

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, MARCH 6, 2018 –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.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, Betts, Grotting and McCoy

ABSENT: None

STAFF: City Administrator Kaltsas, City Administrative Assistant Horner, City Attorney Bob Vose

VISITORS: Anita Volkenant

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 the City Council minutes from the February 20, 2018 Regular City Council Meeting.
- b. Approval of Accounts Payable; Checks Numbered 17807 – 17841.
- c. Approval of Agriculture Preserve Renewal and Expiration Application from John Klinkner for the Parcel Identified by PID No. 31-118-24-21-0010.

**Motion by Betts, second by Spencer to approve the Consent Agenda items. Ayes: Johnson, McCoy, Betts, Grotting and Spencer. Nays: None. Absent: 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:**

- Highway 12 Safety Coalition Meeting
- Planning Commission Meeting

**Grotting attended the following meetings:**

- Planning Commission Meeting
- LMCC meeting

**McCoy attended the following meetings:**

- Planning Commission Meeting

**Betts attended the following meetings:**

- Planning Commission Meeting
- Highway 12 Safety Coalition Meeting

**Johnson attended the following meetings:**

- Northwest League of Municipalities Meeting
- Hennepin County Community Action Partnership Board Meeting
- Met with auditors for WHPS report
- Senior Community Services Finance Community Meeting
- Met with John Gerhartson
- Hennepin County Public Works meeting regarding Highway 12
- Highway 12 Safety Coalition Meeting
- Westonka Historical Society event honoring Pam Meyers
- Planning Commission Meeting

**Horner attended the following meetings:**

- Planning Commission Meeting

**Kaltsas attended the following meetings:**

7. Art Ahlstrom (Applicant/Owner) requests that the City consider the following action for the property located at 9085 US Highway 12 (PID No. 18-118-24-12-0016) in Independence, MN:
  - a. **RESOLUTION NO. 18-0306-01** – Consideration of a variance and conditional use permit to allow commercial indoor and outdoor storage to occur on the subject property within newly constructed buildings and on a property that is not owner occupied.

Kaltsas said this property historically had a conditional use permit to allow a nursery, trucking, excavation and dirt pulverizing operation. The original CUP was granted in 1993. In 2015 the City revoked the conditional use permit following a city-wide review of existing permits that were no longer in use. It was recently discovered that the conditional use permit granted in 1993 was only placed on a contiguous property to the 9085 Highway 12 property and not on the subject property itself. When the City revoked the CUP in 2015, it revoked the CUP for the adjoining property located on Nelson Road. The City does not have any viable recourse to go back and “correct” this issue as it granted and revoked the CUP in accordance with applicable processes and statutes.

This leaves the property owner with a property that had historically operated as a commercial business under what was believed to be a valid conditional use permit. The City Council has discussed this issue with the applicant and recommended that the applicant seek consideration for a new conditional use permit for uses that are conditional in the Agriculture zoning district. The applicant is now seeking consideration from the City to allow commercial boat storage on the subject property. The applicant is also seeking a variance from several provisions of the ordinance pertaining to commercial indoor storage. The applicant would like the City to consider both indoor and outdoor commercial storage within the existing buildings and on a predefined portion of the existing property. The applicant would additionally like the City to permit additional buildings to be permitted on the property and an exception to the requirement that the property be owner occupied. The City’s zoning ordinance currently permits commercial indoor storage on properties zoned Agriculture as a conditional use with the following requirements:

- (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.

The applicant has prepared a proposed site plan that shows that existing buildings and the area that would be utilized for outdoor storage/new buildings. The applicant is proposing to define an approximate 11-acre area that would be permitted for the commercial boat storage. The remaining acreage would not be permitted to be used as part of the commercial operation.

The Planning Commission will need to consider if the request meets the criteria for granting a conditional use permit and the criteria for granting a variance from the provisions of the zoning ordinance.

#### Conditional Use Permit (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.

#### 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)

520.22. 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)

1. The applicant is asking for the following approvals:
  - a. Approval to construct up to 60,000 additional square feet of commercial indoor storage on the subject property. The applicant is not proposing to construct any additional indoor storage at this time but would like approval to be able to construct the amount in the future. The City would condition any approval on the applicant meeting all applicable standards including storm water for any additional structures on the property.
  - b. Approval to use the existing buildings for indoor commercial storage.
  - c. Approval to use the predefined area for outdoor commercial storage. The City would require any outdoor storage to be screened from adjacent residential views. Screening would be in accordance with all applicable City standards and be in place prior to or concurrently with any outdoor storage. Outdoor storage would be permitted only on those areas that have an approved surface (gravel or pavement). The area to accommodate outdoor storage would need to be reviewed and approved by the City prior to any outdoor storage being permitted. The outdoor storage area shall conform to all other applicable criteria.
  - d. Approval to permit commercial storage on the subject property without having an owner occupant.

The property has five existing detached accessory structures and one existing residence. The applicant has historically used some of the detached accessory structures for commercial indoor storage. The historic use of the property for a landscape nursery was done across the entire 37-acre parcel. Limiting the area that could be used for any type of commercial use would help to mitigate impacts to the surrounding properties.

Consideration of the criteria for granting a conditional use permit and variance:

- a. The property was historically used for a commercial operation. The proposed use is arguably less intense than the commercial storage due to the limitation on the area that

would be included in the

- b. The property is located along Highway 12 and there is a cluster of similar commercial type uses in the general vicinity. The properties located directly west of the subject property are residential. Limiting the area of commercial use to the land directly adjacent to Highway 12 should mitigate additional impacts from the commercial storage.
- c. The property had a perceived historic conditional use permit. This factor combined with the location along Highway 12 and large amount of existing buildings make this property unique and could be consider as a finding for granting the variance.
- d. Due to the seasonal nature of commercial indoor/outdoor storage, the traffic generated from the proposed use should be less than the historic use of the property as a nursery and trucking operation.

The City will ultimately need to determine of the criteria for granting a conditional use permit and variance are being satisfied.

The City has not received any written comments regarding the proposed variances or conditional use permit. One neighboring resident spoke at the public hearing and noted that she would like to see additional screening added to the southeast corner of the proposed storage area.

Commissioners discussed the request for a conditional use permit and variance to allow commercial storage on the subject property. Commissioners discussed the proposed use of the existing buildings and defined site area and noted that the City should impose hours of operation for the drop-off and pick-up of the boats and or vehicles in storage. Commissioners discussed adding a condition that would require the existing lighting on the existing buildings to be changed to fixtures that were compliant with the City's lighting standards. Commissioners discussed adding a condition that would require the buffering landscape to be permanently maintained by the applicant. Failure to maintain and or replace dead or dying landscaping would be grounds for revocation of the CUP. Commissioners discussed the location, size and placement of future buildings on the property. Commissioners believed that the proposed concept plan would be acceptable; however, any changes to the plan presented would require site plan approval by the City. Commissioners ultimately found that the request met the applicable criteria and recommended approval to the City Council with the findings and conditions noted below and in the proposed resolution.

The Planning Commission recommended approval of the requested conditional use permit and variance subject to the following findings and conditions:

1. The proposed conditional use permit and variance meets all applicable criteria stated in Chapter V, Section 500, Planning and Land Use Regulations of the City of Independence Zoning Ordinance.
2. 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.
  - a) The applicants are proposing to use the property in a manner consistent with the historic use of the property. The historic conditional use permit and corresponding use of the property was more intense in nature than the proposed use of the property for commercial storage. The applicant has attempted to reduce the total area used for commercial use on the property which will in turn mitigate the potential impacts of the proposed use on the surrounding properties.

- b) The requested variance is unique to this property for the following reasons:
    - i. The property is located on TH 12 with significant highway frontage.
    - ii. The property has multiple detached accessory structures that were permitted to be used as a part of the historic conditional use on the property.
    - iii. The properties directly north of this property have similar conditional use permits which allow uses that are commercial in nature.
    - iv. The property had a conditional use permit that allowed for the commercial use of the entire property. The proposed commercial storage area will be limited to a smaller portion of the overall property.
3. The City will grant a variance to allow commercial storage to occur on the subject property:
- a) Within existing farm buildings that have not been in continuous for AG purposes for the past 10 years;
  - b) Within a building or buildings constructed after the issuance of this CUP, provided that such building(s) comply in all respects with applicable City Code requirements;
  - c) Outside buildings on the subject property in the area identified in this CUP, and under all conditions established herein; and;
  - d) Without the subject property being owner occupied at all times.
4. The conditional use permit will have the following conditions:

Approval to construct up to a total of 60,000 additional square feet of commercial indoor storage on the subject property in accordance with the attached Exhibit B. Any proposed change in the size of the proposed buildings or layout of the approved site plan will require site plan review and approval by the City. Any future building approval shall be reviewed and permitted by the City and meet all applicable standards including storm water requirements.

- a) Approval to use the existing buildings for indoor commercial storage.
- b) Approval to use the predefined area (as shown and further defined on the approved site plan, Exhibit B) for outdoor commercial storage.
- c) All outdoor storage shall be screened in accordance with the landscaping and screening requirements provided in the City's zoning ordinance, Section 530.15, Subd. 5 Landscaping, Subd. 6 Lot screening and Subd. 8, Storage and display. Screening shall be installed and in place prior to or concurrently with any outdoor storage being located on the property. Required landscaping shall be continually maintained and or replaced for the duration of the conditional use permit. Should landscaping fail to perform, die or no longer provide the requisite screening and buffering, it shall be immediately replaced or corrected.
- d) Outdoor storage will be permitted only in those areas that have an approved surface (gravel or pavement). The areas proposed to accommodate outdoor storage shall be reviewed and approved

by the City prior to any outdoor storage being permitted. The outdoor storage area shall conform to all other applicable criteria and standards.

- e) Outdoor and indoor storage shall be limited to licensed (with current registration) and operable boats, recreational vehicles and vehicles.
- f) No storage or commercial use shall be permitted on any other portion of the property not included in the predefined area as shown on Exhibit B.
- g) All existing lighting located on the property, including on existing buildings shall be in full compliance with the City's lighting standards prior to use of the property for the proposed commercial storage.
- h) No service, work or other maintenance of boats/recreational vehicles or vehicles is permitted on the property.
- i) The hours of operation for the commercial storage use shall be limited to 7:00 am to 9:00 pm.

Johnson asked if the house was part of the property. Kaltsas said it is part of the property. Vose stated that any new buildings should meet building requirements as well as storm water requirements. Johnson said there should be some directive in the city code pertaining to catch basin in the flooring of the buildings. Kaltsas said that would fall under building code for new construction and not zoning requirements.

Johnson said his main concern would be traffic on Highway 12 in the spring and fall of the year with all of the boats coming and going regarding this property. He asked if there was any way there could be flashing lights at the property during the busy seasons only. Johnson thought additional warning signs may help with traffic flow. Kaltsas noted Chief Kroells has traffic concerns as well but no solution has been determined as it is a variable timeline. Johnson said at certain times the sun is so bright it is hard to see anything at all and he is concerned about safety. Grotting agreed that safety is a concern. McCoy said hours of operation could be adjusted to address traffic concerns. Spencer said this type of operation is more geared toward marine services than a public operation and logistic requirements could be written in the resolution.

Grotting asked if boats would be parked in front or set further back on the property. Kaltsas noted the outdoor storage has to be screened and buffered in its entirety. Kaltsas said it had to be opaque fencing. Grotting asked about reforesting or the possibility of creating a spec for landscaping. Kaltsas said the applicant would provide dialogue prior to approval to get staff input and recommendations.

Kaltsas noted a provision could be added that states whoever purchased this site would be required to provide the City with an operation and traffic mitigation plan. Spencer said that would be a good idea and then it could be dealt with on a case by case basis.

Johnson noted the other boat places provide service but this has nothing in regards to service work. Kaltsas said in AG there may not be service but in Commercial it is allowed. Grotting asked how the building would be and Kaltsas said the max for accessory buildings is 35'.

**Motion by McCoy, second by Grotting to approve Resolution No. 18-0306-01 – variance and conditional use permit to allow commercial indoor and outdoor storage to occur on the subject property within newly constructed buildings and on a property that is not owner occupied with the**

**addition of 4 (k). Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

**Motion by Spencer, second by Grotting to deny waiving the fee associated with approval of Resolution No. 18-0306-01. Ayes: Johnson, Betts, Grotting and Spencer. Nays: McCoy. Absent: None. MOTION DECLARED CARRIED.**

8. Bryan Johnson and Hilltop Farm, Inc (Applicants/Owners) request that the City consider the following action for the properties located at 6576 Turner Road and 1235 County Road 90 (PID No.s 27-118-24-14-0005 and 27-118-24-14-0004) in Independence, MN:
  - a. **RESOLUTION NO. 18-0306-02** – Consideration of a minor subdivision to permit a lot line rearrangement which would move the existing lot line between the two properties. The rearrangement would add acreage to the 6576 Turner Road property and reduce the acreage of the 1235 County Road 90 property.

Mayor Johnson recused himself from the council table for Conflict of Interest and Councilmember Spencer chaired the remaining meeting.

The applicant is seeking a minor subdivision to allow a lot line rearrangement to increase the size of the Turner Road property and decrease the size of the CSAH 90 property. The Turner Road property would be increased from approximately 5 acres to 20 acres and the CSAH 90 property would be decreased from 35 acres to 20 acres.

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

1. The lot line rearrangement will not have any impacts on the existing buildings relating to setbacks. The CSAH 90 property has an existing home that does not meet applicable front yard setbacks and is considered legal non-conforming. There would be no change in status in the after condition.
2. Both parcels in the before and after conditions have adequate frontages and would meet applicable lot width to lot depth ratios.
3. Both properties are guided for Rural Residential and could be further subdivided if rezoned by the property owners.
4. There do not appear to be any adverse results of the proposed minor subdivision to permit a lot line rearrangement.

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

Commissioners reviewed the request and asked questions of staff and the applicant. Commissioners clarified that there was an existing home on the CSAH 90 property. Commissioners found that the request for a minor subdivision meets all applicable requirements and recommended approval to the City Council. The Planning Commission recommended approval of 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.

**Motion by Betts, second by McCoy to approve RESOLUTION NO. 18-0306-02 –of a minor subdivision to permit a lot line rearrangement which would move the existing lot line between the two properties. The rearrangement would add acreage to the 6576 Turner Road property and reduce the acreage of the 1235 County Road 90 property (PID No.s 27-118-24-14-0005 and 27-118-24-14-0004) in Independence, MN. Ayes: McCoy, Betts, Grotting and Spencer. Recused: Johnson. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

9. Open/Misc.

10. Adjourn.

**Motion by McCoy, second by Betts to adjourn at 7:19 p.m. Ayes: Johnson, McCoy, Betts, Grotting and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

Respectfully Submitted,

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Trish Gronstal/ Recording Secretary