

MINUTES OF A MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, JANUARY 21, 2020 – 7:30 P.M.

1. CALL TO ORDER

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

2. Swearing in of Newly Appointed Planning Commissioner Palmquist.

3. ROLL CALL

PRESENT: Commissioners Palmquist, Thompson, Volkenant and Gardner

STAFF: City Administrator Kaltsas, Assistant to Administrator Horner

ABSENT: Commissioner Dumas

VISITORS: Steve Eckman, Vincent Velie III, Terri Barreio, Jim Clifford

4. Approval of Minutes:

- a. November 19, 2019 Planning Commission Meeting
- b. January 7, 2020 City Council Meeting Minutes (For Information Only)

Motion by Thompson to approve the November 19, 2019 Planning Commission minutes, second by Palmquist. Ayes: Gardner, Thompson, Volkenant and Palmquist. Nays: None. Absent: Dumas. Motion Approved.

5. PUBLIC HEARING: Vincent Velie III (Applicant) requests that the City consider the following action for the property located at 3315 County Road 92 N, Independence, MN (PID No. 09-118-24-34-0004):

- a. An interim use permit to replace the existing conditional use permit. The new interim use permit would allow a landscape business to operate from the subject property. The interim use permit would add new conditions to the property and the existing conditional use permit would be removed.

Kaltsas said the City originally granted a conditional use permit for this property in 1994 allowing a landscaping, irrigation and snowplowing business to be operated from the subject property. The City has perennially worked with the previous owner of the property to achieve compliance with the approved conditional use permit and its conditions. In January of 2019, the City notified the property owner that the CUP was going to be revoked due to non-compliance with the existing conditional use permit conditions. The City revoked a number of CUP's in February of 2019 and this property was unintendedly not included in the revocation resolution. The City discovered the error and sent notice that the CUP was going to be revoked at the City Council Meeting on July 30th, 2019. The buyer of the property attended that meeting and asked for the Council to delay any action on the revocation of the CUP. The delay would allow the buyer of the property to clean up the property and make application to the City for an interim use permit to continue to use the property for a commercial business. The City Council acknowledged that the buyer had already begun to clean up the property and agreed to postpone any action on the CUP with the understanding that the buyer would bring forward an application for an interim use permit (IUP) in the future.

Kaltsas said the property has been sold and the current owner has made an application to the City for an IUP to allow a commercial landscaping, tree removal and snowplowing business to operate from the property. The City has the ability to consider approval of the IUP and also impose any conditions relating to the proposed use that are deemed necessary to mitigate potential impacts on the surrounding properties. The applicant would like to utilize the property in a manner consistent with the previously granted conditional use permit. The City has the ability to revoke the current CUP and approve or not approve a new IUP for the property. One of the considerations discussed by the Council was the idea that an interim use permit would allow the City to establish new conditions relating to the use of the property while providing for a known action that would end the commercial use of the property. Staff will be seeking feedback and direction from the Planning Commission and City Council relating to whether or not the City should issue an interim use for this property.

The City has criteria relating to interim use permits. One of the criteria of an interim use permit is that it needs to meet all standards for granting a conditional use permit. In addition, the following criteria have been established for an interim use permit and conditional use permit:

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

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

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.

7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

The City will need to determine if the requested interim use permit meets all of the aforementioned conditions and restrictions. There are several key considerations relating to the proposed interim use permit that should be noted and further considered by the City.

1. The property has been substantially “cleaned up” since the new owner took possession of the property. There is still a significant amount of remaining equipment and other similar miscellaneous debris strewn about the property (see attached photographs taken on 11.15.2019).

2. The neighboring property owner to the west of this property has provided written and verbal correspondence to the City relating concerns about the proposed use of the property.

3. Should the City consider granting an IUP for the proposed use of the property, it is recommended that the following conditions be considered:

a. An interim use permit (IUP) will be granted for the property and allow a Landscape, Tree and Snow Removal business to be operated on the subject property.

b. The IUP shall remain effective for so long as Velie possesses and resides at the 3315 County Road 92 N. property and owns and operates the approved business.

c. No more than five (5) employees, in addition to Velie, may originate, regularly visit and or park at the subject property. Each of the foregoing employees shall be allowed to park their personal vehicles on the Property while present at the property. Velie agrees to screen said vehicles from view from the public roadway.

d. The applicant is proposing to construct a new approximately 4,800 SF detached accessory structure on the property. The new detached accessory structure would be used for the business. The existing detached accessory structures would not be used for any business purposes or storage. No outdoor storage of any equipment, materials or similar products will be permitted on the property. One commercial vehicle used by Velie on a daily basis shall be permitted to be parked outside on the property along with two landscape trailers. No equipment or materials shall be stored on the trailers when parked outside. The trailers shall be screened from public view. Velie shall provide the City with a description and registration number of the vehicle and trailers permitted to be stored outside on the property.

f. The existing evergreen and deciduous plant screen located along the property perimeters shall be maintained in perpetuity. No removal of the existing trees shall be permitted with the exception of dead or diseased trees. In the event a tree is removed due to death or disease, a replacement tree (which provides a similar screening effect and meets the minimum tree planting size of the City at the time of planting) shall be installed by Velie.

g. No business signs shall be permitted on the premise.

h. Hours of operation shall be limited to Monday through Saturday between 7:00 am to 8:00 pm. No expansion of the existing buildings or construction of new accessory structures shall be permitted on the property without the approval of the City Council by an amendment to the IUP.

j. No materials generated off of the subject property shall be brought back to the property at any time or for any time period. This includes, but is not limited to trees, brush, leaves, organic materials and similar.

The City will need to determine if the requested interim use permit meets all of the aforementioned conditions and restrictions. Staff is seeking a recommendation from the Planning Commission for the request for an interim use permit. Should the Planning Commission recommend approval of the interim use permit, the following findings and conditions should be considered:

1. The proposed interim use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The IUP shall be subject to the following conditions:
 - a. The interim use permit (IUP) will allow a landscape, tree and snow removal business to be operated on the subject property.
 - b. The IUP shall remain effective for so long as Velie possesses and resides at the 3315 County Road 92 N. property and owns and operates the approved business.
 - c. No more than five (5) employees, in addition to Velie, may originate, regularly visit and or park at the subject property. Each of the foregoing employees shall be allowed to park their personal vehicles on the Property while present at the property. Velie agrees to screen said vehicles from view from the public roadway.
 - d. The applicant is proposing to construct a new, approximately 4,800 SF, detached accessory structure on the property. The new detached accessory structure would be used for the business. The existing detached accessory structures shall not be used for any business purposes or storage. The proposed building shall be generally constructed on the site in the location shown in this report. Prior to City Council consideration of the requested IUP, the applicant shall provide the City with a site and grading plan which will be incorporated by attachment to the resolution. Interim use permit approval will be subject to the applicant completing construction of the proposed detached accessory structure within 12 months from the date of City Council approval. Failure to complete the construction within this timeframe will result in nullification of the IUP.
 - e. No outdoor storage of any equipment, materials or similar products will be permitted on the property. One commercial vehicle used by Velie on a daily basis shall be permitted to be parked outside on the property along with two landscape trailers. No equipment or materials shall be stored on the trailers when parked outside. The trailers shall be screened from public view. Velie shall provide the City with a description and registration number of the vehicle and trailers permitted to be stored outside on the property.
 - f. The existing evergreen and deciduous plant screen located along the property perimeters shall be maintained in perpetuity. No removal of the existing trees shall be permitted with the exception of dead or diseased trees. In the event a tree is removed due to death or

- disease, a replacement tree (which provides a similar screening effect and meets the minimum tree planting size of the City at the time of planting) shall be installed by Velie.
- g. No business signs shall be permitted on the premise.
 - h. Hours of operation shall be limited to Monday through Saturday between 7:00 am to 8:00 pm.
 - i. No expansion of the existing buildings or construction of new accessory structures shall be permitted on the property without the approval of the City Council by an amendment to the IUP.
 - j. No materials generated off of the subject property shall be brought back to the property at any time or for any time period. This includes, but is not limited to trees, brush, leaves, organic materials and similar.
 - k. The business operation shall not be conducted in a manner that, in the determination of the City Council, unreasonable interferes with the neighboring property owners' peaceful use and enjoyment of their property.

3. The applicant shall pay for all costs associated with the City's review and processing of the requested interim use permit.

Thompson asked if the property was non-compliant as it is today. Kaltsas said it is not compliant. Council suggested moving forward with an IUP instead of a CUP. Kaltsas noted the CUP has to be revoked in order to move forward with an IUP. Volkenant asked if the property owner was indeed living on the property. Kaltsas said he was living on site and he noted that he is taking the necessary steps to make it complaint with the CUP. Volkenant said it sounded like the property was forgotten in the process and she felt it was not fair to the current owner to suffer. Thompson asked if this would be denied based on current ordinance and Kaltsas said it likely would be.

Public Hearing Open

Velie stated he was born and raised in Independence and wants to raise a family here. He wants to contribute be a positive asset to the City. Velie said an IUP limits him if he would want to sell the property. He would be grateful for an IUP but feels he is not being treated fairly.

Gardner asked what Velie planned on doing with the old buildings on the property including the existing barn. Velie said he wants to put a steel roof and new foundation on the barn. He noted he has completely redone the existing home and cleaned up the entire property. Velie plans on having goats and llamas. Velie said he could park his trucks elsewhere if needed.

Jim Clifford who lives west of the property said Velie has vastly improved the property and has been working very hard on it. Kaltsas noted the business would only be in the new barn.

Steve Eckman who lives across from Velie said the history of this property had been a terrible mess with the previous owner. He said he is concerned in that he does not want to see an industrial area spring up by initiating this IUP. Eckman said this is nothing personal and he welcomes Velie to the community, but he would encourage Velie to search out an industrial area to run his business. Eckman said the original CUP should never have been approved in the first place.

Clifford asked if a certificate of occupancy had been granted. Velie said he is living there and has temporary occupancy in place. Clifford said the trees that are supposed to screen his property have not been put in place yet. Clifford said he wants the City to enforce the IUP. He said Velie is doing a great job.

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

Public Hearing Closed

Palmquist asked if there was a concern about equipment and other debris on the property. He wondered if that was no longer an issue. Kaltsas stated there would be an inspection. Volkenant asked if this property was inspected as all CUP's must be. Kaltsas said the owner would never respond to notifications so it was not inspected. Velie noted the house would be compliant within the year as well.

Gardner asked about the plant screening. Kaltsas said there were trees in place previously but Leo Poole (previous owner) took them down. Palmquist said he would punt that issue to Kaltsas. Thompson said they could come up with something between the applicant and the neighbor and then give it to the City Council for a recommendation.

Motion by Palmquist to approve an interim use permit to replace the existing conditional use permit for the property located at 3315 County Road 92 N, Independence, MN (PID No. 09-118-24-34-0004). The new interim use permit would allow a landscape business to operate from the subject property. The interim use permit would add new conditions to the property and the existing conditional use permit would be removed. Staff will work on a screening agreement with neighbors and that will be presented to City Council for approval. Debris will be removed within a deadline that coincides with the certificate of occupancy; second by Gardner. Ayes: Gardner and Palmquist. Nays: Thompson and Volkenant. Absent: Dumas. Abstain. None. Motion failed due to lack of majority vote.

6. **PUBLIC HEARING:** Theresa Marple (Applicant/Owner) requests that the City consider the following action for the property located at 7825 County Road 11, Independence, MN (PID No. 09-118-24-22-0003):

- a. A variance to allow a minor subdivision of property zoned AG-Agriculture that does not meet all applicable requirements. The subdivision proposed would create two approximately 40-acre parcels from the existing 80-acre parcel.

Kaltsas stated the applicant is seeking to subdivide the subject property into two parcels and ultimately sell both parcels. In 2009, the subject property was combined into one property from two existing properties. The property historically was comprised of a 5-acre parcel located along CSAH 11 and the remaining 75-acre parcel. There was an existing home located on each parcel. The City granted approval of a minor subdivision and conditional use permit to allow the existing home on the smaller 5-acre parcel to be converted to a guest house for the use of the property owners.

The applicant recently met with the City to discuss the subdivision of this property. It was noted that the City would allow a minor subdivision of the property which would permit a new parcel to be created with a minimum lot size of 2.5 acres and maximum lot size of 10 acres. The City and the applicant looked at various configurations that would allow for a 10-acre parcel to be split off from the property and incorporate various configurations that would allow for a 10-acre parcel to be split off from the property and incorporate the existing second house and detached accessory structures. The applicant ultimately determined that than carving out a smaller 10-acre parcel. The City does not allow the subdivision of property zoned Agriculture with the exception of lot line rearrangements and rural view lot splits. The City would have to consider granting a variance from the accommodate requisite side yard building setbacks for the existing detached accessory structures.

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

The standards for granting a variance are as follows:

520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, “practical difficulties” means:

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;
- (b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;
- (c) the variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)

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

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

Consideration of the standards for granting a variance:

- a. The applicants are proposing to split the property so that there is an existing residence on both properties. The use of the property as residential is consistent with the AG Agriculture Zoning District.
- b. The properties created by the subdivision are similar in nature and character to the surrounding properties. There are many existing properties located along County Road 11 that are similar in size and configuration.
- c. The character of the surrounding area is mixed residential/agricultural and guided for long term agriculture. The City’s current comprehensive plan guides this area for long term agriculture. The City will need to determine if the proposed subdivision is in keeping with the intent of the City’s comprehensive plan.
- d. The requested variance to allow the subdivision of the property must be found to be unique to this property. The property was historically split into two parcels. The presence of two principle structures on the property is generally unique to just a handful of properties in the City. The significant number and size of detached accessory structures on this property is also, unique.

The City should note that the property is able to realize a rural view lot subdivision of the property. The rural view lot subdivision would allow a maximum of a 10- acre parcel to be subdivided from the whole. In reviewing the property frontage, lot depth acre parcel to be subdivided from the whole. In reviewing the property frontage, lot depth subdivision appears to be a reasonable request. The conditional use permit for the guest house will be revoked as a part of the subdivision and the properties will both be conforming in the after condition.

The Planning Commission will need to determine if the requested variance to allow the minor subdivision of meets the requirements for granting a variance. The proposed subdivision, if approved, would have the following setbacks and accessory building square footage would all meet requisite standards.

Min. Lot Frontage Required:

300 Lineal Feet

Lot Frontage Proposed:

(Parcel A) - 703 Lineal Feet

(Parcel B) - 607 Lineal Feet

The applicant has provided locations for an alternative septic site on Parcel B. The septic system for Parcel A is relatively new. The City would require a secondary site to be identified. The City has historically asked for additional County right of way easement that has been requested is 17 feet wide.

Staff is recommending that the City require the additional 17 feet of right of way along the south side of County Road 11. The additional right of way the additional 17 feet of right of way along the south side of County Road 11. The additional right of way would be dedicated in the form of an easement. The additional right of way does not appear to impact the proposed subdivision. The creation of a new parcel typically requires the payment of a park dedication fee to the City. In this case, the property was historically subdivided prior to the combination of the properties in 2009. If applied, the park dedication fee would be based on the creation of a new 39-acre parcel. The park dedication fee for this subdivision would be approximately \$29,255.

Staff is seeking from the Planning Commission relating to the requirement for park dedication for this property. The City has not received any written comments regarding the proposed subdivision or conditional use permit.

Staff is seeking a recommendation from the Planning Commission for a variance to allow a minor subdivision and with the following findings:

1. The proposed variance and minor subdivision request meet all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, and Chapter V, Section 500, Subdivisions, in the City of Independence Zoning Ordinance.
2. The Applicant shall provide, execute and record the requisite drainage and utility easement.
3. The Applicant shall dedicate 17 feet of right of way to the City along County Road 11. The Applicant shall prepare the requisite easement exhibit and legal description and execute and record the document with the county within six (6) months of approval.
4. The City will revoke the existing conditional use permit for a guest house on the property.
5. The Applicant shall pay for all costs associated with the City's review of the requested variance and subdivision
6. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Thompson asked if rural view lots follow the same lot line preference. Kaltsas said they are trying to abide by the 39.35-acre requirement, and it is very subtle skew of the lot line. He noted they are trying to keep the building setbacks compliant. Thompson asked if the rural view lot followed by lot line address the park dedication fee. Kaltsas said a lot of the rural view lots are charged this way. Kaltsas said everything is compliant with the exception that we are not able to create two 40-acre lots. Thompson said he would use the 10-acre rural view lot for the park dedication fee. Marple said they bought it as 80 acres but did not know when the 5 acres came out. Kaltsas noted this is unique with the two houses on one lot so it propels us to make two separate lots. Gardner said there could be an easement to run a driveway. Kaltsas said it could cause an issue as it would be a flag lot with no frontage.

Public Hearing Open

Theresa Marple said they built the house in 1986 and had an approach to the driveway and also an approach in the middle to the lots.

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

Public Hearing Closed

Thompson said there is enough uniqueness with this lot to support a variance and he felt comfortable with it. He said he would amend recommendation to have the park dedication fee based off 10 acres. Palmquist said he did not see the need for the park dedication but would go with Thompson's recommendation. Gardner thought the park dedication fee needed further legal interpretation as this was not a new homestead. He wondered if it was appropriate in this instance. Kaltsas said it could be recommended to go with no fee.

Motion by Palmquist to approve a variance to allow a minor subdivision of property zoned AG-Agriculture that does not meet all applicable requirements at 7825 County Road 11, Independence, MN (PID No. 09-118-24-22-0003). The subdivision proposed would create two approximately 40-acre parcels from the existing 80-acre parcel. Parcel A would be the primary and secondary septic site. It is also recommended to not charge a park dedication fee; second by Thompson. Ayes: Gardner, Palmquist, Thompson and Volkenant. Nays: None. Absent: Dumas. Abstain. None. Motion Approved.

7. Open/Misc.

8. Adjourn.

Motion by Thompson, second by Volkenant to adjourn at 9:20 p.m.

Respectfully Submitted,

Trish Gronstal/ Recording Secretary