

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
MONDAY, SEPTEMBER 8, 2008 – 7:30 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Chair Spencer at 7:30 p.m.

2. ROLL CALL.

PRESENT: Chair Spencer, Commissioners Crespo, Gardella, Gardner and Phillips

STAFF: Planner Lorsung, Water Resources Consultant Jessica Laabs, Administrative Assistant Scipioni

VISITORS: Visitor sign-in will be attached to meeting minutes.

3. APPROVAL OF AUGUST 11, 2008 MEETING MINUTES.

Motion by Phillips, second by Gardella, to approve the minutes as written. Ayes: Crespo, Gardella, Phillips, Spencer. Abstention: Gardner. MOTION DECLARED CARRIED.

4. TIM HUGHES, 4885 COUNTY ROAD 6 (PID# 36-118-24-11-0001), REQUEST FOR A SIMPLE SUBDIVISION TO CREATE ONE NEW LOT.

Lorsung stated that before the meeting the applicant submitted an updated plat for the Commission's review. She stated that the applicant moved the lot line south of the outbuilding to remove any issues with the outbuilding being on a separate lot of record. Lorsung said that the new lots still meet code requirements. She stated that there was precedent within the City to allow for an cross-access easement. She said that there are five or six incidences where lots have been split using a cross-access easement. She added that there are many private road agreements as well. Lorsung said that because flag lots are so rare in the community, it seems that Code would prefer lots like the current proposal be provided access through an easement.

Gardner asked if the City received any letters from residents.

Lorsung said did not receive any letters. She said some residents requested staff reports.

Phillips asked if there was a reason why City Code does not address the issue of flag lots and cross-access easements.

Lorsung responded that it is somewhat unusual to not address those issues in City Code. She said that other cities do address those issues and it might be something Independence should consider adding.

Crespo stated that the City does have a frontage ordinance.

Phillips said that the easement is a way of getting around the frontage requirements, which he believes is like granting a variance.

Gardella asked how many examples there were of the City approving a subdivision with this type of access agreement.

Lorsung said there had been about four or five within the past 10 years that she is aware of.

Gardella asked if there were any examples where applicants sought approval for a subdivision with an cross-access easement and were denied approval.

Rose responded that City Administrator Hirsch could not remember any instances of that happening.

Gardner said that if the division created a flag lot, it would have been denied. He added that cross-access easements are a way of side-stepping the ban on flag lots.

Crespo stated that there are many properties in the vicinity of the applicant's property that would qualify for subdivision and could potentially use cross-access easements as well.

Lorsung said that the frontage requirements in City Code are safety mechanisms. She added that cross-access easements are safer because they mean that there are fewer access points on the roadway.

Gardella asked if it would be right for the Planning Commission to interpret the code differently and deny this request when Commissions in the past have granted these types of requests.

Crespo stated that his concern is that the City has many lots similar to the current applicant's lot.

Public Hearing

Pat Anderson, resident, said that she applied for a similar subdivision with the City and it was not approved.

Spencer asked if the subdivision created a flag lot.

Anderson responded that a flag lot had been proposed.

Spencer explained that the Commission would not have approved a flag lot. He added that the current application does create a flag lot.

Spencer closed the public hearing.

Gardner stated that he would like the easement to be widened to 33 feet so that if the adjacent property were to subdivide, another 33 feet could be taken and the easements would have enough room for a 66-foot-wide road.

Lorsung noted that a 33-foot easement would come within 1.7 feet of an outbuilding currently on the property.

Gardella asked if the structure would need to be moved if a road were to be constructed.

Gardner responded that it depended on the circumstances if the structure would have to be moved.

Motion by Gardner, second by Gardella, to recommend approval of the simple subdivision, subject to the following conditions:

- **The applicant shall provide to the City a drainage and utility easement.**
- **The applicant shall provide a cross-section easement agreement and record the document against both properties.**
- **The applicant shall have Hennepin County review the subdivision for conveyance of property for right-of-way.**
- **The applicant shall pay one park dedication fee.**
- **The applicant shall pay to the city all fees associated with the review of this application.**
- **The applicant shall record the subdivision and all easement agreements with Hennepin County within six months of approval.**
- **The cross-access easement shall be 33 feet wide.**

Ayes: Gardella, Gardner, Spencer. Nays: Crespo, Phillips. MOTION DECLARED CARRIED.

5. PUBLIC HEARING. GERALD BENZ AND GENE PURDY, 8590 COUNTY ROAD 6 (32-118-24-22-0001), REQUEST FOR A PRELIMINARY AND FINAL PLAT TO REARRANGE A LOT LINE.

Lorsung explained that the applicant had previously received approval to create two rural view lots. She explained that the applicant is coming back to the City for approval to move where one of the lots is located. She explained that all of the lots still meet City Code requirements. She added that the new lot locations would add one driveway access on Copeland Road. Lorsung stated that she received one phone call from an adjacent property owner who resides in California. She said that after he found out that no additional lots were being created he didn't have any problems with the request.

Phillips asked if the City would have taken utility, drainage and wetland easements in the same manner if Fox Lake were a DNR-controlled lake.

Lorsung responded that the proposed new Shoreland Ordinance would turn Fox Lake into a DNR-controlled lake. She added that if Fox Lake were DNR-controlled, then other Code requirements would apply.

Phillips asked if the plats were approved before the new Shoreland Ordinance was adopted then would the plats be subject to the new shoreland ordinance following their adoption.

Lorsung responded that anything that is approved before the new Shoreland Ordinance is approved would be grandfathered in. She added that based on the size of the proposed lots, she did not see any potential issues arising when the new Shoreland Ordinance is adopted.

Public Hearing

LuAnn Brenno, resident, asked about drainage for the site. She said that there have been changes to the land and she didn't know if drainage issues had been addressed.

Kunkel explained that a grading permit was issued for the site, which included a drainage plan. She added that inspections have been done on the site.

Spencer closed the public hearing.

Phillips asked Purdy if he would object to ensuring that the water management plan for the site be created as if Fox Lake was a DNR-controlled lake.

Purdy responded that he would reserve a final opinion until he saw how the new ordinance would affect the properties.

Phillips suggested tabling the request until the Commission discussed Fox Lake and the new Shoreland Ordinance.

Spencer stated that if Fox Lake were to become a DNR-controlled lake, required setbacks on the property could change. He added that based on the size of the lots, setback requirements wouldn't seem to be much of an issue.

Crespo noted that if the property owners applied for building permits for the lots, they could just move the buildings further from the lake, if the new Shoreland Ordinance were adopted.

Gardner said that it seemed as though one of the lots in the new configuration would have less shoreline on Fox Lake.

Spencer added that while it is possible, it seems unlikely that homes would be built on the rear of the lots, near the lakeshore.

Motion by Gardner, second by Gardella, to recommend approval of the preliminary and final plats, subject to the following conditions:

- **The final plat shall indicate Hennepin County's right of way requirement, as approved by the City.**
- **The final plat shall indicate the appropriate drainage easements for wetlands and interior drainage and utility easements for each property.**
- **The attorney shall prepare a plat opinion with the updated title work prior to Final Plat approval.**
- **The applicant shall pay for all fees associated with the review of this application.**

All present voted aye. MOTION DECLARED CARRIED.

6. PUBLIC HEARING. ADOPTION OF NEW SECTION 505, MANAGEMENT OF SHORELAND AREAS, CREATED FOR TH PURPOSE OF MEETING REQUIREMENTS OF THE SHORELAND DEVELOPMENT ACT, MINNESOTA STATUTES, SECTIONS 103F.201 ET SEQ.

Laabs stated that the Minnesota Department of Natural Resources standards for management of shoreline areas went into effect in 1989. At that time, all cities were required to adopt standards. The City of Independence adopted its ordinance in 1992, but it was not reviewed by the DNR at that time and it falls short of minimum standards. Laabs explained that the City and DNR have been in contact to update the ordinance. She explained that the DNR has a model ordinance for cities to use as a base for their own ordinances. She added that much of the language is the same, but where current standards fall short of State standards, the ordinance was changed. Laabs explained that the DNR has reviewed the draft ordinance once and the Department's comments were incorporated into the draft the Commission is reviewing. She added that notice of the public hearing was sent to all the property owners within 1000 feet of lakeshore and within 300 feet of streams. Staff also met with Spencer to discuss comments and issues he has received.

Laabs discussed some of the changes incorporated into the new ordinance. She explained that Fox Lake and Ox Yoke Lake were added to the Shoreland Ordinance. Also, there is a longer list of conditional uses within the Shoreland area. She added that the maximum lot covered by impervious surfaces would be changed from 30 percent to 25 percent and the DNR is not flexible on changing that percentage. Laabs added that staff is working on a conditional use or variance process for substandard lots that were grandfathered into the new ordinance requirements. She also explained that riprap and retaining wall language had changed to allow for these to be used for erosion control. Laabs explained that another addition to the ordinance was that in the case that FEMA did not have a 100-year flood level established, then a secondary provision would be to measure from the highest known water level or ordinary high water elevation

Phillips wanted it noted that his property is within the Pioneer Creek shoreland area.

Spencer added that his property was within the lakeshore area.

Crespo asked if properties that currently have animals on their property within the shoreland area would need conditional use permits for feedlots.

Laabs explained that existing properties would be grandfathered into the new ordinance requirements.

Crespo, Lorsung, Laabs and Spencer discussed how a feedlot would be defined.

Spencer noted that regardless of how a feedlot is defined, existing properties with animals would not need a conditional use permit unless they were proposing to change their property.

Laabs agreed with Spencer's interpretation.

Gardella stated that a clause for current properties being grandfathered into the new ordinance should be expressly written in the new Shoreland Ordinance.

Crespo said he would like to know what the typical conditions would be for a conditional use permit for a feedlot.

Public Hearing

Paul Williams, resident, stated that he would like the period for public input to be extended. He added that many people have existing structures that would be in violation of City Code. He asked what would happen if work needed to be done on those existing structures.

Spencer explained that whatever structures are currently on the property would be allowed to stay on the property, even if work needed to be done on them in the future.

Williams added that he would like to see additional provisions that deal with issues related to the colors used on properties and light pollution.

LuAnn Brenno, resident, stated that she would like to public hearing period to be extended and want the public to have clear clarifications and definitions for the new ordinance. She added that the feedlot definition might be from the Minnesota Pollution Control Agency. Brenno also suggested that the Commission look at using variances instead of conditional use permits to avoid future issues.

Harry Pool, resident, asked why the City needed to have a 1000-foot setback from the lakes.

Laabs explained that 1000 feet is what the DNR requires. She added that the 1000 feet is not a setback, it only dictates what properties fall within the Shoreland Ordinance.

Pool also asked how the new Shoreland Ordinance would help protect property values when it limits what can be done with a property.

Spencer explained that the Shoreland Ordinance provide structure setbacks and allows for the natural preservation of shorelands.

Gardella added that the DNR requires the City to adopt a shoreland ordinance that is in compliance with its standards.

Pool stated that he felt the State should not be dictating what he can do with his property. He added that this is a large issue and suggested that it be tabled until another meeting.

Robert Berens, resident, said he was concerned about the new ordinance because he lives on a heavily wooded lot and might, at some point, want to cut down some of the trees. He stated that he didn't want to have to apply for a permit in order to cut down trees on his property.

Spencer closed the public hearing.

Spencer requested that staff incorporate the changes suggested by the Planning Commission into an updated draft of the ordinance. He added that the public hearing should be reconvened at the next Commission meeting.

Gardella asked if a grandfather clause would be added into the new draft.

Spencer responded that a grandfather clause should be included, along with feedlots and a definition for conditional use permits. He added that he would like to see more variances being used and fewer conditional use permits.

Motion by Spencer, second by Gardner, to table the Shoreline Ordinance until the Oct. 13 Planning Commission meeting and to direct staff to incorporate the changes that have been proposed and consider meeting with City staff to discuss proposed changes. All present voted aye. MOTION DECLARED CARRIED.

Spencer directed staff to have an updated draft ordinance on the City website within two weeks of the meeting.

7. OPEN/MISC.

Nothing was added to the agenda.

8. ADJOURN.

**Motion by Gardner, second by Gardella, to adjourn the Planning Commission meeting at 8:25 p.m.
All present voted aye. MOTION DECLARED CARRIED.**

Respectfully submitted by Christina Scipioni,
Recording Secretary