

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, SEPTEMBER 5, 2017 –6:30 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 6:30 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, Grotting and McCoy

ABSENT: None

STAFF: City Administrative Assistant Horner, City Administrator Kaltsas, City Attorney Vose (arrived at 7:30)

VISITORS: Rick & Kari Strommer, Renae Clark, Jeff Carnivale, Kathy & Ed Pluth

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 August 15, 2017 Regular City Council Meeting.
- b. Approval of City Council minutes from the August 22, 2017 City Council Workshop.
- c. Approval of Accounts Payable; Checks Numbered 17363-17414.
- d. Approval of the Large Assembly Permit for James Dahlheimer to hold an anniversary party on the property located at 9226 US Hwy. 12 and held on September 9th, 2017.
- e. Approval of the Large Assembly Permit for Mama's Happy – Fall Outdoor Market on the property located at 7888 County Road 6 and held on September 7th, 8th and 9th, 2017.
- f. Approval of Election Judges for the November 2017 Local and School District Elections.
- g. Approval of **RESOLUTION NO. 17-0905-02** – Supporting adoption of the Minnehaha Creek Watershed District Watershed Management Plan.

Johnson pulled (g) Approval of **RESOLUTION NO. 17-0905-02** – Supporting adoption of the Minnehaha Creek Watershed District Watershed Management Plan for discussion as a representative from the watershed district was present to address the Council.

Motion by Betts, second by Grotting to approve the Consent Agenda items (a-f). Ayes: Johnson, McCoy, Spencer, Grotting and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Johnson said the Minnehaha Creek Watershed District has been working on their plans for four years. Renae Clark who is a Project Manager for the Minnehaha Creek Watershed District thanked Johnson for serving on

the Advisory Committee for the district. She said the District focuses on three themes; areas of highest need, flexibility district-wide, and developing partnerships in communities. Clark said the formal support of the community is critical for projects including the cleaning up of Lake Minnetonka.

Motion by Spencer, second by Grotting to approve RESOLUTION NO. 17-0905-02- Supporting adoption of the Minnehaha Creek Watershed District Watershed Management Plan. Ayes: Johnson, McCoy, Spencer, Grotting and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

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

Jeff Carnivale requested a discussion to be added on train horn issues in Independence.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- Planning Commission Meeting
- Comprehensive Plan Workshop

Grotting attended the following meetings:

- Planning Commission Meeting
- Comprehensive Plan Workshop

McCoy attended the following meetings:

- Planning Commission Meeting
- Comprehensive Plan Workshop
- Ground Breaking Orono Schools Activity Center

Betts attended the following meetings:

- Planning Commission Meeting
- Comprehensive Plan Workshop
- Sensible Land Use Conference

Johnson attended the following meetings:

- Community Action Partnership of Hennepin County Finance Meeting
- Planning Commission Meeting
- Haven Homes Advisory Committee Meeting
- West Hennepin Pioneer Museum Meeting
- Maple Plain Museum Ice Cream Social
- Old Timers Luncheon
- Ground Breaking Orono Schools Activity Center
- Orono School Board Meeting
- Comprehensive Plan Workshop
- Orono Healthy Youth Advisory Board Meeting
- Great Expectations Breakfast
- Mound Old Timers Reunion at the Mound High School
- Met with Representative Eric Paulsen

- Delano School Board Meeting
- Sensible Land Use Conference
- Small Cities Conference Call
- Haven Homes Pig Roast

Horner attended the following meetings:

- Planning Commission Meeting
- Comprehensive Plan Workshop
- Elections Meeting at Hennepin County

Kaltsas attended the following meetings:

7. **Tabled at July 31, 2017 City Council Meeting:** Richard and Kari Stromer (Applicant/Owner) requests that the City consider the following actions for the property located at 2828 County Line Road (PID No. 18-118-24-24-0003) in Independence, MN:
- RESOLUTION NO. 17-0905-01** - Consideration of granting a variance to allow a lot split of their 19.47 acres in the Agriculture zoning district. The variance would allow for the division of a 4-5 acre portion of this property with access onto Nelson Road; and
 - A minor subdivision allowing the split of the subject property into two parcels.

Updated Information: City Council tabled the application in July 2017 in order to allow staff time to research additional information pertaining to this property. The primary question raised during the City Council Meeting was relating to a past assessment for road improvements made to Nelson Road in 1991. Staff researched project files and City Council minutes searching for information relating to the Nelson Road assessment. Ultimately staff was able to confirm two factors relating to the assessment project: The property was assessed for the Nelson Road improvements in 1991. Prior to the assessment hearing, the City had the Building Inspector perform a field inspection of the property east of the existing creek and with frontage on Nelson Road to determine if the land would support a new home (with septic field). The Building Inspector completed an inspection the property, took a soil sample and reported to the Council that he believed the property could accommodate a new home if split from the remaining property (see attached minutes). The City will need to determine if the decision to assess the property in 1990 was made at least partially on the ability of the east portion of this property to be subdivided as an independent lot. The City will need to determine if the additional information provides findings that would allow for approval of the variance and subsequent minor subdivision. The City has historically studied the potential developability of a property when considering road and utility assessments. Staff has prepared two resolutions (numbered the same) for consideration by the City Council. Based on the direction provided, one of the resolutions can be adopted. Note: The City received additional public comment following the last City Council Meeting.

Discussion:

The applicants approached the City about the possibility of subdividing their property into two lots. The property is zoned Agriculture. The City does not allow the subdivision of property zoned Agriculture with the exception of lot line rearrangements and rural view lot splits. The City would have to consider granting a variance from the zoning ordinance to allow the subdivision of this property. The overall property does not meet the minimum 40-acre requirement to realize a rural view lot subdivision. The property has an existing home and accessory structures that are accessed via Maria Rd. to the west. The applicant has noted in their application that the existing creek and tree line divides the property and makes access of the eastern portion difficult. Additionally, the property has frontage on Nelson Road to the east. The applicant would like the City to consider granting a variance to allow the subdivision of property in the Agriculture zoning district that does not meet the minimum 40-acre lot size. The applicant has provided a survey, wetland delineation and septic design for the proposed Tract A. The proposed new parcel would be a total of 4.32 acres with 2.76 acres of useable upland. The newly subdivided property would be accessed via Nelson Road. Based on the information provided and a site visit, the proposed lot would appear to accommodate the development of a single-family home meeting all requisite requirements. The proposed property would have the following detail:

Min. Lot Size Required to Subdivide:	40 Acres Existing Lot
Size:	19.47 Acres
Min. Lot Frontage Required:	250 Lineal Feet
Lot Frontage Proposed:	440 Lineal Feet
Min. Upland Acreage Required:	2.5 Acres
Upland Acreage Proposed:	2.76 Acres

The remainder property with the existing home and accessory structures would not be negatively impacted as a result of the proposed subdivision. The proposed property line for the new parcel would not create any non-conformities or reduced setbacks relating to the remainder property, the existing home or accessory buildings.

The City has standards for granting a variance which need to be considered prior to making a recommendation relating to the application. The standards established by the City require the applicant to demonstrate that the requested variance does not create a situation that is not in keeping with the character of the surrounding area. In addition, the applicant must demonstrate that the requested variance is unique to the subject property. The standards for granting a variance are as follows:

520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:

(a) The property owner proposes to use the property in a reasonable manner not

permitted by the zoning code;

(b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;

(c) the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011- 08)

Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)

520.23. Conditions and restrictions. The board of adjustments may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)

Consideration of the standards for granting a variance:

- a. The applicants are proposing to use the existing and proposed property as residential which is consistent with the AG-Agriculture Zoning District.
- b. The properties created by the subdivision are similar in nature and character to the surrounding properties. There are existing properties located along Nelson Road that range between 2.5 and 40 acres plus.
- c. The character of the surrounding area is mixed residential/agricultural and guided for long term agriculture. The majority of existing properties that are less than 40 acres along Nelson Road, were subdivided based on a previous ordinance and comprehensive plan for the City. The City's current comprehensive plan guides this area for long term agriculture. The City will need to determine if the proposed subdivision is in keeping with the intent of the City's comprehensive plan.
- d. The requested variance to allow the subdivision of the property must be found to be unique to this property. The City reviewed aerial photographs and survey information to determine if the condition of having a creek subdivide the property with two points of access (Maria Road on the west and Nelson Road on the east) is unique to this property. Due to the large area of the City and the number of properties, it is difficult to determine if this situation is wholly unique to this property. The City has many unique properties as well as many situations that could be presented as unique to a given property. The City has recently considered and granted a variance to allow the subdivision of an Agricultural property, less than 40 acres, that was bisected by an existing road. In that instance, the City was able to more definitively identify the same condition and found that there were a handful (less than 5) of properties that had the same circumstances and conditions of a road bisecting the property. The City has a large number of properties that are less than 40 acres, zoned Agriculture and have unique conditions. The City will need to determine if the unique characteristics of this property are distinctive and discernable from other conditions on similar properties.

The City will need to determine if the requested variance to allow the subdivision of the property meets the

requirements for granting a variance. The proposed subdivision, if approved, would create two properties that meet all other applicable criteria of the City's zoning ordinance.

The existing house on the remainder property has an existing on-site septic system that will remain in use with the existing home. Upon the sale of the parcel, the City will require an inspection of the system.

Proposed Tract A will need to accommodate the requisite primary and secondary on-site septic system locations. The proposed subdivision does not currently provide for the requisite drainage and utility easements along all property lines. These easements would need to be provided to the City should the application be approved.

The proposed Tract A would be required to pay the City's Park Dedication fee. For this property, the park dedication fee amount is \$3,500.00. This fee will need to be paid prior to recording the subdivision.

Park dedication fee \$3,500 per lot up to 4.99 acres, plus \$750 per acre for each acre over 5.

4.32 acres = \$3,500

Planning Commissioners discussed the proposed variance to allow a subdivision. Commissioners noted that they would need to determine that there are unique characteristics of the property that would warrant the variance to be granted. Commissioners discussed that there is a creek that separates the proposed parcel from the remainder of the property and that it would have access onto a City street.

Commissioners discussed whether or not the condition was created by the landowner and if the property was useable to the landowner in the current condition. Commissioners asked staff for historical information relating to any similar variances granted by the City and also if there were properties that would have similar characteristics. Staff noted the few instances where a variance had been granted and also noted that there are too many variables to determine if this condition would appear on other properties within the City. Planning Commissioners had varying viewpoints relating to the request and whether the condition was unique to this property. Several Commissioners believed that the creek separation and access on a City road were unique characteristics of the property and several Commissioners stated that they did not believe that these conditions were solely unique and that the variance would potentially open up too many similar situations. Commissioners ultimately could not approve a motion to either approve or deny the requested variance and minor subdivision.

The Planning Commission did not make a recommendation for the requested variance and minor subdivision. City Council is being asked to provide direction and resolve to approve or deny the requested variance. The City has prepared two resolutions; one approving the application, and one denying the application. Based on the determination made by Council, the corresponding resolution can be considered for adoption. If new findings are considered by the Council, a revised resolution can also be brought back for future consideration.

Betts said she felt the assessment means nothing. She noted she was assessed for both PID's at her house. Johnson asked if the property was always nineteen acres or if it was split. Kaltsas said there was no record for this property being split at any point.

Grotting asked if the applicant was aware that it could not be split. Strommer said they called the City and asked if they would be able to split when they were purchasing the property. He was told it would be no problem but they would have to apply for a variance. Spencer asked if there was ever a discussion about extending Maria Road. Johnson said no.

Grotting asked if the landowner on Nelson was assessed as the accessibility was different. McCoy said corner lots are typically treated differently due to road accessibility. Grotting asked what the rate was based on. Kaltsas noted they are randomly checked and all the same assessment. McCoy said for fairness the City could take soil samples and then say no. The hardship would be the wetland areas but otherwise it fits the theme. He noted it was a unique piece of property. Betts said that would not be a problem but it is in the Ag district. She said then the Comprehensive Plan would need to be changed as others would come forward and expect the same treatment. Johnson said he felt the property was unique and asked if any was in Ag Preserve. Strommer said no. Spencer said it would be in line with the neighborhood but would need a Planning Commission variance. He said it would be spot zoning and thought this should be avoided to eliminate problems down the road. Spencer said this would just be a rearrangement and there is not a hardship. Johnson said people could have built a house at the other end of the lot.

Grotting said it is a challenge with the zoning. Johnson asked which way the water runs. Strommer said it runs south. Spencer said they should approach the waterway and ask about a bridge or cartway. Strommer noted this was a problem for a property on Becker that was separated by a road and they were granted a variance. Spencer said this issue is the same for others. Natural barriers are pre-existing and opens up a can of worms if a variance is attempted.

Motion by Betts, second by Spencer to deny RESOLUTION NO. 17-0905-01 - Consideration of granting a variance to allow a lot split of their 19.47 acres in the Agriculture zoning district. The variance would allow for the division of a 4-5 acre portion of this property with access onto Nelson Road; and (a) minor subdivision allowing the split of the subject property into two parcels. Ayes: Johnson, Spencer, Grotting and Betts. Nays: McCoy. Absent: None. MOTION DECLARED CARRIED.

8. MESSAGE PARLOR ORDINANCE:

- a. **ORDINANCE NO. 2017-04** - Considering Adoption of a New Ordinance Regulating Massage Parlors in the City.
- b. **SUMMARY ORDINANCE NO. 2017-05** - Considering Adoption of a Summary Ordinance pertaining to Massage Parlors to be published.

Kaltsas said West Hennepin Public Safety has worked with the City of Maple Plain to adopt an ordinance regulating the licensing of massage services parlors. The ordinance was developed following difficulties the City and West Hennepin had with non-legitimate massage parlors. West Hennepin would like the City to consider adopting a similar ordinance for the purpose of regulating the licensing of massage services parlors in Independence.

The basis of the ordinance is to regulate the licensing of individuals and business providing massage services in the City. The City has reviewed the ordinance adopted by the City of Maple Plain and believes that it could adopt similar language in order to regulate licensing of legitimate businesses and individuals. WHPS has reviewed the ordinance and believes that adoption of the ordinance would better protect the City and its residents. Staff is seeking discussion and direction from the City Council relating to the possibility of adopting an ordinance similar to that adopted in Maple Plain.

Council reviewed a draft ordinance at its April 2017 meeting and provided direction to staff to

revise the ordinance. Based on the discussion and direction provided by the City Council, staff has prepared a revised ordinance with the following changes:

1. Changed “Clerk” to “Administrator”.
2. City reviewed the time period for reviewing an application and is recommending that the language included provides an adequate review period.
3. Reviewed insurance requirements in comparison to similar licensing (including liquor license insurance requirements) and found \$1,000,000 to be consistent.
4. Reviewed employment history background review requirement (currently proposed to be 5 years). Five years is consistent with the City’s liquor license requirement.
5. Updated language pertaining to what types of criminal background needs to be disclosed on the application.
6. Updated language to expand delinquent taxes section to include delinquent utilities or similar outstanding fees as a reason for denial.
7. Reviewed zoning ordinance pertaining to whether or not massage services could be provided as a home occupation. A person would likely not be able to operate a full massage business as a home occupation based on the existing criteria established in the ordinance. These provisions include a maximum of one employee, “limited” clients or patients allowed to visit the premise. Staff will seek additional direction relating to whether or not any additional restrictions should be placed on a licensed massage therapist?

The City Council is being asked to discuss the aforementioned ordinances and provide feedback and direction to staff.

Betts asked if the ordinance was the same as Maple Plain’s ordinance. Kaltsas said it was almost identical but included an expanded criminal background check and a search on delinquent taxes and utilities. If those were found they would not be approved.

McCoy said he appreciated the work that was done by staff and WHPS but thought a few areas could be more definitive or there may be loopholes. McCoy said they look at any convictions not just those within the last five years.

Motion by Spencer, second by Betts to approve ORDINANCE NO. 2017-04 - Considering Adoption of a New Ordinance Regulating Massage Parlors in the City. Ayes: Johnson, Spencer, Grotting and Betts. Nays: McCoy. Absent: None. MOTION DECLARED CARRIED.

Motion by Spencer, second by McCoy to approve SUMMARY ORDINANCE NO. 2017-05 - Considering Adoption of a Summary Ordinance pertaining to Massage Parlors to be published. Ayes: Johnson, Spencer, Grotting, McCoy and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

8. OPEN/MISC.

Carnivale said he lives across the wetland in fieldstone. He noted the trains are many and all night long. He said five went through the night before. Johnson said they have been trying to eliminate the train whistle in Loretto for the past 4 years and have spent quite a bit of money to try and achieve that. Kaltsas said it takes grant money for funding. He noted there has also been a request for Valley Road. Grotting asked if it would be more of chance of happening with the revamp of 90 and 12. Kaltsas said if there was money that would be the best opportunity to look at that. Betts said the whistles seem louder than they used to be and wondered if

the decibel could be brought down. Vose noted it would have to be a cooperative effort between cities and rails. He said there is no way to cite a railway company for loudness etc. Johnson said it could be looked at but there are no guarantees.

9. ADJOURN.

Motion by Betts, second by Grotting to adjourn at 7:55 p.m. Ayes: Johnson, McCoy, Spencer, Grotting and Betts. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Respectfully Submitted,

Trish Bemmels/ Recording Secretary