

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, OCTOBER 1, 2019 –6:30 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 6:30 p.m.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, Betts and Grotting

ABSENT: Assistant to Administrator Horner, Councilor McCoy

STAFF: City Administrator Kaltsas, City Attorney Vose

VISITORS: None

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 September 17, 2019 Regular City Council Meeting.
- b. Approval of City Council Minutes from the September 12, 2019 City Council Workshop.
- c. Approval of Accounts Payable; Checks Numbered 19133-19160 (Check 19132 was voided).
- d. Approval of Election Judges for the 2019 Election.
- e. Large Assembly Permit for an Event to be Held on the Property Located at 7075 US Highway 12 on October 12, 2019.

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

- Planning Commission Meeting
- Pioneer Sarah Creek Watershed Meeting
- Lynn Nadasdy Memorial Service

Grotting attended the following meetings:

- Pioneer Sarah Creek Watershed Meeting
- Planning Commission Meeting
- LMCC meeting with Mediacom

McCoy attended the following meetings:

Betts attended the following meetings:

Johnson attended the following meetings:

- Sensible Land Use Committee Meeting
- Orono Healthy Youth Meeting
- Lynn Nadasdy Memorial Service
- Delano School Board Meeting
- Orono School Board Work Session
- National League of Small Cities Conference Call Meeting
- Senior Community Services Board Meeting
- Community Action Partnership Meeting

Horner attended the following meetings:

Kaltsas attended the following meetings:

- Several meetings with residents on the Otten Development
- Several meetings with residents on road conditions on Klaers Drive
- Met with Architectural Firms on City Hall remodel

7. R. Michael and Margaret King (Applicants/Owners) request that the City consider the following actions for the property located at 2365 County Road 92 N., Independence, MN (PID No. 20-118-24-11-0002):

- a. RESOLUTION NO. 19-1001-01 – considering a variance and minor subdivision to allow the creation of a rural view lot. The property is an original quarter, quarter section with the exception of a small piece of property that was taken by Wright Hennepin Electric for their substation. The variance would allow the subdivision of property for a rural view lot that is less than 40 acres.

Kaltsas said the applicants approached the City about the possibility of subdividing their property to create a rural view lot. The property is zoned Agriculture. The City does not allow the subdivision of property zoned Agriculture with the exception of lot line rearrangements and rural view lot splits. The overall property does not meet the minimum 40-acre requirement to realize a rural view lot subdivision; however, the property has not previously been subdivided for the purpose of creating any additional lots. The City has an additional provision that allows properties that were originally subdivided into a quarter-quarter section and not further subdivided to be deemed a 40-acre parcel for purposes of determining rural view lot eligibility.

Wright Hennepin Electric has a substation located in the northeast corner of the property that appears to have taken a small piece of the original quarter-quarter section. The applicant would like the City to consider granting a variance to allow the subdivision of property in the Agriculture zoning district that does not meet the minimum 40-acre lot size. The applicant is proposing to subdivide a 10-acre parcel from the overall property. The newly created lot would be located along the north property line. The newly subdivided property would be accessed via a private driveway easement that would provide access from County Road 92 N into the site on the existing driveway that serves the existing residence. Based on the information provided and a site visit, the proposed lot would appear to accommodate the development of a single-family home meeting all requisite requirements. The proposed property would have the following detail:

Min. Lot Size Required to Subdivide:
40 Acres

Existing Lot Size:
38.95 Acres (original quarter-quarter sect.)

Min. Lot Frontage Required:
300 Lineal Feet

Lot Frontage Proposed:
280 Lineal Feet

Min. Upland Acreage Required:
2.5 Acres

Upland Acreage Proposed:
8.32 Acres

Min. Lot Frontage to Lot Depth Required:
1:4

Min. Lot Frontage to Lot Depth Proposed:
1:4

The proposed Parcel 2 would meet all applicable criteria of the City's zoning ordinance with the exception of the minimum lot frontage (300 LF required/280 LF proposed). The applicant could meet the minimum lot frontage; however, the shape of the lot would become skewed rather than square. The overall width of the lot with the exception of the utility property is proposed to be 350 LF. The City can provide direction relating to whether or not the line should be adjusted to provide for the 300 LF of frontage. The remainder property with the existing home and accessory structures would not be negatively impacted as a result of the proposed subdivision. The proposed property line for the new parcel would not create any non-conformities or reduced setbacks relating to the remainder property, the existing home or accessory buildings.

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

The standards for granting a variance are as follows: 520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where:

1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

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

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

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

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

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

Consideration of the standards for granting a variance:

- a. The applicants are proposing to use the property as residential which is consistent with the AG-Agriculture Zoning District.
- b. The properties created by the subdivision are similar in nature and character to the surrounding properties. There are existing properties located along County Road 92 N. that range between 5 and 40 acres plus.
- c. The character of the surrounding area is mixed residential/agricultural and guided for long term agriculture.

The City’s current comprehensive plan guides this area for long term agriculture. The City will need to determine if the proposed subdivision is in keeping with the intent of the City’s comprehensive plan. The requested variance to allow the subdivision of the property must be found to be unique to this property. The City could find that because the parcel has not benefited from the subdivision of a rural view lot in the past, that it could consider this property to be an original quarter-quarter section. Due to the large area of the City and the number of properties, it is difficult to determine if this situation is wholly unique to this property but believes that there are very few properties impacted by a utility similar to this situation. The City will need to determine if the unique characteristics of this property are distinctive and discernable from other conditions on similar properties. The Planning Commission recommended approval of the requested variance and minor subdivision with the following findings and conditions:

1. The proposed variance and minor subdivision request meet all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, and Chapter V, Section 500, Subdivisions, in the City of Independence Zoning Ordinance.
2. The proposed subdivision meets the criteria for granting a variance due to the following findings:
 - a. The resulting rural view lot is in keeping with the character of the surrounding area.
 - b. The existing property has not realized any previous subdivision that resulted in an additional buildable lot.
3. The Applicant shall provide to the City verification that proposed Parcel 2 can accommodate a

primary and secondary septic site.

4. The Applicant shall provide, execute and record the requisite drainage and utility easement with the county within six (6) months of approval.

5. The Applicant shall pay the park dedication fees in the amount of \$7,250 prior to the applicant receiving final approval to record the subdivision by the City.

6. The Applicant shall pay for all costs associated with the City's review of the requested variance and subdivision.

7. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Johnson said he appreciates the easement with the driveway. Betts noted the wider driveway and Kaltsas said it was a 15' easement. Johnson asked about maintenance responsibility and Kaltsas said that is put in place with three or more properties.

Motion by Spencer, second by Grotting to approve RESOLUTION NO. 19-1001-01 – considering a variance and minor subdivision to allow the creation of a rural view lot. The property is an original quarter, quarter section with the exception of a small piece of property that was taken by Wright Hennepin Electric for their substation. The variance would allow the subdivision of property for a rural view lot that is less than 40 acres for the property located at 2365 County Road 92 N., Independence, MN (PID No. 20-118-24-11-0002) Ayes: Johnson, Grotting, Betts and Spencer. Nays: None. Absent: McCoy. MOTION DECLARED CARRIED.

8. AT&T (Applicant) requests that the City consider the following action for the property located at 3310 County Line Road, Independence, MN (PID No. 07-118-24-33-0004):

RESOLUTION NO. 19-1001-02 – considering a conditional use permit amendment to allow the colocation of new cellular antennas on the existing wireless tower located on the subject property and a variance to allow a second accessory structure on the property and the reduction of the requisite 40-foot rear yard setback.

Johnson noted this would not be heard tonight as the applicant needed more time to work on some open items.

9. Anita Volkenant (Applicant/Owner) requests that the City consider the following actions for the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006):

a. **RESOLUTION NO. 19-1001-03** – considering an amendment to the existing interim use permit previously granted on the property.

Kaltsas said the City granted an interim use permit (IUP) in April of 2019 to allow the continued use of horticulture on the subject property. The IUP was approved subject to a settlement and stipulation agreement which further detailed the conditions of the IUP approval. One of the conditions related to the two hoop houses located on the property. The agreement included the following provisions relating to the hoop houses on the property:

There are currently two temporary hoop houses situated on the Property (the "Hoop Houses"). Volkenant and PVG agree that the Hoop Houses will be utilized for Horticultural Purposes, and the City consents to the

continued use of the Hoop Houses on the Property for Horticultural Purposes. Volkenant and the City further agree as follows:

- (i) Volkenant shall be allowed to maintain the temporary plastic covering on the 30X1 00 Hoop House year-round.
- (ii) Between November 1 and December 1 of each calendar year, Volkenant shall be allowed to install the temporary plastic covering on the 20X80 Hoop House that is currently situated on the Property;
- (iii) Between July 1 and July 30 of each calendar year, Volkenant shall remove the temporary plastic covering from the 20X80 Hoop House that is currently situated on the Property; and
- (iv) Volkenant shall not install any additional temporary hoop house structures on the Property without prior City review and approval.

The current agreement requires the applicant to remove the temporary plastic covering from the 20 x 80 hoop house between the dates of July 1 and July 30. The applicant is now asking the City to consider allowing the temporary plastic covering to remain on the 20 X 80 hoop house year-round. There are several key considerations relating to the proposed amendment to the interim use permit that should be noted and further considered by the City.

1. The City regulates the total square footage of detached accessory structures on a property. The subject property would allow for a total of 3,306 SF. The applicant currently has the following detached accessory structures on the property totaling 3,457 SF:

- a. Garage: 600 SF
- b. Garage #1: 270 SF
- c. Garage #2: 420 SF
- d. Barn & Lean-to: 881 SF
- e. Shed: 736 SF
- f. Lean-to: 550 SF

In addition, the applicant has the following hoop houses totaling 4,600 SF:

- a. Hoop House #1: 3,000 SF (300' x 100')
- b. Hoop House #2: 1,600 SF (20' x 80')

The total square footage of detached accessory structures on the property is 8,057 SF. This total is more than twice the allowable square footage of 3,306 SF. The square footage of detached accessory structure exceeds the allowable amount permitted on the property. All of the permanent detached buildings are existing and considered legal-non conforming.

The two hoop houses (greenhouses) on the property were constructed in the last 5 years without approval from the City. The applicant noted that they believe the structures to be temporary and considered agricultural buildings which would not require a building permit. The City does not differentiate between temporary and permanent structures in the zoning ordinance and the hoop houses are considered permanent accessory structures. City will need to find that it should permit more than double the allowable square footage on the property and the buildings are adequately mitigated so as to not take away from the reasonable use and enjoyment of the surrounding properties.

The City has criteria relating to interim use permits. One of the criteria of an interim use permit is that it meets the standards for granting a conditional use permit. The following criteria have been established for both an interim use permit and conditional use permit:

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

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

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

The City will need to determine if the requested interim use permit amendment meets all of the aforementioned conditions and restrictions. Along with the initial IUP approval, the applicant did prepare a site plan which proposed screening of the property from Drake Drive. A copy of the site plan is attached to this report. Staff is seeking a recommendation from the Planning Commission pertaining to the request for an amendment to the interim use permit with the following findings and conditions:

1. The proposed interim use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The horticulture use of the property shall be subject to all conditions provided for and further detailed in the attached Exhibit A (Settlement and Stipulation Agreement) with the following amendment:
 - a. Volkenant shall be allowed to maintain the temporary plastic covering on the 30X1 00 Hoop House year-round.
 - b. Volkenant shall be allowed to maintain the temporary plastic covering on the 20 X 80 Hoop House year-round.
3. The applicant shall pay for all costs associated with the City's review and processing of the requested amendment to the interim use permit.

Vose explained the amended IUP does not allow the applicant to get out of the original settlement agreement. Betts asked about the hoop house and once a freeze hits. Volkenant said the current style is temporary and not re-usable and the one she will put on will be a much higher grade and last 5-7 years. Grotting disagreed with the legal opinion as this was a request for further change after a negotiated agreement with the City. Betts said maybe there should be different applications for structures like this that are more than temporary. Vose said some cities spell out the types of structures that don't count against structure space. He noted Independence does not differentiate structures.

Spencer said he is concerned that if this approved is it backward engineering that hoop houses are not accessory structures. What if someone comes in and wants to put up a huge hoop house for horses. He noted the City has already been through a big legal process with the original settlement. Vose said that someone may come in and argue that this is not fair. He noted the facts are never truly identical. Spencer said if these structures don't count then someone can come in and say they want a pole barn in addition to their hoop house. Spencer said the agreement was put in place to deter people from putting up these hoop houses all over. Vose said the answer may be that anything temporary or permanent count. Spencer said the applicant has been waiting too long for an answer. Grotting said Council gave them answer originally and now it is back in front of them. Johnson said he was disappointed when he saw this application coming in so quickly after the agreement.

Volkenant said she didn't want to open a can of worms, but she needs to order the plastic in order to put it on by November. Grotting asked if there was anything else other than this issue that is not in the agreement that also needs to be looked at.

Motion by Grotting, second by Johnson to approve RESOLUTION NO. 19-1001- 03 for an amendment to the existing interim use permit previously granted on the property located at 5835 Drake Drive, Independence, MN (PID No. 26-118-24-43-0006) Ayes: Johnson, Grotting and Betts. Nays: Spencer. Absent: McCoy. MOTION DECLARED CARRIED.

10. Open/Misc.

11. Adjourn.

Motion by Spencer, second by Grotting to adjourn at 7:42 p.m.

Respectfully Submitted,

Trish Gronstal
Recording Secretary