

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, OCTOBER 28, 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, Public Safety Director McCoy,
Water Resource Staff Laabs, City Engineer Miller

VISITORS: Planning Commission Char Brad Spencer, Gordon Wetter, Bob Young, Larry Palm, Dale Rue, Leland Mann, Betsy Stoeffe, Gary Gniffke, Lori McNamara, Brian McNamara, Kathy & Ed Pluth, June Sutton, Archie & Mary Magnuson, Jim Coleman, Mike Zeglin, John Zeglin, LuAnn Brenno, Debbie Fredrick's, Cynthia Erickson, Polly Schoen, Mitchell Schoen, Tony Barranco, Jean Peterson, Al Sterner, Dan Ylitao, John Quinlan, Pat Bacon, Ken Thomas, Victor Walters, Lou Merchant, Hahan Lewis, Mary Olson, Sam Nelson, Jim Smith, Joseph Petrusa, Joseph Schleif, Mario & Donna Crespo, Mike Lueck, Laurie Bresslin, Bruce McComb, Jim Wehmann, Will Haack

4. CONSENT AGENDA.

Approve:

- Council Minutes – Oct. 14, 2008.

Motion by Wenck, second by Betts, 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 to the agenda.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

Gyllenblad: Taking phone 75 calls on the Ryan Companies Comp Plan amendment request.

Wenck: Nothing to Report

Wallace: Nothing to report

Betts: Fire Department Handbook Revision Committee meeting,

Mayor: Land Use Advisory Committee meeting, Highway 55 Corridor Commission meeting, Lake Sarah stakeholders' meeting, Toni Bergland's funeral- she was the former Orono Community Education Director, Community Action Partnership of Suburban Hennepin Board meeting and training session, Delano Highway 12 bridge ribbon-cutting, Hennepin County Active Living Committee meeting, Senior Community Services Executive Committee meeting, Meeting regarding Ride Net with western Hennepin County officials.

Hirsch: Nothing to report.

7. DIRECTOR RAY MCCOY – WEST HENNEPIN PUBLIC SAFETY.

September Activity Report

McCoy stated that as of the end of September, West Hennepin Public Safety had 3,025 incidents. McCoy noted that WHPS recently arrested a 30-year-old who was responsible for a number of daytime burglaries.

Johnson asked what happened to the three juveniles who WHPS had previously arrested on charges of burglary.

McCoy responded that the three juveniles have court dates pending. He stated that WHPS is working to collect victim-impact statements.

Ordinance No. 2008-06, amending Chapter 20 of the Independence City Code; adding provisions for the Administrative Enforcement of Offenses and Imposition of Penalties

McCoy stated that the Police Commission directed him to work with Independence and Maple Plain to approve administrative penalties.

Vose stated that the ordinance is a new City process within the City Code that would allow for the City to enforce certain offenses and impose penalties. Vose stated that many cities throughout Minnesota have adopted similar codes. Vose stated that a penalty would be paid by a person who commits certain offense. He noted that the penalty would be less than what would be imposed through the Hennepin County Court system. Vose stated that the State Attorney General issued an opinion stating that cities do not have the authority to impose penalties for certain offenses. Vose noted that because the administrative enforcement process is voluntary, he believes it is legal.

McCoy stated that the City of Maple Plain has approved the first reading of a similar ordinance.

Wenck asked if Council needed to add to City Code offences listed on the proposed ordinance that aren't currently in City Code.

Vose responded that the Council could do so, but until then, offenses not in City Code simply wouldn't be dealt with through an administrative process.

Motion by Betts, second by Wenck, to approve Ordinance No. 2008-06 and waive second reading. All present voted aye. MOTION DECLARED CARRIED.

8. DISCUSSION AND APPROVAL OF PROPOSAL TO COMPLETE THE STORMWATER SURFACE USE PLAN FOR THE 2008 COMPREHENSIVE LAND USE PLAN.

Hirsch stated that staff received proposals from Hakanson Anderson and Kimley-Horn. She stated that Kimley-Horn's proposal was for \$22,000 and Hakanson Anderson's proposal was not to exceed \$28,000 to \$31,000. Hirsch deferred to Wenck for his opinion.

Wenck stated that it appeared that Hakanson Anderson included in its proposal gaining approval from the Minnehaha Creek Watershed District. He asked if Kimley-Horn included that work in its estimate.

Laabs, of Kimley-Horn, responded that Kimley-Horn based its plan on the Met Council requirements.

Wenck stated that the Met Council will require the City to include a local stormwater management plan before final approval of the Comp Plan will be given. He noted that work for the stormwater management plan did not seem to be included in the Kimley-Horn proposal.

Craig Jochum, of Hakanson Anderson, stated that his proposal included five services not included in Kimley-Horn's proposal. He noted that a significant difference between the two proposals was defining the watershed rate volumes and flows, which is included in the Hakanson Anderson proposal and not in the Kimley-Horn proposal. Jochum stated that about \$15,000 of his proposal was for that work.

Johnson asked if the Pioneer-Sarah Creek Water Management Commission would require approval of the plan.

Wenck responded that the approval process would not be as rigorous as it is for the Minnehaha Creek Watershed District.

Lorsung stated that what needs to be in the Comp Plan is an executive summary of the Stormwater Surface Use Plan.

Wenck stated that he prefers the Hakanson Anderson proposal, which includes an amount not to exceed \$5,500 for the work needed for the Comp Plan and an amount not to exceed \$28,000 for the additional work.

Motion by Wenck, second by Wallace, to approve the proposal from Hakanson-Anderson to complete the Stormwater Surface Use Plan for the 2008 Comprehensive Land Use Plan. All present voted aye. MOTION DECLARED CARRIED.

9. APPROVAL OF ORDINANCE 2008-03 REPLACING SECTION 505 OF THE INDEPENDENCE CITY CODE REGULATING SHORELAND.

Spencer, Planning Commission Chair, stated that the Planning Commission approved an updated version of the Shoreland Ordinance. He said that the Commission worked with staff and the Department of Natural Resources to incorporate comments and concerns from residents and to create an ordinance that would receive DNR approval. Spencer stated that the updated ordinance would bring the City into compliance with the DNR requirements.

Spencer noted that the new ordinance would tighten some restrictions that are currently in place, including the impact zones and impervious surface coverage. Spencer noted that language regarding Conditional Use Permits was changed to minimize the use of Conditional Use Permits in the City. He added that language regarding rip rap and invasive species was also changed.

Johnson asked how the Ordinary High Water Level is determined.

Spencer stated that the DNR determines the Ordinary High Water Level based on typical water levels, not flood levels or seasonal changes in water levels.

Wenck asked if anything in the proposed ordinance was included at the City's discretion and not at the request of the DNR.

Laabs responded that the City elected to change the language to reduce the number of Conditional Use Permits and use a variance process instead. She added that feedlot requirements were also changed, based on public comments.

Spencer added that the DNR language for structures, such as boathouses was confusing and was changed by the City.

Betts noted that the proposed ordinance also included creeks. She asked what the setback is from creeks.

Laabs responded that the structure setback would be 100 feet from the Ordinary High Water Level.

Betts asked what type of surface would be allowed within that 100-foot setback.

Laabs responded that it should have vegetative cover to protect the body of water, but some accessory structures would be allowed.

Motion by Betts to approve Ordinance 2008-03 replacing Section 505 of the Independence City Code Regulating Shoreland. Motion failed due to lack of a second.

Wallace asked what would happen if the City doesn't comply with the DNR requirements.

Spencer responded that the City isn't currently in compliance. He added that he didn't know if anything would happen. Spencer stated that as a property owner within the shoreland, he doesn't have any problems with the current ordinance, but noted that a lot of work was put into updating the ordinance.

Laabs stated that the DNR hasn't enforced its requirements in the past. She added that as the City pays more attention to its M4 process and TMDLs, the issue will be more prevalent.

Johnson asked if most of the current ordinance was the same to the proposed new ordinance.

Laabs responded that the setbacks are generally the same.

Johnson asked what would happen if the City took no action on the proposed new ordinance.

Vose responded that the City already has a comprehensive shoreland ordinance, so it is unlikely that the DNR would try to enforce its requirements. He stated that he didn't know what the DNR would do if it decided to enforce its requirements.

Spencer noted that most of the more important issues within the proposed new ordinance are already included in the current Shoreland Ordinance.

Gyllenblad asked why two lakes in the original draft of the updated ordinance were reclassified.

Spencer responded that the reclassification was a mistake that has since been corrected.

Motion by Johnson, second by Wenck, to table the ordinance indefinitely. All presented voted aye. MOTION DECLARED CARRIED.

10. TOM GONYEA, JAMES & LYNDA FRANKLIN, 2825 COUNTY ROAD 90 (PID NO. 15-118-24-14-0002) AND 6475 FRANKLIN HILLS ROAD (PID NO. 15-118-24-11-0007) AND 6615 FRANKLIN HILLS ROAD (PID NO. 15-118-24-11-0001), REQUEST FOR PRELIMINARY PLATS AND REZONING OF THOSE PLATS FROM AGRICULTURAL TO RURAL RESIDENTIAL. RESOLUTION NO. 08-1028-02 AND 04 APPROVING THE PRELIMINARY PLATS AND REZONING FROM AGRICULTURAL TO RURAL RESIDENTIAL.

Lorsung explained that the request includes north and south plats. Lorsung explained that the eastern part of the north plat is currently guided rural residential and the western part is guided agricultural. Lorsung explained that the south plat is all guided rural residential. Lorsung noted that the rezoning request is an administrative process that would simply rezone the property to a land use that it has already been guided for.

Lorsung noted that staff spent considerable amount of time working with the applicants to review the plats. She noted that both plats meet City Code requirements. She also noted that the south plat was reconfigured to help protect a wetland and a maple/basswood forest.

Lorsung stated that the City Engineer prepared a memo, included in the staff report, which addresses neighbors' concerns about existing drain tiles. She added that the Planning Commission received a large amount of public comment during its public hearing. She noted that the Planning Commission had said Nov. 6 would be the deadline for comments. Lorsung stated that most of the residents have already submitted their comments, which were forwarded to the Council.

Lorsung stated that the Council will still need to approve final plats and construction agreements.

Johnson asked if the map that was included in the staff report shows where the drain tiles are.

Lorsung responded that one of the recommended requirements for the preliminary plats is that all drain tiles remain intact.

Miller stated that in many cases, when a property is being developed drain tiles on adjacent properties that are still being used for agriculture can be impacted. He stated that his requirements, outlined in his memo, will help avoid those issues.

Betts asked what the average acreage of the properties was.

Lorsung responded that the average density is 5 acres, but some lots can be smaller.

Johnson expressed a concern that the Parks Commission hadn't yet reviewed the plats.

Lorsung responded that the Parks Commission would be reviewing the plats at its Nov. 6 meeting. She added that the plats would be coming back to the Council for final review after the Parks Commission had reviewed them.

Wenck suggested waiting to pass a resolution until the Parks Commission had reviewed them.

Johnson responded that the Council would then have the resolutions on its Nov. 25 meeting agenda.

Wenck expressed a concern about the wording of the City Engineer's memo in regards to the drain tile.

Motion by Wenck, second by Betts, to direct staff to prepare preliminary plat and rezoning resolutions for both the North and South Franklin properties. All present voted aye. MOTION DECLARED CARRIED.

11. NORTHERN NATURAL GAS, 3850 COUNTY LINE ROAD (PID NO. 07-118-24-22-0006) AND 3810 COUNTY LINE ROAD (PID NO. 07-118-24-22-0002), REQUEST FOR A CONDITIONAL USE PERMIT TO CONSTRUCT AN ABOVE-GROUND FACILITY FOR A NATURAL GAS PIPELINE. RESOLUTION NO. 08-1028-01 APPROVING THE CUP REQUEST.

Lorsung stated that the applicant is requesting a Conditional Use Permit to construct a "pig launcher," which is an above-ground facility for monitoring pipes. She added that while the property has an existing Conditional Use Permit, the Planning Commission recommended issuing a separate permit for this facility. She said the facility is subject to state and federal regulations. She added that applicant has said that the proposed pig launcher is not related to a larger pipeline project in the area. Lorsung stated that the Planning Commission had specific recommendations for screening the facility.

Johnson asked what the phrase "expansion of the church" meant in the resolution.

Lorsung explained that it meant the increasing number of parishioners. She explained that federal regulations require NNG to put the pig launcher facility in that location.

Johnson asked if there would be an additional access on County Line Road.

Lorsung responded that the applicant would not be creating a new access.

Johnson asked about the Planning Commission's screening recommendations.

Lorsung explained that after the Planning Commission, the applicant asked property owners what they would prefer for screening. She added that a recommended condition for the permit would be approval from property owners of the screening.

Bob Young, of NNG, explained that he discussed with the church using conifers and ivy to screen the property.

Johnson asked where the fence would be.

Young responded that the fence would cover the entire easement area. He added that planting the conifers and ivy would be done next spring, due to weather.

Johnson also requested that the wording “expansion of the church” in the resolution be changed to reflect that the facility is being built because of safety concerns and requirements.

Wenck suggested changing the wording to “because of its location near a high-consequence area.”

Leland Mann, of NNG, explained that the facility is required by the National Pipeline Safety Act. He said that the facility allows NNG to launch a device that inspects the pipes for safety.

Motion by Wallace, second by Wenck, to approve the Conditional Use Permit and resolution to construct an above-ground facility for a natural gas pipeline, subject to the following conditions:

- **The applicant shall provide to the city a maintenance schedule for the facility.**
- **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 applicant shall pay all necessary fees for the review of this application.**
- **The Conditional Use Permit shall be reviewed annually.**
- **The applicant shall remove the facility within seven years if it becomes obsolete.**
- **The applicant shall screen the facility in such a way that meets the approvals of the immediate property owners to the north, east, and south of the property.**
- **The applicant shall pay to the City all fees associated with the review of this application.**

All present voted aye. MOTION DECLARED CARRIED.

12. RYAN COMPANIES, ACE PROPERTIES LLC, ERVIN & BRIDGET SCHOENBORN, 9560 U.S. HIGHWAY 12 (PID NO. 07-118-24-33-0005) AND 9414 U.S. HIGHWAY 12 (PID NO. 07-118-24-33-0001), REQUEST FOR A COMPREHENSIVE PLAN AMENDMENT, RE-GUIDING FROM AGRICULTURAL TO COMMERCIAL. RESOLUTION NO 08-1028-03 (A) APPROVAL OR RESOLUTION NO. 08-1028-03 (B) DENIAL OF RYAN COMPANIES REQUEST.

Johnson stated that the Council would be discussing a Comp Plan amendment. He added that at this point, the Council would not be discussing what specifically might go on the property.

Lorsung stated that the applicant is requesting a Comp Plan amendment to reguide 23 acres to commercial industrial. She added that although the City had discussed adding an Urban Commercial zoning area to the updated Comp Plan, the City would need to reguide the property to a land use that is currently being used. She explained that the parcel owned by the church is not part of the request, but the other property owner requested at the Planning Commission that her property also be reguided. She said the question the Council needed to answer was whether or not it would like to see commercial in that area.

Lorsung explained that if the Council approves the amendment, it would then go to the Met Council for review. She stated that a request for comments was already sent to other communities and that a reguiding would require four affirmative votes from the Council.

Lorsung explained that because the current process for updating the Comp Plan is so lengthy, staff is recommending that Council consider an amendment to the current Comp Plan. She stated that staff recommends approval of the Comp Plan amendment.

Vose stated that this item is not about the current discussions about utilities from Delano or the potential development. He stated that the issue before the Council is only whether the Council thinks commercial should be in that area.

Tony Barranco, of Ryan Companies, went through a brief history of the project. He explained that in January 2008, Ryan Companies met with the Council to see if the City would be open to commercial development in that area. Barranco stated that in March 2008, Ryan Companies attended another meeting, where it received a lot of support. He stated that in August 2008, City officials and Ryan Companies met with Met Council representatives. He added that Independence officials and Ryan Companies representatives have been meeting with Delano officials to discuss utilities for the site.

Barranco stated that although the project would not be built for about two years, he stated that time is needed beforehand for all the planning that must be done. He added that if the Comp Plan amendment isn't approved now, the City and Ryan Companies would need to wait about 18 months for the updated Comp Plan to take effect.

Barranco discussed some of the positive and negative comments that were brought up at previous meetings and in letters from residents. Some of those issues included more jobs for the community, bringing traffic in for other local businesses, traffic concerns and infrastructure costs.

Johnson asked Wenck if he had a conflict of interest in voting on this issue because Wenck had made a statement about this at an earlier meeting. Wenck responded that his firm had not been retained for a project, so there was no conflict of interest.

Johnson noted that the meeting tonight is not a public hearing, which was held at the Planning Commission meeting on Oct. 13. He added that the Council has received many letters, phone calls and e-mails on the request.

Wallace said that most of the letters were in favor of approving the Comp Plan Amendment.

Betts stated that she thinks the property is well-suited for commercial, but the timing is wrong. She stated that the City had previously received similar requests and did not approve them. She stated that the land use could be used previously.

Johnson clarified that the two previous requests that Betts mentioned were different. He stated that one request was pulled by the applicant before it was to come to the Council and one request was never officially brought before the Council. He added that both applicants could have gone through the entire Comp Plan Amendment process, but chose not to.

Vose stated that there are two ways Comp Plan Amendments can be conducted. The City can choose to make an amendment, or an applicant can request an amendment. He wanted it noted that Ryan Companies was amenable to adding 3260 County Line Road to its request. Vose added that another act by Council would be necessary to rezone the property.

Vose added that approval would need to be by supermajority. He added that after the Met Council comments on the amendment, it would come back to the Council for final approval.

Motion by Wallace, second by Gyllenblad, to approve the Comprehensive Plan Amendment, regarding from agricultural to commercial, including 3260 County Line Road, and to approve Resolution No. 08-10-28-03(a). Ayes: Gyllenblad, Johnson, Wallace, Wenck. Nays: Betts. MOTION DECLARED CARRIED.

13. DISCUSSION AND SET TIME TO MEET WITH THE LAKE SARAH STAKEHOLDERS TO DISCUSS LAKE SARAH'S TMDL.

Motion by Wenck, second by Gyllenblad, to direct staff to set-up a Lake Sarah TMDL stakeholder meeting. All present voted aye. MOTION DECLARED CARRIED.

14. OPEN/MISC.

Nothing was added to the agenda.

15. ADJOURN.

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

Respectfully submitted by Christina Scipioni,
Recording Secretary