

SPECIAL JOINT MEETING  
CROSSLAKE CITY COUNCIL  
AND  
PLANNING & ZONING COMMISSION/BOARD OF ADJUSTMENT  
9:00 A.M., MONDAY, JANUARY 20, 2004  
CITY HALL

Members present: Mayor Darrell Swanson, City Council Members Dick Phillips and Dean Eggena; Planning and Zoning Commission Members: Chairman Andy Anderson, Nancy Koch, Jack Huber, Terry Curtis, and Alternate Planning and Zoning Commission Members: Olaf Olsen and Gerry Leinfelder. Also present were Ken Anderson, Community Development Director; Paul Sandelin, City Attorney; and Carla Backstrom of the Planning & Zoning Office.

Mayor Swanson called the meeting to order at 9:04 A.M. Planning and Zoning Commission Chairperson Andy Anderson called the meeting to order at 9:05 A.M.

**AGENDA ITEMS**

**1. Staff Review of Inspection Procedures for Zoning Permits.**

Ken Anderson gave a summary of the purpose of this item being on the agenda. Ken Anderson explained that as a result of some previous situations that have occurred, there has been a heightened awareness of how the City goes through its inspection process. Ken Anderson discussed the mediated settlement with the Johnson's property on Fawn Lake. The Johnson house was constructed too close to the lake after the City conducted an onsite inspection. Ken Anderson stated that the City has been inspecting stakes prior to issuing the permit for a number of years and that as part of the Council mediated settlement, the Council directed that staff review our inspection procedures, which included looking at the forms after they are in place versus the site staking prior to any excavating. Mr. Anderson stated that he did an in-depth review of other cities ordinances. Mr. Anderson stated that the City of Brainerd and Baxter have adopted the building code, which includes inspections of the forms and footings in addition to the foundation and framing. Ken Anderson stated that our ordinance currently requires that we do inspections of the building footings, however, there is a distinction that needs to be made between building footings and building forms. Ken Anderson also stated that the ordinance currently requires that proposed structures shall be staked prior to submittal of the application. Ken Anderson stated that the purpose of this meeting is to determine what staff needs to be doing in terms of inspection procedures.

The Planning and Zoning Commission discussed this at their November meeting and based on the ordinance language, they directed staff to go out and inspect footings. However, due to the controversy of this process in our community and surrounding communities, Ken Anderson felt that this was an area that would be appropriate for both bodies to consider and discuss before a final decision is made on the procedure to be approved.

Ken Anderson explained that he laid out four options that could be considered and summarized them as follows: 1. Adopt a motion that directs staff to prepare a resolution that clarifies the intent of the ordinance in the areas listed above (as discussed); 2. Adopt a motion that directs the staff and City Attorney to amend the ordinance to clarify the inspection process and have the

Planning and Zoning Commission make a recommendation regarding the same to the City Council; 3. Direct the staff to prepare the necessary documentation to adopt the building code and appropriate fee schedule in its entirety on a contract or hired employee basis; and 4. Direct staff to make recommendations to the Planning and Zoning Commission to adopt the building code and to enter into a joint powers agreement with other jurisdictions to perform building inspection functions.

Ken Anderson recommended Option 4 be approved and he recommended that it be done jointly with surrounding cities and/or the County. Mr. Anderson stated that he has spoken with Kevin Mealhouse of the State Building Codes and Standards Division for this area and he stated that the County would like adoption of the code to be driven and promoted by builders/contractors.

Andy Anderson stated that he agrees with Ken and that he has seen a lot of challenges in the time he's been here, and that if the building code is adopted with surrounding communities it will give us more strength. Terry Curtis stated that there are two separate issues here and the building code has nothing to do with zoning violations. Mr. Curtis stated that during his time spent on review of the County Comprehensive Plan, the building code came up numerous times. However, they failed to get support from the builders in the County to actually say that they felt it was worth the additional expense and permitting and that the larger contractor's were building in excess of the code anyway. Mr. Curtis stated that he is not convinced that the building code is necessary at this time.

There was discussion on whether there was an inspection requirement for setbacks of footings in the Uniform Building Code. Ken Anderson stated that footing/form inspections could be performed with zoning staff, however, it will only be to verify setbacks, not building code compliance. Mr. Anderson stated that there are challenges when staff does inspections, including excavation holes, piled soils, slopes, and the property owner's responsibility for locating their lot lines. Mr. Anderson stated that the ordinance now allows staff to require a Certificate of Survey. Dean Eggena agreed with Terry Curtis and stated that we are not enforcing the ordinances that we have today, which is why we ended up with the Johnson case. Mr. Eggena stated that our ordinance has always stated that we will be inspecting footings. Mr. Eggena stated that he wanted Planning and Zoning to follow the ordinances and, if we need to interpret or change the ordinances, then we can do that one step at a time. There was discussion on current ordinance language.

Dean Eggena stated that the building code is a minimum standard and with his experience, the homes are built throughout the state over code already, and that a better home will not be built and you're not protecting the consumer by adopting the building code. Dean Eggena stated that the City could use the code as a means to enforce our zoning ordinance setbacks, but it's an expensive way to do this. Mr. Eggena stated that he is totally against adopting the building code due to cost reasons and he felt that the County would not adopt it either.

There was discussion on whether there is adequate staff to conduct an inspection prior to and after the permit has been issued. Ken Anderson stated that it depends on when and where the inspections are within the City; however, he felt that three staff should be adequate based on the past number of permits. Ken Anderson explained the value of conducting an inspection prior to issuing the permit, as staff could visually see and verify if there were any wetland or bluff concerns and whether the applicant exceeded the size of allowable structures on the property

that the applicant may have omitted from the site plan. Ken Anderson also stressed his concern with commercial and industrial construction and code requirements such as sprinkler systems and other life safety issues. Mr. Anderson stated that it's important to get on the front end of the growth to ensure that these minimum standards are being met for buildings that will exist in the City for many years to come. Mayor Swanson commented that since he has been involved, this is the third time the building code has come up and a lot of it is because people come from larger cities that have the building code. There was discussion on the State Plumbing Code and how the building code does not cover this.

Dean Eggena commented that the ordinance does not require the staking of a home prior to issuing a permit. Dean Eggena stated that there is nothing to be gained by staking prior to construction. Mr. Eggena stated that he should be able to as a contractor, licensed by the state, walk into City Hall for a simple permit and walk out with a permit and place the footing forms and then call the City for an inspection. Anything done prior to this does nothing. Mr. Eggena stated that there should not be a need for additional staff by having the property owner stake the property line and staff inspects the setback.

Terry Curtis stated that he never heard any concerns on the building code at the City Comp. Plan meetings, however, he did hear a lot of concern on the availability of affordable housing, which won't happen when we're adding \$2,000 to \$4,000 to permit costs. Mr. Curtis stated that what he did hear is that we need to enforce the ordinances we have today and that we need to follow up on conditions placed on approved conditional use permits.

There was discussion on other options, such as a joint powers with another city to maintain what we have now. Jack Huber said that there are four separate issues: 1. Building Code; 2. Zoning; 3. Fee/Fines; and 4. Follow up, and that they should be separated and prioritized. Mayor Swanson stated that the City has always been trying to catch the running ball with the growth. Mr. Swanson stated that previously, the Planning and Zoning Commission checked conditions on Variances and Conditional Use Permits the next year and it is his understanding that this doesn't happen anymore. Mr. Swanson stated that what they really want to do is get back to what the ordinance requires, and the building code is a large debate which will not be resolved today. We need to talk about what we really need to do to get to where we want to go which was prioritized by Jack Huber very well.

Dean Eggena commented that we are making the assumption that we've changed and tried to streamline; however, we're accepting responsibility as a City that we may not be responsible for such things as a sprinkler system for Reeds Market, which has nothing to do with the City of Crosslake. Mr. Eggena stated that if we're going to start enforcing regulations for everyone else we need to consider other agencies such as the DNR, FEMA, MPCA, etc. and he pointed out that we should worry about Crosslake zoning first. As a taxpayer, he does not want to pay to enforce DNR rules in the City of Crosslake.

Mayor Swanson recommended that we discuss the process of inspections. Ken Anderson commented on the value of inspecting the site prior to issuing the permit. The on-site inspection allows a review of impervious surface calculations, accessory structures, wetlands, bluffs, topography and grading concerns. Mayor Swanson commented that if we didn't do this, any violations found would then be an after-the-fact variance. Dean Eggena stated that would be the

case and the property owner would have to stop work and apply for a variance if he wants to continue.

Nancy Koch commented on the Certificate of Survey requirement. Dean Eggena stated that they are very expensive. Nancy Koch stated that there would be more consistency. There was discussion on requiring a \$3000 survey for everybody and there was discussion on how expensive it is. Paul Sandelin asked how accurate the measurements would be short of a survey or survey stakes being placed onsite. Ken Anderson commented that it is hard to measure once the site has been excavated. Nancy Koch stated that there is a lot of room for error if the property owner doesn't know where their lot line is, and a lot of property owners don't know where their actual lot line is located. There was discussion on the ordinance requiring that the four corners be staked. There was discussion on staff requiring the lot lines be marked by a surveyor on an as needed basis. Dean Eggena stated that the current ordinance requires that all the property corner stakes have to be in and that the property owner has to show staff where they are and if they can't, Planning and Zoning staff do not have to issue the permit until they are visible. Dean Eggena stated that staff could require the contractor stand a story-pole on all four corners of the addition on a case-by-case basis.

Mayor Swanson discussed the level of service and the fact that big cities don't give the level of service that country cities do and that it costs money to give a higher level of service. If we're going to require Planning and Zoning staff to follow the ordinance which doesn't require an on-site inspection before issuing the permit, then the rest of us need to live with this and the calls this will bring. Nancy Koch stated that there could be delays if the corners are not visible to staff. Mr. Swanson stated that this is right and this is where the political problem's going to come. Gerry Leinfelder asked how this would be communicated to the property owners and developers. There was discussion on these procedures.

Mayor Swanson summed up the general consensus which was to 1) save the building code for another day, 2) forms would be inspected as required by current ordinance language with one inspection, and 3) staff will prepare an appropriate handout to explain this process. There was further discussion on who would stake the corners of the property, a licensed land surveyor or the property owner/contractor. There was discussion that the Planning and Zoning Department was not responsible for finding the pins and that if the property owner/contractor cannot find them they are responsible for having a surveyor come out to their property. It was the consensus that, ultimately, it is the property owners' responsibility to have the lot corner pins accurately located. Mayor Swanson stated that the current ordinance language covers this requirement already. If there is a pin missing, a surveyor has to come out and replace it. There was discussion on the discretion of staff to impose this requirement. There was discussion on the fact that the actual locating of pins should not be oversimplified due to the fact that the typical property owner does not know where their pins are and pins get removed and relocated over time. Terry Curtis stated that you have to do the best with the information provided. Mayor Swanson recommended that staff look at all of the discussed changes and bring back questions if there are any concerns.

There was discussion on whether the form inspection falls within the 10 days permitted for the issuance of a permit. Dean Eggena stated that the 10 days was to check the stakes and we're not checking stakes anymore, commenting that you should be able to walk in get a building permit and leave. Dean Eggena stated that he felt we should be able to give them same day service for

form inspections as we do for sewer inspections. Carla Backstrom commented that this process would reduce the level of service provided and that the department would need to be supported during this change.

## **2. Review Zoning District Permitted, Conditional, Accessory, and Prohibited Uses and proposed Amendment to Chapter 8 of the City Code related to Limited Commercial District Wholesaling/Warehousing Uses.**

Ken Anderson explained that the Planning and Zoning Commission had entertained the Ordinance Amendment within the Limited Commercial zoning district that would allow for Warehousing/Wholesaling with buildings up to 20,000 square feet as a conditional use. Currently, wholesaling/warehousing is currently a prohibited use. Mr. Anderson explained that the Commission chose to table this application, which in turn tabled NMN's variance and conditional use permit application to expand their existing nonconforming use. Mr. Anderson explained that the Commission stated that they did not want to look at one particular use within a district and that all the uses should be reviewed to see how it fits into the big picture. Mr. Anderson stated that this is brought before us today to determine how we want to resolve the issue and how it should be acted upon. Mayor Swanson commented that the City Council is working hard on the Comprehensive Plan with the intent that after the Plan is adopted, the City Council will immediately start working on any zoning changes that are necessary. Mayor Swanson stated that everything would be looked at after this is done, so the Council was asking for an opinion from the Commission on this particular case. Terry Curtis clarified the motion made by the Commission was that they were discussing the issue of not prohibiting wholesaling/warehousing and that the reason it was tabled was to set up a workshop for the Planning and Zoning Board to look at all of the uses instead of just one because of the NMN request. Some of the Commissioners were uncomfortable with the fact that there was a single request coming in and that by adjusting the ordinance for a single request, it would impact all of the Limited Commercial property within the City. Terry Curtis commented that it was his opinion that there was to be a workshop for the Commission members. Ken Anderson explained that there was some discussion on a joint meeting and due to the agenda items to be considered, he felt it would be beneficial for the Commission and Council to meet jointly. Andy Anderson stated that once the Comprehensive Plan is done, all of the issues should be looked at. Dean Eggena commented that by allowing it through a conditional use permit allows safeguards for the City. Dean Eggena commented that by ordinance, the City cannot grant a permit for the NMN request and that when something comes up it should be dealt with at that time. Andy Anderson commented that there were three neighbors in opposition to the request. There was discussion on the current ordinance language. Terry Curtis commented on the surrounding commercial uses including the Manhattan Beach Lodge and the Chiropractic Office. Andy Anderson expressed his concern that expanding a nonconforming use could create an eyesore. There was discussion on appropriate conditions to protect the surrounding area. There was further discussion on the proposed use in the Limited Commercial zoning district.

Mayor Swanson stated that if there were a mutual agreement, the City Council would consider this ordinance amendment at their next meeting. Andy Anderson stated that he still felt uncomfortable with the proposed change based on one current issue. There was discussion on the fact that the City will always have the option to review the conditional use application and determine if it is an appropriate use with conditions for the particular neighborhood the use is being proposed for. There was discussion on the fact that a variance application places a burden

on the property owner, while a conditional use permit application places a burden on the City in the decision of the application.

#### **4. Review and enforcement of conditions for approved Conditional Use Permits.**

Mayor Swanson stated that it is assumed that whatever conditions are placed on a building will be looked after and they need to come into compliance within a year. Dean Eggena stated that conditions should be placed that are enforceable. Paul Sandelin stated that the equal protection law requires that rules need to be applied fairly. There was discussion on the enforcement of conditions. There was discussion on some current conditions placed on some commercial businesses. Terry Curtis stated that conditions should be reviewed over time, as things change over time. Terry Curtis felt that maybe businesses should be able to come in and request the reconsideration of conditions. Nancy Koch stated that a lot of conditions come from input from the applicant at the time of application. Dean Eggena stated that it is not possible for the City to actively enforce all of the conditions on conditional use permits issued. Mayor Swanson stated that there are some that should be enforced within the first year, such as screening and planting, etc. Chuck Miller stated that the conditional use permit conditions should be met within a year and if they are not completed, the City will do it at the applicant's expense. Chuck Miller stated that a letter should be sent that states that it should be done within one year.

There was discussion on David Nevin's and Whitefish Auto's conditions placed on their conditional use permits and whether they were being enforced. Dean Eggena commented that parking limitations on a business are an ongoing issue unlike tree planting, which can be done within a year. Mayor Swanson stated that Planning and Zoning should look at the conditional use permits and modify the ones that need modification and enforce the ones that need to be enforced. Ken Anderson explained that we have gone through the enforcement process of notifying the property owner and staff has sent them numerous letters requiring them to comply with the conditions of approval. The matter has been passed on to the City Attorney and the conditions have still not been met. Mr. Anderson stated that now we have held permits based on this noncompliance and the property owner is now complaining that the conditions are inconsistent with conditions placed on other businesses. Ken Anderson stated that the Commission would be reviewing some of these previously approved conditions for amendment at the applicant's request. Ken Anderson stated that we need appropriate conditions and uniform enforcement. There was further discussion on David Nevin's conditional use permit for Whitefish Log Works. Nancy Koch commented that initially all of these people agreed to the conditions of the permit. Nancy Koch stated that if David Nevin found that he needed the exposure he should have come back and requested an amendment. Mayor Swanson stated that they should be given the opportunity to come back and amend conditions. Nancy Koch stated that the property owner has the ability to come back and amend their permit. Chuck Miller stated that a statement should appear in the Comp Plan that all nonconforming businesses that don't meet their conditions will be notified and enforced. Chuck Miller stated that there has to be conditions and they need to be enforced. Dean Eggena stated that the property owner should be given the choice to come back and amend their conditions. There was discussion on the fact that any amendments would require a new public hearing and the applicant would be responsible for paying the conditional use permit application fee.

Ken Anderson stated that he wouldn't want to encourage everybody to request an amendment based on the timing and staff issues. He stressed that whatever we impose as conditions on a permit, that they be very reasonable, very well thought out, and very clear to the applicant. Also,

the approved conditions will be expected to be completed within a year and that a review and/or inspection will be done. Ken Anderson stated that the Commission and Council as a group may get phone calls and staff needs to be backed up once enforcement of these conditions begin. Terry Curtis clarified that there would be an inspection within one year and a letter would be sent stating what needs to be done and giving the property owner their options. Tom Swenson commented that the debate should be on the reasonableness of the applicant's conditions and not the conditions placed on their neighbor's. Mayor Swanson stated that there should be no comparisons. Paul Sandelin suggested that the property owner be given the opportunity to address the Commission prior to the violation being brought to court. Dick Phillips suggested that some of the older conditional use permits be notified of the upcoming enforcement of conditions so they have the opportunity to comply prior to enforcement. Paul Sandelin stated that there could be a notice of a meeting of the enforcement action to give the applicant's notice.

THE JOINT MEETING ADJOURNED AT 11:45 A.M.

**5. Review terms of the 2003 Audit and 2004 Audit Accounting Agreements.**

Mayor Swanson referenced the letter received from Tom Swenson explaining that there appears to be a misunderstanding between the staff and the City Council regarding the hiring of Larsen Allen and whether the intent of their hiring was to assist with the 2003 audit or work with the City throughout 2004 and prepare the pre-audit documents for the 2004 Audit. Tom Swenson explained what was approved by the motion that was made and explained that staff was also looking for assistance in the future.

MOTION 01-01-04 WAS MADE BY DEAN EGGENA AND SECONDED BY CHUCK MILLER TO HIRE MATHIAS JUSTIN AT \$5,500.00 TO DO THE 2003 AUDIT, NOT TO EXCEED \$4,500.00 ON THE 2004 AUDIT AND TO HIRE LARSEN ALLEN TO ASSIST THE CITY, NOT TO EXCEED \$8,000.00 THROUGHOUT 2004. ALL MEMBERS VOTED AYE, MOTION CARRIED UNANIMOUSLY.

MOTION 01-02-04 WAS MADE BY CHUCK MILLER AND SECONDED BY DICK PHILLIPS TO APPROVE THE BILLS FOR PAYMENT. ALL MEMBERS VOTED AYE, MOTION CARRIED UNANIMOUSLY.

Tom Swenson added that the City Council had requested a status report on the Marion Ridge letter that was going to the Legislators. Tom Swenson stated that Darlene Roach and he had worked with Alden and they drafted a proposed letter with changes made by Ms. Ridge that she would like to sign and submit. Mayor Swanson stated that she is putting in a bill for \$1,000,000.00 for the Crosslake Library with a hearing scheduled on February 12, 2004.

MOTION 01-03-04 WAS MADE BY CHUCK MILLER AND SECONDED BY DEAN EGGENA AUTHORIZING THE MAYOR TO SIGN THE LETTER TO THE LEGISLATORS. ALL MEMBERS VOTED AYE, MOTION CARRIED UNANIMOUSLY.

MOTION 01-04-04 WAS MADE BY DEAN EGGENA AND SECONDED BY DICK PHILLIPS TO ADJOURN THE MEETING. ALL MEMBERS VOTED AYE, MEETING ADJOURNED AT 11:57 A.M.

Taped and Transcribed by Carla Backstrom

**BILLS FOR APPROVAL**  
**20-Jan-04**

VENDOR	DEPT	AMOUNT
Ameripride, floor mats	PW	87.31
Cellular One, cell phone charges	PW	28.03
Crow Wing Auto Body, stripe and logo squad	Police	120.00
Dacotah Paper, mop, towels	P&R	101.58
Echo Publishing, public hearing 1-23	P&Z	43.75
Echo Publishing, ordinance 186	Gov't	31.25
Echo Publishing, commission ad	P&Z	23.00
Executive Training Institute, chief of police conference	Police	280.00
Intoximeters, pbc's	Police	1,038.38
Mills Motors, molding	Police	61.16
MN Chiefs of Police Assn, membership dues	Police	75.00
Pegot Auto Parts, conditioner	PW	66.78
Reed's Market, forks, tissues, plates	Gov't	27.05
Simonson Lumber, wood	PW	2.02
Simonson Lumber, insulation	Cemetery	19.90
Triangle Oil, unleaded gasoline	PW	309.52
Triangle Oil, diesel fuel	PW	95.06
Ziegler Cat, install fender	Police	606.59
<b>TOTAL</b>		<b>3,016.38</b>