

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, MAY 14, 2013 – 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, Fisher, Wenck, and Spencer

ABSENT: None

STAFF: City Administrator Hirsch, Bob Vose, Mark Kaltsas

VISITORS: John Conlin, Randee Kyrola, Craig Olson, Ryan Simafranca, Mike McLaughlin, Brady Anderson, Jeff Natrop, Todd & Laura Zaugg, Ed & Barb Bies, Randal Patnode, Dick Schieffer, Donald Baird, and Adam Young

4. CONSENT AGENDA

a. All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- Approval of City Council minutes from April 23, 2013
- Approval of the Accounts Payable for the month of May, 2013.
- Approval of Resolution No. 13-0514-01, authorizing the issuance, sale, and delivery of Senior Housing Revenue Bonds (The Legends at Hazeltine Senior Housing Project), Series 2013, in a principal amount of up to \$28,000,000, for the benefit of the Legends at Hazeltine, LLC;...
- Approval of Recommended Bids for Gravel
- Approval to Demolish the Soley House

Further discussion of the Accounts Payable, Gravel bids, and the Soley House requested by Johnson and Wenck.

**Motion by Betts, second by Fisher to approve the Consent Agenda items: Minutes from April 23, 2013 and Resolution No. 13-0514-01. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

Wenck asked about the expenditures and thought those were paid in April. He has further questions and would like to further discuss this with Hirsch. Johnson suggested tabling this until the next meeting.

Wenck also had questions about the costs of the Winter Sand. Hirsch stated Dan Koch would be the one to answer those. Johnson suggested approving the bid without the winter sand.

**Motion by Wenck, second by Betts to approve the three (3) gravel bids not including the winter sand. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

Johnson suggested the accounts payable part could be approved and further review of the checks could be done at a later point.

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

Johnson suggested since the economy is starting to pick up maybe the City should wait to demolish the Soley house. The Councilors discussed options previously attempted and that the property has been vacant four to five years. Spencer suggested talking to the Fire Department for a practice burn. Johnson suggested waiting until later in the Summer.

**Motion by Johnson, second by Wenck to delay demolition until at least the first of August. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

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

Nothing Added.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

**Spencer attended the following meetings:**

- Tour of Vinland Center
- Citizen's Police Academy Graduation
- Clean Water Resource Fair
- Planning Commission Meeting
- Chamber of Commerce Meeting
- City Clean Up Day
- City Hall Community Room Party Review

**Wenck attended the following meetings:**

- Sensible Land Use Coalition Meeting
- Clean Water Resource Fair

**Fisher attended the following meetings:**

- City Clean Up Day

**Betts attended the following meetings:**

- Clean Water Resource Fair
- Todd Boelter's Retirement Party
- Citizen's Police Academy Graduation

**Johnson attended the following meetings:**

- Senior Community Services Phone Conversation Meeting
- Senior Community Services Program Committee Meeting
- Clean Water Resources Fair
- Communtiy Action Partnership for Suburban Hennepin County Board Meeting
- State Mayor's Conference in Moorhead
- Todd Boelter's Open House and Retirement Party
- Citizen's Police Academy Graduation
- Highway 55 Corridor Coalition Quarterly Meeting
- NW League of Municipalities Meeting
- Orono Healthy Communities Meeting
- Village Church Ground Breaking
- Communtiy Action Partnership for Suburban Hennepin County Finance Committee Meeting
- Regional Council of Mayor's Meeting
- Chamber of Commerce Meeting discussing AED
- National League of Cities for Small Cities Telephone Conference Call
- City Hall Community Room Party Review

**Hirsch attended the following meetings:**

- Clean Water Resource Fair
- Meetings with Frontier and MediaCom
- Meeting with Deferred Comp Representative from ING
- Meeting with another Eagle Scout about project ideas
- Met with Chamber of Commerce Representative about advertising options

7. **A + D PROPERTIES, LLC (APPLICANT) AND DONALD BAIRD (OWNER) REQUEST THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 2076 COUNTY ROAD 90, (PID# 23-118-24 23-0001) AND APPROVE RESOLUTION NO. 13-0514-02.**

- a. A variance from the side yard setback to construct a commercial building closer than 100 feet from the Agriculture zoning district.
- b. Site plan approval for a new commercial building on the subject property.

Kaltsas explained the applicants are was seeking a set-back variance from the neighboring property to the South and site plan approval for the proposed commercial building. He stated they were also seeking a variance for the driveway to be installed without a curb and gutter.

Kaltsas explained the history of the property and that it was recently re-zoned Commercial Light Industrial. He stated the applicant had intended to build a new commercial structure for metal fabrication; which they are ready to now do.

Kaltsas stated that setbacks from the property to the South are 100 feet due to that property still being zoned Agricultural; however, the property is guided commercial and will ultimately change to a commercially zoned property in the future. If it were zoned commercial, the setback would be 20 feet.

Kaltsas explained the variance is to allow a reduction of 79 feet for the side yard setback. When the neighboring property to the South gets rezone to Commercial Light Industrial the variance will no longer be needed.

Kaltsas stated a another driveway access would be added to lead directly to the new structure and one of the two existing driveways removed; which Hennepin County has approved.

He explained the applicant is proposing to build the driveway and parking lot without a concrete barrier curb and gutter. The ordinance requires this so a variance is needed if not installed.

The variances requested would be for the set-back and the absence of a concrete curb and gutter, as well as getting site plan approval.

Kaltsas explained the stone building material would meet the ordinance requirement. He explained the parking lot and the three parking spots. He stated if the use of this building changed or ownership changed the parking requirement could change.

Kaltsas stated the Planning Commission greatly discussed the issues. The Planning Commission added some new conditions. He stated they want more screening by adding a six 6 foot tall berm along County Road 90 with coniferous trees planted on it and with a spacing of 1 per 20 feet.

Kaltsas stated a stormwater management plan also needs to be submitted by the applicant, showing rate control.

Kaltsas explained the Planning Commission made a recommendation for approval of the side set-back variance and the curb and gutter variance, as well as site plan approval. The only changes in the report conditions were for item No. 5 was altered to reflect the screening changes and item No. 11 was added for the storm water management plan.

Johnson asked about the requirement of the storm water management plan and Kaltsas explained it was because this is a commercial property.

The Councilors discussed the berm location. Since the property is located on a County Road the County will need to determine the location and set-back for the berm.

**Motion by Betts, seconded by Wenck, to approve the Resolution No. 13-0514-02 for A + D Properties revised May 14<sup>th</sup>, 2013. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

8. TODD AND LAURA ZAUGG, 5585 LAKE SARAH HEIGHTS DRIVE (PID# 02-118-24 11-0015), ARE REQUESTING THE FOLLOWING ACTION AND APPROVAL OF RESOLUTION NO. 13-0514-03.

- a. A conditional use permit to allow a Non-rental Guest Apartment on the subject property.

Kaltsas described the property location. The property has 1.34 acres and is zoned rural residential on Lake Sarah. The structure is detached and has three floors with the top floor offering living space.

Kaltsas stated this is an after-the-fact request. He stated the City was notified of the existing dwelling unit within the detached structure by an appraiser. The accessory dwelling unit is not permitted. He stated the City contacted the owners to examine the property and determine if a conditional use permit was needed. Kaltsas stated the City discovered the unit as is does not qualify for a conditional use permit as it is. He stated under the City ordinance, an accessory dwelling unit cannot exceed 33% of the above ground square footage of the principle structure or 1,200 square feet. In this case, the existing dwelling area in the accessory structure exceeds 1,200 square feet (1,472 square feet). In order to grant a conditional use permit (CUP) for an Accessory Dwelling Unit (ADU), the applicant would need to request a variance from the maximum size permitted or would need to reduce the total square footage of the ADU.

Kaltsas stated the City has two provision for this type of structure, guest house and a non-rental guest apartment.

Kaltsas stated the definition of a guest house:

"Guest house." A separate building constructed on an existing undivided lot for the sole use of the homesteaded owner occupants of the principal building or their non-paying guests, and consisting only of one or more sleeping rooms with or without bathrooms.

Kaltsas stated the applicant believes they meet the requirements for a non-rental guest apartment; which is defined as:

"Non-rental guest apartment." An apartment within the principal residence structure or its garage on an existing undivided lot for the sole use of the homesteaded owner occupants of the principal residence, including their full-time domestic employees or non-paying guests.

Kaltsas explained the Planning Commission discussed the options in great detail. The distinguishing factor to differentiate a principle structure was the presence of a kitchen. This structure is comprised of a living space, office, kitchen, bathroom, and two bedrooms. Kaltsas explained the garage was permitted as a finished garage space with a bathroom and additional storage.

Kaltsas stated the concern of the Planning Commission revolved around not having two principle structures on a single property. The Planning Commission felt that having a kitchen will distinguish one from the other. The Commissioners made one of two option recommendations to the City Council.

Option 1:

No second principle structure, distinguishing factor being a kitchen – applicant must not exceed the maximum square footage criteria for an accessory dwelling unit, thus some of the space must be converted into non-dwelling space. The maximum dwelling space of approximately 800 square feet.

Option 2:

Allow accessory dwelling unit as a non-rental guest apartment, with the removal of the range and stove top; as these appliances complete a kitchen.

Kaltsas stated the applicant also presented a petition signed by neighbors in approval of the structure.

The Planning Commission also recommended keeping the other conditions as stated in the report. Kaltsas stated any action that is approved should be brought back to Council to get an official Resolution with the correct wording.

Johnson asked Voss if there was any kind of policy violation for deceiving the City. Voss stated the City does not have an after-the-fact permit violation. However, some cities do state they will not grant after-the-fact approvals. Voss felt that it would not be wise of the City to add a policy stating the City will never grant an after-the-fact approval. Johnson asked what the fees are for a policy. Kaltsas stated an after-the-fact permit is a double fee. The applicants did not pull a building permit and paid double for the building permit and the conditional use permit application.

Voss suggested if approved the City will want to make it clear in the Resolution why it would be approved and the Council's interpretation of the City Code.

Betts asked if that is what was approved with Windsong Golf Course, and if so, we need to give them the same treatment. Kaltsas stated Windsong had the same requirements.

Johnson inquired about the sewer connections. The owner Zaugg and Kaltsas stated the City sewer was permitted with a connection to the accessory structure for the one bathroom. Betts asked if this would have been approved with a second bathroom in the accessory structure. Kaltsas stated our building official has inspected the property and did approve it.

Voss pointed out the application the applicant submitted was for a non-rental guest apartment conditional use permit not a guest house, so the Council should not be choosing the options.

Johnson asked about the County's assessment of the property value and if it was being taxed properly, based upon the value. Voss was not absolutely certain but with the new after-the-fact permit the County will become aware of the improvements and an assessor can re-evaluate it.

Fisher inquired about the review process of conditional use permits. Kaltsas informed the Council that permits are subject to annual reviews but typically done every two to three years or upon request.

Todd Zaugg, 5585 Lake Sarah Heights Drive, applicant, informed the Council that it was not his intention to break any rules, but was rather a misunderstanding with Bauer, the builder. He stated he has been trying to accommodate the City with all their requests.

Spencer asked Zaugg about the building process, permits, and timeline. Zaugg stated the builder took care of the permits and inspections. The entire project took about two years, much longer than anticipated. Johnson questioned if the City should pull the builder's licensing option to build in the city.

**Motion by Wenck, seconded by Spencer, to allow a conditional use permit with the removal of the oven and cooktop.**

Johnson stated a formal Resolution will be prepared for the next Council Meeting and will be voted at that time.

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

9. APPROVAL OF A PROPOSED TEXT AMENDMENT TO THE CITY ORDINANCE AS FOLLOWS:

- a. Chapter 5, Section 530, consideration to amend the total square footage permitted for detached agricultural storage buildings, barns, or other structures, accessory to an existing single family dwelling.

Tabled item and will review in at the June 11<sup>th</sup> Council Meeting.

10. RICHARD SCHIEFFER, RESOLUTION FOR ACCESS TO CITY RIGHT OF WAY LOCATED OFF OF LAKE SARAH HEIGHTS DRIVE (ANDERSON/KYROLA). RESOLUTION NO. 13-0514-04.

Voss requested more time to look into the legality of the right-of-way. An agreement versus a resolution may make more sense for this situation.

Richard Schieffer, applicants representative, stated he was representing six (6) property owners. A Lake Sarah access easement had been granted to these property owners in the past. There are some restrictions on the property with the easement. After some legal disputes, a settlement agreement was created but it only applies to the lake access easement.

Schieffer stated the lake access easement is connected to the City's easement but is not the same thing. Kyrola owns an unimproved parcel off of Lake Sarah heights circle in which the easement applies. Kyrola also owns and homesteads a property adjacent to the parcel. Lake Sarah Heights Circle is unpaved road that runs past Kyrola's property. Schieffer stated his clients would like to improve part of the road, 60x100 feet to access Lake Sarah. He said the clients were looking for City Council to approve the applicants making this road improvement. He stated access to the lake would be used by vehicle, walking, snowmobile, and ATV. His clients would like to be able to remove the weeds, non-landscape trees, and other things blocking the right-of-way. He stated they would like to bring in rock and gravel with the approval of public works. Schieffer stated snow removal and maintenance by his clients was discussed with the Public Works Director, Dan Koch, and they were informed it would not be an issue. His clients would like to make sure that when removing snow, snow is not pushed into this right-of-way, per City and State statutes.

Johnson inquired about the access to this easement and if it is open to the public. Voss stated this road is not open to the public because the City has not developed the road. Voss stated what is being said is the clients, per the easement, are asking for the rights to make improvements to the road for their own use.

Kyrola stated where his property is located and where the easement is located.

Fisher asked if there was any liability if the public is doing work. Voss stated the City had similar situations in the past and the City has determined an agreement would be a better way to come to a decision rather than a resolution.

Spencer questioned if a full 60 foot wide access is needed. Schieffer stated his clients would not necessarily need that entire width. He stated they would be required to get any necessary grading permits. Betts inquired if his clients were planning on adding a boat launch. Schieffer stated they were. Spencer believes this is a flood plain area and gravel fill is not allowed in flood plains. The details would need to be further worked out.

Kyrola showed a map of the parcels and easements which illustrates roughly a 30 x 100 foot wide section of an open area that he has been maintaining for the last 25 years. Kyrola stated he doesn't understand what more Schieffer's clients could want. Kyrola stated he has not been pushing the snow into the access. He stated it is the City plows causing the issue and is due to their limited available places to move the snow.

Schieffer stated Kyrola maintains what is necessary for him, but his clients may have a different view point. The people who would like to use the easement would like to make some improvements. Brady Anderson, a client, stated his main concern is to make sure the access is maintained. He stated it could be used as is but wants to make sure nothing disturbs the current access. Anderson stated he was looking for clear and free passage to the lake. Spencer stated an exact distance and definition will be needed for an agreement. The Commissioners discussed and agreed a clearance of up to 30 feet would be sufficient. They also stated snow removal could be further discussed with Public Works to come up with a solution.

Voss stated he will come back with an agreement that works with all parties. Johnson stated in the agreement the Council will allow access to the lake that is 30 feet wide and any fill that is needed must be approved by the watershed district. He stated City staff will be directed to come up with a solution for snow plowing.

**Motion by Johnson, seconded by Wenck, to direct the City attorney to create a written agreement for this and for all parties involved in this easement. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**



11. CRAIG OLSON – LAKE INDEPENDENCE OUTLET REQUEST

And Item #12 Discussed together.

12. DISCUSSION AND APPROVAL TO CONTRIBUTE EQUAL FUNDS TO MATCH THE CITY OF MEDINA'S CONTRIBUTION FOR THE LAKE INDEPENDENCE OUTLET CLEAN UP.

Johnson read a letter from Barbara, 3414 Independence Road, explaining that they have a large lot with a channel to Lake Independence. They have lived there for about 20 years and have noticed the water quality significantly decline, and the water level has fluctuated greatly. They are hoping state agencies and other professional will work with them to help improve the lake.

Johnson asked Hirsch what has all happened regarding the solutions. Hirsch referred to Spencer, who stated the lake has consistently been over the high water level for the last 10 to 15 years. He stated persistent high water levels have impacted the shoreline causing erosion. Pioneer Sarah Creek Watershed District did a study with Hakanson Anderson to study the outlet and review any issues.

Craig Olson, 5112 S. Lakeshore Dr., a City Planning Commissioner and a LICA board member, stated he has been hearing a lot of concerns around this project mostly due to a lack of information. He stated causing too low water issues should also be addressed. The project needs to be looked at from all angles. He stated a public hearing meeting is needed to discuss the issues. Olson stated people's concerns are with the estimated costs from the newspaper, the long term commitment, and who is responsible for keeping it clear. He stated more information before the project begins will be helpful.

Mike McLaughlin, president of LICA, Vice Chair of Pioneer-Sarah Creek Watershed Commission, and the Medina Commission, and a lakeshore owner, stated many people are concerned the cleaning of the outlet will suddenly drop the lake level down. He stated it does not work like that, but rather bringing it closer to the normal water levels. He stated a study shows the water levels are up by 12 inches. He stated more work needs to be done in order to control erosion. The Cities and State have spent a lot of time and money studying these issues and solutions. He stated information regarding the topic is out there if residents look for it.

Betts asked about the creek that leads to Lake Independence and stated she thought the opening of the Outlet would increase the lake water levels. A study was done stating if the outlet is cleared it will reduce water levels.

John Conlin, 2906 Lindgren Lane, founding member of LICA, stated the water quality has greatly diminished over the years and feels much of this is due to the outlet channel being clogged and the high levels of phosphorus. He stated the lack of natural shoreline; which is a buffer zone, allows the water run-off to run straight into the lake. He stated now is the time to take action and clean out the outlet, and prevent erosion.

Spencer stated he has heard from residents about the issue and stated there is a lot of misinformation. Wenck stated he views it as how many people benefit, how many are harmed, and if some of the cost can be assessed. Spencer stated the problem with an assessment is if it actually improves the value of the home. Hirsch stated the amount requested is \$55,000 each from Medina and Independence.

McLaughlin stated there is a lot of steps that need to be taken before starting rumors about funding and tax increases.

Hirsch stated our obligation is to vote on the \$55,000 funding; which is the same as what Medina has committed to. McLaughlin thought the amount was higher. Johnson stated we are not ready to approve this tonight. Fisher stated without hard numbers he is not ready to approve anything. Johnson stated we should table this until further concrete information regarding cost is provided.

**Motion by Betts, seconded by Spencer, to table this item. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

13. DISCUSSION REGARDING THE USES OF THE COMMUNITY CENTER

Johnson stated there has been some concern about uses and any abuse to the community center. He stated he stopped in three times over the weekend to check out the last event. Spencer stopped in as well. Spencer stated this was brought to attention after a recent party held on a Sunday and it was not properly cleaned until mid-Monday. Other issues the City has had are with sticky floors, gavel missing and fire alarms pulled. Wenck stated they should be charged for those items; by taking it out of the security deposit. Betts stated when alcohol is being served she strongly feels there should be a police officer present. Fisher stated most cities do have that requirement. The Councilors discussed that with a security guard present their behaviors may be slightly different. Betts concern is with a minors consuming alcohol. Hirsch stated renters are required to have a million dollar policy listing the City of Independence as additionally insured and the City's insurance company has not expressed any concern about it. Spencer stated the issues the City has had are not alcohol related but rather clean up issues. He stated a letter should be sent to the renters who have already booked the room expressing concern about the care of the room and clean-up. He thought that we should monitor it for now.

**Motion by Wenck, seconded by Spencer, to send a letter to renter of the community room about our expectations. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

14. DISCUSSION AND APPROVAL OF THE CITY APPLYING FOR A 2-DAY TEMPORARY 3.2 LICENSE FOR THE HERITAGE FEST IN SEPTEMBER.

**Motion by Wenck, seconded by Spencer, to approve an application for a temporary 2-day 3.2 liquor license for the Heritage Fest.**

Hirsch stated the City's insurance company will cover this.

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

15. APPROVAL TO CANCEL THE CITY COUNCIL MEETING FOR TUESDAY, MAY 28, 2013, DUE TO LACK OF AGENDA ITEMS.

**Motion by Wenck, second by Betts, to cancel the City Council meeting scheduled for May 28, 2013. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

11. MISC. /OPEN

None

12. ADJOURN.

**Motion by Spencer, second by Betts, to adjourn the City Council meeting at 10:08 p.m. Ayes: Johnson, Betts, Fisher, Wenck, and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

Respectfully submitted,

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Jolene Nelson, Recording Secretary