

SPECIAL COUNCIL MEETING
CITY OF CROSSLAKE
THURSDAY, APRIL 21, 2005
2:00 P.M. - CITY HALL

Pursuant to proper notice and call, the City Council met in a special session on Thursday, April 21, 2005 at 2:00 P.M. at City Hall. The following Council Members were present: Mayor Jay Andolshek, Terry Curtis, Dean Eggena, Dick Phillips and Dean Swanson. Also present was City Administrator Tom Swenson, Community Development Director Ken Anderson, and Clerk/Treasurer Darlene Roach. Also in attendance were Curt Hoffman and Dan Vleck of the Minnesota Pollution Control Agency (MPCA), Doug Morris of Crow Wing County Solid Waste, Brian Clapper of the Lake Country Echo, Renee Richardson of the Brainerd Dispatch and a reporter from Lakeland TV who video taped the meeting. There were approximately thirty individuals in the audience.

Mayor Andolshek called the special meeting to order at 2:00 P.M. and stated that the agenda before the Council would allow time for the public to speak at the podium. Council Member Eggena excused himself from the Council Table and took a seat in the audience. Mr. Eggena is the owner of the Crosslake Construction Demolition Debris Disposal Facility. The operation and proposed re-permitting of this facility is an item for discussion at this meeting.

The meeting was turned over to Community Development Director Ken Anderson. Council Member Phillips inquired about re-permitting and Mayor Andolshek stated that the MPCA was present at the meeting to explain the re-permitting process.

Ken Anderson was asked by the Council to prepare a chronological overview of the demolition facility. This review resulted in a Staff Report consisting of twelve pages of detail consisting of permit activity and other events associated with the demolition facility. Several exhibits were included as a part of Anderson's Staff Report.

Anderson stated that on May 5, 1977 the zoning for this site was changed from commercial to industrial. Initially, the site consisted of buildings to house Native Lumber Company. In subsequent years, permits were issued to Mr. Eggena to build two houses, a pole building, installation of septic systems and for placement of a temporary recreational vehicle. In 1990 an application for a conditional use permit was submitted for a demolition and industrial waste facility. On January 11, 1991 and on January 14, 1991, the City Council met to review the conditional use permit as requested by Mr. Eggena. On March 11, 1991 a third meeting was held and a motion was made and passed approving the conditional use permit as recommended by the Planning and Zoning Commission with a series of conditions. On June 3, 1991 a letter from Mike Dinndorf to Mr. Eggena informed him that the owner must prevent unauthorized entry to the site which is usually accomplished by means of a fence and gates that can be locked. Times of operation should be erected at the site entrance as well as tipping fees and what materials are prohibited. Mr. Dinndorf stated that local regulations may require additional security which is permitted provided the standards are no lower than the

standards set by the state. In October 1991, the Council met to consider a request by Mr. Eggena to lower the fence height around his demolition pit. A motion was made and passed on a 3-2 vote to allow the fence to be lowered from an 8 foot fence to a 6 foot fence. In 1992, the MPCA approved the permit for the demolition facility.

On January 12, 2005 the City Administrator, Community Development Director and Mr. Eggena met at approximately 11:30 a.m. The City Administrator informed Mr. Eggena that Staff has been receiving numerous complaints about odors and a rotten egg smell in the area of Fawn Lake Road. Mr. Eggena stated that a fire started at the facility on Christmas Day and he and his son attempted to cover the pit to help extinguish the fire and cap the pit. The fire was reported to the MPCA by Mr. Eggena and the MPCA has been monitoring the situation since December 27, 2004. Mr. Eggena was asked if he would like to report the situation at the next City Council meeting and he declined stating that complaints could be referred directly to him.

On page 10 of Anderson's report, an analysis of how this situation pertains to City Ordinance is addressed. The most prevalent concern is the obnoxious odor being emitted from the site and Mr. Anderson read that section of Ordinance (Section 8.50 Performance Standards – General, Subd. 4, Nuisance Standards) pertaining to odor, which in the case of the landfill could be determined to be considered obnoxious. The City Attorney's opinion is that without measurable standards in the ordinance, the City would have a very difficult time enforcing this provision since there is no measurable standard to apply or enforce. The MPCA has intermittently taken registered samples and the measurements have registered a third of what the MPCA standards allow. Regarding landfills in Section 8.51 Special Provisions, Subd.7, Landfills, Anderson stated that the Ordinance states no new landfills are allowed in the City due to the close proximity to the lakes and streams, as of this ordinance which was adopted in 1993.

The conditional use permit that has been issued had several conditions attached including (1.) that security fencing be constructed around the entirety of the demolition pit; (2.) the fence may be 6 foot in height or more around the site; (3.) there shall be only one point of access or egress from the pit; (4.) an updated survey must be submitted every five years as required with the demolition permit from the MPCA; and (5.) encouraging that additional fencing of trees be installed on the south end of the property or additional screening. On March 17, 2005 Ken Anderson visited the site to see if the conditions of the CUP had been met and it appears that the operator has not met the conditions of the CUP issued. The fencing on the site has not been constructed around the entirety of the demolition pit. Specifically, there is no fencing on the north property line and only a portion of the property on the west and east sides. A larger berm has been placed in lieu of the fence on the west side, however, there is an open field north of the Build All site and no fence on the shared property line with the Eggena property. Also, there is a total of three gates on the property and only one has been allowed by CUP. The west gate has been observed to be open and unattended. The gate on the southwest corner of the lot does not appear to be in use, but does exist. Some of the fence adjacent to Fawn Lake Road and next to this gate has not been installed because of the low area and significant tree growth in the stormwater retention area. Another concern noted was that the gate,

which is shared with Granite City Ready Mix and Crosslake Construction is shared and not always secure and it is questionable whether a licensed operator is on site when the gates are open but the pit is not.

Ken Anderson stated that the Council has four basic options available. These options are: (1.) do nothing; (2.) request additional information and suggest additional terms be incorporated by the MCPA in the re-permitting process currently in progress; (3.) City Council directive to staff to forward a letter identifying noncompliance with the terms of the approved CUP's and identify a maximum timeline for corrective actions to be completed; and (4.) City Council may determine the landfill operation is a nonconforming use that may not be re-permitted by the MPCA and expansion continued beyond the original four acre site permitted by the MPCA. The actual four acre area needs to be identified in the site plan as does a determination of the actual size of the existing boundaries of the pit. This information should be required as a minimum for any option selected by the City Council; and (5.) the City Council may determine the landfill operation is a nonconforming use that may not be further re-permitted by the MPCA. Further expansion will not be permitted beyond the existing limit of in place demolition debris and the property owner shall be directed to close the landfill facility in full conformance with all federal, state and local standards. Based upon the City Attorney's opinions, it is the recommendation of Community Development Director Anderson that the best approach to meet the intent of the existing ordinances, protect the public health, safety and welfare and insulate the City from possible litigation is for the City Council to adopt both options 3 and 4 as noted. Anderson stated that there have been threats of litigation against Staff by Mr. Eggena and threats of litigation by the public against the City if nothing is done.

Anderson stated he was not going to address the issue of odor since the MPCA would be better able to address this issue. Councilmember Phillips commended Anderson for his report and asked for an explanation of option 4. Anderson stated that the demolition landfill is a grandfathered non-conforming use, but once they go beyond the four acres it is not allowed under the current ordinance.

Curt Hoffman of the Brainerd Office of the MPCA addressed the Council. He stated that there are 120 demolition landfills statewide and odors have been an issue at some of the other facilities. Regarding the re-permitting, the MPCA may be required to issue a permit even if there are City Ordinance's that go over and above, however the other government bodies can be more stringent in looking at the process for issuing the permit. Dan Vleck of the Brainerd Office of the MPCA was also in attendance at the meeting. Regarding the permitting process a draft is sent to the property owner about one week before the public notice. The public notice period extends for a period of 30 days allowing for public input. A notice will be sent to the City and the County as well as to adjacent property owners and adjacent cities and townships. Notices will be posted in libraries and post offices as available. A total of between 120 to 150 notices are sent via mail. The public can send comments in writing regarding the facility or a public hearing can be requested which would be conducted by the MPCA with a decision made by a citizens board in front of an administrative law judge. It was noted that if the City has

more stringent Ordinance's than what the MPCA requires, it is the city's responsibility to enforce the Ordinance. Mayor Andsolshek asked if the City wants to give a statement during the public process or earlier could they do so and he was told by the MPCA that, yes it could be included if it doesn't go outside the State rules. Regarding the odors, it is the thoughts of the MPCA that the production of odor is from sheet rock. A final cover is going on later this spring which should help alleviate the problem. He stated that the sheet rock could be coming in contact with water and that the sheet rock needs to be spread out to mitigate space, but the cover will prevent the hydrogen sulfide from escaping. The MPCA is unsure whether the fire had more effect on it, however the Elk River Landfill did have a fire and odor and it probably exacerbates the problem. Dan Vleck stated that sheetrock is a permitted waste material for the landfill and expansion is allowed beyond the four acres. The MPCA can't go beyond the 5 years without re-permitting but the MPCA does allow for expansion. Regarding the tests conducted on odor, the hydrogen sulfide levels do not exceed MPCA guidelines.

Dean Eggena, owner of the facility addressed the Council. Eggena stated that the permit was issued by the MPCA in 1992 and the CUP approved by the City in 1993. Eggena stated that he did attend several Council meeting at that time and it was the intent of the Council that no new landfills would be allowed. The MPCA would like a landfill every 30 miles as a means for people to get rid of these types of items. Eggena stated that he has operated the facility for 13 years. Eggena stated that he did put City Staff on notice that before anyone enters his property he be notified. He stated that heavy equipment is used onsite and this represents a safety issue. He stated that on days the debris is pushed, the entrance is restricted. He stated that the Ready-Mix area requires hard hats, but if the Council or any member of the public wishes to enter they are welcome as long as the property owner is notified. Eggena stated that the 40 acres has been used as a barrow pit since the 30's and that he purchased the property from the Gould family in 1976. Initially the use was for a sawmill and that is when the City granted the industrial permit. He stated that until 1989, landfills were unregulated so everyone had their own pit. It was when landfills became regulated by the MPCA that Mr. Eggena was approached by Mike Dinndorf to pursue developing the area into a regulated landfill. It took two years and \$30,000 to become operational and the gross revenue after five years of operation was less than the \$30,000 expended. The results after five years of operation showed that the sandy soil in the area were good conditions for a landfill. Since the operation began there has been two re-permitting processes. Mr. Eggena stated that the operation has never had a violation only a letter of warning and that only one letter of warning was received in the 13 years of operation. He stated that the MPCA checks the landfill about every two months. Eggena stated that he hopes the Council looks at this operation as a public service. He stated that they were in the construction business and the gravel and landfill operation is a side business to benefit the public. Eggena stated that 4000 truckloads of demolition would need to go to the County Landfill in Brainerd, if this site wasn't available. At a cost of operating a truck at \$2.00 per mile, it would cost a huge amount of money for the public to travel outside the area. Eggena stated that they discourage demolition from outside the County. He stated that we can say that we don't want this in our backyard, but where would it go but in someone else's backyard. Eggena stated that he thinks the smell was generated as a result of the fire and that he is working

on putting the final cover, and possibly lime, on the area. He has hired a consultant to review the use of lime to determine if this will cause more problems for the water table. He stated that the process of rotting produces hydrogen sulfide.

At 3:00 P.M., the meeting was open to the public for comments.

Doug Morris, Solid Waste Coordinator for Crow Wing County addressed the Council. He stated that the County was directed by the Legislature to manage landfills within the County. He stated that at the County site there are several areas designated for different types of disposal material. Morris stated that the landfill is permitted within the City limits of Crosslake so the County didn't get very involved except to require financial assurance. Morris stated that it is nice to have two sites within the County so this is a good location to provide a public service.

Paul Willmus of 33369 County Road 3, asked what level of financial assurance was required. Willmus stated that he has a number of issues since nothing is clear cut and it's easy to say this is a public service, however he has followed trucks into the City and a lot of the demolition is coming from outside the area and maybe items are not as closely scrutinized here. Willmus stated that there were violations. He stated that there is material buried there that is not acceptable. He stated that the monitoring of water is only going to tell you if there is a problem. When it is in the water, what is it going to cost to run water that people can drink. Willmus stated that he understands the assurance to be a \$30,000 bond and wonders if his insurance company is aware that they may be incurring exposures. Willmus stated that this Council is the governing body for this landfill so when the contamination hits the wells the City will have a beast on their hands. Willmus stated that he would like to see the data from the monitoring wells to compare with his well results. Willmus stated that the City spent a lot of money putting sewer in the ground to protect the ground water. He further stated that the landfill is over the four acres and wondered how much further north it is going to go. Willmus stated that the Council is going to have to ask themselves why they're here and who put them here. The Council needs to delineate the actual size not just allow it because the City agreed to it in 1991. The original permit states that wallboard is unacceptable material. Willmus stated that the Council that approved the CUP had the forethought to take a long time to review the matter before making a decision. Willmus stated that in the early 1990's there was more remodeling going on than there was new construction, so the quantities were less. Willmus stated that he's not certain that the landfill has complied with the conditions of the CUP since he has taken pictures at the facility that show carpet displays, carpeting, radiator hoses and treated lumber at the site that are not demolition materials but garbage. Willmus felt the Council should not put so much faith in the MPCA and require financial assurance.

Curt Hoffman addressed the Council and stated that with regards to demolition landfills, there are 2 in Crow Wing County and 4 in Cass County. To clarify the word "violation", a letter of warning is the lowest level of enforcement from the MPCA. He further stated that the MPCA does certify operators with six hours of continuing education every three years. He also stated that the 1999 permit is not included in the packet provided, but the

Council might wish to look at it. Regarding wallboard, the statement that it is unacceptable material is not included in the 1999 permit. Mr. Hoffman stated that he does not consider home construction as utilizing large quantities of sheet rock as opposed to the manufacturers of sheet rock who would generate large quantities. Hoffman stated that all the documents regarding permitting are public documents and Hoffman stated he takes offense to people bad mouthing the agency. Mr. Hoffman commented that the MPCA does not get out every month but probably does inspect the site once or twice a year. Hoffman stated that most of their enforcement issues are illegal dumping where a contractor dumps illegally or burns the material.

Council Member Swanson stated that he does have a copy of the 1999 permit and it does not list wallboard. Swanson stated he was on the Council in 1992 when the CUP was approved and the intent of the Council was not to keep it going.

Doug Morris stated that some cities do inspections of their landfills above and beyond what they inspect. Curt Hoffman stated that was an option, but the City Staff person would need to be certified.

Steve Roe of 11662 Whitefish Avenue asked the County representative where a load of sheetrock would go if taken to the County. Mr. Morris stated it would go in the sanitary landfill not in the demolition landfill. Mr. Roe stated that since the landfill is up for permit renewal he would like to know who is operating out of this site. Mr. Roe stated that he has discovered that there are seven companies operating from these parcels. He stated that these companies go from gravel mining to equipment storage to waste disposal to construction company offices. Roe stated that odor and fencing are two of his concerns. He stated that Federal, State and City all have rules governing these facilities and that Crosslake should be a part of the process and the final authority on the facility. Roe stated that the permit was issued to one real estate code and now includes another real estate code. Roe stated that he would also like to see an identification of all officers and owners of these companies. Who are the landowners and who is issued the permit. State Statute covers financial assurance and it is crucial that the City be an integral part and implore the MPCA to include the City in the decisions.

Dick Dietz addressed the Council and stated that he feels the MPCA will grant the permit, so the Council needs to step forward. He implored the Council to listen to the citizens. He stated that the Council is saying they don't want pawn shops in our backyard and we're saying we don't want any expansion of the landfill in our back yard. He stated that with a 2-2 vote, the Council is going to have to make a decision.

Paul Willmus stated that there is material coming to Crosslake that he feels would have been treated differently elsewhere and in response to a comment made previously by Mr. Eggena making reference to his being a hydrologist, he informed Mr. Eggena that he does have two degrees from the University of Minnesota, one of which deals with soils so has knowledge on this issue. Mr. Willmus stated that he has not heard what financial liability is being provided by Mr. Eggena.

Dan Vleck stated that the MPCA files are open to the public. He also stated that he didn't say, the MPCA was going to issue the permit. He stated that the MPCA welcomes the public comments.

Mayor Andolshek stated that he has found the MPCA to be helpful.

Doug Morris stated that he provides the City with annual reports of all activity conducted at the Brainerd landfill. He stated that garbage is considered commerce so the County can't regulate where it goes.

Pete Vilella of 13262 Kimberly Road addressed the Council and stated that his concern is the smell and drop in property values as a result of the landfill. He also asked what time the MPCA was conducting tests. Are they testing between 5:00 – 6:00 A.M. when the temperature hovers around 10 degrees when it is at its worst. Vilella stated that he too is concerned about the ground water.

Council Member Swanson asked how the MPCA handles complaints. Mr. Hoffman stated that they are logged into a database and the landowner is contacted. Hoffman stated that the MPCA has taken readings around 6:00 A.M. It appears that the time and weather conditions are a factor.

Council Member Swanson asked how the Council would determine offensive. The MPCA has recognized that the Council has a difficult task of determining what is offensive so there is no easy answer.

Council Member Phillips asked if the MPCA monitors the wells around the facility and Mr. Hoffman stated that the owner does the monitoring twice a year. Phillips asked the MPCA if they do core samplings and Hoffman stated that they do not, but that they do show up announced and do spot checks.

Pat Netko, business owner in Crosslake, addressed the Council and stated that the smell is terrible. She stated that she cannot believe that the MPCA has only received a few complaints. She asked Mr. Eggena why he doesn't cover it now.

There was discussion regarding the cover. Dean Eggena stated that there is intermittent cover where six inches of soil is added every 30 days and then an additional 6 inches of heavier soil is added to repel water. The final cover then consists of an additional foot on the foot that is already covered. There are no specifics as to the type of soil, but it has to sustain vegetative growth.

Mayor Andolshek stated that the Community Development Director has given the Council some possible avenues to take that should be considered. The MPCA has asked if we want to make a statement and if so we could do so before the public comment period.

Council Member Phillips stated that he doesn't know how the Council can micro-manage the MPCA other than the original issue of the permit. The odor is a temporary problem, hopefully. Phillips stated that the ethanol plant in Little Falls smells also and he thinks this whole discussion regarding the odor is foolish.

Pat Netko stated that she doesn't agree with Mr. Phillips comments. She stated that the City is the final word and it is up to the City to make the decision.

Dean Eggena stated that he agrees this is an obnoxious odor and stated that they will do everything they can to eliminate the odor. He stated that the site has to be inspected by the MPCA as we do the cover and we hope to do this by June. Eggena stated that if the Council tries to change the rules as to what is an obnoxious odor, it is going to open the gates for gas leaks and other odors. Eggena also stated that the largest producer of hydrogen sulfide is city sewer and if you start imposing rules, it will apply to the whole community.

Sandy Eliason commented from the audience that she felt Mr. Eggena was out of line by addressing the Council on every issue discussed as if he were a councilmember. She stated that he has overstepped his bounds. Mayor Andolshek stated that he did allow Mr. Eggena to speak to the issue as the owner of the facility.

Council Member Swanson stated that there are two issues before the Council. Swanson stated that he thinks the four acres is appropriate but this is the area we as a Council need to discuss. The County has a large area with a buffer for their landfill and doesn't think that the site in Crosslake is large enough to protect the City of Crosslake. Swanson stated that we don't know how much of the four acre site is used and that we should have a certified surveyor tell us where it is. We're here representing the citizens.

Paul Willmus stated that the Council doesn't have all the information on the table. He stated that Eggena is conducting water monitoring and says he is concerned with the odor. I bought my property in 1994 and the City needs to determine what the impact has been. I'd be interested in seeing a comparison between his results and my results. Also what is the depth of the wells being monitored. Willmus stated that there is some scientific data to look at and asked the Council to have a study done and review the results at another Council meeting.

Council Member Phillips stated that he agreed we need to determine how much area is being used and what the financial security is.

Dean Eggena stated that the Legislature determines the amount of financial security and each year they establish a different number. Eggena stated that he does carry several million dollars in liability insurance which he could furnish if the City wanted to request that information. He stated that the owner has to put up financial security for 30 years after closure. City Administrator Swenson asked if these were irrevocable bonds and Eggena stated that it is like a performance bond that is renewable each year. Swenson

stated that it would then be the bonding company that would be on the line for the \$31,000 and Eggena stated that it would be the bonding company's responsibility.

Mayor Andolshek asked Dean Eggena if he sees a problem delineating where the four acre site is and what part has been used on the plan. Eggena stated he doesn't have a problem with that, "you can see the hill". It's pretty simple to see. Andolshek asked if he could give it to the City on a drawing so future City Councils' would know where the site is. Swanson stated if the Mayor was talking about a certified survey drawing and Andolshek stated he wasn't sure of the terms. Swanson stated it should be surveyed because the maps we have are not survey's. Eggena answered no he would not have a problem with this since everything that is done there has to be engineered and we've used the same engineer, Landecker and Associates, since the start and it is very easy for them to place it on the proper documents. Eggena stated that this is a physical characteristic that can be measured.

Paula Karl of 11986 Sunrise Island Road addressed the Council and stated that she has spoken to the Council on many different items that are dear to all our hearts and charged the Council as a voter and a citizen of this beautiful country that the smell is the canary in the coal mine and that canary is dead on the bottom of the cage. It is not so much the smell but what that smell means. She charged the Council as representatives of the people in this area to do their job. You are elected by all of us and you hold our future in our hands.

Council Member Curtis stated that he appreciated the meeting and the report that Ken Anderson put together. He stated that he feels he has been in the dark on this issue and as a Council Member has been left out of the loop. Curtis stated that he didn't know about the smell and what bothered him was that an attorney and an engineer approached him. He stated that this meeting has given him an education on the issue. How much of this is personal and political is unknown but the landfill does provide a service. Curtis stated that he doesn't want to be in a position where one time we listen to the MPCA and the next time we don't and referenced sewer versus landfill. Curtis stated that he agrees the odor is offensive but that there are solutions. He stated that he wants to do the right thing and understands that offensive is subjective. Curtis stated that he addressed the Council as a citizen a few years ago regarding trash blowing onto his property and noise from commercial property and the Council told him that this is subjective so it's not so much what's the legal thing to do, or how I have to vote, but what the right thing is to do as a neighbor. I think any reasonable businessman would want to do the right thing for the community. Curtis stated that at the last meeting he addressed an issue whereby he wants to be included in the meetings and in the information and feels some procedures and policies need to put in place to be fair and equitable so as not to have a political witch hunt or an unfair process to a business owner but for everyone to be treated fairly. This meeting has been a good meeting because for the first time he has seen the information which is fact versus a personal attack.

Council Member Swanson congratulated Ken Anderson on his report. He feels it is factual and what the Council needs to make decisions.

Mayor Andolshek asked if the Council had any thoughts regarding an agenda item for the Regular Council Meeting. Council Member Curtis asked if the Council needed more information regarding items #3 and #4 and stated that it sounded like the Council was requesting a survey. Council Member Swanson felt items #3 and #4 should be on the agenda for the Regular Meeting. Council Member Phillips stated that there is a Council meeting on the 28th for the Comp Plan and is it feasible that the location could be identified for that meeting. Phillips stated that he was more interested in Item #4 and how much area has been used. Swanson stated that option #3 and the certified survey that Dean Eggena has agreed to provide should be on the agenda. City Administrator Swenson asked for a clarification for Staff if the Council wanted a copy of the site survey where Landecker has placed four acres and do you want a draft letter on the CUP. Phillips stated he was only talking #4. The Mayor asked if we have an issue with #3 regarding the fence and etc. Curtis stated they are issues we need to address so maybe a combination of #3 and #4 can be looked at. MOTION 4S2-01-05 WAS MADE BY DICK PHILLIPS AND SECONDED BY DEAN SWANSON TO ASK THE PROPERTY OWNER TO PROVIDE ITEMS NOTED IN ITEM 4 FOR THE MAY AGENDA. MOTION CARRIED UNANIMOUSLY 4-0.

Prior to taking a five minute break, Mayor Andolshek asked if the Council had left Item #3 hanging or if the Council was going to require this. This item will be reviewed after the break. At 5:05 P.M. a break was taken at which time almost all attendees left the meeting with the exception of Cindy Holden and Renee Richardson of the Brainerd Dispatch.

At 5:15 P.M. the meeting reconvened.

Mayor Andolshek asked the Council about Item #3. Council Member Phillips stated that he didn't care because it had already been identified. Council Member Curtis read Item #3 and his thoughts were that these issues should be addressed and that #3 and #4 really go together and then a recommendation will come out of this body and a letter sent to the MPCA. Council Member Swanson agreed with Curtis. City Administrator Swenson stated that he doesn't think the MPCA cares about the violations of the CUP so asked if it was the Council's intention to have Ken Anderson put a draft letter together to the owner/operator listing the outstanding issues of the CUP with a timeline to comply for the May Regular Council Meeting. Council Member Curtis and Swanson agreed with this. Regarding Item #4, Mayor Andolshek stated that the engineering plan done up by the landowner does go to the MPCA so maybe we could tell the MPCA that we have asked the landowner to delineate the area. Swanson stated that this is part of our permit, not the MPCA permit. Our permit states that it is for 4 acres and we want to know what the 4 acres are. Mayor Andolshek stated that he hears what Council Member Swanson is saying but feels Dean Eggena would respectfully disagree. Swanson stated that we agreed here today that Dean Eggena would show us where the four acres are and how much has been used and stated that he wants to see a survey which shows this. Council Member Phillips asked Swanson what he was asking for and he said he wants the site survey showing where the four acres are and what part has been consumed in this

operation. Phillips stated that this is what Dean Eggena has agreed to provide. So, Curtis asked if it is the Council's understanding that #4 is not an issue only #3. There was some discussion regarding the letter to the property owner and Phillips stated he doesn't care about the letter let's take the big mountain, the four acres. Eggena responded, so that he fully understands what is required of him and that what the Council is requiring is, that the engineers survey the area that we have covered with demo, period. Swenson stated that is not what the Council asked for. They are asking you to define the four acres that will be used as the demo pit. Eggena stated that would become the permit. That's what we're proposing would be the next phase which would increase so that's already been determined. If you look at the engineer drawings furnished to the MPCA it would show where the demolition area would expand. Swenson stated that the application to the MPCA shows what he would like to see progressing, but the City has the permit for the site and the City has said four acres. I want to see where the four acres is at and if it goes beyond the four acres then we as a Council need to discuss that, but I want to see how much has been used. Eggena stated that if there was a specific four acres mentioned in the original permit issued in 1992, why would I be supplying you something that shows 4 acres. Eggena stated that the Council gave him a conditional use permit to place demolition on four acres not a specific four acres. Curtis compared this to a gravel extraction pit where a certain amount of gravel is allowed to be extracted, no one cares what area it is extracted from as long as the amount isn't exceeded. If the CUP says up to a maximum of four acres does it matter where the four acres are. Mayor Andolshek is saying that what we are asking Mr. Eggena to provide is over and above what he has been asked to provide for previous permits. This is a new request to delineate the four acres. Eggena stated that he cannot do this, that it is not his place to do this. In 1992, he was given a permit and if you read through the permit you don't see the four acres as a specific four acres. It was not a part of the conditional use permit from the City so I would not change this at my will. If I were up for some new conditional use permit, then I think it could be brought up but I'm still operating under the same CUP and I don't agree that it is limited to 4 acres. So I am not going to define 4 acres. Eggena stated that this may have to go to Court to be settled.

Discussion continued regarding the original CUP, how to interpret the CUP regarding the four acres and the motion that changed the fence height. Ken Anderson stated that he did not think that there was a paper permit issued to Mr. Eggena but obtained his information from the minutes of the Council meeting where the Council approved the CUP and placed certain conditions on the CUP. What the four acres comes to is based on an opinion from the City Attorney and the site plan included with the engineering plan with the 2004 permit plan obtained from the MPCA where you see the oblong shaded portion. This is where they show the existing demo landfill site. The outline of the rest of the site (2 parcels) is about 23 acres so the question is how much acreage is encompassed by the shaded portion. What Mr. Eggena is saying is that only one acre of his site is covered with landfill. Other people are saying it is closer to two and a half acres so we want to get a Certificate of Survey to find out how much of this property is occupied by the existing landfill. Whatever that number is and the reason it is important is because the City Attorney has stated that the original permit issued by the MPCA back in 1992 was for 50,000 cubic yards of in place demolition debris and a four acre site. The four acre

site was never delineated and because our Ordinance now says, no new landfills, the City Attorney's Opinion is that anything over four acres is considered a new landfill. Council Member Curtis again brought up the comparison of a grandfathered gravel pit. Eggena stated that the 23 acre parcel approved for the CUP set no limitations as to the four acres. He stated that the City's CUP does not talk about limiting to four acres. Eggena also stated that regarding adjoining property, he purchased 20 acres to the NW, 10 acres to the East and 20 acres to the North to continue to add property as a buffer. If we expand beyond the 23 acres, then I feel we would need to come back to the Council for approval but not before then.

Council Member Swanson felt the Council should ask for a legal opinion on the CUP and whether we as a Council can shut the operation down.

Council Member Curtis stated we already have a landfill and can't believe the Court would uphold the City shutting it down.

City Attorney Kirk Adams stated that when the City Council incorporated the entire MPCA permit into the City's CUP, it is his opinion that the City could not use the cubic yard limitation but could stand by the 4 acre limitation.

Discussion ensued regarding Mr. Eggena's identifying the area that has been used for the landfill and Mr. Eggena stated that he will not delineate the four acres within the 23 acres. Discussion ensued regarding the square footage of the area covered by the demolition pit.

Mayor Andolshek again asked the Council if they wanted to make a formal written statement to the MPCA and it was agreed that this will be on the agenda for the Regular May Meeting. It was also the direction of the Council to send a letter to the property owner regarding the odor from the Council. Dean Eggena stated that in his opinion he has not violated City Ordinance or any MPCA Rules. MOTION 4S2-02-05 WAS MADE BY TERRY CURTIS AND SECONDED BY DEAN SWANSON TO INSTRUCT STAFF TO BRING A DRAFT LETTER TO THE MAY 11, 2005 REGULAR MEETING AS STATED IN OPTION 3 IDENTIFYING A TIMEFRAME TO CORRECT THE ISSUES AND INCLUDE THE NUMBER OF COMPLAINTS THAT THE CITY HAS RECEIVED ON ODOR. MOTION CARRIED 4-0.

Dean Eggena joined the Council at 6:25 P.M. to continue discussion regarding the other items on the agenda.

Public Works Director Ted Strand addressed the Council to discuss various items tabled at the Regular Meeting in April. The first item was a request to pave an area from the existing bituminous to the clarifier/filter building and over the sludge storage tank at the Treatment Plant. This area washes out continuously and the sand and dirt tracked into the filter building falls through the walkway grates and contaminates the effluent filters which causes treatment problems. In addition to this area, the driveway approach to the lift station could be paved at the same time at a total cost of \$9,970. Council Member

Curtis stated that he would abstain from discussion due to his employment with Anderson Brothers who provided the quote. MOTION 04S2-03-05 WAS MADE BY DICK PHILLIPS AND SECONDED BY DEAN SWANSON TO ACCEPT THE RECOMMENDATION TO PAVE AN AREA AT THE TREATMENT PLANT AND THE DRIVEWAY APPROACH TO THE LIFT STATION AT A COST OF \$9,970. Council Member Eggena did not agree with the paving since it would create more problems with erosion problems. City Administrator Swenson stated that it is his understanding that the problem is in the sand tracking into the plant clogging the grates rather than an erosion problem. Council Member Eggena felt that sand would still track in off the blacktop. MOTION FAILED WITH ANDOLSHEK AND SWANSON VOTING AYE AND EGGENA AND PHILLIPS VOTING NAY. City Administrator Swenson asked if the Council would consider sod for this area. The Council agreed this was a good alternative. Public Works Director Strand stated that he is proposing the blacktopping of other areas within the City as a result of the Sewer Project. The first area is the first 66 feet of Cross Avenue. This road was paved prior to the collection system being installed, however the contractor building the town homes adjacent to Cross Avenue had rocks and etc. piled on the roadway causing this area to get overlooked by the contractor doing the paving. Another area is the driveway into Dr. Joel Miller's property. When Riverwood Drive was paved, a lift into the parking lot remained and this needs to be leveled out. Approval was also requested to pave the lift station approach by Holiday. MOTION 04S2-04-05 WAS MADE BY DEAN SWANSON AND SECONDED BY DICK PHILLIPS TO AUTHORIZE THE PAVING OF 66 FEET OF CROSS AVENUE, BEHIND HOLIDAY AND A PORTION OF DR. MILLER'S DRIVEWAY. MOTION CARRIED 4-0 WITH CURTIS ABSTAINING FROM THE VOTE.

Regarding striping, requests have been received from residents to have various roads striped and other roads re-striped. Council Member Eggena stated that his review of Swann Drive did not indicate a need for re-striping this year. Council Member Curtis agreed and also felt Manhattan Drive could wait even though it is worse than Swann Drive but at a cost of \$4,000, they can wait. Council Member Curtis stated that a policy and striping budget is needed. City Administrator Swenson asked about the parking lots. Council Member Eggena stated that striping is a waste of time and a waste of money. Swenson asked what would be needed if the City isn't going to stripe. City Attorney Adams stated that the City should have the current striping ground off since the City could be considered negligent. MOTION 04S2-05-05 WAS MADE BY DEAN EGGENA TO AUTHRORIZE THE RE-STRIPING OF PARKING LOTS AS NEEDED EXCLUDING THE COMMUNITY CENTER. MOTION CARRIED WITH ALL AYES.

Approval to purchase a trailer mount vacuum to suck sand and debris from both sanitary and storm sewer manholes and catch basins was requested. The cost for this used vacuum is \$42,600. With this unit one person can clean the manhole otherwise three people are needed. Strand stated that it would also be used to clean the interceptor on Swann Drive. Breezy Point and Pequot Lakes have expressed an interest in sharing the equipment or renting the equipment from Crosslake. Rental of a unit is \$250 per hour

with the closest locations having these units available is Minneapolis and Bemidji. In addition to the hourly rate, the City would pay mileage and per diem. This unit pumps 16,000 gallons per hour. Council Member Eggena inquired of the cost of a new unit and Strand stated \$82,000. Mayor Andolshek asked if a warranty would be included with the used unit and a six month warranty would be included. Council Member Eggena suggested using Fyle's Honey Wagon and Strand stated they cannot go beyond 25 feet. Eggena stated he is opposed to this since there are cheaper and better ways to do this. Strand stated that in 18 years of doing this job, it is the only correct way to do it. Council Member Swanson asked how many times the lift stations need to be cleaned. Strand explained how you would manually need to go down into the manhole to manually clean it out. He stated that without the cleaning, there is the potential of sewage going into peoples homes if they are not cleaned out every year. Council Member Curtis suggested contracting it out or renting a unit to get some history of the cost. Curtis would advise Staff only going down into the manhole in an emergency situation. City Administrator Swenson asked why the Council was opposed to the City looking for used equipment that is needed while the Telephone Company can purchase trenching equipment and boring equipment that is only used occasionally without any explanation. Council Member Eggena stated that in the long run, new may be better. MOTION 04S2-06-05 WAS MADE BY JAY ANDOLSHEK AND SECONDED BY DEAN SWANSON TO AUTHORIZE THE PURCHASE OF A 1998 VERSA VAC 1000PD TRAILER MOUNTED VACUUM UNIT. Council Member Eggena stated that reserves are being used fast and he wants money put in reserve for operating equipment. MOTION FAILED WITH ANDOLSHEK AND SWANSON VOTING AYE AND CURTIS, EGGENA AND PHILILPS VOTING NAY.

Approval of Bills – MOTION 04S2-07-05 WAS MADE BY DEAN SWANSON AND SECONDED BY TERRY CURTIS TO APPROVE THE PAYMENT OF BILLS AS SUBMITTED IN THE AMOUNT OF \$8,526.74. MOTION CARRIED WITH ALL AYES.

MOTION 04S2-08-05 WAS MADE BY DEAN SWANSON AND SECONDED BY TERRY CURTIS TO ADJOURN THIS SPECIAL MEETING AT 7:05 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and transcribed by,



Darlene J. Roach
Clerk/Treasurer

SPECIAL COUNCIL MEETING – April 21, 2005

BILLS FOR APPROVAL
21-Apr-05

VENDOR	DEPT	AMOUNT
Ace Hardware, clamp hose	PW	8.43
Ace Hardware, valve, coupling	P&R	7.22
Ace Hardware, irrigation hoses	P&R	95.69
Ace Hardware, screws, switch	Fire	7.34
Ace Hardware, reducer, pin hitch, flasher, ball adapter	Fire	69.17
Ace Hardware, fix a flat	PW	9.89
AW Research, water testing	Sewer	228.00
Crosslake Construction, roof steel for old city garage	PW	183.86
Crow Wing County Treasurer, alarm renewal	P&R	10.00
CWC Treasurer, voting machine maintenance agreement	Gov't	164.85
Echo Publishing, envelopes	Admin/P&Z	129.10
Echo Publishing, ordinance 205	P&Z	22.58
Fastenal, bulk bolts	PW	155.68
Flexible Pipe Tool, washdown gun	PW	133.13
Frontline Plus Fire & Rescue, khaki fire suits	Fire	3,136.00
Frontline Plus Fire & Rescue, fire uniform	Fire	876.45
Frontline Plus Fire & Rescue, nozzles	Fire	274.51
Hawkins Water Treatment, aluminum sulfate	Sewer	406.01
Hawkins Water Treatment, tank, cover, pump, valve	Sewer	1,114.07
Hawkins Water Treatment, aqua hawk	Sewer	122.56
Krause Lock & Key, latch guard, installation, keys	Gov't	144.41
Kustom Signal, tuning forks	Police	36.96
Mastercard, lodging and meals for class	Police	293.33
Menards, tanks, fertilizer, iron hold	PW	141.57
Oreck, detent pedal	P&R	25.20
Paul Willmus Heating & Cooling, repair furnace	Gov't	380.00
Quill, receipts	P&Z	113.74
Robert Hartman, reimburse mileage	Police	76.29
Tom's TV, dvd's	Gov't	39.00
Unicel, cell phone charges	PW	121.70
TOTAL		8,526.74