

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, JANUARY 13, 2015 – 7:30PM

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 7:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, and Councilors Betts, Fisher, Wenck, and Spencer

ABSENT: None

STAFF: City Administrator Hirsch, City Attorney Vose, and City Planner Kaltsas

VISITORS: Kathy McCann, Steve Bayer, Mike DeLuca, Dawn Mooney, Jerry Wagoner, Lynda Franklin, Dennis Geffre, and Matt Bunkers

4. CONSENT AGENDA

a. 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.

- Approval of the City Council minutes from December 16, 2014.
- Approval of the City Council minutes from the Truth- in-Taxation meeting on December 16, 2014
- Approval of the Accounts Payable/Receivables ending December 31, 2014 and January 1st through the 13th, 2015.
- Approval to not waive the monetary limits on Tort Liability established by MN Statues, to the extent of the limits of liability coverage obtained from the LMCIT
- Approval, acknowledgement of the Disclosure Statement for 2014
- Set the Board of Review for Tuesday, May 12 at 6:30 p.m.
- Mayor Marvin Johnson's request to attend the National League of Cities Congressional Cities Conference, March 7 – 11th, 2015.

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

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

Fisher requested the City review the cost of permits, especially when they are based on value. Johnson discussed placing this on the agenda at the next meeting when we could review the full fee schedule.

Wenck requested adding a discussion about the budget and last year's expenditures. Johnson suggested adding this discussion to the end of the meeting.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF.

Spencer attended the following meetings:

- Swearing in ceremony for Maple Plain Councilmembers DeLuca and Maas-Kusske
- Planning Commission Meeting

Wenck attended the following meetings:

- Shared services meeting with the City of Maple Plain

Fisher attended the following meetings:

- Planning Commission

Betts attended the following meetings:

- Planning Commission
- Chamber of Commerce meeting

Johnson attended the following meetings:

- Delano Chamber of Commerce dinner
- Tom Emmer's open house
- Highway 55 Coalition meeting
- Funeral for founding board member of the Greater Lakes Country Food Bank
- Swearing in ceremony and reception for the new county commissioners
- Shared services meeting with the City of Maple Plain
- Highway 12 Corridor Coalition meeting in Delano
- Annual meeting for the Senior Community Services in Minnetonka
- Community Action Partnership for Suburban Hennepin County meeting in Golden Valley
- Community Action Partnership for Suburban Hennepin County Finance Committee Meeting
- Conference of Mayors in Minneapolis
- Chamber of Commerce Meeting

Hirsch attended the following meetings:

- Chamber of Commerce meeting
- Delano Chamber of Commerce Recognition
- Highway 12 Corridor Commission meeting in Delano

7. DIRECTOR OF PUBLIC SAFETY, GARY KROELLS – ACTIVITY REPORT FOR THE MONTH OF DECEMBER, 2014.

- Update on the U.S. Highway 12 Safety Coalition.
- Ox Yoke Inn – Alcohol Compliance Check

Director Kroells gave a recap of December's activity. He stated the year ended with just under 7,000 incident reports for both cities, of that 4,210 were in Independence. For the month of December, there were 474 incidents. He stated for the year criminal activity is down and is lower for the month of December. He thanked the Department staff for their excellent work over the year.

Kroells highlighted a few December incidents including: December 2nd fatal head-on crash on Highway 12 just East of Maple Plain in Medina, December 6th View Santa Program which collected 1,300 lbs. of food and \$850 for the local food shelf, December 7th burglary, December 9th fatal head-on crash on Highway 12 in Maple Plain, December 17th armed robbery in Delano at Holiday Gas Station and WHPS assisted in the arrest, December 24th loaded firearm discovered in the woods which was forgotten about by the property

owner, December 24th domestic assault arrest, December 29th speeding violation with a warrant for the driver using a canceled license.

Johnson discussed the negative publicity regarding police officers. He thanked the Police Department for their service. Johnson asked if there has been any push back or issues in this community towards the Police Department. Kroells stated he has not experienced it within the community. He stated their job is to serve the public. The one thing they have seen is people using the “hands-up” gesture.

Kroells stated the Highway 12 Safety Coalition met on the 8th and goals were discussed. He stated they are looking at making safety improvements along the entire length of Highway 12 into Wright County. He discussed the rumble strip installment and coordinated efforts. The Department has only heard positive feedback and no negative feedback. He stated the state would repaint the center line in the spring. Kroells stated MnDOT will be completing a public safety report based on statistics and data. He stated a grant for the lighting at the intersections of Highway 12 and County Roads 90 & 92 is pending.

Kroells stated on October 27th an undercover decoy was sent to all establishments serving alcohol in Maple Plain and Independence. The Ox Yoke Inn was the only business that failed the test. There was an arrest for the violation, but there has not been an official verdict on this yet. He stated in 2008 there was a violation and the fine was \$250. The owner has been very receptive and open to training. Kroells recommended not revoking the license, but rather charging a minimum fine for the violation. Johnson inquired if this staff person has gone through the training. Kroells stated the staff member has worked at the Ox Yoke for 12 years, and she has gone through the training but failed to check the age and served the minor. Vose stated the establishment owner has the right to contest or right to ask for a lower penalty. The City has been in contact with the business owner, who acknowledged this violation occurred. A \$250 fine was recommended.

Motion by Wenck second by Spencer to approve issuing a \$250 fine to the Ox Yoke, for serving alcohol to a minor. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

8. JUSTIN VUCINOVICH, 5960 PAGENKOPH ROAD (PID# 14-118-24 43-0002) – REQUESTS THE FOLLOWING ACTIONS TO BE TAKEN: RESOLUTION NO. 15-0113-01

- Rezoning from Ag-Agriculture to RR-Rural Residential.
- Preliminary Plat to allow a (3) three lot subdivision.
- Final Plat to allow a (3) three lot subdivision.

Kaltsas explained the application for a subdivision. He stated approval would be just for a preliminary plat and not a final plat, which would be subject to a development agreement should it be approved.

Kaltsas stated the property is approximately 20 acres in overall size, and this property could be subdivided into up to four lots but would need to meet other City standards. The City requires 2.5 acres of buildable upland, so the applicant is proposing to split the lot into three parcels. Kaltsas stated the City is requiring wetland delineation in order to verify the upland. The water resource consultant is confident the upland space is available.

Kaltsas discussed lot frontage. Lots 2 and 3 would not have public right-of-way frontage, and this is allowed with a private driveway. The owner would need to assign covenants for installation and maintenance of a private driveway. If the City Ordinance criterion is met, the City could waive the public right-of-way frontage provision. Kaltsas stated the area has some significant wetland and a subdivision to the North, so a public road would not likely improve the area.

Kaltsas stated the applicant provided an analysis report showing that all the lots could support a primary and secondary on-site septic site. Storm water on this development would not be subject to the City's standards, but Pioneer Sarah Creek would review and may require some conditions.

Kaltsas stated this property would be subject to park dedication fees of roughly \$8500 for the two new lots. He stated Lot 1 would not be subject to a park dedication fee. He stated the Planning Commission reviewed this last night, and they ultimately felt the lot frontage could be waived. The Planning Commission noted the current driveway crosses over the property to the south, and they requested shifting the driveway 30 feet or obtaining an easement prior to the final plat. The Planning Commission ultimately recommended approval subject to the conditions.

Johnson questioned the legal description of the property. Kaltsas stated he received the description from the tax records. Betts inquired about the maintenance of the driveway, and Kaltsas stated this would be part of the required maintenance agreement. The Councilors and Voss further discussed maintenance of the driveway. Voss stated an agreement would be part of the development agreement, and this would be recorded. He stated if there is non-compliance the City is not responsible, and it's handled privately.

Motion by Wenck second by Fisher to approve Ordinance No. 15-0113-02 rezoning 5960 Pagenkopf Road (PID# 14-118-24 43-0002) from Agriculture to Rural Residential. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Motion by Spencer second by Betts to approve Resolution No. 15-0113-01 for a Preliminary Plat for a three lot subdivision at 5960 Pagenkopf Road (PID# 14-118-24 43-0002). Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Voss stated the legal description will be rechecked upon the title work being filed.

9. NICK GEFFRE, AND BRENDA AND DENNY GEFFRE (APPLICANTS/OWNERS) LOCATED AT 5860 DRAKE DRIVE, (PID NO. 26-118-24-42-0004) -REQUEST THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY: RESOLUTION NO. 15-013-02

- An Interim Use Permit to allow two (2) dwellings on the subject property for a period of three years.

Kaltsas explained the request and he reminded the Council they had first heard about this issue at a City Council meeting last fall. This is a formal application requesting an Interim Use Permit. He explained the City does not allow rental of a secondary structure by anyone other than family. He further explained allowable criteria as stated in the City's Ordinance.

Kaltsas explained the history of the property where in the early 1980's a manufactured home was brought in to the back of the property for the owner's parent. At that time the City allowed this, but since then the original owner sold the property a few years ago. The City had some discussions about that home being removed, but documentation of this could not be found. Kaltsas stated an audience member last night informed the City this was discussed roughly 10 years ago when the new road was built. However, we could not find written documentation of this in the minutes.

Kaltsas stated the guesthouse provision does not allow for this type of requested use either and it requires a Conditional Use Permit. He stated the City also notified the new owners that the current rental use was not permitted, but they could rent one home on the property and leave the other one vacant. Kaltsas explained the applicants are requesting a three year Interim Use Permit to continue to rent the home in the back to the current tenants and occupy the home in front. The home in the back has been rented for roughly eight years

by the same tenants. During a three year IUP the applicants plan to clean up the property and remove the home in the front.

Kaltsas explained what an IUP was, when it is allowed, and the criteria. The City requested three conditions when the IUP would expire: after three years December 31, 2018, selling of the property, or if the current tenants move. He stated the Planning Commission discussed this in depth and heard from neighboring property owners. He stated the Planning Commission ultimately felt the three years was too long and property has been out of compliance for too long. The Planning Commission decided they would allow a six month term allowing both structures to be rented and the other home owner occupied. Kaltsas stated the applicants were looking for more than six months, so if it couldn't be extended and more conditions were added they would withdraw their application. If approved more conditions could be added, including removing the second driveway; which is partially on the neighbor's property. Another condition could be to remove the back home by the end of the IUP.

Vose stated legal requirements of removing a home on a property is difficult to enforce. He stated an interim use is more of a catch all use that is approved based on the Council's discretion. He stated allowing this makes him a little uncomfortable. He recommends the City designates a particular use where an IUP could be used.

Wenck was comfortable with a three year term. Fisher stated we need to put an end to this and enforce the ordinance. He felt three years is too long and thought the Planning Commission did a good job debating this. Spencer stated the situation was fully disclosed when the owners purchased the property. Betts agrees with the Planning Commission and Councilors Spencer and Fisher.

Johnson stated he thought this was originally approved in the 1970's. He also questioned how many of these exist in the city. Hirsch wasn't aware of others, nor was she aware of this before it was discussed. For guest homes, Kaltsas thought there might be roughly a dozen, but some have Conditional Use Permits.

Johnson and Kaltsas discussed what the Planning Commission recommended. The IUP would expire in six month, if the property is sold, or if the current tenants move.

Brenda Geffre asked to withdraw her Interim Use Permit application. Vose stated now the Council will not need to take any action since there is no resolution. The City will request a written confirmation to cancel.

10. A PROPOSED TEXT AMENDMENT TO THE CITY OF INDEPENDENCE ORDINANCES AS FOLLOWS:

- Chapter 5, Section 540 – Zoning: Telecommunications Towers and Facilities: Consideration to amend the number and square footage permitted for accessory buildings associated with a telecommunications tower. Ordinance 2015-01

Kaltsas explained the City's ordinance promotes co-location on towers; however it only allows for one accessory structure. He stated after issuing a CUP last year for a secondary accessory structure for a second carrier on a cell tower, the Planning Commission recommended a change to the ordinance. He stated some other minor language changes were made, for the site plan and screening.

Johnson expressed some concerns with listing meters for distance. Vose stated when it comes to cell towers they are federally governed. He stated the city is just using the same designation as the federal government is using rather than converting it. Johnson suggested also listing the feet and inches.

Johnson asked about the cell tower height restriction. Vose explained the height and setback description was written so that should a tower ever fall over it will not fall onto another property. Johnson just wanted to clean up the language as it should be written less 10 feet and not more than 10 feet.

Spencer questioned about the size of the accessory structure changing from 300 square feet to 350. Kaltsas stated the last application from Verizon and they discussed needing the space for their generator. The Planning Commission then recommended increasing the size of the structures to allow carriers to keep the generators in the building.

Motion by Johnson second by Wenck to approve an amendment to the Ordinance No. 2015-01 amending the number and square footage permitted for an accessory building, and adding footage when referring to the size, and correcting the language of more than to less than. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

11. TROY DENNISON, 5835 TURNER ROAD, RIGHT OF WAY/ACCESS FOR A DRIVEWAY/EASEMENT

Johnson sat in on the discussion as the Council felt this was not a conflict of interest. Vose stated the Resolution would designate a section of Turner Road between County Road 83 and County Road. This designation would make this section a minimum maintenance road. He stated a minimum maintenance road is a statutory concept that allows road authorities to designate sections of roads that are only used occasionally. The road authority is only responsible for maintaining the road as required to provide for occasional and intermittent traffic.

Vose stated this Resolution would designate the road as a minimum maintenance road. He stated it would also direct the public works staff to conduct maintenance and inspections on this road in a very limited way. The City Administrator would need to notify neighboring cities of this road designation. The public works staff would also need to post signage on this road.

Vose stated what the statute does, if followed, is that it exempts the road authority from any liability, as the public is notified. He stated the City wants to still have some measure of control over that portion of Turner Road, yet not giving the City a great deal of responsibility of maintenance. Vose stated currently this is not designated as a road.

Johnson inquired about requiring a Public Hearing. Vose explained the state statute to close or open minimum maintenance roads are different. He stated they could even be closed seasonally. Betts inquired about the recorded history of this road. Vose stated the right-of-way has been platted, but beyond that there is not. Betts inquired if the road has to be minimally maintained to a width of 33 feet. Kaltsas stated it is just the width that is being utilized and used during the use of this road. The full 33 feet has not been used. Vose stated currently the way it is now there is no liability, but there is theoretical liability if not maintained to its current standard, but the statute says a City is exempt. Betts inquired about the benefit to the City if this resolution is approved. Vose stated this is the Council's decision, but the Council requested creating a resolution to solve competing uses. Currently the City has no role, right, or ability to deal with any situations regarding the road, but the City could if it was designated a minimum maintenance road. Fisher discussed how designating this road could increase the liability and creates the potential of future issues.

The City Council discussed the shared driveway easement that Troy Denneson uses to access his house. Spencer questioned the access to two other properties just west of this subject property. Johnson described the history and the original owner of the land. He discussed how the properties accessed them off of Turner Road cart way. He explained the history when the land was being divided and the intentions on making this portion of Turner a full width road on the West end; however, these plans fell through and instead Drake Drive was

further improved. Betts questioned about waiting until other properties are developed before making this portion of Turner cart way a road. Spencer added the reason we are discussing this is to resolve the recreational use of the cart way. The Councilors discussed how the resolution can resolve the use but allows more liability and enforcement.

Troy Denneson stated the snowmobile trail is marked off to ride in the Johnson's field; however riders have been taking it down the cart way. Voss stated this cart way is platted as a road; which does not mean there is a road there, but there is a right to have a road there.

Troy Denneson, owner of 5835 Turner Road, explained the situation. He stated he got an easement from the neighbor which now gives him access into his driveway. He stated there have been issues when he has intentionally and unintentionally blocked the road while building his home. He stated they have never initially tried to prevent people from using it. However, he was concerned about people tearing up their driveway or Mr. Bunting's, the neighbor. He is seeking to control potential damage to the driveways. He further discussed liability for the road. Fisher questioned about the location of his easement. He stated his easement is on the portion of the 33 foot section of the cart way, but easement is lost if the City turns this into a road. Fisher questioned if a neighbor can grant an easement on the City's easement. Voss stated it can be done as long as the easement rights do not conflict.

Johnson stated he doesn't feel there is a problem at this point. They discussed the option of future developers building a road, but the City would not build a road. The owners of the property could post no trespassing signs.

Motion by Johnson second by Betts to table the right of way/access for a driveway/easement. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Denneson asked Voss about the ownership of the road. Voss explained both the City and the property owners share an interest in the cart way. Technically the owner owns to the center of the street. Denneson questioned if the City has the right to grant others the use of the cart way, like the snowmobile club. Denneson wants to make it a safe place and thus, would like to post a no trespassing sign.

Spencer stated this is Denneson's issue. He stated it was up to Denneson now to make it work and balance the uses. He stated if this can be done, the City does not need to make this a road; however if this is a problem, it can be brought back and changes can be made.

Director Kroells stated he has worked with the snowmobile club, and they believe this road is a City owned road. He foresees this as an issue. The snowmobile club will want to know where they should go.

12. FIRST OF THE YEAR APPOINTMENTS:

The City Council reviewed the list. Johnson stated Gary Kroells needs to be renamed as the civil defense director. He questioned about a volunteer for second position on the Cable Commission, and the Council decided in Wencks absence any other Councilmember could fill in. Delano Eagle newspaper should be updated to the North Crow River News. Fisher stated he could stay as the Planning Commission liaison, and Betts was ok with the Maple Plain Fire Commission.

Motion by Betts second by Wenck to approve the City Appointments for City 2015. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Johnson and Hirsch discussed terms ending for two Planning Commissioners and creating a Park Commission.

Motion by Fisher second by Spencer to direct staff to advertise for Planning Commission members and Park Commission members. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

13. DISCUSSION REGARDING THE HIRING OF A CONSULTANT TO FURTHER PURSUE THE MERGING OF SHARED SERVICES/EVENTS WITH THE CITY OF MAPLE PLAIN

Johnson explained a report like this was completed in 1998. Of the two bids received the Council decided to go with the less expensive one at \$13,500. Maple Plain City Councilmember, Mike DeLuca, stated Maple Plain also chose the same bid. The Council discussed this and all agreed it is best to get an outsiders perspective.

Motion by Fisher second by Wenck to approve hiring the consultant that bid \$13,500 to further pursue the merging of shared services/events with the city of Maple Plain.

Johnson inquired where the funding would come from. Hirsch stated she didn't know right now, as this was not part of the budget.

Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Johnson discussed the involvement in last year's joint summer event and how much the City should be involved in this year's event. Hirsch stated she wanted Independence to be more involved last year but was told Maple Plain was too far into the planning and advertising process. So, the City could only be a sponsor. Bett's thought that the City's would be taking turns every other year. The Councilors all agreed they think it is a good idea to continue to share the event.

They discussed having the circus this summer and determined that the July 4th weekend would compete with Delano, so that date would not work.

Motion by Spencer second by Wenck to approve becoming a full participant in Independence/Maple Plain summer city event.

Mike DeLuca, Maple Plain City Councilmembers, stated their Council was just looking to find out what role and how much Independence wanted to participate. The City Administrators would work need to work together on the planning.

Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

14. SET A DATE TO MEET JOINTLY WITH THE CITY OF MAPLE PLAIN, TO HEAR THE ANNUAL MAPLE PLAIN FIRE DEPARTMENT REPORT

The Councilmembers all discussed dates that would work best. They determined the 2nd Monday or 2nd Tuesday in February, the 9th or the 10th, to do a joint meeting with the city of Maple Plain and Fire Department

15. MISC./OPEN.

Fisher recommended having a work session to discuss questions and concerns with the 2014 and 2015 budget. The Councilmembers discussed this and determined Friday, February 6th at 7 a.m. would work.

Motion by Betts second by Wenck to direct staff to approve a work session on Friday, February 6th at 7 a.m. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

16. ADJOURN.

Motion by Wenck second by Spencer to adjourn the City Council Meeting at 9:53 p.m. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Respectfully submitted,

Jolene Nelson, Recording Secretary