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CITY COUNCIL MEETING AGENDA  
REGULAR MEETING  
TUESDAY, NOVEMBER 29, 2016

**CITY COUNCIL MEETING TIME: 7:30 PM**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. \*\*\*\*Consent Agenda\*\*\*\*

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council minutes from the November 15, 2016 City Council Meeting.
  - b. Approval of Accounts Payable; Checks numbered 16657-16706.
    - For Information - Checks numbered 16654-16656 and 166707-16721 are Payroll Checks. Checks numbered 14784 and 16580 are voided checks.
  - c. **RESOLUTION NO. 16-1129-01-** Resolution Certifying Delinquent Sewer Service Charges as Special Assessments
5. Set Agenda – Anyone Not on The Agenda Can Be Placed Under Open/Misc.
  6. Reports of Boards and Committees by Council and Staff.
  7. Discussion/presentation by Christie Larson, Executive Director of WeCAN (Western Communities Action Network, Inc.).
  8. Director Gary Kroells, West Hennepin Public Safety - Activity Report for the Month of October, 2016.
  9. **PUBLIC HEARING:** To consider, and possibly adopt, the proposed assessment for the street and utility improvements along Budd Avenue from Independence Street to north of Manchester Drive.

- a. **RESOLUTION NO. 16-1129-02** – Adopting the proposed assessment for the street and utility improvements along Budd Avenue.
10. Consider approval of Final Development Agreement for the Five (5) Lot Subdivision Known as Hendley Addition and located on the property at 4150 Lake Sarah Drive South, Independence, MN (PID No. 02-118-24-43-0003).
11. December City Council Meeting Schedule
12. Open/Misc.
13. Adjourn.

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, NOVEMBER 15, 2016, -7:30 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Protem Spencer at 7:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Protem Spencer led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Councilors Spencer, Betts, and Grotting

ABSENT: Mayor Johnson, McCoy, City Attorney Bob Vose

STAFF: City Planner & City Administrator Mark Kaltsas, City Administrative Assistant Horner,

VISITORS: George & Linda Becker, Sally & Jerry Simpson, Brian Benson, Lynda Franklin

4. \*\*\*\*Consent Agenda\*\*\*\*

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council minutes from the October 25, 2016 City Council Meeting.
- b. Approval of Accounts Payable; Checks numbered 16614-16647.
  - For Information - Checks numbered 16600-16613 and 16648-16653 are Payroll Checks.

**Motion by Grotting, second by Betts to approve the Consent Agenda. Ayes: Spencer, Grotting, and Betts. Nays: None. Absent: Johnson, McCoy. MOTION DECLARED CARRIED.**

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

**Grotting attended the following meetings:**

- City Council Workshop

**Betts attended the following meetings:**

- SLUC
- Pioneer Sarah Creek Watershed Community Conversation
- Highway 12 Coalition
- Planning Commission
- West Hennepin Chamber of Commerce
- City Council Workshop
- Police Commission

**Spencer attended the following meetings:**

- Hennepin County 2040 Comp Plan Policy
- City Council Workshop
- Pioneer Sarah Creek Watershed Community Conversation
- Highway 12 Safety Coalition
- Planning Commission

**Horner attended the following meetings:**

- Election
- Jim with LMCC

**Kaltsas attended the following meetings:**

7. **REOPEN PUBLIC HEARING:** George and Linda Becker (Applicants/Owners) request that the City consider the following actions for the property located at 4635 Lake Sarah Road, Independence, MN (PID No. 03-118-24-22-0002):

- a. **RESOLUTION NO. 16-1115-01** – Considering approval of a variance to allow the subdivision of property in the AG-Agriculture zoning district; and
- b. A minor subdivision to allow the subdivision of the subject parcel into two (2) lots.

Kaltsas reintroduced this request from an earlier meeting in August. The Planning Commissioners provided feedback to the applicant that the requested variance and subdivision appeared to meet the requirements for granting a variance and allowing a subdivision. The City

does not allow the subdivision of property zoned Agriculture with the exception of lot line rearrangements and rural view lot splits. The City would have to consider granting a variance from the zoning ordinance to allow the subdivision of this property. The overall property does not meet the minimum 40 acre requirement to realize a rural view lot subdivision. The parcel is located just outside of the area guided for rural residential development. Granting a variance is the only option for a subdivision of this property.

**Property Information: 4675 Lake Sarah Drive**

Zoning: *Agriculture*

Comprehensive Plan: *Agriculture*

Acreage: (BEFORE) 32.49 acres

Acreage: (AFTER) 16.49 acres – West Parcel  
16.00 acres – East Parcel

Staff reviewed other parcels in the City to try to determine if there were any that would have a similar situation. The only other parcel discovered with a similar condition (where the property crosses over a right of way) is the parcel directly north of the subject parcel. This parcel is owned by Three Rivers Park District.

Should the parcel be subdivided, the newly created and existing remaining parcel would not be completely out of character with the surrounding parcels. The parcel to the east side of Lake Sarah Road backs up to the City's park on the east side and to the Three Rivers parcel on the north side. The parcel to the south is approximately 10 acres in size and has an existing home. On the west side of Lake Sarah Road the properties range in size from more than 40 acres to less than 5 acres.

At the time this report was prepared, the City had received preliminary comments from Three Rivers Park District regarding the proposed subdivision. The Park District was supportive of the subdivision and is interested in possibly seeking a similar action for their property to the north. The Park District also noted that they have a regional trail "search" corridor along County Road

11 and Lake Sarah Road which would extend north towards Lake Sarah and then into Lake Rebecca Park. The City of Independence did not include the search corridor in the Comprehensive Plan because the City did not have the ability to fully study and vet the possible corridor (see map below and larger map attached). The Park District asked if the City would retain a future trail easement as a part of the required subdivision. Historically, the City has retained additional County/City right of way where known improvements were

proposed. In this case, it should be noted that the City did not support the trail search corridor in the 2030 Comp Plan. There has also not been an approved alignment for a trail along Lake Sarah Road.

Betts asked if there were any trails to link this into.

Kaltsas said now we'd be guessing-there are no trails. The Planning Commission meeting suggested Tamarack Park, but at this point we're not in a position to potentially unfairly set the stage as to where that trail would go. With right of ways, it's possible to acquire a trail corridor. Betts mentioned this could be in lieu of a park dedication fee which would be a lesser fee to the land owner.

The City has standards for granting a variance which need to be considered prior to making a recommendation relating to the application. The standards established by the City require the applicant to demonstrate that the requested variance does not create a situation that is not in keeping with the character of the surrounding area. In addition, the applicant must demonstrate that the requested variance is unique to the subject property. The standards for granting a variance 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 (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.*

Public Hearing Open:

Public Hearing Closed:

Betts mentioned the request has been covered and is a good plan. Grotting asked if we recently split the small homestead, and Kaltsas said they recently wanted a lot line rearrangement to make the one acre and five acre lot instead.

**Motion by Betts, second by Grotting to approve RESOLUTION NO. 16-1115-01- Considering approval of a variance to allow the subdivision of property in the AG-Agriculture zoning district. Ayes: Spencer, Betts and Grotting. Nays: None. Absent: Johnson and McCoy. MOTION DECLARED CARRIED.**

8. **PUBLIC HEARING:** Lisa Dayton (Applicant/Owner) requests that the City consider the following actions for the property located at 8415 Hitsman Lane (PID No. 17-118-24-31-0004) in Independence, MN:

- a. **RESOLUTION NO. 16-1115-02** – Considering approval A minor subdivision to permit the creation of a rural view lot.

The property is located south of US HWY 12 and south of Hitsman Lane. The property is accessed via a 33 foot wide private driveway which extends south from Hitsman Lane. The property has an existing home and several outbuildings. The property is comprised of significant wetlands and upland acreage. The property has the following characteristics:

Property Information: 8415 Hitsman Lane

Zoning: *Agriculture*

Comprehensive Plan:

*Agriculture Acreage*

(BEFORE): *58.92 acres*

*Acreage (AFTER): North Parcel – 10.00 acres*

*South Parcel – 48.92 acres*

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 58.92 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** – North Parcel – 10.00 acres

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

**Minimum lot frontage proposed** – North Parcel – 300 LF

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

**Ratio of lot frontage to lot depth proposed** – Parcel A - ~1:5 (300:1500)

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 5 acres of useable upland and 300 LF of frontage on the 33 foot wide easement.

The existing property is accessed via a 33 foot wide parcel that connects to Hitsman Lane. It appears that this parcel was historically established as a cart way. As proposed both lots do not meet the minimum public right of way frontage requirements of the City's ordinance. The City can grant a waiver to the frontage requirements if the criteria established in the City's ordinance are met. The configuration proposes to utilize the common driveway provision of the City's zoning ordinance. The City allows common driveways to be utilized for up to three lots if all criteria established in the ordinance are satisfied.

The proposed lot depth to lot frontage ratio for the rural view lot would be ~1:5. This lot width to lot depth ration exceeds the maximum range but creates a "clean" lot line. Moving the line to adjust for the lot depth would create an irregular parcel behind the proposed rural view lot. Moving the line to the south to provide more lot width would create a lot that is greater than 10 acres.

The proposed subdivision would produce a 10 acre rural view lot. The proposed property would be "in line" with the property to the west and north. The proposed North Parcel 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. The applicant will need to include the requisite drainage and utility easements as required by ordinance (Section 500.15, Subd.'s 1 and 2) for both the existing and proposed parcel.

The newly created North Parcel will be required to pay the City's requisite Park Dedication fee. For this property the requirement is \$7,250. 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*

The City had comments from a neighboring property owner. The neighboring property owner stopped into City Hall to review the plans. The neighboring owner asked questions pertaining to the subdivision and wanted to understand the proposed subdivision in relation to their respective property. The neighboring owner generally supported the proposed subdivision. At the public hearing the neighboring property owner to the west commented on the proposed subdivision and offered his support of the subdivision. The City also confirmed that the existing wetlands could not be altered or built upon.

Commissioners discussed the proposed subdivision. Commissioners considered whether or not to recommend altering the proposed parcel configuration to conform to the lot depth to lot width requirements by shortening and widening the proposed new parcel. Commissioners noted that requiring the applicant to conform to the lot depth to lot width ratio would create an awkward “gap” on the remaining property. Planning Commissioners discussed the condition of the septic system on the existing property and recommended that the City include a condition requiring the applicant to verify the location and ability of the remainder property to provide an alternative septic site. Commissioners ultimately recommended approving the proposed subdivision utilizing the initial configuration.

Betts asked if we've checked with our attorney regarding the right of way so nobody would be cut off. Kaltsas said we'd ensure that'd be done. Grotting said we'd take 66' from either side of the road, and Kaltsas said 33' on top of that. Betts asked if the road is substantial for fire trucks etc... and Kaltsas ensured it's an old road and has been fine. Spencer talked about the septic system, and Kaltsas said we'd require availability. If it doesn't sell, there isn't a trigger mechanism although we could add one. Kaltsas said Satek is comfortable with the sale.

Public Hearing Open:

Public Hearing Closed:

Grotting asked if there's concern about 1 property owner cutting off another, and Kaltsas said no, the easement rights would be transferred to the property. It's a legitimate easement.

**Motion by Spencer, second by Grotting to approve RESOLUTION 16-1115-02-Considering approval of a minor subdivision to permit the creation of a rural view lot. Ayes: Spencer, Betts, and Grotting. Nays: None. Absent: Johnson and McCoy. MOTION DECLARED CARRIED.**

9. **PUBLIC HEARING:** B. Benson Group (Applicant) and Joyce Larson (Owner) request that the City consider the following actions for the property located at 1160 County Road 19 N, Independence, MN (PID No. 25-118-24-42-0001):
  - a. **ORDINANCE 2016-08** – Which will rezone the property from Ag-Agriculture to RR-Rural Residential.

- b. **RESOLUTION NO. 16-1115-03** – Considering approval of the preliminary and final plat for a four (4) 4 lot subdivision.

The property is located on the east side of County Road 19 N. and just south of Willow Street. There is an existing home and several accessory structures located on the property. The house is accessed via a gravel driveway off of County Road 19 N. The property is a combination of rolling hills, tillable acreage and wetlands. The property has the following characteristics:

Property Information: 1160 County Road 19 N.

Zoning: *Agriculture*

Comprehensive Plan: *Rural Residential*

Acreage: *19.83 acres*

The Planning Commission reviewed the same request for this subdivision in September of 2015. The Commission held a public hearing and ultimately recommended approval of the proposed subdivision. Following the Planning Commission review, the applicant ran into issues with the watershed district review of the property. The final wetland delineation identified an additional wetland on the property and caused the road to need to shift to the south. Following discussions with the watershed district last fall and earlier this year, the applicant decided to withdraw their application. The applicant has now worked through the watershed issues and has made a new application seeking Rezoning, Preliminary and Final Plat approval for a four (4) lot subdivision to be known as Settlers Prairie Subdivision. The proposed subdivision would split the existing 20 acre parcel into four lots. There is an existing home located on the west edge of the property just off of County Road 19 N. The existing home would remain in the after condition and be located on one of the four lots.

The property is currently zoned Ag – Agriculture and is guided by the City's Comprehensive Plan as a RR- Rural Residential property (See Map – Green = Agriculture, Yellow = Rural Residential).

Rezoning this property is consistent with the City's 2030 Comprehensive Plan. Rezoning of this property is also consistent with the zoning of the property to the south and west. There are three subdivisions that surround this property which are similar in nature to that which is proposed.

The City allows the subdivision of property in the rural residential zoning district if it can be shown to meet all applicable criteria of the ordinance. The City's applicable standards are further defined as follows:

*Subd. 3. Density. Lots of record in the rural residential district may be divided or subdivided into the following maximum number of lots, said maximum number to include the lot for any existing dwelling unit or other principal use: (Amended, Ord. 2010-01)*

<u>Area of Lot of Record</u>	<u>Maximum Number of Lots Permitted</u>
7.5 acres or less	One
7.6 through 12.5 acres	Two
12.6 through 17.5 acres	Three
<b>17.6 through 22.5 acres</b>	<b>Four</b>
22.6 through 27.5 acres	Five
27.6 through 32.5 acres	Six
32.6 through 37.5 acres	Seven
37.6 through 42.5 acres	Eight
42.6 through 47.5 acres	Nine, plus one addn. lot for every five addn. acres of land.

*A lot must be a minimum of 2.50 acres buildable land with a demonstrated capability to accommodate two on-site waste disposal systems. Buildable land must be contiguous and not separated by streams, wetlands, slopes in excess of 10% or other physical impediments.*

*<sup>b</sup> A waiver to permit lots with reduced frontage on a public right-of-way, neck lots or lots with no frontage on a public right-of-way but with frontage on a common driveway may be considered and granted or not granted. If granted, evidence must be provided that all standards established and defined in Section 510.05, Subdivision 20 of this zoning code are met: (Amended, Ord. 2010-06)*

A more detailed breakdown of the proposed individual lots is as follows:

Block 1	Area	Upland Acreage	Frontage	Lot Frontage to Lot Depth
Lot 1	3.56 acres	2.51 acres	575/456 LF	1:1
Lot 2	5.43 acres	2.91 acres	473 LF	1:1
Lot 3	3.48 acres	3.48 acres	122 LF	1:1
Lot 4	5.08 acres	3.26 acres	990 LF	2:1

The applicant is proposing to provide access into the property by developing a new public cul-de-sac off of County Road 19 into the middle of the subject property. The road is proposed to meet all applicable City standards for road and right of way width. The new road would follow the north property line into the site. The driveway which provides access to the existing home would be relocated such that it connects to the new cul-de-sac and no longer connects to County Road 19 N. There are several existing accessory buildings that would be rem configuration of the proposed lots

and potential building sites appears to take into account the location of the existing wetlands, primary and secondary septic locations and existing topography. The applicant indicates the potential locations of a proposed building pad for each lot. The proposed building pad is conceptual only, but provides the City with evidence that the lots can accommodate a new home site. The applicant has submitted information to the City verifying the ability of each lot to accommodate a primary and secondary septic system. The applicant may need to revise the proposed secondary or alternative location to ensure that it meets the applicable setbacks from a wetland. The size of the lots proposed will allow all applicable building setbacks to be met. The proposed lots appear to meet all applicable criteria relating to the subdivision and zoning standards.

The applicant is proposing to construct a storm water conveyance system to accommodate the runoff resulting from the construction of the public street. The conveyance system includes a two bay filtration basin system to be located within a drainage and utility easement across Lot 2. In addition, the applicant is proposing to install a small filtration basin on Lot 3 to aid in the runoff from the proposed lot. This was one of the concerns raised at the public hearing last year. The City has reviewed the conveyances system and noted several conditions that should be included with any approval (see attached memorandum from Hakanson Anderson, dated October 10, 2016).

The City sent the proposed subdivision to Hennepin County for their review of the proposed road access onto County Road 19 N. Hennepin County found the proposed road access location to be acceptable; however, required that the existing driveway servicing the home be relocated to connect to the new road.

The City has completed a review of the proposed grading plan (see attached memorandum from MSA Professionals, dated October 13, 2016). The City has received revised plans based on the comments provided by the City's engineer and is finalizing the review. There did not appear to be any comments that would prohibit the development of the property or cause for the design to be substantially changed. The individual lots will be required to apply for and be granted a grading permit at the time of building permit application. At that time the City will review the individual lot grading.

The City has received several questions and comments from adjacent property owners both verbally and at the public hearing. Adjacent property owners had questions relating to the stormwater runoff from the proposed subdivision. Neighboring property owners wanted to ensure that the stormwater runoff would not cause an increase or change to the water on their respective properties. Kaltsas met with her, and she talked with Minnehaha Creek Watershed also. She feels the pond was put in incorrectly, and Kaltsas agrees. Grotting asked if the new subdivision would affect the runoff, Kaltsas said it meets criteria for watershed management.

Kaltsas said the Planning Commission recommended approval of the rezoning Preliminary and Final plats. First an Ordinance would need to be passed for rezoning, then the Resolution. A final development agreement would come back to the City Council for approval, which Kaltsas expects by the next meeting.

**Motion by Betts, second by Grotting to approve ORDINANCE 2016-08 to rezone the property from Ag-Agriculture to RR-Rural Residential. Ayes: Spencer, Betts, and Grotting. Nays: None. Absent: Johnson and McCoy. MOTION DECLARED CARRIED.**

**Motion by Grotting, second by Betts to approve RESOLUTION 16-1115-02-Considering approval of the preliminary and final plat for a four (4) lot subdivision. Ayes: Spencer, Betts, and Grotting. Nays: None. Absent: Johnson and McCoy. MOTION DECLARED CARRIED.**

**Motion by Betts, second by Grotting to adjourn at 8:20 p.m. Ayes: Spencer, Betts, and Grotting. Nays: None. Absent: Johnson and McCoy. MOTION DECLARED CARRIED.**



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RESOLUTION NO. 16-1129-01

RESOLUTION CERTIFYING DELINQUENT SEWER SERVICE  
CHARGES AS SPECIAL ASSESSMENTS

WHEREAS, the records of the billing department of the City of Independence lists certain accounts as delinquent for the year 2016 (a copy of which is on file with the City Clerk) and;

WHEREAS, the consumer has been notified of the delinquent account according to the legal requirement of the law; and

WHEREAS, Minnesota Statutes authorizes collection of delinquent accounts by certification to the county tax rolls for collection;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Independence, Minnesota to direct the County Auditor of Hennepin County to place the delinquent accounts, consisting of principal and interest thereon at the rate of 5% the payable 2017 tax rolls.

This resolution was adopted by the City Council of the City of Independence on this 29<sup>th</sup> day of November, 2016, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays.

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Marvin Johnson, Mayor

ATTEST:

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Mark Kaltsas, City Administrator

(SEAL)

**List of Delinquent Accounts**

GABOR DELL	\$	1,141.87
RICHARD TUBESING	\$	1,141.87
CHAD LANGDON	\$	201.60
DUWAYNE LAWRENCE	\$	1,159.20
DAVID OVERSTAKE	\$	554.19
KEVIN WITTINGER	\$	201.60
JENNIFER STROM	\$	800.77
RAYMOND FLEMAL	\$	184.80
KEN DAVIS	\$	153.60
TIMOTHY ALLISON	\$	153.60
DAVID & LINDA NELSON	\$	140.80
THOMAZ OPITZ	\$	218.40
DL LIND & BK KASTER	\$	179.20
MARK & SHARYL FISCHER	\$	228.70

**ADOPTED BY THE MAYOR AND COUNCIL THIS 29<sup>th</sup> DAY OF NOVEMBER 2016.**

\_\_\_\_\_  
Marvin D. Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Beth Horner, Clerk

Motion By:

Second By:



Date: November 2, 2016  
To: Public Safety Commissioners  
City of Independence Council Members  
City of Maple Plain Council Members  
From: Director Gary Kroells *G.K.*  
SUBJECT: OCTOBER 2016 ACTIVITY REPORT

The purpose of this report is to give the reader a quick overview of the activities of the Public Safety Department each month. It also compares monthly and year-to-date information to the reader.

The report is broken down into five categories, as defined by the Criminal Justice Reporting System.

CRIMINAL-- Criminal is broken down into Part I and Part II crimes.

Part I includes crimes against persons versus crimes against property; criminal homicide, forcible rape, robbery assault, aggravated assault, burglary -breaking or entering, larceny-theft, larceny analysis, motor vehicle theft and arson.

Part II includes other assaults, forgery and counterfeiting, fraud, embezzlement, stolen property, buying, receiving, possession; vandalism, weapons, carrying, possessing, etc.; prostitution and commercialized vice, sex offenses; drug abuse violations, gambling, offenses against the family and children, driving under the influence, liquor laws, drunkenness, disorderly conduct, vagrancy, all other offenses, suspicion, curfew and loitering laws - persons under 18; and runaways - persons under 18.

TRAFFIC-- Includes violations of the road and driving laws.

PART III-- Lost and Found: Includes lost and found persons, animals, and property, and stalled and abandoned vehicles.

PART IV-- Casualties: Includes all motor vehicle accidents, boating, and snowmobile; public home occupational accidents, fires, suicides, sudden deaths, burning permits, and burning violations.

PART V-- Miscellaneous Public: Includes open doors, gun permit applications, suspicious activities, animal complaints, motorist assists, alarm calls, parking complaints, house checks, driving complaints, civil matters, family disputes, department assists.

The balance of the report shows the total number of incidents handled, miles driven and how the Public Safety Department received calls. If anyone should desire more detailed statistical data, please contact my office.

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*West Hennepin Public Safety Department*  
1918 County Road 90 / Maple Plain, Minnesota 55359  
Phone: (763) 479-0500 / Fax: (763) 479-0504  
Web Address: <http://www.westhennepin.com> E-mail: [westhennepin@westhennepin.com](mailto:westhennepin@westhennepin.com)

**Monthly Activity Report**  
**October 2016**

Offense	This Month	Same Month Last Year	This Year To Date	Last Year To Date
<b>City Of Independence</b>				
Criminal	12	14	108	108
Traffic	193	182	2,115	2,021
Part III	10	14	117	106
Part IV	28	36	327	335
Part V	185	147	1,702	1,591
<b>Total City of Independence</b>	<b>428</b>	<b>393</b>	<b>4,369</b>	<b>4,161</b>
<b>City Of Maple Plain</b>				
Criminal	6	3	64	60
Traffic	80	97	944	610
Part III	5	5	78	55
Part IV	19	16	195	218
Part V	138	151	1,367	1,326
<b>Total City Of Maple Plain</b>	<b>248</b>	<b>272</b>	<b>2,648</b>	<b>2,269</b>
<b>Grand Total Both Cities</b>				
	<b>676</b>	<b>665</b>	<b>7,017</b>	<b>6,430</b>
TZD	2	31	133	242
Agency Assists	99	38	501	328
<b>Total ICR Reports</b>	<b>777</b>	<b>734</b>	<b>7,520</b>	<b>7,000</b>
Mileage	14,132	14,211	129,279	127,923
<b>How Received</b>				
Fax	5	7	108	101
In Person	30	56	360	418
Mail	1	2	18	29
Other	3	4	55	38
Phone	30	38	346	442
Radio	215	210	2,179	1,956
Visual	426	376	3,910	3,499
Email	2	1	46	36
Lobby Walk In	65	40	498	481
<b>Total</b>	<b>777</b>	<b>734</b>	<b>7,520</b>	<b>7,000</b>

**October 2016 Criminal Part I & II**  
**City of Independence Grid #'s 3-5**

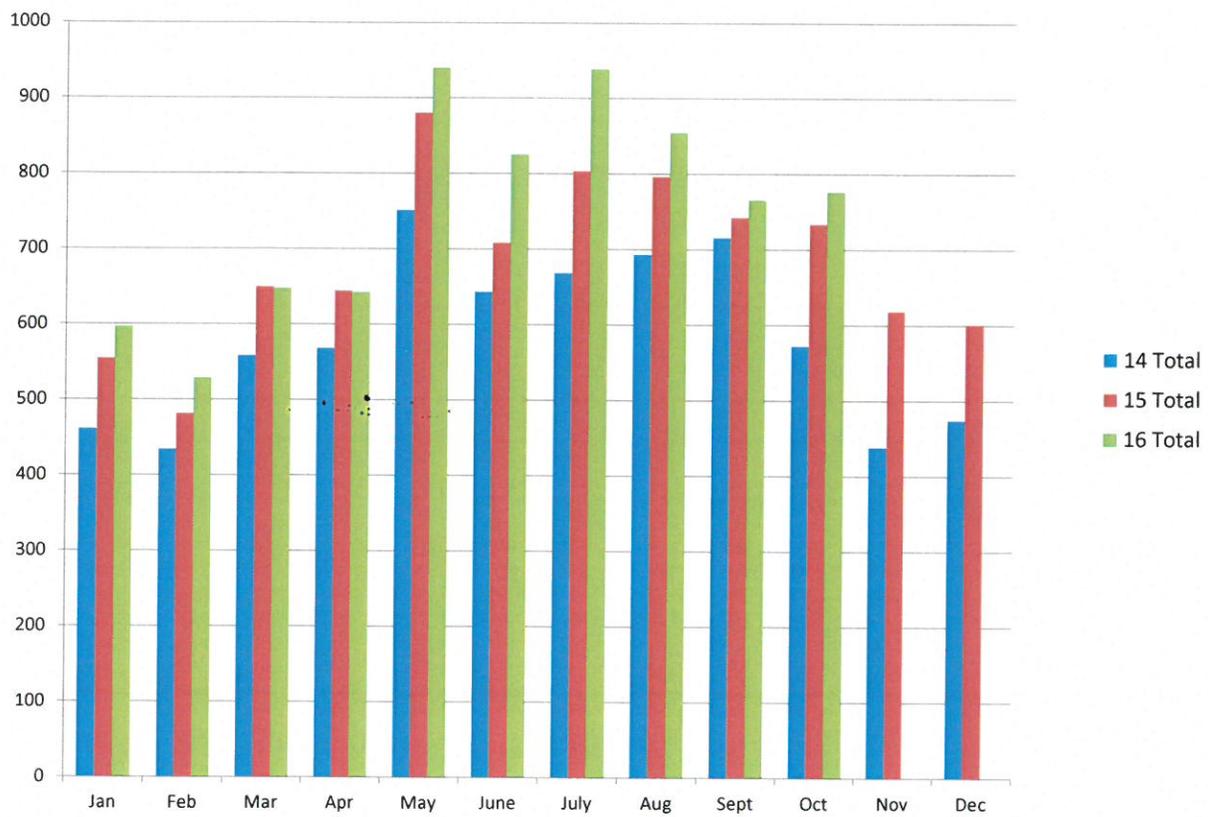
AGN	ICR	Title	Create Date	Grid #	Reported Date	MOC range
WHPS	16006742	4th Degree DWI	42644	5	42644	JGW01
WHPS	16006883	Dangerous Weapons- Intentionally Point a Gun / Damage to Prop-1st Degree- Value Reduced	42649	4	42649	P3119
WHPS	16006935	Burglary/ Theft of Property / Damage to Property	42651	5	42651	P3119
WHPS	16006959	Assault-2nd Degree-Dangerous Weapon-Substantial Injury / Felony Flee Police Officer	42652	4	42652	E1700
WHPS	16006987	Damage to Property	42654	3	42654	P3119
WHPS	16007005	Domestic - 2nd Degree Assault - Dangerous Weapon	42655	4	42655	A2131
WHPS	16007075	Damage to Property / Trespassing	42657	3	42657	P3119
WHPS	16007123	Property Damage to Mailbox	42659	3	42659	P3119
WHPS	16007126	Property Damage to Mailbox	42659	3	42659	P3119
WHPS	16007135	Possession of Small Amount Marijuana / Possession of Drug Paraphernalia	42659	4	42659	DA540
WHPS	16007177	Possession of Small Amount Marijuana / Possession of Drug Paraphernalia / No Insurance on Motor Vehicle	42661	3	42661	DA540
WHPS	16007185	CSC / Alleged Child Maltreatment	42661	3	42661	L1801

**October 2016 Criminal Part I & II**  
**City of Maple Plain Grid # 1-2**

AGN	ICR	Title	Create Date	Grid #	Reported Date	MOC range
WHPS	16006806	Financial Exploitation Vulnerable Adult	42646	2	42646	U1701
WHPS	16006846	5th Degree Controlle Substance Possess Schedule 1, 2,3, 4	42648	1	42648	DH530
WHPS	16006951	Domestic Assault - Misdemeanor- Commits Act to Cause Fear or Immeidate Bodily Harm or Death /Domestic Assault -Misdemeanor- Intentionally Inflicts -Attempts to Inflict bodily Harm on Another /Disorderly Conduct	42652	2	42652	AL351
WHPS	16007068	Theft/ Shoplifting	42657	1	42657	U328D
WHPS	16007096	Theft from Auto - Catalytic Converters	42658	1	42658	TC159
WHPS	16007338	Theft & Damage of Campaign Signs	42668	2	42668	TR059

**October 2016 Criminal Part I & II**  
**Towards Zero Death Grant Shift**

AGN	ICR	Title	Create Date	Grid #	Reported Date	MOC range
WHPS	16006742	4th Degree DWI	42644	12	42644	JGW01
WHPS	16007164	Possession of Drug Paraphernalia	42660	68	42660	DC500



# DIRECTOR'S NEWS & NOTES

## WEST HENNEPIN PUBLIC SAFETY

October 2016 Activity Report

### Year to Date Activity Report

At the end of October 31, 2016, West Hennepin Public Safety (WHPS) has year-to-date handled a total of 7,520 incident complaints; 2,648 in Maple Plain and 4,369 in Independence. This is an increase of 520 incidents compared to the same time frame last year.

The Criminal Part I and Part II cases for both cities have been highlighted for your review on the attached documents.

### **Recent Highlighted Cases:**

#### Reckless Driving

Oct 1 At 12:56 a.m. WHPS Officer heard tires squealing and observed gray Dodge Pickup driving at a high speed through the Metro Transit parking lot. The driver and two passengers in the vehicle were stopped. The driver decided to come to the parking lot to "have some fun" and was intentional in his driving. Tire marks left in the parking lot led up to the stopped vehicle and the truck tires were warm to the touch. The driver was issued a citation for reckless driving.

#### Suspicious Activity

Oct 1 10:19 p.m. Caller reported a female took a pumpkin from the MPFC in Maple Plain after hours and did not pay for it. The female was located in the 1500 block of Howard Ave with a cart full of groceries in bags from MPFC and a large pumpkin in one of the bags. The female said she originally was not going to buy a pumpkin, but changed her mind and told the cashier to add it to her bill but did not have a receipt for her groceries. Case pending if female had paid for the pumpkin.

#### PI Crash

Oct 2 At 7:43 a.m. at 7900 Co Rd 11, Independence. A single car rollover crash. Two juvenile males were standing outside of their vehicle. The juveniles had been at a church lock out and were up all night until 4:00 a.m. The driver said he closed his eyes because he was tired, drove slightly off the road, onto the steep ditch embankment and the vehicle ended on its roof. The driver and passenger were able to get out of the vehicle through the passenger side door. Both had been wearing their seatbelts and were not injured. Their relatives arrived and picked them up.

#### Medical

Oct 2 Male at Vinland National Center, Independence reported he was having suicidal thoughts. He was at Vinland Center voluntarily but has been feeling homesick. North Memorial responded to the scene and transported to the hospital to speak to a doctor about his thoughts and possibly change his medication.

#### Suspicious Act

Oct 4 5700 Providence Curve, Independence. 6:09 a.m. reported a vehicle with flashers on had been parked in front a residents hours for approximately 1 ½ hours. Contact with the male driver who said he was with the utility company, was doing some markings and showed the list of addresses on his laptop.

#### Child Stuck

Oct 4 Orono Discovery Center reported a child that was stuck in their playground equipment. Maple Plain Fire Rescue responded and was able to release the child.

#### Suspicious Act / 5<sup>th</sup> Degree Controlled Substance

Oct 5 At 12:48 a.m. caller reported vehicle parked behind the Maple Plain Family Center strip mall with two male occupants that were reclined in their seats and appeared passed out. Contact was made with the males who were sleeping. Nearly a pound of marijuana and drug paraphernalia was found inside the vehicle. The two males were arrested and transported to Hennepin County Jail charged with 5<sup>th</sup> Degree Drug Possession.

#### Assist/ Female Stuck in Elevator

Oct 5 1800 block of Budd Ave., Maple Plain a 90 year old female was stuck in an elevator in the basement of the building and the door would not open. Maple Plain Fire responded and was able to get the doors open and the female was able to get out.

#### School Bus Stop Arm Violation

Oct 6 1400 Halgren Rd, Maple Plain. Reported a vehicle passed on the left side of the school bus when the kids were on the bus and the bus doors were closing. Contact was made the driver who admitted he had passed a school bus.

#### Reckless Discharge of Firearm

Oct 6 Fern Drive and Sunset Lane, Independence Driver reported his truck was shot with a pellet gun by two kids near the railroad tracks. The area was checked, a 13 year old male from Independence and 16 year old male from Loretto admitted to intentionally shooting at the truck with the pellet guns. Charges/ Consequences pending for their actions.

#### Stolen Vehicle Recovered

Oct 6 Vehicle had been reported stolen out of Minneapolis was stopped at Co Rd 6 / Co Rd 92, Independence. Both driver and passenger were taken into custody. The driver was arrested, booked and released pending complaint for theft and driving a vehicle without the owner's consent.

#### Disorderly Conduct/ Unreasonable Acceleration

Oct 6 Police observed a driver pull into the 1890 Newport apartments, cut the corner, driving on the dirt area, accelerated hard with his truck, flinging mud all the way across Budd Ave hitting the van that had just closed its side door with children sitting inside. The driver looked in his rear view mirror at the Officer who yelled to stop and come back. The driver kept going to his parking spot, got out, and walked towards the squad, saying "What"? He was informed why he was stopped. He stated he did not try to fling mud at the Officer, or the other vehicles, his truck has big tires, can't control that and his truck is just big and powerful. The male scraped the road clean of the mud and was issued a citation for Disorderly Conduct and Unreasonable Acceleration.

#### Theft of Mail

Oct 7 2200 block of Budd Street N. Maple Plain resident reported someone has stolen mail from his mailbox as he has had bogus checks written on two separate accounts of his. Counterfeit checks were written at several locations, and two of them got cashed. The accounts were closed at his bank. Case under investigation.

#### Warrant

Oct 7 Vinland National Center, Independence reported a client had a Ramsey County warrant for a probation violation originating charge of felony drugs. Client was arrested and transported to Hennepin County Jail.

## Burglary

Oct 8 3500 block of Co Rd 92, Independence. Owner of property stopped by his unoccupied dwelling and found his front door was pried open and inside were 3 dogs and 5 cats. Occupants were illegally living in the dwelling, had replaced the lock with a new lock and had been using the house as their residence. Occupants were from the state of Pennsylvania and arrived while Police were there. They were issued no trespassing notices and told to not return to the property. Extensive damage was done to the residence and barn. Charges pending.

## Domestic Assault

Oct 9 5300 block of Bryant St, Maple Plain. Reported a domestic assault. A 54 year old male was arrested for domestic assault and transported to Hennepin County Jail.

## Trespassing

Oct 9 Vinland National Center, Independence Reported a male who was previously a client at the center was on site fraternizing with other female clients and they requested he leave. The male was issued a No Trespassing Notice barring him from the center or its grounds for one year. He left the property in a taxi.

## Assault

Oct 9 10:58 p.m. Vinland National Center, Independence reported a male was struck with a pillow case filled with rocks causing large lacerations to the top of the victims head. The victim had multiple stitches and staples to close the wound. Anthony Haxen Hill, 34 from St. Louis Park was arrested and transported to Hennepin County Jail. He was charged 2<sup>nd</sup> Degree Assault – Dangerous Weapon

## Suicide Threat

Oct 10 1800 block of Newport Street, Maple Plain. Female was breaking up with her boyfriend, had made suicidal comments and possibly broke her hand punching the wall. North Memorial Ambulance transported her to the hospital.

## 2<sup>nd</sup> Degree Assault

Oct 12 5300 Sunset Lane, Independence. A 30 year old female cut her mom with a box cutter and was arrested for 2<sup>nd</sup> Degree Assault and transported to Hennepin County Jail.

## Misc. Assist

Oct 12 Person at Vinland National Center, Independence reported he was assaulted by staff that had grabbed his sweatshirt and made him go back into the building. It was not a crime and he would need to go through the grievance process at Vinland.

## Misc. Assist

Oct 13 WHPS Officer assisted two males that were trying to rope a goat that was on Co RD 6 and Co Rd 110, Independence. The goat was roped, loaded into the back of the males' pickup truck and returned to the owner on Broadmoor Drive.

## Theft

Oct 14 4900 block of Highway 12, Maple Plain. Male paid for a bottle of Phillips vodka and when asked where the Bacardi was he had picked up, he stated he put it back. The store video showed the male put the bottle in his pants, did not put it back on the shelf and left with it in his pants. The case is under investigation.

## Suspicious Act

Oct 15 Homeowner in the 800 block of Co Rd 19, Independence had accidentally left her garage door open when she left. Upon returning, the door to the house was locked and she thought she had left it unlocked. The house was checked, no one was found inside and nothing appeared disturbed. No crime had occurred.

#### Theft of Catalytic Converters

Oct 15 5200 Independence Street, Maple Plain. The owner stated he started up his two trucks and noticed they were extremely loud. He checked the exhaust and the catalytic converters had been cut off from two trucks. Approximate loss \$2,000.00.

#### Suspicious Vehicle

Oct 16 11:51 p.m. reported an occupied vehicle was parked on the roadway of 5400 block of Lake Sarah Heights Drive, Independence. The driver a 17 year old female from Plymouth and 21 year old male from Loretto were inside the vehicle. The driver was issued a citation for Possession of a Small Amount of Marijuana and Possession of Drug Paraphernalia.

#### School Bus Crash

Oct 18 School bus rear-ended at the 3300 block of County Line Rd / Railroad Tracks, Independence. The driver, 45 year old female from Waconia admitted being distracted trying to find a location on her phones GPS. She failed to see the school bus with amber lights active, stopping at the RR crossing and rear ended the school bus at posted speed of approximately 40 – 45 mph. The Driver was cited for Failure to Drive with Due Care.

#### Crash

Oct 19 10:51 p.m. WHPS Officer responded to crash; a vehicle rolled over on Co Rd 11 near Lake Rebecca Rd, Independence. The driver a 16 year old male from Delano stated he drove off the side of the road, over corrected trying to get back on the road, went back into the ditch and the vehicle rolled over. The driver and the 15 year old female passenger from Independence reported no injuries.

#### Hit and Run Crash

Oct 20 Driver reported she was traveling westbound Highway12 prior to County Line Rd, Independence and her vehicle was rear-ended by another westbound vehicle. She turned onto County Line Road and the other vehicle that had struck her drove off. No injuries to the driver. The other vehicle was not located.

#### Traffic Complaint

Oct 21 5:11 p.m. caller reported a large combine was driven down the roadway taking up an entire lane at Highway 12 and Co Rd 92, Independence. The caller was not happy that the combine/farmer has to be working during rush hour.

#### Animal Complaint

Oct 22 6000 block of Co Rd 11, Independence. Reported two dogs entered a horse pen and the horse kicked one of the dogs in the face. The dog was bleeding but did not appear to be life threatening. Previous reports were found of the dogs chasing a horse with a rider, running at large, and no city dog license. The animal owner's sister picked up the dogs; said the dogs always find a way out and have broken windows and doors to get out of the barn. The animal owner was issued a citation for Dog at Large.

#### Help Requested

Oct 24 Client at Vinland Center, Independence was hearing voices and telling him to do inappropriate things. He wanted to go to the hospital instead of jail. He was transported to the hospital.

#### Killed Chicken

Oct24 4900 Block of Main Street, Maple Plain reported their neighbors old yellow lab dog was found with a chicken in its mouth; when confronted the dog dropped it and went back home. Caller did not have issues with the dog; she was hoping the Police would take the dead chicken for her. She was given a couple options of how to take care of the dead chicken.

#### Hunter Harassment

Oct 27 9000 block of Kuntz Crossing, Independence. Reported a neighbor near his hunting area is harassing him. Six deer walked out in front of the hunter, as he was going to shoot one of them the neighbor came into his back yard of Nelson Road and started hitting his fence posts with a stick to scare them away. The hunter checked his trail cameras and noted the SD cards in two cameras have been stolen.

#### Traffic Stop / Warrant Arrest

Oct 27 8:55 p.m. vehicle stopped for no tail lights. The 26 year old male passenger from Minneapolis had a Misdemeanor Warrant in Washington County for Drug Paraphernalia. He was transported to Hennepin County Jail.

#### Traffic Complaint

Oct 28 Caller stated a car that going 60 – 80 mph was speeding down Nelson Road had tried to run him over when he stood in the road and forced the car to stop. As soon as he walked around to speak to the driver the vehicle sped off.

#### Warrant Arrest

Oct 29 Vehicle stopped for fail to dim headlights. The 24 year male driver from Brooklyn Center admitted he did not have a driver's license, he was revoked. His girlfriend bought the vehicle a month ago and did not have insurance on it. He was issued a citation for Driving after Revocation and No Insurance Motor Vehicle. The 50 year old male passenger had a body only Gross Misdemeanor Warrant in Dakota County for stalking /harassment; was arrested and transported to Hennepin County Jail.

#### Halloween

Oct 31 7:36 p.m. caller reported 6 males in the area of the Orono Discovery Center, one had a clown mask and they were scaring kids that were out trick-or-treating. The area was checked and found many kids out trick-or-treating, did not find a large group of males or someone wearing a clown mask.

# City of Independence

## BUDD AVENUE RECONSTRUCTION STREET ASSESSMENTS

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*To:* City Council  
*From:* Mark Kaltsas, City Administrator  
*Meeting Date:* November 29, 2016

### UPDATE:

The City of Maple Plain has completed reconstructing a portion of Budd Avenue. A portion of the road that was included in the reconstruction project is owned by the City of Independence. One of the City's residences (David and Carla Leisch at 1826 Budd Avenue for Parcel No. 24-118-24-42-0007) currently is connected to Maple Plain water and sanitary sewer services. The City held a public hearing in April of 2016 to order the improvements and hold a preliminary assessment hearing on behalf of the City of Maple Plain. At that time the City anticipated assessing a portion of the cost for the improvements to the resident. The outstanding portion of the costs associated with the sewer and water will be paid by the City of Maple Plain. The City of Independence will pay for the remaining portion (65%) of the street reconstruction costs. The City of Maple Plain cannot assess an Independence resident so the assessment must be done by Independence.

It was originally estimated that the assessment for the subject project was going to be as follows:

### ORIGINAL:

Their assessment amount of \$25,454.67 is based upon:

- \$10,570.00 - Street Assessment Costs (35% of rural section for 260' reconstructed).
- \$3,829.00 - Sanitary Sewer Assessment (35% of sanitary sewer costs)
- \$4155.67 - Water Main Assessment (35% of water main costs)
- \$3,450.00 – 8" Sanitary Sewer Stub for future development (100% of sanitary sewer stub costs)
- \$3,450.00 – 6" Water Main Stub for future development (100% of water main stub costs)
  
- – City of Independence Cost would be \$19,630.00 for 35% of road reconstruction.
- - City of Independence Cost for Sewer Pipe Oversizing would be \$12,000.

### PROPOSED:

Their assessment amount of \$19,931.98 is based upon:

- \$9,010.19 - Street Assessment Costs (35% of rural section for 260' reconstructed).

- \$2,643.67 - Sanitary Sewer Assessment (35% of sanitary sewer costs)
- \$3,372.12 - Water Main Assessment (35% of water main costs)
- \$1,546.00 – 8" Sanitary Sewer Stub for future development (100% of sanitary sewer stub costs)
- \$3,360 – 6" Water Main Stub for future development (100% of water main stub costs)
  
- – City of Independence Cost would be \$16,677.50 for 35% of road reconstruction.
- - City of Independence Cost for Sewer Pipe Oversizing would be \$12,000.

***Request:***

The overall cost anticipated to be assessed to the benefiting property owner has decreased based on actual project costs. The City of Maple Plain has also completed a benefit analysis which supports the proposed assessments. Maple Plain will be assessing 35% of the project costs to their residents. It is recommended that the City of Independence be consistent with their assessment of 35%. In addition to the assessed amounts, the City is going to pay for a portion of the reconstruction costs (\$16,677.50). The City will use remaining 2015 overlay project bond proceeds to pay for the street reconstruction and sewer pipe oversizing costs. The City of Independence will be seeking a reimbursement from Maple Plain in the amount of \$3,853.50 for their portion of the 2015 street overlay project.

**Attachments:**

**RESOLUTION NO. 16-1129-02**



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RESOLUTION NO. 16-1129-02

A RESOLUTION ADOPTING ASSESSMENTS FOR THE  
BUDD AVENUE – STREET AND UTILITY IMPROVEMENTS

WHEREAS, pursuant to proper notice duly given as required by law, the council has met and heard and passed upon all objections to the proposed assessment for Budd Avenue – Street and Utility Improvements, the improvement of Budd Avenue between Independence Street to north of Manchester Drive by utility and street improvements.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INDEPENDENCE, MINNESOTA:

1. Such proposed assessment, a copy of which is attached hereto and made a part hereof, is hereby accepted and shall constitute the special assessment against the lands named therein, and each tract of land therein included is hereby found to be benefited by the proposed improvement in the amount of the assessment levied against it.
2. Such assessment shall be payable in equal annual installments extending over a period of 20 years, the first of the installments to be payable on or before the first Monday in January 2017, and shall bear interest at the rate of 3.80 percent per annum from the date of the adoption of this assessment resolution. To the first installment shall be added interest on the entire assessment from the date of this resolution until December 31, 2017. To each subsequent installment, when due, shall be added interest for one year on all unpaid installments.
3. The owner of any property so assessed may, at any time prior to certification of the assessment to the county auditor, pay the whole of the assessment on such property, with interest accrued to the date of payment, to the city treasurer, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of this resolution; and he/she may, at any time thereafter, pay to the city treasurer the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the next succeeding year.

4. The clerk shall forthwith transmit a certified duplicate of this assessment to the county auditor to be extended on the property tax lists of the county. Such assessments shall be collected and paid over in the same manner as other municipal taxes.

This resolution was adopted by the City Council of the City of Independence on this 29<sup>th</sup> day of November, 2016, by a vote of \_\_\_\_ ayes and \_\_\_\_ nays.

\_\_\_\_\_  
Marvin Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Mark Kaltsas, City Administrator

(SEAL)

# City of Independence

## Consideration of Final Development Agreement for Hendley Subdivision

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*To:* City Council  
*From:* Mark Kaltsas, City Administrator  
*Meeting Date:* November 29, 2016

### *Discussion:*

The City approved the Final Plat for the five lot subdivision in September of 2016. The City has prepared a Development Agreement which memorializes all components and requirements of the development. Key items of the agreement:

1. Developer will construct a public sewer extension to serve three (3) lots along Lake Sarah Drive South.
2. Developer will reimburse the City for the cost of upgrading the existing lift station on Lake Sarah Drive South from a single pump to a double pump system.
3. All lots in the development will be required to connect to City sewer. The actual connection costs will be paid at the time the building permit is obtained from the City. The cost per lot is \$9,550.00.
4. Lots 4 and 5 will have a driveway easement to allow access to both lots.

### *Summary:*

It is recommended that the City Council consider approval of the development agreement.

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**DEVELOPMENT AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF INDEPENDENCE**  
**AND**  
**DONNA HENDLEY**  
**FOR**  
**HENDLEY ADDITION**

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This document drafted by:

Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300 (RJV)

This Development Agreement (the “Agreement”) is made and entered into this \_\_\_ day of November, 2016, by and between the City of Independence, a municipal corporation under the laws of Minnesota (the “City”), and Donna Hendley, a single person (the “Developer”).

### **WITNESSETH**

WHEREAS, the Developer is the fee owner of land described as Lots 1, 2, 3, 4, and 5, Block 1, Hendley Addition, Hennepin County, according to the recorded plat thereof, and

WHEREAS, on October 11, 2016, the City granted final approval of the plat of a 5-lot subdivision known as Hendley Addition (the “Subdivision”) subject to the terms and conditions found in its Resolution No. 16-1011-03 (“City Approvals”), and;

WHEREAS, the City Approvals include a requirement that the Developer enter a development agreement satisfactory to the City, which development agreement will be recorded.

NOW, THEREFORE, based on the mutual covenants and obligations contained herein, the parties agree as follows:

### **AGREEMENT**

1. Right to Proceed. This Agreement is intended to regulate the development of the Subdivision and the construction therein of certain improvements. The Developer may not construct improvements within the Subdivision until the following conditions precedent have been satisfied:

- a) this Agreement has been executed by the Developer and the City and recorded immediately following recordation of the final plat of the Subdivision with Hennepin County;
- b) the Letter of Credit as provided herein has been provided to the City;
- c) the Developer has obtained all required permits or approvals from the Pioneer Sarah Creek Watershed District;
- d) the Developer has executed and recorded the private driveway easement agreement in the form attached hereto as Exhibit A;
- e) the Developer has paid the park dedication fees required herein;
- f) the Developer has deposited an additional \$5000.00 into an escrow account with the City pursuant to Section 16 of this Agreement;
- g) final engineering and construction plans in digital form have been submitted by the Developer and approved by the City Engineer;
- h) the Developer has paid the City for all legal, engineering and administrative expenses incurred by the City regarding the City Approvals;
- i) the Developer has provided the City with a certificate of insurance required by this Agreement;
- j) the City has issued notice that all conditions have been met and the Developer may proceed.

2. Plans; Improvements. a) All terms and conditions of the City Approvals are hereby incorporated by reference into this Agreement. The Developer shall develop the Property in accordance with the City Approvals. The Developer shall construct all improvements, including the necessary sewer extension to Lots 1, 2 and 3, in accordance with engineering and construction plans approved by the City attached hereto as Exhibit B (collectively, the “Plans”). The Plans may not be modified by the Developer without the prior written approval of the City.

b) The Developer shall reimburse the City for the costs of improving the City’s Lift Station. The improvements shall include converting the lift station from a single pump to a duplex pump system and replacement of the control panel. It is estimated that the cost for the improvements to the lift station will be \$7,500. The City will bill the developer for the actual costs of the improvement.

(c) Construction in the Subdivision shall be restricted to the hours of 7:00 a.m. through 8:00 p.m., Monday through Friday and 8:00 a.m. through 5:00 p.m. on Saturday and Sunday.

3. Erosion Control. a) All construction regarding the sewer extension shall be conducted in a manner designed to control erosion and in compliance with all City ordinances and other requirements. Before any portion of the Subdivision is graded, an erosion control plan shall be implemented by the Developer as approved by the City.

b) If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems reasonably appropriate to control erosion based on the urgency of the situation. The City agrees to provide reasonable notice to the Developer in advance of any proposed action, including notice by telephone or email in the case of emergencies, but limited notice by the City when conditions so dictate will not affect the Developer’s obligations or the City’s rights hereunder.

4. Site Grading. a) In order to construct the sewer extension and otherwise prepare for development, the Developer may need to grade the Subdivision property. All grading must be done in compliance with this Agreement and applicable law. The City may withhold issuance of a building permit for the Subdivision until the approved certified grading plan is on file with the City and all erosion control measures are in place as determined by the City. Within 30 days after completion of the grading, the Developer shall provide the City with an “as constructed” grading plan.

b) The Developer agrees that any fill material which must be brought to or removed from the Subdivision while grading the site or during construction of the sanitary sewer or any buildings located within the Subdivision will be transported using haul routes established by the City. The City intends to post roads it has accepted for maintenance for spring weight limits in accordance with City policy. The Developer shall be responsible for the cost of repair of any roads damaged by the Developer or its contractors or subcontractors.

5. Private Driveway. The Developer shall record a driveway easement to allow access to lot 5 across lot 4 (the “Private Driveway Easement”). The Private Driveway shall remain private and be maintained by the lot owners. The Developer shall enter into a private shared driveway

agreement the form of which is attached as Exhibit A, to ensure that the lot owners are responsible for maintenance and repair of the Private Driveway. The private driveway agreement shall be executed and recorded prior to the sale of any lots within the Subdivision.

6.

7. Sewer. Lots 4 and 5 will be required to make direct connections to City sewer located in County Road 11. Lots 1, 2, and 3 will be required to make connections to sewer facilities newly extended by the Developer in Lake Sarah Drive South in accordance with the Plans (“Sewer Extension”).

8. Letter of Credit. a) In order to ensure completion of the Sewer Extension, and erosion control requirements under this Agreement, repair of any roads damaged by the Developer or its contractors or subcontractors, and satisfaction of all fees due to the City, the Developer agrees to deliver to the City prior to beginning any construction or work within the Subdivision a letter of credit (the “Letter of Credit”) in the amount of One Hundred Ten Thousand Four Hundred and Fiftyand 00/100 Dollars (\$110,450.00), which represents 150 percent of the estimated cost of the foregoing. The Letter of Credit shall be delivered to the City prior to beginning any work and shall renew automatically thereafter until released by the City. The Letter of Credit shall be issued by a bank determined by the City to be solvent and creditworthy and shall be in a form acceptable to the City. The Letter of Credit shall allow the City to draw upon the instrument, in whole or part, in order to complete construction of the Sewer Extension, comply with erosion control requirements, repair roads damaged by the Developer or its contractors or subcontractors, or satisfy fees due to the City by the Developer.

b) The Letter of Credit shall be released in full and returned to the Developer following satisfaction of all the Developer’s obligations to the City under this Agreement. Prior to releasing any portion of the Letter of Credit or accepting another letter of credit in replacement, the City shall first be satisfied regarding the quality and completeness of the work.

c) If at any time the City reasonably determines that the bank issuing the Letter of Credit no longer satisfies the City’s requirements regarding solvency and creditworthiness, the City shall notify the Developer and the Developer shall provide to the City within 45 days a substitute for the Letter of Credit from another bank meeting the City’s requirements. If the Developer fails to provide the City within 30 days with a substitute Letter of Credit from an issuing bank satisfactory to the City, the City may draw under the existing Letter of Credit.

9. Park Dedication Requirements. The Developer shall pay to the City a cash-in-lieu park dedication fee of Twenty One Thousand Five Hundred and 00/100 Dollars (\$21,500.00) at the time that this Agreement is executed.

10. Responsibility for Costs; Escrow for Construction Inspection. The Developer agrees to pay to the City an administrative fee in the amount necessary to reimburse the City for its reasonable costs and expenses in reviewing the final plat and drafting and negotiation of this Agreement. The Developer agrees to reimburse the City in full for such reasonable costs within 45 days of the date that the City issues written notice of its costs and expenses. The Developer agrees

to reimburse the City for the reasonable cost incurred in the enforcement of any provision of this Agreement, including reasonable engineering and attorneys' fees.

11. Developer's Default. In the event of default by the Developer as to construction or repair of any of the sanitary sewer or any other work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Property for such purposes. If the City does any such work, the City may, in addition to its other remedies, levy special assessments against the land within the Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including but not limited to, hearing requirements and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes, section 429.081.

12. Insurance. The Developer agrees to take out and maintain or cause to be taken out and maintained until six months after the substantial completion of all improvements identified in the Plans are completed, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its contractors or subcontractors. Liability limits shall not be less than \$500,000 when the claim is one for death by wrongful act or omission or for any other claim and \$1,500,000 for any number of claims arising out of a single occurrence. The City shall be named as an additional insured on the policy. The certificate of insurance shall provide that the City must be given the same advance written notice of the cancellation of the insurance as is afforded to the Developer.

13. Floodplain Regulations. No structures, including fences and accessory structures, may be constructed within the Subdivision below the regulatory flood protection elevation. The Developer must comply with the requirements of the City with regard to flood protection. Any utilities which are installed by the Developer on ground the surface of which is below the regulatory flood protection elevation must be flood proof in accordance with the state building code and City requirements.

14. No Building Permits Approved; Certificates of Occupancy. a) The City Approvals do not include approval of a building permit for any structures within the Subdivision. The Developer must submit and the City must approve building plans prior to an application for a building permit for a structure on any lot within the Subdivision. The Developer or the parties applying for the building permits shall be responsible for payment of the customary fees associated with the building permits and other deferred fees as specified in this Agreement. In addition, the Developer or parties applying for building permits shall be responsible for payment of all sewer connection fees. The sewer connection fee for each lot shall be comprised of Nine Thousand Five Hundred Fifty and no/100 Dollars (\$9,550.00), plus applicable Sewer Access Charges (SAC) and City connection fee charges.

b) No certificate of occupancy shall be issued for any home constructed in the

Subdivision unless prior thereto the shared driveway has been installed, the home is connected to public sewer, and an as built survey of the lot has been submitted and approved by the City.

15. Clean up and Dust Control. The Developer shall keep street adjoining the Subdivision reasonably clean and free of dirt and debris resulting from construction.

16. Compliance with Laws. The Developer agrees to comply with all laws, ordinances, regulations and directives of the state of Minnesota and the City applicable to the Subdivision. This Agreement shall be construed according to the laws of Minnesota. Breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits for the Subdivision.

17. Agreement Runs With the Land. This Agreement shall run with the Subdivision property and shall be recorded against the title thereto and shall bind and inure to the benefit of the City and the Developer and their successors and assigns. The Developer warrants that there are no unrecorded encumbrances or interests in the Subdivision property. The Developer agrees to indemnify and hold the City harmless for any breach of the foregoing covenants.

18. Indemnification. The Developer hereby agrees to indemnify and hold the City and its officers, employees, and agents harmless from claims made by it and third parties for damages sustained or costs incurred resulting from approval of the final plat of Hendley Addition and the other City Approvals. The Developer hereby agrees to indemnify and hold the City and its officers, employees, and agents harmless for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees, except matters involving acts of gross negligence by the City.

19. Assignment. The Developer may not assign this Agreement or its rights or obligations hereunder without the prior written permission of the City, which consent shall not be unreasonably withheld, conditioned or denied.

20. Notices. Any notice or correspondence to be given under this Agreement shall be deemed to be given if delivered personally or sent by United States certified or registered mail, postage prepaid, return receipt requested:

a) as to Developer: Donna Hendley  
\_\_\_\_\_  
\_\_\_\_\_

b) as to City: City of Independence  
1920 County Road 90  
Independence, MN 55359-9448  
Attn: City Administrator

with a copy to: Robert Vose  
Kennedy & Graven  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

or at such other address as any party may from time to time notify the others in writing in accordance with this paragraph. The Developer shall notify the City if there is any change in its name or address.

21. Severability. In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other provision of this Agreement.

22. Non-waiver. Each right, power or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

23. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day and year first above written.

**CITY OF INDEPENDENCE**

By: \_\_\_\_\_  
Marvin Johnson, Mayor

By: \_\_\_\_\_  
Mark Kaltsas,

City Administrator

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Marvin Johnson and Mark Kaltsas, the mayor and city administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public



**EXHIBIT A TO  
DEVELOPMENT AGREEMENT**

Form of Shared Private Driveway Easement Agreement

**DECLARATION OF EASEMENTS AND MAINTENANCE AGREEMENT  
FOR SHARED PRIVATE DRIVEWAY**

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by Donna Hendley (the “Declarant”).

Recitals

A. Declarant is the fee owner of certain real estate in Hennepin County, Minnesota, described as:

Lots 1, 2, 3, 4 and 5, Block 1, Hendley Addition, according to the plat on file in the office of the County Recorder, Hennepin County, Minnesota.

(the “Property”).

B. The Declarant intends to develop and use the Property for residential purposes. Declarant hereby establishes non-exclusive, permanent easements for driveway and vehicular and pedestrian ingress and egress purposes as hereinafter described in, over and across a portion of Lot 4, Block 1 for the benefit of Lot 5, Block 1, Hendley Addition.

Declaration

Now, therefore, the Declarant hereby declares as follows:

1. Ingress and Egress Easement. Lot 4, Block 1, Hendley Addition shall be held, sold and conveyed subject to a permanent, non-exclusive, perpetual easement for driveway and vehicular and pedestrian ingress and egress purposes which shall inure to the benefit of Lot 5, Block 1, Hendley Addition (the “Driveway Easement”). A sketch of the Driveway Easement is attached hereto as Exhibit A.

2. Scope of Easement Rights. The Driveway Easement is for driveway, vehicular ingress and egress and includes the right to improve, repair and maintain the same.

3. Construction, Repair and Maintenance. The owners of Lots 4 and 5, Block 1, Hendley Addition shall construct, reconstruct, maintain and repair the private shared driveway on the Driveway Easement at their shared expense. The owners acknowledge that the City has no obligation to construct, reconstruct, maintain or repair the private shared driveway and that the City does not intend to acquire or open the Private Driveway as a public roadway.

4. Payment of Costs. The owners Lots 4 and 5, Block 1, Hendley Addition shall pay

equal shares of the cost of reconstruction, repair and maintenance of the Private Driveway, including the costs of snow removal and roadway maintenance and resurfacing, unless the Owners unanimously agree to share costs according to some other formula.

5. Lien and Obligation for Private Assessments. The owners shall pay their share of the costs with respect to each Lot, together with interest, court costs, and reasonable attorneys' fees required for collection thereof, which amount shall be a charge on that Lot and shall be a continuing lien upon that Lot. The lien of any private assessment shall be subordinate to the lien of any first mortgage against a Lot. The private assessment shall also be the personal obligation of the owner of the Lot. The personal obligation for delinquent private assessments shall not pass to an owner's successor in title unless expressly assumed by such successor. Either owner may bring an action to collect a defaulting owner's share of the maintenance costs not paid when due, and shall be entitled to recover reasonable attorneys' fees together with all necessary costs and disbursements incurred in connection therewith.

6. City's Rights.

6.1 Right of Repair. The covenants, conditions and restrictions of this Declaration shall inure to the benefit of the City. In the event that the owners fail to construct, reconstruct, maintain or repair the Private Driveway in accordance with the City's standards, the City may, at its sole discretion, undertake the construction, reconstruction, maintenance or repair of the Private Driveway but any such action taken will not result in the establishment of a public roadway. Costs incurred by the City under this section shall be divided equally between the owners. In the event that either owner shall default in such payment to the City, the City may, at its option, assess the costs against the appropriate Lot(s) and certify said assessment to the county auditor and collect the same in single or multiple payments as in the case of special assessments for public improvements pursuant to Minnesota Statutes Chapter 429. The assessments shall bear interest at the rate determined by the City but not more than 2 percent more than the average coupon rate if the City sells debt to pay for the cost of the work or 2 percent over the average rate of return earned by the City on its investment portfolio. Such assessments shall run with the affected Lot(s). The owners shall be deemed to waive any right to hearing or notice and the right to appeal the assessment otherwise provided by Minnesota Statutes Chapter 429.

6.2 Conveyance of Easements. The owners hereby convey an easement to the City for ingress, egress, construction, reconstruction, maintenance and repair over and across the Road Easement to the City. This easement permits City response to police calls, fire calls, rescue and other emergency calls, inspections, animal control, street maintenance and repair, street construction and reconstruction, snow removal, provisions for adequate surface drainage, and other public services deemed necessary by the City. The City shall not be required to perform any of the work outlined in this Section but reserves to itself the option to do so.

6.3 Reservation of Rights. Nothing in this Declaration is intended nor shall it prevent the City from the exercise of its full range of land use authority regarding the Property granted to it by state statute, the City code or any other applicable regulation and

the City shall be entitled to apply its official controls to the Lots in the same manner and to the same extent as if they were served by a public road.

7. Restrictions on Use. No owner shall obstruct or interfere with the right or privilege of any other owner to use the private shared driveway or Driveway Easement nor shall alter, construct, remove or obstruct the private shared driveway or Driveway Easement.

8. Duration. The covenants, conditions and restrictions of this Declaration shall run with the land and shall be binding on all persons claiming ownership thereunder. The covenants, conditions and restrictions of this Declaration shall not be deemed to be merely nominal and of no actual and substantial benefit to the party or parties to whom or in whose favor they run unless the City shall so consent in writing.

9. Indemnification. The owners, on behalf of themselves and their successors or assigns, employees, agents or invitees, hereby release, indemnify and hold harmless the City from any and all claims for damages to the person or property of the owners, including costs and attorneys' fees arising from or by reason of any Owner's design, construction, maintenance or use of the Private Driveway; provided, however, that nothing in this Declaration shall be construed to waive any rights that the City has against the owners under this Agreement. Nothing in this Declaration shall be construed as a waiver by the City of any immunities, defenses or other limitations on liability to which the City is entitled to by law, including but not limited to, the maximum monetary limits on liability established by Minn. Stat. § 466.04.

10. Easement to Run with Land; No Merger. The easements created herein shall run with the land and be binding on all parties having any right, title or interest in a Lot, their heirs, successors and assigns. The Declarant intends that the easements created herein shall not merge in Declarant's title to Lots 4 and 5, Block 1, Hendley Addition and any future conveyance by Declarant shall be subject to this Declaration.

11. Amendment; Modification; Termination. This Declaration may not be amended, modified or terminated without the consent of the owners of Lots 4 and 5, Block 1, Hendley Addition and the City.

\*\*\*\*\*

IN WITNESS WHEREOF, the party hereto has executed this Declaration on the day and year first above written.

DONNA HENDLEY

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STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Donna Hendley, a single person.

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Notary



**Exhibit A**

Sketch of driveway easement

[to be inserted]

**EXHIBIT B TO  
DEVELOPMENT AGREEMENT**

IMPROVEMENT PLANS

# City of Independence

## December City Council Meeting Discussion

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*To:* City Council  
*From:* Mark Kaltsas, City Administrator  
*Meeting Date:* November 29, 2016

### *Discussion:*

It is anticipated that the City will not need to hold a second December City Council Meeting. The regularly scheduled meeting is set for Tuesday, December 27<sup>th</sup>.

### *Summary:*

It is recommended that the City Council consider **canceling** the December 27<sup>th</sup> Meeting unless it is determined at a future date that the meeting will be necessary.