

MINUTES OF A MEETING OF THE  
INDEPENDENCE PLANNING COMMISSION  
JUNE 15, 2020 – 7:30 P.M.  
(Virtual Meeting)

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 (all virtual)

PRESENT: Commissioners Gardner, Dumas, Thompson, Volkenant and Palmquist

STAFF: City Administrator Kaltsas, Assistant to Administrator Horner

ABSENT: None

VISITORS: Jerry Wise, Donovan DesMarais, Paul Otto, Nathan Kirkpatrick, Steve Grotting

3. Approval of Minutes:

a. May 18, 2021 Planning Commission Meeting

b. June 1, 2021 City Council Meeting Minutes (For Information Only)

**Motion by Thompson to approve the April 20, 2021 Planning Commission minutes as amended, second by Dumas. Ayes: Gardner, Dumas, Thompson and Palmquist. Nays: None. Absent: Volkenant. Abstain: None. Motion Approved.**

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

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

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

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

1. Consider Preliminary Plat approval.

2. Consider Final Plat approval.

The City has reviewed this plan and provided review comments to the applicant. The property is currently zoned RR-Rural Residential and is also located within the S-Shoreland Overlay zoning district adjacent to Lake Sarah. The City allows properties zoned S-Shoreland and have access to sanitary sewer, to be subdivided into 1-acre minimum lots as long as all applicable requirements can be satisfied by the applicant. The applicable requirements that stipulate the number of lots generally relate to the minimum

road frontage (200 LF – for lots less than 3.49 acres), minimum shoreline frontage (100 LF) and minimum width at the building setback line (100 LF).

**505.13. Zoning provisions.**

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

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

1. A detailed review of the storm water, grading, wetlands, and infrastructure details has been completed by the City. The following comments should be considered by the City: There is no grading being proposed as a part of the subdivision.

- a. Each lot will be individually graded at the time a building permit is pulled.
  - b. Each lot will be individually connected to City sewer at the time a building permit is pulled.
- As a result, there are no overall development concerns relating to grading, utilities, or stormwater.

2. A wetland delineation has been completed for the property. The applicant is proposing to contain the wetlands and the requisite buffer within a newly established drainage and utility easement. This is required and consistent with established City standards. a. It should be noted that Lot 3, Block 1 has approximately 5 feet of clear access from the main portion of the lot to get to the lake side of the property. In addition, the applicant would have to cross the wetland in some manner to access the lake.

3. The applicant has identified the potential home sites for each lot along with the prescribed building setbacks.

4. The proposed subdivision creates a total of 4 lots: 3 with shoreland access to Lake Sarah. The City requires a minimum lot public road frontage of 200 LF per lot. This property has approximately 1169 LF of total frontage on Woodhill Drive and CSAH 11. The City can waive the minimum frontage requirement per lot if the following criteria is satisfied.

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

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

The proposed layout appears to create a more advantageous configuration due to access for all lots coming off of Woodhill Drive versus CSAH 11. During the review of the concept plan, Council and Planning Commission noted that access for all lots off of Woodhill Drive would better serve

the proposed properties. Hennepin County has also indicated that an additional access onto CSAH 11 would not likely be approved. One key aspect of this consideration is that the property has the requisite length of frontage to support all four proposed lots. The City is therefore would be waiving the frontage requirement for each individual lot, but not the reduction of total frontage required to realize the lots. The proposed layout is somewhat impacted by the existing detached accessory structure located on Lot 2, Block 1. This structure is not considered a legal structure as there is no principal structure located on this property. The City will require an escrow deposit and agreement relating to the use and removal of the structure should no principal structure be established on the property. This structure is shown to meet applicable building setbacks in the proposed condition.

6. There is a second existing detached accessory structure located on Lot 2, Block 1 near the shoreline. This shed is also considered to be an illegal structure as there is no principal structure on the property. In addition, the maximum size of a detached accessory structure located within 100 feet of the OHWL of the lake is 120 SF. The applicant will need to verify the size of this shed and if greater than 120 SF, will need to remove the shed or modify it to comply with all applicable requirements. This can also be addressed in the recommended agreement with the applicant.

7. The proposed lots would be connected to the City's sanitary sewer system. The type of connection to the public sewer line will need to be further reviewed and considered by the City at the time a building permit is pulled. It has been noted by the City that the invert elevation of the existing public sewer may dictate additional restrictions for the elevations of the proposed homes.

8. There is one existing connection to the sanitary sewer serving the existing detached accessory structure. This connection can be used for one of the proposed lots. The three new and additional lots would be subject to applicable connection fees in addition to the initial assessment fee of \$9,550 per lot. As historically has been done along County Road 11, Hennepin County is requesting an additional 17 feet of right of way for future trail and road expansion. This has been a consistent request for all subdivisions along CSAH 11. The additional setback does not impact the potential buildable area of Lot 4, Block 1 due to the setback being taken from the centerline of CSAH 11 (which would not change as a result of the additional ROW request).

10. The City's current park dedication fee is \$3,500 per lot (less than 4.99 acres). The proposed subdivision of this property is generally in keeping with the existing Rural Residential zoning district. The proposed lots would be similar in nature and character to the surrounding properties. Lots along Woodhill Drive range in size from approximately .5 acre to 2 acres.

#### Recommendation:

The Planning Commission is being asked to consider approval of the applications for a preliminary and final plat. Should the Planning Commission recommend approval to the City Council, the following findings and conditions should be considered:

1. The proposed preliminary and final plats meet all applicable conditions and restrictions stated in Chapter V, Section 500, Subdivisions, in the City of Independence Zoning Ordinance. The Applicant shall address all comments made within this report and recommended by the Planning Commission.
2. The Applicant shall enter into an agreement with the City relating to the use and removal of the two detached accessory structures located on Lot 2, Block 1. The agreement will stipulate conditions of use and or modification of the existing structures and require a form of security acceptable to the City to support the agreement.
3. The Applicant shall revise the plat to include the additional 17 feet of right of way for future trail and road expansion.
4. There is one existing connection to the sanitary sewer serving the existing detached accessory structure. This connection can be used for Lot 1 or 2, Block 1. The three new and additional lots would be subject to all applicable connection fees in addition to the initial assessment fee of \$9,550

per lot. The \$9,550 shall be paid by the developer prior to recording of the final plat.

5. The Applicant shall pay the City's current park dedication fee of \$3,500 per lot (less than 4.99 acres). This The \$3,500 per lot shall be paid by the developer prior to recording of the final plat.

6. The Applicant shall pay for all costs associated with the City's review of the requested preliminary and final plat.

7. The Applicant shall record the final plat with Hennepin County within 180 days of the City Council approval.

Palmquist asked about lot 3 and guidance staff could provide on what type of crossing would be acceptable. Kaltsas said there a few options one being a boardwalk. They would possibly need to do a raised dock or platform. Palmquist asked if this guidance should be added to the request. Kaltsas said the buffer would be regulated by the watershed district.

Palmquist asked if Lot 2 would have a fee for connection to sanitary sewer. Kaltsas said yes there was fee applied and paid. Kaltsas recommends the applicant enter an agreement with a security deposit to ensure the conditions around approval and use of the accessory building.

Gardner opened the Public Hearing.

### **Public Hearing Open**

Palmquist asked about the accessory building not being used as a dwelling unit. DesMarais said this in not intended to become a primary residence and he wants to work within the current code. Thompson said it is illegal now and cannot be used in that capacity unless it goes through the process with the Planning Commission in the future. Thompson said because it exists now does not mean it is "grandfathered" in for the future. Kaltsas noted if greater than 120 square feet would have to be modified or removed and this would be a part of the agreement/ stipulation.

Otto asked about the ROW as it is 40' and usually it would be 50'. Kaltsas said he left 17 extra feet in the notes, but this can be clarified further through Council.

**Gardner motioned to close the Public Hearing, second by Thompson.**

### **Public Hearing Closed**

**Motion by Dumas, second by Volkenant to approve a Preliminary and Final Plat for a proposed subdivision of the subject property to create four (4) new lots (3 would have lakeshore on Lake Sarah) and a Final Plat for a proposed subdivision of the subject property to create four (4) new lots (3 would have lakeshore on Lake Sarah) with the 8 stipulations in the staff report and the additional two stipulations on ADU and noting that a letter will be sent regarding the letter on wetland buffers. Ayes: Thompson, Volkenant, Dumas, Palmquist and Gardner. Nays: None. Absent: None. Abstain: None. Motion Approved.**

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

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

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

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

Front Yard Setback:

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

Existing: 143 feet from centerline 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)*

*Sub. 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 lot. 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)*

*Sub. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08) 520.23.*

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

Consideration of the criteria for granting a variance:

a. Residential use of the property is consistent with the Rural Residential District.

b. Many of the surrounding properties do not appear to be in compliance with all applicable principle or accessory structure setbacks.

c. The character of the surrounding area is residential. The proposed screen porch addition is generally in keeping with the residential uses on properties in the surrounding area.

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

1. Staff discussed alternative options for locating the screen porch in compliance with applicable setbacks with the applicant. The applicant noted that the general interior configuration of the home would best support the proposed porch location. The proposed porch also is in line with the west (rear) of the existing home.

2. The applicant could locate a detached accessory structure on this property in the general location of the proposed screen porch and meet applicable setbacks (15 feet).
3. The adjacent property to the south is located approximately 19' from the shared property line.
4. The applicant discussed the encroachment with the neighboring property owner and they have provided a letter in support of the requested variance.

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

Staff is seeking a recommendation or direction from the Planning Commission pertaining to the request for a variance. Should the Planning Commission consider granting a variance, the following findings and conditions should be considered.

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The City finds that the criteria for granting a variance have been satisfied by the applicant. Specifically, the City finds the following:
  - a. Residential use of the property is consistent with the Rural Residential District. The applicant is seeking a variance to allow a screen porch addition to be added onto the existing home.
  - b. The alignment of the proposed porch with the rear of the home and the proposed building architecture and exterior finishes appears to mitigate some of the potential impacts resulting from the addition.
  - c. The character of the surrounding area is residential. The proposed screen porch addition and would be in keeping and consistent with the surrounding uses found in this neighborhood.
3. The variance will permit a 20-foot reduction (from 30 feet to 10 feet) to the south side yard setback to allow the proposed screen porch to be added onto the existing structure as depicted on the site plan and building plans attached hereto as Exhibit A. Any modification changes or alteration to the structure that does not meet applicable setbacks in the future would require additional review and approval in the form of a variance.

Dumas asked if there was a fireplace in the porch making it appear to be more of a permanent structure. He wondered about the placement and reason why as he does not see the hardship. Kaltsas noted the City Attorney supported the request.

Gardner opened the Public Hearing.

### **Public Hearing Opened.**

Kirkpatrick noted the placement had to do with the well on the property. He confirmed the pool was going in now. Thompson asked if Kirkpatrick could better address Dumas's question on placement and what made this a unique condition not of his doing. Kirkpatrick noted the other corner was being used already for a play area and this makes it more convenient to have a room to eat right off of the kitchen. He said the lot size makes it very limited.

**Gardner motioned to close the Public Hearing, second by all.**

**Public Hearing Closed.**

Dumas noted he is concerned about setting a precedent as he does not see a “unique condition”. Thompson asked why the neighbor to the South was not at the setback line. Kaltsas said that one predates the ordinance. Thompson said he agreed with Dumas that these need to be looked at on a case-by-case basis and not have precedents set by a case such as this. Palmquist said he agreed with Dumas as well and maybe there needed to be additional language for guidance put into place.

**Motion by Thompson, second by Palmquist to approve a variance to allow a reduced side yard setback to add a screen porch to the south side of the existing home property located at 2485 County Road 90 (PID No. 15-118-24-44-0003) in the City of Independence, MN. Ayes: Thompson, Volkenant, Dumas, Palmquist and Gardner. Nays: None. Absent: None. Abstain: None. Motion Approved.**

6. **PUBLIC HEARING:** John Klinkner (Applicant/Owner) is requesting the following action for the property located at 2160 Nelson Road (PID No. 19-118-24-13-0001) in the City of Independence, MN:

a. A rural view lot subdivision to allow the creation of two (2) rural view lots on the subject property.

Kaltsas said the applicant’s representative approached the City about the possibility of subdividing the property in order to realize the allowable rural view lots. The applicant would like to establish two (2) rural view lots and has configured both to maximize the value of the new lots created. The applicant is proposing to create two (2) rural view lots in accordance with the provisions set forth in the City’s Zoning Ordinance. The subject property has a total acreage of 80.84 acres.

The Agriculture Zoning District prohibits the subdivision of property with two exceptions: rural view lot subdivisions and lot line rearrangements. The provisions in the Agriculture Zoning District also allow one (1) rural view lot for every 40 acres of land under the same ownership. Under the current zoning standards, the subject property has the ability to realize two (2) rural view lots for a total of three (3) lots across the property. Rural view lots must have the following characteristics:

**Lot size required** - between 2.5 and 10 acres

**Lot size proposed** - Parcel A – 10.00 acres

Parcel C – 10.00 acres

**Buildable Upland Required** - 2.5 acres

**Buildable Upland Proposed** - Parcel A – ~10.00 acres

Parcel C – ~9.00 acres

**Minimum lot frontage required** – 300 LF (for property between 5-10 acres)

**Minimum lot frontage proposed** – Parcel A – 662 LF

Parcel B – 670 (Nelson Rd) / 812 (Copeland Rd)

Parcel C – 507 LF

**Ratio of lot frontage to lot depth required** - no more than 1:4

**Ratio of lot frontage to lot depth proposed** – Parcel A – ~1:1

Parcel 4 – ~1:1.5

In addition to the minimum size necessary to subdivide, the ordinance requires at least 2.5 acres of buildable upland, 300 LF of frontage on a right of way and no greater than a 1:4 ratio of lot

frontage to lot depth for each rural view lot. Based on the proposed subdivision, both proposed rural view lots would meet all applicable setbacks. There is an existing home and several detached accessory buildings that would be located on the newly created Parcel A. This home is accessed off of Nelson Road. The new lot would have 10 acres and all existing structures would meet applicable building setbacks. Parcels B and C would be vacant properties with no existing structures in the after condition. The applicant is proposing to subdivide the property into lots that take advantage of the natural characteristics of the property and offer the best geographic location for a potential new home site.

The remaining 60-acre Parcel B would have multiple locations for a future home site which could be accessed off of either Nelson or Copeland Roads. The City has not received an on-site septic report verifying that the proposed rural view lots can accommodate a primary and secondary on-site septic system. It is anticipated that the City will have this verification prior to City Council consideration of the application. The applicant will need to include the requisite drainage and utility easements as required by ordinance (Section 500.15, Subd.'s 1 and 2) for all three parcels. Parcel B will have **no** rural view lot subdivision eligibilities following this subdivision.

The newly created rural view lots (Parcels A and C) will be required to pay the City's requisite Park Dedication fee. For this property, the requirement is as follows: Lot A and B (10 acres) \$7,250 each. This fee will need to be paid prior to recording the subdivision.

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

The Planning Commission will need to determine if the proposed rural view lot subdivision is in keeping with the requirements set forth by the City. The proposed subdivision of this property is intended to maximize the value in each of the lots being created while meeting all applicable criteria. The proposed lots being created generally align with the character of the surrounding properties and the intent of the City's Comprehensive Land Use Plan.

Staff is seeking a recommendation from the Planning Commission regarding the request for the rural view lot subdivision. Should the Planning Commission make a positive recommendation to the City Council, the following findings, and conditions:

1. The proposed rural view lot subdivision meets all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. Approval of the rural view lot subdivision is subject to the following:
  - a) The Applicant shall pay the park dedication fees in the amount of \$14,500, for the newly created Parcels A and B, prior to the applicant receiving final approval to record the subdivision by the City.
  - b) The Applicant shall pay for all costs associated with the City's review of the requested minor subdivision.
  - c) The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.
  - d) The Applicant shall execute and record the requisite drainage and utility easements with the county within six (6) months of approval.
  - e) Parcel B will have no remaining rural view lot eligibilities.

Dumas said it was straightforward.



Gardner opened the Public Hearing.

**Public Hearing Opened.**

Grotting said he was happy to answer any questions as the representative. There were no questions.

**Public Hearing Closed.**

**Motion by Palmquist, second by Thompson to approve a rural view lot subdivision to allow the creation of two (2) rural view lots for the property located at 2160 Nelson Road (PID No. 19-118-24-13-0001) in the City of Independence, MN. Ayes: Thompson, Volkenant, Dumas, Palmquist and Gardner. Nays: None. Absent: None. Abstain: None. Motion Approved.**

7. Open/ Misc.

Gardner asked about the house moving into the City being looked at by Council. Kaltsas said it needs to go through the process and the timeframe can be limited.

Kaltsas noted the next Planning Commission could be in person hopefully by the July meeting.

8. Adjourn.

**Motion by Palmquist, second by Thompson to adjourn at 9:08 p.m.**

Respectfully Submitted,

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Trish Gronstal/ Recording Secretary