

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, DECEMBER 13, 2011 – 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 7:34 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL.

PRESENT: Mayor Johnson and Councilmembers Betts, Spencer, Wenck and Wallace (arrived 8:28 p.m.)

ABSENT: Councilmember Wallace

STAFF: Clerk – Administrator Hirsch, City Planner Kaltsas, City Attorney Vose

VISITORS: LuAnn Brenno, Jim and Lynda Franklin, Larry Palm, William Thomas, Colin Brown, Deb Gatz, Ralph and Mary Widman, Andy Lawson, Drew Lawson, Kelby Lawson, Kathy Pluth, Mike Zeglin, John Zeglin, Marc Dahlquist, Steven Hohag, Scott Johnson, Darryl Jerdee, Tim Gleason, Margaret Jerdee, Michael Keane, Neill Ward, Kathy and Chuck Theis, Charlie Brown, Mitch Cook, Joe Avery, Dan Ament, Scott Larson, Marta Patterson

4. CONSENT AGENDA.

Approve:

- Approval of Council Minutes – November 29<sup>th</sup>, 2011
- Approval of Accounts Payable for December, 2011
- Approval of Ordinance No. 2011-14 Excel Electric Franchise Agreement amendment
- Approval of the fee increase for fire and police services to Vinland Center
- Approval of the Large Assembly Permit for the 6<sup>th</sup> Annual DA Shiver Fishing Tournament on Lake Sarah, sponsored by the Crow River Youth Hockey Association, to be held on Saturday, February 4, 2012

Betts had a minor change to the November 29, 2011 minutes.

**Motion by Betts, seconded by Wenck, to approve the consent agenda. Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

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

Johnson stated Hirsch wanted to add two items to the agenda:

- Resolution to transfer funds
- Evaluation of completion of Franklin Hills Road

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

Spencer: Planning Commission, Meeting with Colin Brown  
Wenck: Sensible Land Use Coalition, Meeting with Medina City Council  
Betts: Maple Plain Fire Department Meeting, Sensible Land Use Coalition  
Johnson: Orono Healthy Communities, Metro Cities Meeting, Sensible Land Use Coalition, Maple Plain Fire Department Meeting, Meeting with Medina City Council, Farm Service Agency County Agriculture Recognition Program, Community Action Partnership for Suburban Hennepin County Finance Committee Meeting, Highway 55 Corridor Coalition, Orono School Board meeting, Hometown Hero Visit to Discovery School  
Hirsch: Hennepin County Election Meeting for 2012, Meeting with water resources firm Hakanson Anderson and Meeting with Medina staff to discuss Vinland Center

Kaltsas reported that he, the Clerk-Administrator and the City Engineer met with Medina city staff to discuss Vinland Center. The Medina City Council had made some informational requests and at this meeting they discussed who would provide what information. The City Engineer will be putting together a review of the capacity potential and limitations in Independence's system as well as looking at the lift station. He stated they have scheduled another meeting with Medina for after the first of the year. He said they would also need to look at the Loretto sewer connection and how it affects their system.

Johnson said there did not seem to be a real change on flowage with the properties on Lindgren Lane. Kaltsas stated they hope to get enough information to move forward. The goal would be to show that it can work and to also get the support of the Met Council. Johnson stated that Medina's concern is what type of development it would bring in and he stated Vinland is under a conservation easement and could not be developed.

7. SNOWMOBILE TRAILS 101, TONY SALZAR – DNR CONSERVATION OFFICER AND STEVE HOHAG – NORTHWEST TRAILS IN HENNEPIN COUNTY.

DNR officer Tony Salzar was called out on an emergency call and was not present at the meeting.

Steve Hohag, from St. Michael, reported that he is the trail administrator for the Northwest Trails Association. He stated it is a volunteer organization and they have been around for 35 years. He stated

they are made up of four smaller clubs: Hamel, Loretto, Brooklyn Park and now Maple Plain. Hohag stated they are responsible for acquiring and maintaining trails. His job is to work closely with the DNR filing applications and obtaining funding. He makes sure the trails have signage and the appropriate permits.

Hohag stated their trail begins up in Dayton and their goal is to connect it with the Luce Line Trail. They work closely with Three Rivers Parks.

Spencer asked if snowmobilers on this trail would be required to have a trail pass. Hohag stated that if they are off their private property, it is an absolute must that they obtain a trail pass. The snowmobile must also be licensed with the state. Spencer asked who is responsible for maintaining the trail. Hohag replied there are assigned trail captains in each area. Each trail captain is responsible for working with the area land owners or with council if issues arise. They also have trail liability insurance.

Johnson clarified the signs will come down in the spring. Hohag stated that 90% of the signs must come down. Betts asked about the size of the trail groomer. Hohag stated it is about eight feet wide and about 43 feet long in its entirety. He stated they make sure intersections are cleared.

Marty Chelstrom stated he has two young certified riders and asked if there is a correlation between rider safety and groomed trails. Hohag stated there is a direct correlation and their association teaches rider safety to kids.

LuAnn Brenno, 7676 Turner Rd, inquired if the northwest trail association does anything with the Luce Line Trail. Hohag stated that it is the DNR or someone they contract with that grooms the Luce Line Trail. Brenno was concerned with snowmobilers also using the horse trail and she is unable to ride in the winter. Spencer stated that it is usually not someone in a snowmobile club that rides off the trail.

Spencer asked who residents should contact if they have a question or complaint. Hohag stated it is usually best to call the local police department who should have the club president's contact information.

Colin Brown, 5315 Sunset Lane, thanked the Council for their time. He stated that his goal is to work with municipalities, businesses and landowners to promote a way to get along. He will act as trail captain for the area.

Brown had several proposals for Council. He would like to do some brushing along some of the right of ways on the County roads as well as put in a bridge over Pioneer Creek. Johnson suggested working with Hennepin County Public Works Department for any county roads. Brown provided his number for anyone who wanted to talk to him. Spencer suggested including a link on the city website to contact Colin Brown if residents have questions on the trail.

8. LARRY PALM. ACE ELECTRICAL CONTRACTORS INC. – DISCUSS OTHER OPTIONS FOR THE URBAN COMMERCIAL LAND THAT RUNS PARALLEL WITH THE COUNTY LINE ROAD.

Larry Palm stated that he is going to continue to try to find another developer for the land and they are desperately looking in hopes they can meet the TIF deadline in July 2012.

Johnson stated that Council did not make a motion to establish a TIF district. His understanding was that the ground work was researched and once a developer committed, they could then enact a TIF district. Palm stated the TIF they were after allowed them to use TIF funds for infrastructure and that is not normally the case. Vose stated the July 1, 2012 time limit is typically used for industrial development but has been extended for retail development until July 1, 2012. Vose stated that ongoing TIF districts can be established but the July 1, 2012 deadline is for initiating construction.

Johnson stated that hopefully in the future, Delano may be more receptive to extending utilities.

John Zeglin, 2858 Nelson Rd, stated that he attended the meeting with Delano regarding extending sanitary sewer services. He felt the Delano City Council is not willing to work with Independence. He stated that other communities are competing to bring these retailers to their towns and he felt they struck out with two major retailers. He stated they really need to look at what they are trying to do for that area. Johnson thanked Zeglin for his comments.

9. WILLIAM THOMAS, 6775 FOGELMAN ROAD (PID# 10-118-24 43-0008) REQUEST FOR A CONDITIONAL USE PERMIT TO ALLOW FOR A DETACHED AGRICULTURAL BUILDING OR BARN THAT EXCEEDS LIMITATIONS OF THE CITY ZONING CODE FOR PRIVATE INSIDE RIDING ARENA.

Kaltsas reported the request is for a Conditional Use Permit for a detached accessory building to be used as an indoor riding arena that exceeds size limitations. He stated the property is zoned Agriculture and is guided Rural Residential. He stated the applicant is allowed 2,600 square feet for detached accessory buildings. The applicant currently has an existing barn totaling 2,560 square feet and is proposing an 8,400 square foot pole barn style building to serve an indoor riding arena for their private use. This will far exceed the size limitations. The building will be 70' by 120' with a peak height of 26'. He stated the owner clarified the building will be open with no interior rooms or stalls.

Kaltsas stated there is significant elevation change that would further buffer or screen the view of the indoor arena. The surrounding properties have structures of similar size. Kaltsas reported the applicant could meet the conditions of a Conditional Use Permit because of these factors.

Kaltsas stated that the proposed application grossly exceeds the size limitations and that brings the question of whether the size limitations in the ordinance make sense. He stated that by looking at lot size versus allowable detached accessory structure coverage, it does not allow a proportional amount per lot.

Kaltsas stated that only one neighbor would see the arena from their property. The applicant also stated that he spoke with six of his neighbors and no one was against it. Staff received one comment in favor of the applicant's request.

The Planning Commission recommended approval of the CUP with several additional conditions. They recommended strengthening the language to allow only for an indoor riding arena and specifically not for commercial storage. They also recommended the applicant provide landscaping on the east side of the lot.

Kaltsas reported the Planning Commission then held a lengthy discussion on setting precedence. The Planning Commission also recommended review of the ordinance to establish the difference between agricultural use and commercial indoor storage. They are currently lumped together in the ordinance. They also recommended looking at another mechanism to determine the maximum size for detached accessory buildings on all lots.

Johnson asked if the applicant is in danger of exceeding the animal density for that size lot. Kaltsas stated the applicant is not looking to add any animals – they only have the two horses.

Betts asked the difference between a Conditional Use Permit and a variance. Vose replied a Conditional Use Permit is an allowed use permitted in the ordinance so long as the proposed use meets the minimum conditions and a variance is not an allowed use absent special permission granted by the Council. Betts asked if a variance requires you to show hardship. Vose replied that used to be the law. Betts thought there was something that prohibited large hard cover areas that would increase runoff. Kaltsas replied there is a limit in the shoreland ordinance - a maximum amount of impervious surface that is allowed.

**Motion by Wenck, seconded by Wallace, to approve the application with the amended conditions with a resolution to come at the next meeting. Ayes: Betts, Johnson, Spencer, Wallace, and Wenck. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

10. DISCUSSION AND APPROVAL OR ORDINANCE NO. 2011-09 AMENDING TEXT TO CHAPTER V OF THE CITY ORDINANCE-SECTION 510.05, DEFINITIONS (GUEST HOUSE, NON-RENTAL GUEST APARTMENTS)

Kaltsas reported the Planning Commission has sat through several readings of the ordinance. The ordinance currently has provisions for a guest house and non-rental guest apartment that allows living quarters but not a kitchen.

The Planning Commission has looked at adding provisions for an ADU or accessory dwelling unit. This would allow a small additional dwelling intended to be accessory to the main structure which would allow families to care for relatives within or on their existing home. This is an issue that a lot of cities are facing. However, most of these cities are higher density inner suburbs. Staff looked at fitting the needs of residents of Independence as it is a different type of housing stock.

Kaltsas reported the Planning Commission looked at requiring an accessory dwelling unit to be attached or placed over an existing detached structure such as a garage if the lot size is less than 2.5 acres. Lots

larger than that size could better accommodate a detached accessory dwelling unit. The Planning Commission was careful to make sure someone could not build another home on their property and wanted to ensure that an ADU was truly accessory to the principal structure. There was a lot of discussion on maximum size. The Planning Commission recommended an ADU size the lesser of 33% of the above ground living area of the principal structure or 1,200 square feet, and no less than 400 square feet.

Kaltsas reported the Planning Commission recommended that the accessory dwelling unit must be architecturally compatible with principle structure, the unit have permanent provisions for cooking, living, and sanitation, no more than 2 bedrooms, limited to relatives of the homesteaded owners and be compliant with the building code. This would not allow commercial rental of the units.

The Planning Commission also recommended that if there is an application for an ADU, the applicant must show the septic system is compliant or bring it into compliance.

Kaltsas stated there was good input at the public hearing.

Kaltsas stated the defining factor is allowing cooking/kitchen provisions. He said they have also received requests from residents with adult children with disabilities in support of this. Betts was very supportive of this.

**Motion by Betts, seconded by Wenck, to approve the ordinance.**

Brenno stated her concern of what will happen to the accessory dwelling units when their occupants pass on. She inquired if the property owners would be required to take the accessory dwelling unit down or could they be turned into rentals. She was concerned this will drive a large rental market in future years.

Brenno felt the ordinance as written did not allow for detached units.

Jim Franklin applauded the Council for bringing this issue up as housing dynamics are changing. He stated they had been looking at another property in another city and the realtor had advised them it must be a relative that must reside in the accessory dwelling unit. He felt this should be disclosed at the time of sale and can actually under value the market unless a buyer falls in the exact same situation as the seller. He stated that the continued use after sale of the property should be looked at carefully.

Franklin stated the City of Medina has also passed a similar ordinance. Their ordinance allows for a 1 bedroom to be up to 750 square feet, a 2 bedroom up to 1,000 square feet or 40% of the habitable principal family dwelling. He inquired if livable or habitable are the same as it does not specify finished area. If a rambler was built, you could only count the top floor even though the home was designed for someone who could not do stairs. He stated that by choice or disability, a resident may be discriminated against in the amount of allowable accessory dwelling unit square footage and would refer the Council back to the language in the Medina ordinance. It would make for more consistency within neighboring communities.

Kaltsas stated the stipulation the Planning Commission came up with was not about the number of stories but to keep a proportional footprint ratio for the principal structure to the accessory dwelling unit.

The goal was to not allow two 1,000 square foot building on a lot where it is impossible to tell which is accessory in nature. He stated that Franklin has a valid point.

Betts stated that if a homeowner does choose to place an accessory dwelling unit on their property, the property owner should think about how they are limiting the future use of their property.

Spencer stated the discussion of making sure the accessory structure was subordinate to the principal structure was well thought out. He said with a larger property, the homeowners could subdivide the lot and construct another structure on a different lot. Instead of having two competing buildings on one lot, make sure they are on two different lots. He applauded the Planning Commission for their work on this ordinance.

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

11. DISCUSSION OF THE PROPOSED REFUND/PROFIT SHARING WITH RANDY'S SANITATION

Hirsch stated part of the contract that was awarded to Randy's Sanitation dealt with profit sharing in 2012 & 2013. She reported staff met with the residential services coordinator to discuss the option and to receive feedback. She stated that there is one other community that is doing the revenue share and with the new requirements for plastic collection the market may be unsure in the future. Also, there will be an upfront increase in cost to participate in the revenue share option. The City would also have to commit for both 2012 and 2013.

Johnson invited Deb Gatz, Randy's Sanitation, to speak about the recycling market. Gatz stated the paper market has taken a hit in the last month. Hennepin County revised their funding policy to collect more plastics in the recycling stream. This will now include yogurt and cottage cheese cups and lids as well as paper juice and milk cartons. She stated there is not a market for these items right now. She stated the County has tried to assure them there is someone who is willing to buy these products, but she has not seen it yet. She also stated that education materials are not ready for the new year. With the expansion of the Materials Recovery Facility (MRF), she hopes they will be able to process all the materials they are required to.

Johnson asked what the cause in the fluctuation of the paper markets. Gatz stated that she didn't know but it had held steady for about 15 months but just went from \$130 a ton to \$100 a ton.

Betts asked if plastic bags are recyclable. Gatz stated there is not a good market for it but it is possible to bring them back to your grocer. The processor for those bags can handle that volume but not the volume that would be generated if all the haulers collected plastic bags.

Gatz stated they are working on an organics program and had run a pilot of the program in Delano. She stated there is a separate bag that residents can put organics in. The bag is then put in the trash bin and is pulled once it arrives at the MRF. Johnson asked how many pounds are being recovered. She stated

that it is estimated that 40% of household trash can be converted to organics recycling. It takes about three months to turn over into compost.

Wenck felt it was a good return to do the profit sharing. Johnson stated that nothing is guaranteed. Hirsch stated that it would be a two year contract. Johnson asked if a refund would be returned during the fiscal year. Gatz stated it would be done month by month. Wenck stated that past performance is the best measure of future performance. Spencer stated that commodities are good now but can bounce around. He asked if they could look at the issue in another year. Hirsch stated that it is a two year deal or no deal.

Gatz stated another concern is that Randy's has been doing a dual sort but with the introduction by Hennepin County of the new materials to be collected, the compacted glass will contain more contaminants and they will not receive such a good rate for their glass. Spencer would rather take the safer route.

**Motion by Wenck, seconded by Wallace, to approve entering into a revenue share agreement with Randy's Sanitation. Ayes: Wallace and Wenck. Nays: Betts, Johnson, and Spencer. MOTION FAILED.**

12. JEFF LEUER, CHIEF OF THE LORETTO FIRE DEPARTMENT – REQUESTING APPROVAL OF THE REVISED CONTRACT FOR FIRE PROTECTION WITH THE CITY OF INDEPENDENCE

Jeff Leuer, Loretto Fire Chief, was not able to attend the meeting as Loretto was also having their Council meeting tonight.

Council inquired about the formula used to calculate the yearly amount owed for fire services.

**Motion by Spencer, seconded by Betts, to table the item until the next meeting and to direct staff to include the formula into the contract language. Ayes: Betts, Johnson, Spencer, Wallace and Wenck. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

13. DISCUSSION AND APPROVAL OF THE YEAR 2012 FINAL BUDGET AND LEVY, RESOLUTION NO. 11-1213-01

Johnson stated the figure in the budget resolution before them tonight was brought down an additional \$30,000 from the last time the Council reviewed it. He would like to see the tax rate go down.

Spencer inquired if a special work session should be held. Johnson felt that they did not necessarily need another meeting.

Wenck stated he would like to see an additional decrease of \$100,000. He wants the ad valorem lowered. Johnson felt that Public Works staff should have taken time off without pay to balance out all the overtime paid out for the many of hours of snowplowing. Hirsch stated she had planned for the



same amount for plowing and materials, with a few minor cuts, as last year because it is supposed to be the same type of winter this year. Hirsch stated that she has talked to staff in the past about taking time off without pay. Betts felt that may be something to focus on.

Johnson felt they should fix a dollar amount and have staff bring back an amended budget. Hirsch stated she could probably cut \$50,000 to \$75,000. Betts suggested a compromise of \$75,000. Wenck felt they can cut \$100,000. Johnson appreciated staff being conservative. Johnson stated that he is willing to go with a compromise figure of \$75,000 from last year's budget. Wenck stated that he wanted it cut from the figure in the resolution.

**Motion by Betts, seconded by Spencer, to cut an additional \$75,000 from the ad valorem from the certification in September and approve the changed Levy Resolution and budget prepared by staff. Ayes: Betts, Johnson, Spencer and Wallace. Nays: Wenck. Absent: None. MOTION DECLARED CARRIED.**

Johnson stated that residents in the Mound-Westonka school district will see something different. He stated that school levies are not involved with this resolution.

14. SET THE FIRST QUARTER OF 2012 CITY COUNCIL MEETING DATES.

Johnson asked Kaltsas how the Planning Commission agendas look for the beginning of the year. Kaltsas replied they are working on a couple of text amendments, but do not have any other applications right now.

Johnson stated that he felt they should keep the regular meeting schedule and if there are no Planning Commission items, they can always cancel the second meeting of the month.

Spencer asked if they would be meeting on December 27 this month.

**Motion by Wallace, seconded by Wenck, to cancel the December 27 meeting. Ayes: Betts, Johnson, Spencer, Wallace and Wenck. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

15. TRANSFER OF FUNDS

Hirsch stated the transfer of funds is needed to offset the extra expenses from snowplowing last winter. She stated when funds are transferred from one account to another a resolution is required.

**Motion by Betts, seconded by Spencer, to adopt Resolution Number 11-1213-01. Ayes: Betts, Johnson, Spencer, Wallace and Wenck. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

16. FRANKLIN HILLS ROAD

Johnson stated some work had needed to be done on the road and the developer has now finished the work. Staff recommended approving the work and finalizing the payment.

**Motion by Wallace, seconded by Wenck, to approve the work and finalize the payment. Ayes: Betts, Johnson, Spencer, Wallace, and Wenck. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

17. OPEN/MISC.

Johnson inquired if the contractor for the sealcoat project by Providence has paid any money to the residents. Hirsch stated the money went directly to them as they didn't want it coming through the city.

Johnson stated the Council will miss Wallace.

18. ADJOURN

**Motion made by Wenck, seconded by Spencer, to adjourn the meeting at 10:05 p.m. Ayes: Betts, Johnson, Spencer, Wallace and Wenck. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

Respectfully submitted,

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Kimberly A. Olson, Recording Secretary