

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE PLANNING COMMISSION  
TUESDAY JUNE 21, 2016 – 6:30 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 6:30 p.m.

2. ROLL CALL

PRESENT: Chair Phillips, Commissioners Olson, Gardner, Palmquist and Thompson  
STAFF: City Planner Kaltsas, City Administrative Assistant Horner  
ABSENT: None  
VISITORS: Brad Spencer, Peter Beck, Jack Wegmann, Ed Pluth, John Pritchard, Kirt Kletscher, Rebecca Arendt, Alecia Babich, Tim Babich, Abby Lindenor, Laverne Dunsmore, Jay Fogelson, Tom and Barb Janas, Lynda Franklin

3. APPROVAL OF MINUTES:

- a. May 17, 2016 Planning Commission Meeting

**Motion by Gardner to approve the minutes of the May 17, 2016 Planning Commission Meeting, second by Olson. Ayes: Gardner, Olson and Thompson. Nays: None. Absent: None. Abstain: Palmquist. Motion approved.**

4. **PUBLIC HEARING (Tabled at May 17 Meeting):** Jay Fogelson (Applicant/Owner) requests that the City consider the following action for the property located at 4618 South Lake Sarah Drive, Independence, MN (PID No. 02-118-24-21-0005):

- a. A variance to allow a reduced side yard setback on both sides of the property, which would permit a home and garage addition.

Kaltsas stated the subject property is located at 4618 South Lake Sarah Drive. The property is a legal non-conforming property that does not meet the current lot and setback requirements. There is an existing home and detached garage on the subject property.

The City granted a variance for this property in 2008 to allow the expansion of the existing home on the property. The variance that was previously granted, allowed the expansion of the home along the west property line, utilizing the existing 3.4-foot setback. The variance allowed the expansion of the home up, allowing a second story, and out (to the north) for additional space. Those improvements were made to the home in 2014 and now the applicant would like to expand the home again.

The applicant would like the City to consider granting two variances to the property. The first variance requested would allow the construction of deck to the north of the home (lakeside) utilizing the existing setback of approximately 3.4 feet from the west property line. The deck is proposed to be constructed in line with the existing west wall of the home. The home and proposed deck are setback a significant distance from the OHWL and would not encroach into the shoreland setback.

The second variance requested is to allow the expansion of the house and garage towards the east property line. The applicant would like to expand the house and replace the existing garage. The applicant is proposing to expand the house and garage by constructing a connected garage and addition between The subject property is considered a substandard lot of record in accordance with the City’s Shoreland Ordinance Section 505.15.

*505.15. Substandard lots. Lots of record in the office of the county register of deeds or registrar of titles prior to December 1, 1982, which do not meet the requirements of this section 505, may be allowed as building sites provided:*

- (a) such use is permitted in the zoning district;*
- b) the lot of record is in separate ownership from abutting lands, and can meet or exceed 60% of the lot area and setback requirements of this section; and*
- (c) all requirements of section 705 of this code regarding individual sewage treatment systems are complied with.*

Setbacks for properties located in the shoreland ordinance are as follows:

**Subd. 2. Lot standards.**

	Unsewered Areas			Sewered Areas		
	NE Waters	RD Waters	Tributary Streams	NE Waters	RD Waters	Tributary Streams
Lot Area	2.5 acres	2.5 acres	2.5 acres	1.0 acre	1.0 acre	1.0 acre
Water frontage and lot width at building line	200 ft	200 ft	200 ft	125 ft	100 ft	100 ft
Structure setback from ordinary high water mark	150 ft	100 ft	100 ft	150 ft	100 ft	100 ft
Structure setback from roads and highways	85 ft from centerline or 50 ft. from right-of-way, whichever is greater					
Structure height limitation	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft
Maximum lot area covered by impervious surface	25%	25%	25%	25%	25%	25%
Sewage system setback from ordinary high water mark	150 ft	75 ft (RR) 150 ft (AG)	75 ft (RR) 150 ft (AG)	125 ft	75 ft	75 ft

**Front Yard Setback:**

Required: 85 feet from centerline or 50 feet from the ROW (@ 60% = 30 feet from right of way)  
Proposed: 48 feet from the right of way

**Side Yard Setback:**

Required: 30 feet (@ 60% = 18 feet)  
Provided (West): 3’-4” (variance of 14’-8”)  
Provided (East): 1’-2” (variance of 16’-10”)

**Lakeshore Setback (East Side):**

Required: 100 feet from Ordinary High Water Mark (@ 60% = 60 feet)

Proposed: 100+ feet

In addition to the setback requirements, properties located in the shoreland district can have a maximum impervious surface coverage of 25%. This property can have a maximum coverage of 5,757.75 square feet. The proposed house and impervious site improvements have a total approximate impervious coverage area of approximately 4,900 square feet or 21%. The proposed house and site improvements would not exceed the required maximum impervious coverage allowed under the Shoreland Ordinance.

There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a variance.

*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 criteria for granting a variance:

- a. Residential use of the property is consistent with the Rural Residential District. The applicants are seeking a variance that exceeds the typical setback granted for properties in this area.
- b. Each property in this area is non-conforming and can require relief from certain setbacks. The City will need to determine if the requested variance is unique to this property.
- c. The character of the surrounding area is residential. The proposed single family home is in keeping with the City's comprehensive plan.

The Planning Commission will need to determine if the requested variance meets the requirements for granting a variance. Several additional considerations that could be considered are as follows:

1. This lot was developed prior to the establishment of the setbacks in the current ordinance being adopted.
2. The adjacent property to the west received a variance to allow an addition (attached garage and bonus room) that has an 8 foot setback (10 foot variance) from the side yard setback.
3. The property to the east appears to meet the side yard setback of 18 feet.
4. The applicant currently has access to the lakeside of the home via an opening between the existing home and detached garage. This access is approximately 20 feet in width and allows for an open (non-covered) access to the remainder of the property. The proposed addition would significantly restrict access to the remainder of the property and would make it difficult to maintain the proposed structure or property from the applicant's property without encroaching onto the neighbor's property.
5. The building code requires a minimum of a 5 foot separation between a building and a property line (without making more onerous fire preventive building improvements). Based on this separation, the proposed building would potentially restrict the development of the adjacent property due to the limited setback.
6. The proposed configuration does not appear to be the only layout that could accommodate the applicants proposed improvements. It is possible that the garage addition could be shifted to the west to provide for a greater setback along the east property line. The City could consider requiring an increased setback along one side of the property to maintain a reasonable access to the lakeshore property.
7. The existing detached garage is located approximately 1'-10" from the east property line and can remain in its current location. The applicant could connect the existing detached garage to the existing home as long as all applicable setbacks are maintained. It appears that this connection would be possible without any variances. If this were to occur, the access to the back (lakeshore) property would be restricted.
8. The applicant will need to provide the City with an actual impervious surface calculation.
9. The applicant will need to provide the City with an engineered grading plan that depicts how the property will be graded so that no water is discharged onto the neighboring properties.
10. The home is connected to City sewer.

Kaltsas said Staff is seeking direction and feedback from the Planning Commission relating to the proposed addition and requested variances. The variance along the west property line to allow the construction of the deck is consistent with the previously granted variance. The proposed expansion of the house and garage to the east will limit access to the lakeshore property and will make it difficult to maintain the new structure. The City has typically considered granting variances for non-conforming properties in this area. The City will need to determine if there is a hardship that warrants the requested variance and determine what a reasonable setback would be for the proposed expansion.

The City received comments from the neighboring property owner to the east. He stated that he was concerned with the proximity of proposed addition and spoke to that point at the public hearing. He was concerned that the close proximity of the proposed addition would negatively impact his property. He was also concerned with the impact to his property during construction noting that the proposed addition could not be constructed without construction encroaching onto his property. He recommended that the City consider an increased setback from the east property line.

Commissioners discussed the requested variance and asked questions of staff and the applicant. Commissioners asked staff if the fire code stipulated any setback requirements that should be noted. Staff discussed that the building code has a minimum setback requirement of 5 feet from a property line. Commissioners expressed concerns relating to the close proximity of the proposed addition on the east side of the property. Commissioners asked how the addition could be maintained without having to go on the neighboring property. Commissioners also discussed that the proposed addition would limit access to the rear of the property. Planning Commissioners discussed whether the addition could be located further to the west to provide for a larger setback. The applicant stated that moving the addition to the west would encroach on the front door of the home. Commissioners believed that the proposed addition to the east could not be recommended for approval as proposed and asked the applicant to consider revising the plans and coming back with a proposal that addressed their concerns. Commissioners asked if they could separate the request and did recommend approval of the variance on the west property line to allow the construction of the proposed deck. The applicant will be bringing back a revised plan at the next Planning Commission Meeting for further review and consideration by the Planning Commission.

Kaltsas said the Planning Commission recommended approval of the requested variance to allow a 3'-4" setback on the west property to allow the construction of the proposed deck with the following findings and conditions:

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The variance allows allow a 3'-4" setback on the west property line to allow the construction of the proposed deck. Any changes to the configuration of the deck as proposed or future expansion will require City Council approval through the variance review process.
3. The total impervious surface coverage for this property will not exceed 25% of the total lot area. The Applicant shall submit a survey, which provides impervious surface calculations to the City.
4. The Applicant shall pay for all costs associated with the City's review of the requested variance.
5. Any future improvements made to this property will need to comply with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts.

Phillips asked that the difference would be between hardship and practical difficulty as it relates to this proposal. Kaltsas said "practical difficulty" allows it to be more subjective. Thompson asked if they would lose the pathway between the houses. Kaltsas said the concern is the access path would then rely on the neighbor's property due to the gap being lost. Gardner asked if the garage door would remain as shown. Kaltsas said the applicant is now proposing a 9-foot door with access through the back.

## Public Hearing Open

Fogelson stated they looked at connecting the existing garage to the house but there was not a way to do that without any cross-footings in place. He noted they would not be putting in this addition without the access to the back.

Spencer stated Fogelson has had done a beautiful job with the Langdon house. He said that it was a challenging lot and his concern would be the dual variances. Spencer said such large variances on either side could represent issues for the City in the future with other lots that want the same consideration. Spencer said the City does not want to set a precedence allowing a larger variance than has been allowed prior. He said this was not a hardship so in order to process this request it would have to meet the practical difficulties guidelines.

## **Motion by Gardner to close the Public Hearing, second by Thompson.**

### Public Hearing Closed

Phillips said they need to look at what has been historically and use that for guidance in this case. Thompson said a two-car garage would seem reasonable so they could remove the third stall and that would give back 10 feet. Gardner asked if the fire department has any input. Kaltsas said current code requires 5 feet or the wall has to be rated according to the fire code. Gardner noted the access is dismal. Olson said making the property less conforming is not a persuasive reason to approve the variance. He said there were other options to accomplish a similar thing.

Palmquist asked if the applicant's explored making the garage double deep. He said he would be concerned with the proposal as it is if he lived next door to the property. Kaltsas said if the motion would be to decline if the applicant could get some direction so they could go back and revise accordingly. Palmquist said the concern is the precedence being set. He noted there were a couple ideas presented that would allow for the square footage the applicant is looking for while making it more conforming. Phillips said they need to be strategic and consistent in their recommendations to Council.

## **Motion by Olson to table the discussion for a variance to allow a reduced side yard setback on both sides of the property, which would permit a home and garage addition, second by Palmquist. Ayes: Gardner, Olson, Palmquist and Thompson. Nays: None. Absent: None. Motion approved.**

5. **PUBLIC HEARING:** Jeff Arendt (Applicant/Owner) requests that the City consider the following action for the property located at 1665 Copeland Road (PID No. 19-118-24-44-0001) in Independence, MN:

- a. A rural view lot subdivision to allow the subdivision of property into two lots.

Kaltsas stated The subject property is bounded on three sides by public roads. It is located at the intersections of Copeland Road and Dean Lane and Nelson Road and Dean Lane. There is an existing home and large detached accessory structure on the property. The property is primarily agriculture with some tree coverage in the southeast corner. The property has the following site characteristics: The applicant is proposing to subdivide the property in order to create a rural view lot. The applicant is proposing to create one (1) rural view lot in accordance with the provisions set forth in the City's Zoning Ordinance. The subject property has a total acreage of 75.85 acres. The provisions in the Agriculture

Zoning District allow one (1) rural view lot for every 40 acres of land under the same ownership. Under the current zoning standards, the subject property has the ability to realize one (1) rural view lot for a total of two (2) lots on this property.

Rural view lots must have the following characteristics:

**Lot size required** - between 2.5 and 10 acres

**Lot size proposed** – South Parcel – 8.12 acres

**Minimum lot frontage required** – 300 LF (for property between 5-10 acres)

**Minimum lot frontage proposed** –Parcel A – 1,246 LF

**Ratio of lot frontage to lot depth required** - no more than 1:4

**Ratio of lot frontage to lot depth proposed** – Parcel A - ~1:2 (436.04:809.96)

In addition to the minimum size necessary to subdivide, the ordinance requires a minimum of 2.5 acres of buildable upland, 300 LF of frontage on a right of way and no greater than a 1:4 ratio of lot frontage to lot depth for each rural view lot. Based on the proposed subdivision, the rural view lot would have approximately 8.12 acres of useable upland and over 1,200 LF of frontage on Nelson Road and Dean Lane. The proposed lot depth to lot frontage ratio for the rural view lot would be ~1:2.

The proposed subdivision would produce an approximate 8.12 acre rural view lot. The proposed newly created property would be “in line” with the property to the south and located primarily along Nelson Road. The proposed Parcel A would accommodate a new building pad given its overall size, topography and proposed dimensions. Any development on the property would need to meet all applicable setbacks including those from wetlands. The City received an on-site septic report verifying that the proposed rural view lot can accommodate a primary and secondary on-site septic system. Access to the property can be located off of either Nelson Road or Dean Lane given its frontage on both streets. The applicant has included the requisite drainage and utility easements as required by ordinance (Section 500.15, Subd.’s 1 and 2) for both the existing and proposed parcels.

The remaining 67.73 acres would continue to be a conforming lot of record. The remaining lot would have access on Kuntz Drive. The City’s subdivision ordinance allows lots on a cul-de-sac to have a minimum right of way frontage of 50 LF. The existing home and detached accessory structure meet all applicable setbacks in the after condition.

The newly created Parcel A will be required to pay the City’s requisite Park Dedication fee. For this property the requirement is \$6,500. This fee will need to be paid prior to recording the subdivision.

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

**Summary:**

The proposed subdivision appears to meet all of the applicable standards of the City’s zoning and subdivision ordinance. The lot being created will fit into the surrounding area and have minimal impacts on the surrounding properties.

Kaltsas said the City has not received any written comments regarding the proposed subdivision to permit a rural view lot.

Kaltsas said staff is seeking a recommendation from the Planning Commission for the requested Minor Subdivision with the following findings:

1. The proposed minor subdivision for a rural view lot meets all applicable criteria and conditions stated in Chapter V, Section 500, Planning and Land Use Regulations of the City of Independence Zoning Ordinance.
2. The Applicant shall pay the park dedication fees in the amount of \$6,500, for the newly created Parcel A, prior to the applicant receiving final approval to record the subdivision by the City.
3. The Applicant shall pay for all costs associated with the City's review of the requested subdivision.
4. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.
5. The Applicant shall execute and record the requisite drainage and utility easements with the county within six (6) months of approval.
6. The remaining Parcel B will have no remaining rural view lot eligibilities.

#### Public Hearing Open

Kletcher said he is concerned with what may be going in next door. He said he has an architectural background and wants to see something similar to other structures on Nelson being permitted. Kaltsas said the only stipulation as far as building code is that it be a 750 sq. ft. home or larger with one bedroom and one bathroom minimum. Kletcher said he has no issues with the parcel being split.

**Motion by Gardner to approve a rural view lot subdivision to allow the subdivision of property into two lots for the property located at 1665 Copeland Road, second by Palmquist. Ayes: Gardner, Olson, Palmquist and Thompson. Nays: None. Absent: None. Motion approved.**

6. A proposed text amendment to the City of Independence Ordinances as follows:

- Chapter 5, Sections 510 and 530;
  1. Consideration of the establishment of regulations pertaining to solar systems.

Kaltsas said at the last Planning Commission Meeting staff presented information pertaining to decision points that could be considered by the City in adopting a solar energy ordinance. Commissioners provided staff with direction relating to the detailed design and performance standards for solar energy systems. Based on that discussion, staff has prepared a draft ordinance amendment for consideration by the Planning Commission.

Staff is seeking Planning Commission feedback pertaining to the draft ordinance amendment. Commissioners can make revisions or changes to the language presented. Based on the meeting the Planning Commission can consider a recommendation to the City Council.

Staff is seeking discussion and direction from the Planning Commission for the requested Text Amendment.

***DRAFT SOLAR ENERGY SYSTEM ORDINANCE***

510.05 Definitions. Subdivision 1. The following words and terms, and their derivations have the meanings given in this zoning code.

Subd. 2. “Solar Energy System (SES).” A device or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating.

Subd. 3. “Solar Energy System, Building Integrated.” A solar energy system that is an integral part of a principle or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building, examples of which are roofing materials, windows, skylights, and awnings.

Subd. 4. “Solar Energy System, Ground-Mounted”. A freestanding solar system mounted directly to the ground using a rack or pole rather than being mounted on a building.

515.11. Solar Energy Systems. Subdivision 1. The purpose of this subsection is to provide design and performance standards pertaining to solar energy systems.

Subd. 2. Compliance required. A Solar Energy System is permitted only in accordance with this subsection.

Subd. 3. Permitted Districts. Solar Energy Systems are only permitted in accordance with the following table:

Type of Use	Zoning Districts				
	AG- Agriculture	RR-Rural Residential	UR-Urban Residential	CLI-Commercial - Light Industrial	UC-Urban Commercial
Building Integrated Solar Energy System	A	A	A	A	A
Ground Mounted Solar Energy System	C	C	C	C	C

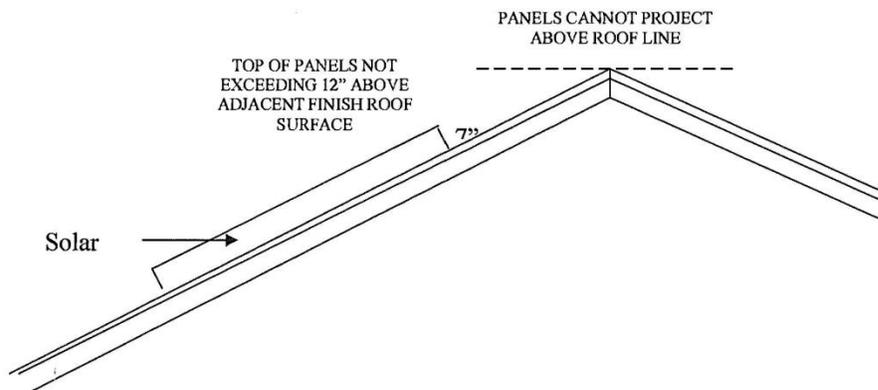
P - Permitted A - Accessory C - Conditional I - Interim
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Subd. 4. Building Integrated Solar Energy Systems - shall conform to the following standards:

- a. Solar panels (photovoltaic and solar thermal systems) can be located on pitched and flat roofs of all principle and accessory buildings within the City.
- b. Solar panels mounted on a pitched roof shall not have a highest finished pitch more than five (5) percent steeper than the roof pitch on which the system is mounted, and shall be no higher than twelve (12) inches above the roof. Solar panels mounted on a flat roof shall not extend more than 5 feet above the roof

surface. Solar panels cannot exceed the maximum structure or accessory building height for the structure they are mounted on.

- c. Solar panels, mounting structures and all accessory components shall be set back a minimum of four (4) feet from the outside edge (or inside edge of the parapet) of a flat roof to minimize visibility and allow roof access.
- d. Solar panels, solar devices, mechanical equipment and mounting structures shall have non-reflective finishes to eliminate glare.
- e. Solar panel frames and support structures should be constructed of a neutral color and compatible with the roof surface color.
- f. Solar panels shall be placed in a uniform manner. Consider the panels as part of the overall roof configuration. Match the slope and proportions of the array with the shape and proportions of the roof.



Subd. 5. Ground-Mounted Solar Energy Systems - shall conform to the following standards:

- (a) Ground-mounted systems shall be located only in rear or side yards.
- (b) Ground-mounted systems shall not be located in the Shoreland Overlay District.
- (c) Ground-mounted systems shall be wholly screened from view from the public right of way or adjacent residential structures. Methods for screening shall include berming, fencing, landscaping and/or combination thereof.
- (d) Ground-mounted systems shall be located on a parcel of at least 2.5 acres.
- (e) Ground-mounted systems shall be setback 40 feet from the rear yards.
- (f) Ground-mounted systems shall be setback 30 feet from the side yards.

- (g) Ground-mounted systems shall have a maximum area of 500 SF.
- (h) The maximum height for any component of the system shall be 15 feet.
- (i) Ground-mounted systems shall be in compliance with any applicable local, state and federal regulatory standards, including building, electrical and plumbing codes.
- (j) Ground-mounted systems and their support structures shall be designed by a certified professional to meet applicable professional standards for the local soil and climate conditions.

Phillips commented on spelling corrections and other text additions. Palmquist asked about restoration requirements. Thompson asked why it would be limited if it was for personal use. Palmquist said he is concerned about screening. Olson asked how screening would be enforced years from now. Kaltsas said any free standing solar would be conditional use guided. If the screening goes away they could revoke the CUP for freestanding units. Gardner said it would be hard to control and is a nuisance factor. He said people do not like to see them. Palmquist asked for clarification on the definition of wholly screened. He asked if it meant landscaping or fencing or something more intrusive. Kaltsas said it was discussed relating to free standing and the City would always be able to control as a conditional use. He said it could range from a berm to some trees to other creative ways to screen and could be looked at on a case-by-case basis.

Thompson said he wanted to reiterate that he felt screening was not always needed nor the limits on size. He thought this should be a continuation of a commercial use of land.

**Motion by Olson to approve text amendment changes to the City of Independence Solar Ordinance Chapter 5, Sections 510 and 530 incorporating changes presented this evening and submitted letter by Brenno, second by Gardner. Ayes: Gardner, Olson and Palmquist. Nays: Thompson. Absent: None. Motion approved.**

7. Open/Misc.

Kaltsas said he would like the Planning Commissioners feedback on the technology initiative to go paperless for the meetings. He asked if they preferred to use their own devices or would like to have City issued devices. Kaltsas noted City email was important to have a backup.

8. Adjourn.

**Motion by Gardner, second by Olson to adjourn the meeting at 8:05 p.m. Ayes: Gardner, Olson, Thompson and Palmquist. Nays: None. Absent: None. Motion approved.**

Respectfully Submitted,

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Trish Bemmels  
Recording Secretary