or less	1,850 square feet or 2% of lot area ² (whichever is greater)
(2)	Greater than two and one-half acres but less than 10 acres	2% of lot area ²
(3)	Ten or more acres	No requirement

¹ Building size shall be calculated by determining the footprint of the building.

² Percentage of lot area shall be based on the buildable land. Buildable land must be contiguous and not separated by streams, wetlands, slopes in excess of ten percent or other physical impediments. In no instance shall the total impervious surface area of any lot exceed 25 percent.

³ The height of an accessory structure shall not exceed the height of the principle structure, except as provided in footnote 4. The height of the principle and accessory structure shall be measured in accordance with the definition provided in this ordinance, section 510.05, subdivision 10.



⁴ An accessory structure may exceed the height of the principle structure if the accessory structure meets all applicable criteria of the Section and the following conditions are met:

- (1) Building plans containing any proposed accessory structure with a height exceeding that of the principle structure must be submitted to the City in advance of work to confirm compliance with this Section.

- (2) The City Council may establish an Accessory Building Height Review Committee to review building plans submitted for any proposed accessory structure with a height exceeding that of the principle structure to ensure compliance with the following:
- a. On properties that are 2.5 acres or less, the proposed accessory structure must be located to the rear of the principle structure.
 - b. The proposed accessory structure must be detached and separated by a minimum distance of 75 feet from the principle structure.
 - c. The proposed accessory structure must meet the principle structure setbacks from all property lines.
- (e) Retail sales, on a seasonal basis of agricultural and horticultural products grown on the premises by a person who occupies the premises as a principal residence, provided that the applicant apply for and receive an administrative permit from the city prior to commencing any sales of products. All applications shall meet and comply with all of the following standards:
- (1) Adequate off-street parking is provided for the number of persons reasonably anticipated to be on the site at any one time;
 - (2) The hours of operation must be limited so as not to unreasonably interfere with the character of the surrounding area and the neighboring property owners' peaceful enjoyment of their properties;
 - (3) The following signs may be permitted: one permanent on-site sign of no greater than 32 square feet in area per surface and having no greater than two surfaces, two temporary off-site signs of no greater than eight square feet in area per surface and having no greater than two surfaces and such other signs as city may reasonably determine to not interfere with public safety or the character of the surrounding area;
 - (4) Any new accessory structure constructed for the purpose of such sales and any adjacent parking area must satisfy those requirements as to setback, size, appearance and screening as the city may reasonably determine for purposes of protecting public safety and the character of the surrounding area;
 - (5) Greenhouses may not be artificially lit between the hours of 9:00 p.m. and 7:00 a.m. unless shielded so as to prevent any light from escaping in any direction;
 - (6) Such requirements, including application of dust control materials and grading of roadways, as the city reasonably determine are necessary in order to minimize the impact of any increase in traffic on city roadways as a result of such sales being conducted on the premises;
 - (7) All applicable federal, state and local statutes, ordinances, codes and regulations, including, but without limitation, all applicable health and safety regulations, must be complied with.
- (f) Aeration or decorative windmills provided the following performance standards are satisfied:
- (1) Permit required. A building permit shall be required for the construction of a recreational or aeration windmill.

- (2) Minimum lot size requirement. Lot must be 5 acres in total area or larger.
- (3) Setback requirements. The windmill must be setback from all property lines and residential structures, ten feet plus the height of the windmill.
- (4) Height restrictions. The maximum height of the windmill, as measured to the top of the highest point of the structure or blade) must not exceed the height of the principal structure or 35 feet, whichever is less.
- (5) Stability. The windmill shall be installed to withstand a wind force of 90 miles per hour.
- (6) The function of the windmill can only be used for the purpose of water aeration or decoration and not for any other on or off-site use; including the generation of electric power, either for use or sale.
- (7) No more than one windmill shall be permitted per property.
- (8) Windmills less than ten feet in height shall not require a permit.

Subd. 4. *Conditional uses.* The following conditional uses may be permitted in the Agricultural District, by action of the city council pursuant to subsections 520.09, 520.11 and 520.13.

- (a) Accessory dwelling units;
- (b) Riding stables;
- (c) Bunkhouses;
- (d) Farrieries;
- (e) Detached agricultural storage buildings, barns, or other accessory structures that exceed the size limitations of subdivision 3(d) of this subsection;
- (f) Kennels;
- (g) Local government buildings;
- (h) Churches;
- (i) Cemeteries;
- (j) Extraction;
- (k) Essential services;
- (l) Temporary use of a mobile home or camper as a dwelling unit during construction of a permanent dwelling for a period not to exceed six calendar months;
- (m) Wind energy conversion systems (WECS);
- (n) Commercial indoor storage in existing farm buildings, provided:
 - (1) The applicant establishes that the building has been in continuous use for agricultural purposes for at least ten years preceding the application for the conditional use permit;
 - (2) The building is located on property that is owner-occupied; and

- (3) The applicant establishes that the structure cannot be economically used for agricultural purposes.
- (o) Guest houses and non-rental guest apartments;
- (p) Commercial golf courses;
- (q) Telecommunications towers approved pursuant to section 540 of this Code;
- (r) Forestry products processing, provided that:
 - (1) The operation of the conditional use must be on a lot that is being used as an occupied single-family dwelling;
 - (2) The lot upon which the conditional use is operated must be not less than ten acres in area;
 - (3) The area devoted to the conditional use, including buildings, parking, storage area, and all related uses may not exceed 15,000 square feet or 12 percent of the size of the lot, whichever is smaller, subject to existing accessory building standards.
- (s) Polo grounds.
- (t) Catering business, provided that:
 - (1) The business is subordinate to the principal use of the property as a residence;
 - (2) No materials, equipment or parts used in the business may be stored on the premises other than within the dwelling unit or accessory structure;
 - (3) No signs relating to the business may be visible from the exterior of the dwelling unit or accessory structure except signs that are permitted under subsection 550.09, subdivision 2 of this zoning ordinance;
 - (4) No exterior alterations may be made to the dwelling unit to accommodate the business except those alterations customarily found with the dwelling units on lots of similar size within the district;
 - (5) No traffic shall be generated by the business beyond what is reasonable and normal for the area in which it is located;
 - (6) The hours and days during which the business is conducted on the premises is limited so as not to unreasonably interfere with the residential character of the surrounding areas;
 - (7) No over the counter retail sales may occur on-site.
- (u) New wireless support structures for small wireless facilities.

Subd. 5. *Animal assisted therapy operation.* AAT may be permitted as a conditional use by action of the city council pursuant to subsections 520.09, 520.11 and 520.13 of the zoning ordinance, subject to the following additional conditions:

- (a) The applicant shall provide proof of insurance in an amount and with such coverage as the city attorney deems reasonable, and shall thereafter maintain such insurance.

- (b) The applicant shall provide proof of licensing or appropriate educational attainment and training in AAT for all therapists delivering services at the site. This requirement shall be continuing and the city may request such proof on a periodic basis for all therapists then delivering services.
- (c) The applicant shall provide documentation and a site plan describing the AAT program(s) to be delivered. Such documentation shall include a description of the goal-directed process and criteria for evaluating the effectiveness of the program(s).
- (d) The applicant shall identify all species of animals that will be present at the site and used in delivering AAT. No other species of animals shall be allowed with the city's approval.
- (e) For parcels of less than ten acres, the maximum density of animal units is two acres for the first animal unit and one additional acres for each additional animal unit.
- (f) Other than the delivery of AAT, no commercial or business activities may be conducted on the site except the production of agricultural products in de minimis amounts as a result of the delivery of AAT.
- (g) The city may periodically inspect the site without notice.

530.05. - Rural Residential District established.

Subd. 1. *Established.* The Rural Residential District is established for the purpose of providing for residential development affording enjoyment of the rural life style.

Subd. 2. *Permitted uses.* The following uses are permitted in the Rural Residential District:

- (a) Single-family dwellings;
- (b) Commercial agriculture;
- (c) Public recreation;
- (d) Horticulture;
- (e) Forestry.

Subd. 3. *Accessory uses.* The following accessory uses are permitted in the Rural Residential District:

- (a) Private fences, gardening and landscaping;
- (b) Recreation equipment;
- (c) Home occupations operated in accordance with subsection 515.09 of this zoning code;
- (d) Non-commercial greenhouses;
- (e) Private garage, additional storage buildings, barns or other structures, accessory to an existing single-family dwelling and subject to the following criteria:
 - 1. No accessory building or structure shall be constructed on any residential lot prior to the time of construction of the principal building to which it is accessory.

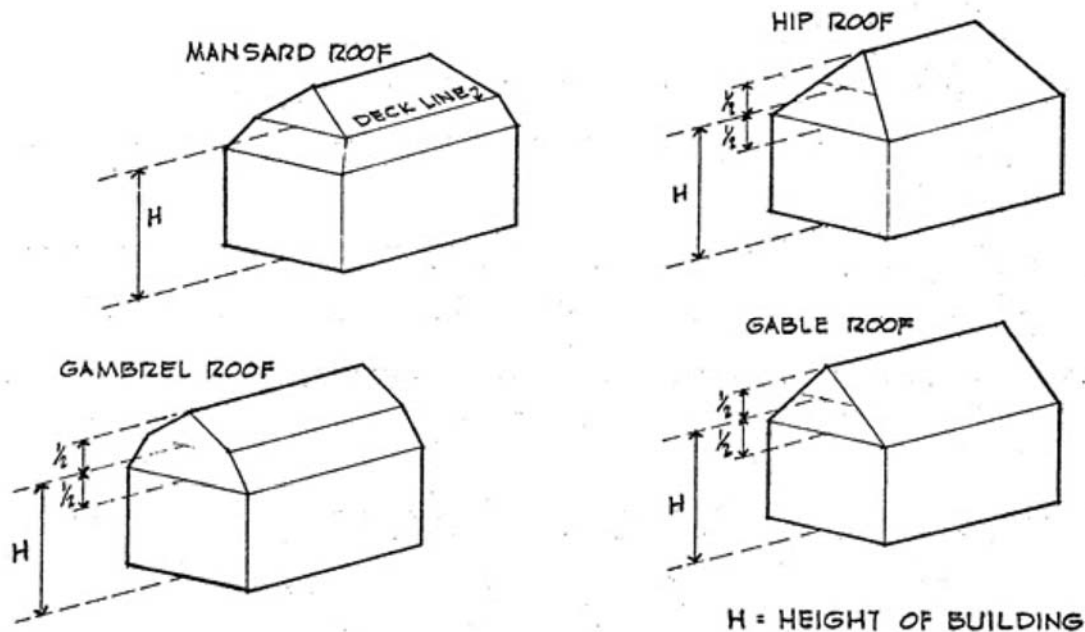
2. Accessory buildings or structures of 120 square feet or less are exempt from the total square footage.
3. The total square footage of all accessory structures on an individual property shall not exceed the following standards:

	Lots of Record	Building Size ¹
(1)	2½ acres or less	1,850 square feet or 2% of lot area ² (whichever is greater)
(2)	Greater than two and one-half acres but less than 10 acres	1,850 square feet
(3)	Ten or more acres	No Requirement

¹ Building size shall be calculated by determining the footprint of the building.

² Percentage of lot area shall be based on the buildable land. Buildable land must be contiguous and not separated by streams, wetlands, slopes in excess of ten percent or other physical impediments. In no instance shall the total impervious surface area of any lot exceed 25 percent.

³ The height of an accessory structure shall not exceed the height of the principle structure, except as provided in footnote 4. The height of the principle and accessory structure shall be measured in accordance with the definition provided in this ordinance, section 510.05, subdivision 10.



⁴ An accessory structure may exceed the height of the principle structure if the accessory structure meets all applicable criteria of the Section and the following conditions are met:

- (1) Building plans containing any proposed accessory structure with a height exceeding that of the principle structure must be submitted to the City in advance of work to confirm compliance with this Section.
- (2) The City Council may establish an Accessory Building Height Review Committee to review building plans submitted for any proposed accessory structure with a height exceeding that of the principle structure to ensure compliance with the following:
 - a. On properties that are 2.5 acres or less, the proposed accessory structure must be located to the rear of the principle structure.
 - b. The proposed accessory structure must be detached and separated by a minimum distance of 75 feet from the principle structure.
 - c. The proposed accessory structure must meet the principle structure setbacks from all property lines.

Subd. 4. *Conditional uses.* The following conditional uses may be permitted in the Rural Residential District by action of the city council pursuant to subsections 520.09, 520.11, and 520.13 of this Code:

- (a) Cluster development meeting the standards of subdivision 6 of this section;
- (b) Kennels;
- (c) Nurseries;
- (d) Commercial recreation;
- (e) Local government buildings;
- (f) Churches;

- (g) Cemeteries;
- (h) Essential services;
- (i) Temporary use of a mobile home as a dwelling unit during construction of a permanent dwelling for a period not to exceed six calendar months;
- (j) Guest houses and non-rental guest apartments;
- (k) Telecommunications towers approved pursuant to section 540 of this Code; and
- (l) New wireless support structures for small wireless facilities.

SECTION 2. This ordinance shall be in force and effect after enactment and publication as required by law.

Adopted this _____ day of September, 2019, by the Independence City Council.

Marvin Johnson, Mayor

ATTEST:

Mark Kaltsas, City Administrator