

**CITY OF CROSSLAKE
CITY COUNCIL WORK SESSION
2:00 P.M., THURSDAY, JANUARY 13TH, 2005
CITY COUNCIL CHAMBERS, CITY HALL
MINUTES**

MEMBERS PRESENT: Mayor Jay Andolshek, Dean Eggena, Dean Swanson, Dick Phillips, Terry Curtis.

OTHERS PRESENT: Tom Swenson, City Administrator; Ken Anderson, Community Development Director; Carie Fuhrman, Planner-Zoning Coordinator; Jeff Miller, WSN-Consulting City Surveyor; Kirk Adams, Associate City Attorney; Tom Lutgen, DNR Floodplain Hydrologist; Peder Otterson, DNR Shoreland Hydrologist; and Ron Morreim, DNR Area Hydrologist.

CALL TO ORDER: Mayor Jay Andolshek called the work session to order at 2:00 p.m.

Ken Anderson gave preliminary comments to explain why the work session was scheduled. He stated that two gentlemen from the St. Paul DNR office, Tom Lutgen and Peder Otterson, and Ron Morreim from the Brainerd DNR office, were present to discuss and receive more information from the City Council regarding the issues on the agenda. Mr. Anderson then went on to give an overview of the five items on the agenda.

1. Review Nonconforming Uses and Structures Ordinance Amendment(s).

Ken Anderson stated that Section 8.10, *General Provisions*, of the City ordinance addresses the *Use of Pre-existing Lots and Nonconformities*, and Section 8.27, *Residential Medium Density (R-3)* also addresses nonconforming structures. He stated that there have been recent changes to these portions of the ordinance, which allow structures that are currently at less than the required setbacks to be expanded or rebuilt, as long as the addition does not encroach any closer than the existing structure setback. He noted that if the addition is located in the shore impact zone, flood plain, or bluff impact zone, a variance is required.

Tom Lutgen, DNR Floodplain Hydrologist from the St. Paul office, provided background information regarding nonconforming uses. He stated that Minnesota statutes used to be silent regarding these issues. Now, there is a statute that addresses nonconformities. Mr. Lutgen continued by stating that he is concerned that the changes to the City ordinances regarding nonconformities could be non-compliant with the floodplain laws. He said that he wants to keep communities and their ordinances compliant with the Federal Emergency Management Agency (FEMA) flood protection standards as they are essential and important to protect the community.

Dean Eggena addressed Mr. Lutgen's comments. He pointed out that additions to existing structures that were located in the flood plain, shore impact zone, and bluff impact zone did not apply in this ordinance change. He explained that the reason these changes were adopted was because the City of Crosslake is an older lake community with many non-conforming structures, not nonconforming uses. He stated that many residents

are turning cabins into full-time homes, which often means rebuilding or remodeling. They had found that the previous ordinance was inconsistent, and now they are trying to create consistency. Council Member Eggena stated that they want to prevent structure "creep," which means adding on and getting closer and closer to the lake. He also noted there was insurance reimbursement problems with the 50% rule.

Lengthy discussion ensued regarding the ordinance and FEMA regulations. Tom Lutgen explained that the DNR gets involved in specific instances when there is adequate technical data provided which has established a 100-year flood elevation (Base Flood Elevation (BFE)).

Peder Otterson, DNR Shoreland Hydrologist, stated that Minnesota statute directs the DNR to establish standards for shoreland management and requires the DNR to review local ordinances for compliance with shoreland rules. If the local ordinances are not compliant, the local governments have two years to bring the ordinances into compliance. If they do not bring their ordinance into conformance, the DNR can litigate to enforce compliance. He went on to state that nonconformities could be addressed with flexibility provisions in which the City can provide justification and the DNR may or may not approve the request. Mr. Otterson stated that he supported the idea of creating uniformity in Crosslake's ordinance, but he was concerned with the setbacks, rebuilding over 25% impervious coverage, height restrictions, etc. Dean Eggena explained that if a property owner is interested in expanding their existing structure, they have to meet the other ordinance requirements—such as the height requirements, 25% impervious coverage, septic system requirements, etc.—and if they do not meet those requirements, they need a variance.

Discussion ensued regarding the Shore Impact Zone (SIZ) and variance requirements. Dean Eggena brought up the possibility of allowing expansion of a nonconforming structure if the Shore Impact Zone is in proper condition. Mr. Eggena stated that in that scenario, they would allow the property owner to make improvements to their property, as long as the Shore Impact Zone is compliant. Mr. Otterson noted that this was an example of flexibility with enforcing the DNR standards. He agreed with being flexible with someone who wanted to make improvements to their structure if they were also willing to make improvements to their shoreline. He explained that he did not mean that they needed to replant the entire Shore Impact Zone, but that they should do something.

Dean Swanson questioned how they could deal with the issue of storm water runoff draining directly into the lakes off of County roads. Mr. Otterson replied that MNDOT or the MPCA Stormwater Standards might address that issue. Dean Eggena stated that there is curb and gutter with catch basins and storm sewer pipe on County Road 66, and most pipes drain into the river and into ponds, with some retention ponds. Dean Swanson replied that not all of them drain into the lake, but some do. Mr. Otterson stated that he could check on that issue because someone would have information on it. Dean Swanson explained that if they are concerned with the water quality in the lakes, then they should also look at this issue because it may be contributing to water pollution.

Lengthy discussion ensued regarding roads, public accesses, and impervious coverage requirements in the zoning districts. Mr. Otterson stated that the 25% impervious coverage applies to residential lots in the shoreland area, but that it is more flexible with commercial areas (downtowns) because it is difficult to meet that impervious coverage requirement. Dean Eggena explained the issue with the Waterfront Commercial zoning district here in Crosslake. He stated that right now the ordinance requires that the impervious coverage maximum is 25%. He also brought up the two conflicting ordinances that require the parking area to be paved, but at the same time, the impervious coverage must be kept below the maximum 25%. Runoff issues were also discussed.

Mr. Otterson explained the Non-point Education for Municipal Officers (NEMO), which was a program created to look at how land use impacts the water quality. He also explained the Five-County Pilot Program and the Shoreland Advisory Committee, which will represent numerous interests, including realtors, developers, local governments, etc. These groups have been created not to be dictatorial on issues, but to establish standards for the shoreland area.

Council Member Terry Curtis asked if the 25% impervious coverage standard is based on current data. Discussion ensued regarding the history and research done on the impervious coverage requirement, and Mr. Otterson stated that 10-25% impervious coverage is more appropriate for lots in the shoreland area. He stated that 10% was a standard used in watersheds draining to Trout Streams with 25% as the maximum for other lakes. He stated the DNR trend was to move to a lower percentage impervious coverage, not a higher percentage. Mr. Curtis stated that he would like to see more focus on the treatment of the runoff water.

The next steps to be taken were discussed. Mr. Otterson brought up the point that many people look at runoff issues, impervious coverage, etc., as the last thing, especially if they have run into a problem with getting a permit—he said that if those issues were the first thing that people looked at, that there might not be as many problems. He suggested that the City request flexibility for both the nonconforming issues and for the nonriparian minimum lot sizes on Natural Environment lakes (coming up later on the agenda), but show what is going to be done in place of it. Tom Lutgen stated that he does not see any problems with the nonconformities changes as long as the floodplain is not affected by the rebuilding of any nonconforming structures. Mr. Otterson stated that local units of government must ask and provide written justification to the DNR in order to be authorized administrative flexibility in the shoreland standards.

Discussion ensued regarding the variance process. Dean Eggena stated that most of the variance requests to build or add on to existing structures are granted, and it does not matter how close or far away the addition is. Mr. Eggena stated that he supported the restriction of not allowing anything to be done in the Shore Impact Zone (SIZ). Council Member Eggena suggested re-looking at the SIZ and maybe expanding it to be larger than 50% of the normal setback, perhaps 40 ft., and to require vegetation improvements in the SIZ to create the buffer desired by the DNR to improve water quality. Discussion ensued regarding the suggestion from Dean Eggena.

2. Review new BFE/RFPE for Whitefish Chain of Lakes.

Ken Anderson stated that the City Council had recently acknowledged the new Base Flood Elevation (BFE) on the Whitefish Chain to be at 1231.0, which was established through a Corps of Engineers study. The City Attorney had asked the City Council to look at the Regulatory Flood Protection Elevation (RFPE) established by the DNR, which is 1232.0. Mr. Anderson referred to the e-mail from Paul Sandelin and Kirk Adams, dated January 7th, 2005, regarding the flood plain ordinance. Kirk Adams, Associate City Attorney, was present and explained that the 1 ft. of freeboard is mandated by the flood plain statute effective in 1997.

Ken Anderson explained that the lowest adjacent grade must be at least 1231.0, but the lowest finish floor elevation must be at least 1232.0. Mr. Anderson asked the question of whether or not the Council needs to acknowledge the 1232.0 RFPE so staff may appropriately implement the floodplain provisions. Tom Lutgen explained that if a building is on or below 1231.0, that is when the 1 ft. of freeboard is mandated. Dean Eggena explained that if a lot is at 1231.1, it is not in the floodplain, and the 1 ft. of freeboard does not apply, so the floor height does not need to be 1 ft. higher.

Ken Anderson also brought up the fact that the Shoreland regulations in the City ordinance require that structures be 3 ft. above the Ordinary High Water (OHW) level. Mr. Otterson explained that the regulations state that if a local government unit does not have Floodplain regulations, then the Shoreland regulations should be used (3 ft. above the OHW). Mr. Otterson explained that the Floodplain regulations were more detailed than the Shoreland regulations. Lengthy discussion ensued regarding the floodplain, the BFE, and the RFPE.

Ken Anderson stated that staff would work with the City Attorney on clarifying the ordinance language. Discussion ensued regarding dams, dikes, etc.

3. Review Tiff Lake OHW Study by DNR.

Ken Anderson explained that a request for a metes and bounds subdivision on Tiff Lake had been presented to the Planning and Zoning Commission in the fall, which instigated discussion of the OHW on Tiff Lake. The issue was tabled until further research had been completed. In early December, after a request submitted by the City to Ron Morreim, the DNR established the OHW of Tiff Lake to be 1227.2 ft. Dean Eggena asked whether FEMA requires a local flood elevation on all lakes. Tom Lutgen replied that the requirement of 3 ft. above the OHW is used if there is not a specific flood elevation established on a lake. Discussion ensued regarding elevations.

Ron Morreim explained that the OHW is determined by observing the long-term tree growth, other vegetation, etc., and not where the water elevation is currently located. Mayor Jay Andolshek questioned if it made sense to have multiple elevations on the lakes. Dean Eggena explained that every lake is different. Discussion ensued. Ron Morreim explained that from the OHW and lakeward was the DNR's responsibility, and from the OHW and landward was the City's responsibility.

4. Request for implementation flexibility in Shoreland Management Act standards/guidelines for nonriparian (off-lake) minimum lot sizes on Natural Environment lakes.

Ken Anderson stated that he drafted a letter to be submitted to Ron Morreim asking for implementation flexibility for lot sizes with no land fronting on public water. Mr. Anderson stated that there is a request to subdivide two lots in the Wildwood Acres plat on Tiff Lake, and the two proposed nonriparian lots are substandard to what is required in the ordinance and the Shoreland Management Act standards. Currently, nonriparian lot sizes on a Natural Environment lake are required to be 80,000 sq. ft., which is the same as a riparian lot. Mr. Anderson requested that the Council review the letter before it was sent to Ron Morreim.

Dick Phillips asked how this issue surfaced. Mr. Anderson stated that the proposed subdivision is located on Tiff Lake, which is a Natural Environment lake, and the proposed nonriparian lots to be created are only 40,000 sq. ft. He stated that in the past, staff might have overlooked the nonriparian lot size requirement of 80,000 sq. ft. Dean Eggena stated that if they cannot get this approval from the DNR, numerous lots would be considered nonconforming. He stated that a tremendous amount of people would be affected if the off-lake lots were required to be double the size of the lake lots.

Ron Morreim stated that he was not familiar with the history of the lot sizes being established at 50% of the required amount, but he said that it would not have been accepted by the DNR if they had known about it. He asked if the Council was looking for an "across-the-board" agreement for all of the lakes to have smaller lot size requirements for nonriparian lots. Discussion ensued.

Dean Swanson questioned what the sequence of events was that led up to the subdividing of the existing lots and whether the subdivision was approved prior to the new Shoreland Management Act. Mr. Morreim stated that the lots could have been conforming at the time they were established. Dean Eggena stated that the City Hall lot was an example of a lot that would be non-conforming if the DNR would not approve the request. He stated that the City does not have any second-tier lots twice as large as the lake lots. Jeff Miller, City Surveyor from WSN, recalled that the City used to have a separate zoning district for lake lots versus off-lake lots. The minimum lot sizes were 20,000 and 40,000 sq. ft. Even after the Shoreland regulations were accepted, he stated that the City continued to use the zoning map that was established. Discussion ensued regarding lot sizes.

Mr. Otterson explained the Shoreland regulations regarding lot sizes and said that larger lots are required on the second tier because of the pressure and cumulative impacts the lots have on the lakes. Dean Eggena questioned how you could explain to people that 40,000 sq. ft. lots are required on the second tier, but only 20,000 sq. ft. lots are required on the lakefront with a General Development lake classification. Mr. Otterson responded that the pressure from the density of the lake lots creates many potential problems for the lakes. He explained that you cannot place a requirement of 40,000 sq. ft. minimum lot sizes on riparian lots because most of those lots have already been developed, but he

stated that there is still time for non-riparian lots. Dean Eggena raised the question of how to address General Development and Natural Environment lakes that are less than 1,000 ft. from one another. In response, it was noted that the topographic divide would dictate which standard applies when there are lakes with overlapping shoreland areas and different lake classifications. Discussion ensued.

Dean Swanson recommended having Ron Morreim research the issue. Mr. Morreim stated that he knew that smaller second tier lot sizes would not be approved for every lake. Tom Swenson suggested re-drafting the letter for each specific instance in specific plats. Ron Morreim stated that the justification for the request for implementation flexibility was needed. Dean Eggena brought up the idea of changing the classification of some of the lakes. Lengthy discussion ensued regarding the lake classifications and commercial and residential lot standards. Mr. Otterson stated the DNR will not change the classification to allow more development.

Ken Anderson suggested that he would draft a letter based on the conversation that took place at this meeting. He would draft the letter for the site-specific issues and identify areas that are impacted by the issue. The approach will apply a different standard for established lots of record versus newly platted and undeveloped lots. He stated that he would present the draft to the City Council before sending it to the DNR. Discussion ensued regarding the issues that were discussed.

5. Review feasibility to change Pine River classification from Forested River to Urban River.

Ken Anderson introduced the issue and stated that currently the Pine River is classified as a Forested River, which requires a setback of 150 ft. The issue is to look at changing the classification to an Urban River, which requires only a 75 ft. setback. In addition, there are some properties that are located on the Pine River and also now have access to the new City Sanitary Sewer, which may provide justification for allowing smaller lot sizes because the lot area reserved for an individual septic system is not needed.

Discussion ensued regarding the area of the river that would be affected by the re-classification. It was agreed that it should not continue all the way down the river; some suggestions included stopping the re-classification at the section line, or at the point where the City Sewer stops. Mr. Anderson explained the definition of Urban Rivers.

Dean Eggena left the work session at 5:00 p.m.

Mr. Otterson explained that the "Urban" classification was used for metropolitan area rivers. Terry Curtis questioned whether the Pine River was really still a Forested River because of the surrounding area that contains apartments, a wastewater treatment plant, etc. Mr. Otterson stated that he felt more comfortable keeping the classification as "Forested," but changing the lot size requirements. Dean Swanson stated that he was in favor of the lots being smaller, especially those that have access to the City Sewer. Discussion ensued regarding the lot size requirements and setback requirements.

Mayor Jay Andolshek stated that the work session was very informative and that something should be put in writing regarding the issues discussed at the meeting. Dick Phillips also stated that it was a very informative meeting. Ken Anderson thanked the DNR for being present at the meeting. The DNR guests thanked the City Council for having them at the meeting.

MOTION MADE BY DEAN SWANSON AND SECONDED BY TERRY CURTIS TO
CLOSE THE WORK SESSION AT 5:10 P.M. MOTION CARRIED WITH ALL
"AYES."

Minutes respectfully prepared by Carie A. Fuhrman, Planner-Zoning Coordinator

Carie A. Fuhrman