MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
MONDAY, MARCH 12, 2012 – 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 Phillips at 7:30 p.m.

2. OATH OF OFFICE

Olson administered the oath of office to Thompson. The commission welcomed him.

3. ROLL CALL

PRESENT: Chair Phillips and Commissioners Gardner, Palmquist and Thompson
STAFF: Planner Kaltsas, Administrative Asst. Olson, Councilor Fisher
ABSENT: Commissioner Olson
VISITORS: David Wayne, Susan and Doug Heyvaert, John and Joyce Sipe, Mike Steadman, Peggy Bleskicek, Jay Lorek, Jerry Grewe, Lynda Franklin, Sheila Smith, John Quinliva, Dennis Nieman, Cindy and Tom Notch, Jill & Rob Langer, Ed & Kathy Pluth, John and Pat Hasse, Cathy Mueller

4. ELECTION OF OFFICERS – CHAIR & VICE CHAIR

Motion made Gardner, seconded by Thompson, to elect Phillips as Chair and Olson as Vice Chair. Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.

5. APPROVAL OF PLANNING COMMISSION MEETING MINUTES OF FEBRUARY 13, 2012

Motion by Gardner, seconded by Palmquist, to approve the February 13, 2012 Planning Commission minutes. Ayes: Gardner, Palmquist, and Thompson. Nays: None. Abstain: Phillips. Absent: Olson. MOTION DECLARED CARRIED.

6. PUBLIC HEARING. DONNA MAE JOHNSON, REQUEST THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 340 COUNTY ROAD 19 (PID NO. 36-118-24-13-0001):

- An amendment to a previously granted minor subdivision for a rural view lot.
- A variance to permit a reduced rear yard setback.

Kaltsas reported that in September of 2011, the applicant received approval of a rural view lot that would be approximately 5 acres in size to include the existing house and three out buildings. Since that time the applicant has reconsidered the layout of the rural view lot and is seeking an amendment to the subdivision. The applicant would like the east lot line to follow the drainage swale rather than crossing over it as in the previously approved subdivision. This will allow the preservation of an existing field access point. However, this would create a setback deficiency for an existing outbuilding providing only an 11 foot setback from the rear property line. The applicant would like a variance for the 29 foot difference.

Phillips opened the public hearing.

There was no one present to speak.

Motion by Gardner, seconded by Palmquist, to close the public hearing. Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.

Thompson inquired about the remaining eligibility for additional rural view lots on the property. Kaltsas stated the overall acreage is 117.87 and there can be one rural view lot per 40 acres. The rural view lot with the house qualifies as one leaving only one more rural view lot that can be subdivided. There is not enough acreage remaining to reach 40 acres for a third rural view lot. Kaltsas stated the property is guided Rural Residential and if the owner were to exit the agricultural preserve program this would no longer apply.

Phillips stated there is sufficient property for the applicant to create a rural view lot without the need for a variance.

Thompson asked about the barn that is in question wondering if it is in good condition to remain in place for a some time or if it can be taken down. The applicant, Mike Steadman, replied that they are focused on preserving access to the farm land to help sell the farm property.

Phillips stated that he does not want to approve a variance for an 11 foot setback when a different subdivision of the property could correct it. Gardner agreed with Phillips and would like to see the subdivision with the correct setbacks with easements.

Motion by Gardner, seconded by Palmquist, to deny the request for an amendment to the previously approved minor subdivision and variance for a reduced rear yard setback. Ayes: Phillips, Gardner, and Palmquist. Nays: Thompson. Absent: Olson. MOTION DECLARED CARRIED.

7. PUBLIC HEARING. BRADLEY HAYES, REQUEST THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 6205 PAGENKOPF ROAD (PID NO. 23-118-24-21-0001):

- Rezoning from A-Agriculture to RR-Rural Residential.
- A minor subdivision to subdivide the subject property into two lots.

Kaltsas reported the applicant is requesting to subdivide the property to create a second buildable lot. The original lot is accessed from Pagenkopf Road and the second lot would be accessed from Stone Court. The property is currently zoned Agriculture and in order for the lot to be subdivided it would need to be rezoned to Rural Residential, which it is guided in the 2030 Comprehensive Plan. The parcel with the existing home would be 3.42 acres and the new parcel would be 5.62 acres.

Kaltsas reported that in 2003 and 2004, a previous request for a subdivision of the property was made by a different applicant. At that time the City recommended the applicant dedicate a right of way continuation for Stone Court and to construct the road. The applicant eventually withdrew the application. Kaltsas asked for direction relating to the continuation of the street.

Phillips opened the public hearing.

Rob Langer, 6235 Pagenkopf Rd, stated he is against having the road going through the wetland area.

Motion by Phillips, seconded by Gardner, to close the public hearing. Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.

Gardner stated there is the option to put an easement through the property. The commission discussed placing a 66 foot easement on the property. Phillips asked if that would affect the septic placement. Hayes stated that it may affect the house site and a 66 foot easement would be for a road going nowhere. Thompson suggested an easement could be put on the south end of the property.

Phillips felt that to turn the cul-de-sac into a through street would cause upset to the neighborhood.

Palmquist would like to see the septic system for Parcel A brought into compliance and the applicant work out a private road agreement for access to Stone Court.

Motion by Palmquist, seconded Gardner, to recommend approval of the rezoning and minor subdivision with the following finding:

1. **The proposed rezoning and minor subdivision meet all applicable criteria stated in Chapter V, Section 500, Planning and Land Use Regulations of the City of Independence Zoning Ordinance.**

2. **The Applicant shall provide to the City a final plat indicating the proposed subdivision and legal description of the properties.**

3. **The Applicant shall provide all easements for drainage and utilities as required by and in accordance with the City's subdivision ordinance for both the existing and newly created parcels (Section 500.15, Subd.'s 1 and 2).**

4. **The Applicant shall pay for all costs associated with the City's review of the requested rezoning and minor subdivision.**

5. **The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.**

6. **The Applicant shall bring the non-compliant septic system on Parcel A into compliance as part of the subdivision.**

7. **The Applicant shall enter into driveway agreement with the City relating to the use of the right of way for a private driveway.**

Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.

8. PUBLIC HEARING. GERRY GREWE AND SHEILA SMITH, REQUEST THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 1080 COUNTY ROAD 92 N. (PID NO. 28-118-24-32-0008):

- A proposed text amendment to City of Independence Zoning Ordinance pertaining to Section 530.01, Subd. 4, Conditional Uses in the Agriculture Zoning District. The proposed text amendment would consider adding the processing of agricultural products grown on the property into saleable products, as a Conditional Use.
- A Conditional Use Permit to allow a farm winery facility to operate from the subject property.

Kaltsas reported there is not a dwelling unit on the property but it has two accessory structures. The applicant currently has a lease to operate the apple orchard and is working on a contract to purchase the property from the owner. There had been a Conditional Use Permit to allow retail sales of agricultural products grown on the property granted in 1984. The applicant stated the orchard is not financially sustainable and would like to repurpose the orchard to produce wine, hard cider and spirits.

Kaltsas reported there are several different ways they could amend the ordinance to allow for the requested use of the property. They could allow a narrow, specific conditional use to distill wine and spirits or to allow a broader conditional use related to processing of agricultural products. He stated that because of the large amount of land in the City zoned as Agriculture, there is the likelihood that there may be a similar request sometime in the future.

Kaltsas reported they could add a new provision to allow for the processing of agricultural products grown on the premises to compliment other conditional and permitted uses in the Agricultural district and to also include wineries and associated uses in accordance with the Minnesota Farm Wineries Act in the provision. The Act allows a certain amount of wine and distilled products to be produced on the farm. Kaltsas stated this use would be a conditional use rather than a permitted use because of the variable. He stated that the proposed language is not the final language but is something for the Commission and Council to look at.

The applicant is proposing 3-4 full time employees and a new 8,000 square foot barn to accommodate the distilling equipment, mash storage and bottling area. One employee must be present at all times to oversee the distilling operations, but hours of operation would be 9:00 a.m. to 9:00 p.m. Kaltsas stated that by converting the orchard into a different use, they will be decreasing the intensity of the use and instead of having a large peak season they would have more year round use. Kaltsas reported that traffic may decrease as well.

Kaltsas reported the fire department would need to review the building plans because of the distillery. The applicant proposes to accommodate the sanitary sewer needs of the employees with a holding tank. Kaltsas reported the City will need more information to determine if a holding tank will be adequate for the site. Kaltsas stated the distilling process has a byproduct of distilled water and the applicant is proposing to disperse the water into the orchard rather than the holding tank. Kaltsas reported that the City does is not the regulating authority and the applicant would need to comply with MPCA requirements.

Kaltsas reported there is a current selling and tasting room located on the property but the applicant would need to provide more information on their plans for that room. The conditional use permit would not allow on sale activities and this would be regulated by other City licensing procedures.

Kaltsas reported that concerns have come up in regards to smell, odors, exhaust, and noise. He called around to a similar distillery located in New Richmond, WI and they did not have any concerns. However, that distillery was located in a commercial district. Conditions of the conditional use permit are to protect the use and enjoyment of surrounding property for surrounding occupants.

Kaltsas reported that there was one request for additional information at the time of writing the report, but more comments have come in since that time. He reported that the text amendment would have to be approved prior to granting the conditional use permit.

Phillips opened the public hearing.

Gerry Grewe, 7845 Turner Rd, reported that he had the orchard tested and found that the orchard is at its half life. He stated that nearly a thousand trees need to be replaced. He stated that he is looking at targeting the vegan market. He stated other wineries in the state are going into high quality spirits such as brandy and vodka.

Sheila Smith, 7845 Turner Rd, stated that she grew up in the area and believes greatly in agriculture and wants to save the orchard. She stated she is looking forward to being able to offer jobs to those in the community.

Kaltsas asked that the written comments be added to the record.

Phillips stated they received written and verbal comments from the following who were opposed to the applicant's request:

LuAnn Brenno, 7676 Turner Road
Kathy Fenner, 7576 Turner Road
Dennis Nieman, 875 Kuntz Drive
Tom and Cindy Notch, 940 County Rd 92
Annonymous, Turner Rd

Doug Heyvaert, 7645 Turner Rd, felt the proposed distillery is more of a commercial use. He also had heard that additional apples would be brought in. He felt that if there is fermentation there will be some odors. He also expressed concern over the height of the proposed barn. He also felt that approving the text amendment would be opening the city up to whole set of new issues. He took exception to the statement that neighboring properties have commercial uses that are similar or more intense; he felt that

horse operations are a natural use of agricultural land where as a processing plant is not. He would like it on the record he is opposed to the request.

Dennis Nieman, 875 Kuntz Drive, was concerned with the height of the proposed barn. He thought it would be an eyesore. He inquired how this request could be approved if the applicants are the not the owners of the property. He did not think the orchard would be financially viable.

John Hasse, 1035 County Road 92, stated he is opposed to the request. He stated that he does not see a lot of traffic from the horse operations property. He stated that the orchard has always been in operation by someone. He does not like the hours of operation. Hasse felt the intersection is dangerous. He had a complaint about the number of lights and screening of lights on the orchard property. He felt the new barn would obstruct his view of the sunrise. He had concerns with the amount of runoff that flows through his property, especially if the applicant puts in a blacktop parking area. He is also concerned about sanitary sewer on the property.

Cindy Notch, 940 County Road 92, stated that the orchard is the high point of the neighborhood and is concerned about the runoff from the orchard. She felt that applicant's proposal is very industrial. She was concerned that a lot of water will be used resulting in a lot of waste and she inquired how those tanks holding the waste would be pumped. She also felt that it would interfere with the peace and enjoyment of neighboring properties. She stated that if it was to be just a winery she would have no problem with it but when you add distillation it becomes industrial. She felt that the text amendment should be dealt with carefully because it will cause unintended consequences. She was curious how the waste will be disposed and what chemicals would be in it. She was against the request.

Tom Notch, 940 County Road 92, suggested that if the apples on the orchard are too small to sell, they could still be processed in an industrial building off site. He felt the height of the barn is too high and feels the proposed barn is not really being tucked behind the current building. There will still be a large part of the barn showing. He also felt there is a reason the New Richmond, WI facility is located in an industrial area. He stated that the applicant has only leased the land for seven months. He felt that asking for special privileges from the City should come from the owners of a property, not someone who is leasing it. He felt the likelihood of the applicant actually purchasing the property is in question because of the land value negotiations.

Dan Wagner, 918 County Road 92, stated he is opposed to the request. He agrees with the comments of the previous speakers. He felt the size of the proposed building is industrial in size and not appropriate for the area.

Dave Fenner, 7576 Turner Rd, stated that previously there was a proposal for an amphitheater and it was turned down at that time. The Planning Commission and City Council allowed the apple orchard, but not the amphitheater. His concern was that traffic would take a shortcut to get to the property and that would be on a gravel road. He stated that County Rd 92 has no shoulder and bicyclers often ride in the road because of it and he is concerned with possibly having large trucks and bicyclers on the road at the same time. He is opposed to the request.

Grewe felt that the issues brought up have been addressed. He stated the proposal is for sustainable agriculture. He felt there is no way semi trucks would think of traveling on a gravel road as a shortcut to the property. He stated sanitary sewer is being addressed by a holding tank which is done in other parts of the city and the waste from the distillery is distilled water. He stated that the cost of land for a purchase

agreement still needs to be addressed. He also stated that if the orchard is not maintained, the trees are susceptible to many diseases and those can spread to other crops. He stated that he is not stupid enough to invest such a large amount of money into the orchard and watch it go to waste. He invited the others to sit down to coffee with him to discuss any of these issues.

Motion by Gardner, seconded by Thompson, to close the public hearing. Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.

Thompson inquired about the definition of "on" or "off" property as it relates to agricultural goods and if the property has to be contiguous land, could it be rented leased and does it need to be within the city limits. Kaltsas replied that the intent it be within the city on property owned by the owner. It is up to Planning Commission to determine if it is contiguous and stated it is the one limiting factor on how much product can be processed. He stated that it would not be possible for someone to come in and open up an ethanol plant because they would be able to own enough land within the city to do so.

Thompson said he is struggling with the discussion focusing on the difference between wine and distilled spirits. The process of fermenting and processing fruit into wine seems more cumbersome and impactful than a distilling process. He felt that it is akin to agricultural uses.

Palmquist stated he is conflicted. He felt a strong case hasn't been made for the request. He felt that the applicant has some support to gain from the neighbors. He felt the Planning Commission has to address some larger issues such as the text amendment. He needs further information and research to be done before acting on the text amendment.

Kaltsas stated that wineries focus on the consumer experience on the grounds and at tasting events. He doesn't believe that is what the applicant is interested in.

Gardner felt the commercial scope of the request is more than what you see on most wineries. It seems distilling is a stretch to an agriculture standpoint. If the stretch goes that far, it should be in a commercial area.

Phillips felt they need to focus on the text amendment. He does not see any mention of scope and scale. He wants people to be able grow and sell what is on their property. He encouraged Kaltsas to build scope and scale into the text amendment. The Code currently does not allow wineries and distilleries. He wants make sure they capture the spirit behind the regulation in the Code, not just the individual source of activities. He suggested suspending the item until the next meeting. Kaltsas stated they could table it until the next meeting and then the hearing would not have to re-noticed. Phillips wanted to identify that it is okay to grow and process what you grow on your property, but you cannot bring in product from outside the city. He did not know what the right matrix is to use. He stated that they cannot move forward with the remainder of the request until they deal with the text amendment.

Kaltsas asked if there was anything further the Planning Commission would like to see on the CUP portion of the request prior to it coming back at the next meeting. Gardner would like to see property ownership come into play with the Conditional Use Permit process. Kaltsas replied that he spoke with the City Attorney regarding the issue and the attorney had stated that a conditional use permit is granted to the property to run with the property and is not granted to the owner. Therefore, they could not require ownership. Phillips stated that he would like to see a similar example of this use in an agricultural district, not a commercial and industrial district.

Palmquist stated that it is more a matter scope and scale that needs to be further defined, so there are some boundaries so the reasonability test can applied.

Palmquist and Phillips stated they would not be present at the April meeting and Kaltsas stated they may not have a quorum.

Motion by Gardner, seconded by Palmquist, to table the item to the May 14, 2012 meeting.

Kaltsas stated he needed the applicant to okay tabling the item to the May meeting because that begins to stretch the 60 day rule. Grewe verbally agreed to table the item to the May meeting.

Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTIONED DECLARED CARRIED.

9. PUBLIC HEARING. VINLAND NATIONAL CENTER, REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 3675 IHDUHAPI RD. (PID NO. 12-118-24-12-0002):

- An amendment to their existing Conditional Use Permit (CUP) to allow for the connection of the existing facility to City sanitary sewer.
- An amendment to the 2030 Comprehensive Land Use Plan to revise the Sanitary Sewer Service Areas to include the Vinland National Center.

Kaltsas reported Vinland Center had been approved last fall to expand their facility. Staff has been working with the City of Medina to connect to sanitary sewer rather than constructing a new onsite septic system. Staff, City Council, Medina City Council, and Met Council have been meeting to discuss the viability of the connection. . In order to allow the connection, the Tri-City agreement with the Cities of Medina and Greenfield must be amended as well as the Comprehensive Plan per the Met Council.

The Met Council's trunk sanitary sewer facility near Maple Plain is near capacity and they will be making improvements to it in 2018. The Metropolitan Council has requested that the City not add any additional sewer connections to the 289 it currently has until that time. The City has 184 existing connections, 80 stubbed connections, and 25 floating connections. The Vinland Center would require 20 connections and would take away some of those available to the City prior to 2018. After 2018, the City could then add those 20 connections to the total 289 they currently have. The Comprehensive Plan amendment would guide only the property serviced by sewer to a new land use designation of MIC, Medical Institutional Campus. All of the land would be guided, just the small portion where sewer would be. This amendment would require a public hearing.

The City Council has already approved the City Engineer to conduct a feasibility study. It would be a public sewer line along Ihduhapi Trail. Kaltsas reported they would also require a Conditional Use Permit to all Vinland to connect to sanitary sewer.

Phillips opened the public hearing.

There was no present to speak.

Motion by Gardner, seconded by Thompson, to close the public hearing. Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.

Motion by Thompson, seconded by Gardner, to recommend approval of amendments to the Conditional Use Permit and the City's 2030 Comprehensive Plan to allow a connection of the Vinland facility to the City's sanitary sewer located along County Road 11. Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.

10. OPEN/MISC.

There were no other items.

11. ADJOURN

Motion by Thompson, seconded by Gardner, to adjourn the meeting at 10:10 p.m. Ayes: Phillips, Gardner, Palmquist and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.

Respectfully submitted

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Kimberly A. Olson, Recording Secretary

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