

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, DECEMBER 16, 2014 – 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: Mark Alstin, Lance Gyllenblad, Troy Denneson and wife, Tom Spears, Rich Mickschl, Ezra Bisson, Susanne Bernards, Kelly Bernards, Jay Benards, Jim Coleman, and John Gehring

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.
- a) Approval of the City Council minutes from November 17, 2014.
- b) Approval of the minutes from the joint Maple Plain/Independence held on Monday, November 17, 2014.
- c) Approval of the Accounts Payable/Receivables ending December 16, 2014.
- d) Recognition of support the Highway 12 Safety Coalition took at its meeting on Thursday, December 11, 2014, moving forward with the installation of rumble strips from County Road 90 to the County Line Road (Delano), for the good and safety of all the commuters and their families.
- e) Approving a letter of support from the City Council, in respect to the action taken of the Highway 12 Safety Coalition on Thursday, December 11, 2014.
- f) Requesting approval of the final payment (3) in the amount of \$10,768.82 to Kusske Construction Company, for the Vinland Center Sewer Extension project.
- g) Approval of the request for a Letter of Credit Reduction, Franklin Hills Third Addition in the amount of _____
- h) Approval requesting Keith and Sara Triplett, 2555 County Road 92 (PID# 17-118-24 43-0008) to remain in the Agricultural Preserve Program.
- i) Authorization to direct City Attorney to proceed with Civil Suits, against property owners with City Ordinance violations.
- j) Approval of Resolution No. 14-1216-01 supporting the 2015 City Budget and 2015 City Levy.

Wenck requested pulling items G and J for further discussion.

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

Wenck inquired about the figures for Franklin Hills. Hirsch stated from the developers agreement the starting amount was \$164,170, and they want to decrease it by \$118,947.83, with the remaining amount kept in escrow. This would bring the escrow down to \$45,222.17.

Motion by Wenck, second by Betts to approve the letter of credit reduction for the Franklin Hills Third Addition. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Wenck thinks the budget increase should not increase more than 3%. The current proposal is 5.8%, which is a \$65,000 difference. He is not sure where it should be cut. Johnson's and Betts' concern is about keeping up the infrastructure that has been ignored. Wenck wants to reduce the cost of business. Spencer stated the City budget is well below the 2008, 2009, and 2010 budgets. He wanted to note this budget is not out of line what has been done in the past. He stated the City needs to give more attention to some of the Public Works stuff previously ignored in the past.

Motion by Spencer, second by Betts to approve the budget.

Wenck stated the other city's being compared show that their tax capacity went down and ours went up slightly. He still feels it should be reduced by \$65,000.

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

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

Johnson suggested adding discussion about lighting on Highway 12. Johnson also requested adding discussion about supporting people for the Minnehaha Watershed Creek Board.

Wenck requested adding discussion about staff drafting an ordinance regarding event centers.

Snowmobile trails discussion with Ezra Bisson of the Maple Plain Snowmads Club.

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

Spencer attended the following meetings:

- Pioneer Sarah Creek Watershed community conversations on water quality meeting
- Meeting with Mayor Whalen of Minnetrista, Mayor Weir of Medina, and Joe Baker regarding the future of Pioneer Sarah Creek Watershed District
- View Santa event
- Planning Commission Meeting
- City Budget Workshop
- Mayor Liz Weir's retirement open house
- Truth in Taxation Meeting

Wenck attended the following meetings:

- City Budget Workshop
- Loretto's Holiday Train
- Truth in Taxation Meeting

Fisher attended the following meetings:

- Planning Commission
- Truth in Taxation Meeting

Betts attended the following meetings:

- Pioneer Sarah Creek Watershed community conservations on water quality meeting
- Maple Plain Fire Commission Meeting
- Highway 12 Safety Coalition Meeting
- Police Commission Meeting
- Truth in Taxation Meeting

Johnson attended the following meetings:

- National League of Cities Meeting in Austin Texas
- Delano School Board Meeting
- South Lake Joint Powers Retirement Party for Chief Litsey
- Hennepin County Hearing for Truth in Taxation
- Maple Plain Fire Commission Meeting
- Orono School District Healthy Youth Annual Meeting
- Conference of Mayors in Minneapolis
- Orono School Board Meeting
- City Budget Workshop
- Chamber of Commerce Maple Plain Luncheon
- NW League Dinner
- Highway 12 Safety Coalition Meeting
- Congressman Open House in Eden Prairie
- Community Action Partnership for Suburban Hennepin County Finance Committee Meeting
- Hennepin County Healthy Living Collaboration
- Senior Community Services Finance Committee Meeting
- Brian O'Shea Meeting regarding trucking loads
- Police Commission Meeting
- Truth in Taxation Meeting

Hirsch attended the following meetings:

- Highway 12 Safety Coalition Meeting
- Police Commission Meeting
- City Budget Workshop
- ABDO Sponsored Seminar
- Hennepin County Natural Resource Meeting regarding watersheds and wetlands
- Maple Plain Fire Commission Meeting
- Hennepin County Post-Election Meeting
- Met Council Customer Forum
- Truth in Taxation Meeting

7. DIRECTOR OF PUBLIC SAFETY, GARY KROELLS – ACTIVITY REPORT FOR THE MONTH OF NOVEMBER, 2014 AND AN UPDATE ON THE U.S. HIGHWAY 12 SAFETY COALITION.

Director Kroells gave a recap of November's activity. He stated, for the year though the end of November, the department has handled 6,512 incident complaints with 3,882 of them happening in Independence. For the month there were 402 incidents between both cities. He stated this is the lowest number he has seen for quite some time and attributes this to being short two officers. One officer resigned unexpectedly and another officer was injured. A new officer was hired on November 10th, and a lot of time has been designated to training him. Kroells stated compared to previous years the criminal activity is down and is very low for the month of November.

Kroells highlighted a few cases in November including: a November 2nd personal injury crash, November 5th personal injury crash with an intoxicated driver, November 9th DWI test refusal, November 12th a suicide attempt, November 13th felony terrorist assault between a father and son involving guns, November 20th a third degree DWI with a .28 breath test reading, November 21st the Lake Minnetonka SWAT team, which includes one WHPS officer, did a call out for a high risk narcotics warrant in Mound, and a November 23rd DWI arrest.

Johnson and Kroells discussed the new 911 call center in Plymouth.

Johnson inquired about a recent head-on collision in Maple Plain. He was curious when a report would be available, as the speed limit is only 40 mph and there is a center turn lane where this accident took place. Kroells stated this December 9th case is still being worked on. They are reviewing toxicology reports and cell phone records. He stated there could be a six-month delay in the blood and urine test processing. He stated they are trying to rule out other factors including mechanical failures, medical, or distracted driving.

Johnson gave credit to Director Kroells for his role in getting the rumble strips installed on Highway 12. The Councilmembers discussed a recognition luncheon for Diamond Surfacing, held by the Delano Chamber of Commerce on the 18th. Wenck stated he personally called to thank them for their service.

Kroells stated Diamond Surfacing is the company that donated their time and materials for installing the rumble strips on Highway 12. In the process of this improvement, the limited lighting on the highway was also reviewed. He stated the Highway 55 intersections are much better illuminated than the Highway 12 intersections. At the Highway 12 Safety Coalition Meeting, lighting was discussed and found to cost approximately \$15,000 per intersection. MnDOT discussed the a proposal with Director Kroells about adding lighting at County Road 90, County Road 92 North, and County Road 92 South. MnDOT stated if funding for this is approved, they would like to see the City of Independence pay the utility bill for the lights. Kroells stated the City has currently been paying for the limited lighting at these intersections; which has been averaging \$12.00 to \$12.50 per month, per light. The estimate for the new lighting would be \$28 to \$38 per month, per intersection. The Councilors discussed this and agreed that this is something the City can do to help with this issue.

Motion by Spencer, second by Betts to support the City paying the electric costs for the lighting of three intersections on Highway 12.

Staff to send a letter to MNDOT stating the City is willing to pay the electric bill for the new lights.

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

Wenck questioned who is responsible for lighting on the Highways when the lights are burnt out. Kroells stated he could note the current burnt out lights to MnDOT. For future reference just inform MnDOT.

8. TOM SPEARS (APPLICANT/OWNER) REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTION FOR THE PROPERTY LOCATED AT 2880 LINDGREN LANE, INDEPENDENCE, MN (PID NO. 13-118-24-24-0014): RESOLUTION NO. 14-1216-02

- A variance from the requisite setbacks to permit a non-conforming structure to be expanded. The variance would allow the expansion of the existing home on the property.

Kaltsas explained the Planning Commission reviewed this item last week, and then explained the variance request. He stated there was an existing home that was torn down and has been rebuilt. There is also a pre-existing detached garage. Kaltsas stated the property is a substandard lot of record in the shore land overlay district, allowing reduced setbacks by 60%. The lot is approximately one acre and is zoned rural residential.

Kaltsas stated the City allows a non-conforming home on a property to be torn down and rebuilt in its current form and on its current location. The City does not allow expansion of a non-conforming use structure, unless it meets all applicable setback requirements, currently within the City's ordinance. He stated in this case the applicant applied for the building permit which included increasing the height of the structure and extending the structure back with an attached garage. The City granted a building permit for this and later the applicant requested a change, requesting to permanently attach a screen porch to the home. At this time, Planning reviewed the permit and discovered the initial building permit was issued without requesting a variance. The City notified the owner about the required variances for the home and the screen porch.

Kaltsas stated the shore land reduced side yard setback is 18-feet. Currently, there is a 6.2-foot setback on one side and 21-foot setback on the other side. The lakeshore setback can be reduced to a 60-foot setback from the OHW mark. The home is roughly at a 37-foot OHW mark setback in the Southeast corner and a 48-foot setback in the Northeast corner. The garage addition is in line with the home, giving it a 6.2-foot setback; which without a variance, it would have needed to have an 18-foot setback. The second story addition would not have been permitted without a variance.

Kaltsas stated the original screen porch was not permanently attached to home, but the applicant is now looking at permanently attaching the screen porch using footings. He stated the porch does not meet the required setbacks and would need a variance for a 12-foot reduction from the OHW mark setback.

Kaltsas stated the Planning Commission reviewed this and felt they would not have likely approved this in its current form, prior to the applicant building the home. The Planning Commission would have likely negotiated less of a setback. The Planning Commission ultimately recommended granting a retroactive variance for the part of the home already constructed and grant a 12-foot setback to a permanently attach a screen porch. The retroactive variance for the home would be an 11.8-foot deduction in setback, allowing a 6.2 foot side yard setback for the newly attached garage and second story addition. There would be a 23-foot reduction in setback from the OHW mark for the home to allow for a 37-foot setback. There would be a 12-foot reduction in setback from the OHW mark for the porch to allow for a 48-foot setback.

Kaltsas stated conditions to the approval would include the applicant requiring a grading and drainage plan that would need to be approved by the City to ensure that improvements do not adversely affect or impact the surrounding properties. He stated a neighbor did attend the Public Hearing and he was concerned about drainage since the structure was so close the property line.

Johnson inquired about changes to this process so that this error does not happen again. Kaltsas stated a form is being created so that all building permits are signed off by Planning and other staff so that nothing is overlooked.

Kaltsas stated the neighbor to the South has been contacted, and he is working to make sure that he is comfortable with that grading and drainage plan.

Richard Mickschl, 2850 Lindgren Lane, stated he was very unhappy with the whole situation. He felt the issued building permit was in complete violation of the City Code. He was told the City used a historical interpretation of the Code. He thought the City's Ordinance Codes are very clear. He was happy to hear the City is taking steps to prevent the error from happening again. He would have liked to have had input on the current structures setbacks. He stated if done properly, it may have been configured differently and not 6-feet off his property. The structure has changed his property views of the lake and has caused him distress. He requested being able to review the drainage plan and requested the getting approval from the DNR, as well as, the Lake Association. He also feels he is owed a public apology for this mistake.

Tom Spears, applicant and owner of 2880 Lindgren Lane, stated he did not try to do anything illegal and feels he should not be punished. He understands the neighbor's argument. The screen porch was attached, but when rebuilding the home, he found it was not done correctly. He is just looking at rebuilding the screen porch in the same spot.

Johnson stated it appears that no one is trying to hide anything. He stated it the City is not trying to punish Spears. Johnson stated he wants to make sure nothing like this happens again and feels this is embarrassing.

Kaltsas stated the Planning Commission broke up the motion into two separate points, one for a retroactive variance and a variance for the porch. Kaltsas also stated DNR approval is a condition of the variance, but the City has not yet heard from them. Johnson requested allowing the neighbor to see all the final drainage and grading plans.

Betts clarified the request and Wenck questioned if a non-conforming home can be removed and rebuilt. Vose stated a non-conforming use structure can be continued and based upon state statues, it states this includes repair, replacement, or improvement but not by expansion. This is a relatively new option of allowing full replacement of non-conforming use structures.

Spencer stated we have lost the opportunity to achieve compliant setbacks for this structure. Regarding the drainage control, Spencer asked that all runoff from the structure be collected in a drainage pond.

The Council all agreed Richard Mickschl is owed a formal written apology from the City.

Motion by Spencer second by Wenck to create a formal written apology to Richard Mickschl for issuing a building permit to the neighbor without a Public Hearing for a variance request. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

The Councilors all discussed making the approval contingent upon the grading and drainage plan acceptance by the City and Richard Mickschl. Kaltsas also suggested adding the storm water runoff pond.

Motion by Spencer second by Wenck to approving Resolution No. 14-1216-02 allowing a variance from the requisite setbacks to permit a non-conforming structure to be expanded. The variance would allow the expansion of the existing home on the property.

The Councilors suggested approving this request subject to the language additions and rewriting in paragraph 3 regarding the stormwater and grading plan.

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

9. APPROVAL TO CANCEL THE TUESDAY, JANUARY 27TH, 2015 CITY COUNCIL MEETING DUE TO THE LACK OF AGENDA ITEMS AND QUORUM.

Motion by Wenck second by Spencer to cancel the January 27th City Council Meeting. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

10. MISC./OPEN.

Minnehaha Watershed Creek Board

Johnson discussed the Minnehaha Watershed Creek Board and the candidates that were looking to fill two positions. He is asking to make a motion to create a letter of support for these candidates and any other interested candidates.

Motion by Betts second by Fisher to approve sending a letter in support of the candidates interested in joining the Minnehaha Watershed Creek board, contingent upon any other candidates looking to join. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Event Centers

Wenck suggested the staff create a proposal for an ordinance relating to event centers.

Motion by Wenck second by Fisher to direct staff to draft an ordinance on how to evaluate event centers in the City. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Ezra Bisson – Maple Plain Snowmads Club

Bisson wanted to discuss the trail issues on Turner Road, between County Road 83 and County Road 90. He stated the trail has been there for roughly four years. The City had gave permission to the club to clear some brush along the trail and Marvin Johnson also gave them permission to use his field, as a new home is being built along Turner Road. In November, there was trees blocking the path and signage was missing. He stated the club then spoke to Marvin Johnson and the WHPS about this issue. Weeks later they found stumps and cinder blocks in the path with no way to get through. The club is concerned about safety issues and wants to get this resolved. They are seeking a resolution to this issue.

Vose stated staff has spoken to the landowner, Denneson, and received some new information about his access. He stated the City has a dedicated platted easement, so it is not a city road. He stated the city may consider designating it as a road. However, staff is not prepared to make a recommendation exactly what to

do, but will likely make a proposal in an upcoming meeting. Denneson would be invited to attend the City Council meeting when this is discussed.

Johnson stated this will be on the agenda for the January meeting.

Troy Denneson, stated the snowmobile trail started in 2012, and has been heavily used at times. He stated they never made any complaints about the trail or asked for anything to be removed. A member of the club, Colin Brown, came to his property and stated they received permission from Marvin Johnson to use the part of his field for the trail. Denneson stated they discussed where the trail should enter back on to the road, as they were trying to leave space around Denneson's property. Denneson stated a couple of weeks later a crew came to clear the path, and they cut an opening in the trees near his driveway. He stated this is not what they had agreed upon and the location does not make sense. He pointed out another location that he felt made more sense and was less dangerous. He barricaded the area so that the club could use the safer alternative route.

Further questions and concerns regarding the trail will be answered at the January City Council Meeting.

11. ADJOURN.

**Motion by Wenck second by Betts to adjourn the City Council Meeting at 8:55 p.m.
Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION
DECLARED CARRIED.**

Respectfully submitted,

Jolene Nelson, Recording Secretary