

PUBLIC HEARING
CITY OF CROSSLAKE
THURSDAY, SEPTEMBER 4, 2003
10:00 A.M. – CITY HALL

Pursuant to due notice and call, the Crosslake City Council met on September 4, 2003 at 10:00 A.M. to hear a request by Dan White and Betsy Hoffman for an appeal of a decision made by the Planning and Zoning Commission at its meeting of July 25, 2003. The Planning and Zoning Commission/Board of Adjustment denied a variance request of approximately 3.8 feet to allow the construction of a home with the basement floor elevation below the elevation currently allowed by ordinance. Present at the hearing was Mayor Darrell Swanson, Dean Eggena, Chuck Miller, Dick Phillips and Irene Schultz. Also present was City Administrator Tom Swenson, Community Development Director Ken Anderson, City Attorney Paul Sandelin and Clerk/Treasurer Darlene Roach. Other individuals in attendance included Attorney Lonny Thomas, DNR Hydrologist Ron Morreim, DNR Waters Floodplain Division Representative Tom Lutgen and Kevin McCormack of Landecker & Associates.

Mayor Swanson called the public hearing to order at 10:06 A.M. for the purpose of hearing Variance Appeal No. 2003-007 submitted by applicants Dan White and Betsy Hoffman.

Community Development Director Ken Anderson informed the Council that a considerable amount of additional information has been received since the Planning and Zoning Commission hearing that may be relevant to the appeal. One of the documents received includes a letter dated September 3, 2003 from Tedd Mattke of Mattke Surveying & Engineering, Inc. recommending that the appeal be tabled until additional information can be investigated. Attorney Sandelin advised the Council that they could review information received in regards to the Appeal as well as allow individuals in attendance for the hearing to address the Council and present information regarding the matter prior to the Council taking action to table to a future date. Anderson stated that a letter dated September 2, 2003 was also received from FEMA (Federal Emergency Management Agency) related to the White/Hoffman appeal.

Mayor Swanson stated that he would support tabling the matter, based on information he received in a conversation the prior day between Mr. Mattke and Mr. Anderson. Mayor Swanson requested that Community Development Director Anderson bring the Council up to date with what has transpired in the last few days in regards to this matter. Anderson stated that based on the information received since the Planning and Zoning Commission meeting, further research may be required to determine if a variance is actually required. The applicant's original request was for a variance of approximately 3.8 feet of vertical setback to allow construction of a home with the basement floor elevation below the elevation currently allowed by ordinance. The survey conducted by Landecker & Associates shows the subgrade elevation at 1,230 feet. Including the poured concrete floor, the elevation is approximately four inches above the 1230 foot elevation. The Regulatory Flood Protection Elevation (RFPE) on Crosslake requires that

the lowest floor elevation in the floodplain be at 1,233.8 feet, therefore the variance request was for approximately 3.8 feet. Upon review by the Planning and Zoning Commission, it was determined that a hardship could not be demonstrated and that the variance criteria could not be met. Following this decision, the City received a letter from Attorney Lonny Thomas, legal counsel for the applicant, appealing the decision of the Commission. After the notice of appeal was filed, the applicant contacted Tedd Mattke in an effort to accumulate additional survey information. From the information received from Mr. Mattke, and based on additional survey information, it appears that the location of the house may be outside the floodplain. What is then required is a Letter of Map Amendment (LOMA) being submitted to FEMA for exemption from the floodplain restrictions. Based on this information, it seems appropriate that the applicant be allowed more time to research the information.

Mayor Swanson, with Council consensus, agreed to hear comments by representatives of the DNR who were in attendance in regards to how the State guidelines relate to FEMA requirements.

Mr. Ron Lutgen addressed the Council and stated that the DNR is the State Agency responsible for administrating the federal flood insurance program. Prior to the Planning and Zoning Commission meeting, the DNR submitted a letter dated July 23, 2003 in regards to this matter for review by the Commission. In this letter, the DNR stated that they are the State Coordinator for the National Flood Insurance Program (NFIP) to act as an intermediary between FEMA and the City and will advise to the best of their ability. The DNR is also required to provide oversight to cities ensuring that the flood plain ordinance and FEMA maps are adhered to by the local levels of government. The DNR is also responsible for administering the State Floodplain Management Act and provide training to ensure that the Act is followed at the local level of government. For purposes of zoning permits, the City of Crosslake uses the FEMA requirement for a floodplain elevation of 1232.8 as suggested by the DNR and the Corps of Engineers. Councilmember Eggena asked if it is the City that sets the floodplain requirements or FEMA. Mr. Lutgen stated that it is the local municipality that sets the floodplain level. However, if a Letter of Map Amendment is submitted, FEMA is not bound to use the City's requirements. Regarding the floodplain maps, Councilmember Eggena stated that he has gone through the maps and it is very difficult to determine whether a property is located within the established FEMA floodplain or not. And while this is FEMA's problem, it falls back on the City for interpretation. It was suggested that maybe the City set a flood elevation for each lake and then submit this to FEMA for approval. Regarding the Whitefish Chain, FEMA is using an elevation of 1232.8. Any elevation below that number will not receive a Letter of Map Amendment, unless the elevations are shot and it is determined that the property is in fact, above the 1232.8 elevation. City Administrator Swenson inquired if the City should amend the ordinance to reflect the 1232.8 elevation number so that when the surveyor shoots the elevations, the benchmark is set and you don't go below the 1232.8. Councilmember Eggena agreed that this is the step that hasn't been done by the City which needs to be done, not only for the Whitefish Chain, but for all the lakes.

After considerable discussion regarding elevations, Mr. Lutgen expressed his comments regarding his visit to the property earlier this date. A visual inspection of the home showed that if the elevation was at one time above the 1232.8 elevation, it no longer is since the dwelling has a walkout which is a number of feet below this elevation on the lakeside of the home. Councilmember Eggena asked if the applicant closed off the walkout and added fill to get to the correct elevation level whether they could keep the full basement. Mr. Lutgen stated that this was a possibility by making an appeal to the agency (DNR) and have them sign off on it. Councilmember Eggena asked if the DNR would help the City set the floodplain requirements on all of the lakes within the City. Mr. Lutgen stated that they would assist with this and that there is a small amount of money at the State level that has been committed to Crosslake to look at the base flood level of the lakes. FEMA is working towards updating and modernizing the floodplain maps, but this is quite an extensive project considering the number of rivers, valleys and lakes located throughout the State and country.

City Administrator Swenson asked for a clarification on the various levels between what the applicant submitted on the variance application, which was 1230, and the hundred-year floodplain level of 1232.8. The survey shows the level at 1232.8 so the question arises as to where the 1230 level came from. Community Development Director Anderson stated that the 1230 level is the subgrade or fill level on the site which was set in order to pour the basement floor. Anderson stated that the revised survey information shows the existing grade elevation (before construction) being at or around the 1232.8 level which is a change in the information presented to the Planning and Zoning Commission.

Community Development Director Anderson stated that the Planning and Zoning Department had been planning a floodplain educational seminar in September co-sponsored by the DNR and the City as it relates to the insurance industry, realtors, surveyors as well as local government. However, because of a timing problem with doing something like this in the Fall, Staff has determined that it will be held sometime after the Christmas holidays. Anderson also pointed out that for purposes of variance applications, Staff has been using an elevation of 1233.8 because when the structure is built within the floodplain, there is a requirement to be one foot higher than the 1232.8 floodplain elevation. City Administrator Swenson asked if the one-foot was part of the State Shoreland Management Act or if the additional one-foot is a City requirement. Anderson stated that this is the State Floodplain Management Act itself, not a FEMA requirement. There are different sets of rules established by the different entities for floodplain management. FEMA writes one set of rules, the State another set of rules and the City a third set of rules (the City has adopted one of the model state ordinances regulating floodplain protection). If the City does not follow the FEMA rules, however, the City would lose any flood protection, be suspended from the program, lose flood insurance for its residents and lose most types of State and Federal grants. The State requires that a one-foot freeboard be added over and above the level that FEMA sets. What penalty would be imposed on the City by not following the State requirements is unknown; however, Mr. Lutgen stated there could be legal issues since the guidelines clearly state that cities cannot vary from the State's RFPE requirement of 1233.8.

City Attorney Sandelin stated that in the R-3, Medium Density Residential Zoning District, the Ordinance requires an additional three feet above the 1232.8 and this issue needs to be clarified. Councilmember Eggena stated that the three feet came into play years ago when it was decided that all footings should be three feet above the water table. While this requirement is not being adhered to in the ordinance, it needs to be amended since it is no longer applicable in the floodplain area or anywhere else in the City.

Discussion ensued regarding the ordinary high water level on the chain as compared to the one-hundred year flood plain level.

City Attorney Sandelin asked a procedural question of the DNR where if the applicant can establish they are not in the floodplain due to the survey, yet the level of the basement floor is below the floodplain level, procedurally what role would the City play in this. Mr. Lutgen stated that they would advise the City to make a finding which needs to be justified and the City is subject to a review by FEMA as to how the City does business. One method cities use to resolve these types of issues would be to require that the applicant get a conditional Letter of Map Amendment from FEMA. Ron Morreim stated that it is hard for the City to find a variance hardship on something already constructed. That is, the nonconformity was created by the applicant starting and continuing construction within the floodplain. He also stated that it is very common for cities to ignore the lowest floor elevation, but the requirement is there to protect the landowner. Mayor Swanson asked if restoring the land, eliminating the walkout, but still using the basement which is below the floodplain level, would solve the problem with FEMA. He further asked if the problem with the Shoreland Management Act would also be solved. Mr. Lutgen stated that it would not satisfy the State's requirement. If the City chose to approve the variance request, the decision could be challenged by the DNR.

Lonny Thomas, Attorney for the applicant, addressed the Council and stated that Mr. White retained Mr. Mattke, a hydrologist to look at the elevations in more detail. When the numbers were looked at, the conclusion was reached that the one hundred year base flood level may have changed to be less than the 1232.8 level with the construction of the new dam. If this is the case, including the one-foot freeboard, the applicant could possibly be in compliance. In conversations with the Corps of Engineers, there is a possibility that the new levels may have already been determined. This information is the basis for a request for a continuance on the hearing until the final numbers can be obtained. Attorney Sandelin asked what timeframe for tabling was being requested and Attorney Thomas stated thirty days would be sufficient and based on the request from the applicant the sixty day rule would not be applicable.

Based on the request to table the issue, MOTION PH9-01-03 WAS MADE BY DEAN EGGENA AND SECONDED BY IRENE SCHULTZ TO TABLE THE PUBLIC HEARING APPEAL FOR WHITE/HOFFMAN TO 5:00 P.M. ON OCTOBER 13, 2003. MOTION CARRIED WITH ALL AYES.

MOTION PH9-02-03 WAS MADE BY DEAN EGGENA AND SECONDED BY
CHUCK MILLER TO ADJOURN THIS PUBLIC HEARING AT 11:26 A.M. MOTION
CARRIED WITH ALL AYES.

Recorded and transcribed by,

A handwritten signature in cursive script that reads "Darlene J. Roach". The signature is written in black ink and is positioned above the printed name and title.

Darlene J. Roach
Clerk/Treasurer

SHARED/PUBLIC HEARING -- September 4, 2003.doc