

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, APRIL 13, 2010 – 7:30 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 7:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL.

PRESENT: Mayor Johnson, Council Members Spencer, Wallace and Wenck.

ABSENT: Council Member Betts.

STAFF: Clerk-Administrator Hirsch, Attorney Vose, Public Works Director Koch, City Engineer Miller, Dave Callister – Ehlers and Associates, Matt Mayer – KDV.

VISITORS: Len Beal, Phil Saterbo, Lynda Franklin, Jody Gustafson, Kathie & Ed Pluth, Mark & Candy Miller, Dean Ramsey, LuAnn Brenno, Chris Dahlberg, Dave Appelhof, Chris & Marietta Cady, Sheri & Mark Fischer, Richard Schieffer, Carla Smith, Jim Smith, Charles Gehrman, Chris Van Patten, Frank Smaron, Paul Merz, Bonnie Kaster, Doug Lind, Brian & Pam Henjum, Barhan & Mohsen Zadeh, Bob Ibler, Mark & Pat Johnson, John Conlin.

4. CONSENT AGENDA.

Approve:

- Council Minutes – March 23, 2010.
- Accounts Payable for April 2010.
- The UPA Northwoods College Sections to be held at the Twin City Polo Club on April 17 & 18.
- Agricultural Preserve Application for Judy and Henry Marin, 7060 Highway 12 (PID No. 22-118-24-21-0004)
- Resolution No. 10-0413-01 adopting the MPCA Stormwater Policy Guidelines.
- Resolution No. 10-0413-03 directing Staff to develop a Complete Streets policy and accompanying implementation procedures.
- 2010 Gravel and Material Bids.

Motion by Wenck, second by Spencer, to approve the consent agenda. Ayes: Johnson Spencer, Wallace and Wenck. Nays: none. MOTION DECLARED CARRIED.

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

Johnson added a discussion of the Public Works Policy.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

- Spencer: Board of Appeals training, Planning Commission meeting, Board of Review meeting.
Wenck: Board of Appeals training, Board of Review meeting, two Lake Minnetonka Communication Commission meetings, Sensible Land Use meeting.
Wallace: Board of Review meeting.
Mayor: SCS Board of Directors meeting, Joint Legislative Day in St. Paul, site visit to a property within the City, Green Acres informational meeting, Sensible Land Use meeting, Pre-Audit Review meeting, Minnehaha Watershed District meeting, funeral of former City Council Member Doug McCulley, Greater Lakes Food Bank meeting, Community Action Partnership of Suburban Hennepin Finance Committee meeting, Regional County of Mayors meeting, meeting with Robb Luckow from Hennepin County to discuss transportation issues to Delano, Board of Review meeting.
Hirsch: Met with Karen Sherman from National Playground Group to discuss a grant application, met with Becky Wozney from Hakanson Anderson and LuAnn Brenno to discuss an equestrian trail grant application, election meeting in Minnetonka, Pre-Audit Review meeting, met with Robb Luckow from Hennepin County to discuss transportation issues to Delano, Board of Review meeting.

7. MATT MAYER, KDV – 2009 AUDIT REPORT.

Mayer discussed the Audited Financial Statement and Management Letter documents. He stated the auditors' report found that the financial statements are accurate. Mayer stated there were two housekeeping items that were not in compliance with State law – one had already been corrected and the other was a recommendation to adopt a credit card policy. The financial statements show that the City received about \$40,000 less in revenue than budgeted in 2009 and spent \$127,000 less than was budgeted. Overall the fund balance as of December 31, 2009 the fund balance is about \$1.7 million, which is typically the high point of the year. The City has maintained the standards created by the fund balance policy. City spending in 2009 was about \$200,000 less than in 2008. Mayer stated about half of the budget is spent on public safety, a quarter is spent on public works and a quarter is spent on general government. Mayer stated that if depreciation was not taken into account, the sewer enterprise fund would be showing an operating income. He recommended factoring out depreciation until a time when the City plans to use user fees to fund improvements. Mayer discussed the Management Letter. He stated City Staff has created a response and action plan to the Management Letter.

Johnson stated he met with Mayer and City Staff to review the Audit and was pleased with the findings. He noted that the segregation of duties comments is an issue the City has every year because of the small staff.

Wenck asked if staff's response would be in another document.

Hirsch stated staff would include a response in the next meeting packet.

Motion by Wenck, second by Spencer, to accept the 2009 Audit Report. Ayes: Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

8. PUBLIC HEARING (8:00 P.M.) – LINDGREN LANE/EAST INDEPENDENCE ROAD
SANITARY SEWER EXTENSION PROJECT.

Johnson discussed the process for the public hearing.

Miller stated the Lindgren Lane/Independence Road sanitary sewer project started in 1992 when a gravity sewer was constructed prior to paving the roads. He discussed the location of the properties that are included in the project area. The lots sizes on Lindgren Lane do not allow for additional septic sites, which are failing on some properties, and the properties close to Lake Independence. He stated a study was conducted to review options for the project and concluded the most cost-effective solution was to connect to sanitary sewer to the north, which is controlled by Medina, Independence and Greenfield's Tri-City Agreement. The total project cost for using force main along Independence Road is estimated to be \$880,065. With 46 connects, that would lead to assessments of \$19,131 per connection. Miller noted that the figures are only estimates at this point because the project has not been bid and the final figures would be different. Miller stated there are 28 parcels on Lindgren Lane that would use the existing line, which could lead to an additional assessment of \$3,483 for those properties. Miller stated a combination of force main and gravity sewer on Independence Road would cost approximately \$1,480,887, which would increase the assessments and is a less cost-effective option. Miller discussed the possible payment schedules for the project, which are included in the feasibility report. Miller discussed the possibility of the number of connections increasing to 53, which would decrease the net assessment for each hookup, but would mean that parcels that could subdivide would pay an assessment for all of their eligible lots. For example, a property that could subdivide into three lots would pay three assessments. Miller stated before an assessment hearing, the City would need to decide how many properties are assessable and he noted that the City has not received construction bids or secured financing for the project, so the estimates of the potential assessments can change.

Johnson stated that if the Council votes to move ahead, it can still decide not to move forward on the project once bids are received.

Callister, City Financial Advisor, stated the City's sewer fund does not have a large enough balance to fund the project, so the City will most likely look to outside financing for the project. There are two different options for the assessments – equal payments each year or consistent principal payments each year. He stated if there are a lot of prepaid assessments the City knows it will be receiving, then it will not finance that portion of the project. He stated it is still early in the financing process.

Johnson asked if the financing included the Met Council's Sewer Availability Charge (SAC) and the City's sewer connection charge.

Vose stated the financing could not include the SAC charge or city connection charge. He added that the project is a two-step process. The first step is the public hearing tonight, which allows the Council to decide to move forward with the project. The second step is an assessment hearing, after the bids have been received. At that point, the City will know what the project cost is and can make decisions about financing the project. The City has different options with its sewer connection charge, but it cannot include that charge in the assessment amount.

Wallace asked what the City connection charge is.

Johnson responded the City connection charge is \$1,030. He also noted a mound system typically costs between \$12,000 to \$20,000.

Public Hearing

Steve Skillen, resident, asked what the monthly sewer rate is.

Johnson responded the quarterly sewer charge is \$148.90 and it typically increases 3 percent each year.

Vose noted that approval to move forward with the project would require four votes to pass.

John Conlin, resident, asked if the reason behind the project was because the properties on Lindgren Lane have failing septic systems.

Miller responded that when the sewer was constructed underneath Lindgren Lane in 1992, the City recognized there would be issues with the septic systems on Lindgren Lane in the future because of the lack of room for drainage fields. He stated that septic systems on Lindgren Lane, even if they are functioning, are contributing nitrogen and phosphorus to the groundwater, which flows into the lake. In addition, the properties on the east side Independence Road may also be contributing to phosphorous and nitrogen to Lake Independence. He stated the project would contribute to the general health and welfare of the City.

Richard Schieffer, resident, stated the City has done several projects in the past to put in mound systems on Lindgren Lane. He stated he believes the driving force behind the project is the pressure from other governmental agencies to improve the situation on Lindgren Lane. He stated that he has not seen a study stating that removing the septic systems will solve the water quality issues on Lake Independence. He asked what effect the project would have on Lake Independence.

Miller responded he has not seen a study that dealt in particular with Lake Independence, but there are studies that show that where there is a concentration of septic systems near lakeshore, there is a higher concentration of nutrients.

Schieffer stated the City does not know if the project will make a difference.

Wenck stated a TMDL study was conducted and adopted by the City, which means the City has committed to decrease the nutrient levels in Lake Independence. In addition to the sewer project, Independence is working on other projects to decrease the nutrient levels.

Jody Gustafson, resident, stated the land use designation changed to Environmental Protection and are still zoned 1 unit per 5 acres. She stated she could subdivide her property into three lots and is concerned about being able to subdivide in the future if they connect to sewer now. She requested written confirmation from the City that she would be able to subdivide in the future.

Miller stated the facilities being put into the ground would support about 200 properties, so it would not be a limiting factor. The current zoning code's requirements for road frontage and upland acreage limit property owners' ability to subdivide. He stated based on the City's calculations, there are 53 potential connections if every property that could subdivide did so. The other factor that limits the number of sewer connections is the Tri-City Agreement between Medina, Independence and Greenfield. He noted the

sewer facilities further down the line have a limited capacity and so the City must negotiate with Medina and Greenfield to increase its amount of connections to the system.

Gustafson expressed concern about Independence limiting its development because of concerns from the Medina. She asked if the City would be allowed more connections if it were to connect to a sewer system in Maple Plain

Miller explained that the Met Council has control over how many connections a city may have. He noted that because Medina has facilities that Independence's sewer system uses, Medina does have some regulatory control. Miller stated the route to Maple Plain would be more expensive and the City would still have to work with the Met Council and potentially Maple Plain.

Gustafson asked if the City had considered limiting the amount of manure that can be spread near Lake Independence in order to improve the nutrient levels in the lake.

Dave Appelhof, resident and president of Lake Independence Citizen's Association, stated he believes it is important that Lindgren Lane receive sewer service.

Chris Dahlberg, resident and LICA Board Member, asked if property owners would be able to decide whether it is paid in full or over the term of the assessment.

Johnson stated a property owner has the option to pay off an assessment in its entirety at the beginning or can pay it off anytime during the term of the assessment.

Dahlberg stated he supports the project and encourages the Council to do the same.

John Colin, resident, stated that he has a functioning septic system and is concerned that the project is moving forward because of a few houses on Lindgren Lane with failing septic systems. He stated a study conducted about 10 years ago found that the highest level of nutrients in the lake were due to runoff from horse stables and farms. He asked how many septic systems within the project are failing.

Miller stated that the City did not conduct a survey of the existing septic systems. He stated the scope of the feasibility study is to determine how to best provide sewer service to the area.

Conlin stated the cost-benefit analysis for the project is not based on sufficient data. He stated he cares about Lake Independence, but does not want the project to move forward because a few septic systems are failing.

Miller noted that during the course of Lindgren Lane's history, there have always been some septic functioning property and some that are failing. He noted that if sewer services are not provided to the area, the City will be dealing with the same problem for many years. In addition, there is not a perfect time for the City to start the project because the septic systems all have different ages.

Mark Miller, resident, wants to know if an estimate has been done on how much it will cost residents to bring sewer from the road to their home.

Brian Miller responded that an estimate had not been done and that the cost depends on the layout of the property.

Mark Miller expressed a concern about the expense to bring sewer service from Independence Road to his home. He stated the project would cost him between \$80,000 and \$100,000 to complete the project, which could bankrupt him. He asked how he could be considered to benefit from the project, given his current situation.

Vose responded he could not discuss Mark Miller's situation because he did not know all of the specific details. He stated in general, the amount assessed to a property cannot be more than the amount of the increase in property value the property receives because of the project.

Cheryl Fischer, resident, stated she has 26 acres and if she is not able to subdivide her property after the sewer line is built, it will devalue her property. She added she received an estimate for \$6 to \$25 per foot for bringing sewer to her home. She stated her main concern is her ability to subdivide in the future. She expressed concern that only some properties on Lake Independence would be required to connect to sewer and suggested that all of the homes around the lake be required to connect in order to improve water quality. She stated the animal waste issue around the lake needs to be addressed and noted that she cleans up waste from her horses. Fischer asked if the Environmental Protection Area would include all homes around the lake.

Spencer responded the Environmental Protection Area has been removed from the Comprehensive Plan.

Fischer asked if the pipe would be large enough to accommodate future development along Independence Road. She commented that other lakes in Independence should also be part of the Environmental Protection Area.

Vose stated he had received two letters regarding the capacity of the pipe in regards of future subdivision. He noted future subdivisions could be limited by the size of the pipe and the City's existing subdivision and zoning requirements.

Miller responded the size of the pipe could accommodate over 200 homes.

Fischer stated she wants to pay for additional sewer stubs when and if she subdivides her property. She added that she has hired an attorney.

Marvin asked when the sewer line is put in if there will also be additional stubs put in.

Miller responded the force main will be put by a directional bore, so when someone is ready to connect, they will excavate at that time. He also noted that extra stubs could cause issues with private well clearances.

Steve Skillen, resident, stated he is connected to the City mound system that is currently having problems. He asked what the City will do with its mound system if the sewer project is not approved. He stated that he supports the sewer project, but does not know if it will pass. He asked what the City will do about Lindgren Lane if the project does not pass.

Carla Smith, resident, stated if there is a problem with Lindgren Lane, she supports the sewer project, but does not think there is enough information right now. She stated if the project goes through, she would

like to see it include the west side of Independence Road. She also expressed a concern about requiring all properties to connect to sewer when many properties have functioning septic systems.

Wallace explained that the Met Council will not allow the properties on the west side of Independence Road to connect to sewer. He added that the City is working with multiple agencies in trying to bring sewer service to the area and he is not in favor of forcing people to connect either.

Jim Smith, resident, stated that there is not an ideal time to start a project like this one. He noted that the City has been carrying the cost of the pipe in Lindgren Lane for 10 years. He suggested using the same logic to postpone the assessments for people who live 200 or 300 feet from the road and would incur a large cost in connecting to sewer service. He added it would probably not cost the City any more money than it had already carried due to the Lindgren Lane sewer pipe.

Vose stated there are statutory restrictions on deferring assessments and many of the properties under discussion would not meet those criteria.

Fischer, resident, asked what the process would be to connect additional units if properties subdivide after the sewer project is completed.

Miller responded the City of Medina has indicated Independence could receive some additional connections. If the property is subdivided so that each subdivided property has enough road frontage, a stub could be put into the main line to connect each property. If there is not enough road frontage and a roadway would be built into the subdivision, the property owner would have to pay to put a sewer main down the new road.

Vose stated the size of the pipe would not be a limitation on development. However, City Code does put development standards in place that limit development rights. Vose encouraged residents to discuss their subdivision rights with the City Planner in order to better understand City Code.

Marietta Cady, resident, stated she would like the City to look into connecting its system with Maple Plain's sewer lines. She asked where the pipe on the south side of Lake Independence connects to the larger system.

Johnson stated the pipe on Perkinsville Road connects with a larger sewer pipe in Medina.

Miller stated the route to take the pipe to the south would be a half a mile longer than the northern route and would have fewer assessable properties than the route that goes north to County Road 11.

Cady asked if the new Urban Residential area could be serviced by a sewer pipe route to the south.

Johnson responded that the Urban residential area would not be benefited by routing the pipe to the south.

Cady asked why property owners who live along the sewer pipe's route on County Road 11 not being required to hook up when they are in the same situation as the residents along Independence Road.

Koch responded that there are some people who are connected to the sewer and there are some who are paying an availability fee each year.

Johnson stated the pipe on County Road 11 was put in place in the 1980s and it was paid largely through grant money.

Cady asked how it was decided that her property would be required to connect.

Miller stated that he cannot answer her specific question, but her property is part of the area that received approval from the Met Council for sewer service.

Cady expressed a concern about the cost of the project and asked the Council not to approve the sewer line extension.

Robert Selstad, resident, stated he owns 80 acres on the west side of Independence Road and has restored wetlands on his property. He notes that there is a drainage ditch that goes through his property and into Lake Independence. He requested that his 5-acre parcel be allowed to connect to the system.

Wenck stated he believes the City could receive permission for a few more connections.

Selstad requested that the Council discuss with the Met Council connecting his 5-acre parcel to the sewer line.

Bob Ibler, resident, stated Lindgren Lane needs sewer and encouraged the Council to approve the project.

Miller stated most of the septic systems that are over 10 years old will not be in compliance with current septic system codes. If residents want to improve or sell their properties, they would be required to bring their septic systems into compliance.

Dahlberg, resident, asked if the City needed to vote on the project right now.

Johnson stated that the City is not required to vote on the project at this meeting, but the longer the City waits, the less likely it will meet deadlines for the 2010 construction season.

Miller stated that if the Council orders the plan at this meeting, then construction would end in November 2010. If the Council delays a decision, the project may not be done this year. He noted that because of the poor economy, the City could receive good construction rates.

Mark Miller, resident, stated he is not opposed to bringing the sewer line down Independence Road and paying the assessment, but he does not want to be required to connect.

Fischer, resident, expressed a concern that there are too many unanswered questions to move the project open.

Motion by Wenck, second by Spencer, to close the public hearing. Ayes: Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

Wenck asked when the City should determine the number of lots each property is eligible to subdivide into.

Miller stated that issue would need to be resolved before the assessment public hearing. The City will need to decide how it will make assessments for any future lots. He noted that some of the capital costs could be paid for by the City and then paid for through increased sewer rates.

Vose encouraged the Council to assume the decision about the assessments will be a multi-meeting decision because staff will create a proposal for handling the assessments that the public should have a chance to discuss.

Johnson asked if covenants that restrict development rights on properties are legally binding.

Vose responded that agreements between the City and property owners can create an agreement that discusses the number of connections, future development rights and assessment amounts.

Wallace stated he does not feel comfortable with those types of agreements because the City could enter into an agreement, but Medina may not allow any additional connections. Wallace added there are too many unanswered questions and expressed a concern about the people on Independence Road who do not want to connect or cannot afford it.

Johnson stated he would like to move forward on the project in order to determine what it will cost.

Spencer stated he would also like the City to move forward.

Wallace stated he would feel more comfortable making a decision on the project at the next Council meeting, when more questions have been answered.

Miller stated that delaying a decision would delay construction.

Motion by Wallace, second by Johnson, to direct the City Engineer to move ahead in preparing plans and specifications for the Lindgren Lane/Independence Road sewer extension project. Ayes: Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

9. APPROVAL OF RESOLUTION NO. 10-0413-02 ORDERING PREPARATION OF PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS IN THE MATTER OF THE LINDGREN LANE SANITARY SEWER EXTENSION.

Motion by Wallace, second by Wenck, to table Resolution No. 10-0413-02. Ayes: Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

10. CLOSED SESSION/ATTORNEY CLIENT PRIVILEGED INFORMATION.

The City Council recessed at 10:43 p.m. to go into closed session in order to discuss attorney-client privileged information.

The city attorney gave a brief report. The Council directed that the attorney grant an extension of time for joining the City as a 3rd party defendant.

The City Council concluded its closed session at 10:53 p.m.

11. OPEN/MISC.

Public Works Design Manual Update

Spencer stated he would like staff to put the Public Works Design Manual update on the April 27 Council Agenda.

The Council agreed to revisit the issue at its next meeting.

12. ADJOURN.

Motion by Wenck, second by Wallace, to adjourn the City Council meeting at 10:55 p.m. Ayes: Johnson, Spencer Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

Respectfully submitted by Christina Scipioni, Recording Secretary