

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, MAY 12, 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

VISITORS: Todd Hagen (Ehlers and Associates), Christopher Knopik (Clifton Larson Allen Auditors), LuAnn Brenno, Ed Pluth, K L Ziermann, Lance Gyllenblad

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.

- Approval of the City Council minutes from the April 28th, 2015 meeting.
- Approval of the Accounts payable; to date, for the month of May, 2015.
- Approval of Resolution #. 15-0512-01, Declaring the Official Intent of the City of Independence to Reimburse Certain Expenditures from the proceeds of Bonds to be issued by the City
- Approving the Refunding of the Senior Housing Revenue Note (St. Therese at Oxbow Lake, LLC Project), Series 2005C issued by the City for the Benefit of St. Therese at Oxbow Lake. LLC and it's Successors from the Proceeds of Senior Housing Revenue Refunding Notes (Oxbow Lake Care Center LLC Project), to be issued by the City of Brooklyn Park, Minnesota – Resolution # 15-0512-03.

**Motion by Betts, second by Fisher 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.

- Spencer added a request for an update on the Kuka property.
- Wenck added the letter the Council received from the Planning Commission.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

**Spencer attended the following meetings:**

- Spring Clean-Up Day
- Mayor Johnson's Birthday Celebration
- Met with Martin Eichers (Eagle Scout) on his project at Pioneer Park
- Countryside Heating and Cooling Ribbon Cutting Ceremony
- Road Workshop Meeting

**Wenck attended the following meetings:**

- Mayor Johnson's Birthday Celebration
- Countryside Heating and Cooling Ribbon Cutting Ceremony
- Chamber of Commerce Meeting
- Road Workshop Meeting
- Sensible Land Use Coalition Meeting
- Road Workshop Meeting

**Fisher attended the following meetings:**

- Spring Clean-Up Day
- Mayor Johnson's Birthday Celebration
- Planning Commission Meeting
- Road Workshop Meeting

**Betts attended the following meetings:**

- SLUC Conference
- Chamber of Commerce Meeting
- Countryside Heating and Cooling Ribbon Cutting
- Highway 12 Coalition Meeting
- Mayor Johnson's Birthday Celebration
- Road Workshop Meeting

**Johnson attended the following meetings:**

- Sensible Land Use Coalition Meeting
- Senior Services Finance Committee Meeting
- 287 Mentorship Program
- Science Museum presentation on Driverless Cars
- Countryside Heating and Cooling Ribbon Cutting
- Reverend Garwick Open House
- Met with Deb Taylor- Senior Community Services
- GrandStay Hotel Ribbon Cutting Ceremony- Delano
- Senior Community Services Dinner
- Delano Senior Center Appreciation Luncheon
- Highway #12 Coalition Meeting
- Regional Council of Mayor's Meeting
- Chamber of Commerce Meeting
- Road Workshop Meeting

**Hirsch attended the following meetings:**

- Chamber of Commerce Meeting
- Road Workshop Meeting

7. **CHRISTOPHER KNOPIK, CLIFTONLARSONALLEN LLP, AUDIT 2014 REPORT**

Knopik stated the main thing to look at is what kind of opinion the City got this year. Knopik stated the City had an unmodified opinion/ clean audit this year. He noted the sewer fund is a comparative statement. Knopik summarized slides he presented of the financial results for the City.

The first slide is a government-wide statement that takes a look at what the City is doing as a whole. Cash and investments have decreased over the past two years due to projects and bonding. He noted expenses are also starting to slide down as well.

Knopik then addressed slide 5 which shows the breakdown of where the funds come from. He stated that the important thing to note is that even though the numbers are down that proportionately they have stayed the same. Taxes are in the same range as are license and permit fees. Knopik said there is good consistency in how the City is generating operational funds.

Knopik stated slide 6 shows where the money that is generated goes. He said this also shows consistency which is very good to see. He said there are not any spikes in any one type of spending. Knopik stated that Administrative functions continue at around 20% of the budget which is very typical. Public Safety is around 50% which is very typical as well for a small community.

Johnson asked about charges for services noted on slide 5 for the years 2010 and 2011 and why it is so much less than before. Knopik stated that was the economy factor and the biggest drivers are planning and zoning and subdivisions fees.

Johnson also stated that people tend to think of Public Safety as only the Police Department but it actually encompasses the fire department, dog catching, building inspections, etc.

On slide 7 which looks at taxes, Knopik said that the improvement there points to the improving economy. He noted a 98% collection on levy was really good.

Next Knopik looked at general fund revenues and expenditures. He said for the last two years expenditures have been just slightly over revenue in the general fund. He said this is due to Public Works expenditures being up over winter and wages being up a little for on-call work. He stated Planning and Zoning fees are also up but it is offset with the revenue side of Planning and Zoning being up as well. The accounting costs are also up as well. Knopik stated an important part of all this is the Unassigned Fund Balance that the City has in case it is needed, i.e. "rainy day". He said state auditors recommend a 5-6 month balance and the City is at 50% so it is very healthy with reserve funds.

The next slide addressed debt service. Knopik stated the City would have some bonds that will mature over the next year or two.

Knopik said his biggest concern would be the Sewer fund and that it is sliding and he would like to see a plan in place so that does not get too far. He has seen some cities that have had to levy to maintain

their business fund and that is not a good situation to get into when you have to raise fees and have a levy just to maintain a fund. He said this would be his only cautionary note.

Johnson asked if it would be permissible to do a negotiation in-house to transfer property from a park fund to a sewer fund. Knopik said that be perfectly acceptable and it would be a transfer of assets from a business fund to a government fund.

Wenck asked if the sewer fund was \$200,000 behind. Knopik stated that was the operating loss for the year.

Johnson asked if there was a delay in payment from the Vinland Center and Hirsch said that was taken care of in 2013. Knopik noted there was an increase in SAC charges. Wenck asked what the number was to cover the loss. Knopik said it would be about \$194,000 to cover including depreciation. Johnson asked Hirsch to check and make sure the costs associated with the Vinland Center are accurate before they set rates for next year. Wenck said he would like that and also would like to see what they can do with sewer rates.

Knopik stated the audit provides reasonable not absolute assurance. He said there were no audit adjustments made which is good and means the information is accurate. Knopik stated one recommendation would be to include check sequences with accounts payables, etc. He also said that with the outsourcing of the financials to make sure there is some sort of internal review process with those services.

Knopik spoke about some new PERA notifications that would be coming for the year 2015. There will be a contribution schedule that will show pro-rata shares based on City. Knopik noted the PERA pension is about 78% funded which is pretty good when you look at other state pension plans across the country. 78% funded still equals about a 5 ½ billion shortfall. Knopik stated the goal is going to be to get that number into the 98% funded range.

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

8. 8:00 P.M. PUBLIC HEARING – ON PROPOSED PROPERTY TAX ABATEMENTS FOR 2015 STREET RECONSTRUCTION: PASSING RESOLUTION NO. 15-0512-02. APPROVING PROPERTY TAX ABATEMENTS RELATED TO PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF INDEPENDENCE.

#### Public Hearing Open

Hagen stated he felt compelled to let the Council know that Ehlers and Associates do a rate studies sewer proposal if they are interested.

Hagen stated this public hearing was for the tax abatement program for the City's Street Reconstruction. There are 55 parcels indicated. He stated the cost of the roads project came in at \$1,705,000.00 which was \$100,000 more than originally estimated. He stated there had been a public hearing on April 14, 2015 and notifications as required. It was published in the papers as per Minnesota statutes. Kennedy and Graven Bond Attorney put the Resolution together. He said the Council has to be comfortable on what the

expectations are of the project. Some of the expectations will be drainage including the prevention of further road deterioration. Hagen stated the project is consistent with the long term road plans for the City and the 10 year tax abatement approved by the City.

Johnson asked if we could vote on this resolution tonight. Vose stated his bond council has looked at the publication process and she concluded that everything had followed the appropriate process; an additional meeting is not required. Johnson asked if anyone in the audience had questions; no one did. Johnson stated the basic thing the City is doing is resurfacing some roads to give additional life expectancy and not assessing the property owners; but rather bonding for the project.

**Motion by Betts, second by Wenck to close the Public Hearing. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

#### Public Hearing Closed

Vose stated the legal details around the Resolution No. 15-0512-02 they would be passing with no further questions. Vose said Resolution No. 15-0512-02 meets the statutory requirements to use this type of financing mechanism as described.

**Motion by Betts, second by Fisher to approve Resolution No. 15-0512-02. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

#### 9. LAKE INDEPENDENCE OUTLET-WEIR REPLACEMENT-TIME TO COMPLETE IT NOW?

Spencer stated they did the outlet project of cleaning out the vegetation to help with the high water conditions on Lake Independence. He said part of that permit involved replacing the outlet control device which is on the west end of Lake Independence underneath the bridge. Spencer stated the partners are still on board with sharing the costs of the project. It has not been determined what the total costs will be, but the original estimate was around \$10,000. Spencer stated the next step would be to hire our water resource specialists (Hakanson/ Anderson) to assess the weir and determine the best means of its replacement. The estimated cost of the assessment would be \$500 at the most, and they can get it started as soon as we can authorize it.

**Motion by Spencer, second by Betts to approve the assessments costs for Hakanson/ Anderson to review the weir and make recommendations. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

#### 10. Misc./Open

##### 1) Kuka Property discussion.

Johnson stated they heard from several sources who witnessed a major event being held on the property this last weekend and they did not have a Conditional Use Permit (CUP) from the City. Johnson asked Vose for advice on what the City should do this in situation.

Vose gave some background information on the property. He stated the Kuka Equestrian Center became known to the City in late 2013/ early 2014. Vose stated a letter had been sent from the City to the operator of

the property in 2014, the commercial use of the property would require a Conditional Use Permit (CUP) which City did not have on file. The letter also stated there may be other conditions which may be required. Vose stated the letter also said that any commercial uses without proper permits would not be in compliance with City Code. Since that time, there have been events held which has reignited concern. The operator or land owner has since started the application for a CUP but that has taken months to complete. Vose stated the City Planner Kaltsas said the application is now complete, but has not been considered or acted upon by the Planning Commission yet. Vose stated this is to be addressed during the next Planning Commission meeting in June.

Vose stated since the time of the last letter written it has been determined by staff, that there is a fire code violation which is the issue on the property. When the building was permitted it was under the agricultural permit process which is subject to different standards than commercial use. City Building Official (Satek) has been in contact with the property operator and owners about the fire safety issue pertaining to the roof of the building. Vose stated he did not know if a resolution to that has been found at this point. Vose stated that would have to be corrected as part of the CUP approval going forward.

Vose has drafted a letter that is being reviewed by Hirsch, Kaltsas and Satek that states these known commercial events are being held in violation of City Code. These facts may be weighed by the Planning Commission in determining whether to approve a CUP. Vose stated he feels staff can provide this information, but it would be up to the Council if they wanted to proceed with legal action. He did not have a recommendation on that at this time.

Johnson said it is an unfortunate situation and he was worried about what liability the City would have in the event of a fire. Vose stated due to the letter previously sent out and the one being drafted by Vose on behalf of communications by Satek and Kaltsas to the property operator/owners, it will make clear this type of activity is not permitted and is in violation from a legal standpoint. Vose stated he is not worried about a City liability, but is more concerned about protecting the public.

Spencer stated he is concerned the activities that have already been happening exceed what a valid CUP in place would allow. He is also concerned that even if they are granted a CUP, would they adhere to it? Spencer felt the letter stops short of cease and desist and since their website advertises events coming up, what should be done about that?

Vose said it would be up to the Building Official/ Fire Marshall (Satek) to determine whether to shut down the operation. Vose said he could write a letter for Satek but that is not typically how it is done.

Betts stated the longer it is ignored, the operator/ owners are going to feel it doesn't make a difference and is not an important thing. She said if we don't make people comply; they will do as they please.

Johnson asked if anyone knew if the event this week was the first one out there. There was dialogue that many events have been taking place with some smaller in size.

Hirsch stated that Satek is willing to go out there and do a cease and desist but for him to do that he would need the support of the Council and would need the Police Department to go out there with him.

Vose stated it is not practical to shut down an event of that size without the coordination of the Police Department.

Johnson stated when he drove by the property on Saturday at noon there were vehicles parked along the road, including a horse vehicle. He felt this was dangerous as it is a 55 mile an hour road.

Wenck asked if the City could put him on notice before the advertised event. Vose stated there is no question the roof is not rated for it. He said Fire Marshalls have the power to shut down events that exceed the fire code because of safety issues.

Gyllenblad asked if there were shooting events going on at the property. He said there are a lot of law enforcement people down there, a lot of West Hennepin people. Gyllenblad said the Council would have a tough time enforcing this as there is a shooting range out there.

Johnson stated that should all be on the CUP. Fisher stated the building is the issue, regardless of what events they are holding there. Spencer said do we resolve this issue now or wait until the June Planning Commission meeting? He said it is likely the issues would not be resolved and the CUP would be denied if that is the case.

Vose stated he would concur with Councilmember Wenck, that issuing a cease and desist order before an event happens would be a much more orderly way to try and do this other than to try and break up an actual event.

Wenck asked if the City would have any liability as far as lost income. Vose stated there would not be a liability to the City for lost income. It would not prevail. There was more discussion with Vose summarizing; that Council should direct Staff to act as promptly as possible to let the operator/ property owners know that no further events may be held until the CUP is approved.

## 2) Letter to the Council from the Planning Commission

Wenck said he thought this was in the genre of the zoning official or building administrator. An audience member asked what was in the memo as it was not included in the packet. Fisher summarized the letter for the audience member saying that it addressed issues the Planning Commission felt were not being followed up on properly. He gave examples of landscaping around towers, screening, etc. Fisher said they are asking for more structure on how the follow-up is done, timelines, etc. Johnson stated he thought it also was asking for follow-up recommendations, from time to time to make them aware and keep up to date, etc.

Wenck asked if new language was needed as far as bonds and new developments. He also stated we need to see if they are compliant with CUP's and he said this would really be Satek's job as the Building Official. Fisher said there could be more of a checklist for follow-up and Spencer asked if we should have a one year follow-up. Hirsch stated this is being done every two to three years due to costs. Hirsch stated we send out notices when the CUP's are coming up so they can set an appointment. Wenck said we don't need to set up appointments as that would create excuses for them not setting up the appointment. Spencer suggested a one year follow-up after the initial approval and then put them on the normal cycle of checking in every 2 or 3 years.

**Motion by Spencer, second by Betts to approve a written condition on CUP's for one year follow-up and review with the Planning Commission. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

**ADJOURN**

**Motion by Wenck, second by Spencer to adjourn the City Council Meeting at 8:50p.m. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

Respectfully submitted,

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Trish Bemmels, Recording Secretary