

**CITY OF CROSSLAKE
CITY COUNCIL
SPECIAL MEETING
1:00 P.M., TUESDAY, JANUARY 30, 2007
CITY COUNCIL CHAMBERS, CITY HALL
MINUTES**

MEMBERS PRESENT: Mayor Jay Andolshek, Steve Roe, Dean Swanson, Terry Curtis and Irene Schultz

OTHERS PRESENT: Tom Swenson, City Administrator; Planning and Zoning Commissioners Peter Abler, Mike Winkels, Dale Melberg, Nancy Addington and Roger Lynn; Kenneth Anderson, Community Development Director; Bryan Hargrave, Planner - Zoning Coordinator; Paul Sandelin, City of Crosslake Attorney

SPECIAL MEETING/CALL TO ORDER: Mayor Jay Andolshek called the meeting to order at 1:01 P.M. He stated that there would be a public hearing in the Kevin Hummel appeal of the denial of C2006-011, then the meeting would be closed and the Council would make a decision on the appeal.

MOTION 01PH-01-07 WAS MADE BY DEAN SWANSON, SECOND BY IRENE SCHULTZ TO OPEN THE PUBLIC HEARING. MOTION CARRIED WITH ALL "AYES."

1. Appeal 2006-003, Kevin Hummel appeal of C2006-011 denial by the City of Crosslake Planning and Zoning Commission

Mayor Jay Andolshek went over the purpose of the special meeting. Kevin Hummel applied for a Conditional Use Permit (C2006-011) to create a controlled access lot for the new six-lot Wild Haven Plat on Daggett Lake. The Planning and Zoning Commission denied the application. Mr. Hummel was appealing the Commission's decision to the City Council, asking that the denial be overturned. Mayor Andolshek then asked Mr. Hummel for his comments.

Lonny Thomas of 34354 CR 3, Crosslake, Mr. Hummel's Attorney, addressed the Council. Mr. Thomas stated that he had submitted a number of papers addressing the reasons why Mr. Hummel felt the decision by the Planning and Zoning Commission was wrong and should be overturned. Mr. Thomas did not wish to go over those papers in detail; he wanted to highlight some cogent points. Mr. Thomas enumerated the following points:

- He wanted the City Council to understand that the application was submitted by a person who is not a developer. The Applicant read the City Ordinance and on the basis of what he read, made the application for a Controlled access lot.
- The Applicant has invested his future in the lot and that what he was proposing to do was lawful.

- It was obvious that the Planning and Zoning Commission listened to all of the comments of the people at the meeting and felt pressure to deny the application. The people who complained offered no solutions.
- The Law says that a Conditional Use Permit (CUP) is a way of putting conditions on a legal project.
- Mr. Thomas went over the seven (7) requirements for a CUP, as enumerated in the City Ordinance.
- When there is a Zoning Ordinance, people should be able to rely on what's in the Ordinance.
- Minnesota case law states that if a local government unit has CUP requirements and the steps are all laid out as to the requirements for the CUP, then it is arbitrary and capricious for the Planning and Zoning Commission to deny the CUP. They should just be discussing the appropriate conditions.
- Neighbors don't get a vote on approval of a CUP if Ordinance requirements are met.
- If the City Council imposes a moratorium on the approval of Controlled access lots, it would not affect this application.
- Mr. Thomas asked the City Planning and Zoning Department to put together a history of all CUPs' that set up controlled access lots. None have ever been denied. So there is no precedent for denying his client's application. If approved, this would be the third controlled access lot on Daggett Lake.
- Mr. Thomas went over the Eureka decision, a recent Minnesota Appeals Court ruling which overturned the denial of a CUP by a local unit of government. He felt the issues were similar to this application.
- Mr. Thomas went over the Planning and Zoning Commission reasons for denial of the CUP.
 - The proposed controlled access lot may be injurious to the use and enjoyment of other property owners in the immediate vicinity – this reason is very nebulous. How is the approval of a controlled access lot going to be injurious to other lot owners? Mr. Thomas said that case law has made it clear that the Commission must be specific about the negative impacts – they need to be quantified.
 - The controlled access lot is non-contiguous to the Wild Haven Plat – Mr. Thomas stated that there are no requirements in City Ordinance that a controlled access lot has to be contiguous to the lots it services.
 - The shared ingress/egress drive will negatively impact the lot to the west – Mr. Thomas questioned how it would negatively impact the lot. He also stated that Mr. Hummel has said that he would move the driveway at his expense.
 - Traffic congestion and public safety hazard – even if this is true, then the Commission should have crafted conditions to deal with this issue.
 - The use is incompatible with the existing neighborhood – this didn't make sense to Mr. Thomas. The proposed controlled access lot would only be used for lake access – it serves no other purpose.
- Enforcement problems – Mr. Thomas stated that a CUP can be revoked if conditions are not met.

City Attorney Paul Sandelin went over the conditions for a successful CUP by City Ordinance. He felt that if the City Council wished to deny the appeal, their whole focus should be on the public health, safety and welfare portion of the CUP requirements. He went on to state that the City Council would need to come up with specific reasons, not just some generalized speculative reasons. Terry Curtis asked if the City Council was here to overturn the decision of the Planning and Zoning Commission or was the City Council here to redo the denial of the CUP and do it legally? Mr. Sandelin answered that the City Council was either going to agree with the decision of the Commission or it was going to disagree and come up with conditions for the approval of the CUP. Mr. Curtis asked if the decision was appealed to District Court, would the Court consider the action of the City Council or the action of the Planning and Zoning Commission? Mr. Sandelin said that the Court would consider the decision of the last government body decision, which would be the City Council, but that the Planning and Zoning Commission decision would be part of the record the Court would consider. Mr. Curtis said that if the Council agreed with the decision of the Planning and Zoning Commission but could not justify it legally, then this would be an opportunity to correct the decision. Mr. Sandelin agreed. Mayor Andolshek stated that the City Council would need to come up with good reasons to overturn the Planning and Zoning Commission decision also. Dean Swanson asked Mr. Sandelin if the City Council overturned the decision, would the community have the right to appeal their decision. Mr. Sandelin said that they could if they have good legal standing. Mayor Andolshek then asked for public comment.

Peter Abler of 34447 Duck Lane, City of Crosslake was the first to give public comment. Mr. Abler is the Chairperson of the Crosslake Planning and Zoning Commission and he wished to tell the City Council the rationale for the Commission's decision. He stated that the Commission visited the site of the proposed controlled access lot the day before the Commission meeting. He said that the first impression that struck him was the narrowness of Rabbit Lane. Mr. Abler said that the Commission discounted the argument about the loss of property values by neighbors. He went on to say that the Commission struggled with establishing conditions of CUP approval. In the end, the Commission decided that allowing a controlled access lot in this area was *not* the right thing to do. Terry Curtis asked if the Commission offered any conditions that would prohibit parking? Mr. Abler answered in the affirmative – they considered restrictions on parking in Rabbit Lane. They felt it would hurt other residents. Mr. Curtis asked if the Commission considered requiring the applicant to create a cul-de-sac at the end of Rabbit Lane? Mr. Abler said the Commission did not consider that particular condition. Mr. Curtis stated that the Commission could put as many conditions as they considered necessary on a CUP – did they come up with any other conditions that didn't make it into the Commission meeting notes? Mr. Abler said they didn't – the biggest obstacle in their minds was the parking issue. Mr. Curtis commented that no parking on any controlled access lot was really a problem.

Delores Rubald of 14355 Rabbit Lane, City of Crosslake, said that her lot is two lots over from the proposed controlled access lot. She stated that she was against the approval of the controlled access lot – in her experience with the Tall Timbers Trail Plat across the lake, people parked on the controlled access lot there all the time. She didn't want to see the same sort of problem in her current neighborhood. She went on to state that there are many small children in the neighborhood and she felt that there would be a safety issue.

Quintin Rubald Jr. of 14355 Rabbit Lane, City of Crosslake, said that Lisa Taylor, another neighbor, had contacted the City Fire Chief and asked him about access for emergency vehicles if cars were parked on Rabbit Lane. The Fire Chief told her that there was no way fire trucks could get access to the end of Rabbit Lane if cars were parked on the road. Mr. Rubald went on to say that enforcement would be a big issue. He wanted to know who was going to enforce the conditions of the controlled access lot.

Kurt Swenson of 14398 Rabbit Lane, City of Crosslake, said that parking on Rabbit Lane should not be an option. He stated that there would be an environmental impact – putting more people on the lake would put much more pressure on the lake environment. He said that the controlled access lot was not appropriate for the neighborhood. He further stated that the Wild Haven plat was too far from the controlled access lot for people to walk to.

Gary Hickok of 36775 Pine Bay Drive, City of Crosslake, stated that there would be no place for people to go to the bathroom. He went on to say that if the driveway is moved, it would require the removal of trees, which would negatively impact the visual qualities of the neighborhood. He felt that the proposed controlled access lot does not fit with the existing area.

Lonny Thomas, attorney for Kevin Hummel, wished to point out that people who own controlled access lots are no different than anyone else. The lots serve no other function than accessing the lake. They would only be used for 12 to 14 weeks out of the year. The Commission should have crafted conditions to deal with the anticipated problems. They worked long and hard to deal with this – however, they didn't discuss any conditions to make the approval of the controlled access lot acceptable.

Mayor Jay Andolshek asked Planning and Zoning Staff what could be done on the controlled access lot. Community Development Director Ken Anderson answered that the lot could be used only for lake access. The owners could not picnic, park or camp on the lot according to City Ordinance. City Administrator Tom Swenson asked if the docks on the property could be stored there or would they be required to be moved elsewhere. Mr. Anderson said that City Ordinance specifies that docks can be stored on the lot along the shore from October to May. Terry Curtis said that one of the possible conditions is that no docks could be stored on the lot. He went on to say that the minimum conforming lot size is 20,000 sq. ft. He asked Mr. Anderson how big the proposed controlled access lot is? Mr. Anderson answered that it is about 30,000 sq. ft. in area. Mr. Curtis asked how many boats the neighbors could moor on their properties? Mr. Anderson answered that there are no restrictions as to the number of boats they could moor. Tom Swenson asked about the configuration of the docks for the proposed controlled access lot. Mr. Anderson stated that Kevin Hummel had submitted a drawing showing the configuration. Mr. Joe Oshwaldt, DNR Area Hydrologist from Brainerd, requested that only one dock extend out from the shoreline instead of multiple docks. Mayor Andolshek asked about the width of the right-of-way on Rabbit Lane. Mr. Anderson said that he assumed the right-of-way was 66 ft. – the pavement was 16 ft. wide (the platted right-of-way is actually 60 ft.). Bryan Hargrave verified this. Mayor Andolshek asked if there was any thought to allowing parking on controlled access lots. Mr. Anderson stated that City

Ordinance does not allow this. He went on to say that this particular City street, Rabbit Lane, was not designed for a cul-de-sac. He also said that the City received three other written comments: these came from Nick Loscheider of 14406 Rabbit Lane, Bart and Lisa Taylor of 14370 Rabbit Lane and Ronald Sleiter of 14436 Rabbit Lane. All three were against approval of the proposed controlled access lot.

Tom Swenson had a question for Lonny Thomas. Six owners would share the proposed controlled access lot. What happens if one lot owner doesn't pay their property tax for seven years – what would happen to their share? Mr. Thomas stated that he hadn't set up the covenant for the plat. He discussed various possible options. Mr. Swenson stated that if there is an outstanding assessment, one of the conditions of approval should be that the special assessments should be paid off before the establishment of the controlled access lot.

Rick Schuler of 14384 Rabbit Lane, City of Crosslake said that he bought his lot in 1975. The neighborhood was residential when he bought his lot and he felt that it should remain that way. He felt there would be negative impacts on neighborhood noise and the lake. He stated that he met Mr. Hummel last fall. Mr. Hummel told him that he had bought the lot and wanted to move his family there. Mr. Hummel never said anything about his desire to establish a controlled access lot.

Lonny Thomas responded that the Zoning Ordinance is clear. controlled access lots are allowed. Mr. Hummel talked to Planning and Zoning Staff before buying the lot.

Kurt Swenson of 14398 Rabbit Lane, City of Crosslake commented that Rabbit Lane is a dead-end road. It is large enough to handle traffic now. However, it is not large enough to handle significantly more traffic.

MOTION 01PH-02-07 WAS MADE BY STEVE ROE, SECOND BY DEAN SWANSON TO CLOSE THE PUBLIC HEARING AT 2:30 P.M. MOTION CARRIED WITH ALL "AYES."

Dean Swanson made some comments. He said that there are many ways to define residential. In his opinion, taking a house off of the lot makes it non-residential. There was no mention of a controlled access lot when the Wild Haven Plat was developed. He went on to say that Rabbit Lane was developed as a substandard City street because the residents didn't want to take out more trees. He thought there was a safety issue with allowing this controlled access lot. He said the main goal of the City Council is to ensure the safety, health and welfare of the community. He went on to say that he was in favor of the Planning and Zoning Commission decision.

Steve Roe said that he didn't think it was fair to the current property owners to approve the controlled access lot. He said that the City doesn't enforce the plat covenants so enforcement of the conditions is an issue. A controlled access lot is normally a part of a subdivision with riparian and non-riparian owners. He went on to say that his other concerns include insurance and liability, size of boats, sanitary facilities and property ownership. Paul Sandelin said that conditions could be attached to the CUP governing ownership structure. Steve Roe stated that

the City really needs to watch plat covenants carefully. Mr. Sandelin said the leverage the City has is to revoke the CUP if the conditions are not being followed. He went on to advise that if the City Council was considering a denial, then they needed to identify specific reasons not specified by the Planning and Zoning Commission.

Dean Swanson said that safety is the biggest issue in his mind— in particular, the width of Rabbit Lane and possible access for emergency vehicles. Terry Curtis asked the City Attorney if he thought that the Council lacked the discretion to deny the appeal based on Ordinance language? Mr. Sandelin said that the Council had the discretion to approve or deny, but that they needed to craft good reasons for denial. Mr. Curtis stated that he agreed with Dean Swanson and Steve Roe, but he was struggling with the legal reasons to deny the appeal. He related some similar case histories. He was uncomfortable with picking and choosing cases that were based on land values. He said that he would rather see the CUP application approved with appropriate conditions.

Mayor Andolshek stated his reasons for opposing the approval of the application: the controlled access lot is not contiguous with the Wild Haven Plat; it is not within walking distance; Rabbit Lane is a substandard street and there would be no bathroom or parking facilities. Irene Schultz asked if the Council could legally deny the application if it met all Ordinance conditions? Paul Sandelin said no but in his mind, Consideration No. 4 which states: The use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the City. He went on to say that the Council shouldn't come up with unreasonable conditions to stop it.

MOTION 01S2-01-07 WAS MADE BY DEAN SWANSON, SECOND BY STEVE ROE TO DENY APPEAL 2006-003 BASED ON THE FACT THAT NOT ALL CUP CRITERIA HAVE BEEN MET AND THE FOLLOWING REASONS: 1.) HEALTH, SAFETY AND WELFARE – ACCESS FOR FIRE TRUCKS AND OTHER EMERGENCY VEHICLES WOULD HAVE LIMITED ACCESS WITH VEHICLES PARKED ON RABBIT LANE DUE TO THE NARROW STREET WIDTH; 2.) RABBIT LANE IS A SUBSTANDARD CITY STREET – IT IS NOT SUITABLE FOR SAFE PARKING OF VEHICLES FOR THE CONTROLLED ACCESS LOT OWNERS DUE TO THE STREET WIDTH; 3.) THE CONTROLLED ACCESS LOT IS NOT CONTIGUOUS WITH THE WILD HAVEN PLAT; 4.) THE CONTROLLED ACCESS LOT IS NOT WITHIN WALKING DISTANCE OF THE WILD HAVEN PLAT; 5.) SANITATION AND BATHROOM FACILITIES WOULD NOT BE AVAILABLE ON THE CONTROLLED ACCESS LOT; 6.) THE USE WILL BE INCOMPATIBLE WITH THE EXISTING NEIGHBORHOOD; 7.) THE PROPOSED CONTROLLED ACCESS LOT MAY BE INJURIOUS TO THE USE AND ENJOYMENT OF PROPERTY BY OTHER PROPERTY OWNERS IN THE IMMEDIATE VICINITY; 8.) THE SHARED INGRESS/EGRESS DRIVE WILL NEGATIVELY IMPACT THE LOT TO THE WEST OF THE SUBJECT PROPERTY.

Paul Sandelin asked when the road was last improved? Tom Swenson answered that he thought it was done around 2000. He said that it is substandard by City road standards. There was adequate right-of-way to build to City standards, but the City chose not to build it to City standards based on the neighborhood concerns. Much discussion followed on how to state the

findings of fact to base the decision on. Paul Sandelin said that the reasons for the denial would be put down in a findings-of-fact document, which would be signed by the Mayor.

MOTION PASSED ON A 4 TO 1 VOTE WITH JAY ANDOLSHEK, DEAN SWANSON, STEVE ROE AND IRENE SCHULTZ VOTING "AYE" AND TERRY CURTIS VOTING "NAY".

2. Interim Use Ordinance 242. One year moratorium on controlled access lots in the City of Crosslake

Ken Anderson went over the proposed Ordinance. He stated that Staff crafted the Ordinance based on an older Ordinance that put a moratorium on lakeshore PUDs'. The purpose for the moratorium would be to allow sufficient time to complete the update to the Comprehensive Plan, study possible revisions to the performance standards for controlled access lots and review ordinance standards applicable in other jurisdictions such as Crow Wing County.

MOTION 01S2-02-07 WAS MADE BY TERRY CURTIS, SECOND BY STEVE ROE TO ENACT A MORATORIUM ON CONTROLLED ACCESS LOTS IN THE CITY OF CROSSLAKE.

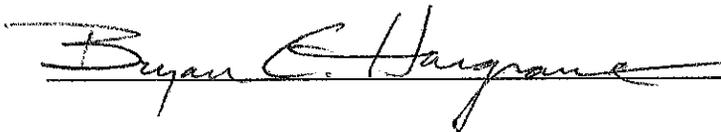
Discussion followed on the length of the moratorium and completing the Comprehensive Plan. Tom Swenson stated that the City Council could take the moratorium off at any time they wish. It doesn't have to run for a year. The maximum the moratorium would be in effect would be one year.

MOTION CARRIED WITH ALL "AYES."

ADJOURN:

MOTION 07S1-07-06 WAS MADE BY DEAN SWANSON, SECOND BY IRENE SCHULTZ TO ADJOURN THE MEETING AT 3:20 P.M. MOTION CARRIED WITH ALL "AYES."

Minutes Respectfully Prepared by Bryan Hargrave

A handwritten signature in cursive script that reads "Bryan C. Hargrave". The signature is written in black ink and is positioned below the typed name of the preparer.

**CITY OF CROSSLAKE
COUNTY OF CROW WING
STATE OF MINNESOTA**

**IN RE: APPLICATION FOR
CONDITIONAL USE PERMIT
BY KEVIN HUMMEL**

**FINDINGS OF FACT AND
CONCLUSIONS OF THE
CITY COUNCIL**

January 30, 2007

This matter comes before the Crosslake City Council (the "City") upon appeal of the December 15, 2006 decision of the Crosslake Planning Commission to deny Conditional Use Permit Application CUP 2006-011 (the "CUP Application") of Kevin Hummel (the "Applicant"). A public hearing on the appeal was conducted before the City on January 30, 2007 at the Crosslake City Hall. The decision of the City Council was read into the record on January 30, 2007 and the following constitutes the written decision of the City Council as authorized by the City Council at the January 30, 2007 Special City Council Meeting. Attorney Lonny Thomas represented the Applicant at the appeal hearing. Other appearances were as noted on the record.

BACKGROUND

The property, which is the subject of the "CUP Application", is located at the following address: 14378 Rabbit Lane, Crosslake, Minnesota. The property is currently zoned R-3, Medium Density Residential. According to information provided by the Applicant, the current fee owner of the property is Kevin Hummel and the lot size is approximately 30,000 sq. ft. The legal description for the property that is the subject of the application is as follows (the "Subject Property"):

See Attached Exhibit A

The Applicant applied for a Conditional Use Permit (C2006-011) to create a controlled access lot within the Plat of Pine Bay to serve a six lot subdivision located within Wild Haven Plat on Daggett Lake. The Planning and Zoning Commission denied the application. The Applicant appealed the

Planning Commission's decision to the City Council.

At the appeal hearing on January 30, 2007 the City Staff provided a written summary review of the application as well as the action taken by the Planning Commission. A copy of the Application and minutes of the Planning Commission decision were provided to the City Council in addition to letters from interested parties as well as information/documents provided by Applicant's attorney.

Applicant's attorney reviewed the Applicant's position on appeal including responses to the Planning Commission decision as well as concerns raised by interested parties, as follows:

- The proposed controlled access lot may be injurious to the use and enjoyment of other property owners in the immediate vicinity.
- The controlled access lot is non-contiguous to the Wild Haven Plat – Applicant's contention is that there is no requirement in the City Ordinance that a controlled access lot has to be contiguous to the lots it services.
- The shared ingress/egress drive will negatively impact the lot to the west – Applicant questioned how it would negatively impact the lot.
- Traffic congestion and public safety hazard – even if this is true, then the Applicant's position is that the Commission should have adopted conditions to address the issue.
- The use is incompatible with the existing neighborhood – Applicant contends that the proposed controlled access lot would only be used for lake access – it serves no other purpose.
- Enforcement problems – Applicant stated that a CUP can be revoked if conditions are not met.

The City Attorney reviewed with the City Council the requirements established by the City Ordinance for conditional use permits. The City Attorney also identified the options available to the City for disposition of the appeal, i.e., affirm or reverse the decision of the Planning Commission including the necessity for findings of fact to support its decision.

The Chairman of the Planning Commission also provided the City Council with the rationale for the Planning Commission decision. He stated that the Commission visited the site of the proposed controlled access lot the day before the Commission meeting and reviewed the road conditions on Rabbit Lane. The Chairman discounted the argument about the loss of property values by neighbors. The Commission struggled with establishing conditions of CUP approval. The Planning Commission considered parking restrictions on Rabbit Lane. The Planning Commission determined it would negatively impact residents and did not consider that particular condition practical given the narrow road width and lack of cul-de-sac or turnaround. The Planning Commission determined one of the biggest obstacles was parking as no parking is allowed on any controlled access lot and parking on the street was not practical.

Various neighbors spoke in opposition to the Application for parking and safety reasons.

Other concerns centered around access for emergency vehicles and whether on street parking would inhibit access by emergency vehicles. In addition interested parties voiced concern over the lack of sanitary facilities on a controlled access lot given the distance between the controlled access lot and the nonriparian lots served by the controlled access lot.

The allowed or permitted uses available for the controlled access lot pursuant to the City's Ordinance only include lake access. The owners could neither picnic, park nor camp on the lot according to City Ordinance. Docks could be stored on the lot along the shore from October to May.

The configuration of the docks for the proposed controlled access lot was reviewed by the DNR and the DNR requested that only one dock extend out from the shoreline instead of multiple docks.

The width of the right-of-way on Rabbit Lane was discussed by the City Council. The paved surface of Rabbit Lane is 16 feet in width. Rabbit Lane, which serves the Subject Property, was not designed for a cul-de-sac and includes no turn around areas, in other words it is a dead end street. Further, Rabbit Lane was developed as a minor City street within the past 6 years because the residents did not want to remove trees and widen the existing road.

Wild Haven Plat was approved by the City on November 13, 2006. When the plat was approved there was no specific approval or consideration of the nonriparian lots within the plat to be served by a riparian controlled access lot within a separate plat. In other words there are no lots of record within the plat of Wild Haven that were approved as a controlled access lot. Further when the plat of Pine Bay was approved it was likewise not approved with any controlled access lots and necessarily therefore no approval of a controlled access lot was considered within the Pine Bay plat that would serve nonriparian lots located in a separate plat. A controlled access lot is normally a part of a subdivision with riparian and non-riparian owners.

Mayor Andolshek stated his reasons for opposing the approval of the application: the controlled access lot is not contiguous with the Wild Haven Plat nor approved as part of the Wild Haven Plat; the controlled access lot is not within walking distance of the nonriparian lots; Rabbit Lane is a substandard city street and there would be no bathroom or parking facilities.

Based upon the evidence and testimony presented to the Planning Commission at the December 15, 2006 meeting, evidence and testimony presented to the City Council on January 30, 2007, and all of the files, records and proceedings, the City Council hereby makes the following Findings of Fact and Conclusions:

FINDINGS OF FACT AND CONCLUSIONS

1. The Findings of Fact and minutes of the Planning Commission are incorporated herein and made a part of this record.
2. Attached hereto as **Exhibit B** is a copy of the Minutes of the January 30, 2007 City Council meeting, which are incorporated hereto and made a part of this record.

3. The property is zoned R-3, Medium Density Residential and is located within the City of Crosslake, MN 56442. The Parcel ID number for the Subject Property is #1416300090CD009.
4. The legal description for the property, which is located in Crow Wing County, is as follows (the "Subject Property"):

See Attached Exhibit A

The Subject Property and the nonriparian lots proposed to be served by the controlled access lots are contained within separate plats. When each plat was approved there were no provisions for a riparian controlled access lot to serve nonriparian lots within either plat.

5. The Applicant is Kevin Hummel, 14284 Tall Timber Trail, Crosslake, MN 56442 (the "Applicant").
6. The City received evidence and testimony from all interested parties relating to the controlled access conditional use permit application and in particular the factual basis as to why the Application meets or does not meet the requirements of the City's Land Use Ordinance and Comprehensive Plan.
7. The Crosslake Land Use Ordinance indicates that the following items must be considered with respect to a conditional use permit application and all factors listed below were considered by the City Council and the Planning Commission:
 - a. The conditional use should not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted on that property, nor substantially diminish or impair values in the immediate vicinity.
 - b. The conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
 - c. The conditional use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
 - d. The conditional use will have vehicular approaches to the property, which are so designed as not to create traffic congestion or an indifference with traffic on surrounding public thoroughfares.
 - e. Adequate measures have been taken to provide sufficient off-street parking and loading space to serve the proposed use.
 - f. Adequate measures have been taken or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so none of these will

constitute a nuisance and to control lights and signs in such a manner, that no disturbance to neighboring properties will result.

- g. The conditional use will not result in the destruction, loss or damage of a natural, scenic or historical feature of major significance.
 - h. The conditional use will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients.
8. The Crosslake Land Use Ordinance outlines the following items that must be met in order for the City to approve a conditional use permit. Findings and Conclusions for each element are as follows:
- a. The use or development is an appropriate conditional use in the land use zone: Yes, the use conforms to the Land Use Ordinance for the following reason:
 - The City's Land Use Ordinance identifies a controlled access lot as a conditional use in the R-3 zone.
 - b. The use or development, with conditions, conforms to the comprehensive land use plan. No, the use does not conform to the Comprehensive Plan for the following reasons:
 - The use will be incompatible with the existing neighborhood as there are no controlled access lots within the neighborhood and further
 - The Subject Property and the nonriparian lots proposed to be served by the controlled access lots are contained within separate plats. When each plat was approved there were no provisions for a riparian controlled access lot to serve nonriparian lots within either plat. Neither the Comprehensive Plan, Land Use Ordinance nor Subdivision Ordinance contemplate a riparian lot providing controlled access to nonriparian lots within separate plats.
 - c. The use with conditions is compatible with the existing neighborhood. No, the use is not compatible for the following reasons:
 - The use will be incompatible with the existing neighborhood as there are no controlled access lots within the neighborhood.
 - The use will provide access to nonriparian lots not located within the same subdivision as the controlled access lot.
 - The City's Land Use Ordinance and Subdivision Ordinance does not contemplate a controlled access lot providing lake access to nonriparian lots that are not located within the same subdivision. Both the Land Use Ordinance and Subdivision Ordinance refer to controlled access lots as

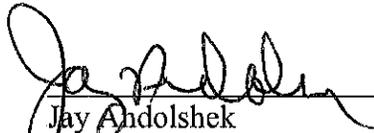
owned by lot owners of the same subdivision or Planned Unit Development.

- Rabbit Lane is a minor City dead end road that was neither designed nor constructed to accommodate off street parking.
 - The lack of a cul-de-sac or turnaround creates a traffic and safety issue for off street parking since by ordinance the City does not allow parking on a controlled access lot.
 - The controlled access lot has no bathroom or sanitary facilities.
 - The controlled access lot is not within walking distance to the nonriparian lots and there is no parking allowed on the lot.
- d. The use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the City. No, the proposed use would not meet this requirement.
- Rabbit Lane is a substandard City dead end road that was neither designed nor constructed to accommodate on street parking.
 - The lack of a cul-de-sac or turnaround creates a traffic and safety issue for on street parking since by ordinance the City does not allow parking on a controlled access lot and on street parking is not an acceptable condition of approval for public safety reasons.
 - The controlled access lot has no bathroom or sanitary facilities.
 - The controlled access lot is not within walking distance to the nonriparian lots and there is no parking allowed on the controlled access lot.
 - The City's Land Use Ordinance and Subdivision Ordinance does not contemplate a controlled access lot providing lake access to nonriparian lots that are not located within the same subdivision. Both the land Use Ordinance and Subdivision Ordinance refer to controlled access lots as owned by lot owners of the same subdivision or Planned Unit Development.

Based upon the foregoing the City of Crosslake hereby determines that:

1. The Conditional Use Application is denied and the decision of the Planning Commission is affirmed for the above-stated reasons.

Passed by the City Council this 30th day of January 2007 by a 4/5th vote.


Jay Andolshek
Mayor


Thomas N. Swenson
City Administrator

This document was drafted by:

Paul J. Sandelin (#188359)
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218-568-8481

S:\LAW\TEXT\70424.418\City Council Findings.doc

STATE OF MINNESOTA)
) ss
COUNTY OF CROW WING)

The foregoing instrument was acknowledged before me this 12th day of March 2007 by Jay Andolshek, the Mayor, and Thomas N. Swenson, the City Administrator, respectively, of the City of Crosslake, a Minnesota municipal corporation, on behalf of the corporation.


Notary Public

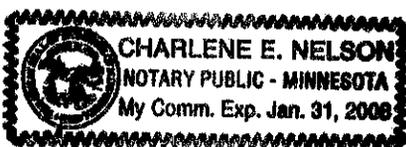


EXHIBIT A

Legal Description

Part of Outlot C of PINE BAY, according to the plat on file at the Register of Deeds described as follows: beginning at the iron pipe monument on the shore of Daggett Lake which is 120 feet North 86 degrees 01 minute East from the Northwest corner of said Outlot C; thence South 3 degrees 27 minutes West 347.8 feet to the Northerly line of Rabbit Lane; thence South 28 degrees 08 minutes East 63 feet along said Rabbit Lane; thence North 15 degrees 06 minutes East 425.8 feet to the South shore of Dagget Lake; then South 86 degrees 01 minutes West 120 feet along said shore to the place of beginning, Crow Wing County. Subject to all reservations of record.

EXHIBIT B

January 30, 2007 City Council Minutes