

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, DECEMBER 1, 2020 –6:30 P.M.
(Virtual Meeting/ All Attendees)

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 (Note: all noted present were “virtually” present

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

ABSENT: None

STAFF: City Administrator Kaltsas, Assistant to Administrator Horner, City Attorney Vose

VISITORS: Mark Theirotff, Vince Velie, WHPS Chief Kroells, Stephen Eckman

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 November 17, 2020 Regular City Council Meeting.
- b. Approval of Accounts Payable; Checks Numbered 20072-20092.
- c. Pay Request #3 from Wm. Mueller and Sons, Inc. for work completed on the 2020 Overlay Project Through 2020.
- d. **RESOLUTION 20-1201-01** – Certifying Delinquent Sewer Service Charges.
- e. Approval to not waive the monetary limits on Tort Liability established by MN Statutes, to the extent of the limits of liability coverage obtained from the LMCIT.

Johnson tabled Resolution 20-1201-01- Certifying Delinquent Sewer Service Charges.

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

Johnson noted that one of the accounts on the delinquent list had paid a portion of their bill. (5080 Fern Dr.) Kaltsas noted the new amount to be certified would be \$322.30 and he would correct it on the certified copy accordingly.

Motion by Betts, second by McCoy to approve RESOLUTION 20-1201-01 – Certifying Delinquent Sewer Service Charges with the noted change on 5080 Fern Dr. Ayes: Johnson, Spencer, McCoy, Betts 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.

5. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- None

Grotting attended the following meetings:

- None

McCoy attended the following meetings:

- None

Betts attended the following meetings:

- None

Johnson attended the following meetings:

- National League of Cities (virtual)
- Metro Cities Annual Meeting (virtual)
- Senior Community Services Board Meeting (virtual)
- Jim Ramstad’s funeral (virtual)

Horner attended the following meetings:

- Met with BKV architects

Kaltsas attended the following meetings:

- Bi-weekly meeting on County Road 92 and Highway 12 projects

7. 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).

Kaltsas stated that last year the City completed its regular compliance review of all conditional use permits in the City. Following inspection of the majority of conditional use permits and after an extended period of time and opportunities were granted to property owners to bring non-compliant properties into compliance, it was recommended that a handful of conditional use permits be considered for revocation. The City Council revoked a number of conditional use permits in February 2019 based on non-compliance or no longer being used by the property owner.

The property located at 3315 County Road 92 N. was notified of a hearing for revocation at the February 5th City Council Meeting. The property identification number was mistakenly not included in the revocation resolution. The City identified this error and looked to make a correction at the July 30, 2019 City Council Meeting. The City Council considered the matter at the July 2019 meeting. The future buyer of the property attended the meeting and asked the City Council to consider postponing a decision on the CUP revocation. The buyer described his intent to clean the property and bring it into compliance with applicable conditions associated with the conditional use permit. Council discussed the matter and ultimately decided to table revocation of the CUP. After a lengthy Council discussion, it was noted that the purpose for tabling the CUP was to allow the buyer and opportunity to consider and make application for an Interim Use Permit. The

Interim Use Permit would allow a reasonable public process to be authenticated and relevant current details of the business to be considered by the City.

The purchaser of the subject property, Vincent Velie, made an application to the City in October of 2019 for an Interim Use Permit. The City reviewed and processed the IUP. The Planning Commission considered the IUP in February 2020 and were unable to pass a motion to approve nor deny the application. Ultimately, the IUP was withdrawn by the applicant before City Council consideration on the matter. At the request of Mr. Velie's Attorney, the City inspected the site in April 2020. The City prepared a letter with the findings of the inspection. A copy of the inspection letter is attached to this report. Mr. Velie's Attorney has also provided the City with a list of equipment and vehicles on the property that Mr. Velie does not use in his business. The City has also received several additional letters or correspondence from neighboring property owners relating to the use of the property in 2019 and 2020. In addition to the inspection made by staff, West Hennepin Public Safety has been called to the property for several additional complaints. Mr. Velie's Attorney has prepared an additional letter to the City relating to a concern addressed by WHPS on June 26th, 2020. It should be noted that WHPS had visited the site prior to this incident and had given the owner a verbal warning to discontinue burning on the property.

The City Council is being asked to consider the information presented and to provide direction to staff relating to the status of the revocation of the existing conditional use permit that was tabled in 2019.

Vose noted the history of the property and addressed three legal points. He said Conditional Use Permits run with the land and do not expire from owner to owner. He noted that is the difference between a Conditional Use Permit and an Interim Use Permit which has an expiration date. CUP's have to have conditions that are in place and observed for the permit to remain in effect. Vose said the second point is that the correspondence being addressed in the letters from the property owner's attorney alludes to past violations not applying to the current owner. Vose said that is incorrect and that past violations may be considered. The final point addresses business versus general life use of the property. He said the requirements have to be understood in how they apply to the property in regard to how the business is operated versus general life operations.

Theirotff (Attorney for Velie) stated the property was an entirely different place that was presented in earlier pictures submitted of the property. He said the CUP points to the property interest and the reason Velie bought the property. Theirotff noted Velie has spent thousands of dollars improving the property after he purchased it. Theirotff said item "k" is basically a "catch all" and the noise over the past year has been in direct relation to Velie improving the property and not business violations.

Spencer said he spoke with the seller's realtor and there was no guarantee of the transfer of the CUP with the purchase of the property. Theirotff said it does not matter because the CUP transfers with the property regardless. Spencer said the CUP was issued with some amnesty's in the 1990's and there is a limitation that the business may not be expanded. Vose noted the language quoted is from the ordinance and the underlying theme is whether the conditions are consistent with the original operation.

Betts asked why Velie was not considering an Interim Use Permit instead of a CUP. Theirotff said it was not desirable as it would have an expiration date.

McCoy asked if in light of Ordinance 88 and if this property has seen an expansion or uptick in the CUP. Kaltsas said that would be subjective and it would have to be investigated since original approval. Spencer asked if storage sheds added would be an expansion of use. Kaltsas said there were three sheds added that were not part of the original CUP and permits were not pulled. An amendment should have been pulled to add those per the CUP.

Stephen Eckman said he lives across the street from the property at 3315. He said this property has been a problem that dates back to amnesty times some 26 years ago. He said there has been landscaping, tree grinding and employees coming and going which are not compliant per the zoning of this area. Eckman said Poole never complied with the CUP that Council approved 26 years ago. He said the 2005 Ordinance revision of non-compliant CUP's would be expired if not complied with after inspection. Eckman suggested the CUP is no longer in effect and formal revocation is not required in his opinion. He agrees with Spencer that Velie acknowledged in writing at the closing that the CUP was not in effect. Eckman said Velie's use of the land is commercial in an ag district which makes it non-conforming and illegal. He said if there is some loophole found within law then it should be dissolved because of repeated violations. It is not fair to neighbors and this situation should be nipped in the bud. Eckman urged the Council to put a stop to this CUP.

Grotting asked Vose why the CUP was not dissolved years ago when the activity stopped. Vose said it relates back to condition number 1 which outlines the CUP running with the land. Vose said if the majority of the Council feels the CUP should not continue than it would be through non-compliance and the issue of non-use is not the hand to play. Violations are a valid basis to revoke. Grotting said he feels this was an amnesty CUP structured around the behavior of the owner at the time. It appears the structure of that business was significantly less than what is going on now with the property. Vose said Council could look at the scope of operations going on now those facts would have to be brought forth and examined as evidence to bear. Johnson asked about information coming from the building inspector and what that file looks like. Kaltsas said there is a file and it is available publicly.

Spencer asked about item (k) which addresses neighbor's reasonable enjoyment of their property and the large fires that have occurred on the property. Vose said that goes back to his comments that business operations and general use need to be brought into conformance per Ordinance 88. Spencer asked Kroells for comments on the property. Kroells said Velie owns a tree trimming business and generates waste from that which he burns without obtaining a burn permit. He said he knows Velie is fully aware that burn permits are required and has gotten them for his other property in Independence but has never gotten one for this property. Kroells said he has called Velie and told him that a permit is required but Velie has not complied. He questions why Velie has not done this for this property.

Theirotff said the way he understands it is that his client is contesting the citation he was served for not getting a burning permit as when he went to obtain the police station was closed due to Covid. He said that his client was the one that made the call for protection for himself on the domestic call noted and it was not a situation where someone called on him.

Betts said there should be more inspection on what is actually going on and did the previous owner have some of the same activities that are going on now. Johnson said that is why records of inspections would be good to look at for a better grasp of any expansion of business. Betts said if there has been an expansion than that is a reason to revoke the CUP. Spencer said Poole's CUP is very limited and thinks the argument could be made that the businesses are very different. He said it would be very hard to operate under the original CUP without an amendment. Spencer said his personal opinion is that the CUP should be revoked. McCoy was disappointed when the IUP was pulled off the agenda by Velie as he thought it was on the road to a compromise. He said it now leaves the City with little choice and in a tough spot. McCoy said the offer was there to try and work it out, but the offer was pulled off the table by Velie.

Motion by Spencer, second by Betts to ask staff to prepare a resolution denying the CUP that would be brought before the Council at the December 15th meeting for non-conformance due to the expansion of the business and added buildings on the property located at 3315 County Road 92 N. (PID No. 09-118-24-34-0004). :

Johnson, Spencer, McCoy, Betts and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

8. Consider Adoption of the Final 2021 Tax Levy and General Fund Budget and Associated Actions.
 - a. **RESOLUTION 20-1201-02** – Adopting the 2021 General Fund Budget.
 - b. **RESOLUTION 20-1201-03** – Adopting the 2021 General Tax Levy.
 - c. **RESOLUTION 20-1201-04** – Adopting the 2021 Pioneer Sarah Creek Watershed Management Commission Tax Levy.

Motion by Spencer, second by McCoy to approve RESOLUTION 20-1201-02 – Adopting the 2021 General Fund Budget. Ayes: Johnson, Spencer, McCoy, Betts and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

Motion by Spencer, second by Betts to approve RESOLUTION 20-1201-03 – Adopting the 2021 General Tax Levy. Ayes: Johnson, Spencer, McCoy, Betts and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

Motion by Johnson, second by Spencer to RESOLUTION 20-1201-04 – Adopting the 2021 Pioneer Sarah Creek Watershed Management Commission Tax Levy. Ayes: Johnson, Spencer, McCoy, Betts and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

Spencer noted the work Commissioner Joe Baker has done with the Pioneer Sarah Creek Watershed district which has been extremely diligent and resulted in a relatively flat levy for several years.

9. A proposed text amendment to the City of Independence Ordinances as follows:
 - a. **ORDINANCE NO. 2020-03 (Summary Ordinance 2020-03)** - Chapter 5, Section 530.03 and 530.07, Physical Standards in both the Agriculture and Rural Residential zoning districts – Considering an amendment to detached accessory structure setbacks. The potential ordinance amendment considers both the process for reviewing accessory structure setbacks and the required setback.

Kaltsas said following the discussion and direction provided by the City Council and Planning Commission, staff has prepared an ordinance amendment for further consideration and direction by the Planning Commission. The following changes have been made to the ordinance:

- The rear yard setback can be reduced by the Accessory Building Review Committee if all applicable criteria are met. The primary reduction would allow a rear yard setback reduction equal to the requisite setback of the adjacent property sharing the same line. For example, if an adjacent property has a side yard setback of 15 feet, then the rear yard setback could be reduced up to 15 feet.
- I added a provision that would allow a similar reduction for properties that abut Out lots. This occurs in cluster type developments where a perimeter Out lot was created for public space.
- I noted that a setback resulting from a non-conforming structure or variance cannot be used to determine a reduced setback.

- I added a provision to the front yard setback that provides for properties that do not have a front yard that abuts a public right of way.

Staff reviewed the possibility of adding a provision which would regulate the size and or height of an accessory structure as it pertains to this reduced setback. I am not sure that there is an identifiable and or logical “break” point where a hard limitation would be appropriate. By requiring all reductions to be reviewed by the building review committee, the City will be able to review each individual proposal on its own merit. One resident was present at the public hearing and noted that he would support the recommended changes and was in favor of allowing a reduction to the rear yard setback. Planning Commissioners discussed the proposed amendment. Commissioners asked if surrounding neighbors should have the ability to reject the request. It was further discussed that the reason the neighboring property owners would be notified is to ensure that they are aware of the proposed construction. Commissioners confirmed that if a request was denied by the Accessory Building Review Committee, an applicant could seek a variance through the formal process. This was confirmed by staff.

Commissioners discussed the impacts of this provision on property that abutted public property (i.e., the Luce Line Trail). Commissioners discussed this for some time but ultimately agreed that the onus would fall on the applicant to obtain written permission from the property owner (state or otherwise). If this was not attainable, it was noted that the applicant could go through the variance process. Commissioners ultimately recommended approval of the ordinance amendment to the City Council. The City Council is presented with an ordinance amendment (**ORDINANCE 2020-03**) for consideration and adoption. A summary ordinance (**SUMMARY ORDINANCE 2020-03**) has also been presented for adoption should the Council approve the ordinance.

Johnson stated the Planning Commission did a great job analyzing this and commended them on their work. Betts asked if this would require it to come to back to Council if looking at approval. Kaltsas said it would not be required if all conditions are met.

Motion by Grotting, second by McCoy to approve ORDINANCE NO. 2020-03 (Summary Ordinance 2020-03) - Chapter 5, Section 530.03 and 530.07, Physical Standards in both the Agriculture and Rural Residential zoning districts – Considering an amendment to detached accessory structure setbacks. The potential ordinance amendment considers both the process for reviewing accessory structure setbacks and the required setback. Ayes: Johnson, Spencer, McCoy, Betts and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

10. A proposed text amendment to the City of Independence Ordinances as follows:

- a. **ORDINANCE NO. 2020-04 (Summary Ordinance 2020-04)** - Section 1100 relating to cigarettes and cigarette wrappers – Considering an amendment to address the new statutory age limitations that were adopted by the State of Minnesota.

Johnson asked why the City needed to do this as it was already a State Ordinance. Kaltsas said it has been revised to be consistent with the state statute. Kroells said they are trying to prevent the use of drugs, alcohol and tobacco by children by updating the ordinance from 18 to 21 years of age. He noted that the police are not allowed to issue citations for underage use which makes it frustrating to enforce.

Kaltsas stated on August 1, 2020, the Minnesota State Legislature updated the tobacco laws to reflect changes in the Minnesota State Statute 144.391 to prevent young people from starting to use tobacco products. The

minimum age required to purchase tobacco products has been raised from 18 to 21. Staff has worked with the City Attorney to revise the ordinance to bring it into compliance with the recently adopted state statute.

The City Council is presented with an ordinance amendment (**ORDINANCE 2020-04**) for consideration and adoption. A summary ordinance (**SUMMARY ORDINANCE 2020-04**) has also been presented for adoption should the Council approve the ordinance.

Motion by Johnson, second by Spencer to approve ORDINANCE NO. 2020-04 (Summary Ordinance 2020-04) - Section 1100 relating to cigarettes and cigarette wrappers – Considering an amendment to address the new statutory age limitations that were adopted by the State of Minnesota. Ayes: Johnson, Spencer, McCoy, Betts and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

11. Consider Approval of the New City Single Sort Recycling Contract with Randy’s Environmental Services.

a. **RESOLUTION 20-1201-05** – Approving the contract for recycling services.

Kaltsas said the City has historically contracted with a waste service provider to provide single sort recycling services for all Independence residents. The current contract ends on December 31, 2020. The City prepared and sent out a Request for Proposals (RFP) in September of this year to obtain proposals for a new contract. Due to contraction, acquisitions and mergers within the industry, the City received only one proposal from our current provider (Randy’s Environmental Services). The City subsequently reached out to all possible service providers to see if anyone else was interested in providing a proposal for service.

The proposed recycling contract would increase the annual recycling contract from \$50,885 in 2020 to \$66,677 in 2021. It was noted that the City’s current contract proved to be advantageous to the City due to its length and the significant change in commodity pricing. This represents an approximately 25% increase in the cost of obtaining the recycling service. In discussions with providers, it was noted that the price increase generally reflects a significant reduction in the pricing of commodities that has occurred for the past several years. One other item of note is that the previous contract was a seven (7) year contract. As a result of the lack of competitive bids, the proposed contract length is three (3) years. The City can seek a different length in contract if directed by the Council. The proposed contract has an annual increase of 2.75% to offset the declining commodities market. The service will provide each property of the City with a 65-gallon single sort container that will be picked up every other week. Residents can request a 96-gallon single sort container if they would like a larger container at no cost.

Motion by Spencer, second by Grotting to approve RESOLUTION 20-1201-05 – Approving the contract for recycling services. Ayes: Johnson, Spencer, McCoy, Betts and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.

12. OPEN/MISC.

Johnson noted that the City of Maple Plain cancelled the “View Santa” event this year without input from WHPS. Kroells stated there has been a 40-year tradition of hosting the “View Santa” event for children which also combined a food drive. He said this was a result of limited social gatherings per Governor’s Walz order due to Covid19. Maple Plain then contacted Kroells and requested the cancellation of the event. Kroells stated 70-80 percent of the event takes place in Maple Plain so he did cancel the event for this year. Kroells

encouraged people to continue to donate to local food shelves that are needing the donations. Betts said it would have been nice to have a discussion with the Police Commission.

13. ADJOURN.

Motion by Johnson, second by Spencer to adjourn at 8:37 p.m. Ayes: Johnson, Grotting and Spencer. Nays: None. Absent: Betts and Spencer. None. Abstain. None. MOTION DECLARED CARRIED.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary

DRAFT