

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, JULY 27, 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 Betts, Spencer, Wallace and Wenck.

STAFF: Administrative Assistant Scipioni, Attorney Vose, Planner Kaltsas.

VISITORS: David Fenner, Lance Gyllenblad, Chris Cady, Lyle & Sharon Olson, Rich Merz, Ed Pluth, LuAnn Brenno, Joe & Wendy VanLoy, Gene Purdy, Kris Horn-Ginthner, Nick LaFond, Rob & Linda Berg, Doug Hoskins.

4. CONSENT AGENDA.

Approve:

- Council Minutes – July 13, 2010.
- Agricultural Preserve Request of Grace and James Nolan, 985 County Road 92 (PID No. 29-118-24-44-0001 and 29-118-24-44-0002)
- Change order request #1 from Landwehr Construction Inc. contractor for the Lindgren Lane/Independence Road Sewer Extension to buy its pumps from Tri-State at a lower cost than given with the original bid.

Vose removed approval of Resolution No. 10-0727-01 Vacating Portions of Franklin Hills Road.

**Motion by Wenck, second by Spencer, to approve the consent agenda with the inclusion of a typographical error correction in the minutes. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.**

Resolution No. 10-07-27-01

Vose explained the vacation would remove the portions of the temporary cul-de-sac on Franklin Hills Road. The vacation is necessary because the road has now been extended and the cul-de-sac is no longer needed. Utility easements on the properties would be retained. Vose also noted a small change to the resolution needed to correctly identify the properties affected by the vacation. The vacation was noticed as a public hearing.

Public Hearing at 7:45 p.m.

No comments were given.

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

**Motion by Wenck, second by Spencer, to approve Resolution No. 10-0727-01 with the change suggested by Attorney Vose. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: None. MOTION DECLARED CARRIED.**

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

Nothing was added to the agenda.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

Spencer: Minnehaha Creek Watershed District Shoreline and Stormwater work session, Police Commission meeting, Lake Sarah Annual Picnic, Pioneer-Sarah Creek Water Management Commission meeting, Planning Commission meeting.

Wenck: Lake Minnetonka Communication Commission Executive Board meeting, Minnehaha Creek Watershed District Shoreline and Stormwater work session, Police Commission meeting.

Wallace: Phone call with Ryan Companies.

Betts: Minnehaha Creek Watershed District Shoreline and Stormwater work session.

Johnson: National League of Cities Small Cities Conference for the League of Minnesota Cities, Police Commission meeting, meetings with three residents, election judges training, Lake Sarah annual picnic, Metro Cities Municipal Revenue Committee meeting.

7. DIRECTOR RAY MCCOY – WEST HENNEPIN PUBLIC SAFETY JUNE 2010 ACTIVITY REPORT.

McCoy discussed the WHPS activity report. He noted several incidents including a motorcycle/deer accident, a gas line severed by a cable installation, a dump truck hitting an electrical pole, and a couple of search incidents.

Johnson asked if Highway 12 would be reopening a week early.

McCoy responded the project is on schedule. McCoy added WHPS has eight registered Night to Unite parties – 4 in Independence and 4 in Maple Plain.

8. STEVE & MARY JANE LINDHOLM, OWNERS OF THE PROPERTY LOCATED AT 3212 INDEPENDENCE ROAD (PID NO. 12-118-24-22-0002 AND 12-118-24-33-0003), REQUEST A MINOR SUBDIVISION TO ALLOW THEIR PROPERTY TO BE SPLIT INTO TWO (2) PARCELS. RESOLUTION NO. 10-0727-02.

Kaltsas stated the applicants have are proposing to create a second buildable lot. In addition to the minimum size required for subdivisions, the ordinance requires a minimum of 2.5 acres of buildable upland, a minimum of 200 LF of frontage on a right of way and no greater than a 1:4 ratio of lot frontage to lot depth for each lot. The applicant has approximately 6 acres of useable upland and over 500 lineal feet of frontage on Independence Road. The proposed lot depth to lot frontage ratio is 1:4. The proposed

subdivision would create a buildable area to accommodate a home site that would fit with homes in this area while maintaining the required setbacks. The driveway for both parcels would be shared and a driveway easement will be required for the existing property. The newly created parcel will be required to pay the City's Park Dedication requirement. For this property the requirement is \$3,500. This fee will need to be paid prior to recording the subdivision. The proposed subdivision appears to meet all of the applicable standards of the City's zoning and subdivision ordinance. The lot being created will fit into the surrounding area and have minimal impacts on the surrounding properties.

Johnson requested the resolution approving the lot split include a provision for the Park Dedication Fee.

Betts asked how the swimming pool and tennis court on the property photos would be dealt with.

Kaltsas responded the swimming pool and tennis court had been removed.

Spencer asked if the existing barn would remain on the property.

Kaltsas responded the applicants have not indicated that they would remove the barn.

**Motion by Wenck, second by Betts, to approve Resolution No. 10-0727-02 with the addition of the Park Dedication Fee to be included in the conditions of the resolution. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.**

9. TWIN CITY POLO CLUB IS REQUESTING A VARIANCE FROM THE SIGN ORDINANCE TO PERMIT A TEMPORARY DIRECTIONAL SIGN THAT EXCEEDS THE MAXIMUM SIZE PERMITTED, TO BE LOCATED AT THE NORTHWEST CORNER OF COUNTY ROAD 90 AND TURNER ROAD. RESOLUTION NO. 10-0727-03.

Kaltsas stated the Twin City Polo Club is seeking a variance from the zoning ordinance to permit the installation of a directional sign with information pertaining to events being held at the polo club. The proposed location of the sign is 1235 County Road 90. The ordinance allows up to three directional signs to be located on or off premises. The maximum size permitted for each sign is four SF. The proposed sign is 8' x 5' for a total of 40 SF. This size is much larger than that which is permitted by the ordinance. The ordinance prohibits off-premise signs to be located anywhere in the City except for seasonal agricultural sales. A portion of the proposed sign has information pertaining to the dates and times of events being held at the club. Kaltsas stated it is difficult to find a hardship, which is needed to grant a variance. There is not a provision in the ordinance for off-premise signs for institutions. The Planning Commission was unable to come to an agreement on the variance request. The Planning Commission recommended the Council initiate a text amendment to the sign ordinance for non-profit organizations.

Betts asked what the definition of institutional uses is.

Kaltsas responded institutional refers to churches, schools and non-profit organizations. He added it is not defined in the City's ordinance.

Johnson asked how the City determines if a sign is temporary.

Kaltsas stated the City's ordinance defines temporary.

Betts asked if the proposed sign would be permanent.

Kaltsas responded the sign would be seasonal. It would be in place during the polo season and removed in the winter.

Betts expressed a concern that granting the variance would set an unwanted precedence in the community. She added that the Internet and GPS have made the signage obsolete.

Johnson noted the City had received public comment regarding the proposed variance.

Purdy, on behalf of the Twin City Polo Club, stated the variance request does not provide a precedent for the rest of the community. He agreed with the Planning Commission's assessment that the ordinance should be changed, but asked for the Council to consider allowing the sign now until the ordinance had been updated. Purdy stated the sign would attract people who do not know about the Polo Club and would not be searching for it on a website. He added churches use temporary signs for their events and they do not ask for approval. Purdy stated the neighbors see the benefit to the sign because it would help keep people from driving down Polo Club Road while looking for the polo fields.

Betts asked why the sign was not being put on Highway 12.

Purdy responded the Polo Club would like to eventually have a sign on Highway 12, but right now the proposed sign location would take advantage of the high traffic volume from the detour.

Betts asked if Polo Club had requested a sign from the Department of Transportation.

Purdy responded the Polo Club had looked into a sign on Highway 12 during the detour, but MNDOT was not interested in having additional signs on the road during construction.

Spencer asked how many more events the Polo Club has this year.

Purdy responded the Polo Club will be hosting the Polo Classic, USPA Binger Cup and USPA Amateur Cup. In addition there will be two more Ultimate Frisbee tournaments.

Spencer expressed a concern about having club information on an off-premise sign.

Purdy responded the off-premise sign would allow for maximum visibility.

Betts stated there would be too much information on the sign for drivers to read. She expressed a concern about traffic impacts.

Spencer stated the Planning Commission identified two primary issues with the request: the size of the sign is larger than all the existing allowable signs and the ordinance prohibits offsite signs. Spencer added no hardship exists, so there is no basis for granting a variance. He suggested initiating a text amendment to sign ordinance before allowing any sign to be placed offsite.

Johnson suggested tabling the request until the ordinance had been reviewed.

Vose stated the application falls under the 60-Day Rule. The Council could extend the approval timeframe for another 60 days. Any extensions after that would require the approval of the applicant.

Wenck asked what the procedure for a temporary sign variance would be.

Johnson noted the Council did approve the semi-trailer advertisement on Drake Drive.

Kaltsas and Vose stated a temporary sign would still require a variance.

Wenck stated he wanted the sign size to be 32 square feet in order to stay consistent with the City's ordinance.

Wallace suggested allowing a temporary sign variance that would allow the Polo Club to put the sign up while the City works on changing its ordinances.

Spencer stated a lack of the City enforcing its ordinances in the past does not constitute a variance.

Johnson suggested tabling the request until the City had a chance to change its ordinances.

Vose noted the City could only approve a temporary variance if the applicant agreed to changing the request.

Wallace stated he does not see the harm in allowing a temporary sign.

Purdy stated he is willing to change his request to one for a temporary variance.

Betts stated she wants the Police Department to monitor for any traffic issues the sign causes.

Spencer stated he is not concerned about the sign, but is concerned about the process for approving the sign.

**Motion by Wenck, second by Wallace, to grant a temporary variance to the sign ordinance for the requested sign until Oct. 15, 2010 with the following provisions:**

- **The sign does not exceed 32 square feet**
- **The temporary variance is agreed to by the applicant**
- **Staff brings to the Council at its next meeting a resolution ratifying approval of the temporary variance**
- **The applicant may put up the sign after approval of this motion.**

**Ayes: Johnson, Wallace, Wenck. Nays: Betts, Spencer. MOTION DECLARED CARRIED.**

**Motion by Wallace, second by Wenck, to direct staff and the Planning Commission to begin the text amendment process to amend the sign ordinance so it includes provisions for churches, schools and non-profit organizations. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. MOTION DECLARED CARRIED.**

10. LYLE & SHARON OLSON, 3434 LAKE HAUGHEY ROAD (PID NO. 08-118-24-32-0005&6), REQUEST A CONDITIONAL USE PERMIT TO ALLOW RETAIL SALES ON A SEASONAL BASIS OF AGRICULTURAL AND HORTICULTURAL PRODUCTS GROWN ON THE PREMISES BY A PERSON WHO OCCUPIES THE PREMISES AS A PRINCIPAL RESIDENCE ON THE SUBJECT PROPERTY. RESOLUTION NO. 10-0727-04.

Kaltsas stated the applicants would like to sell honey crisp apples from their orchard on the property for 3-4 weekends during the fall. Retail sales of seasonal products are permitted as a conditional use in the ordinance. The applicants have provided a proposed site plan which indicates how and where the sales, parking and picking will occur on the site. Staff visited the site to confirm that the proposed operation could be handled as indicated on the property. The property has adequate parking space and access and appears to be able to accommodate the seasonal sale of the apples on the property.

Johnson asked if four weekends per year were enough. He noted weather conditions could create the need to be open for more than four weekends.

Kaltsas responded the Council could change the number of weekends or set a date range as a condition.

**Motion by Betts, second by Wenck, to approve Resolution No. 10-0727-04 with condition 5 changed to read “The Conditional Use Permit shall limit the dates of the apple sales to weekends between September 1 and November 1. Weekends shall be Holidays, Friday, Saturday and Sunday.” Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.**

11. SMALL FARM PRODUCE STANDS AND CONDITIONS.

Spencer stated the Planning Commission expressed concern about the cost of applying for a Conditional Use Permit for sales of agricultural products. The City has encouraged that activity and requiring an applicant to apply for a CUP seems too expensive and time consuming. Spencer suggested the City review changing its ordinance to allow for a seasonal permit instead of a CUP. The permit could still work like a CUP to control the potential nuisances created by seasonal sales of agricultural products.

**Motion by Spencer, second by Betts, to direct the Planning Commission and staff to create an administrative application process for seasonal sales of agricultural products grown on site. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.**

12. JOE & WENDY VANLOY, 136 BIRCH LANE WEST, WAYZATA, MN, ARE REQUESTING A CONDITIONAL USE PERMIT TO ALLOW A KENNEL ON THE PROPERTY LOCATED AT 1925 HIGHSTED DRIVE (PID NO. 20-118-24-31-0002). RESOLUTION NO. 10-0727-05.

Kaltsas stated the applicant is seeking a Conditional Use Permit to allow a dog kennel on the subject property. The proposed breeding facility would not be a typical commercial dog kennel. The proposed facility would not operate like a commercial kennel and would not service the general public. Rather, the proposed kennel would be a breeding facility for a specific bloodline of St. Bernard dogs. The applicants have a relationship with the successful breeder of the Montana Mountain Saints. It is their intent to relocate the breeder and her dogs to the property in Independence. The applicants would live on the subject property along with the breeder and would be the primary care providers for the dogs. The applicant is requesting the ability to accommodate 50 dogs on the property in addition to the dogs that are less than six months in age. The request for 50 dogs stems from the number required to continue the

bloodline as stated in the applicant's letter to the City. The dogs that will be housed at the kennel will be owned by the breeder and applicants.

Kaltsas stated the property is somewhat isolated from the surrounding properties given the existing trees, wetlands and orientation. The applicants are proposing to construct a new barn facility to accommodate the dogs. The facility would be set up with an indoor room for each dog and then a series of outdoor spaces that are connected to the main building. All of the outdoor spaces would be fenced. The proposed building would be located in the center of the 40 acre parcel to provide the most buffering from the surrounding properties. The applicants have stated that they will be the primary care providers for the breeding facility. It is intended that there will be additional support staff that helps with operation. The number of additional employees is unknown at this time and will need to be further defined in the Conditional Use Permit. The applicants do not intend having more than some part time help at this time. Deliveries and pick up of other supplies associated with the facility will be limited and should not be more than a similarly sized agriculture parcel in the City.

Johnson noted the City received several letters from residents and the Planning Commission also received public comment during the public hearing. He asked the applicant how waste would be handled on the site.

Wendy VanLoy responded the dog runs are picked up multiple times per day and all the waste is bagged and put into a dumpster that is emptied at least weekly.

Johnson asked how the puppies are sold.

VanLoy responded most of the puppies are spoken for before they are born. Typically people find the breeder through word-of-mouth or the breeder's website. Each puppy is selected by the breeder for the buyer and photos are sent of the puppy to the buyer. VanLoy added people might occasionally visit the property, but it would not be any more traffic than a typical household would generate.

Betts asked why the applicant is moving the dogs from Montana.

VanLoy responded they want to be closer to the dogs and moving to Montana was not feasible with her husband's job. In addition, Minnesota is a better location for traveling to dog shows and shipping.

Betts asked for clarification on the number of dogs the applicant has and the number of litters there are each year. She also asked if the applicant travels internationally with the dogs and if any products will be sold at the facility.

VanLoy stated they currently have 37 dogs. An analysis of the past 12 years of the breeding facility showed the average number of litters per year is 3.5. She added they do not show their dogs internationally, but dogs sold from their bloodline have been shown in other countries. She said the only product they considered selling at their site is St. Bernard-related sweatshirts or tee-shirts. Those sales would be through the website.

Johnson asked what causes the dogs to bark.

VanLoy responded the dogs may bark if they see something out of the ordinary. They do not typically bark when they are being fed or are playing. The dogs are used to being with one another, so they do not typically bark at each other.

Betts asked how the breeder and applicant are able to give each dog individual attention.

VanLoy responded they spend all their time with the dogs and play with them as they are doing their daily chores. In addition, the dogs spend time playing with one another.

Johnson asked if any dogs not owned by the applicant would be housed at the facility.

VanLoy responded if there were other dogs onsite it would be breeding and would be for a short time.

Wallace asked if the breeder had any American Kennel Club or parent club sanctions.

VanLoy responded the breeder did not.

Brenno, resident, asked if the VanLoys would be purchasing the property.

VanLoy responded they would purchase the property and live on it with the breeder.

Merz, resident, expressed a concern about the noise from the dogs and the traffic generated by the facility.

Johnson noted that Highsted Drive is a narrow road.

Wallace asked the applicant if she agreed with the proposed CUP conditions.

VanLoy responded the only condition that concerned her was the one limiting the number of dogs to 40 for the first 6 months. She stated they could potentially have 40 or 41 dogs during the first 6 months. She noted they had requested 50 dogs in order to accommodate the natural ebb and flow of the breeding process.

Spencer stated the concern from neighbors is about the noise and number of dogs on the property. He noted the applicant is making a substantial investment in the facility. He asked VanLoy if she was confident the neighbors would be satisfied with the noise level.

VanLoy responded she would work with neighbors to solve any problems that might arise. She added she is confident she can control the noise level.

Johnson asked how long the applicant has been in the dog breeding business.

VanLoy responded she has worked with the breeder for 10 years and the breeder has almost 40 years of experience.

Wallace noted 30 to 40 horses on a property would have a larger impact than the proposed dogs. He added the City maintains Highsted Drive and provides dust control.



**Motion by Wallace, second by Wenck, to approve Resolution No. 10-0727-05 with the following changes:**

- **Condition two be changed to read: “The City Council may revoke the conditional use permit if the applicant violates any of the conditions set forth in the conditional use permit or for a noise nuisance.”**
- **Condition seven be changed to read: “The number of dogs permitted on the property shall be limited to 40, not including dogs less than 6 months of age. The applicant shall be required to notify the City during the first six months of the CUP if the total number of dogs, 6 months of age or older, exceeds 40 due to the pending litters in fall 2010. Following the six month monitoring period, the applicants can request an additional 10 dogs if no violations of the Conditional Use Permit have been identified.”**
- **Condition nine be changed to read: “The proposed breeding facility is permitted as shown on the site plan approved at the time a building permit is issued. Any expansions, additions or other changes to the proposed site plan will require an amendment to the Conditional Use Permit.”**

Betts expressed a concern about inspecting the kennel to ensure the dogs are being properly taken care of.

Wallace explained the American Kennel Club can conduct inspections at anytime. In addition, veterinarians would probably in the facility and would know if there are poor conditions.

Kaltsas stated there are not any State licensing or inspection requirements for kennels.

Betts asked how noise complaints would be addressed.

Kaltsas responded the City would notify the owners and ask for information on how they would address the issue. The City could also choose to restrict the times the dogs are allowed outside.

Betts asked if there are any kennels of similar size in the area.

Kaltsas responded the largest kennel in the area has about 25 dogs.

**Johnson called for a vote. Ayes: Johnson, Spencer, Wallace, Wenck. Nays: Betts. MOTION DECLARED CARRIED.**

13. A PROPOSED TEXT AMENDMENT TO THE CITY OF INDEPENDENCE ZONING ORDINANCE PERTAINING TO SECTION 530.03, SUBD. 2, RURAL VIEW LOT DENSITY AND SECTION 530.07, SUBD. 4 LOT AREA DIMENSIONS. ORDINANCE NO. 2010-01 AMENDING CHAPTER FIVE.

Kaltsas stated the Land Use Planning Act requires communities to make changes to official controls following the adoption of the Comprehensive Plan. The City has nine months from the date of adoption to bring official controls into compliance with the plan. The City recently completed the process of updating the Comprehensive Land Use Plan. As a part of this update there were recommendations made relating to various zoning and land use requirements in the City. One of the recommendations made pertains to the size of a property needed to subdivide a Rural View Lot in the Agriculture Zoning District. The Planning Commission recommended approval of an ordinance that would provide Rural View Lot eligibility to properties over 39.99 acres and unsubdivided quarter-quarter sections.

Johnson asked for clarification on the paragraph discussing density transfer.

Kaltsas explained the wording in the density transfer option portion of the ordinance. He added approximately 20 properties are nominal 40 acres that would qualify for a Rural View Lot under the proposed ordinance.

**Motion by Betts, second by Wenck, to approve Ordinance No. 2010-01 Amending Chapter Five with clarification on the paragraph discussing the density transfer option. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.**

14. PUBLIC WORKS DESIGN MANUAL.

Kaltsas stated staff's suggestion is to update the Public Works Design Manual now and then institute a fee for developers to pay back the cost of the update and the cost of future updates.

Johnson stated the Design Manual should be updated now because developers will want to know City standards when they start a project.

Wenck stated he approves of staff's suggestion. He noted the Minnesota Department of Transportation will be revising their standards in January 2011 and suggested waiting until then to update the City's standards.

Kaltsas stated much of the update work could be done now and the final updates could come after Mn/DOT releases its standards.

Spencer asked how the fee would be established.

Kaltsas responded staff would analyze the cost to update and maintain the Design Manual and compare it to the typical developments in a year. A final fee would be brought back to Council for approval.

**Motion by Wallace, second by Spencer, to direct the City engineer to proceed with development of the manual in accordance with their proposal and to direct staff to develop a fee schedule for developers to pay back the cost of updating the Public Works Design Manual. The engineer shall ensure that the soon to be released MNDOT standards are incorporated into the final version. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.**

15. OPEN/MISC.

Nothing was added to the agenda.

16. ADJOURN.

**Motion by Wenck, second by Wallace, to adjourn the City Council meeting at 10:20 p.m. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.**

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Respectfully submitted by Christina Scipioni, Recording Secretary