



CITY COUNCIL MEETING AGENDA
REGULAR MEETING
TUESDAY, JANUARY 24, 2017

*******NOTE: PLANNING COMMISSION INTERVIEWS: 6:15 PM*******

CITY COUNCIL MEETING TIME: 7:30 PM

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
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 City Council minutes from the January 10, 2016 Regular City Council Meeting.
 - b. Approval of Accounts Payable; Checks Numbered 16838-16873. For Information Checks Numbered 16829-16837 and 16874-16878 are Payroll Checks.
 - c. Approve E-Charging Joint Powers Agreement and Court Services Amendment Renewal.
 - i. **RESOLUTION 17-0124-01** Approving the Joint Powers Agreement (JPA) with the State of Minnesota, Department of Public Safety and Bureau of Criminal Apprehension to utilize systems, tools and data made available by the State and BCA.
 - d. Approval of Liquor License Renewals for Windsong Golf Club, Pioneer Creek Golf and the Ox Yoke Inn.
5. Set Agenda – Anyone Not on the Agenda can be Placed Under Open/Misc.
 6. Reports of Boards and Committees by Council and Staff.
 7. Annual City Council Visit by District 33 State Senator David Osmeck.

8. Director Gary Kroells, West Hennepin Public Safety - Activity Report for the Month of December, 2016.
9. Dean Voss (Applicant) and Linda Nelson (Owner) request that the City consider the following actions for the property located at 4586 Shady Beach Circle, Independence, MN (PID No. 02-118-24-21-0007):
 - a. **RESOLUTION 17-0124-02** Considering a variance to allow a reduced front yard setback for the purpose of constructing a garage addition.
9. Open/Misc.
10. Adjourn.

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, JANUARY 10, 2017 –7:30 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 7:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

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

ABSENT: None

STAFF: City Planner & City Administrator Mark Kaltsas, City Administrative Assistant Horner, City Attorney Vose

VISITORS: Jeff Johnson, Four Boy Scouts

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 December 13, 2016 Truth in Taxation Meeting.
- b. Approval of City Council minutes from the December 13, 2016 Regular City Council Meeting.
- c. Approval of Accounts Payable; Checks Numbered 16792-16828. For Information Checks Numbered 16765-16791 are Payroll Checks.
- d. Approval of Mayors Attendance at the National League of Cities Congressional Cities Conference March 11-15 and the National Community Action Legislative Conference on March 15-17.
- e. Approval to not waive the monetary limits on Tort Liability established by MN Statues, to the extent of the limits of liability coverage obtained from the LMCIT.
- f. Approve date of Local Board of Appeal and Equalization Meeting-April 11, 2017 at 7:00 p.m.
- g. Approve Annual Payment to WeCAN and Delano Senior Center for Services Provided to Independence Residents.
- h. **RESOLUTION 17-0110-01** Supporting the WeCAN Community Development Block Grant (CDBG) Application.
- i. Letter of Support for Senior Community Services Community Development Block Grant (CDBG) Application.
- j. Approval of Planning Commission Appointment of Thomas Palmquist to a Three (3) Year Term.
- k. **RESOLUTION 17-0110-02** Approving Residential Recycling Grant Agreement with Hennepin County.
- l. Approve Agriculture Preserve Enrollment Application for the Property Located at 7275 Turner Road and Further Identified by PID Nos. 2811824410005, 2811824410005 and 2811824440004.
- m. Approval of Third Quarter Financial Report

Motion by McCoy, second by Spencer to approve the Consent Agenda. Ayes: Johnson, Betts, Spencer, McCoy and Grotting. 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:

- City Council Workshop
- Highway 12 Safety Coalition Meeting

Grotting attended the following meetings:

- None to report

McCoy (report for April 12th and April 26th) attended the following meetings:

- Highway 12 Safety Coalition Meeting
- City Council Workshop
- Northwest League of Cities Meeting
- Maple Plain Mayors Recognition Reception
- Retirement Reception for Tom Stinger, Orono School Business Manager

Betts attended the following meetings:

- Police Commission Meeting
- City Council Workshop
- Highway 12 Coalition Meeting
- West Hennepin Chamber of Commerce Meeting

Johnson attended the following meetings:

- Northwest League of Municipalities Meeting
- Retirement Reception for Tom Stinger, Orono School Business Manager
- Suburban Hennepin County Community Action Partnership Finance Committee Meeting
- Highway 55 Quarter Coalition Meeting
- Police Commission Meeting
- City Council Workshop
- Governors Holiday Reception
- Jerome Hanson funeral
- Conference of Mayors
- Orono Choir Concert
- West Hennepin Chamber of Commerce Meeting

Horner attended the following meetings:

- City Council Workshop

Kaltsas attended the following meetings:

- City Council Workshop

7. ANNUAL CITY COUNCIL VISIT BY DISTRICT 7 HENNEPIN COUNTY COMMISSIONER JEFF JOHNSON.

Johnson handed out the 2016 budget numbers. He said mostly the budget will remain the same for 2017 with the exception of property taxes which increased 5%. Johnson said he feels there is spending where there does not need to be and that there could be more effective ways of spending the budget dollars. He said the increases are not sustainable year after year especially looking at the demographics. Johnson noted they are looking at the way they do business with vendors and having more performance-based pay. He said they are also looking at changing over from a step model for paying employees to a performance driven model. Johnson said they are also working on the comprehensive plan and implementing some reform to that model as well.

Mayor Johnson said he would like to see the County take a look at the election ballot counter. He noted it was so slow there were lines of voters waiting to cast their ballot. Mayor Johnson also expressed concern regarding the SCORE funding that comes from the County with the contract reducing funding for regular recycling programs and increasing funding for the organic program.

Betts said she really liked the video Commissioner Johnson put on Facebook about Met Council.

Spencer thanked Commissioner Johnson for his involvement in the Highway 12 Coalition meetings and his attentiveness to that issue.

8. ANNUAL CITY COUNCIL APPOINTMENTS

Kaltsas said each year the City selects Council Members, consultants and staff to serve the City and fill roles supporting boards and commissions. The Council has the discretion to make appointments as necessary. The various positions are identified on the attached schedule. Staff is seeking Council direction relating to all official City Council appointments.

Spencer stated he spoke with Joe Baker and he is willing to stay on as the City's representative to the watershed district. Johnson and Spencer both said Joe has done a wonderful job and his efforts are much appreciated.

Spencer said he would be the Planning Commission's primary liaison to the City Council and Grotting could serve as his back-up.

McCoy stated he would continue to be the representative for the City with Delano and Loretto fire departments. Betts said her schedule could stay the same as well. Grotting was fine with staying on as the cable representative.

Acting Mayor	Councilor Brad Spencer
Assessor	Hennepin County, Melissa Potter
Weed Inspector	PW Director Larry Ende
Assn. of Metro Municipalities	Mayor Johnson
Attorney, Civil	Kennedy & Graven
Attorney, Criminal	Carson & Clelland
Auditor	Clifton Larson Allen

Civil Defense Director	WHPS Director Gary Kroells
Dog Pound	Crossroads Animal Shelter
Engineer	MSA Professional Services, Brian Miller/Steve Winter
Fire Department Advisory Boards - Maple Plain FD	Mayor Johnson, Councilor Betts, City Admin Kaltsas
- Delano FD	Mayor Johnson, Councilor McCoy, City Admin Kaltsas
- Loretto FD	Mayor Johnson, Councilor McCoy, City Admin Kaltsas
Fire Marshall	Building Official Bruce Satek
Hennepin County Recycling Comm	Admin Asst Beth Horner
Highway 55 Coalition	Mayor Johnson
Highway 12 Coalition	Mayor Johnson, Councilor Betts
HRA	Mayor Johnson, Councilors Betts, Spencer, McCoy and Grotting
Lake Minnetonka Cable Commission	Councilor Grotting
Minnehaha Watershed	Mayor Johnson
Newspaper	Crow River News (Official Newspaper), Pioneer, and Delano Herald
Northwest Hennepin League	Mayor Johnson, Councilors Betts, Spencer, McCoy, Grotting and City Admin Kaltsas
Official Depository	Bank of Maple Plain, Northland Securities, Ehlers & Assoc., League of MN Cities
Pioneer Sarah Watershed	Joe Baker, Alt. Brad Spencer
Planner	Terramark - Mark Kaltsas
Planning Commission Liaison	Councilor Spencer, Grotting as back-up
Public Works Road Liaison	Councilor Spencer
Water Resource Staff	Hakanson/Anderson – Kaci Fisher, Shane Nelson and Craig Jochum
West Hennepin Police Commission	Mayor Johnson, Councilor Betts

Motion by Grotting, second by McCoy to approve the City Council Appointments for 2017. Ayes: Johnson, Betts, Spencer, McCoy and Grotting. Nays: None. Absent: None. MOTION DECLARED CARRIED.

9. OPEN/MISC.

Kaltsas addressed the Council about the financial status of the City recapping the third quarter. Kaltsas said the City is in good financial shape and will be within budget. He noted the solid waste budget is off but that will be trued up in 2017. Kaltsas said the building inspectors hours have been moved from Public Works back to inspector category.

City of Independence

Approval of Electronic Charging Joint Powers Agreement and Court Services Amendment Renewal Agreement

To: City Council
From: Mark Kaltsas, City Administrator
Meeting Date: January 24, 2017

Discussion:

Five years a joint initiative was launched with the State, Bureau of Criminal Apprehension, local law enforcement agencies and the prosecuting attorneys to establish a system for electronic charging for criminal prosecuting. The maximum term of the JPA and Court Services Agreement is five years. The City is now required to enter into a new JPA and Court Services Renewal Agreement.

The City utilizes the services of Carson, Clelland and Schreder for criminal prosecution. Their office has prepared a memorandum further explaining how this aids the City along with the resolution authorizing the Mayor and Administrator to execute both the Joint Powers Agreement and Court Services Amendment Renewal Agreement on behalf of the City.

Recommendation:

The City Council is being asked to approve the following:

1. **RESOLUTION 17-0124-01** approving the joint powers agreements with the State of Minnesota.

Attachments: Memorandum from Carson, Clelland and Schreder
RESOLUTION 17-0124-01
Master JPA Agreement
Court Services Amendment Agreement

MEMORANDUM

TO: Mark Kaltsas
Independence City Administrator

FROM: Dawn Speltz
Carson, Clelland & Schreder

RE: E-Charging JPA & Court Services Amendment Renewal

DATE: 1/12/2017

Dear Mr. Kaltsas,

If you may recall approximately 5 years ago a joint initiative was launched between the Bureau of Criminal Apprehension (BCA), State Court Administration, and local prosecuting attorneys to establish a system of electronic charging (e-charging) for criminal offenses. The e-charging process allows cases to be submitted electronically by police departments to the prosecuting agency (our offices) for review and consideration of charges. Upon charging, the case is then sent electronically back to the police department for approval and then submitted to the court for entry. The Bureau of Criminal Apprehension (BCA) provides the computer network to facilitate this process. Access to this network is granted through the execution of a Joint Powers Agreement. Statutorily there is presently a Joint Powers Agreement that is in place between the City on behalf of the city attorney and the police department which is now set to expire. Minnesota Statutes restrict the duration of Joint Powers Agreements to 5 year terms and therefore we will be required to sign a new Joint Powers Agreement on a 5 year cycle.

We have prepared a proposed resolution approving the continuation of the Joint Powers Agreement for the Council's consideration and approval. I am requesting that the attached resolution be approved by the City Council and that the Mayor and City Administrator sign the attached agreements (there are two agreements—the master JPA as well as the Court Amendment Agreement). We do ask that this be put on the agenda for a January meeting as the current Joint Powers Agreement will be expiring at the end of January 2017. If you have any questions or concerns about this please do not hesitate to let either myself or John Thames from my office know and we will be happy to answer any questions. Thank you for your attention to this matter.

Sincerely,

Dawn Speltz



RESOLUTION NO. 17-0124-01

RESOLUTION APPROVING STATE OF MINNESOTA JOINT POWERS AGREEMENTS WITH THE CITY OF INDEPENDENCE ON BEHALF OF ITS CITY ATTORNEY AND POLICE DEPARTMENT

WHEREAS, the City of Independence on behalf of its Prosecuting Attorney and Police Department desires to enter into Joint Powers Agreements with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State's criminal justice data communications network for which the City is eligible. The Joint Powers Agreements further provide the City with the ability to add, modify and delete connectivity, systems and tools over the five year life of the agreement and obligates the City to pay the costs for the network connection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Independence, Minnesota as follows:

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Independence on behalf of its Prosecuting Attorney and Police Department, are hereby approved.
2. That the Police Chief, Gary Kroells, or his successor, is designated the Authorized Representative for the Police Department. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
3. That the Prosecuting Attorney, John Thames, or his successor, is designated the Authorized Representative for the Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
4. That Marvin Johnson, the Mayor for the City of Independence, and Mark Kaltsas, the City Administrator, are authorized to sign the State of Minnesota Joint Powers Agreements.

Passed and Adopted by the Council on this ____ day of _____, ____.

CITY OF INDEPENDENCE

By: Marvin Johnson
Its Mayor

ATTEST: _____
By: Mark Kaltsas
Its City Administrator

**STATE OF MINNESOTA
JOINT POWERS AGREEMENT
AUTHORIZED AGENCY**

This agreement is between the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension ("BCA") and the City of Independence on behalf of its Prosecuting Attorney ("Agency").

Recitals

Under Minn. Stat. § 471.59, the BCA and the Agency are empowered to engage in those agreements that are necessary to exercise their powers. Under Minn. Stat. § 299C.46 the BCA must provide a criminal justice data communications network to benefit authorized agencies in Minnesota. The Agency is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in this agreement. In addition, BCA either maintains repositories of data or has access to repositories of data that benefit authorized agencies in performing their duties. Agency wants to access these data in support of its official duties.

The purpose of this Agreement is to create a method by which the Agency has access to those systems and tools for which it has eligibility, and to memorialize the requirements to obtain access and the limitations on the access.

Agreement

1 Term of Agreement

- 1.1 Effective date:** This Agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.05, subdivision 2.
- 1.2 Expiration date:** This Agreement expires five years from the date it is effective.

2 Agreement between the Parties

2.1 General access. BCA agrees to provide Agency with access to the Minnesota Criminal Justice Data Communications Network (CJDN) and those systems and tools which the Agency is authorized by law to access via the CJDN for the purposes outlined in Minn. Stat. § 299C.46.

2.2 Methods of access.

The BCA offers three (3) methods of access to its systems and tools. The methods of access are:

- A. Direct access** occurs when individual users at the Agency use Agency's equipment to access the BCA's systems and tools. This is generally accomplished by an individual user entering a query into one of BCA's systems or tools.
- B. Indirect access** occurs when individual users at the Agency go to another Agency to obtain data and information from BCA's systems and tools. This method of access generally results in the Agency with indirect access obtaining the needed data and information in a physical format like a paper report.
- C. Computer-to-computer system interface** occurs when Agency's computer exchanges data and information with BCA's computer systems and tools using an interface. Without limitation, interface types include: state message switch, web services, enterprise service bus and message queuing.

For purposes of this Agreement, Agency employees or contractors may use any of these methods to use BCA's systems and tools as described in this Agreement. Agency will select a method of access and can change the methodology following the process in Clause 2.10.

2.3 Federal systems access. In addition, pursuant to 28 CFR §20.30-38 and Minn. Stat. §299C.58, BCA may provide Agency with access to the Federal Bureau of Investigation (FBI) National Crime Information Center.

2.4 Agency policies. Both the BCA and the FBI's Criminal Justice Information Systems (FBI-CJIS) have policies, regulations and laws on access, use, audit, dissemination, hit confirmation, logging, quality assurance, screening (pre-employment), security, timeliness, training, use of the system, and validation. Agency has created its own policies to ensure that Agency's employees and contractors comply with all applicable requirements. Agency ensures this compliance through appropriate enforcement. These BCA and FBI-CJIS policies and regulations, as amended and updated from time to time, are incorporated into this Agreement by reference. The policies are available at <https://bcanextest.x.state.mn.us/launchpad/>.

2.5 Agency resources. To assist Agency in complying with the federal and state requirements on access to and use of the various systems and tools, information is available at <https://sps.x.state.mn.us/sites/bcaservicecatalog/default.aspx>. Additional information on appropriate use is found in the Minnesota Bureau of Criminal Apprehension Policy on Appropriate Use of Systems and Data available at <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/BCA-Policy-on-Appropriate-Use-of-Systems-and-Data.pdf>.

2.6 Access granted.

A. Agency is granted permission to use all current and future BCA systems and tools for which Agency is eligible. Eligibility is dependent on Agency (i) satisfying all applicable federal or state statutory requirements; (ii) complying with the terms of this Agreement; and (iii) acceptance by BCA of Agency's written request for use of a specific system or tool.

B. To facilitate changes in systems and tools, Agency grants its Authorized Representative authority to make written requests for those systems and tools provided by BCA that the Agency needs to meet its criminal justice obligations and for which Agency is eligible.

2.7 Future access. On written request by Agency, BCA also may provide Agency with access to those systems or tools which may become available after the signing of this Agreement, to the extent that the access is authorized by applicable state and federal law. Agency agrees to be bound by the terms and conditions contained in this Agreement that when utilizing new systems or tools provided under this Agreement.

2.8 Limitations on access. BCA agrees that it will comply with applicable state and federal laws when making information accessible. Agency agrees that it will comply with applicable state and federal laws when accessing, entering, using, disseminating, and storing data. Each party is responsible for its own compliance with the most current applicable state and federal laws.

2.9 Supersedes prior agreements. This Agreement supersedes any and all prior agreements between the BCA and the Agency regarding access to and use of systems and tools provided by BCA.

2.10 Requirement to update information. The parties agree that if there is a change to any of the information whether required by law or this Agreement, the party will send the new information to the other party in writing within 30 days of the change. This clause does not apply to changes in systems or tools provided under this Agreement.

This requirement to give notice additionally applies to changes in the individual or organization serving a city as its prosecutor. Any change in performance of the prosecutorial function must be provided to the BCA in writing by giving notice to the Service Desk, BCA.ServiceDesk@state.mn.us.

2.11 Transaction record. The BCA creates and maintains a transaction record for each exchange of data utilizing its systems and tools. In order to meet FBI-CJIS requirements and to perform the audits described in Clause 7, there must be a method of identifying which individual users at the Agency conducted a particular transaction.

If Agency uses either direct access as described in Clause 2.2A or indirect access as described in Clause 2.2B, BCA's transaction record meets FBI-CJIS requirements.

When Agency's method of access is a computer to computer interface as described in Clause 2.2C, the Agency must

keep a transaction record sufficient to satisfy FBI-CJIS requirements and permit the audits described in Clause 7 to occur.

If an Agency accesses data from the Driver and Vehicle Services Division in the Minnesota Department of Public Safety and keeps a copy of the data, Agency must have a transaction record of all subsequent access to the data that are kept by the Agency. The transaction record must include the individual user who requested access, and the date, time and content of the request. The transaction record must also include the date, time and content of the response along with the destination to which the data were sent. The transaction record must be maintained for a minimum of six (6) years from the date the transaction occurred and must be made available to the BCA within one (1) business day of the BCA's request.

2.12 Court information access. Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by Agency under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Agency's access to and/or submission of the Court Records delivered through the BCA systems and tools.

2.13 Vendor personnel screening. The BCA will conduct all vendor personnel screening on behalf of Agency as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Agency.

3 Payment

The Agency understands there is a cost for access to the criminal justice data communications network described in Minn. Stat. § 299C.46. At the time this Agreement is signed, BCA understands that a third party will be responsible for the cost of access.

Agency will identify the third party and provide the BCA with the contact information and its contact person for billing purposes so that billing can be established. The Agency will provide updated information to BCA's Authorized Representative within ten business days when this information changes.

If Agency chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, additional fees, if any, are addressed in that amendment.

4 Authorized Representatives

The BCA's Authorized Representative is Dana Gotz, Department of Public Safety, Bureau of Criminal Apprehension, Minnesota Justice Information Services, 1430 Maryland Avenue, St. Paul, MN 55106, 651-793-1007, or her successor.

The Agency's Authorized Representative is John Thames, City Attorney, 6300 Shingle Creek Parkway, Suite 305, Minneapolis, MN 55430, (763) 561-2800, or his/her successor.

5 Assignment, Amendments, Waiver, and Contract Complete

5.1 Assignment. Neither party may assign nor transfer any rights or obligations under this Agreement.

5.2 Amendments. Any amendment to this Agreement, except those described in Clauses 2.6 and 2.7 above must be in writing and will not be effective until it has been signed and approved by the same parties who signed and approved the original agreement, their successors in office, or another individual duly authorized.

5.3 Waiver. If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it.

5.4 Contract Complete. This Agreement contains all negotiations and agreements between the BCA and the Agency. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6 Liability

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the BCA's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466, governs the Agency's liability.

7 Audits

7.1 Under Minn. Stat. § 16C.05, subd. 5, the Agency's books, records, documents, internal policies and accounting procedures and practices relevant to this Agreement are subject to examination by the BCA, the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement. Under Minn. Stat. § 6.551, the State Auditor may examine the books, records, documents, and accounting procedures and practices of BCA. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to this Agreement.

7.2 Under applicable state and federal law, the Agency's records are subject to examination by the BCA to ensure compliance with laws, regulations and policies about access, use, and dissemination of data.

7.3 If Agency accesses federal databases, the Agency's records are subject to examination by the FBI and Agency will cooperate with FBI examiners and make any requested data available for review and audit.

7.4 To facilitate the audits required by state and federal law, Agency is required to have an inventory of the equipment used to access the data covered by this Agreement and the physical location of each.

8 Government Data Practices

8.1 BCA and Agency. The Agency and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Agency under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Agency or the BCA.

8.2 Court Records. If Agency chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, the following provisions regarding data practices also apply. The Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the *Rules of Public Access to Records of the Judicial Branch* promulgated by the Minnesota Supreme Court. All parties acknowledge and agree that Minn. Stat. § 13.03, subdivision 4(e) requires that the BCA and the Agency comply with the *Rules of Public Access* for those data received from Court under the Court Data Services Subscriber Amendment. All parties also acknowledge and agree that the use of, access to or submission of Court Records, as that term is defined in the Court Data Services Subscriber Amendment, may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law. All parties acknowledge and agree that these applicable restrictions must be followed in the appropriate circumstances.

9 Investigation of alleged violations; sanctions

For purposes of this clause, "Individual User" means an employee or contractor of Agency.

9.1 Investigation. Agency and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Agency and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Agency of the suspected violation, subject to any restrictions in applicable law. When Agency becomes aware that a violation has occurred, Agency will inform BCA subject to any restrictions in applicable law.

9.2 Sanctions Involving Only BCA Systems and Tools.

The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber Amendment. None of these provisions alter the Agency's internal discipline processes, including those governed by a

collective bargaining agreement.

9.2.1 For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Agency must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Agency must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Agency and BCA's determination controls.

9.2.2 If BCA determines that Agency has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Agency's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.

9.3 Sanctions Involving Only Court Data Services

The following provisions apply to those systems and tools covered by the Court Data Services Subscriber Amendment, if it has been signed by Agency. As part of the agreement between the Court and the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Agency. The agreement further provides that only the Court has the authority to reinstate access and use.

9.3.1 Agency understands that if it has signed the Court Data Services Subscriber Amendment and if Agency's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Agency also understands that reinstatement is only at the direction of the Court.

9.3.2 Agency further agrees that if Agency believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

10 Venue

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11 Termination

11.1 Termination. The BCA or the Agency may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

11.2 Termination for Insufficient Funding. Either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the other party's authorized representative. The Agency is not obligated to pay for any services that are provided after notice and effective date of termination. However, the BCA will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Neither party will be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Notice of the lack of funding must be provided within a reasonable time of the affected party receiving that notice.

12 Continuing obligations

The following clauses survive the expiration or cancellation of this Agreement: 6. Liability; 7. Audits; 8. Government Data Practices; 9. Investigation of alleged violations; sanctions; and 10. Venue.

The parties indicate their agreement and authority to execute this Agreement by signing below.

1. AGENCY

Name: Marvin Johnson
(PRINTED)

Signed: _____

Title: Mayor
(with delegated authority)

Date: _____

Name: Mark Kaltsas
(PRINTED)

Signed: _____

Title: City Administrator
(with delegated authority)

Date: _____

**2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF
CRIMINAL APPREHENSION**

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION
delegated to Materials Management Division

By: _____

Date: _____

COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

This Court Data Services Subscriber Amendment (“Subscriber Amendment”) is entered into by the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension, (“BCA”) and the City of Independence on behalf of its Prosecuting Attorney (“Agency”), and by and for the benefit of the State of Minnesota acting through its State Court Administrator’s Office (“Court”) who shall be entitled to enforce any provisions hereof through any legal action against any party.

Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 117369, of even or prior date, for Agency use of BCA systems and tools (referred to herein as “the CJDN Subscriber Agreement”). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

The CJDN Subscriber Agreement is amended by the addition of the following provisions:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Subscriber Amendment shall be effective on the date finally executed by all parties and shall remain in effect until expiration or termination of the CJDN Subscriber Agreement unless terminated earlier as provided in this Subscriber Amendment. Any party may terminate this Subscriber Amendment with or without cause by giving written notice to all other parties. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Subscriber Amendment as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

2. **Definitions.** Unless otherwise specifically defined, each term used herein shall have the meaning assigned to such term in the CJDN Subscriber Agreement.

a. **“Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

b. **“Court Data Services”** means one or more of the services set forth on the Justice Agency Resource webpage of the Minnesota Judicial Branch website (for which the current address is www.courts.state.mn.us) or other location designated by the Court, as the same may be amended from time to time by the Court.

c. **“Court Records”** means all information in any form made available by the Court to Subscriber through the BCA for the purposes of carrying out this Subscriber Amendment, including:

- i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information, as defined herein.
- ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
- iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
- iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.

d. **“DCA”** shall mean the district courts of the state of Minnesota and their respective staff.

e. **“Policies & Notices”** means the policies and notices published by the Court in connection with each of its Court Data Services, on a website or other location designated by the Court, as the same may be amended from time to time by the Court. Policies & Notices for each Authorized Court Data Service identified in an approved request form under section 3, below, are hereby made part of this Subscriber Amendment by this reference and provide additional terms and conditions that govern Subscriber’s use of Court Records accessed through such services, including but not limited to provisions on access and use limitations.

f. “**Rules of Public Access**” means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records or Limits on Public Access to Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is www.courts.state.mn.us.

g. “**Court**” shall mean the State of Minnesota, State Court Administrator's Office.

h. “**Subscriber**” shall mean the Agency.

i. “**Subscriber Records**” means any information in any form made available by the Subscriber to the Court for the purposes of carrying out this Subscriber Amendment.

3. REQUESTS FOR AUTHORIZED COURT DATA SERVICES. Following execution of this Subscriber Amendment by all parties, Subscriber may submit to the BCA one or more separate requests for Authorized Court Data Services. The BCA is authorized in the Master Authorization Agreement to process, credential and approve such requests on behalf of Court and all such requests approved by the BCA are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

a. **Activation.** Activation of the requested Authorized Court Data Service(s) shall occur promptly following approval.

b. **Rejection.** Requests may be rejected for any reason, at the discretion of the BCA and/or the Court.

c. **Requests for Termination of One or More Authorized Court Data Services.** The Subscriber may request the termination of an Authorized Court Data Services previously requested by submitting a notice to Court with a copy to the BCA. Promptly upon receipt of a request for termination of an Authorized Court Data Service, the BCA will deactivate the service requested. The termination of one or more Authorized Court Data Services does not terminate this Subscriber Amendment. Provisions for termination of this Subscriber Amendment are set forth in section 1. Upon termination of Authorized Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

4. SCOPE OF ACCESS TO COURT RECORDS LIMITED. Subscriber’s access to and/or submission of the Court Records shall be limited to Authorized Court Data Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber’s duties

required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

5. GUARANTEES OF CONFIDENTIALITY. Subscriber agrees:

a. To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

b. To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Subscriber Amendment.

c. To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Subscriber Amendment, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Subscriber Amendment, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of the Subscriber Amendment and/or CJDN Subscriber Agreement, whichever is longer, and shall provide the Court with access to, and copies of, such acknowledgements upon request. For purposes of this Subscriber Amendment, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

d. That, without limiting section 1 of this Subscriber Amendment, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Subscriber Amendment and the CJDN Subscriber Agreement and the termination of their relationship with Subscriber.

e. That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Subscriber Amendment, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Subscriber Amendment.

6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS.

Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

7. LICENSE AND PROTECTION OF PROPRIETARY RIGHTS. During the term of this Subscriber Amendment, subject to the terms and conditions hereof, the Court hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Authorized Court Data Services identified in an approved request form under section 3, above, and related Court Records. Court reserves the right to make modifications to the Authorized Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

a. Court Data Services Programs. Court is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of Court and its licensors.

b. Court Data Services Databases. Court is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of Court and its licensors.

c. Marks. Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Authorized Court Data Services, including but not limited to the marks “MNCIS” and “Odyssey.”

d. Restrictions on Duplication, Disclosure, and Use. Trade secret information of Court and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of Court or its licensors, in any way or for any purpose not specifically and expressly authorized by this Subscriber Amendment. As used herein, "trade secret information of Court and its licensors" means any information possessed by Court which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of Court and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from Court or its licensors, information which is independently developed by Subscriber without reference to or use of information received from Court or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of training materials and configuration documentation, if any, for each individual authorized to access, use, or configure Authorized Court Data Services, solely for its own use in connection with this Subscriber Amendment. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of Court and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of Court and its licensors, of the restrictions upon duplication, disclosure and use contained in this Subscriber Amendment.

e. Proprietary Notices. Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of Court and its licensors, or any part thereof, made available by Court directly or through the BCA, if any, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of Court and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Subscriber by Court directly or through the BCA, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

f. Title; Return. The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, if any, made available by the Court to Subscriber directly or through the BCA and all copies, including partial copies, thereof are and remain the property of the respective licensor. Except as expressly provided in section 12.b., within ten days of the effective date of termination of this Subscriber Amendment or the CJDN Subscriber Agreement or within ten days of a request for termination of Authorized Court Data Service as described in section 4, Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information, if any; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

8. INJUNCTIVE RELIEF. Subscriber acknowledges that the Court, Court's licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Subscriber Amendment are not specifically enforced and that the Court, Court's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, Court's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, Court's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, Court's licensors, and DCA for reasonable attorneys fees incurred by the Court, Court's licensors, and DCA in obtaining any relief pursuant to this Subscriber Amendment.

9. LIABILITY. Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law. Subscriber and Court further acknowledge that the liability, if any, of the BCA is governed by a separate agreement between the Court and the BCA dated December 13, 2010 with DPS-M -0958.

10. AVAILABILITY. Specific terms of availability shall be established by the Court and communicated to Subscriber by the Court and/or the BCA. The Court reserves the right to terminate this Subscriber Amendment immediately and/or temporarily suspend Subscriber's Authorized Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system.

11. [reserved]

12. ADDITIONAL USER OBLIGATIONS. The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Subscriber Amendment.

a. Judicial Policy Statement. Subscriber agrees to comply with all policies identified in Policies & Notices applicable to Court Records accessed by Subscriber using Authorized Court Data Services. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Authorized Court Data Services on a temporary basis and/or immediately terminating this Subscriber Amendment.

b. Access and Use; Log. Subscriber shall be responsible for all access to and use of Authorized Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a minimum period of six years from the date of disclosure, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Authorized Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Subscriber Amendment without prior notice to Subscriber.

c. Personnel. Subscriber agrees to investigate, at the request of the Court and/or the BCA, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Authorized Court Data Services, Court Confidential Information, or trade secret information of the Court and its licensors where such persons are alleged to have violated the provisions of this Subscriber Amendment, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

d. Minnesota Data Practices Act Applicability. If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the

BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

13. FEES; INVOICES. Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

14. MODIFICATION OF FEES. Court may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Subscriber Amendment as provided in section 1 hereof.

15. WARRANTY DISCLAIMERS.

a. WARRANTY EXCLUSIONS. EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, COURT'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

b. ACCURACY AND COMPLETENESS OF INFORMATION. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, COURT'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

16. RELATIONSHIP OF THE PARTIES. Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, Court's licensors, or DCA. Neither Subscriber nor the Court, Court's licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

17. NOTICE. Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber

hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

18. NON-WAIVER. The failure by any party at any time to enforce any of the provisions of this Subscriber Amendment or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Subscriber Amendment. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

19. FORCE MAJEURE. Neither Subscriber nor Court shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

20. SEVERABILITY. Every provision of this Subscriber Amendment shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Subscriber Amendment so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Subscriber Amendment, and all other provisions shall remain in full force and effect.

21. ASSIGNMENT AND BINDING EFFECT. Except as otherwise expressly permitted herein, neither Subscriber nor Court may assign, delegate and/or otherwise transfer this Subscriber Amendment or any of its rights or obligations hereunder without the prior written consent of the other. This Subscriber Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any other legal entity into, by or with which Subscriber may be merged, acquired or consolidated.

22. GOVERNING LAW. This Subscriber Amendment shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

23. VENUE AND JURISDICTION. Any action arising out of or relating to this Subscriber Amendment, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

24. INTEGRATION. This Subscriber Amendment contains all negotiations and agreements between the parties. No other understanding regarding this Subscriber Amendment, whether written or oral, may be used to bind either party, provided that all terms and conditions of the CJDN Subscriber Agreement and all previous amendments remain in full force and effect except as supplemented or modified by this Subscriber Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Subscriber Amendment in duplicate, intending to be bound thereby.

1. SUBSCRIBER (AGENCY)

Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

Name: Marvin Johnson
(PRINTED)

Signed: _____

Title: Mayor
(with delegated authority)

Date: _____

Name: Mark Kaltsas
(PRINTED)

Signed: _____

Title: City Administrator
(with delegated authority)

Date: _____

**2. DEPARTMENT OF PUBLIC SAFETY,
BUREAU OF CRIMINAL APPREHENSION**

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION
delegated to Materials Management Division

By: _____

Date: _____

4. COURTS

Authority granted to Bureau of Criminal Apprehension

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with authorized authority)

Date: _____

City of Independence

Approval of Annual Certification of On Sale, Off Sale and 3.2% and Sunday Liquor License Renewals

To: City Council
From: Mark Kaltsas, City Administrator
Meeting Date: January 24, 2017

Discussion:

Three establishments have historically been granted liquor licenses by the City of Independence. The liquor license renewals are typically considered annually by the City. West Hennepin Public Safety performs a background check on the establishments prior to approval. The liquor licenses considered for each establishment are as follows:

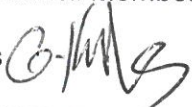
- | | |
|------------------------|---------------------------------------|
| 1. Ox Yoke Inn: | On-sale
Sunday
3.2%
Off-sale |
| 2. Windosng Golf Club: | On-sale
Sunday
3.2% |
| 3. Pioneer Creek Golf | On-sale
Sunday
3.2% |

Recommendation:

The City Council is being asked to approve the certification for the liquor licenses subject to the successful background check by West Hennepin Public Safety.

Attachments: Applications for Liquor Licenses



Date: January 4, 2017
To: Public Safety Commissioners
City of Independence Council Members
City of Maple Plain Council Members
From: Director Gary Kroells 
SUBJECT: DECEMBER 2016 ACTIVITY REPORT

The purpose of this report is to give the reader a quick overview of the activities of the Public Safety Department each month. It also compares monthly and year-to-date information to the reader.

The report is broken down into five categories, as defined by the Criminal Justice Reporting System.

CRIMINAL-- Criminal is broken down into Part I and Part II crimes.

Part I includes crimes against persons versus crimes against property; criminal homicide, forcible rape, robbery assault, aggravated assault, burglary -breaking or entering, larceny-theft, larceny analysis, motor vehicle theft and arson.

Part II includes other assaults, forgery and counterfeiting, fraud, embezzlement, stolen property, buying, receiving, possession; vandalism, weapons, carrying, possessing, etc.; prostitution and commercialized vice, sex offenses; drug abuse violations, gambling, offenses against the family and children, driving under the influence, liquor laws, drunkenness, disorderly conduct, vagrancy, all other offenses, suspicion, curfew and loitering laws - persons under 18; and runaways - persons under 18.

TRAFFIC-- Includes violations of the road and driving laws.

PART III-- Lost and Found: Includes lost and found persons, animals, and property, and stalled and abandoned vehicles.

PART IV-- Casualties: Includes all motor vehicle accidents, boating, and snowmobile; public home occupational accidents, fires, suicides, sudden deaths, burning permits, and burning violations.

PART V-- Miscellaneous Public: Includes open doors, gun permit applications, suspicious activities, animal complaints, motorist assists, alarm calls, parking complaints, house checks, driving complaints, civil matters, family disputes, department assists.

The balance of the report shows the total number of incidents handled, miles driven and how the Public Safety Department received calls. If anyone should desire more detailed statistical data, please contact my office.

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West Hennepin Public Safety Department
1918 County Road 90 / Maple Plain, Minnesota 55359
Phone: (763) 479-0500 / Fax: (763) 479-0504
Web Address: <http://www.westhennepin.com> E-mail: westhennepin@westhennepin.com

**Monthly Activity Report
December 2016**

Offense	This Month	Same Month Last Year	This Year To Date	Last Year To Date
City Of Independence				
Criminal	11	9	125	124
Traffic	109	160	2,342	2,310
Part III	12	9	136	129
Part IV	33	34	414	402
Part V	130	155	1,985	1,901
Total City of Independence	295	367	5,002	4,866
City Of Maple Plain				
Criminal	6	8	81	74
Traffic	78	74	1,094	752
Part III	7	3	88	68
Part IV	24	15	232	259
Part V	122	102	1,619	1,570
Total City Of Maple Plain	237	202	3,114	2,723
Grand Total Both Cities	532	569	8,116	7,589
TZD	12	0	538	247
Agency Assists	26	33	585	385
Total ICR Reports	570	602	8,713	8,221
Mileage	13,110	10,751	155,371	145,193
How Received				
Fax	10	12	123	121
In Person	23	23	408	501
Mail	0	9	23	41
Other	2	4	59	45
Phone	25	37	393	516
Radio	173	185	2,563	2,361
Visual	299	268	4,503	4,001
Email	1	8	48	46
Lobby Walk In	37	56	593	589
Total	570	602	8,713	8,221

**December 2016 Criminal Part I & II
City of Independence Grid #'s 3-5**

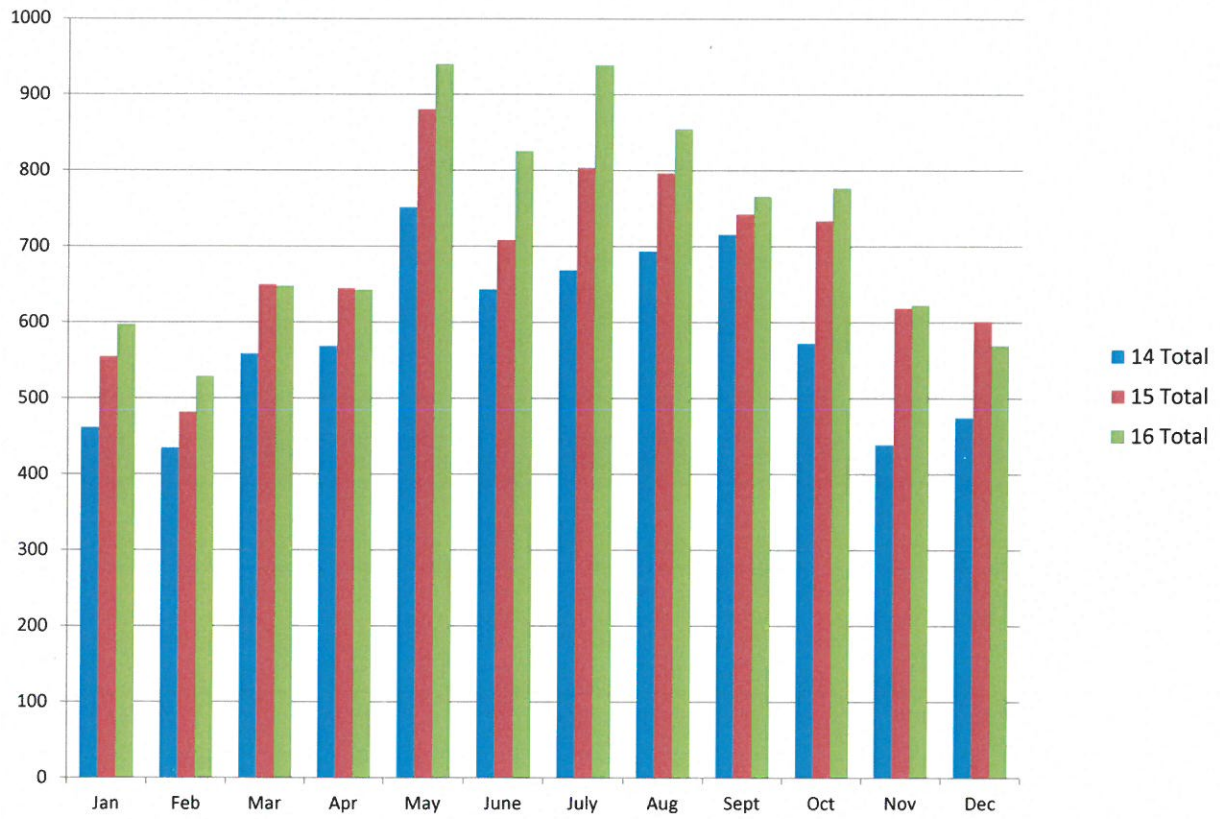
AGN	ICR	Title	Create Date	Grid #	Reported Date	MOC range
WHPS	16008150	Theft of catalytic converter	12/1/2016	3	12/1/2016	VB111
WHPS	16008153	Theft of catalytic converter	12/1/2016	3	12/1/2016	VB111
WHPS	16008201	Possession of Burglary Tools	12/3/2016	3	12/3/2016	TC009
WHPS	16008210	Damage to Property - Mailbox	12/4/2016	3	12/4/2016	P3119
WHPS	16008236	Theft of catalytic converter	12/6/2016	3	12/6/2016	VB111
WHPS	16008344	4th Degree DWI	12/11/2016	3	12/11/2016	JGW01
WHPS	16008533	Theft From Auto	12/22/2016	4	12/22/2016	TW159
WHPS	16008534	Theft From Auto	12/22/2016	4	12/22/2016	TW159
WHPS	16008538	4th Degree DWI	12/22/2016	3	12/22/2016	DC500
WHPS	16008551	3rd Degree DWI / Pursuit- Fleeing Peace Officer in Motor Vehicle / Open Bottle	12/23/2016	3	12/23/2016	JFW01
WHPS	16008598	Possession of Small Amount Marijuana in Motor Vehicle / Possession of Paraphernalia Possession / Curfew Violation	12/26/2016	3	12/26/2016	DC500

**December 2016 Criminal Part I & II
City of Maple Plain Grid # 1-2**

AGN	ICR	Title	Create Date	Grid #	Reported Date	MOC range
WHPS	16008161	Theft of Street Sign	12/2/2016	2	12/2/2016	TR229
WHPS	16008166	Theft Scrap Metal	12/2/2016	2	12/2/2016	TC229
WHPS	16008219	Felony Domestic Assault by Strangulation	12/5/2016	2	12/5/2016	AN352
WHPS	16008220	Theft Wire / Construction Tools	12/5/2016	2	12/5/2016	TC009
WHPS	16008638	Sexual Assault	12/28/2016	2	12/28/2016	L3190
WHPS	16008688	Theft of iPhone	12/30/2016	2	12/30/2016	TC009

**December 2016 Criminal Part I & II
Towards Zero Death Grant Shift**

AGN	ICR	Title	Create Date	Grid #	Reported Date	MOC range
WHPS	16008437	Possession of Drug Paraphernalia/Open Bottle / Driving After Suspension	12/17/2016	25	12/17/2016	DC500



DIRECTOR'S NEWS & NOTES

WEST HENNEPIN PUBLIC SAFETY

December 2016 Activity Report

Year to Date Activity Report

At the end of December 31, 2016, West Hennepin Public Safety (WHPS) has year-to-date handled a total of 8,713 incident complaints; 3,114 in Maple Plain and 5,002 in Independence. This is an increase of 492 incidents compared to the same time frame last year.

The Criminal Part I and Part II cases for both cities have been highlighted for your review on the attached documents.

Recent Highlighted Cases:

Theft of Catalytic Converters

Dec 1 1400 Co Rd 90, Independence A business owner had reported in November an attempt was made to steal catalytic converters from his vehicles. The thief's later came back and stole the converters. Case under investigation and a suspect is in custody.

Theft of Catalytic Converters

Dec 1 Another business at 1400 Co Rd 90, Independence reported he started his truck and noticed it was extremely loud. He looked underneath the truck and there was a fresh cut and the catalytic converter was gone. Approximate loss \$750.00. Case is under investigation and a suspect is in custody.

Theft

Dec 2 Maple Plain Public Works reported someone stole a street light decoration that was left on the ground during installation at Highway 12 and Main. It disappeared over night. The decoration is a lighted white "snow flake" that mounts up high to a light pole. Approximate loss \$100.00

Theft

Dec 2 Business in the 5100 Industrial Street, Maple Plain reported overnight, unknown suspects entered their fenced in yard and removed over 200 lbs. of scrap copper. Suspects used their business wheel barrow to haul it over to a fenced gate. Approximate loss is \$900. Suspects were caught on video and being investigated.

Accident / Crash / PI

Dec 2 Highway 12 / Co Rd 90, Independence. 39 year old driver from St. Bonifacius was stopped southbound on Co Rd 90 at the intersection. He began to cross the Highway, realized he couldn't cross because of the heavy traffic, stopped and backed up into a car driven by 27 year old male from Minneapolis. Both drivers pulled over and exchanged information. 39 year old driver then pulled out into traffic on Highway 12 and struck another vehicle that was eastbound on Highway 12 as he crossed in front of it without the right away. Both vehicles were towed. Passenger in the third involved vehicle was transported.

Fraud
Dec 2

6900 Fogelman Rd, Independence. Resident discovered a bank account had been opened in her name. She was working with the bank fraud department and made reports to all credit agencies. She wanted WHPS to know of the incident.

Theft Unfounded – Civil

Dec 8

3100 Lake Sarah Rd, Independence, Previous renter reported a burglary. Someone went into the condemned residence and took some of her items she had left inside. The property owner had evicted them from the property and it was not a burglary. It is a civil matter between the owner and renter.

Intoxication Problem

Dec 9

2000 South Lake Shore Dr, Independence. Reported the father had been drinking in recent days and was yelling at their son. Father admitted there was an argument and he threw a pizza in the trash. Mother and children found a place to stay and left for the night.

Hunting Question

Dec 10

3300 Brei Kessel Rd, Independence. Resident stated they are going to be conducting a permit to carry course on the 17th and wanted to check with WHPS to make sure it was legal to shoot a .22 handgun from her deck which is attached to her house. A wood pile will be used as a back drop for the shooting range. She was advised that it was legal to shoot per City of Independence ordinances as long as they are 500 feet from another house and it is safe. The resident was going to notify their neighbors of the shoot.

Crash / Property Damage

Dec 10

Co Rd 6 / Co Rd 92, Independence. Motorist said he was going south on County 92 at about 20 mph. He tried to stop at the stop sign, due to the snowy conditions his vehicle slid through the intersection; he went in the ditch on the south side of 6, striking a street sign and a culvert. His vehicle was towed.

4th Degree DWI

Dec 11

Co Rd 92 / Highway 12, Independence. Reported a vehicle in the ditch and the driver was intoxicated. Edward Lowell Mlynar, 85 from Lester Prairie submitted a breath test which resulted in .14% Breath Alcohol Concentration. Mlynar was arrested for 4th Degree DWI, Operate a Motor Vehicle under Influence of Alcohol.

Parking Complaint

Dec 14

Eagle Ridge Court, Independence. A vehicle has been parked on Eagle Ridge Court, Independence all summer and City of Independence requested the vehicle be moved for their snow plowing. Attempts to reach the registered owner of the vehicle were not successful.

Missing Person

Dec 14

5400 Main Street, Maple Plain. At 8:40 p.m. a daughter reported her mother had gone to a doctor's appointment at 3:30 p.m. and had not returned home. A check with family members who said they had not seen her mother. An hour later the daughter reported she had made contact with her mother and all was ok.

Utility Check

Dec 16 5200 Manchester Dr, Maple Plain. Resident reported she did not have any heat in her apartment. Management had not responded to her call. Upon Police arrival, management had returned the call and was going to be there in a couple hours.

Utility Damage

Dec 18 Street and stop signs at the intersection of Main Street E and Co Rd 29, Maple Plain had been struck and ran over. Someone had propped them back up. Hennepin County Road Maintenance was contacted.

Accident / Personal Injury

Dec 18 Co Rd 11 / Lake Sarah S, Independence. Motorist failed to stop at the intersection and T-Boned a vehicle. One child passenger in the T-boned vehicle was slightly injured; was not transported to the hospital. Both vehicles were totaled.

Crash/ Property Damage

Dec 18 Pagenkopf Rd / Fieldstone Place, Independence. Motorist was eastbound on Pagenkopf Rd, attempted to turn on Fieldstone Place and was unable to make the turn, striking the stop sign and gas line marker. The gas line was not struck, no odor of gas. City of Independence Public Works was advised of the damage.

Snowmobiling Complaint

Dec 21 Co Rd 90 / Quass Cut Off Independence. Property owner reported snowmobilers were driving back and forth across his alfalfa field and not following the snowmobile trail along the ditch of his field. 3 snowmobilers were found riding off the trail who did not realize they could not ride in the field. They were advised they needed to stay on the posted and marked trail and that riding on the alfalfa field with the small amount of snow could damage the crop for the next season. All three drivers were apologetic.

Panic Alarm

Dec 21 WHPS and assisting Police Departments responded to a silent panic alarm at the Bank of Maple Plain. Management walked outside to the Police advising everything was okay. A new employee had accidentally pulled the alarm and set it off.

Texting While Driving

Dec 21 17 year old female driver from Independence was texting on her phone while stopped for the stop light at Baker Park Rd / Highway 12, Maple Plain. Officer stepped out of his squad car, walked over to the passenger's door of her car and stood there and watched her texting. She did not see the Officer and was startled when she looked up and saw him standing there. The texting law was explained to her and she was issued a citation for "Provisional license violations-use of cell phone while driving". Her father was contacted and Officer explained the situation to him and that she would be getting a ticket.

Suspicious Activity

Dec 22 5500 block of Joyce Street, Maple Plain. Resident reported during the night someone went through her husband's unlocked truck. Nothing was taken from the truck but the clothes inside and the items from the glovebox were thrown around and it was obvious that someone was looking for something.

Theft from Auto

Dec 22 2900 Lindgren Lane, Independence. Resident reported overnight someone had stolen items from their two vehicles that were unlocked and parked in their driveway. Stolen: money, a package, a black Gerber folding knife that was also a money clip. The case is under investigation.

Theft from Auto

Dec 22 2800 Lindgren Lane, Independence. Resident reported theft from an unlocked truck that occurred during the night. Stolen: Wallet, Credit Card, Cash, a black backpack with yellow piping around the edges, silver dog tag with the name "Oakley" engraved with the resident's phone number and a small black leather bag containing shaving items. A neighbor found the wallet, credit cards and ID cards in the middle of a cul-de-sac. No suspects, the case is under investigation.

Crash

Dec 22 Co Rd 92 S / Highway 12, Independence. Motorist pulled out into the intersection, did not see the westbound vehicle and was struck in the rear passenger side of the vehicle. Motorist admitted fault to causing the crash and not seeing the vehicle. No injuries and both vehicles were drivable.

4th Degree DWI

Dec 22 Co Rd 110 / Co Rd 6, Independence. Vehicle stopped for loud muffler and improper functioning lights. The driver William Todd Sincheff, 63 from Mound submitted a breath test that resulted in .08% Breath Alcohol Concentration. Sincheff was arrested for 4th Degree DWI, Possession of Small Amount of Marijuana and Possession of Drug Paraphernalia. Passenger John Steven Moot, 57 from Maple Plain was charged with Possession of Drug Paraphernalia.

3rd Degree DWI /

Dec 23 6400 Hillstrom Rd, Independence. Reported a vehicle was parked at the end of a driveway for the last 5 minutes. Officer located a male standing in the yard looking at the camper next to the house because he thought it was for sale. The camper was not for sale nor was it parked in a place indicating it would be for sale. The male had a very strong odor of an alcoholic beverage coming from him and handed his driver's license to the Officer when requested for it. The male then took off in his vehicle and would not stop for approximately 3 miles with the squad and its red lights and siren on in pursuit. Neal Alan Prior, 56 from Minneapolis submitted a breath sample which resulted in .20% Breath Alcohol Concentration. Prior was arrested, charged and booked into Hennepin County Jail for "Felony Flee in Motor Vehicle and 3rd Degree DWI.

Child Dispute

Dec 24 5200 Manchester Dr, Maple Plain. Reported a child custody dispute the ex-husband did not drop off their child and it was her weekend per the child custody agreement. Arrangements were made to drop off the child.

Wire Down

Dec 26 Main Street / Maple, Maple Plain. Reported a garbage truck had snagged a power line and the lines were sparking. XCEL was notified and responded. MPFD assisted by 'coning' off the area. It appeared the power line had been brought down by a tree branch during the storm the night before and was across the road.

Welfare Check-DOA

Dec 27 1800 Newport Street, Maple Plain. Requested a welfare check on a co-worker that had not shown up for work. Access to the apartment found the 64 year old female was deceased. Nothing suspicious was found in the apartment. Medical Examiner responded and will complete an autopsy.

Crash

Dec 27 Driver was stopped at the stop sign for northbound Budd Ave at Highway 12. The driver attempted to cross Highway 12, suddenly stopped in the middle of the eastbound lane as she noticed she was pulling out in front of a westbound vehicle. In a panic to get out of the eastbound lane she put her car in reverse without noticing a vehicle had pulled in behind her, striking the vehicle. No injuries.

Suspicious Activity

Dec 30 Complaint of the paper driver who blocks Co Rd 50 & Roy Rd, Independence for lengthy periods playing his cell phone games. Prior to arrival, the driver urinated in the middle of the road before he left. The driver was located who admitted to both issues. He was advised to find another place with Wifi to play his cell phone and use the bathroom.

Theft

Dec 30 5500 Bryant Street, Maple Plain. Employee left her iPhone on her cart in the hallway unattended. When she returned the iPhone was gone. Staff and residents were checked and the phone was not located. Case under investigation.

Vandalism

Dec 31 2:50 a.m. Co Rd 11 / Independence Rd, Independence. Two vehicles were approaching the squad car and three white objects were thrown from one of the approaching vehicles. Egg white and egg yolks were found on the front driver's side of the squad. No damage was observed and the eggs were washed off. The two Reserve Officers in the squad reported the incident to the on duty Officer.

City of Independence

Request for a Variance from the Front Yard Setback for the Property Located at 4586 Shady Beach Circle

To: City Council
From: Mark Kaltsas, City Planner
Meeting Date: January 24, 2017
Applicant: Dean Voss
Owner: Linda Nelson
Location: 4586 Shady Beach Circle

Request:

Dean Voss (Applicant) and Linda Nelson (Owner) request that the City consider the following action for the property located at 4586 Shady Beach Circle (PID No.02-118-24-21-0007):

- a. A variance to allow a reduced front yard setback which would permit a home/garage addition.

Property/Site Information:

The subject property is located at 4586 Shady Beach Circle. The property is a legal non-conforming property that does not meet all of the current lot and setback requirements. There is an existing home and two small sheds on the subject property.

Property Information: **4586 Shady Beach Circle**
Zoning: *Rural Residential (Shoreland Overlay)*
Comprehensive Plan: *Rural Residential*
Acreage: *0.34 acres (14,812 square feet)*
Impervious Surface Maximum: *25% (3,703 square feet)*

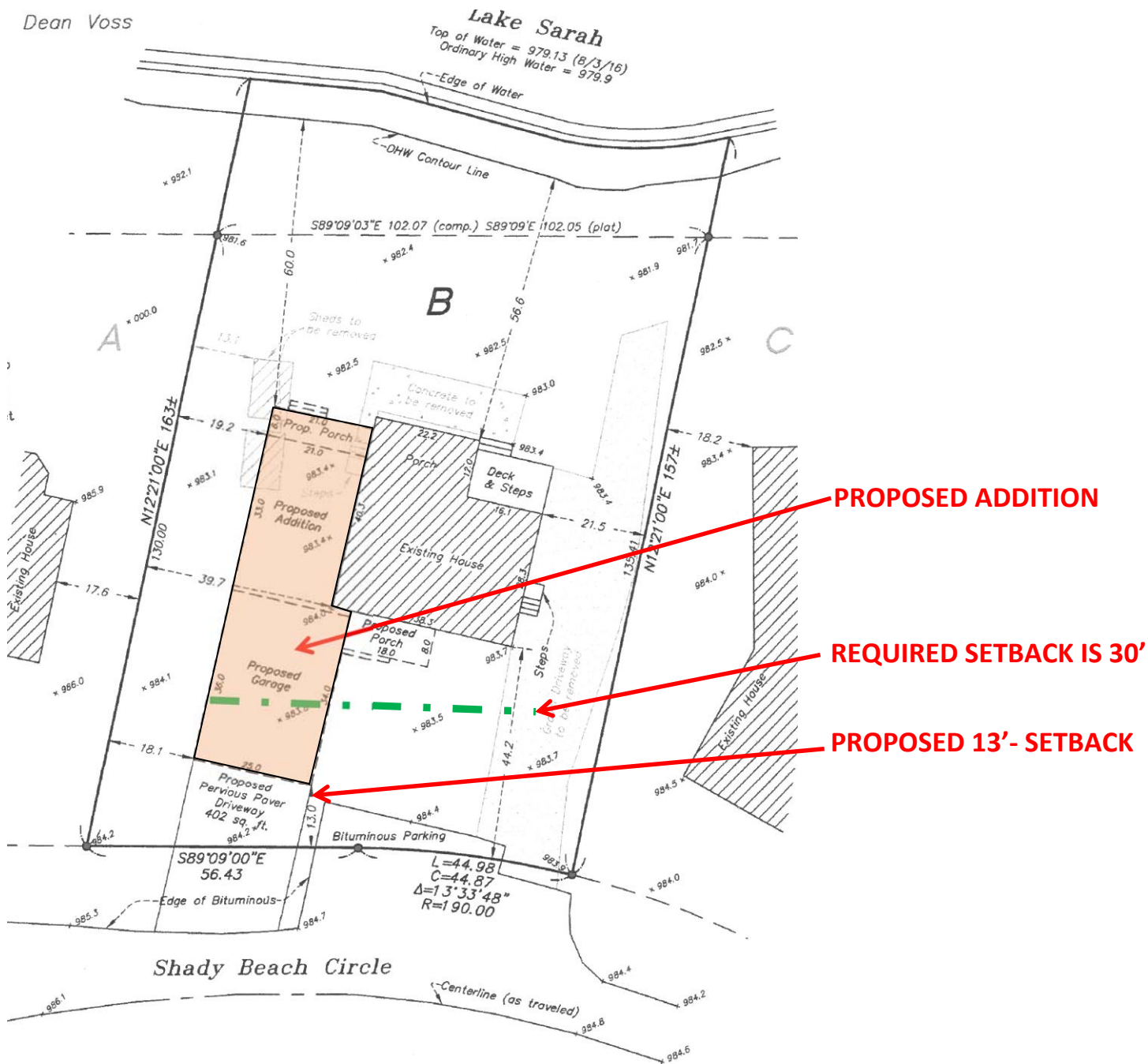


Discussion:

The applicant is seeking approval to construct an addition onto the existing home. The addition would include living space and a new garage. The applicant is proposing to meet applicable side yard setbacks, but would like to encroach into the required front yard setback. The proposed encroachment would require the City to grant a 17 foot variance to allow a front yard setback of 13 feet rather than the required 30 feet.

The subject property is a legal non-conforming lot of record. The City's current lot standards require a minimum of 1 acre for all properties in the Shoreland Overlay zoning district. The subject property is .34 acres in size. The existing home does not have a garage. There are two small sheds located on the property. The City has historically considered variances for properties in the Shoreland Overlay district that are substandard lots of record. The City already allows a considerable amount of relief from the requisite standards by ordinance. The City allows all requisite setbacks to be reduced by 40% for substandard lots of record. In this particular situation, the existing lot could accommodate an approximately 22 foot wide expansion without a variance. This width would be the minimum width of a typical two car garage.

Dean Voss



The subject property is considered a substandard lot of record in accordance with the City's Shoreland Ordinance Section 505.15.

505.15. Substandard lots. Lots of record in the office of the county register of deeds or registrar of titles prior to December 1, 1982, which do not meet the requirements of this section 505, may be allowed as building sites provided:

(a) such use is permitted in the zoning district;

(b) the lot of record is in separate ownership from abutting lands, and can meet or exceed 60% of the lot area and setback requirements of this section; and

(c) all requirements of section 705 of this code regarding individual sewage treatment systems are complied with.

Setbacks for properties located in the shoreland ordinance are as follows:

Subd. 2. Lot standards.

	Unsewered Areas			Sewered Areas		
	NE Waters	RD Waters	Tributary Streams	NE Waters	RD Waters	Tributary Streams
Lot Area	2.5 acres	2.5 acres	2.5 acres	1.0 acre	1.0 acre	1.0 acre
Water frontage and lot width at building line	200 ft	200 ft	200 ft	125 ft	100 ft	100 ft
Structure setback from ordinary high water mark	150 ft	100 ft	100 ft	150 ft	100 ft	100 ft
Structure setback from roads and highways	85 ft from centerline or 50 ft. from right-of-way, whichever is greater					
Structure height limitation	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft
Maximum lot area covered by impervious surface	25%	25%	25%	25%	25%	25%
Sewage system setback from ordinary high water mark	150 ft	75 ft (RR) 150 ft (AG)	75 ft (RR) 150 ft (AG)	125 ft	75 ft	75 ft

Front Yard Setback:

Required: 85 feet from centerline or 50 feet from the ROW (@ 60% = 30 feet from right of way)

Proposed: 13 feet from the right of way

Side Yard Setback (as it relates to proposed addition):

Required: 30 feet (@ 60% = 18 feet)

Provided (West): 18'

In addition to the setback requirements, properties located in the shoreland district can have a maximum impervious surface coverage of 25%. This property would be permitted to have a maximum impervious surface coverage of 3,703 square feet. The applicant has prepared an analysis of the impervious surface area for this property. The existing and proposed impervious surface calculations are as follows:

<u>Existing Hardcover (sq. ft.)</u>		<u>Proposed Hardcover (sq. ft.)</u>	
House	1,352	House	1,352
Deck & Steps	207	Deck & Steps	207
Bituminous Parking	233	Bituminous Parking	233
Concrete	378	Proposed Addition	698
Gravel Driveway	1,843	Proposed Garage	900
Shed	196	Proposed Porches	296
	<u>4,209</u>		<u>3,686</u>
Lot Area	14,812	Lot Area	14,812
Total Hardcover	28.4%	Total Hardcover	24.9%

The applicant is proposing to remove two existing sheds, a concrete patio area and the existing gravel driveway to reduce the impervious surface coverage area of the property (see diagram below).



The applicant is also proposing to construct a pervious paver driveway to access the garage addition. The City has not counted pervious pavers towards the total impervious surface area. With the proposed garage/house addition, the property would have a total impervious surface equaling 24.9% of the lot area.

There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a 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)

520.23. 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 criteria for granting a variance:

- a. Residential use of the property is consistent with the Rural Residential District. The applicants are seeking a variance that is generally consistent with similar variances granted for properties in this area.
- b. Each property in this area is non-conforming and typically requires relief from certain setbacks. The City will need to determine if the requested variance is unique to this property.
- c. The character of the surrounding area is residential. The proposed single family home is in keeping with the City's comprehensive plan.

There are several additional items that could be considered by the City:

1. Many of the surrounding properties have been granted relief from the requisite setback requirements due to the small size of the properties, unique lot layouts resulting from the historic nature of the structures on the properties and the change in nature of the homes from seasonal to permanent.
2. From the image below it can be seen that several properties in this neighborhood have reduced front yard setbacks. The setbacks range from approximately 10 feet to 20 feet from the right of way/property line. The applicant is seeking a 13 foot setback.
3. The requested variance would allow a standard size two garage to be located on the property. From the plans provided, it appears that the depth of the garage could be reduced to accommodate a greater setback from the right of way.
4. Due to the location of the property at the end of a cul-de-sac and its orientation on the curve of the road, the apparent impact on the "streetscape" will be somewhat minimized.

Ultimately the City will need to find that the aforementioned criteria for granting a variance have been met by the applicant.



Public Comments:

The City has not received any comments prior to the writing of this report or at the public hearing.

Planning Commission Discussion/Recommendation:

Planning Commissioners discussed the proposed variance and asked questions of staff and the applicant. Commissioners asked the applicant if the proposed permeable pavers are intended to extend all the way to the edge of Shady Beach Circle and not just to the edge of the right of way. The applicant responded that the permeable pavers will extend all the way to the edge of the existing pavement. Commissioners asked what the setback is from the edge of the pavement to the proposed garage. Staff noted that the distance from the proposed structure to the edge of the pavement is 32 feet. Commissioners discussed/asked if there were any other possibilities for increasing the setback of the proposed garage. Ultimately commissioners thought that the requested variance was in keeping with the character of the surrounding properties and would not pose a potential impact. Commissioners recommended approval of the variance as requested with the addition of a condition specifying the extents of the permeable paver area.

Recommendation:

The Planning Commission recommended approval of the requested variance with the following findings and conditions:

1. 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.
2. The 17-foot variance will allow a reduced front yard setback of 13 feet. The variance will allow the proposed one story structure as depicted on the approved site plan attached as Exhibit A to the resolution.
3. The total impervious surface coverage for this property will not exceed 25% of the total lot area. The applicant shall submit a detail of the proposed pervious paver driveway to the City for review and approval at the time an application for a building permit is submitted. The entire proposed driveway shall be installed with permeable pavers (from the edge of the pavement on Shady Beach Circle to the garage).
4. The applicant shall submit a drainage plan to the City at the time of building permit application. The drainage plan will be reviewed by the City to ensure that the proposed improvements do not adversely impact any of the surrounding properties relating to grading and drainage.
5. The Applicant shall pay for all costs associated with the City's review of the requested variance.
6. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts. No expansion of the home/ garage or impervious areas will be permitted without an additional variance request.

Attachments:

1. RESOLUTION 17-0124-02
2. Application
3. Site Plan



RESOLUTION NO. 17-0124-02

A RESOLUTION GRANTING APPROVAL OF A VARIANCE TO ALLOW A 17 FOOT
REDUCTION IN THE PERMITTED FRONT YARD SETBACK FOR THE PROPERTY
LOCATED AT 4586 SHADY BEACH CIRCLE

WHEREAS, the City of Independence (the “City”) is a municipal corporation under the laws of Minnesota; and

WHEREAS, the City adopted a comprehensive plan in 2010 to guide the development of the community; and

WHEREAS, the City has adopted a zoning ordinance and other official controls to assist in implementing the comprehensive plan; and

WHEREAS, Linda Nelson (the “Owner”) submitted a request for a variance to allow a reduced front yard setback which would permit a home/garage addition for the property located at 4586 Shady Beach Circle (PID No. 02-118-24-21-0007) (the “Property”); and

WHEREAS, the Property is zoned Rural Residential; and

WHEREAS, the Property is legally described as shown and depicted on Exhibit A attached hereto.

WHEREAS the requested Variance meets all requirements, standards and specifications of the City of Independence zoning ordinance for Rural Residential lots; and

WHEREAS the Planning Commission held a public hearing on January 17, 2017 to review the application for a Variance, following mailed and published noticed as required by law; and

WHEREAS, the City Council has reviewed all materials submitted by the Applicant; considered the oral and written testimony offered by the applicant and all interested parties; and has now concluded that the application is in compliance with all applicable standards and can be considered for approval.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MINNESOTA, that it should and hereby does approve the application by Linda

Nelson and grants a Variance for the property in accordance with the City's zoning regulations with the following findings and conditions:

1. 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.
2. The applicants are proposing to use the property in a manner consistent with the Rural Residential District. The applicants have attempted to locate the building to meet all other applicable setbacks for property zoned Rural Residential and under the Shoreland Overlay District.
3. The character of the surrounding area is residential. The proposed expansion of the home and garage is generally in keeping with the City's comprehensive plan.
4. The 17-foot variance will allow a reduced front yard setback of 13 feet. The variance will allow the proposed one story structure as depicted on the approved site plan attached as Exhibit A to the resolution.
5. The total impervious surface coverage for this property will not exceed 25% of the total lot area. The applicant shall submit a detail of the proposed pervious paver driveway to the City for review and approval at the time an application for a building permit is submitted. The entire proposed driveway shall be installed with permeable pavers (from the edge of the pavement on Shady Beach Circle to the garage).
6. The applicant shall submit a drainage plan to the City at the time of building permit application. The drainage plan will be reviewed by the City to ensure that the proposed improvements do not adversely impact any of the surrounding properties relating to grading and drainage.
7. The Applicant shall pay for all costs associated with the City's review of the requested variance.
8. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts. No expansion of the home/ garage or impervious areas will be permitted without an additional variance request.

This resolution was adopted by the city council of the City of Independence on this 24th day of January, 2017, by a vote of ___ ayes and ___ nays.

Marvin Johnson, Mayor

ATTEST:

Mark Kaltsas, City Administrator

(SEAL)

City of Independence

The Independence City Code was established to protect both current and future residents from the negative impacts of improper development and to ensure a positive future for the city. The land use application review is the mechanism that allows the city to examine proposed uses to ensure compatibility with the surrounding environment, natural or otherwise. It is important to understand that a proposed use may be acceptable in some circumstances, but unacceptable in others—all applications are viewed on a case-by-case basis.

- Appeal
- Comprehensive Plan Amendment
- Concept Plan
- Conditional Use Permit
 - Residential
 - Commercial/Light Industrial
 - Telecommunications
 - Agriculture
 - Home Occupation
 - Non-Conforming Use
 - Guest/Bunk House
 - Institutional
 - CUP Amendment
- Extension Request
- Final Plat
- Interim Use Permit
- Lot Consolidation
- Minor Subdivision (Survey)
 - Lot Subdivision
 - Lot Combination
 - Lot Line Rearrangement
- Moving Buildings
- Preliminary Plat
- Rezoning
- Site Plan Review (Commercial)
- Vacation
- Variance
 - Subdivision Regulations
 - Zoning
 - Road Frontage
- Zoning Text Amendment

*Please check all that apply

Request: Variance for 17'
setback from right-of-way
to accommodate shallow lot

Site Address or Property Identification Number(s):

4585 Shady Beach Circle
Independence MN

NOTE: Minnesota State Statute 15.99 requires local governments to review an application within 15 days of its submission to determine if an application is complete and/or if additional information is needed to adequately review the subject request. **To ensure an expedited review, applicants shall schedule a pre-application meeting with the City Planner/Administrator at least one week prior to submittal.** Most applications have a review period of 60 days, with the City's ability to extend an additional 60 days if necessary due to insufficient information or schedule.

Office Use Only	
<u>\$1500.500⁰⁰</u>	<u>12/13/16</u> Date
<u>\$1000</u>	<u>9410</u> Application Check #
Escrow Paid	<u>9410</u> Escrow Check #
Date Accepted by Planner	<u>Bruce</u> Accepted By
City Planner	

*****Note: All parties with a fee interest in the real estate must sign this application before the City will review for consideration!**

Applicant Information:

Name: DEAN VOSS

Address: 4025 TOWNLINE RD

City, State, Zip: LORETTO MN 55357

Phone: 612-201-6934

Email: deanvossandsonsconst@gmail.com

Signature: Dean F. Voss

Owner Information (if different than applicant)

Name: Linda Nelson

Address: 4387 Braddock Avenue

City, State, Zip: Buffalo, Mn 55313

Phone: 763-464-0876

Email: lindynamianeapclisglass.com

Signature: Linda Nelson

Checklist: Please review the checklist that goes with the request(s) as all materials in the checklist unless waived by the City.

Review Deadline and Timeline: All applications must be received by the deadline according to the schedule attached hereto. Failure to submit by the date shown will result in a delay in the scheduling of the application review by Planning Commission and City Council.

Application for Planning Consideration Fee Statement

The City of Independence has set forth a fee schedule for the year 2014 by City Ordinance. However, projects of large scope that include two or more requests will be required to provide a larger deposit than the resolution sets forth as set by the City Administrator. The fees collected for land use projects are collected as deposits. All invoices associated with each land employ application will be billed to the applicant within 30 days upon receipt by the City for each project. The City of Independence often utilizes consulting firms to assist in the review of projects. The consultant and City rates are shown at the bottom of this form. By signing this form, the applicant recognizes that he/she is solely responsible for any and all fees associated with the land use application from the plan review stage to the construction monitoring stage through to the release of any financial guarantee for an approved project. If a project is denied by the City Council or withdrawn by the applicant, the fees associated for the project until such denial or withdrawal, remain the applicant's responsibility.

I UNDERSTAND THE FEE STATEMENT AND RESPONSIBILITIES ASSOCIATED WITH THIS LAND USE APPLICATION:

Applicant Signature: Dean F. Voss

Date: 12-13-16

Owner Signature (if different): Linda Nelson

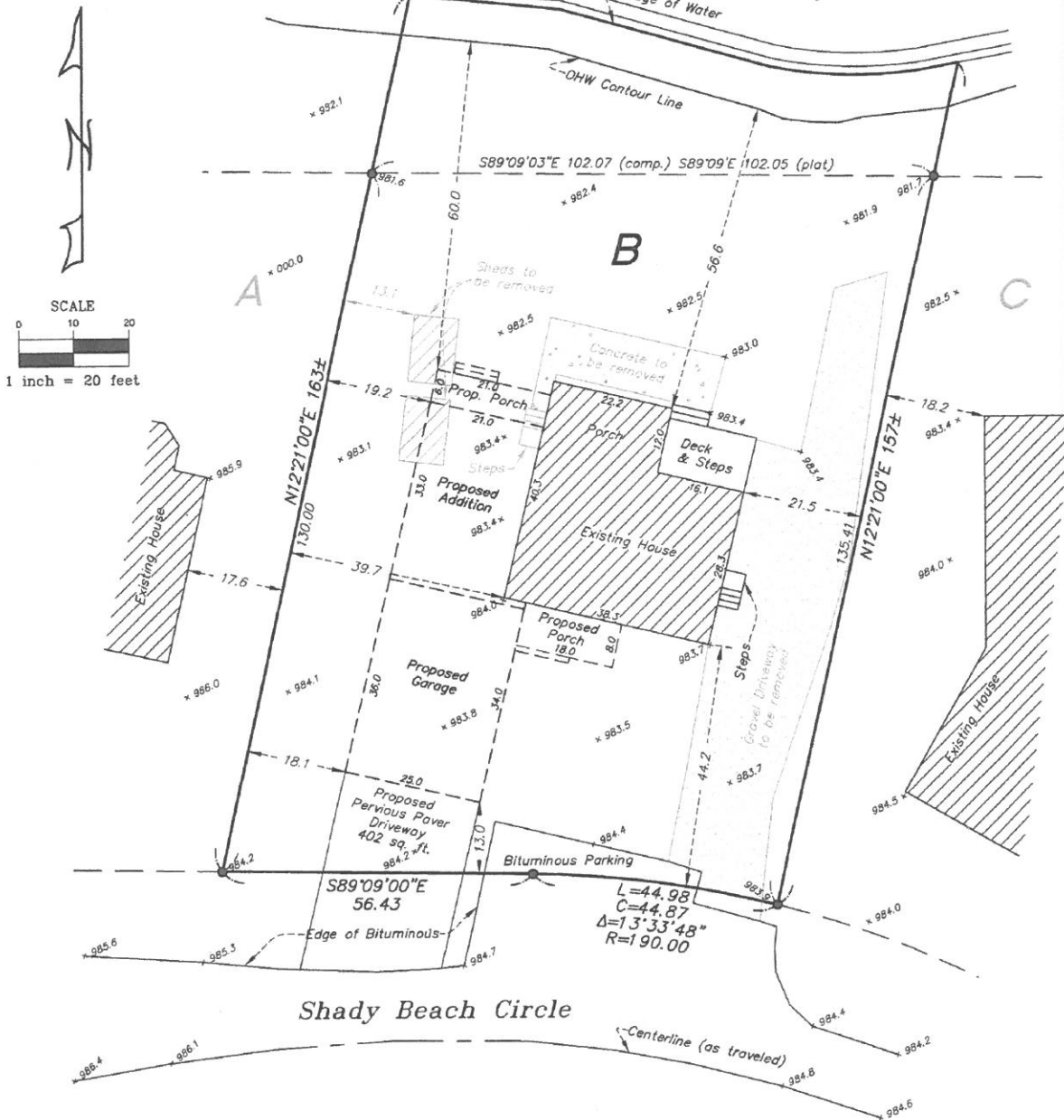
Date: 12-14-16

Building Permit Survey

Prepared for:
Dean Voss

Legend

- Found Iron Monument
- × 000.0 Existing Elevation



SCALE
0 10 20
1 inch = 20 feet

Site Address:
4586 Shady Beach Cir.
Independence, MN 55359

Boundary Description (supplied by client)
Tract B, REGISTERED LAND SURVEY No. 1139, according to the recorded plat thereof, Hennepin County, Minnesota. Subject to any and all easements of record.

Existing Hardcover (sq. ft.)	Proposed Hardcover (sq. ft.)
House	1,352
Deck & Steps	207
Bituminous Parking	233
Concrete	378
Gravel Driveway	1,843
Shed	196
	Proposed Addition
	Proposed Garage
	Proposed Porches
	3,686

Lot Area	14,812	Lot Area	14,812
Total Hardcover	28.4%	Total Hardcover	24.9%

Bearings based on assumed datum.

SCHOBORG
LAND SERVICES
INC.

763-972-3221
www.SchoborgLand.com

8997 Co. Rd. 13 SE
Delano, MN 55328

I hereby certify that this certificate of survey was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

Paul B. Schoborg
Paul B. Schoborg

Date: DECEMBER 6, 2016 Registration No. 14700

Job Number:	8210
Book/Page:	LL
Survey Date:	8/3/16
Drawing Name:	voss.dwg
Drawn by:	DMS
Revisions:	8-10-16, 8-11-16, 11-23-16 (size of addn.) 12-6-16 (setback, hardcover)