

PUBLIC HEARING
CITY OF CROSSLAKE
WEDNESDAY, SEPTEMBER 4, 2002
1:00 P.M. - CITY HALL

Pursuant to due notice and call, the City Council met in the Chambers of City Hall to reconsider an appeal for Subdivision 2002-006 submitted by Charlie McCulloch. Mr. McCulloch is requesting that the City Council decision to deny metes and bounds subdivision 2002-006 be reconsidered. The subdivision request was for a metes and bounds subdivision that would allow one parcel of land to be divided into two residential lots. The property is approximately 40,233 square feet in area and described as Lot 1, Block 2, Staley Shores, Section 7, Township 137 N, Range 27W. The property is zoned R-3, Medium Density Residential. Present at the hearing was Mayor Darrell Swanson, Councilmembers Sandy Eliason, Chuck Miller, Irene Schultz and Dean Swanson (who arrived at 1:04 P.M.). Also present was City Administrator Tom Swenson, City Attorney Paul Sandelin, Community Development Director Paul Larson and Clerk/Treasurer Darlene Roach. (Sign in sheet attached as a permanent part of the minutes.)

Mayor Swanson called the Public Hearing to order at 1:00 P.M. and stated that the purpose of the meeting was to re-hear an appeal of Subdivision 2002-006 for Charlie McCulloch. He stated that although Councilmember Swanson had not yet joined the meeting, a quorum of the Council was present. He stated that the order of events would include a legal opinion by the City Attorney, a presentation by the Planning and Zoning Staff, a presentation by the Applicant, comments from the public and final questions and comments by the City Council. It was noted that Ray Charpentier, Attorney for Mr. McCulloch was not in attendance at the hearing due to a conflict, however, Mr. McCulloch notified the Chair that he wished to proceed with the hearing. Councilmember Swanson joined the meeting at this time.

Attorney Paul Sandelin informed the Council that they would need to look at the appeal request as if they had not heard the matter previously. He further informed the Council that the applicant has met all of the requirements of the sub-division portion of the City's Ordinance.

Community Development Director Paul Larson addressed the Council and read a list of ten items that were provided to the City Council for their review prior to the hearing. Copies of all of the letters received regarding this subdivision were also provided to the Council. Paul Larson stated that at the August 12th City Council meeting, a request to rehear the appeal was approved by the City Council due to additional information received related to this plat. It was discovered that on February 16, 2001 the Planning and Zoning Commission did approve a sub-division in this plat which resulted in one lot being split into two lots.

Community Development Director Paul Larson stated that Staff has determined that the applicant's request does meet the minimum requirements of the subdivision ordinance. If the Council approves the request, Staff is recommending eight conditions be included as

part of the approval. City Administrator Swenson asked Paul Larson to read the eight recommended conditions into the record. Councilmember Eliason asked if the prior subdivision was in the same block and on the same bay as the McCulloch request and she was informed that it was. City Attorney Paul Sandelin informed the Council that conditions could be added, but the Council cannot deny the applicants request unless something shows that the subdivision ordinance has not been met and he hasn't seen that up to this point.

Charlie McCulloch addressed the Council and stated that he wanted to make two points that were not brought up in the last meeting. He stated that the concern over big boats in the bay is not a problem since there is a bridge in this area which would prevent big boats from getting through. Also, if the property owner wanted to keep the density down, why was the Outlot put in an area where five or so boats are docked. He further stated that there have been no permits requested for this property, only a request for a lot split. Regarding the covenants, they are a private issue with the property owners and not an issue that the City controls. He stated that the property split which was approved in February, 2001 was approved by the Planning and Zoning Commission of which three members still are members of the current Commission. He wondered why none of these three members mentioned the previous lot split. Mr. McCulloch stated that he has a problem with #6 of the recommended conditions which states "the applicant is responsible for payment of his own attorney and surveyor fees and costs". He stated that the Commission and Council has imposed numerous expenses on him due to the various meetings which have been held where he needed to hire an attorney, incur additional engineering costs due to additional survey work, as well as needing to hire a septic designer not only to do the work, but to attend the meetings.

Councilmember Miller stated that he felt the Council erred when the original appeal was heard or the issue would not be before the Council at this time. Councilmember Swanson referenced a similar situation on Daggett which did not come before the Council. Mayor Swanson stated that the Planning and Zoning Commission has statutory powers and the decision on the house on Daggett was approved by the Planning and Zoning Commission.

Lynn Schmidt, homeowner in Staley Shores handed out a document which was prepared by Neal Gaalswyk of the Crow Wing County Sheriff Department's Water Patrol Division. Mr. Gaalswyk has made an onsite inspection of Lot 1, Block 2 of Staley Shores and is of the opinion that it would be impossible to place a dock on the proposed Tract A, extending to the line of navigation that would not be in violation of Crow Wing County's Ordinance. He further stated that in his opinion it is impossible to place a dock on the proposed Tract B, that would not be in violation. He stated that his opinions are not intended to have legal standing and are simply his interpretation of the existing ordinance.

Lynn Schmidt stated that the problem with the prior split is that no one was notified of the meeting. No notices were mailed out to property owners. He stated that the previous lot split was made for a property containing 81,000 square feet with 750 feet of lakeshore. He stated that is over twice the size of the McCulloch lot.

June Wallace addressed the Council and stated that she feels the increased density is not good for the area or in keeping with the spirit of the way the land was developed. She stated that she was not aware of the other lot split. Ms. Wallace mentioned the August 12th letter to the City Council from residents of Staley Shores Addition which states various property owners' position on the issue.

City Attorney Sandelin informed the Council that the decision they had to make was whether or not the subdivision request meets the ordinance requirements.

Mayor Swanson stated that the reason the Council was here is to protect everyone's rights under the Ordinance, and although we may not all agree with what is being said or heard in regards to this matter, the Council does rely on Staff to the best of their ability. He stated that the Council is here to meticulously protect everyone's right to be heard. Lynn Schmidt addressed the Council and asked that the Mayor refrain from the vote since he has an association with Shores & More Realty. Mayor Swanson inquired how this could be and Mr. Schmidt stated that the Mayor's daughter, Laura is a realtor with Shores & More Realty who are mentioned on the Certificate of Survey. Mayor Swanson reviewed the survey and stated that the Hart Team were the realtor's referenced and that his daughter and son-in-law work for the Pederson Marketing Team. Councilmember Miller asked Mr. Schmidt if he was associated with a realty firm and he stated that he did work for Century 21. City Attorney Paul Sandelin asked the Mayor if there was any financial gain involved where there could appear to be a conflict of interest and Mayor Swanson stated that he does not hold a real estate license, his daughter is 30 years of age and financially independent, and that he had no idea Shores & More was involved, therefore sees no financial gain. City Attorney Paul Sandelin informed the audience that the City goes above and beyond in notifying adjacent property owners of upcoming meetings in addition to publishing public notices. Regarding the subdivision approved in 2001, the City did publish a notice in the newspaper. Attorney Sandelin informed the Council that they were not making a decision on surface water as referenced in the letter from Neal Gaalswyk. The City Council is only making a decision on land use and are not making decisions related to docking.

Rod Reighard, owner of property two lots from the McCulloch property, stated that the Planning and Zoning Commission and Council turned down a request he submitted for his property and feels since this request was voted down three times should be voted down again. June Wallace, owner of the property when it was originally platted, stated that she never dreamed anyone would consider further splitting of the property and wondered what the reason for platting is if property can be further subdivided. She referenced an August 24th newspaper article regarding square foot requirements on Gull Lake. Another concern of Ms. Wallace's was parking for company. She also stated that the waterfront area is a very crowded area and she is concerned about future water and sewer. She felt that the neighbors' objections to the land split should weigh heavily on the Council's decision. Regarding June Wallace's concern regarding sewer, Community Development Director Paul Larson stated that based on the Ordinance and based on the DNR's Shoreland Management rules, these lots do meet the minimum requirements for

septic. Regarding the August 24th newspaper article, Paul Larson stated that Crosslake sees many lots developed each year that contain 20,000 square feet and the City is not considered urban. Bob Levin, Crosslake property owner, stated that he has a house with 750 square feet and knows that is all that is allowed on the property. It was noted that Crosslake does not have a requirement for garages. Councilmember Miller reminded everyone that the reason for being here is not to hear a variance request, but to review a subdivision request. Whether a property owner proposes a 750 square foot home is another issue. It was noted that the survey did show a rectangular building 30'x24' in the building envelope. Community Development Director Paul Larson stated that with the right design, a home with 1000 square feet on each level could be constructed. He also stated that individuals are still building cabins in Crosslake.

Charlie McCulloch addressed the Council and stated that since Mr. Schmidt wanted to get personal, Mr. Schmidt tried to buy a lot from Mr. McCulloch and then said it was a test case. He stated that Mr. Schmidt has tried to attack him, his attorney and now the Mayor. Mayor Swanson stated for the record that he is not offended and that the facts have shown there is no conflict. Councilmember Miller stated that this is not an easy job for the City Council since they can sympathize with the property owners, but must follow the ordinance. He stated that the Council is bound to work within the Ordinance as it has been adopted. He further stated that he remembers when there was only 1 house in this area and questioned whether one more would make any difference.

MOTION PH1-09-01-02 WAS MADE BY CHUCK MILLER AND SECONDED BY SANDY ELIASON TO APPROVE SUBDIVISION 2002-006 FOR CHARLIE MCCULLOCH BASED ON THE REQUIREMENTS WITHIN THE ORDINANCE WITH THE FOLLOWING CONDITIONS: (1) BEST MANAGEMENT PRACTICES ARE USED DURING AND AFTER CONSTRUCTION TO PREVENT EROSION; (2) ALL LAND ALTERATION AND VEGETATION REMOVAL WITHIN THE SHORE IMPACT ZONE SHALL BE REVIEWED AND APPROVED BY THE PLANNING AND ZONING STAFF; (3) ALL OF THE FOLLOWING FEES ARE PAID TO THE CITY PRIOR TO THE SIGNING OF THE FINAL DEED FOR RECORDING INCLUDING PARK DEDICATION CASH IN LIEU OF LAND FEE; CITY ATTORNEY REVIEW FEES; CITY ENGINEER AND SURVEYOR REVIEW FEES; OUTSTANDING ROAD ASSESSMENT FEE IS PAID TO CROW WING COUNTY AND A RECEIPT IS PROVIDED TO THE CITY PLANNING AND ZONING DEPARTMENT; (4) ADEQUATE SWALES AND OR BERMS SHALL BE CONSTRUCTED TO PREVENT STORMWATER RUNOFF FROM GOING ONTO LOT 2 FROM THE PROPOSED TRACT B; (5) ANY PROPOSED BUILDINGS ON TRACT A OR TRACT B SHALL BE STAKED BY A LICENSED LAND SURVEYOR PRIOR TO ISSUING ANY ZONING PERMITS; (6) THE APPLICANT IS RESPONSIBLE FOR PAYMENT OF HIS OWN ATTORNEY AND SURVEYOR FEES AND COSTS; (7) DISMISSAL WITH PREJUDICE OF THE APPEAL IN DISTRICT COURT; AND (8) NO VARIANCES SHALL BE GRANTED IN THE FUTURE FOR THE SUBDIVIDED LOTS. Councilmember Eliason stated that while she agrees with many of the comments made by the public, she has to abide by the ordinance. Councilmember Schultz stated that she feels badly for the property owners

and while she knows the bay is very shallow, has to follow the ordinance. Councilmember Swanson stated that he voted against the approval previously and may be in the minority here, but does have a concern with the density. He stated that he has spoken with Community Development Director Paul Larson regarding the 20,000 square foot requirement and stated there is no way of knowing what the ordinance maybe should be, but the main area of concern for him is that the land was platted the way it was for a reason and feels that the objections by the property owners need to be heard. He stated that he did not appreciate the subpoena to go to court which was served on the Council by the applicant. Mayor Swanson stated that there is a balancing act with exclusionary zoning and that is one of the reasons that the City has been pro-active in purchasing parkland within the City. Councilmember Miller stated that he has been elected to sit on the Council to defend the code and doesn't feel taxpayers money should be spent to defend an un-defendable case. He also commented that there are other lots in this plat that contain enough square feet whereas the property could again be subdivided. He stated that he must do what the law allows for. Councilmember Swanson commented that he understands the position that the Council will be taking, but wanted to go on record in saying there may be something wrong with the system. MOTION CARRIED WITH A 4-1 VOTE WITH COUNCILMEMBER SWANSON OPPOSED.

MOTION PH1-09-02-02 WAS MADE BY CHUCK MILLER AND SECONDED BY SANDY ELIASON TO ADJOURN THIS PUBLIC HEARING AT 2:11 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and transcribed by,



Darlene J. Roach
Clerk/Treasurer

