

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, AUGUST 12, 2008 – 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, Gyllenblad, Wallace (arrived at 7:43) and Wenck  
STAFF: Administrator Hirsch, Attorney Vose, Planner Lorsung  
VISITORS: Elizabeth Rick, Kevin Hidde, Jean Johnson, Dick & Pat Meyer, Steve Trueman, Lisa Phillips, Jean Peterson, Al Sterner, Theodore Rick, John & Cathy Zeglin, Mike Zeglin, Brad Spencer, Kathleen Pluth, LuAnn Brenno, Ron Wabner, Becky Wozney, Mario Crespo, Chris Stephan, Harry Pool

4. CONSENT AGENDA.

Approve:

- Council Minutes – July 8, 2008.
- Accounts Payable – August 2008.
- Appointment of Election Judges for the 2008 Primary and General Elections.

**Motion by Betts, second by Gyllenblad, to approve the consent agenda. All present voted aye.  
MOTION DECLARED CARRIED.**

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

Nothing was added.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

Gyllenblad: Police Commission meeting, took 175 questions/phone calls regarding the Comprehensive Plan  
Wenck: Took telephone call on dust control on Hitsman Road, out of the country in July for a volunteer trip to North Korea to do construction management on a sustainable greenhouse project  
Wallace: Nothing to report.  
Betts: Attended National Night Out, attended Fire Commission meeting, took telephone call on dust control on Hitsman Road.  
Mayor: Took several calls on dust control, Minnehaha Watershed Board meeting, two Community Action Partnership of Suburban Hennepin Finance Committee meeting, League of

Minnesota Cities Fiscal Futures Committee, WeCan Board meetings, Association of Metropolitan Municipalities Revenue & Taxation Committee, Police Commission meeting, Funeral of former Minnetrista Mayor Bob Hubbard, GEARS Board election at the capitol, Presentation at the University of Minnesota's Presidents Residence about the Minnesota conservation and preservation plan, DRN Rules Information meeting, helped with two WeCan home tours, Land Use Advisory Committee, Gillespie Senior Center boat trip fundraiser, Small Cities Conference, National Night Out, Fire Commission meeting.

Hirsch: Fire Commission meeting.

7. PRESENTATION – OF THE 2008 FARM FAMILY OF THE YEAR AWARD TO PETERSON PRODUCE AND FAMILY

Johnson announced that the University of Minnesota Hennepin County Extension Service recognized Peterson Produce as the 2008 Farm Family of the Year. The Petersons were awarded a certificate at the meeting.

In addition, Kevin Hidde presented Jean Peterson with the Outstanding Service to Agriculture award from the USDA.

8. APPROVAL OF THE CITY ENGINEERING CONTRACT WITH BRIAN MILLER OF BDM.

Hirsch explained that Brian Miller was present to answer any questions the Council had about the contract.

Johnson asked if everything in the contract was the same as the Selection Committee had reviewed.

Hirsch stated that the fee schedules and everything else looked to be in place. She noted that the City Attorney reviewed the contract.

Vose said that there isn't a standard consulting agreement. He said he wanted to make sure that the consultants can be terminated at the will of the Council, the consultant would indemnify the City against any of his mistakes and the payment schedule is clear.

Wenck ask for one clarification with the contract.

**Motion by Wenck, second by Betts, to approve the City Engineering contract with Brian Miller of BDM, adding the City Administrator as the owner's representative. All present voted aye. MOTION DECLARED CARRIED.**

9. RICHARD MEYER, 823 COPELAND ROAD (PID# 31-118-24-11-0002), REQUEST FOR AN AMENDED CONDITIONAL USE PERMIT FOR THE INSTALLATION OF A TELECOMMUNICATION TOWER AND APPROVAL OF RESOLUTION NO. 08-0812-01, ALLOWING FOR SUCH TOWER.

Lorsung explained that Meyer currently has a conditional use permit on the property to allow for a golf course. The proposed amendment would also allow for a telecommunications tower on the site. Telecommunications towers are an allowed use in the agricultural district. Lorsung added that in 2005, the City added a telecommunication tower ordinance in order to add more review to these types of proposals. She said that staff used the code that was added in 2005 to review the proposed tower.

Lorsung explained that the tower is being installed due to a gap in service in the area. The site was carefully chosen after inquiring about service on the T-Mobile tower, which is southeast of the site, relatively nearby. This tower, however, is over capacity and couldn't accommodate the new user.

Lorsung said that the tower will be positioned southwest of the barn at the residence portion of the parcel. There will be a roughly 100 square-foot easement around the area as well as a 12-foot wide easement leading to the tower from Copeland Road. Lorsung added that there will be several other improvements related to the project, such as the extension of the gravel road around the tower for access purposes and utilities that will connect to the tower itself. Lorsung also stated that the tower will be 150 feet tall with a 10-foot lightning rod on top.

Lorsung noted that City Code limits the size of mechanical buildings to 200 square feet. The applicant's proposal has a 240 square-foot mechanical building. She also added that the mechanical building and tower area would be surrounded by a 6-foot fence with double-swinging gates.

Lorsung also noted that one of the recommended conditions for approval is that the applicant provides a maintenance schedule for the tower.

Johnson asked if there was a difference between the condition that required the applicant to obtain all required permits and the condition that required the applicant to pay for a fees associated with the review of the application.

Lorsung responded that those were typical requirements

Johnson asked about landscaping requirements.

Lorsung responded that there are some trees that will be taken out, but the ordinance does not state that the applicant has to replace all of those trees. She said that the condition can be changed to be more specific.

Johnson said he wasn't too concerned about the landscaping, but he wanted to note that a vague requirement could mean different things to different people.

Wallace asked if the base of the tower would be visible from the road. He said that he didn't know how much of the base would be seen from the road anyway. He said he was unsure that he wanted it to be a condition.

Lorsung explained that that condition was added by the Planning Commission.

Johnson asked Meyer if he had a problem with the landscaping requirement

Meyer responded that he didn't have a problem putting in landscaping.

Johnson asked if the Council should change the ordinance regarding the size of the mechanical building before voting on the proposed tower.

Vose responded that the ordinance needs to be changed in order to allow for the larger mechanical building. He added that the condition of the Conditional Use Permit states that the "square footage of the

mechanical building shall comply with City Code.” So as long as the code requirements change before the building is built, the applicant would be able to build the structure.

Steve Trueman, on behalf of AT&T, said that three of the four major carriers use 240 square foot mechanical buildings and Verizon Wireless uses a much larger building.

**Motion by Betts, second by Wallace, to amend the Conditional Use Permit for the installation of a telecommunication tower, subject to the following conditions:**

- **The square footage of the mechanical building shall not exceed City Code.**
- **The applicant shall provide to the City a maintenance schedule for the tower and facility.**
- **The applicant shall provide to the City the color of the tower**
- **The cell tower shall not have any lighting.**
- **The applicant shall move the gate on the fence from the east side to the north side facing the pole barn.**
- **The applicant shall add plantings of their choice around the perimeter of the fence enclosure.**
- **The applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any future construction or activity on the land.**
- **The tower and all associated accessory structures shall comply at all times with Section 540 of the Independence City Code.**
- **The applicant shall pay all necessary fees for the review of this application.**
- **Conditional Use Permit to be reviewed annually.**

**All present voted aye. MOTION DECLARED CARRIED.**

Vose said that direction for the new limitation would be helpful in crafting the ordinance.

Betts said she would like to see some limitation in size.

Hirsch suggested 250 feet.

Wenck suggested a 300 square foot building.

Johnson expressed concern that that would be too large.

**Motion by Wenck, second by Gyllenblad, to direct staff to prepare a resolution to change the City Code to all for a 300 square foot mechanical building. All present voted aye. MOTION DECLARED CARRIED.**

10. CHRIS STEPHAN, 3775 COUNTY ROAD 92 (PID# 09-118-24-24-0001), APPROVAL TO MOVE IN A HOUSE FROM WAYZATA TO BECOME THEIR PRIMARY RESIDENCE AND TO CONVERT THEIR EXISTING RESIDENCE TO A BUNKHOUSE FOR UP TO THREE EMPLOYEES AND APPROVAL OF RESOLUTION NO. 08-0812-02, ALLOWING FOR SUCH REQUEST.

Lorsung explained that the Council granted preliminary approval for the applicant to move a home into the City. She said that the applicant would also like to amend his existing Condition Use Permit to allow for a bunkhouse. Lorsung noted that a bunkhouse is used to house employees who work on the property. She said that the building that the property is within the shoreline ordinance, so the applicant worked with

the Building Official to meet those conditions. Lorsung also said that part of the Conditional Use Permit will require the applicant to bring all the buildings on the property up to code.

Lorsung also noted that the Planning Commission recommended limiting the number of employees living in the bunkhouse to three.

Gyllenblad asked if the condition that said all buildings must be brought up to code applied to all the buildings, regardless if they were agricultural buildings.

Hirsch explained that the agricultural building is sitting on blocks right now.

Stephan explained that the barn structure still has to conform to agricultural building standards.

Wallace said that the condition should be changed to note the specific buildings.

Vose asked how, in the future, people would be able to tell from the building permit survey which home would be used for the bunkhouse. He suggested making reference to the plan, which shows the bunkhouse, in the resolution.

**Motion by Gyllenblad, second by Wenck, to amend the Conditional Use Permit to allow for the bunkhouse as well as the moving of the new house on the property, subject to the following conditions:**

- **The applicant shall obtain all necessary permits and approvals from the City and State.**
- **The height of the addition shall conform to City Code.**
- **There shall not be more than three employees residing in the bunkhouse at any time.**
- **The applicant shall bring the moved-in home and the barn on the property up to State Building Codes.**
- **The applicant shall pay to the City all fees associated with the application.**
- **The CUP shall be reviewed annually for compliance.**

**All present voted aye. MOTION DECLARED CARRIED.**

11. APPOINTMENT AND APPROVAL OF A CITY PLANNER AND WATER RESOURCE STAFF.

Hirsch explained that the Selection Committee voted 3 to 1 to stay with MFRA for the City Planner and it also voted 3-1 to appoint Hakanson Anderson Associates, Inc. as the Water Resource Staff. She said Hakanson came in with much lower fees than the City's current water resource firm. She also said that MFRA had lowered its fees considerably. Hirsch added that the Selection Committee consisted of herself, Council Members Wenck and Betts and Planning Commission Chair Brad Spencer.

Wenck said that he recommends Terramark for the City Planner position because they are 23 percent less expensive and they are the planner for Victoria and Watertown. He said that he feels like the City will be getting more for less with this firm. In addition, he said he recommends Hakanson Anderson for the water resources position.

Johnson asked how long Terramark had been working for Watertown. He said he thought that the firm hadn't been working there very long.

Wenck responded that he was unsure of how long the firm had been working for Watertown.

Hirsch stated that the concern the Selection Committee had with Terramark was that it was a one-person firm. She said the Committee was worried that there would be no back-up in case the planner couldn't make a meeting. In addition, about 50 percent of the firm's business is out of state.

Johnson asked if discussion is needed for the Water Resource staff.

**Motion by Wenck, second by Wallace, to appoint Hakanson Anderson Associates, Inc. as the City's Water Resources staff effective Sept. 1, 2008. All present voted aye. MOTION DECLARED CARRIED.**

Spencer said that as a planner, the Selection Committee didn't have a problem with him, but the concern was the issue of back-up. He also said that the Planning Commission had been working with MFRA to clean-up the City Code and continuity in that process would be helpful. He also noted that MFRA lowered their rates significantly.

Betts said she agreed with Spencer. She also said that MFRA already has a background with the City, so there wouldn't need to be any new training.

Johnson asked if anyone had check references for the planner.

Wenck said that he used to be a one-man company and believes that you can get better service because the business is very important. He added that the City only has one City Administrator and one Public Works Director. Wenck said that Terramark said that if there was an issue with coverage, the firm could add another person. Wenck said that he thinks the City will get more experience for less money.

Betts said that she respectfully disagreed with Wenck's comments.

Wallace asked if the 23 percent savings was before or after MFRA lowered its rates.

Hirsch said that Terramark's rate was \$70 per hour, billed in 15-minute increments with \$70 for the first two hours of a meeting then hourly. MFRA's rate was \$90 per hour for a senior planner and \$60 for an assistant and \$75 for meetings.

Wallace asked if MFRA is worth 23 percent more a year. He said that he doesn't have an issue with MFRA, but doesn't know if the \$10,000 more a year is worth it.

Johnson said he would be more comfortable making a decision if a reference check was done on Terramark.

Hirsch noted that three-fourths of the fees that City is billed for are reimbursable by the applicants. She said that when creating new ordinances, which the city pays for, the City asks for a set cost up-front, instead of being billed hourly.

Wenck said that if the citizens are paying for the consultant, either through reimbursing the City or through taxes, then he wants to keep the costs down. He said he would agree to someone checking Terramark's references.

Johnson suggested keeping the current City Planner until the end of the year and check references on Terramark.

Wenck requested that reference checks also be done for MFRA.

Hirsch responded that reference checks were done with the City originally hired MFRA.

**Motion by Wenck, second by Gyllenblad, to appoint Terramark as the City Planner effective Jan. 1, 2008, conditional upon a reference check. Gyllenblad, Wallace, Wenck ayes. Betts and Johnson nays. MOTION DECLARED CARRIED.**

12. DISCUSSION REGARDING THE BUILDING INSPECTOR/CODE ENFORCEMENT OFFICER EMPLOYEE POSITION.

Hirsch said that the Selection Committee had recommended no changes to this staff position.

Wenck said that the Selection Committee didn't discuss the issue. He said that three proposals came in. One proposal was for 30 percent of the building permit fees, two were for 50 percent of the building permit fees. So far this year, the City has received about \$76,000. Wenck said that if the City would have been on a contract for 30 percent of fees, the City would have received about \$50,000 and the consultant would have received about \$26,000. He said that one of the companies that offered 50 percent recently offered to negotiate further.

Hirsch said that code enforcement and public works is also part of the position's job description.

Wenck said that he thought those job functions could be part-time and would be less expensive than a full-time position. He said that he thinks the City can make money on building permits.

Johnson said that in the past, the City had lost money using contractors.

Wenck said that with the volume of building permits in the City, he doesn't think the City would lose money. He said he would like to see figures on benefits and how the position spends his time.

Hirsch said that it's difficult for the position to show exactly how his time is spent everyday because he has so many duties. She said that the City has already matched the number of new house permits for the last two years. Hirsch added that the City sends the staff person out to do code enforcement instead of paying for consultants. She said that losing the position would be putting a big hole in the City's staff. Hirsch said she's not asking for any additional employees, she wants to keep what she has. She added that one of the companies that had submitted a proposal to the City had done a poor job in the past, which she had already made the Council aware of.

Johnson said that having this position has decreased the amount of complaints he's received and the system is running smoother than it ever has.

Betts asked if the position helps other cities.

Hirsch responded that the position helps the City of Delano when its inspector is on vacation or in classes, and Delano does the same for Independence.

Betts asked how many inspections the position does. She said she was surprised with the amount of work that the position does.

Hirsch added that the position has also been available to answer questions quickly and she has received numerous compliments from residents.

Betts said that residents have also told her that they're satisfied.

Wenck said that Independence is one of the highest-taxed cities in Hennepin County. He said that while it might be great service, he has not had residents ask him for that level of service. He stated that he does have residents ask him for lower taxes. Wenck said that he wants to look at every item and see where the City can save money and lower taxes.

Betts said that she thinks the City needs to provide the highest quality and meet the needs of the community.

Wenck said that he thinks the service is at too high of a level for what the City is facing. He added that the same principle applies to the Police Department.

Johnson said that by having a staff position, the City is saving money for the residents.

Gyllenblad said he would like to see something that shows the savings. He added that things such as benefits, insurance and other perks should be taken into account when looking at the cost of a staff person versus a consultant.

Johnson said that Hirsch has numbers that were put together when the position was added three years ago.

Gyllenblad said that residents are mad about the taxes. He said that there is a petition circulating to annex part of Independence to Greenfield or Franklin Township because of the high taxes.

Hirsch stated that she is concerned that this issue has gone on for a long time, which she doesn't think is fair to her employees, herself or the residents. She said that she would like for the issue to be settled so her staff and move on.

13. PARKS COMMISSION REQUEST TO GO BACK TO A FIVE-MEMBER COMMISSION – DIRECT STAFF TO COME BACK WITH ORDINANCE AMENDMENT FOR THE REQUEST AT THE NEXT COUNCIL MEETING.

Johnson asked why the City couldn't just leave the Commission with seven members and have it work with five.

Hirsch responded that the City has never been able to maintain a seven-member Commission and that a six-member Commission is difficult because it can lead to a tie vote.

Wenck said he would prefer to stay with seven.

Vose said that for the Parks Commission to function with five members would be fine.



14. PIONEER-SARAH CREEK WATERSHED MANAGEMENT COMMISSION BUDGET – APPROVAL.

Johnson asked if this is the second year in a row the budget has decreased.

Hirsch said that it's a 3.61 percent decrease in the budget this year.

Gyllenblad asked if last year there was a 15 percent increase last year.

Wenck asked what the increase was two years ago.

Hirsch said that last year there was a 12.1 percent increase, in 2007 it was 15.86 percent increase, in 2006 there was a decrease of 3.6 and in 2005 there was an increase of 6.34 percent.

Wenck said that the Council should reduce the Lake Independence TMDL from \$210,000 to \$150,000, which is what is had last year (item 48 on the budget).

**Motion by Wenck, second by Wallace, to approve the Pioneer-Sarah Creek Watershed Management Commission budget, except for the Lake Independence TMDL cost, which the Council requests be changed to \$150,000. All present voted aye. MOTION DECLARED CARRIED.**

15. DISCUSSION AND FURTHER DIRECTION – ADMINISTRATIVE FEES.

Johnson said that several cities have started to use administrative fees. He said that instead of giving tickets where most of the money goes to the state, the tickets become a local issue and the City is able to keep more of the fee. He said that Corcoran and a number of other cities are adopting this practice. Johnson added that Maple Plain and Independence would coordinate so that they have the exact same ordinances.

Vose said that there are certain kinds of regulatory functions that cities and impose penalties for, such as liquor license violations. There's another category of misdemeanor traffic violations where State law says what the penalty is and says how it can be enforced. Vose said that there is a middle area where cities are stepping in and saying that they would like to impose administrative penalties, too. It would cover some traffic violations, but not traffic-related things that are already addressed by State law. Vose said that Maple Plain has started looking into the issue. He asked the Council if it would like to pursue the matter further.

Wenck asked if Independence could let Maple Plain write an ordinance and then copy it.

Vose said that Maple Plain drafted an ordinance and he had reviewed it and thinks it looks fine. He said that there are a few specific violations that he thinks the Council will need to review to make sure that it complies with State findings.

Wenck said that he thinks the City should have the fees.

Gyllenblad asked if the appeals process would take away from any monetary gains from the fees.

Vose said that West Hennepin Public Safety has structured the appeal as a voluntary process, so if someone wants to appeal, they would be diverted over to the normal appeals process.

Betts asked if Vose saw any negatives to the process.

Vose said he doesn't see any negatives.

Johnson said that the Department of Revenue has threatened to take this privilege away.

Vose said that it would take an act of the legislature to change the fees, so he wasn't too worried about them being taken away.

Johnson said that another issue is that because so much of the fees go to the State, officers are less inclined to stop people and write tickets.

**Motion by Betts, second by Wenck, to direct staff to proceed with working on administrative fees. All present voted aye. MOTION DECLARED CARRIED.**

16. REQUESTING CLARIFICATION TO ORDINANCE NO. 2004-08 ENACTING SECTION 1130, ESTABLISHING REGULATIONS FOR PEDDLERS, SOLICITORS, ETC. RESIDENT VERSUS NON-RESIDENT SALE OF FARM OR GARDEN ITEM PRODUCTS.

Hirsch explained that staff wanted clarification as to whether the exception in the peddlers and solicitors ordinance that allowed people selling farm and garden item products applied to only City residents, or all solicitors. She asked the Council for clarification.

Betts said that residents have roadside stands, they usually don't go door-to-door.

Hirsch said staff would like clarification.

Wallace said that the ordinance should be changed to specify that the growers have to be residents in order to be excluded from the permit requirement.

Vose said that he doesn't like the idea of differentiating between residents and non-residents for people going door-to-door to sell farm products. He said that residents are already allowed to have roadside stands, so he would suggest removing the exception in the Code that allows the door-to-door sale of farm products.

Johnson asked about farmers markets.

Vose explained that a farmers market does not fall within the definition of peddlers, solicitors and transient merchants.

**Motion by Wallace, second by Betts, to change ordinance 1130.05 d) ~~the sale of the products of the farm or garden occupied or cultivated by a farmer~~; solicitations by children aged 18 or younger for school sponsored activities, or for such organizations as the Scouts or Little League where the children are members of the organization and where the proceeds of the sales are mainly devoted to the benefits of children. All present voted aye. MOTION DECLARED CARRIED.**

17. NORTHERN NATURAL GAS CORRESPONDENCE UPDATE.

Hirsch said that she spoke with Bob Young with Nordic Pipeline Services. He said that County Line Road will be wider at some point, so the company will be encumbering more space to anticipate that growth. Young said that the company has worked with the residents on the north side of Highway 12 and is planning to meet with the City after the draft plan is completed. Young said the company is hoping to start the construction in 2010. Hirsch discussed with the Council some correspondence that she had received.

Hirsch said that she told Young that a company representative would need to come to a City Council meeting to discuss the project.

Hirsch said that Northern Natural Gas will be coming in front of the Planning Commission and Council in order to gain permission to add a launcher station on the Joe Kittok property.

Johnson asked if the City has a detailed map of the project.

Hirsch said she would try to schedule a time for a representative from NNG to speak to the Council and bring a detailed map of the project.

18. DISCUSSION REGARDING THE INVITE FROM THE STATE OF MINNESOTA FOURTH JUDICIAL DISTRICT COURT JUDGE JAMES T. SWENSON TO DISCUSS BUDGET DIFFICULTIES IMPACTING THE LOCAL COURTS IN HENNEPIN COUNTY.

Johnson said that he thought the discussion would be a good one for the Northwest League of Municipalities.

Hirsch stated that the Maple Plain City Council would like to have the discussion at a joint meeting.

Wenck and Johnson said they are not interested in having a joint council meeting for that purpose.

19. CANCEL AND RESCHEDULE THE TUESDAY, SEPTEMBER 9 CITY COUNCIL MEETING DUE TO THE STATE PRIMARY BEING HELD THAT DAY.

The Council rescheduled the September 9 City Council meeting for 8:30 p.m. Sept. 8, 2008.

20. SCHEDULE A 2009 BUDGET WORKSHOP MEETING.

The Council scheduled a budget workshop for 7 a.m., Tuesday, August 19.

21. OPEN/MISC.

Nothing was added.

22. ADJOURN.

**Motion by Wenck, second by Wallace, to adjourn the City Council meeting at 9:30 p.m. All present voted aye. MOTION DECLARED CARRIED.**

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Respectfully submitted by Christina Scipioni,  
Recording Secretary