

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, AUGUST 26, 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 and Wenck

STAFF: Administrator Hirsch, Attorney Vose, Planner Lorsung

VISITORS: Jeff Morlock, Cathy Brown, June Sutton, Kathleen Pluth, Leo Poole, Tracy & Peter Kooman, Brad Couser, Randy O'Brien, LuAnn Brenno, Harold & Marion Haavisto, Robert Lowery, Jim Smith, Jim Coleman, John Quinlivan, Bob & Marilyn Hamilton, Mr. & Mrs. Eyers, Kathy Armstrong, Harry Pool, Lynda Franklin

4. CONSENT AGENDA.

Approve:

- Council Minutes – August 12, 2008.
- 2nd quarter report from ABDO.

Motion by Betts, second by Wenck, 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.

Liaison to Ryan Companies

Wenck added the RFP from the Hennepin County Sheriff Office.

Brenno asked to be added to the agenda.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

Gyllenblad: City budget workshops.

Wenck: City budget workshops, Lake Minnetonka Communications Committee meeting.

Wallace: City budget workshops.

Betts: City budget workshop.

Mayor: Northwest League of Cities meeting, one meeting with Ryan Companies and City staff and one meeting with City staff and Met Council representatives regarding potential development in the City, Highway 55 Corridor Coalition meeting, West Hennepin Pioneer

Museum Annual Meeting, Orono School Board meeting, City budget workshops, AMM Policy Committee meeting, League of Women Voters forum for County Commissioners and Fourth District Court Judges, Senior Community Services Executive Committee meeting.

Hirsch: Nothing to report.

7. DIRCTOR RAY MCCOY, WEST HENNEPIN PUBLIC SAFETY.

May, June and July activity report.

Director McCoy summarized the May, June and July activity reports for West Hennepin Public Safety. He noted that July was a busy month for the Department. McCoy added that WHPS worked with other departments on the recent house fire.

Johnson asked if the Fire Department and WHPS had determined a cause of the fire.

McCoy said that the cause was most likely a regulator in front of the house that runs the landscaping lighting.

McCoy said that National Night Out was successful, but there was a smaller crowd than in past years.

Johnson stated that it was disappointing that the publicity materials only had Maple Plain's name on it.

Wallace asked McCoy if he had any idea why incidents were up.

McCoy responded that activity is probably up because of the nice summer month.

Alcohol compliance checks for Ox Yoke Inn and Windsong Farm Golf Club.

McCoy stated that both Ox Yoke Inn and Windsong Farm Golf Club failed their compliance checks. McCoy said that for Ox Yoke Inn, there had never been an incident before. He added that the server asked the correct questions, but still served alcohol when they should not have. McCoy stated that WHPS is putting a training session together for alcohol compliance.

McCoy stated that Windsong's server did not ask for identification when the underage party ordered an alcoholic beverage.

Johnson asked what the process would be now for the establishments.

McCoy said that most cities have a graduated fine schedule. Typically, cities don't suspend a license on the first offence. McCoy recommended that the City impose a monetary penalty.

Johnson asked if the server had to pay a fine.

McCoy said that the servers were arrested and charged with supplying alcohol to a minor. He said that any further action taken against the employees would be through their employers.

A representative from Windsong Golf Club said that their employee was fired immediately after the incident.

Vose said that the City ordinance doesn't have graduated fines. He said that the Council needs to make a finding that agrees or disagrees with WHPS, and then impose a penalty. Vose explained that the penalty could be a revocation of the license or some form of monetary penalty or nothing. Vose stated that the finding issue is pretty clear.

McCoy explained that Maple Plain charges \$500 for a first offense. He said that different communities have different fines. McCoy stated that he would just like for the fines to be consistent.

Vose asked McCoy if he recommends the same fine for both establishments.

McCoy said that he is recommending the same fine for both establishments.

Johnson asked who owned Windsong Farm when the violation occurred.

Brown, Club Manager, explained that the club ownership had transferred before the violation.

McCoy suggested that the Council impose a smaller fine and require training for the establishments' staff.

Motion by Wenck, second by Betts, to accept West Hennepin Public Safety's findings and impose a \$250 fine on Ox Yoke Inn and Windsong Farm Golf Club and require their staff to attend alcohol compliance training. All present voted aye. MOTION DECLARED CARRIED.

Wallace asked if the Council could direct Vose to create an ordinance that would impose a \$250 fine for first-time alcohol violations with a training requirement, \$750 for second offences and \$1,500 for a third offence.

Vose said that either leaving the ordinance or changing it would be fine.

McCoy said that he doesn't have a strong feeling about changing the ordinance.

Johnson noted that even if the ordinance is changed, every violation would still need to come before the Council.

Wallace stated that he would prefer to leave the ordinance the way it is.

Three incidents of dog bites within four weeks and required updated.

McCoy explained the requirements owners have to follow if they own a dangerous dog. He said that on Aug. 1, the State Legislature made dangerous dogs a local issue and took counties out of the process for handling these dogs.

Vose said that staff is looking for authorization to proposed ordinance amendments that deal with dangerous dogs in order to keep City code in compliance with State law. He explained that Hennepin County had previously handled the registration of dangerous dogs. The City currently has code provisions for dangerous dogs, but the code needs to be updated to comply with the new State laws. Vose explained that there has been a request to appeal the dangerous dog certification in one case, so the ordinance change should happen soon.

Wenck asked how long the process would take.

Vose said that there is no public hearing requirement for the changes. He said that the changes will be before the Council at one of its September meetings.

Johnson asked if the Council needed to decide who would be on the impartial hearing for appeals.

Vose said that he and McCoy need to discuss that issue, but the Council has several options.

Wenck asked if the Council could designate the hearing officers at the time of the appeal.

Vose said that the designation could be made at the time of an appeal. He said that the easiest way to handle the appeals process would be to have the Council act as the hearing officers.

Motion by Betts, second by Wallace, to direct staff to prepare an updated ordinance that would leave the hearing officer position open for further Council discussion.

McCoy stated that he was concerned about the timeframe for the current appeal.

Wallace suggested that for the current appeal, the Council appoint someone to be the hearing officer.

Vose explained that the Council could make the hearing officer an appointed position that the Council chooses at the beginning of each year.

Johnson called for a vote. **All present voted aye. MOTION DECLARED CARRIED.**

8. DISCUSS AND DIRECT STAFF TO DO RESEARCH ON WHAT AND HOW OTHER ENTITIES HANDLE LEVELS OR TIERS OF PENALTIES FOR ANY FUTURE FAILED ALCOHOL COMPLIANCE CHECKS.

No action was taken.

9. PETER AND TRACY KOOMAN, 7550 TURNER ROAD (PID 28-118-24-13-0005), CONDITIONAL USE PERMIT REQUEST FOR A COMMERCIAL HORSE FACILITY.

Lorsung explained that Peter and Tracy Kooman are requesting a "Riding Stable" as a conditional use in the agriculture zoning district. She stated that the property was purchased as a vacant parcel in 2005 and the Koomans have since built a residence and large barn on the property located at 7550 Turner Road. Lorsung added that the Koomans currently have a few horses at the property that they own and wish to have up to twelve additional horses that they do not own at any given time.

Lorsung also noted that staff reviewed the conditions that were recommended in its report to the Planning Commission and added several conditions to keep it consistent with similar Conditional Use Permits.

Johnson said that he didn't see the necessity of keeping feed and bedding in a building.

Betts and Wallace agreed with Johnson.

Lorsung explained that she had taken that condition from another Conditional Use Permit for a similar facility.

Johnson said that some properties might need that condition added because of the location of the building, but he didn't see the need for it in this case.

Betts suggested adding an exception to allow round bales be allowed to be stored outside.

Brenno suggested changing the condition to have food and bedding either stored inside or adequately screened from neighboring properties.

Poole asked which other properties had the condition that required feed and bedding be stored inside.

Lorsung said she used the conditions placed on Bel Farm as a template for the conditions for the Kooman's request. She added that several other Conditional Use Permits require feed and bedding to be stored inside.

Poole asked if that condition was placed upon the Stephan's property.

Johnson explained that staff didn't have those conditions with them at the meeting.

Gyllenblad said that he was concerned that some commercial boarding operations have different requirements than others.

Lorsung said that in most communities, the code has specific information on what conditions should be placed upon commercial horse operations. She recommended that Independence add that to its code.

Gyllenblad asked Hirsch why extra requirements were put on Liza MacMillan and Chris Stephan's Conditional Use Permits.

Hirsch responded that she would need to review those files in order to explain why certain conditions were added.

Motion by Betts, second by Johnson, to approve the Conditional Use Permit for a commercial horse facility, subject to the following conditions:

- **The applicant shall continue to have manure removed on a timely basis.**
- **Facility hours of operation shall be limited to 7:00 a.m. to 9:00 p.m. weekly.**
- **No horse shows, training clinics, or similar special events may occur on the property without the prior written approval of the City. In no case will there be more than two horse shows, training clinics, or similar special events in any one calendar year.**
- **No horse shall be ridden on adjacent private property without the written consent of the property owner.**
- **Hack horses may not be rented at or from the property at any time.**
- **No resident of, employee at, or visitor to the property shall park any vehicles on any public street, highway, or right-of-way.**
- **Adequate measures must be taken and maintained to prevent or control offensive odors, fumes, dust, noise, and vibration in order that none of these will constitute a nuisance.**
- **All feed and bedding materials must be stored at all times in a covered, completely enclosed building or structure, with an exception for large, round bales.**
- **Appropriate management practices shall be utilized to control flies and odor.**
- **Best efforts shall be made to maintain grass cover in paddock and pasture areas on the property and paddocks may not be used unless there is adequate ground cover.**

- **Signage shall be consistent with City code standards.**
- **The applicant shall have no more than 20 horses at the property at any given time.**
- **The Applicant must pay to the City a fee in the amount determined by the staff to represent the actual cost to the City of reviewing this amended conditional use permit application.**
- **The City shall review the Conditional Use Permit once annually for compliance and without limitation in accordance with applicable law to ensure compliance.**

All present voted aye. MOTION DECLARED CARRIED.

10. KATHY ARMSTRONG, 7888 COUNTY ROAD 6 (PID 33-118-24-22-0018), AND RUSSEL WEFEL (PID 33-118-24-22-0019) REQUEST FOR A LOT LINE REARRANGEMENT.

Lorsung explained that the lot line rearrangement would be done by survey. She said that in the past five years, Wefel property had been involved in a lot line rearrangement with another adjoining property. She said the County would be taking its half of the right-of-way easement at the time of the lot line rearrangement. Lorsung added that both properties are legal, non-conforming and that Independence has not historically had a problem with these types of lot line rearrangements. Lorsung noted that there is an existing Conditional Use Permit on the Armstrong property for a business.

Lorsung added that there have been drainage problems on other properties adjacent to the Wefel property. She said that those issues are a separate matter that the properties owners are working to fix.

Motion by Wenck, second by Gyllenblad, to approve the lot line rearrangement, subject to the following conditions:

- **The applicant shall submit to the City interior drainage and utility easements.**
- **The applicant shall submit the subdivision to Hennepin County for conveyance of the portion of the property that lies within the right-of-way on Co Rd 6.**
- **The applicant shall pay to the City all fees associated with the review of the application.**
- **The applicant shall record the subdivision with Hennepin County within 6 months of approval.**

All present voted aye. MOTION DECLARED CARRIED.

11. COUNTRYSIDE HEATING A COOLING, 6511 HIGHWAY 12 (PID 22-118-24-44-0011), LARGE ASSEMBLY PERMIT.

Item was removed from the agenda.

12. PIONEER-SARAH CREEK WATERSHED MANAGEMENT COMMISSION BUDGET - UPDATE.

Hirsch spoke to concerns the Council had about the budget at its previous meeting. She explained that from the line item they were concerned with, \$210,000 is an expense, but Pioneer-Sarah Creek Watershed Management Commission then receives a grant to cover the costs.

13. REQUEST TO ALLOW JESSICA LAABS FROM KIMLEY-HORN TO CONTINUE WORKING FOR THE CITY UNTIL THE SHORELAND ORDINANCE UPDATE GOES THROUGH THE APPROVAL PROCESS.

Hirsch explained that the Planning Commission would soon be holding a public hearing on a proposed new Shoreland Ordinance. She requested that Jessica Laabs be allowed to continue to work on the Ordinance until the process is completed.

Johnson asked how long the process would take.

Hirsch said she estimates that the process to adopt a new ordinance would take a couple of months. She said that she also spoke with Hakenson Anderson and they agreed that it would work well if Laabs were to remain working on the Shoreland Ordinance.

Wenck said that he would prefer that Laabs work for the City until the end of September.

Motion by Wenck, second by Betts, to allow Jessica Laabs of Kimley Horn to continue working on the City's Shoreland Ordinance until the end of September. All present voted aye. MOTION DECLARED CARRIED.

14. OPEN/MISC.

Liaison to the Ryan Companies.

Johnson said that as the proposal moves forward for a potential Target development, the Council should select one of its members to act as a liaison for the project.

Motion by Wenck, second by Betts, to appoint Wallace as a liaison to Ryan Companies. All present voted aye. MOTION DECLARED CARRIED.

Request for Proposal to Hennepin County Sheriff.

Johnson explained that Wenck, Wallace and Gyllenblad sent a letter to the Hennepin County Sheriff's Office. Johnson stated that the letter was in violation of the Open Meeting Law.

Motion by Wenck, second by Gyllenblad, to request a proposal from the Hennepin County Sheriff's Office for 24-hour police protection to the City, with an hourly rate and other options the Sheriff has available.

Wenck said that he is requesting the proposal for budget purposes.

Betts said that she is opposed to the motion. She said that she believes West Hennepin Public Safety provides excellent service to the City. Betts added that she believes the purpose of City government is to provide services to its residents. She said that the first need of the community is for safety and security.

Johnson said he believes the Council is sending a terrible message to the Public Safety Department.

LuAnn Brenno, resident, said that she has a problem with not making this issue public. She said that the police protection to the community is very important and residents should have input into the process before it comes to a vote. She said that if police officers think their jobs are in jeopardy, they might leave

WHPS for other agencies. Brenno strongly urged the Council to allow for community input before going forward with this process.

Johnson stated that the letter sent to the Hennepin County Sheriff's Office concluded by saying "City of Independence" and included Wenck, Gyllenblad and Wallace's signature. He added that the letter is a violation of the Open Meeting Law. Johnson read the letter to the audience upon request by Evers.

John Quinlivan, resident, asked if it's possible for the Council to make a change in police protection without resident input.

Johnson responded that it is possible.

Quinlivan said that even if it is possible, he doesn't think it is responsible. He said that first responders are important to the community. He said he would like for the community to have an opportunity to weigh in on this issue. He said that his wife owns a coffee shop in town and he believes that the reason they haven't had any issues with crimes in the past three years is because of the police presence.

Harold Haavisto, resident, said he is also opposed to having the Sheriff's office patrol the community. He said that it's assuring to know the people who police the community.

John Evers asked why this issue wasn't on the agenda.

Johnson responded that the issue came to his attention after the agenda was published.

Evers said that this issue has been discussed before and the community didn't approve it then. He said that the way the issue is being discussed it not appreciated.

Wallace said that the purpose of the letter was so that the Council had an idea of a comparison budget. He said that the Council needs to be able to have discussions about the West Hennepin Public Safety budget, even if they are difficult discussion. He said that he wants the community to be as fiscally responsible as possible. Wallace said he believes WHPS does an excellent job, but his job is to get the best deal for the City's money. He said that he doesn't want to jeopardize public safety, as he has family in the community as well. Wallace said that the City does need to cut its budget, or it will cause problems in the future. He said that he would be fine if the majority of citizens do not want to change from WHPS. He said that the Council needs to look at the issue from a distance and not emotionally. He said that he wants the community to thrive. Wallace said that the purpose of the letter was for budget comparison and if the Council was going to move forward and discussing changing its police protection, the community would be involved in the discussion.

Randy O'Brien, resident, asked that when comparing budget numbers, the Council make sure it's comparing the same type of service. He said that when his house was broken into, it was reassuring to his daughter to know the police who responded to the call. He added that when police don't live in the community they serve, their job isn't as important to them. He requested the public input.

Gyllenblad said that he signed the letter because he wanted a comparison budget. He said that the City's budget for the last three years has centered on the Public Safety budget. He said that infrastructure and ability to develop are what create valuable properties, not the number of police officers the City has. Gyllenblad noted that the City is still paying for the debt on the WHPS facility.

Quinlivan stated that police do create better property values in the community.

Brenno asked Wallace why he didn't bring up the RFP request in a public forum before writing the letter to the Sheriff's office. She said sending the letter out without Council discussion is inexcusable.

Johnson called for a vote. **Gyllenblad, Wallace and Wenck voted aye. Betts and Johnson voted nay. MOTION DECLARED CARRIED.**

15. ADJOURN.

Motion by Betts, second by Wallace, to adjourn the City Council meeting at 8:55 p.m. All present voted aye. MOTION DECLARED CARRIED.

Respectfully submitted by Christina Scipioni,
Recording Secretary