

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE PLANNING COMMISSION  
MONDAY, DECEMBER 8, 2014 – 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 Gardner, Palmquist, and Thompson  
STAFF: City Planner Kaltsas, Councilmember Fisher, and Deputy Clerk Nelson  
ABSENT: Commissioner Olson  
VISITORS: Tom Spears, Rich Mickschl, Dave Vanden Einde, John Conlin, Jan Gardner, Keith Colman, and Brad Spencer

3. APPROVAL OF PLANNING COMMISSION MEETING MINUTES OF NOVEMBER 10, 2014

**Motion by Gardner, seconded by Thompson, to approve the November 10, 2014 Planning Commission minutes. Ayes: Phillips, Gardner, Palmquist, and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.**

4. PUBLIC HEARING - TOM SPEARS (APPLICANT/OWNER) REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTION FOR THE PROPERTY LOCATED AT 2880 LINDGREN LANE, INDEPENDENCE, MN (PID NO. 13-118-24-24-0014):

- A variance from the requisite setbacks to permit a non-conforming structure to be expanded. The variance would allow the expansion of the existing home on the property.

Kaltsas described the location and request for the variance for a non-conforming structure. . He stated there was an existing home that has been rebuilt and there is pre-existing detached garage. Kaltsas stated the property is a substandard lot of record in the shore land overlay district, allowing reduced setbacks by 60%. The lot is approximately one acre and is zoned rural residential.

Kaltsas explained the applicant had applied for a building permit earlier this year to rebuild the existing home and expand the structure with a second floor and an attached garage. He stated at that time, the City reviewed the permit and the non-conforming zoning ordinance interpretation was used to approve the building permit. The City felt this they interpreted the ordinance accordingly as long as the structure was not further expanded beyond the current setbacks. Kaltsas stated what the ordinance allows is the ability to rebuild a non-conforming structure in exactly the same form as it previously was built. A non-conforming structure can be expanded, but it cannot encroach upon current setbacks.

Kaltsas stated the City issued the building permit without requiring a variance. The applicant is now looking at attaching an existing detached structure and has asked for the City's permission. At that time, the City staff brought this to Kaltsas' attention. Kaltsas stated this would be an intensification or expansion of the current use and a variance is required. He stated the applicant's request is for a variance on what has already been rebuilt and a variance to expand the structure by attaching the detached structure.

Kaltsas stated the shore land reduced side yard setback is 18-feet. Currently, there is a 6-foot setback on one side and 21-foot setback on the other side. The lakeshore setback can be reduced to a 60-foot setback from the OHW mark. The applicant is currently roughly at a 48-foot lakeshore setback from the home. He stated the applicant is within the 25% impervious square footage provision, which for this lot allows up to 11,000 square feet.

Kaltsas stated the City's standards for granting a variance have been met. He stated within the area there are many non-conforming homes. He stated staff is looking for consideration from the Planning Commission on whether they would consider a variance for the side yard and lakeshore setback. He stated he has not yet received approval from the DNR, but anticipates he will. The home is connected to the city sewer.

The issued building permit was done so based upon a historical interpretation of the ordinance. An expansion of a non-conforming structure in anyway requires a variance.

Palmquist clarified the request is for a retroactive variance for the setbacks and a new variance for the addition of the structure. Thompson inquired if the variance approvals were severable. Kaltsas stated they could be.

### Public Hearing Open

Keith Coleman and wife, representing Deloris Cole at 2894 Lindgren Lane, Keith stated Deloris is his mother-in-law and feels that the new home that replaced the previous structure is an improvement and benefits the area. They have no objection to what the applicant is proposing at doing. He stated they are the only ones who can see the structure. They felt what is being asked seems logical and the work has been well done. They do not see how this infringes upon anyone else.

Rich Mickschl, 2850 Lindgren Lane, explained that his home neighbors the property to the South. He stated he was not upset with the applicant, but rather upset and disappointed with how the city handled this historical interpretation. He if it would have been done accordingly this may have been altered. This did change the views from his home.

Mickschl stated he likes what the applicant is building, so his only grievance is with how the City handled this. His main concern moving forward is to control storm water run-off and drainage. He was happy to see the report noted this concern.

Tom Spears, applicant and property owner of 2880 Lindgren Lane. He stated he apologize for any error. He stated he applied for a building permit, showed his plans, and it was approved. Spears explained the porch was attached when he purchased the property. When rebuilding the home, he removed it, but now would like to attach a porch it permanently. He stated he feels bad about the situation and did everything he thought he needed to do.

Spears stated the home is built and hopes it will be approved. The only other thing he is still looking at doing is finishing the porch with the approval of this variance. The porch is the same exact size of the previous porch, but it would have footings making it a permanent structure. The Commissioner discussed and asked questions of the applicant. Spears purchased the property in March and he is the general contractor on the job.

Mickschl stated the home is closer to 35 feet from the lakeshore on the south side.

### **Motion by Gardner, seconded by Palmquist, to close the Public Hearing.**

### Public Hearing Closed

The Commissioners discussed the porch and how it was previously attached to the house. Spears stated he wants to attach it so that it means the building code.

Gardner questioned the terminology of the intensification of use and if adding this porch was intensifying the use of the home. Kaltsas stated expanding the structure permanently would intensify and improve the home, thus require a variance.

Thompson discussed adding this large of footprint, this close to the lake, should have required further discussion before considering a variance. He was not comfortable with this even with the neighbors support. Palmquist and Kaltsas further discussed how this happened, as staff's interpretation of a non-conforming ordinance not needing a variance, as it did not further encroach on the setbacks. The Commissioners discussed the making policy and procedure changes to prevent future errors.

Phillips stated the entire Planning Commission was very troubled by this mistake and asked that steps are taken to ensure that this does not happen again.

Thompson stated he was uncomfortable putting his stamp of approval on this without further deliberation and limited comment. The Commissioners further discussed. They also reviewed the clauses about granting a variance; which stated that it could not be granted based solely on financial hardship. Gardner stated these types of variance requests have been seen many times on these lake home properties, and if this had been presented initially to the Commission, it probably would have been looked upon favorably. Palmquist had issues with the city's culpability and the risk of the property owner suffering financial hardship because of this. He feels the Commission has a duty to up hold the city's ordinance.

Thompson inquired what would happen if a variance were not granted. Kaltsas stated this does not change anything. It would be a non-conforming home without a variance. The City Council would have to choose to pursue legal action, if they wanted to change it. The Planning Council just needs to review if the criteria for granting a variance has been or could be met in order to grant a variance. Kaltsas stated an owner is still responsible for complying to all applicable ordinances.

Palmquist stated it does not meet all applicable conditions and restrictions for granting a variance.

The Commission then discussed drainage issues. Kaltsas stated a drainage plan would help elevate any of those concerns. He stated he would likely have a response from the DNR before a resolution is drafted.

The motion is was split into two motions.

**Motion by Palmquist, seconded by Thompson, 1) to recommend approval of a variance allowing reconstruction of the porch. 2) to recommend approval grant the request but acknowledge the request does not meet the applicable conditions and restrictions stated in the ordinance, but due to the already built home, city culpability, and financial hardship suffered the variance is granted.**

The Planning Commission does not want this sort of approval to set a precedence going forward.

They further discussed the hardship statement.

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

5. A PROPOSED TEXT AMENDMENT TO THE CITY OF INDEPENDENCE ORDINANCES AS FOLLOWS:

- Chapter 5, Section 540 – Zoning: Telecommunications Towers and Facilities; consideration to amend the number and square footage permitted for accessory buildings associated with a telecommunications tower.

Kaltsas discussed the ordinance amendment. He suspects a new application for a cell tower will be submitted soon. He stated part of the issue is the City is promoting co-location of carriers the cell towers, but there is a provision in the ordinance that allows only one accessory building located at each tower site. The City wants the provider's equipment kept inside the accessory building; however, each carrier needs their own accessory building. A generator is the main piece of equipment the City wants inside of a building. He is recommending allowing more than one accessory building on a tower site, requiring all equipment to be kept inside of the building, and increasing the maximum square footage of an accessory building to 350 square feet. He also suggested requiring that a master plan be submitted to the City; which would show co-locate options.

The Commissioners discussed options and size of the structures. They all agreed the generators should be kept inside a structure. Kaltsas stated the buildings are restricted to one per user.

Palmquist asked about appropriate areas towers. Kaltsas stated cell towers are allowed in an agricultural district with a Conditional Use Permit. He stated Verizon may be submitting an application soon, for a place along Highway 12 on a private piece of property, that is zoned commercial. Palmquist inquired about adverse impacts. Kaltsas stated the FCC regulates the towers. He stated they could be denied based upon the area setting. He really wanted to update it so that the structure size and number of structures was updated in the ordinance. Kaltsas also added language about landscaping screening. He stated that carriers are usually very accommodating to a city's needs. Gardner discussed that a city cannot deny all towers.

This will go to the next Planning Commission meeting as a Public Hearing.

6. PLANNING COMMISSION INTERPRETATION OF THE ZONING ORDINANCE PERTAINING TO WINDMILLS. REVIEW THE CITY'S ZONING ORDINANCE AND DETERMINE INTENT OF THE STATED DEFINITION AND RESTRICTIONS FOR WINDMILLS.

Kaltsas discussed this after it was brought to the City's attending by a homeowner. Kaltsas discussed what is listed in the City's ordinance. He stated he was looking for the Planning Commission to help distinguish what it says or what it should say. Windmills are allowed in the agricultural zone. Kaltsas stated the City's agriculture zoning district is made up of lots from one acre in size to 100+ acre lots. Farm style windmills typically generate energy. He discussed the definition of farm style decorations. Kaltsas stated he is simply looking for some direction on this.

Phillips stated it may make sense to distinguish between a windmill that generates power for a city verses a windmill used for a pump. The Commissioners discussed the distinguishing factors including personal use verses commercial use and height. Dave VandenEinde, an interested resident looking to install a windmill, discussed what he was looking at adding, and how it functioned. He researched his plan and shared with the Commission the State's definition for wind energy conversion system. He suggested matching the City's Ordinance language to the State's definition and language. VandenEinde, described his property which consists of five acres.

Phillips stated he personally loves the idea of windmills and would not have an issue if a neighbor of his installed one. The Commissioners discussed the design and the terminology of the word energy as listed in the ordinance. They also discussed a maximum height and minimum lot size of five acres or two and a half acres. Kaltsas stated he would review this and created a revision for the Planning Commission.

7. OPEN/MISC.

None

8. ADJOURN.

**Motion by Gardner, seconded by Palmquist, to adjourn the meeting at 8:40 p.m. Ayes: Phillips, Gardner, Palmquist, and Thompson. Nays: None. Absent: Olson. MOTION DECLARED CARRIED.**

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Jolene M Nelson, Recording Secretary