

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, JUNE 29, 2010 – 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, Spencer, Wallace (arrived at 7:35) and Wenck.
STAFF: Clerk-Administrator Hirsch, Attorney Vose, Planner Kaltsas, Engineer Miller.
VISITORS: Ralph & Mary Widmer, Carol Kocina, Neil Grewe, John Conlin, Mark Miller, Greg & Jody Gustafson, Craig Robbin, Chris Robbins, Dean Ramsey, Mark Fischer, Chuck Gehrman, Mary Fehn, Bob Selstad, LuAnn Brenno, Carla Smith, Jim Smith, Chris Dahlberg, Bonnie Kaster, Dave Appelhof, Tammi Adams, Richard Mickschl, John Baller, Lance Gyllenblad, Chris Cady.

4. CONSENT AGENDA.

Approve:

- Council Minutes – May 25, 2010.
- Council Special Meeting Minutes – June 18, 2010.
- Amend Contract No. A052253 to allow for an additional tabulator for Absentee Voting (no cost to City).
- The 2010/2011 Safe and Sober Resolution authorizing the execution of agreement.
- Award seal coat bid to Allied Blacktop Company.
- Large Assembly Permit to allow for the Polo Classic to raise funds for the Children's Minneapolis Hospitals and Ronald McDonald House.
- Large Assembly Permit to allow for a company picnic to be held at the Twin City Polo Grounds.

Johnson removed Resolution No. 10-0629-06 to vacate portions of Franklin Hills Road. He noted the City would hold a public hearing on this item at another Council meeting.

Wenck requested that in the future the Council receive copies of the bids in addition to a memo about the bid results. Approval of the Hennepin County Assessment Agreement was delayed until the next meeting so the Council could view the contract.

Motion by Wenck, second by Betts, to approve the consent agenda. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

Hennepin County Assessment Agreement A060057

Hirsch stated the City has the option to contract with Hennepin County for assessor services. The four-year contract is coming to an end in July and the County has asked the City to resign the contract. The contract requires the City to provide space for the assessor to work when he is in the community and requires the County review a fifth of the properties in the City each year.

Wenck stated he would have liked to know the contract was coming up from renewal a couple of months ago. He noted the contract does not specify a price and the information in the Council packet does not include the full contract. Wenck stated he does not have a problem of the service the City is receiving, but wants to make sure it is receiving the best value.

Motion by Wenck, second by Wallace, to put the Hennepin County Assessment Agreement on the July 13 Council agenda. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. 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

Spencer: Nothing to report.

Wenck: Planning Commission meeting, special Council meeting and work session, League of Minnesota Cities Conference, Sensible Land Use Coalition meeting, Lake Minnetonka Communications Commission meeting.

Wallace: Nothing to report.

Betts: Fire Commission meeting, special Council meeting and work session, League of Minnesota Cities Conference.

Mayor: Orono School District open house for graduates that received scholarships, Sensible Land Use Coalition meeting, WeCan Finance Committee and annual meeting, Senior Community Services Executive Committee meeting, Community Action Partnership of Suburban Hennepin Board meeting and open house, Memorial Day service at Lewis Cemetery, conference call for the National League of Cities Small Cities Council, Orono Healthy Youth meeting, Lake Minnetonka Communications Commission meeting regarding high-optic fibers, funeral service for Merna McCulley, National League of Cities conference representing the LMC for the Energy, Environment and Natural Resources Committee, Orono Schools retirement and awards breakfast, meetings with residents, Community Action Partnership of Suburban Hennepin Finance Committee meeting, Fire Commission meeting, conference call meeting for the League of Minnesota Cities Nominating Committee, funeral for former Dayton Mayor Earl Dehn, Land Use Advisory Committee meeting, special Council meeting and work session, Highway 55 Corridor Coalition meeting, Hennepin County Fair, Active Living quarterly partnership meeting, Greater Lakes Food Bank meeting, Senior Community Services Executive Committee meeting, League of Minnesota Cities Conference and Nominating Committee meeting.

Hirsch: Fire Commission meeting, met with Countryside Heating for a comparison quote on heating and air conditioner maintenance, met with an investor from Ehlers Associates,

Northwest League of Cities meeting, three election meetings, absentee voting began June 25, Pioneer-Sarah Creek Water Management Commission budget meeting, SWPPP and MS4 staff training, Met Council Environmental Services customer forum, special Council meeting and work session.

7. DIRECTOR RAY MCCOY – WEST HENNEPIN PUBLIC SAFETY MAY 2010 ACTIVITY REPORT.

McCoy noted the Council received statistics in its packet. There was an officer assaulted and the suspect was charged with fourth degree assault. The officer who was assaulted did return to work, but was injured off-duty after the incident. The Highway 12 detour is going fairly well. Most accidents have been rear-ending incidents where people were not paying attention or on the phone. The Iron Man bike race was in the City and there were no crashes. WHPS assisted with a tornado response training exercise.

8. BRENT FOSTER – 4755 LAKE SARAH HEIGHTS CIRCLE (PID # 02-118-24-12-0007), REQUEST FOR A THREE (3) FOOT VARIANCE FROM THE SIDE YARD SETBACK TO ALLOW FOR THE CONSTRUCTION OF A STAIRWAY PROVIDING ACCESS TO THE EXISTING DECK. RESOLUTION NO. 10-0629-03.

Vose discussed a Minnesota Supreme Court case that recently came out that fundamentally changes the laws of variances in Minnesota and potentially in Independence. Because Foster's request was considered by the Planning Commission before the Court's decision was issued, Vose recommended the Council consider the request based on its current ordinances.

Kaltsas stated the applicant is requesting a three-foot side yard setback variance to allow the applicant to build deck stairs on an existing deck. The property is approximately 0.44 acres and is zoned Rural Residential. The lot is considered a substandard lot of record, which has a built-in reduction in setbacks. The required side yard setback for this lot is 18 feet. Kaltsas noted the proposed stairway is within the impervious surface limits. The proposed stairway would be four-feet. Kaltsas stated the other properties in the area have similar or smaller setbacks than the current request. The Planning Commission recommended approval of the variance. The City did not receive any comments at the public hearing, but did receive a letter of support from the neighbors.

Johnson stated he noticed in the Planning Commission minutes that the Planning Commission wanted to change the ordinance to address these smaller lakeshore lots. He noted the variance requests are so different that it would be difficult to create an ordinance to properly address them all.

Kaltsas responded staff found there were 15 variance requests in the lakeshore area since 2000. He added the issue might not be as prevalent as the Planning Commission had originally thought.

Motion by Wenck, second by Spencer, to approve Resolution No. 10-0629-03. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

Vose stated the first requirement in considering a variance is that the applicant would have an undue hardship if the variance was not granted. It is then up to the City to decide what an undue hardship is. The decision from the Minnesota Supreme Court defined an "undue hardship" as a property cannot be put to any reasonable use if the variance is not granted. Vose stated the City will need to revisit its code and suggested that the City Planner work with the City to ensure that its code conforms to the new decision.

The new standard is very high and Vose expects that the League of Minnesota Cities will work with the legislature to change the law with respect to variances.

Johnson asked if the City should change its ordinances when the Legislature will be changing the variance law.

Vose responded the City has to apply the standard correctly in the interim because if there is a variance request, those opposed to the variance would have good grounds to appeal it if it is granted.

Betts asked if the Minnesota Supreme Court's decision currently is law.

Vose responded the Minnesota Supreme Court has interpreted State Law, which means the new decision is currently law. He noted the Minnesota Supreme Court interpreted the current statute, so the Legislature could change the statute.

Motion by Wallace, second by Betts, to direct staff to research and evaluate if the City's variance ordinance needs to be changed in order to be in compliance with the recent Minnesota Supreme Court decision. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

9. APPROVAL OF RESOLUTION NO. 10-0629-01 ADOPTING THE 2030 COMPREHENSIVE TIER II PLAN FOR THE CITY OF INDEPENDENCE.

Kaltsas stated the Met Council approved the City's 2030 Comprehensive Plan Update, contingent upon the City's approving the update. Kaltsas explained the City spent most of the past year negotiating the establishment of an urban commercial and an urban residential zoning district.

Johnson noted Betts had suggested some wording changes to make it easier to understand.

Kaltsas stated the Met Council requires the City to adopt a resolution approving the sewer plan.

Motion by Wenck, second by Betts, to approve Resolution No. 10-0629-01. Ayes: Betts, Johnson, Spencer, Wallace, Wenck.

10. APPROVAL OF RESOLUTION NO. 10-0629-02 ADOPTING THE 2030 COMPREHENSIVE PLAN UPDATE FOR THE CITY OF INDEPENDENCE.

Johnson asked for public comment regarding the Comp Plan Update.

Brenno, resident, asked for clarification about the staff report regarding the statement about Ag Preserve properties within the Rural Residential district.

Kaltsas explained the draft of the 2030 update changed the name of the Agricultural Preserve, but the City has since decided to keep the classification as Agricultural Preserve. In addition, the draft had originally changed the name of the Agricultural zoning classification, but the final plan keeps the name the same.

Brenno asked for clarification regarding the mention of the 2020 Comp Plan.

Kaltsas explained the 2020 Comp Plan is the City's current plan.

Brenno asked how the City came to a decision about the density in the Urban Residential zoning district.

Kaltsas explained the City had to change the density so it would meet Met Council's density standards.

Motion by Betts, second by Spencer, to approve Resolution No. 10-0629-02 with the recommendation that staff either remove the Baker Regional Trail Search Corridor from the 2030 Comp Plan Update or add a statement noting the City's opposition to it.

Wallace asked why the City is including its zoning map in the appendix.

Kaltsas explained the Met Council requires it as part of the City's submission.

Wallace requested that the Baker Regional Trail Search Corridor be removed from the Comp Plan because it is not part of the City's plan. Johnson noted the City's recommendation has been to use County Road 90.

Kaltsas responded he would take a recommendation to either remove the Baker Regional Trail Search Corridor or state the City's opposition to it in the Comp Plan.

Wallace asked if there were any significant changes to the Comp Plan since the Council last received it.

Kaltsas responded the largest change since a year ago was the increase in size of the Urban Residential zoning district.

Gyllenblad, resident, asked if the Ag Preserve properties were zoned one unit per five acre.

Kaltsas responded the Ag Preserve properties were denoted as such and zoned one unit per 40 acres. The properties would have to apply for a Comprehensive Plan Amendment if they were to develop.

Johnson called for a vote. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

11. APPROVAL OF RESOLUTION NO. 10-0629-04 APPROVING THE PLANS AND SPECIFICATIONS IN THE MATTER OF THE LINDGREN LANE SEWER EXTENSION.

Miller stated the resolution is necessary as part of the special assessment process. The City must approve the plans by resolution. The plans are almost the same as those in the feasibility study, except a two-inch force pressure sewer was extended down Pete Drive and a gravity line was extended down Island Drive. There is a gravity line coming to a pump station on Independence Road and then it is pumped up to County Road 11.

Johnson asked if the requirement to approve plans and specifications by resolution was a new one.

Miller responded it is one of the steps in a special assessment project, but the Council would not be required to approve plans and specifications by resolution if the project was not being assessed.

Wenck stated in the future he wants to receive the plans and specifications in the Council packets before being asked to approve them.

Motion by Wenck, second by Spencer, to approve resolution No. 10-0629-04. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

12. LINDGREN LANE/INDEPENDENCE ROAD SANITARY SEWER EXTENSION PROJECT ASSESSMENT ALTERNATIVES.

Johnson noted the City is not holding an assessment hearing at this meeting, but it did discuss alternatives for assessing the project.

Kaltsas stated the Council held a work session to discuss several alternatives for assessment of the project cost. After meeting with the Council and discussing the assessments with property owners, staff created three alternatives for the Council to consider and receive feedback from residents. Kaltsas noted this meeting is not an assessment hearing. Staff's recommendation is that the City assess for 58 units, which include current properties combined with additional lots that could be created through subdivisions based on the City's current zoning ordinances. The Tri-City Agreement would allow for 60 connections. The 58 connections is the basis for the City's alternatives. The first alternative is assessing 58 units at the time of the project so that the City does not carry any of the costs. That would include assessing the existing 47 properties and the 11 potential properties. The second alternative would have the City defer the assessment of the 11 future connections. The third alternative would be the City would assess 58 units to the project and would carry 11 units and give them out on some pre-determined basis. Kaltsas noted an estimated cost is part of the staff report.

Johnson asked what the results of the consultant's valuation estimate were.

Wenck explained the appraisal found a sewer connection would increase property values \$35,000 if they were on the lake and \$25,000 if they were not on the lake. The appraisal also evaluated how the age of the septic system affected a property's value in relation to the proposed sewer connection.

Johnson noted Hirsch researched funding assistance opportunities through the County. Residents who wished to receive assistance could work with the County to determine their eligibility and sign up for the program.

Miller stated the next step in the process would be to accept the bids. The Council could also accept the bids and authorize the Mayor and Administrator to execute contracts, which would allow work to begin. The assessment hearing would happen in September or October, but staff would need to know how the Council wants to assess the project.

Johnson asked for public comment.

Adams, resident, asked how the residents who had chosen to pay off their assessment for the Lindgren Lane project that was done 10 years ago would be affected by these proposed new assessments.

Johnson responded the piping under Lindgren Lane was not part of the original assessment. The original assessment only covered the cost of the road improvements to Lindgren Lane.

Adams stated she believed adding the cost of the sewer pipe to the original assessment was an option for residents 10 years ago.

Johnson responded residents had an option to pay for the road reconstruction project at the time of the project or have their portion of the assessment placed on their property taxes. He added the sewer pipe was not part of that assessment.

Adams asked if the City would be assisting with the cost for removing their old septic tanks and hooking up to the sewer.

Miller responded that work on individual properties would need to be done by individual owners. The cost for that work is not included in the assessment amount.

Johnson asked what residents would have to do with their old septic tanks.

Miller responded typically residents can remove the tank or abandon it in place. He noted that on Lindgren Lane there is a sewer service already stubbed out to the properties. Properties on Independence Road would need to make the connection to the main sewer line.

Adams asked to see the specifications for the project.

Miller responded copies of the plans and specifications are available for review at City Hall.

Vose stated the size of the plans and specifications was too large to put online, but they are public documents and could be reviewed and copied, for a charge, at City Hall.

Conlin, resident, explained he lives on Lindgren Lane near the lot owned by the City for the community mound system. He added his driveway is an easement over the City's lot. Conlin asked if he would be required to fund the sewer line through the City's property and added he does not believe he should be charged for running a sewer pipe through a property he does not own.

Miller responded all the properties that front Lindgren Lane had a sewer service stub constructed when the sewer pipe was installed. There is probably a stub at the location of the driveway easement and it would be Conlin's responsibility to connect the stub to his property.

Conlin noted he has a functioning septic system and is opposed to the project. He expressed concern about the cost to hookup to the sewer system and the cost of the project assessment.

Miller responded he needed to review Conlin's specific situation before making a response to his questions.

Skillen, resident, asked about the cost of the project for residents on the lake versus residents off the lake.

Miller responded the figures Skillen is referring to are just the appraiser's valuation estimates, not the actual cost of the assessments.

Skillen asked what the timeframe of the project would be.

Miller responded if the Council moves ahead at this meeting, the sewer system would be functional before the ground freezes, but the project area may not be fully restored.

Skillen asked if the City had considered any financing options for residents' cost to hookup to the system.

Kaltsas responded staff is researching the possibility to allowing the cost of the private connection to be a part of the assessment. He added staff is still unsure if that is a possibility.

Skillen asked if the City maintains Island Drive.

Hirsch responded it is a cart way and a minimum maintenance road.

Skillen asked why residents could not receive copies of the bids.

Miller responded that the previous discussion had been about the plans and specifications. Those documents are too large to be placed online, but they are public documents that can be viewed at City Hall. If people want copies of the plans and specifications they would have to pay for them. The bids will become public information after they are officially received by the City.

Skillen asked if the City would remove the current mound system and asked who would be responsible for the cost of removing them.

Miller responded staff would need direction from the Council as to how it wants to handle the cost of removing the existing mounds.

Skillen wanted to know if the City or residents on Lindgren Lane would be responsible for the cost of removing the mounds.

Johnson responded the cost to remove the mounds would not be part of the project assessment.

Wallace noted the residents on Lindgren Lane have benefited from the current mound system.

Betts stated the City would have to pay to remove the mound, which would come from the general property taxes that all residents pay.

Gehrman, resident, asked if the sewer stub would be constructed down Island Drive in order to service the properties along that road.

Miller responded the City would extend the sanitary sewer about 500 feet down Island Drive because that is the extent that the City maintains.

Gehrman asked what is required of residents for abandoning their existing mound systems.

Miller responded he understands the drain fields or mounds are not required to be disassembled. He added septic tanks would need to be cleaned up.

Gehrman asked how deep the pipe under Island Drive would be under the ground.

Miller responded the pipe under Island Drive would be about 7 feet deep, compared to 30 feet deep in other parts of the project. He added the City does not know if the properties on Island Drive would need a lift pump. Most of the properties on Independence Road will be serviced by a pressure line.

Fehn, resident, asked how long the assessment period would be.

Johnson responded 15 years.

Fehn stated if financing is allowed, could the City consider a sliding scale for the assessments. She asked when residents would be required to hookup.

Johnson responded residents have three years to connect to the sewer once the project is completed.

Fehn expressed concern about the cost of connecting to the sewer system and noted the line from her house to the pipe would be about 700 feet.

Miller responded the City has not laid out the route for each individual lot. He added the City could answer some questions about the best route for sewer connections. He suggested Fehn talk to directional bore contractors because it would save some trees on her property.

Fehn asked if the property owners could choose when within the three year timeframe they wanted to connect.

Miller responded the property owners can choose when within those three years they want to connect to the sewer.

Johnson noted residents who need financial assistance for the project should contact Hirsch for information on the County's program.

Selstad, resident, stated he has restored acres of wetlands on his 80-acre property, which has a drainage ditch going into Lake Independence. He has a 5-acre property next to the drainage ditch and requested the property be allowed to connect to the sewer system instead of having to construct a mound system on the property. He noted it would be beneficial for water quality.

Wallace responded the Met Council would not allow the City to hookup properties on the west side of Independence Road.

Johnson stated Selstad's request has been noted, but if the City starts negotiating for hookups west of Independence Road it will delay the entire project. He noted the pipe needed to be placed in the road before anyone can connect.

Dahlberg, resident, asked if there had been discussions between the City and property owners since the last public hearing.

Kaltsas responded the City invited residents who were concerned about future subdivisions on their properties to discuss the issue with staff. Not all of the property owners have come to an agreement with the City, but the City is making progress.

Cady, resident, asked if he could connect to the sewer on County Road 11 instead of Independence Road because it is a shorter route.

Miller responded he could look into the request.

Cady asked if it was true that no properties on the west side of Independence Road were going to be allowed to connect.

Miller responded there are two properties on the west side of Independence Road that will be connecting to the sewer system, but those properties were identified in the 2030 Comprehensive Plan Update as receiving sewer service.

13. LINDGREN LANE SANITARY SEWER EXTENSION BIDS, RESOLUTION NO. 10-0629-05 ACCEPTING THE BIDS IN THE MATTER OF THE LINDGREN LANE SANITARY SEWER EXTENSION.

Miller stated the City received five bids on the project. The lowest three bids were \$598,790.80, \$640,110.25 and \$657,463. The engineer's estimate was \$650,000, which means the lowest bid was about \$51,000 less than the engineer's estimate. Miller noted there are contingency funds in the estimated assessments.

Johnson asked if Miller was happy about the number of companies that bid on the project.

Miller responded the directional boring somewhat limits the number of contractors that bid on these types of projects. He noted the bids were from prime contractors that would work with subcontractors to do the directional boring. Miller noted he has worked with the lowest bidder in past years. He noted his firm recently received a low bid from the same contractor in another city and conducted a reference check that did not reveal any issues.

Miller stated the Council could choose to accept the bids and wait to make any further action. The Council could also choose to accept the bids and authorize the Mayor and City Administrator to start executing contracts. He noted the City needs to obtain a sewer extension permit from the Minnesota Pollution Control Agency, obtain a variance from a property owner along Independence Road and have the Tri-City Agreement signed.

Vose noted there are two resolutions the Council can choose to approve.

Wenck noted the appraiser analysis shows the benefit to the value of the properties exceeds the cost of the assessment.

Motion by Betts, second by Spencer, to approve Resolution No. 10-0629-07 accepting the bids in the matter of the Lindgren Lane Sanitary Sewer Extension with the conditions that the City obtain a sewer extension permit from the Minnesota Pollution Control Agency, obtain a variance from a property owner along Independence Road and has the Tri-City Agreement signed. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

14. APPROVAL TO CANCEL THE TUESDAY, AUGUST 10 CITY COUNCIL MEETING DUE TO THE LACK OF AGENDA ITEMS AND IS ON THE STATE PRIMARY ELECTION EVENING.

Motion by Wenck, second by Betts, to cancel the August 10, 2010 City Council meeting. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

Motion by Betts, second by Spencer, to hold a Special City Council meeting at 7 a.m. on August 11. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

15. OPEN/MISC.

Nothing was added to the agenda.

16. ADJOURN.

Motion by Wenck, second by Spencer, to adjourn the City Council meeting at 9:25 p.m. Ayes: Betts, Johnson, Spencer, Wallace, Wenck. Nays: none. MOTION DECLARED CARRIED.

Respectfully submitted by Christina Scipioni, Recording Secretary