

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, JANUARY 26, 2016 –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, Councilors Betts, Spencer, McCoy, Grotting

ABSENT: None

STAFF: City Planner & Interim City Administrator Mark Kaltsas, City Administrative Assistant Horner, City Attorney Vose

VISITORS: Nathan Rogers, Peter Beck, Barb and Tom Janas, Jack Wegmann, Ed and Kathy Pluth, Ruth Clark, Lynda Franklin, Ryan Jensen, Paul Merz, Joe Fake, Patrick Burns, Barb Dunsmore, Luverne Dunsmore

4. ****Consent Agenda****

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council minutes from the January 12, 2016 Regular City Council Meeting
- b. Approval of Accounts Payable; Checks Numbered 15768-15800
- c. Approval of Planning Commission Appointment of Robert (Butch) Gardner to a Three (3) Year Term
- d. Approval of Pay Equity Report - **RESOLUTION 16-0126-01**
- e. Consideration to Approve **RESOLUTION 16-0126-02** Supporting the WeCAN Community Development Block Grant (CDBG).
- f. Consideration of Approving **RESOLUTION 16-0126-03** Supporting the Cities of Medina and Loretto in Requesting Funding Through a Bonding Bill to Upgrade the Railroad Crossings at Four Intersections, Including Town Line Road in Independence, To Qualify for Quiet Zones.
- g. Approval of Liquor License Renewals for Windsong Golf Club and the Ox Yoke Inn
- h. Approval of Settlement Agreement in the Brown/Strom versus Jacobsen dispute

Johnson said item (g) will be pulled from the consent agenda as the police department has to do a business check first. Betts requested item (f) be pulled from the agenda as well so the Council may discuss further.

Motion by Spencer, second by Grotting to approve the revised Consent Agenda. Ayes: Johnson, Betts, Spencer, McCoy, Grotting. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Betts said she would like more detail on Resolution 16-0126-03 about upgrading the railroad intersections. She asked if this was in regard to having the arms go down but no whistle sounding. Johnson said it is and Loretto is pushing for this. He said Senator Osmek has stated he will request the money (300k) per intersection this legislative year. Johnson said the City would not be putting in any money but rather supporting Loretto and Medina in their efforts.

Motion by Betts, second by Grotting to approve Resolution 16-0126-03. Ayes: Johnson, Betts, Spencer, McCoy, Grotting. Nays: None. Absent: None. MOTION DECLARED CARRIED.

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.
6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- City Council Work Session
- League of Minnesota Cities Officials Conference

Grotting attended the following meetings:

- City Council Work Session
- League of Minnesota Cities Officials Conference
- Sensible Land Use Coalition Meeting
- Met with a number of constituents

McCoy attended the following meetings:

- League of Minnesota Cities Officials Conference
- City Council Work Session
- Retirement Coffee for Maple Plain City Attorney Jeff Carson

Betts attended the following meetings:

- City Council Work Session
- Police Commission Meeting
- League of Minnesota Cities Officials Conference

Johnson attended the following meetings:

- Northwest League of Municipalities Meeting
- Orono Healthy Youth Committee Meeting
- Senior Community Services Annual Meeting
- Police Commission Meeting
- Sensible Land Use Coalition Meeting
- City Council Work Session
- Suburban Hennepin County Community Action Partnership Meeting
- Metropolitan Council Land Use Advisory Committee Meeting
- Orono School Board Meeting/ Workshop
- Conversation with Delano City Council Member

Horner attended the following meetings:

- Hennepin County Recycling Coordinators Meeting

- City Council Work Session

Kaltsas attended the following meetings:

- Met with Maple Plain officials on Budd Street project
- City Council Work Session

7. DONNA HENDLEY (APPLICANT/OWNER) REQUESTS THAT THE CITY TABLE HER APPLICATION FOR REZONING AND A PRELIMINARY PLAT FOR THE PROPERTY LOCATED AT 4150 LAKE SARAH DRIVE SOUTH, INDEPENDENCE, MN (PID NO. 02-118-24-43-0003).

Johnson noted this item was pulled from the agenda and will be discussed at the City Council meeting on February 23, 2016.

8. NATHAN ROGERS (APPLICANT) AND BARBARA JANAS TRUSTEE (OWNER) REQUEST THAT THE CITY CONSIDER THE FOLLOWING ACTION FOR THE PROPERTY LOCATED AT 1351 NELSON ROAD, INDEPENDENCE, MN (PID NO. 30-118-24-23-0001):

- a. A text amendment to allow solar gardens in the AG-Agriculture zoning district as permitted or conditional uses.

Kaltsas stated this item was brought before the Planning Commission at the January meeting. Kaltsas said the applicant is seeking a text amendment to the City's zoning ordinance to permit community solar gardens as a permitted, accessory or conditional use in the AG-Agriculture zoning district of the City. The City's current zoning ordinance does not address solar in any form as a permitted, accessory or conditional use in any zoning district. The City has addressed wind generation systems within the zoning ordinance. All wind generation systems are considered a conditional use and permitted only in the AG-Agriculture zoning district. The City has previously discussed addressing solar system regulations in some fashion within the ordinance. This application brings the question to the forefront and will allow the City to further discuss the issues and benefits of considering solar systems within the zoning ordinance.

The applicant approached the City last year to discuss the possibility of amending the City's zoning ordinance to allow community solar gardens in some manner within the City. The City noted that a text amendment would need to be considered and then pending the outcome of that request, a site specific request could be made for an individual property. As recently noted and discussed, the City can determine where and what land uses should be permitted, accessory or conditional within the City. Once it is determined that a particular land use should be permitted in some manner, criteria and requirements for reviewing and approving a particular land use would be developed. At this point, the City is being asked to consider whether or not to allow solar systems within the AG – Agriculture land use district. Should the Planning Commission want to consider allowing solar systems within the City, an ordinance would be prepared for further discussion and consideration.

The applicant has prepared a conceptual site plan for the property located at 1351 Nelson Road. It was recommended that the applicant prepare a conceptual site plan to provide context and supplementary detail to benefit the discussion and ultimate consideration of the City. In addition to the site conceptually developed in their current proposal, the applicant (as well as several other solar developers) has inquired about installing solar gardens on several properties within the City.

Community solar gardens have become a current topic of discussion for many outlying and rural communities in the state of Minnesota following the passage of additional legislation in 2013 that mandated 1.5% of

renewable energy comes from solar generation. Many communities have begun discussing if to allow and how to regulate solar systems within their respective communities.

Solar systems come in many forms, installation types and sizes. Although there are a wide array of different system types, solar systems can generally be broken down into 3-4 categories.

1. Roof mounted systems – residential and commercial (typically defined by size and underlying building use).
2. Free standing residential and commercial systems – ground mounted, pole mounted, etc. Would need to be defined by a maximum size and or power generation capability. Typically have minimum lot size, height and or setback restrictions which are established to minimize impacts on surrounding properties. Could be permitted as accessory structures if capable of meeting the established criteria and a conditional use if cross established thresholds.
3. Community solar system – could be further distinguished by size and generation capabilities.
4. Utility Scale Solar Systems – regulated by the Public Utilities Commission.

The applicant has provided information pertaining to the recent historical growth of the solar industry nationally and in Minnesota. The applicant has prepared information and site specific information relating to their request. The applicant has also provided a model ordinance which could be utilized during the development of a City specific solar ordinance. The model ordinance provides a plethora of technical information that can be used as a basis for considering a city specific solar ordinance.

Staff has developed similar solar system ordinances for communities both in and outside of Minnesota. The development of any ordinance should be based on the City's Comprehensive Plan and the current vision of the community and its residents. Solar ordinances should address all types of potential solar systems and will likely distinguish between system types and whether or not they are permitted, accessory, conditional or not permitted uses within a given zoning district. The City has three primary zoning districts. The Comprehensive Plan further defines several additional land use categories as well as outlines the intended future locations of certain land uses. Along with the information presented by the applicant, the City should contemplate and provide direction regarding the following considerations:

1. Residential roof mounted solar systems are becoming more common. Typically these roof mounted systems are mounted flush to a residential roof and have been accepted as a typical accessory structure within most residential and agriculture zoning districts. Standards can be developed which further define the requirements for this type of solar system.
2. Commercial roof mounted systems are also becoming more common. These types of systems can be installed utilizing several different methods. Standards can further define the parameters of these types of systems to minimize their potential impacts. Commercial roof mounted systems could be considered as an accessory or conditional use within the Commercial/Light Industrial zoning district.
3. Free standing solar systems come in many shapes and sizes. The City could consider establishing parameters which further define residential versus commercial systems. Minimum lot size, permitted yard location, setbacks, screening and height requirements could be further defined to limit and minimize potential impacts on surrounding properties. These standards could also be used to establish

whether or not the solar system is considered to be an accessory or conditional use on a particular property.

4. Community Solar Systems can also come in many different forms and sizes. This type of system is conceptually proposed with this application. These systems are capped by their generation capabilities; however, individual systems can be developed in concert on an individual property such that their scale becomes more consistent with a utility scale development. This type of development could then be considered more consistent with a commercial or industrial land use versus an agricultural land use. The City will need to consider whether or not these types of systems are in keeping with the character of the rural residential, agricultural and or commercial/light industrial zoning districts. While it is suggested that there are minimal impacts, often times these systems are not positively received by adjacent residential property owners. As a result, the location of these systems and their proximity to residential development becomes a critical issue to further discern. The City will need to consider if and or where these systems can be considered an appropriate and compatible land use. Are they compatible with typical and approved agricultural uses, rural residential uses and commercial/light industrial uses?

It may be possible to develop standards which would effectively mitigate any negative impacts that are otherwise imposed or perceived. Standards could include items such as minimum lot size, setbacks, screening requirements, height limitations, decommissioning plans and other similar criteria. The City will need to first determine the compatibility of the proposed land use and then determine if standards can be established to effectively mitigate potential impacts.

5. Utility Scale Solar Systems are regulated by the Public Utilities Commission.

Additional Considerations:

Kaltsas said the City has property that is zoned AG-Agriculture, but is guided Rural Residential in the Comprehensive Plan. The City has guided this land rural residential and it is anticipated that the land ultimately develops in a manner consistent with rural residential property. Allowing the development of long-term and substantial infrastructure on a property that is currently zoned agriculture may negatively affect the long term use and or develop ability of a property or neighboring property. The City will want to carefully consider if larger community or utility sized systems can be developed in concert with rural residential development. It may be desirable to consider development of an ordinance that uses the Comprehensive Plan as the guide for the future land use rather than the existing zoning of a property.

The City will want to develop both qualifying site and system/site specific design criteria. The applicant has provided some examples of setbacks, fencing and screening to demonstrate some basic ideas relating to larger system design. The City can further discuss and develop standards appropriate for the City of Independence.

The City will ultimately need to determine if the proposed use should be considered in the City. Following the initial review of the applicant's request, the City will need to determine if they would like to move forward with an amendment to the ordinance to allow the use. Depending on the direction provided by the City, an ordinance and site details would be further developed and reviewed by the City at a future meeting. The City does have criteria for considering zoning amendments in the zoning ordinance. The criteria are provided to help guide the City's consideration of zoning amendments, but do not limit the City's ability to consider other factors or criteria. Staff is seeking direction from the Planning Commission relating to the established criteria and whether or not solar systems in general and more specifically, community solar

gardens, should be considered in the zoning ordinance. The criteria provided in the zoning ordinance are as follows:

520.07. Criteria on zoning amendments. Subdivision 1. The planning commission and the city council may consider, without limitation, the following criteria in approving or denying zoning amendments.

Subd. 2. Zoning amendments must conform to the Independence city comprehensive plan.

Subd. 3. The zoning amendment application must demonstrate that a broad public purpose or benefit will be served by the amendment.

Subd. 4. The zoning amendment application must demonstrate that the proposed zoning is consistent with and compatible with surrounding land uses and surrounding zoning districts.

Subd. 5. The zoning amendment application must demonstrate that the subject property is generally unsuited for the uses permitted in the present zoning district and that substantial changes have occurred in the area since the subject property was previously zoned.

Subd. 6. The zoning amendment application must demonstrate merit beyond the private interests of the property owner.

A draft ordinance would be prepared for review by the City should staff be directed to move forward with amending the ordinance to permit solar systems within the City. There many elements and details of the ordinance that will need to be developed. The City will ultimately need to determine if the proposed use is in keeping with the intent of the agricultural zoning district and the Comprehensive Plan. The City has the ability to amend or not amend the City's zoning ordinance to allow certain uses at its discretion. Once the ordinance is amended, the City would then need to use the established criteria for reviewing and granting future approvals.

Neighbor Comments:

Kaltsas stated the City received several calls regarding the proposed text amendment prior to the public hearing. During the public hearing several neighboring property owners and other residents of the City provided comments and feedback to the Planning Commission. The property owner and applicant also addressed the Planning Commission to provide information and respond to questions.

Kaltsas said the Planning Commission reviewed the request and asked questions of staff relating to the proposed text amendment. The Commissioners discussed the concept of considering a text amendment which would address solar in the City's ordinance. Commissioners stated that more information and consideration would have to be given to the idea of amending the ordinance. Commissioners voted 3-1 to recommend that the City Council direct staff to draft an ordinance amendment.

Kaltsas said the Planning Commission recommended that the City Council direct staff to draft an ordinance amendment which would address solar within the City.

Betts stated she recently researched this topic and feels it is very important the City has some guidelines in place. She said there are concerns related to solar energy as to how it will affect climate, land and animals. Betts said solar gardens have not been around long enough to know long-term effects. She said the City of Independence needs to be consistent with surrounding cities ordinances regarding solar energy. Betts said the ordinance needs to protect the City if there are any negative impacts that arise from solar fields. Johnson agreed that an ordinance needs to be developed to address solar. He said he remembers when people were against electric poles going up as they did not want to see them.

Spencer asked for clarification that this discussion was simply to look at surrounding cities ordinances and move forward with drafting language for Independence. He noted this was not taking action on this specific application. Kaltsas said that was correct and that the information presented was for conceptual purposes only.

Johnson asked at what size the public utilities commission get involves in these solar projects. It was stated that the Public Utilities Commission gets involved when the number is at 50 megawatts. Vose stated the PUC does not get involved in a site-specific way but does provide a framework of rules for the smaller projects (5 megawatt and smaller). Johnson disagreed and said he read in the Star Tribune that the PUC has denied certain locations. He thought one example was Watertown. Vose stated they do provide rules regarding location of gardens and that is what would come into play with a situation like Watertown if it was denied.

Vose stated there were letters that came in since the Public Hearing with this applicant and to be fair those should be heard by the Council. He thought it would also be good practice to have the applicant respond to those submittals. Vose noted that the criteria provided in the Staff report is guidance and not as concrete as criteria that is provided in a CUP for example.

McCoy asked if this involved looking at a possible ordinance and/or text amendment or if it was for one or the other. Kaltsas stated the text amendment would look at incorporating solar into the City ordinance. He said there needs to be direction and regulation within the ordinance. McCoy said this application addresses solar use in Ag zoned properties so that would not relate to residential housing/ rooftop style applications. Johnson asked if state building codes had anything that regulated solar on rooftops. Kaltsas said the building code does not contemplate the aesthetics of the panels.

Vose said the application tonight is whether or not to consider solar in the Ag districts and to draft a text amendment relating to that specific application. He said there are plenty of other related issues that the Council may choose to incorporate in the amendment as well but it was important to remember the 60 day timeline related to this application. Johnson said the Council is shirking their responsibility if they don't work on it.

Spencer stated Council was not going to be able to make any recommendations tonight and reiterated that the Planning Commission's request was to work on creating an ordinance to address solar in the City. Kaltsas said that was correct and that Planning felt they did not have enough information to act on the specific application at hand. Spencer said this specific request before them should be tabled indefinitely or denied. Betts said there is pressure on cities to look at solar language and if we don't we will be forced to at some point.

Kaltsas stated the timeline may be extended until mid-April and the text amendment may be reviewed 1-2 times more by the Planning Commission. After that process, it would be presented to Council for a vote.

Peter Beck, representing Ecoplexes, stated this application was not submitted to start a 60 day clock. He said extensions needed would not be an issue.

Patrick Burns, representing him and other neighbors, said he respectfully disagrees about the time clock comment and this application looks complete. He said it appears Council wants to delve into the minutia and work through a hybrid model that he feels is not permitted by the City code. Burns said the applicant wants approval from the Council. Burns stated the Council has the authority to study solar power issues on their own. He feels this application should be rejected and Council should direct the Planning Commission to adopt language around solar at a city-wide level. Burns is concerned with the application and the timeclock. His concern as an attorney is that the Council is trying to adopt a hybrid approach that he feels is not workable. Burns said the application needs to be accepted, rejected or tabled as defined by City code.

Vose stated he agreed that this was an application and the applicant's attorney will allow a time-frame extension and that is totally permissible. Grotting asked if the Council entertained this, why would they do so in haste according to the applicant's timeline. Vose stated the 60 day rule is state law and anything beyond 120 days requires the applicant's agreement. Grotting stated he is not against solar power but feels this

mandate by the federal government is not an organic effort and doesn't necessarily benefit the community of Independence.

Johnson said he did not want to deny the application, they paid money, and something around solar has got to get done in the City. He said an ordinance needs to be in place. Spencer agreed that with the applicant willing to grant more time it takes the pressure off while an ordinance may be drafted. He said Council has a responsibility to take a look at overall comprehensive solar in the City.

Motion by Spencer to have Staff investigate, construct and have the Planning Commission hold Public Hearings on Solar Energy in Independence; as well as, accept the offer from the applicant to extend the time period of the application, second by Betts. Ayes: Johnson, Betts, Spencer, McCoy. Nays: Grotting. Absent: None. MOTION DECLARED CARRIED.

Johnson asked if anyone wanted to speak in regards to the proposed motion.

Luverne Dunsmore stated he owns 40 acres surrounding the applicant property. He encouraged Council to consider the surrounding properties and how they will be affected when drafting language for the ordinance.

Lynda Franklin, 6615 Franklin Hills Rd., asked what would happen if the clock gets to the 120 mark and the applicant says they will not allow more time. Johnson said it would then come before the Council and they can deny it. Franklin asked if this motion means the City is going to allow solar systems. Johnson said if it meets the criteria of the ordinance. Spencer said no, this merely means the City is going to examine solar and nothing specific to this application. Franklin said Excel is the company proposing this and the community would not benefit. Spencer said Excel is one of many and it would be irresponsible for the City to do nothing. He stated there needs to be policy set forth.

Kaltsas stated this would take several iterations and several public hearings to work through the language.

Patrick Burns stated this extension puts a burden on him as a homeowner as he was going to list his house in the spring and would have to disclose this zoning issue. He said his realtor told him this would cause a 50k reduction on the price of his home. He asked how a 50k hit on his property was fair.

9. CONSIDER PURCHASING A SECOND DATA COLLECTOR TO CAPTURE FLOWS COMING OUT OF LIFT STATION #1 ON PERKINSVILLE ROAD

Motion by Spencer to approve the Data Collector purchase, second by Grotting Ayes: Johnson, Betts, Spencer, McCoy, and Grotting. Nays: None. Absent: None. MOTION DECLARED CARRIED.

10. OPEN/MISC.

7. ADJOURN

Motion by Betts, second by Spencer to adjourn at 8:48 p.m. Ayes: Johnson, Betts, Spencer, McCoy, and Grotting. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Respectfully Submitted,

Trish Bemmels/ Recording Secretary