

SPECIAL COUNCIL MEETING  
CITY OF CROSSLAKE  
THURSDAY, MAY 12, 2005  
9:00 A.M. - CITY HALL

Pursuant to proper notice and call, the City Council met in a special session on Thursday, May 12, 2005 at City Hall. The following Councilmembers were present: Terry Curtis, Dean Eggena, Dick Phillips and Dean Swanson. Mayor Jay Andolshek was absent at the start of the meeting. Also present was City Administrator Tom Swenson, Community Development Director Ken Anderson, Police Chief Bob Hartman, City Attorney Kirk Adams and Clerk/Treasurer Darlene Roach. Also in attendance was Renee Richardson of the Brainerd Dispatch, Betty Ryan of the Lake Country Echo and approximately seven individuals not counting Staff.

Acting Mayor Phillips called the special meeting to order at 9:00 A.M. and stated that the purpose of the meeting was to review a request by Councilmember Eggena to review several State Statutes.

Councilmember Eggena asked how the Council wanted to handle complaints received on a City Ordinance. State Statute 412.861 Subd.1, Prosecutions, Violations of Ordinances addresses this issue. Eggena asked what the City's responsibility was in regards to these complaints and how the Council feels complaints should be handled. Currently there is no policy in place for handling complaints. Councilmember Eggena stated that the two years he was the liaison to the Planning and Zoning Commission, the procedure was the Community Development Director would receive the complaint, do an investigation, determine if the complaint was in violation of Ordinance, write a letter to the property owner or call the City Attorney if necessary. Eggena stated that with the turnover in the Planning and Zoning Department, Staff is put in a bad position without a policy. Also, Staff tries to handle the complaints and the Council may not agree with the way it is being handled which puts Staff in an even more difficult position. An example of this was the Dan White property where there was a flood plain issue. The Council worked extensively on this issue and because the Council decision differed from that of Staff, the Staff person resigned. Also when Carla Backstrom left, she stated that she wasn't getting help from the Council. There have been four individuals leave the department within the last two years. Staff is doing the best they can, but because they proceeded without Council approval or made decisions that didn't have the support of the Council, they were left hanging. Eggena stated that these were good people, doing a good job and it was a shame they left. Eggena stated that the Council should try and solve this problem by having Staff follow a policy. Eggena suggested that all complaints be in writing. The complaint should be documented in writing as soon as it is initiated and signed by Staff if the complaint is taken by phone or if the complainant requests to remain anonymous. All complaints regarding Planning and Zoning should be directed to that department. If the complaint warrants action, it needs to come to the Council. If the Council gives Staff direction, Staff would be protected. If the Council doesn't agree, then the City Attorney should be contacted. Lastly, the Council will give direction to Staff. We have cases where Staff has put a stop work order on a project and there could be legal ramifications

due to contractors losing thousands of dollars in lost time. These points are what Councilmember Eggena requested the Council review to make sure that the residents are treated fairly.

City Attorney Adams stated that the procedure outlined by Councilmember Eggena is the procedure the Attorney's Office would follow on a complaint. If you adopt a policy, however it should be followed in every situation. In regards to Stop Work Orders, the policy shouldn't be so strict that nothing gets done if you have to wait a month for a Council meeting. City Administrator Swenson commented that if the Council wants to be in charge of everything, in the case of a clear cutting complaint, once the trees are cut it's too late.

Councilmember Curtis asked why this issue was coming to the Council.

Discussion ensued regarding why the Council wants to be involved in everything. Most of the calls that come in to the City deal with complaints. In order to expedite the situation, the Council would need to meet every three days. As it is now, Staff is not getting any work done besides preparing for, attending meetings and doing minutes. To have the Council involved in every issue would be very time consuming for Staff.

Councilmember Curtis stated that under our current policy, Staff can issue letters of non-compliance without even going to the Planning and Zoning Commission unless no action is being done on the part of the property owner. So Curtis questioned at what point does the City Attorney become involved. Curtis stated that he is not looking at a special meeting every three days. He also stated that Planning and Zoning is a sensitive department and the first interaction most property owners have with government, except for paying taxes. Curtis agrees that it can be difficult and frustrating for Staff. Just as in the case of appeals, the elected officials become the good guy's or the bad guy's.

City Administrator Swenson stated that the Council has to have the trust of Staff that they know how to go up the ladder if they need assistance.

Councilmember Swanson commented that he has been around quite a number of years on the City Council and prior to the City Administrator position, Staff was frustrated with five individual Councilmembers directing them. The City Administrator changed that by bringing continuity and direction for Staff. Swanson feels that the complaints have been handled well. Where the Council needs to become involved is in putting the Ordinances together well for Staff to follow. It's frustrating for Staff when they get pulled in all directions by Councilmembers but if they don't know how to interpret the ordinance, they call the City Attorney. Swanson stated that it sounds like the Councilmembers are trying to micro-manage the Staff. Does Staff get in trouble at times, sure, but they're human just like us. Swanson stated that when he gets calls he tries to direct the party to Staff first to resolve the problem. Regarding turnover of Staff, some may have left from frustration, but others left for the opportunity to get better positions. Swanson stated that he can only think of one person who left because of conflict. Regarding Stop Work Orders, Swanson stated that they need to be acted on immediately.

Councilmember Phillips asked Councilmember Swanson, if based on his comments, he wants to leave things as they are and Swanson stated, yes, let the Staff do their jobs. If they have a problem, they can contact the City Attorney or the Council.

Councilmember Curtis stated that he didn't know if we can throw the word "micro-manage" out everytime we have an issue, but we are a rapidly growing community and I don't feel our Ordinance's should stay stagnant. We should always be looking to re-form the process. Not that today's process is bad, but we should always be looking at reforming the process. This is an area where we have had a lot of issues. We've had commission members come and go over issues. The Planning and Zoning Department has more urgent issues than any other. Curtis stated that he is open to any discussion that's productive to help the process.

Councilmember Eggena stated that he called his attorney when he ran for office and he was informed that he has protection under the law and has immunity. This is given to elected officials, but does Staff have the same immunity? City Attorney Adams stated that he feels Staff is also protected, but would review and get an answer back to the Council. Councilmember Eggena cited an example where Ken Anderson issues a stop work order and it is determined that the City doesn't have the grounds, can the contractor claim lost costs and file a civil suit against Ken Anderson? Eva Kreitz stated not if he followed the rules and Councilmember Eggena stated that is her opinion and he has his opinion which is he does not believe Staff has immunity. If Ken Anderson had the Council backing however, he is protected.

Councilmember Swanson stated that he has been around government all his life and employees can be named in a lawsuit, but they cannot be sued individually.

Councilmember Curtis suggested that a policy be established that gives Staff direction. Regarding complaint issues, how can we make the process fair so that everyone is considered innocent until proven guilty. Citizens want to know how to play by the rules. City Administrator Swenson agreed that there should be a fair process, but the Council has to be very careful how they handle this, because once it comes to the Council, it becomes public information. Councilmember Swanson agreed that many times people just need an interpretation, but when it gets to the Council, it becomes very public. Swanson stated that the procedure being followed where the City Administrator is involved is being handled well. Ken Anderson stated that Statute 412.861 states that when acting on behalf of the City on a violation, he would not be personally liable. Councilmember Eggena asked about the words "failure to perform your duty". City Attorney Adams stated that action, inaction or mis-action all applies as long as the Staff was acting in the performance of their duties. Anderson stated that the job description of the Planning and Zoning Administrator references the handling of complaints and hoped that the City Council would be reasonable about the process so that we can timely enforce and not be so procedure heavy or process heavy. MOTION 05S2-01-05 WAS MADE BY DEAN EGGENA AND SECONDED BY TERRY CURTIS TO REQUIRE THAT ALL COMPLAINTS DEALING WITH PLANNING AND ZONING

ORDINANCES MUST BE IN WRITING SIGNED BY THE COMPLAINANT OR BY STAFF ON A SPECIFIED FORM. Councilmember Phillips asked what is done with the complaint once it is recorded. Councilmember Curtis stated that the County tracks complaints and can provide the number of complaints on any one issue as requested. Councilmember Swanson asked if the Council places value on a complaint that isn't signed and it was agreed that it would carry less weight than one that is signed. Councilmember Swanson also felt if the information is going to be used for other purposes he would be opposed to this process. Councilmember Phillips felt there may be a problem with people not wanting to identify themselves. Councilmember Eggena stated that you could throw out the anonymous complaints. Councilmember Eggena stated that the Brainerd Dispatch recently reported in an article "an unknown number of complaints were received" and if tracked a number would be known. Chief Bob Hartman addressed the Council and stated that each month he comes to the Council and reports the number of calls the Police Department responded to, however much of his information is covered under data privacy until the incident has gone to court at which time it becomes public information unless a juvenile is involved. MOTION CARRIED WITH CURTIS, EGGENA AND PHILLIPS VOTING AYE AND SWANSON VOTING NAY.

City Administrator Swenson felt that Staff needed clarification from the Council on what constitutes a complaint in order to determine which ones need to be documented and which ones do not. Councilmember Eggena stated that all complaints must be received by the Planning and Zoning Department. Swenson stated that the Administrative Staff answers the telephones on many occasions for the Planning and Zoning Staff. Eggena stated that all complaints must be reviewed by Planning and Zoning Staff and verified. When Staff is unclear how to handle, then the Council needs to get involved. MOTION 05S1-03-05 WAS MADE BY DEAN EGGENA AND SECONDED BY DICK PHILLIPS THAT WHEN STAFF FEELS THEY NEED THE DEFINITION OF AN ORDINANCE, THE COUNCIL WILL BE CONSULTED BEFORE STAFF PROCEEDS. Councilmember Phillips stated that this would bypass obtaining the legal opinion first. Councilmember Eggena agreed and stated that under the current procedure, Staff contacts the City Attorney before consulting the City Council. Eggena feels the Council can do it cheaper and since the Council writes the Ordinances, they can be defining them. Eggena felt that the City Attorney could determine for or against an issue depending on who's asking. We spent \$74,024 in City Attorney Fees in 2004 against a budgeted amount of \$28,500 and while there may be some road project expenses in this amount, without some type of control, we have no control on the budget which we're responsible for. Discussion ensued regarding who should be authorized to contact the City Attorney to spend the City's money. Councilmember Swanson stated that he is opposed to this motion. Councilmember Curtis stated his concern would be if there is any other way to make this process more efficient and he would be interested to see the role of the City Attorney in other cities. Crosslake is one of few cities to have the attorney sit at the Council table and while the City Attorney does provide an opinion, he does not vote. Curtis felt that we should have a process as to when we go to the City Attorney in order to control cost. Councilmember Curtis presented a personal example of his where the City Attorney was contacted when he purchased the horse ranch on #103 and there was an issue regarding the interpretation of an ordinance. Ken Anderson

contacted the City Attorney and a lot of questions went back and forth between the City Attorney and Staff. As a taxpayer Curtis stated that he does not feel the taxpayers should bear the cost of attorney fees for his property issue. Therefore, if you have no control, you could spend thousands of dollars on attorney fees. Councilmember Swanson stated that the attorney fees paid in 2004 included legal fees for a Joint Public Works Facility where the City received reimbursement of 53% from the County along with other project costs. City Administrator Swenson stated that on an annual basis, Staff attends the Safety and Loss Workshops conducted by the League of Minnesota Cities and they emphasize that for land use issues and personnel issues, the Staff should be contacting the City Attorney before proceeding. The League of Minnesota Cities Insurance Trust stated that most claims are the result of not getting legal advice up front. City Administrator Swenson stated that sometimes closings are taking place within a day or two and the property owner needs a decision. They can't always wait for a Council meeting. Councilmember Eggena stated that the Council writes and interprets the Ordinance not the City Attorney. Community Development Director Anderson stated that he can't disagree with the Council but every case is different. In the case of Councilmember Curtis' situation there were covenant issues and the plat differed from what was recorded. Also it was a timing issue because we were combining a 3 ½ acre parcel and there are still some outstanding issues. It was noted that Mayor Andolshek joined the meeting at 10:50 A.M. Anderson continued that Staff needs to be responsive to our citizens and we don't want to create problems for property owners or for the City. MOTION CARRIED WITH CURTIS, EGGENA AND PHILLIPS VOTING AYE AND ANDOLSHEK AND SWANSON VOTING NAY.

The next item under discussion pertains to Chapter 412.221 Subd. 5 and Councilmember Eggena asked who can call the City Attorney and who can authorize the call. Councilmember Curtis stated that when he steps off the Council table he is a citizen. When we're spending money the Council as a whole needs to decide so the Council should vote on this issue. City Administrator Swenson stated that the City has two attorney's that they work with and he hoped the Council wouldn't stifle Staff from contacting the Labor Attorney on personnel issues. Councilmember Eggena proposed that only City Administrator Swenson be authorized to contact the City Attorney and the Labor Attorney. Councilmember Swanson asked if he would be allowed to delegate to his staff and Eggena felt that he could except for an interpretation of an ordinance. Mayor Andolshek asked where the Telephone Company would fall into this scenario. MOTION 05S2-04-05 WAS MADE BY DEAN EGGENA AND SECONDED BY DICK PHILLIPS TO AUTHORIZE THE CITY ADMINISTRATOR, GENERAL MANAGER AND POLICE CHIEF TO BE THE ONLY THREE INDIVIDUALS THAT CAN DIRECT LEGAL COUNSEL WITHIN THE CITY AND TELEPHONE COMPANY. Councilmember Swanson requested clarification that this motion allows the City Administrator and General Manager to call the City Attorney and to delegate the authority so the only individuals excluded from calling the City Attorney are the five individual Councilmembers. Mayor Andolshek asked the Council if they felt it necessary to tie the strings of those not of their opinion and whether the Council thought his opinion was so out of line that he can't talk to the City Attorney. Councilmember Curtis felt

controls were necessary and Councilmember Phillips did not feel one Councilmember should have the edge over another by calling the City Attorney.

With the consensus of the Council, the audience was allowed to comment. Sandy Eliason stated that the Council approves the bills each month and the attorney bills are listed on the bills for approval, so the Council approved the payments. Eliason also noted that if you watch the votes, they always go 3-2 and that's not how a democracy works. Councilmember Curtis agreed that the Council approves the attorney bills, but that's after the work has been done. Councilmember Swanson asked how much of the Attorney's bill is the result of Councilmembers talking to the City Attorney. Councilmember Curtis stated that he is willing to have this body determine whether or not he can call the City Attorney. Curtis stated that he wants the same handcuff on him that Ken Anderson has on him. Councilmember Swanson stated that there is a lot of money being spent at this meeting with the City Administrator, Community Development Director and Clerk/Treasurer sitting through this meeting and what is being accomplished.

Community Development Director Anderson stated that some of the attorney funds expended out of the Planning and Zoning budget are reimbursed by developers, so if you are strictly looking at expense that is not accurate. Anderson asked if this motion is going to limit title opinion requests. Councilmember Eggena stated that this motion doesn't hinder Staff in the normal operation, if you need legal work done talk to Tom Swenson and he can authorize the call to the City Attorney. MOTION CARRIED WITH CURTIS, EGGENA AND PHILLIPS VOTING AYE AND ANDOLSHEK AND SWANSON VOTING NAY.

The next item under discussion was Chapter 412.201, Execution of Instruments – Councilmember Eggena commented that this Statute requires that every contract be executed on behalf of the City by the Mayor and the Clerk. City Attorney Adams stated that currently the Mayor and Clerk sign the deeds, however the Mayor and City Administrator have signed them since the Council has the authority to delegate this item. Liquor licenses are signed by the Mayor and the Clerk. Most resolutions are approved by motion and authorize the City Administrator and Mayor to sign the resolution. Mayor Andolshek asked if there was an area where the City is not following Statute and Councilmember Eggena felt in the area of deeds. It was agreed by the Council that they can delegate this signature as part of the motion when approving the plats.

Regarding Statute 412.191, Councilmember Eggena asked if the City Administrator, Clerk or Department Head should be allowed to participate in Council debate. Who should be allowed to speak. Eggena felt the five elected people should engage in debate unless there is a consensus of the Council. As an example, he stated if he wants to hear what Tom Swenson has to say on an issue he'll ask for it. The only persons that he has to convince that he is correct on an issue are two other Councilpersons. MOTION WAS MADE BY DEAN EGGENA THAT DURING DEBATE HE DOES NOT BELIEVE THAT ANYONE SHOULD BE RECOGNIZED WITHOUT COUNCIL CONSENT. Eggena stated that the open conversations that are held with the Council are okay, but once a motion is made and seconded, only the Council should participate in discussion.

Councilmember Curtis stated that he would value the input, but as mentioned previously most cities don't have the City Attorney sitting at the Council table. Councilmember Eggena stated that he is not trying to restrict the Council from getting information. Councilmember Swanson stated he has a problem with ham stringing the Council and wondered what Eggena was trying to do here. Usually a motion is made and seconded and then everyone engages in discussion. Mayor Andolshek felt that the City Attorney, City Administrator and Staff should be handled differently from the audience. City Administrator Swenson stated that a good example of what goes on with this Council is that for purposes of discussion a Councilmember will second a motion. Now you have cut Staff off from any input on the issue. By approving this motion, you're taking the control away from the Mayor since he is the presiding officer. Consensus of the Council started with Mayor Swanson, but Mayor Andolshek has the power, as presiding officer, to recognize individuals. Councilmember Curtis asked if the correct procedure is to make a motion, second the motion and then have discussion. City Administrator Swenson stated that Roberts Rules of Order are followed when it's convenient, otherwise they are not followed. Councilmember Eggena stated that he doesn't think this Council ever agreed to follow Roberts Rules of Order and the Mayor doesn't make the rules. City Administrator Swenson commented that the Mayor doesn't make the rules, but he does have the authority to preside over how the meeting is run. Councilmember Curtis suggested the Council agree as gentlemen to have operating rules. After discussion regarding this issue, Mayor Andolshek thanked the Council for allowing Staff and the City Attorney to be used at his discretion. Regarding the audience, Mayor Andolshek stated that he would take a straw poll of the Councilmembers but would either recognize all or none. **COUNCILMEMBER EGGENA RESCINDED THE MOTION.** It was the consensus of the Council that the Mayor runs the meeting.

Councilmember Eggena stated that the Council voted on an Ordinance Amendment at the May 9<sup>th</sup> meeting that passed 3-1. Community Development Director Anderson had stated that a 4/5ths vote of the Council was required to pass the motion. Statute 462 states that only a simple majority is required unless it is a rezoning from residential to commercial. City Administrator Swenson noted that this item was not listed on the Special Meeting Notice and should be deferred to another meeting.

**MOTION 05S2-05-05 WAS MADE BY TERRY CURTIS AND SECONDED BY DICK PHILLIPS TO ADJOURN THIS SPECIAL COUNCIL MEETING AT 12:02 P.M. MOTION CARRIED WITH ALL AYES.**

Recorded and transcribed by,



Darlene J. Roach  
Clerk/Treasurer