

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
MONDAY, SEPTEMBER 9, 2013 – 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. ROLL CALL

PRESENT: Chair Phillips, Commissioners Palmquist, Olson, and Thompson
STAFF: City Planner Kaltsas, Administrative Assistant Nelson, and Councilor Fisher
ABSENT: Commissioner Gardner
VISITORS: John Zeglin, Cathy Zeglin, Rob Thomas, Mike Zeglin, Kari Stomer, Jim & Lynda Franklin, Jim & Barb Hasselman, Steve Hansen, Deborah Peterson, and Paul Otto

3. APPROVAL OF PLANNING COMMISSION MEETING MINUTES OF AUGUST 12, 2013

**Motion by Olson, seconded by Thompson, to approve the August 12, 2013 Planning Commission minutes. Ayes: Palmquist, Olson, and Thompson. Nays: None. Absent: Gardner. Obstain: Phillips
MOTION DECLARED CARRIED.**

4. PUBLIC HEARING - JIM AND LINDA FRANKLIN (APPLICANTS/OWNERS) REQUEST THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 6615 FRANKLIN HILLS ROAD, INDEPENDENCE, MN (PID NO.15-118-24-12-0003):

- a. Rezoning of a portion of the subject property from A-Agriculture to RR-Rural Residential.
- b. Preliminary Plat to approve a six (6) lot subdivision, to be known as Franklin Hills Second Addition, on the subject property.
- c. Final Plat to approve a six (6) lot subdivision, to be known as Franklin Hill Second Addition, on the subject property.

Kaltsas described the Franklin Hills second addition or second phase, initially started in 2008. The second addition would add another six (6) lots. He described the location and stated the addition would be located off the end of the Franklin Hills Road. It is zoned agricultural and guided by the Comp Plan as rural residential. The parcel that is to be subdivided is 41.32 acres. Rezoning 22.4 acres to rural residential the remaining would stay agricultural.

Kaltsas stated the proposed site plan is consistent with the City's regulations zoning ordinance. The overall ghost plot could yield 16 lots over the entire 80 acres.

Kaltsas stated the lots meet the minimum and maximum lot area, lot frontage, and lot depth. Of the lots that have wetlands, lots 3, 4, and 5, they still meet the minimum subdivision requirements. Kaltsas stated the consulting staff reviewed the application. An existing pond would be expanded for the storm water. The consulting felt that given the amount of land it could accommodate what is needed. Pioneer-Sarah Creek Watershed District is in the process of reviewing the plan. Any approval would be conditioned upon receiving acceptance and a permit from the watershed district.

Kaltsas stated Engineering staff has some comments but overall felt the plans are within the City's requirements and design standards. The proposed road would be 24' wide, similar to the existing.

Kaltsas stated Hennepin County reviewed the application with no additional comments regarding the subdivision as the road exists onto a County Road.

Kaltsas stated the Park Dedication requirement would be \$3500 each lot, with the exception on lot 4, \$4700, due to its size.

Kaltsas stated the applicant has asked for phasing of the proposed development, allowing them to sell a couple of lots before requiring the fully constructed road. Staff is recommending allowing lots 1 and 6 be developed without full road construction, as they would have driveway access off the existing cul-de-sac. A development agreement could be made stating after lots 1 and 6 are developed the road would need to be fully constructed if a building permit is pulled for any of the other lots. This agreement could give further details and timelines upon when these items occur. The agreement gets recorded against the property and adds some additional security. The staff recommends the maximum allotted time be five (5) years or less to get the streets completed. Storm water improvements would need to be made upfront.

The ghost plot was reviewed in the first phase but not approved.

If the Planning Commission sees to make a recommendation to the City Council for final approval the report has 11 conditions and finding to be included.

Olson inquired about emergency access on the temporary road. Kaltsas explained lots 1 and 6 would have access off the current existing driveway. Until the other lots are developed, only the existing cul-de-sac would need to be maintained.

Thompson asked about the public road criteria when creating lots. Kaltsas stated the lots would be platted with the right-of-ways, and it would be recorded so it shows up in the title. They discussed the requirements to complete road leading further into the development. Kaltsas stated a building permit or the fifth year would be the trigger to complete the road.

Thompson asked about minimum frontage and not all of the lots not meeting those. Kaltsas explained the City Ordinance allows lots on a cul-de-sac to have a minimum frontage of 50 feet.

Public Hearing Open

Jim Hasselman, 6575 Franklin Hills Rd, inquired about low ground near his property and if it would be effected by the development. Kaltsas explained there are culverts that would be added.

Hasselmann inquired about the cul-de-sac removal and if any assessments would be added to remove it. Kaltsas stated it would be the developers responsibility.

Hasselmann then inquired about the minimum lot size; which is 2.5 acres. He further asked about requirements in dividing up lots. Kaltsas stated there is a process and a minimum acreage of 7.5 acres needed. He stated it is based on a density of 1 unit per 5 acres. The City has an ordinance; which charts the maximum lots permitted.

Hasselmann asked for clarification on the phasing. Kaltsas explained lot 1 and 6 could develop without completing the road construction. The road would need to be completed if any of the lots 2 through 5 applied for a building permit or the five-year window of time expires.

Paul Otto, 9 West Division St, Buffalo, stated he is aware of the drainage area through lot 6 which is why they proposed a home to be set further back. He stated there is an existing culvert there; which will be replaced with a longer culvert. When the lot is developed, the plan will need to be reviewed by the City in order to make sure it does not impede the drainage way.

Phillips asked if grading work on lot 6 will increase water flow onto Hasselmann's property. Otto stated it is possible but City staff should be reviewing it. A culvert under the driveway is needed, but placement of a home will dictate water flow. Palmquist inquired if Otto anticipated any adverse impact on the Hasselmann's property. Otto stated drainage through the Hasselmann's lot runs through Lot 6, so poor drainage planning could create issues for both lots. Hasselmann's main concern was about flooding, and he was looking for re-assurance. Otto stated the City could place a drainage and utility easement allowing the area to be protected. This would give the City rights, access, and the ability to maintain the culvert. Hasselmann asked about the drain tile in the ditch. He stated it works, but cannot identify where it is located. Otto state they were not able to identify exactly where it is located either.

Hasselmann inquired about a proposed home location on lot 6 and concerned it could block his view. Otto stated the home could go anywhere but they proposed it to be built on the high side of the lot.

James Franklin, 6615 Franklin Hills Rd, stated he does not know exactly where the tile is located. He pointed out the angle of the tile and showed where he assumed it was located. He stated he was fine with having an easement on lot 6.

Rob Thomas, 6525 Meadow Ridge, inquired about what would happen if the lots were not developed within five years. Kaltsas stated the road would need to be developed.

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

Public Hearing Closed

Thompson stated he was ok with the phasing and like the idea of the easement.

Phillips stated he was troubled by the five years and 125% of the cost. He would like to see the number raised or the term decreased. Kaltsas stated 125% is written in the City Ordinance. Franklin stated the road would cost roughly \$250,000. Phillips suggested reducing the timeframe for the road to be completed. Thompson questioned how it works or if the City could be stuck with building the road.

Kaltsas stated the cost of the roads would be assessed to the properties there. He stated the City has done this before. Olson stated the sale of the lots would include some of the road cost.

Motion by Palmquist, seconded by Thompson, to approve the rezoning of 6615 Franklin Hills to Rural Residential, approval of the 6 lot subdivision, known as Franklin Hills 2nd Subdivision preliminary and final plat, subject to the 11 conditions in the staff report. The applicant would work with the City engineer to determine the appropriate drainage and utility easement to lot 6. Grading and drainage of lot 6 to be reviewed by the City engineer so neighbors are not adversely affected. The Applicant is responsible for the cost of converting the existing cul-de-sac to a normal roadway width. Stormwater improvements to be constructed with the first building permit and the road to be installed within the four (4) years from the building permit on the first lot.

Olson inquired where the easement would be located. Kaltsas stated the drainage easement be determined by the City engineer.

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

5. DEBORAH PETERSON, REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 2810 NELSON ROAD, INDEPENDENCE, MN (PID NO. 18-118-24-13-0010):

- a. A conditional use permit to allow a Kennel to be kept on the subject property.

Kaltsas described the property location and the request. The property has an existing residence and two detached structures. The property is 9.78 acres and zoned agricultural.

Kaltsas stated the applicant is seeking a conditional use permit on the property for a kennel. Applicant asking for a permit for a hobby kennel, allowing her to keep her nine (9) dogs on the property. All the dogs are purebred Corgis owned by the applicant and some are for show. He stated she breed roughly one (1) litter per year.

Kaltsas explained a Conditional Use Permit is needed for four dogs or more. This was initially brought to the City's attention when a noise complaint, barking, was report and there were found to be nine (9) dogs living at the property.

Kaltsas explained the dogs are the applicant's own dogs and is not purposing to board other's dogs. She has installed an invisible fence and they are not kept outside in a kennel. The proposed hobby kennel will not have outside traffic or dog turn-over.

Kaltsas stated some additional conditions and criteria are listed in the staff report.

Olson inquired what the difference was between a hobby kennel and a business. Kaltsas stated the space is not rented and it is not a commercial business. The species type is limited with the conditional use. Thompson inquired if it would be confined to a specific building. Kaltsas explained the use would cover the entire property.

Public Hearing Open

Kari Stomer, 2828 Townline Road, stated the dogs have been barking quite a bit day and night. She stated the noise is a factor.

Rob Thomas, 2740 Nelson Road, stated he previously lived with his mother near the property. He stated noise was an issue. The dogs also would not stay within the property and traveled over to his mother's house. He wanted to make sure there was to be no commercial kennel and did not want any other owners coming in to start up a kennel.

John Zeglin, 2858 Nelson Road, stated he lives to the North of the property, but the noise is a real issue. He stated he likes dogs, but it has affected the way they live. He stated they can't sleep with the windows open because the dogs will wake them around 5AM every morning. He questioned how many dogs they actually have. He stated any noise triggers the dogs to bark. He stated he likes the dogs and the neighbors; which makes the situation difficult. The invisible fencing does not work for all the dogs. The dogs will run up his driveway, and he is afraid he will hit the dogs. His family tries to avoid the dogs so they are not encouraged to come over. He stated he feels guilty they haven't approached the applicant earlier about this issue. The noise is a major problem. He thinks there have been more than nine (9) dogs living at the property.

Steve Hanson, 2888 Nelson Road, stated he has dogs and has fencing, yet he has had the applicants dogs in their yard. He stated he hears them barking many times a day. He stated he would like to see something done.

Mike Zeglin, 2873 Lakeshore Dr, stated he could not let his dog out when visiting his brother John because the dogs will come over. He stated he has seen 25 dogs at the property. The dogs also urinate on the car. The barking noise is intolerable.

Deborah Peterson, 2810 Nelson Road, addressed the chamber and informed everyone there are only nine (9) dogs that live at the property. She stated she is not planning to have any more dogs. She is hoping to reduce the number. She stated she was aware there are a couple of the dogs that do like to leave the yard. She stated they have installed invisible fencing and some have collars. As far as the barking, she wasn't aware that others were having issues with the barking. She discussed alternatives to deter barking. The bark collars and invisible fencing collars cannot be used together. Some of the male dogs are kept in the external kennel. She stated they are working on the noise issues. The dogs are let out in the morning when she leaves to go to work.

Palmquist asked about solutions to eliminate the barking issue. Peterson stated bark collars, ultrasonic barking items, some of the dogs could be brought in the house during the day. Another option she stated was de-barking the dogs, but she does not want to have to do that as it is a bit cruel.

Thompson questioned about the citation. Peterson stated it was not a citation but rather a warning.

Thompson asked about the size of the invisible fencing. Peterson stated it is roughly four (4) acres that are fenced or blocked by structures.

Palmquist asked how many times are they breed a year. Peterson stated just one (1) time per year. The dog she was breeding usually had a litter of about seven (7) pups. The pups are usually gone as soon as they can be separated. She stated she does sell the pups; however after the vet bills she does not make money on them. Peterson stated she does this for the love of dogs.

Peterson stated the studded collars could create a rash due to the dogs' double coat.

Olson inquired why they have nine (9) dogs. Peterson stated that the most recent dog was a rescue dog and is hoping to place him in a new home. There are 2 other dogs that are eight (8) years old and does not plan to replace them once they die. Some of the dogs are in dog shows for a hobby.

Thompson asked why you are breeding the dogs if it is not for a business and you are not keeping them. Peterson explained she is trying to improve the breed line. She stated should would not be breeding any for a few years.

Motion by Olson, seconded by Thompson, to close the Public Hearing. Ayes: Phillips, Palmquist, Olson, and Thompson. Nays: None. Absent: Gardner. MOTION DECLARED APPROVED.

Public Hearing Closed

Palmquist asked about the City Ordinance. Kaltsas stated we have a nuisance ordinance relating to noise.

Phillips stated the city also received a written letter from Roger and Michelle Schmitz, 2925 Copeland Road, against issuing a Conditional Use Permit.

Olson asked how the noise ordinance is measured or if it is just commonsense. Kaltsas stated it could be metered, but is more commonsense. The problem is created when it does not allow a resident to reasonably enjoy their property.

Thompson inquired about best practice criteria for kennels. Kaltsas stated the City has several kennels, location is very important. Mitigating the noise issue can be by location.

Phillips pointed out a hobby kennel within the City for sled dogs; which the neighbors supported.

Phillips stated the Planning Commission's job is to serve the City Council, but we also must listen to the people.

Palmquist was troubled with the fact there is no good solution to the noise and wandering dogs. The solutions do not seem to appease the neighbors. No answer feels right without a solution for the noise as annoys many people.

Olson stated a solution needs to be made. Could a moving the outdoor kennel or adding berms be a better solution? No solution is proposed.

Motion by Palmquist, seconded by Thompson, to deny the application for 2810 Nelson Road a Conditional Use Permit for a kennel.

Palmquist stated he could support this if the mitigation of noise issue does not adversely affect the surrounding neighbors and correct the wandering off of the applicants property.

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

6. OPEN/MISC.

None

7. ADJOURN

Motion by Olson, seconded by Palmquist, to adjourn the meeting at 9:00 p.m. Ayes: Phillips, Palmquist, Olson, and Thompson; Nays: None. Absent: Gardner. MOTION DECLARED CARRIED.

Respectfully submitted

Jolene M Nelson, Recording Secretary