

SPECIAL COUNCIL MEETING
CITY OF CROSSLAKE
MONDAY, AUGUST 1, 2005
4:00 P.M. - CITY HALL

Pursuant to proper notice and call, the City Council met in a special session on Monday, August 1, 2005 at City Hall. The following Councilmembers 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, Chief Bob Hartman, General Manager Dennis Leaser and Clerk/Treasurer Darlene Roach. Also in attendance was Renee Richardson of the Brainerd Dispatch, Brian Clapper of the Lake Country Echo and Ross Alexander of Lakeland TV and two representatives of the MPCA. There were nineteen individuals in attendance including Judy Eggena, one of the owners of the Crosslake Construction Demolition Debris Disposal Facility, and Staff.

Councilmember Eggena was seated in the audience during the portion of the meeting pertaining to the Debris Disposal Facility.

Mayor Andolshek called the special meeting to order at 4:00 P.M. and stated that the purpose of the meeting was to discuss all aspects of the operations, conditional use permit and proposed re-permitting of the Crosslake Construction Demolition Debris Disposal Facility by the Minnesota Pollution Control Agency and approve bills for payment. Mayor Andolshek presented the format that would be used for the meeting which included property owner comments, Council comments, public input, and any Council action, if needed, at the end of the meeting. The meeting was turned over to Ken Anderson.

Community Development Director Ken Anderson addressed the Council and stated that he had prepared a Staff report which included a chronological history of permit activity and other events since May 9, 2005. At the end of the Staff Report there were several options that could be possible avenues or combinations of options that the Council could pursue. Anderson asked the Council if there were any questions of him and there were none.

The meeting was then open for public comments.

Dean Eggena addressed the Council and stated that on Page 3, Item 7 regarding "Updated survey - it is noted that a complete updated survey with 2 foot contours to be submitted within 12 months requiring an updated survey every five years as required with the demolition permit from the MPCA". Eggena stated that Staff feels drawings should have been prepared by a surveyor versus a civil engineer and he stated that he disagrees with this position since the surveyor does the field work and the civil engineer does the calculations. Eggena stated that he feels the correct drawings have been provided to the City, but if the City wants a surveyor's signature, Landecker & Associates can provide that.

Councilmember Curtis stated that the public hearing held by the MPCA at the Community Center was a good meeting where a lot of questions were answered.

Councilmember Swanson stated that he has put together comments which he wished to read. Swanson stated that he is a servant of the people and this Council has been discussing this issue since January. Swanson stated that based on the Staff Reports provided by Ken Anderson, there are sections of the Ordinance, namely Section 8.50 Performance Standards, which addresses nuisance standards, and Section 8.51 which prohibits new landfills which were adopted in 1993 are being violated. Swanson stated that the letter dated March 31, 2005 from City Attorney Kirk Adams confirms that re-permitting would be in violation of City Ordinance if the original permit area is exceeded. The 1992 permit showed a four acre site and the 1999 permit also showed a 4 acre site, however wallboard was unacceptable in 1992 and acceptable in 1999. Swanson asked if the conditions specified in the letter of May 10th were addressed by the facility owners. Swanson stated that Kurt Hoffman of the MPCA stated that only 2 other sites have odors and if the City is responsible for the site permit, the City should insure conformance. Swanson stated that a survey dated 2002 is not current and asked where the survey is that locates the four acre site which the May 10th letter requested. Swanson stated to be fair we need the current survey. If four acres is allowed under the CUP and four acres has been exceeded, the CUP is void. Swanson stated that we are no closer now than we were in January and its time to move on. MOTION 08S1-01-05 WAS MADE BY DEAN SWANSON AND SECONDED BY JAY ANDOLSHEK TO MOVE THAT THE CONDITIONAL USE PERMIT IS VOID DUE TO THE CONDITIONS NOT HAVING BEEN MET AND THAT THE OWNER HAS 30 DAYS TO PUT A SEALED CAP ON THE AREA.

Councilmember Curtis asked if the Council was going to allow the property owner to respond.

Councilmember Eggena stated that we've heard all this before. He further stated that Page Three, Item 13 of the April 21, 2005 Staff Report contained a motion which Eggena read. Eggena stated that no place in the motion approved by the City Council was there a reference to four acres. He stated that fencing was in place until the Granite City CUP was issued. He stated that the purpose for the fence is to catch debris not for security reasons. Eggena stated that a locked gate is not a point of ingress/egress. Eggena stated that there has never been a reference to four acres or it would have been defined. He said the Council is misconstruing an MPCA Permit as the CUP. Eggena blamed Swanson for bringing this up as a personal business attack because he doesn't like his politics. After a reference was made to resident Dick Dietz, Mayor Andolshek called for order.

Councilmember Swanson stated that the four acres is referenced in the 1992 and 1999 permits from the MCPA and the City Attorney has confirmed this in his letter to the City.

Councilmember Phillips agreed that this issue has been going on too long and a lot of emotion comes with the issue. He stated that the owner has demonstrated his cooperation

with the City and the MPCA has stated there is no danger in its operation. Phillips agreed that the four acres was referenced on the MPCA permit MOTION FAILED ON A 1-3 VOTE WITH SWANSON VOTING AYE AND ANDOLSHEK, CURTIS AND PHILLIPS VOTING NAY.

MOTION 08S1-02-05 WAS MADE BY JAY ANDOLSHEK AND SECONDED BY DEAN SWANSON TO SEND A LETTER TO THE MPCA PRIOR TO THE AUGUST 4, 2005 DEADLINE FOR COMMENTS RELATING TO RE-PERMITTING THE FACILITY AND TO THE BUSINESS/PROPERTY OWNERS INFORMING THEM LANDFILLS ARE A PROHIBITED USE AND ARE NOT ALLOWED IN CROSSLAKE BEYOND THE ORIGINAL FOUR (4) ACRE SITE APPROVED BY CUP AND/OR MPCA PERMITS PER THE FINDINGS IN THE CITY ATTORNEY LETTER DATED MARCH 31, 2005 (SEE ATTACHED). FURTHERMORE, THE CITY COUNCIL MAY DIRECT THE PROPERTY OWNER TO CONFIRM THE SIZE OF THE LAND AREA OCCUPIED BY THE DEMOLITION FACILITY BY SUBMITTING A CERTIFICATE OF SURVEY SHOWING CURRENT CONDITIONS, ELEVATIONS, USES ETC. ON THE SITE. ALSO, THE CITY HAS RECEIVED COMPLAINTS RELATED TO ODORS ALLEGEDLY EMANATING FROM THE DEMOLITION PIT. THE MPCA HAS DOCUMENTED HYDROGEN SULFIDE GAS ON THE SITE. IF THE FACILITY IS RE-PERMITTED, THE MPCA NEEDS TO MONITOR AND WORK WITH THE OPERATOR TO ALLEVIATE ODOR CONCERNS. There were no comments from the property owner. Councilmember Phillips asked if the MPCA wished to respond and Kurt Hoffman addressed the Council. Phillips stated that the four acres is the hang up and is there any relevance to this in issuing the permit. Hoffman stated that in the 1992 permit the MPCA put all 23 acres into the permit, however only four acres would be used in the 5-year period. In 1999 when the facility was re-permitted, the facility had not yet filled the four acres, but the 23 acres is still referenced. Hoffman stated that in 2005, they are looking at filling the four acres. In the MPCA database, we look at ten years of capacity even though we only issue a five-year permit to allow for unknown situations such as a tornado.

Councilmember Curtis stated that he does not have a problem with the four-acre site. He stated that he recognizes the facility area as a PID # not a four acre site. Curtis stated that his concerns lie with whether or not the conditions of the May 10th letter have been met and asked Community Development Director to respond as to what has been done per the letter that was sent to the owner from the City. Ken Anderson stated that the letter sent to Dean and Judy Eggena contained eight issues. Regarding what items have or have not been resolved, Anderson stated that he is not in a position to determine whether or not the Eggena's have complied with the City's requests, however the Staff Report prepared by Anderson does raise some issues that the Council should review. Some of the information is discretionary on the part of the Council. Councilmember Curtis stated that if discretion is to be used by the Council, he hoped that the Council could put aside personal hatred and animosity. Curtis stated that he does not recognize the four acre requirement and hoped that we are not going to subscribe to the fact that we're too good to put our own trash in the ground. Curtis stated that he was interested in the landfill

continuing. Councilmember Swanson stated that he takes issue with the comments made by Eggena and Curtis. Swanson stated that his decision is based on the information contained in the letter sent by the City Attorney which was read in part by Swanson. Our Ordinance states no new landfills and if you go over the four acres, that constitutes a new landfill.

Dean Eggena stated that if you look at the chronological order on March 11, 1991, a motion was approved by the Council approving the Conditional Use Permit until such time as the MPCA does not issue a permit for the demolition pit. At that time, the Crosslake permit is null and void. Then on January 30, 1999, the permit was renewed. Eggena stated that the first thing he had to do was get a CUP for the site on 23 acres, then he went to the MPCA to get the five-year permit. Eggena stated that he does not agree with the City Attorney's interpretation as stated in his letter of March 31, 2005. Eggena further stated that he does not believe that it was the intent of the Council to limit the site to 4 acres. Councilmember Swanson stated that he was on the Council when the CUP was approved and there was a hole in the ground where material had been removed and that was approved for the site. There was no agreement to go beyond the four acres. MOTION DID NOT PASS ON A 2-2 VOTE WITH ANDOLSHEK AND SWANSON VOTING AYE AND CURTIS AND PHILLIPS VOTING NAY.

MOTION 08S2-03-05 WAS MADE BY JAY ANDOLSHEK AND SECONDED BY DEAN SWANSON TO SEND A LETTER TO THE MINNESOTA POLLUTION CONTROL AGENCY (MPCA) DURING THE COMMENT PERIOD TO ADVISE THE MPCA THAT THE CITY HAS RECEIVED COMPLAINTS RELATED TO ODORS ALLEGEDLY EMANATING FROM THE DEMOLITION PIT. THE MPCA HAS DOCUMENTED HYDROGEN SULFIDE GAS ON THE SITE. IF THE FACILITY IS RE-PERMITTED, THE MPCA NEEDS TO MONITOR AND WORK WITH THE OPERATOR TO ALLEVIATE ODOR CONCERNS. MOTION CARRIED WITH ANDOLSHEK, CURTIS, PHILLIPS AND SWANSON VOTING AYE.

Councilmember Curtis asked if there are any other comments regarding the letter detailing outstanding issues. Eggena stated that the only one that hasn't been touched on is screening. Eggena stated that in 1998, the Planning and Zoning Commission encouraged screening. Eggena stated that screening instead of fencing would open them up for theft of the millions of dollars of equipment on site. Eggena stated that they do pick up the debris, but this industry is not the poster child for Better Homes and Gardens.

Councilmember Curtis thanked the MPCA for their time and involvement. He stated that no one wants to do what's detrimental to the environment. Curtis stated that this is similar to how Council's listened to the MPCA on issues pertaining to the Sanitary Sewer System.

Community Development Director Anderson stated that several options were laid out but through default, the facility will be re-permitted. Anderson asked if the Council wanted to take any action regarding landfills. Councilmember Phillips stated that the current Ordinance already addresses no new landfills. Councilmember Curtis asked who the

CUP is issued to, the land or the property owner, and Anderson stated that CUP is issued to the applicant that uses the land. City Attorney Adams concurred with Anderson. Anderson again asked the Council if they wanted to leave the Ordinance as is and Curtis stated that we will not issue any new CUP's for a landfill.

MOTION 08S1-04-05 WAS MADE BY DEAN SWANSON AND SECONDED BY DICK PHILLIPS TO ADJOURN THIS SPECIAL MEETING AT 5:12 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and respectfully submitted by,

A handwritten signature in cursive script, appearing to read "Darlene J. Roach".

Darlene J. Roach
Clerk/Treasurer

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