

COUNCIL PROCEEDINGS
CROSSLAKE MINNESOTA
SPECIAL SESSION
May 6, 1987 at City Hall
9:30 a.m.

The City Council of Crosslake Minnesota met in a special session on Wednesday, May 6, 1987 in the Council Chambers of City Hall. The following members were present: Mayor Oliver Courts, and Councilmembers Elizabeth Andolshek, Lyle Arends, Diana Gallaway and Oliver Yates. Also present were City Attorney James Gammello, Planning and Zoning Coordinator Marlowe Kingstedt, members of the Planning and Zoning Commission, local realtors, members of the realtors board and attorneys.

Mayor Courts called this special session to order at 9:30 a.m. and welcomed all who were present. He indicated he would give everyone who wished to speak an opportunity to do so. He said the primary purpose for the meeting was to arrive at a solution to the problem the real estate people were having dealing with Ordinance No. 8.65, Subdivision 4 dealing with the sale of real estate without a certificate of compliance on file in the Planning and Zoning office.

The first person to speak was an attorney from Brainerd. His comments were that the Ordinance probably was not meant to include real estate people but the way it was worded it did include them. He said he realized the code was meant to bring pressure on the owner-seller to update the septic system, not the agent or realtor. He also said that it states there should be a certificate of compliance on file at the time a purchase agreement is written but a purchase agreement does not always result in a sale so they would like to see it changed to execution or completion of a sale. It should also be stated that it is the responsibility of the seller to obtain and furnish the certificate. He indicated that Crow Wing County had a similar ordinance but that they changed it because they felt it was subject to legal attack.

Mayor Courts asked Mr. Kingstedt to address these points. Mr. Kingstedt said he strongly agreed with the attorney's comments, that time of sale should be defined in the ordinance and also a provision made for winter sales whereby the seller and buyer agree in writing as to a specified time that the septic system must be done.

Other realtors present stated that they felt the septic system should be left to the discretion of the buyer since the buyer may have something entirely different in mind for the property and may need a larger system or may want to put the garage where the new system was placed or other things of that nature and if the septic system is already in it would be too costly to move it.

Another concern of the realtors was that they felt the code was not uniformly applied. They felt that sales of real estate between private parties were not subject to enforcement as were the sales handled by realtors. They also stated that selling real estate was their job and inspecting septic systems was not. It was the consensus of the realtors present that the Ordinance places undue hardship on them and hinders their ability to make a living.

Councilmember Gallaway said that in St. Paul and Minneapolis there is a truth in housing law that requires a home to be inspected for electrical and/or plumbing problems before it can be sold and she feels that Crosslake has a truth in septic systems which should be complied with to protect our lakes.

Mr. Kingstedt said if a permit has been issued since 1972 and if he has some proof he will issue a certificate of compliance as of the time of the permit but if there is nothing on file there is nothing he can do.

Councilmember Arends said that Crow Wing County goes out and inspects systems that they have had a complaint on or that may not be in compliance but that Crosslake has a letter which says they cannot do that without permission from the owner of the property. Mr. Arends said it took three years to make this ordinance, he feels it is a good ordinance and should be left the way it is. He said anyone wanting a system checked could hire a certified installer to check the system out and if it is working they could make a recommendation to the Planning and Zoning Coordinator to issue a certificate of compliance.

Mayor Courts said he felt there was a direct conflict in the statements in Ordinance 8.65 Subd. 4 (a) and (d) and requested suggestions on how to change it or what should be done with it. Mayor Courts said that local businessmen are being sued and the City should do something to protect them.

Councilmember Arends said that some of these business men were invited to the public hearings three years ago when this was first written and it should be left alone.

Mayor Courts asked Mr. Kingstedt if the word "agent" was deleted from the phrase "owner or agent for owner" and the responsibility put entirely on the owner to produce a certificate of compliance, if it would create a problem for his office.

Mr. Kingstedt stated he would not like to see that happen but that it would work for the real estate people to advise the sellers and buyers that updating the system is necessary and arrangements must be made by the closing date as to who is going to do it and when it is going to be done. A permit would have to be purchased prior to the closing date. Mr. Kingstedt indicated this would take everyone off the hook and put him on it to follow it through. Mayor Courts asked if changing the wording from "time of sale" to "time of closing" would alleviate the problem for the real estate people.

Some of the real estate people asked if they purchased the permit if they would then have met their obligation to the City. Mr. Gammello stated that they have the obligation to inform the buyer and should state it in the purchase agreement so it is in writing.

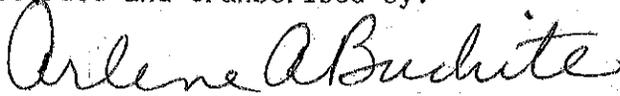
MOTION NO. 5S2-01-87 WAS MADE BY COUNCILMEMBER ARENDS AND SECONDED BY COUNCILMEMBER YATES TO HAVE THE CITY ATTORNEY DRAFT A REVISION OF ORDINANCE 8.65 FOR REVIEW BY THE PALNNING AND ZONING COMMISSION AND THE COMMISSION WILL BRING THEIR RECOMMENDATIONS BACK TO THE COUNCIL FOR FINAL ACTION.
MOTION PASSED UNANIMOUSLY.

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MOTION NO. 5S2-02-87 WAS MADE BY COUNCILMEMBER GALLAWAY AND SECONDED BY
COUNCILMEMBER ARENDS TO ADJOURN THIS SPECIAL COUNCIL SESSION AT 11:07 A.M.
MOTION PASSED UNANIMOUSLY.

Recorded and transcribed by:



Arlene A. Buchite
City Clerk/Treasurer