

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, OCTOBER 20, 2020 –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. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

2. ROLL CALL

PRESENT: Mayor Johnson, Councilors Betts (virtual), Spencer, McCoy and Grotting

ABSENT:

STAFF: City Administrator Kaltsas, Assistant to Administrator Horner (virtual), City Attorney Vose (virtual)

VISITORS: WHPS Chief Kroells

3. ****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 October 6, 2020 Regular City Council Meeting.
- b. Approval of Accounts Payable; Checks Numbered 20005 to 20028 (Checks Numbered 19944-2004 were not printed as a result of being out of order and will be used for next check run).

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

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

Johnson noted that item number (9) on the agenda (Discussion regarding compliance of the Conditional Use Permit granted for the property located at 3315 County Road 92 N. (PID No. 09-118-24-34-0004) would be moved to the November meeting.

5. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- Planning Commission Meeting

Grotting attended the following meetings:

- Planning Commission Meeting

McCoy attended the following meetings:

- Planning Commission Meeting

Betts attended the following meetings:

- Planning Commission Meeting

Johnson attended the following meetings:

- Love Inc., Annual meeting (virtual)
- Planning Commission Meeting
- Northwest League of Municipalities
- Sensible Land Use Coalition (virtual)
- Small Cities Council meeting (virtual)
- Senior Community Services (virtual)
- Honor the Blue event in the Delano City Park

Horner attended the following meetings:

Kaltsas attended the following meetings:

- Highway 12 Meetings (MnDOT projects)
- Met with BKV architects

6. Trevor Clemming Jr. (Applicant/Owner) requests that the City consider the following action for the property located at 2740 Nelson Road (PID No. 18-118-24-42-0001) in Independence, MN:
 - a. RESOLUTION 20-1006-01: Considering approval of a conditional use permit (CUP) to allow a commercial riding stable to be operated on the subject property.

Kaltsas said the property is located on the east side of Nelson Road, south of TH 12 and north of Dean Lane. This property is located on the paved portion of Nelson Road. The property is comprised of an existing home, barn, riding arena and several additional detached accessory structures. The property has pasture areas, paddocks and a wetland in the southeast corner. The Applicant recently purchased the subject property and approached the City about the possibility of obtaining a conditional use permit to allow boarding and commercial riding stable operations on the property. The property has historically been operated as a private horse farm. There are eight stalls located within the existing barn. There is an existing quonset style building that is used for storage and would be renovated inside to accommodate an additional 6-10 stalls. There is an existing indoor and outdoor riding arena. The indoor riding arena and barn are connected.

Commercial riding stables are a conditional use in the Agriculture zoning district. The subject property is zoned Agriculture. The City generally allows 1 animal unit on the first two acres and then 1 additional animal per acre. Of the 25 acres, approximately 21 acres is useable upland based on the national wetland inventory and Hennepin County natural resources mapping. Applying the City's typical standard, the site would accommodate 24 animal units using the gross acreage.

The City has historically required that the applicants comply with a manure management plan, maintain all applicable permits relating to the management of manure on the property and maintain 1/3 acre of open pasture per animal unit. In December 2018, City Council adopted a Manure Management Policy for the City. The policy provides regulations relating to the management of manure associated with commercial horse operations in the City. This property is subject to the Manure Management Policy.

The subject property is primarily comprised of open pasture, several small tree stands and a wetland in the southeast corner. There are approximately 15 acres of open pasture. The requisite amount of open pasture needed to comply with the City's Manure Management Policy (1/3 acre per animal unit) would be 8 acres (24 animal units). The applicant noted that the horses are not fully dependent on pasture grazing as all horses will be boarded inside the stall barn or renovated quonset building and receive hay and feed supplements.

The proposed commercial boarding stable would have the additional following characteristics:

1. The existing horse indoor riding arena is one-story and 8,400 SF in size.
2. The existing barn is 2,275 SF and has a total of 8 stalls.
3. There would be no full-time employees on the property. The Applicant is working with a trainer that would provide lessons and boarding for private clients. The typical number of guests on the property during regular hours will be 3-5. There may be additional guests for group trainings and clinics.
4. The applicant has stated that they would initially have 16 horses on the property in addition to the cows that are currently on the property. They would like to have the option to accommodate a maximum of 24 animal units on the property.
5. Ferriers would come to the site to shoe the horses on a regular basis.
6. There would be regular garbage service and deliveries to the property.
7. Manure is proposed to be collected on-site and stored in a new manure enclosure that would have a concrete floor and wood wall construction. The applicant would like to spread the manure if possible, in accordance with the manure management policy. Any manure that could not be field spread would be hauled off-site as needed.
8. The applicant has already received a delivery of hay that will provide an adequate supply for this upcoming winter. Hay would be delivered as needed after that supply is consumed.
9. The City typically regulates the number of events, training sessions or gatherings that are greater than 15 people in size through the conditional use permit. The City has commonly applied a limit to no more than two larger events per year that would allow up to 50 people. Any event greater than 50 participants would be subject to the review and approval of a large assembly permit.
10. The Applicant has worked with the City to provide a site plan of the existing and proposed conditions.

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 has reviewed the site and discussed the operation of the proposed commercial riding stable with the applicant. The following additional considerations should be noted by the City:

- This property has historically been operated as a private horse farm and riding stable.
- The proposed use as a commercial riding stable generally fits into the character of the surrounding area and is in keeping with the City's Comprehensive Land Use Plan. It should be noted that there is a cluster of five-acre parcels located west and north of the subject property. All properties in this area are guided for long-term Agriculture.
- The applicant will need to fully comply with the City's recently adopted Manure Management Policy. This will include maintaining the prescribed buffer from the existing wetland located in the southwest corner of the property and constructing a new manure containment area.

The location of the property, the orientation of the buildings and their relationship to the surrounding properties and the existing use of the property as a private horse farm aid in mitigating potential impacts relating to the commercial use of the property. The City will need to find that the proposed commercial riding stable meets the requirements for granting a conditional use permit. The City discussed the proposed conditional use permit and asked questions of the City and applicant. Commissioners asked about additional traffic on Nelson Road and whether or not there would be any issues associated with dust control. It was noted that this property is located on the portion of Nelson Road that is paved.

Commissioners and the applicant asked about the number of animal units and how the City calculates other animal units such as pigs. The City described the way that animal units are calculated. The City also clarified that the total number of animal units on the property cannot exceed the maximum permitted regardless of the CUP. Ultimately the Planning Commission recommended approval of the proposed CUP with a clarification to the number of animal units that clearly notes the maximum number of animal units includes all animals on the property including the horses to be boarded.

The Planning Commission recommended approval of the request for a conditional use permit with the following findings and conditions:

1. The proposed conditional use permit requests meet all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Ordinances.
2. The conditional use permit will include the following conditions:
 - a. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
 - b. Any new signage shall comply with all applicable standards of the City's ordinance and require a sign permit.
 - c. No more than 24 horses shall be boarded on the property. The maximum number of animal units, including horses to be boarded on the property, shall not exceed 24.
 - d. The applicant and facility must operate in compliance with the City of Independence Manure Management Policy.
 - e. The hours of operation are: 7:00 am – 10:00 pm.
 - f. No parking shall be permitted on public roadways.
 - g. Two (2), one day, horse related events (greater than 15 participants and less than 50) will be permitted per year and shall comply with the following provisions:
 - The horse related events shall occur during the permitted hours of operation.

- No more than 50 participants shall be permitted at each event.
 - h. No renting of hack horses shall be permitted.
 - i. No riding on adjacent private land unless authorized by owners. j. Must utilize appropriate management practices to control flies and odor.
 - k. No riding on adjacent private land unless authorized by owners.
 - l. No future expansion of the accessory structures shall be permitted on the property without the further review and approval by the City through the conditional use permit amendment process.
3. The applicant shall pay for all costs associated with the review and recording of the resolution for a conditional use permit.
4. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Johnson asked if there were different pastures for manure management. Kaltsas noted there were many pastures and they would like to apply manure but will have to do soil testing. Kaltsas noted that the Planning Commission changed item 2c to no more than 24 horses. Christina Clemming said they plan to put the stalls back up and confirmed that there are separate pastures. Betts said it was a very nice operation and a nice plan.

Motion by Grotting, second by Betts to approve RESOLUTION 20-1006-01 approving a conditional use permit (CUP) to allow a commercial riding stable to be operated on the property located at 2740 Nelson Road (PID No. 18-118-24-42-0001) in Independence, MN. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

7. Darryl Jorgenson (Applicant) and Mary Jorgenson (Owner) request that the City consider the following action for the property located at 4594 Shady Beach Circle, Independence, MN (PID No. 02-118-24-21-0029):
- a. RESOLUTION 20-1006-02: Considering approval of the Final Plat and Development Agreement for the subdivision to be known as Shady Beach Park.

Kaltsas said the subject property is located on Lake Sarah and at the end of Shady Beach Circle. The City recently approved a minor subdivision which allowed the original parcel to be split into two parcels. The vacant parcel that was created has an existing pond and bituminous trail. The property has the following site characteristics:

The property is zoned RR-Rural Residential and is governed by the S-Shoreland Overlay District. Historically, the southern portion of the property was a part of the overall campground that existed on the property prior to the current residential developing occurring. The City approved a minor subdivision and preliminary plat of this property in May 2020 which allowed the house and accessory structure to be split off from the remainder of the property. The applicant is now seeking approval for a final plat that is consistent with the preliminary plat. Within the S-Shoreland Overlay zoning district, the City allows the subdivision of properties connected to City sewer into lots with a minimum size of one acre. The City has historically allowed lots that are within 1,000 feet from the OWHL and connected to sewer to be subdivided as long as they meet all other applicable criteria. The applicant initially requested that the City consider a subdivision of the property into four lots, one of which would have captured the existing home that is located across the street and on Lake Sarah. In order for the City to consider approval of the four lots, a variance to allow a lot that is less than one acre in size would have been required for the existing home.

Initially, an application was submitted to the City for the Preliminary Plat and Variance and was considered by the Planning Commission in February. The proposed final plat would establish two new lots that meet all applicable requirements of the City. There is one sanitary sewer stub that connects to Lot 1, Block 1 that can likely be used for a new home. One additional sanitary sewer connection would be required to serve Lot 2, Block

1. The new lots as proposed would have the following detail:

Block 2 Area Frontage Lot Frontage to Lot Depth

Lot 1 1.0 acres 235 LF ~1:1

Lot 2 1.4 acres 261 LF ~1:1

The City requires the following setbacks/lots standards for lots zoned RR-Rural Residential and in the S-Shoreland:

Side Yard Setback: 30 feet

Front Yard Setback: 85 feet from the centerline of road

Rear Yard Setback: 40 feet

Wetland Buffer Setback: 10 feet

Maximum Impervious Coverage: 25%

The City has reviewed the proposed final plat and found it to be consistent with the preliminary plat. The following comments and notes are offered for further consideration:

1. The applicant is proposing to connect Lots 1 and 2, Block 1 to the existing sewer line running along Shady Beach Circle. There is one existing sewer stub that will serve Lot 1. Lot 2 will require a new service stub. In order to make the connection, it will be necessary to cut into the existing bituminous street. The two new proposed lots would be subject to applicable sewer fees. In addition to applicable fees, a sewer assessment of \$9,550 per lot is applicable to Lot 2, Block 1. The applicant is asking the City to consider collection of this fee at the time a building permit is applied for with the City.
2. The proposed home on Lot 1, Block 1 would be a slab on grade home with no basement. This is a result of the high-water table, existing grades and adjacent pond elevation. Lot 2, Block 1 is shown as a walk out basement that utilizes the natural grade of the lot. The City has reviewed the proposed grading and has minor comments pertaining to the proposed driveway culverts, grading and swales. The applicant has revised the plans to address the comments of the City. One unique element that will be required is an additional easement over a portion of the remainder property (see below). This easement will accommodate a new public storm sewer connection between the pond and the ditch of Shady Beach Cir. The existing shed and sidewalk will be removed prior to development.
3. The applicant will be required to enter into a Development Agreement with the City. A copy of the draft agreement is attached to this report. The agreement stipulates the maintenance of the existing pond, park dedication fees, sewer connection fees, public improvement conditions and requisite security.
4. Lots 1 and 2, Block 1 will be subject to applicable park dedication fees. The current park dedication fee is \$3,500 per lot for all properties up to 5 acres in size.

The proposed final plat will split the property into two lots. The two lots created meet all applicable criteria of the City's zoning and subdivision ordinance. The City will work with the applicant to revise the construction plans to address all advised comments outstanding following Council review.

Recommendation:

The City Council is being asked to consider approval of the proposed Final Plat of Shady Beach Park with the conditions noted below and found within the attached resolution.

1. The proposed final plat request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, and Chapter V, Section 500, Subdivisions, in the City of Independence Zoning Ordinance.
2. The Applicant shall address all comments made within this report, recommended by the City Council and required by the City's Engineer review of the subdivision.
3. The detached accessory structure on Lot 1, Block 1 shall be removed prior to issuance of a building permit for a new home on the property.
4. The Applicant shall prepare the legal description and convey the drainage and utility easement adjacent to the northerly property line of Lot 1, Block 1 as depicted on the Preliminary Plat of Shady Beach Park.
5. The Applicant shall enter into a Development Agreement with the City. The Development Agreement will provide for all applicable fees and details relating to the development and proposed improvements.
6. The Applicant shall pay for all costs associated with the City's review of the requested final plat
7. The Applicant shall record the final plat with Hennepin County within 180 days of the City Council approval.

Kaltsas noted the pond maintenance would be the responsibility of the 2 new owners and if they failed to do the maintenance then the City would take over and those properties would be assessed. He said all properties drain towards the pond.

Spencer said there was an error on the survey. He noted the pond is actually higher than the lake. Kaltsas said water will get above the pipe but then it will drain into the ditch and under the road. He noted there is separation of elevation of the water and the house. Kaltsas said the only outlet is to the lake. He said as part of the development the existing sidewalk would be removed by the applicant. There will be park dedication fees and the lots will be connected to city sewer. Kaltsas said the Planning Commission noted the final plat is consistent with the preliminary plat so it did not go back to Planning for a second review.

Johnson asked Mary Jorgensen if everything sounded good and she understood the information provided to be in line with what they are thinking. Attorney Tarrell Friedley said it looked good but noted the small building would be taken down after the house permit was approved. Mary Jorgensen said she listened to the whole meeting and it all sounds ok. Betts said everything looked good as well.

Vose said he would give Kaltsas a "virtual pat on the back" due to the work on the pond maintenance. He noted Kaltsas steered us toward a pond maintenance agreement and this is good protection for the City and hopefully it will not become an issue. Kaltsas noted the City would maintain the storm sewer ponds.

Motion by Spencer, second by McCoy to approve RESOLUTION 20-1006-02 approving the Final Plat and Development Agreement with the reduced park dedication fee and approval for the bath house to remain until the building permit is pulled for said lot for the subdivision to be known as Shady Beach Park located at 4594 Shady Beach Circle, Independence, MN (PID No. 02-118-24-21-0029). Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

8. Discussion regarding compliance of the Conditional Use Permit granted for the property located at 3315 County Road 92 N. (PID No. 09-118-24-34-0004).

Stephen Eckman said he remembers sitting here before and is concerned that this is being put off again. He asked if they would consider this as he is trying to help other neighbors. He noted this is a 26-year problem and as neighbors they are concerned with the abject, non-compliance of this property. He noted the sign out front and the noise.

9. Discussion relating to the interpretation and application of setbacks for detached accessory structures within the City.

Council was recently notified of a potential discrepancy in an interpretation of the rear yard setback for a property located at 6098 Wood Hill Lane. Staff had initially made an interpretation relating to the designation of the rear and side yard for this property. When the formal building permit was submitted and reviewed, it was determined that there was no basis for the previous interpretation and the applicant was notified of the actual setback requirements based on the City's zoning ordinance.

The City clearly identifies the front, rear and side yards and stipulates setbacks for each yard. The City further provides setbacks for both detached accessory structures as well as principle structure setbacks.

Subd. 53. "Lot line, front." The line connecting the side lot lines of a lot measured along the boundary of the right-of-way designated by the city council to serve the lot.

Subd. 54. "Lot line, rear." The lot line that is opposite the front lot line. If the rear line is less than ten feet in length or if the lot forms a point at the rear, the rear lot line is a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

Subd. 55. "Lot line, side." Any lot line that is not a front lot line or a rear lot line.

Subd. 2.

Setbacks. All buildings and structures, including houses with attached garages or decks, must meet or exceed the following setbacks:

(a) Front yard setback: a 85 feet from centerline of road.

(b) Corner yard setback: c 51 feet from right-of-way line.

(c) Side yard setback: a b 30 feet from side lot line.

(d) Rear yard setback: a 40 feet from rear lot line.

(e) Setback from lakes, rivers and streams: 100 feet from ordinary high mark.

(f) Setback from wetlands: ten feet from the outside edge of the required wetland buffer.

(g) Fences, trees, shrubs, or other appurtenances are not allowed within any road right-of-way.

a Except buildings housing livestock, which may not be located closer than 150 feet from an existing residential structure on all adjacent property.)

b Except detached garages and other accessory buildings, which may be 15 feet from the side lot line.)

c All principle and accessory structures shall meet the corner yard setback requirements.)

The City currently requires detached accessory structures to have a 15-foot side yard setback and a 40-foot rear yard setback. The lot that was in question has a clear front and rear yard; however, the lots to the east, west and south all have unique conditions that bring into question the side and rear yard setbacks. In addition, the lot that is directly north of the subject property has a side yard condition that abuts this lots rear yard condition. This means that the subject property has to maintain a 40-foot setback, but the property to the north can build a structure to within 15 feet of the same line. Staff has been looking for a possible solution to the issue presented to the City. Staff and the City Attorney have discussed the issue and determined that there are two possible solutions:

- The City could grant a variance to allow a reduced rear yard setback
- The City could amend the zoning ordinance to reduce (or change how it is applied) the rear yard setback for detached accessory structures.

Staff has looked at the ordinance and believes that it is reasonable to consider reviewing the rear yard setback for detached accessory structures. The City could look at a provision that would accommodate situations where there are two different prescribed setbacks for a common property line (i.e. the rear yard of one lot is the side yard of an adjoining lot). The City could determine that in this type of situation, the lesser of the two setback requirements could apply to both lots. The City could also look at reducing the requisite setback from 40 feet to something closer to 15 feet. It is often a typical condition that detached accessory structures such as sheds, would be located in the “back corner” of a property. Having a consistent rear and side yard would eliminate the discrepancy and remove the need to interpret side and rear property lines that do not clearly meet the prescribed definition.

Staff is seeking Council direction relating to this issue. If City Council agrees that the ordinance should be reviewed for a possible amendment, staff can be directed to go through the process for considering an ordinance amendment.

Betts said she thought neighboring properties and property size should be considered. Kaltsas agreed. Vose reiterated what had been said and noted nothing changes code or zoning. He noted whatever staff says and interpretation cannot be blamed on individual staff. Vose stated the law can't be rewritten tonight and the setbacks may not be ignored. Grotting stated no work should be done without a permit. Kaltsas said they could look at an amendment to the ordinance instead of a variance. McCoy asked what the philosophy was behind a 40' rear yard and 15' side yard setback.

Johnson said it could be sent to Planning in October with a Public Hearing in November and then to Council in December. Spencer noted that with some of the odd shaped developments there are conflicting definitions. Vose stated there are theoretical legal issues that only Council can decide as it is not a legal problem. Kaltsas said the ordinance could be amended to allow a committee to look at the process.

Motion by Betts, second by Spencer to allow Staff to review the ordinance regarding setbacks and look at redefining the administrative process to bring to Planning for a recommendation. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

10. OPEN/MISC.

11. ADJOURN.

Motion by Grotting, second by McCoy to adjourn at 8:17 p.m. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary