MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
MONDAY, SEPTEMBER 12, 2011 – 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 and Commissioners, Olson, Palmquist, and Triplett
STAFF: Planner Kaltsas, Administrative Asst. Olson, Commission Liaison Spencer
ABSENT: Commissioner Gardner
VISITORS: Richard Jacobs, Donna Mae Johnson, Jim and Lynda Franklin

3. APPROVAL OF MINUTES – AUGUST 8, 2011

Motion by Triplett, seconded by Olson, to approve the minutes. Ayes: Olson, Palmquist, Triplett. Nays: None. Abstain: Phillips. MOTION DECLARED CARRIED.

4. PUBLIC HEARING. RICHARD F. AND MARGIE JACOBS, OWNERS OF THE PROPERTY LOCATED AT 6590 COUNTY RD 11 (PID NO. 03-118-24-44-0003) AND JAMES RICHARD JACOBS, OWNER OF THE PROPERTY AT 6550 COUNTY RD 11 (PID NO. 03-118-24-44-0001), REQUEST THE REZONING, FROM AGRICULTURE TO RURAL RESIDENTIAL, A MINOR SUBDIVISION AND LOT LINE REARRANGEMENT OF THEIR PROPERTY.

Richard and James Jacobs were present requesting the rezoning, a minor subdivision and a lot line rearrangement.

Kaltsas explained there are two homes located on three total properties. Richard and Margie (RJ) own the farmstead and corresponding agriculture buildings and James Jacobs owns the home and roughly 1 acre located at 6550 County Road 11.

There are three separate actions that need to take place to fix this, they are:

1. Rezoning from Agricultural to Rural Residential a 20-acre, newly created parcel.
2. A lot line rearrangement and lot combination to allow a 20-acre parcel to be created and the remainder 17.2 acres to be combined with the adjacent property.
3. A lot line rearrangement to adjust a perimeter lot line for Tract C that runs through several existing buildings.

Right now as it stands, RJ's house has a property line that goes right through the middle of it. Part of the rearrangement would move that line to the east of the house and give a clear survey to which this lot can then be combined with the property to the west and north of the home.

By making this change the property/home that Jim Jacobs (JJ) lives in would then encompass only his home and several existing out buildings. The rearrangement also allows for the proper setbacks for all buildings on both properties.

In order for this to happen the property that JJ's home and outbuildings are on and the remaining 20 acres would need to be rezoned from agricultural to rural residential. This needs to be done to allow for a smaller minimum lot size versus the agricultural rural view lot sizes.

The above request wouldn't create any new building eligibility's nor would it create any property that isn't consistent with the surrounding properties.

Public Hearing

It was noted that several phone calls were received and several residents stopped in to City Hall to review the proposal. The information the residents were looking and saw didn't require any additional follow up, there weren't any concerns expressed regarding the proposed actions.

Motion by Palmquist, second by Olson to close the public hearing. All ayes; motion declared carried.

It was noted by Phillips that it is really important to get any easements now and get them recorded versus later. Palmquist questioned the driveway, Kaltsas stated the driveway is still in legal conformance in width and doesn't need any other action. They are not creating a new "buildable" lot.

Motion by Palmquist, second by Olson to approve the following, with the conditions as listed:

1. The proposed rezoning, minor subdivision to allow a lot line rearrangement and lot combination meets 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 lot line rearrangement and legal description of the properties.

3. The Applicant provides all easements for drainage and utilities as required by and in accordance with the City's subdivision ordinance for the newly created 20 acre parcel (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 minor subdivision.

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

All ayes; motion declared carried.

5. PUBLIC HEARING. DONNA MAE JOHNSON, OWNER OF THE PROPERTY LOCATED AT 340 COUNTY RD 19 (PID NO. 36-118-24-13-001), REQUESTS THE REZONING FROM A-AGRICULTURE TO RR-RURAL RESIDENTIAL AND A MINOR SUBDIVISION.

Donna Mae Johnson was present to request a Minor Subdivision to permit a Rural View Lot for the property located at 340 County Road 19. The subject property is located just east of County Road 19 and just south of County Road 6. The property is bisected by the Luce Line Trail. There is an existing home and several agricultural outbuildings on the property.

Kaltsas presented the request and explained what actions needed to be taken to move the request forward.

The property is currently zoned A-Agriculture and guided in the Comprehensive Plan as Agriculture Preserve. The proposed rural view lot would be approximately 5 acres in size and would include the existing house and out buildings located on the property. The applicant would have approximately 112 acres of the lot remaining after the subdivision. The remaining acreage would have one (1) building eligibility. It is possible that the remaining acreage could be further subdivided in the future using the rural view lot provisions. One (1) additional rural view lot could be subdivided from the property in the future if the subdivision provisions stay the same. This would yield a total of three (3) lots for this property.

Rural view lots must have the following characteristics:

Lot size required - between 2.5 and 10 acres
Lot size proposed – House Parcel – 5.01 acres

Minimum lot frontage required – 300 LF (for property between 5-10 acres)
Minimum lot frontage proposed – House Parcel - 390.00 LF

Ratio of lot frontage to lot depth required - no more than 1:4
Ratio of lot frontage to lot depth proposed - 1:1.35 (390.00:527.00)

The House Parcel (the proposed rural view lot) has an existing on-site septic system. The applicant has provided the City with the required information pertaining to a secondary site (see plan).

The proposed rural view lot (House Parcel) will be required to pay the City's Park Dedication requirement. For this property the requirement is $3,500.00. This fee will need to be paid prior to recording the subdivision.

The applicant is not showing any utility easements on the proposed rural view subdivision. It is recommended that the applicant provide the City with all easements for drainage and utilities as required by and in accordance with the City's subdivision ordinance for the newly created 5 acre parcel and the remaining 103 acre parcel. (Section 500.15, Subd.'s 1 and 2).

The lot being created will fit into the surrounding area and have minimal impacts on the surrounding properties.

Public Hearing

The City has received no verbal or written comments regarding this proposal.

Motion by Triplett, second by Palmquist to close the Public Hearing. All ayes; motion declared carried.

Phillips had a concern about a conforming septic system and that there would be a secondary site available for the existing home site.

Motion by Palmquist, second by Triplett to approve the following with clarifications on Item #'s 3 and 4:

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 provide to the City a final survey indicating the legal description and depiction of the minor subdivision for the newly created rural view lot.

3. The Applicant shall provide all easements for drainage and utilities as required by and in accordance with the City's subdivision ordinance for the newly created 5 acre parcel (Section 500.15, Subd.'s 1 and 2).

4. The Applicant shall provide the City with verification of the soil and percolation report that indicates there is adequate space to accommodate the secondary septic site on the House Parcel. (Current septic must be in compliance.)

5. The Applicant shall pay the park dedication fees in the amount of $3,500, for the newly created House Parcel, prior to the applicant receiving final approval to record the subdivision by the City.

6. The Applicant shall pay for all costs associated with the City's review of the requested subdivision.

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

8. The Remaining Parcel will have only one remaining rural view lot eligibility as stated and further detailed in the staff report.

All ayes; motion declared carried.

6. PUBLIC HEARING. A PROPOSED TEXT AMENDMENT TO THE CITY OF INDEPENDENCE ZONING ORDINANCE PERTAINING TO SECTIONS 510.05 DEFINITIONS (GUEST HOUSE, NON-RENTAL GUEST APARTMENT), 515.07, NON-CONFORMING USES AND 520.21 VARIANCES (STANDARDS FOR GRANTING VARIANCES).

The City Council has directed staff to consider making changes to the City's Zoning ordinance pertaining to several areas of the ordinance. There are three issues that have been identified in the City's current Zoning Ordinance and they are:

a. Guest house and non-rental guest apartments
b. Non-conforming Structures
c. Variances (Standards for Granting Variances)

Guest house and non-rental guest apartments

As the population continues to age, there has been a growing movement amongst Cities to make provisions to allow for an accessory dwelling unit (ADU) to be constructed on a property in addition to the principal structure. This ADU would allow families to care for relatives within or on their existing property. An ADU is essentially a small additional dwelling intended to be accessory to a primary home. Most cities that allow ADUs limit their size and use. Generally the ADU is intended as an independent living space for an aging relative or other family member.

The City currently has provisions for a guest house and or non-rental guest apartment. The current provisions limit the space permitted within the unit to bedrooms and a bathroom. The City has been approached by several residents that would be interested in building an accessory dwelling unit for a family member on their property. The existing ordinance limits the ability to construct a true "mother-in-law apartment" because it does not allow for a kitchen. Typically, a "mother-in-law" unit would allow for a kitchen, living area, bedrooms and a bathroom.

In researching and reviewing this issue further, it appears that there are consistent trends that are considered by most cities that have adopted standards relating to ADUs. Some of the considerations that were consistently identified in reviewing similar ordinances relating to accessory dwelling units are as follows:

1. Size limit of the ADU. A typical minimum is 400 square feet and a common maximum is 800 square feet. Sometimes maximum size is expressed as a percentage of the primary home's size.

2. The number of bedrooms is often limited as well as the number of residents, usually one bedroom and two or three people max.

3. A simple statement such as "compatible with the primary home" can regulate design.

4. Limitation that it must be occupied by a "family" member of the principal structure.

Staff is seeking feedback pertaining to the proposed amendment of the zoning ordinance to accommodate accessory dwelling units. Following the discussion and feedback relating to this issue, the City will prepare a draft ordinance for a second reading and formal consideration by the Planning Commission.

Subd. __. "Accessory Dwelling Unit." A secondary dwelling unit that is:

(a) Physically attached to or within a single family dwelling unit or within a detached accessory building that has a principal structure on the parcel; and

(b) Subordinate in size to the single family dwelling unit; and

(c) Fully separated from the single family dwelling unit by means of a wall or floor, with or without a door; and

(d) Uses a separate entrance that the primary dwelling unit; and

(e) Design with the primary home; and

(f) Is no greater than 800 square feet; and

(g) Has permanent provisions for cooking, living and sanitation; and

(h) Has no more than 1 bedroom; and

(i) Is limited to more than 2 family members of the homesteaded owner occupants of the principal structure.

Discussion concerns or statements, some cities allow for non paying guests and/or caregivers, the current ordinance doesn't specifically limit having a kitchen, the size of a secondary dwelling – is an issue in regards to elderly parents, themselves, disabled children, hot plate versus safety. Size limits, how do you get to an 800 sq. ft, one level with a basement, or if it's a slab of 1200 to 1300 sq. ft.?

Jim Franklin was present and stated they are in the planning stages of retirement and would like to be able to stay on their farm in such a dwelling or arrangement.

Kaltsas offered to do further research. Other comments included putting all the different guests terminology together to call ADU, include care giver, if need caregiver – than would need 2 bedrooms which would force a larger space and compatible for wheel chair equipment. Define basement and allowed in what zones. Kaltsas suggested keeping it in a conditional use process, to keep it easier to monitor.

Other suggestions to put size on a sliding scale due to the size of the property, based on need, and what if the property is already at limit for additional square footage over and beyond other outbuildings?

Triplett had concerns about requiring additional septic. Kaltsas suggested they could either hook up to the existing system if the size allowed or put in its own.

Palmquist could see some adverse to 800 to 900 sq. ft. in a rural residential zone, but had some concern on rural residential use unless based on size. Kaltsas stated that in most cases you could set criteria such as impervious and setbacks. Declarations would add limits, where as covenants could restrict them within a development.

Franklin suggested incorporating a ghost plan so it is not on a lot line or over a sewer line. The size could be set at 50% or 2500 sq. ft/1250 sq. ft.

Phillips suggested using a permit process as a setting process, with the code being written clearly. Strengthening the style of home, making them to be compatible with the already existing primary home.

Olson would like to see a definition of "family". Kaltsas stated they should use the States definition.

Motion by Triplett, second by Olson to continue the public hearing at their October 10th meeting. All ayes; motion declared carried.

Non-conforming Structures

Minnesota State Law affords nonconformities several protections. The City has requirements relating to non-conforming structures that do not completely correlate with the state statute. It is recommended that the City amend its ordinance to be consistent with State Law. There is only one provision that is inconsistent. This provision allows a structure that is destroyed by any cause to an extent exceeding 50% of its fair market value to rebuild or be repaired if a building permit is applied for within 180 days of when the property was damaged. The remainder of the non-conforming ordinance closely follows the States Statute.

Staff is seeking a recommendation from the Planning Commission relating to the proposed ordinance amendment relating to nonconforming uses. See the following:

515.07. Nonconforming uses. Any structure or use lawfully existing upon the effective date of this zoning code or an amendment hereto that does not conform to the provisions of this zoning code or amendment is a nonconforming use. Unless otherwise expressly provided by this zoning code or amendment, a nonconforming use may be continued subject to the following conditions:

(a) No nonconforming use may be expanded or enlarged without bringing the entire nonconforming use into conformity with the provisions of this zoning code;

(b) If a nonconforming use is discontinued for a period of one year, further use of the structures or lot must conform to this zoning code;

(c) If a nonconforming use is replaced by another use, the new use must conform to this zoning code;

(d) If a nonconforming structure is destroyed by any cause to an extent exceeding 50% of its fair market value, **and** no building permit has been applied for within 180 days of when the property is damaged" subject to reasonable conditions on the building permit to mitigate any newly created impact on adjacent property, the nonconforming structure may not be rebuilt or repaired unless the structure is brought into conformity with this zoning code. If the property is less than 50 percent destroyed, then the nonconforming use may be continued, irrespective of the 180 day rule so long as the discontinued use or occupancy is not greater than one year;

(e) Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary nonstructural repairs and incidental alterations that do not extend or intensify the nonconforming use.

Triplett questioned where the 50% value would come from, Kaltsas stated through an appraisal.

Motion by Triplett, second by Olson to approve the amendment and forward to the Council for their September 27th City Council meeting. All ayes; motion declared carried.

Variances (Standards for Granting Variances)

The now famous lawsuit pertaining to variances in the City of Minnetonka (*Krummenacher v. City of Minnetonka*) has changed the landscape relating to how a City can grant variances. Based on the outcome of this case, a cities ability to grant variances became extremely limited. The state has now adopted an amendment to the variance statute (see statute below). The City has drafted proposed Code amendments to address the recent statutory change. These amendments conform closely to the new law.

They are as follows:

> 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.
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> 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:
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> 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.
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> 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.
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> 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.
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> Sec. 2. Section 520.23 of the Independence City Code is hereby repealed in its entirety and replaced with the following:
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> 520.03 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.

Motion by Triplett, second by Olson to approve the amendment and forward to the Council for their September 27th City Council meeting. All ayes; motion declared carried.

7. Open/Misc.

No new items were added.

8. ADJOURN

Motion by Triplett, seconded by Olson, to adjourn the Planning Commission meeting at 8:50 p.m. Ayes: Gardner, Olson, Palmquist, and Triplett. Nays: None. Absent: Phillips. MOTION DECLARED CARRIED.

Respectfully submitted

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Toni Hirsch, Recording Secretary