

CITY OF CROSSLAKE
COUNCIL PROCEEDINGS
PUBLIC HEARING AND SPECIAL SESSION
NOVEMBER 28, 1989
1:00 P.M. AT CITY HALL

The City Council for Crosslake Minnesota met in a Public Hearing and special council session on Tuesday, November 28, 1989 at City Hall. The following Councilmembers were present: Mayor Kurt E. Anderson, Lyle M. Arends, Roger A. Burslem, Diana A. Gallaway and Charles O. Miller. Also present was City Attorney James M. Gammello, Planning and Zoning Coordinator Marlowe R. Kingstedt, City Clerk Arlene A. Buchite and approximately 13 residents.

Mayor Anderson called this Public Hearing to order at 1:00 p.m. Mayor Anderson said he was going to have Police Chief Backdahl state what he found out about purchasing a new police car. Mr. Backdahl stated that there are no new 1989 cars locally and it would cost approximately \$2,000 additional to get a car from out East. Mr. Backdahl said that the best buy for the City would be through the State Contract which is about \$13,100.00 for the car and with the equipment removed from the old car and installed it will be approximately \$14,500.00 total. MOTION NO. 1152-01-89 WAS MADE BY COUNCILMEMBER MILLER AND SECONDED BY COUNCILMEMBER ARENDS TO ALLOW POLICE CHIEF BACKDAHL TO GO AHEAD WITH NEGOTIATION FOR THE PURCHASE OF A PATROL CAR WITH PAYMENT AFTER THE FIRST OF JANUARY. Councilmember Gallaway inquired if that meant delivery also and Mayor Anderson said delivery is at least 120 days so it would be after January 1 before the car is received. MOTION PASSED WITH COUNCILMEMBERS ARENDS, BURSLEM, GALLAWAY AND MILLER VOTING AYE.

The next item was an appeal by Nancy Stellmaker of V-89-25 issued to John Jones. Mayor Anderson said he wanted any person speaking to state their name before they made any comments.

Mayor Anderson said the application for this variance was made on September 1, 1989 by John and Susan Jones. The legal description of the property is Lots 7 and 8 of Block 6 in Manhattan Beach, a replat of Twin Beach. Mayor Anderson read what was written on the Variance application. Next Mayor Anderson read an application for a zoning permit. Mayor Anderson then displayed a copy of a drawing which all the Planning and Zoning Commission Members said they had seen. The next item.

read by Mayor Anderson was a letter from Mr. John Christie stating he could not attend the public hearing for John Cones but this letter was not given to the Commission because of an apparent misspelled name. Also received was an unsigned letter against the Variance but since it was not signed it was not acknowledged. An excerpt from the Planning and Zoning meeting on September 15, 1989 was read by Mayor Anderson which concurs that a second story was discussed at that meeting. Mayor Anderson said that on October 30, 1989 a letter was sent to Mr. and Mrs. John Jones stating that at the Planning and Zoning meeting on October 20, 1989 the Commission voted by Motion 2-10-89 to suspend Variance No. 89-25. Mayor Anderson stated that on November 1, 1989 the Council received a letter from Nancy Stellmaker appealing the Variance No. 89-25 granted to John Jones and requesting that the Variance and permit be suspended. Mayor Anderson read a letter from Nancy Stellmaker which was written on October 13, 1989 saying that when this variance was explained to the neighbors it was for a bathroom only not a two story house. Mayor Anderson read a letter dated November 10, 1989 from Leo Fraser of Crosslake Lumber Company saying that plans were submitted and answers concerns in the Nancy Stellmaker letter. The last item Mayor Anderson read was the notice of Public Hearing which was sent out to all concerned parties and the City Attorney.

Mayor Anderson said he is not pleased with the Variance being issued and asked Mr. Jones when he bought the property.

Mr. Jones said he purchased the property in August of 1988 and assumed that he would be allowed to add on to the cabin because it was grandfathered in. Mr. Jones stated he was required to pay for a septic permit at the time of purchase of the home. Discussion ensued as to what should be required for plans for a septic permit.

Mr. Jones stated that he objected to two meetings which were held at which time his variance was discussed and he was not informed of the meetings. Mayor Anderson said when the appeal was filed with the Council this Public Hearing was set up and he was notified.

Mayor Anderson asked for comments from the complaining parties at this time. First to speak was Marianne Peters who said she was advised that this variance request was for a bathroom only and she wanted to go on record as being against this variance.

Nancy Stellmaker was next to speak and said she felt the variance was granted without adequate site plans and

because of the second story being added her view of the lake will be blocked. Ms. Stellmaker said she would like to work out some sort of compromise and would have no objections to the Jones' building to the back and east of their cabin.

Ron Morrium of the Department of Natural Resources in Brainerd was present and said that it is difficult to say anything at this point because the variance has already been granted. Mr. Morrium said that considering the Jones property in relation to the established set back line of the adjacent properties, substantial construction should probably not be allowed.

Councilmember Burshem asked Mr. Jones if he would be willing to work with Nancy Stellmaker and the others to forget the second story and put a bathroom in and build 12 feet back and 18 feet across.

Mr. Jones said they originally looked at building to the back but two different contractors said that they would not guarantee that the hill in back will not come falling into his house. He stated that the retaining wall is 30 years old and tree roots and other roots have made the present wall safe. Mr. Jones read the excerpt from the September, 1989 Planning and Zoning meeting which addressed the second story being added. Mr. Jones said he does not need a variance for the second story but he needed it because he is only 55 feet from the lake. Mayor Anderson said he needed a variance because he has a substandard structure and if it changes the exterior of the cabin by going up or sideways or whatever the variance is needed.

At this point Leo Fraser reviewed the building plans for the Council. Mr. Fraser stated that the roof pitch will be 7/12.

Mayor Anderson said he wanted to determine if the permit was issued legally according to what was applied for or if the permit was issued contrary to what was applied for or if someone was trying to hide something and those are the three things he wants to base his decision on.

Mayor Anderson said he felt that the variance should never have been granted because the Jones' bought the property knowing there was no bathroom and you cannot make your own hardship. but if the previous owners had requested a variance it should have been granted to them.

Councilmember Miller said he felt that the variance should be rescinded or suspended at this time unless a

compromise could be reached between the adjacent property owners and the Jones'.

Councilmember Arends said there is sufficient room to build a house at the top of the hill.

Councilmember Gallaway said she does not feel that the Planning and Zoning Commission looked at the items under Variances in the zoning ordinances in granting the variance.

Jean-Paul Hudon, Planning and Zoning Commission Member said he felt that no bathroom is a hardship.

Mr. Fraser asked if the application was properly submitted and Mr. Kingstedt said it was. Mr. Kingstedt said this application was precipitated by a permit being issued for a septic permit which is required at the time of sale by Crosslake ordinances.

Mr. Gammello said the Council has to decide if the application is adequate.

Councilmember Burshem said he feels that the application which was submitted to the Planning and Zoning Commission was not complete and they did not have enough information to make a decision.

Councilmember Miller asked Mr. Jones if he would be willing to alter his plan to reach an accomodation with the neighbors that are in objection.

Mr. Jones said that if he could find a contractor that would excavate the side of the hill and guarantee it and if the City Council would guarantee granting a variance because he is only 55 feet from the high water mark he would have no problem with that request.

Councilmember Burshem said no one will guarantee that request. Councilmember Burshem said he feels they should get a lift station and build a house on the top of the hill where they could meet all set back requirements.

Mr. Jones said he followed the rules by applying, paid the fee necessary, they have not been trying to pull the wool over anyone's eyes, their variance was granted and they want to build. Mr. Jones said he would feel bad if some one was losing their panoramic view but he should not have to guarantee some one else's view.

City Attorney Gammello suggested that a short recess be taken to try to have the affected parties work out a

compromise. MOTION NO. 11S2-02-89 WAS MADE BY COUNCILMEMBER BURSHAM AND SECONDED BY COUNCILMEMBER MILLER AT 2:45 P.M. TO TAKE A SHORT RECESS IN THE PUBLIC HEARING WITH THE STIPULATION THAT THE PEOPLE AT THE PUBLIC HEARING, EXCLUDING THE CITY COUNCIL, AND THE ZONING COORDINATOR GET TOGETHER TO TRY TO WORK SOMETHING OUT. MOTION PASSED WITH COUNCILMEMBERS ARENDS, BURSHAM, GALLAWAY AND MILLER VOTING AYE.

Mayor Anderson reconvened this Public Hearing at 3:10 p.m.

Mr. Jones said it is impractical and no contractor will guarantee excavating into the hill and he does not want a home at the top of the hill. Mr. Jones said there was no doubt that everyone knew what he wanted to build, which included a second floor, at the Public Hearing because it was discussed completely and they still granted him a variance.

Nancy Stellmaker said she does not see why they have to build a second story; that they should be able to go sideways and get a bathroom and kitchen. Ms. Stellmaker said she cannot understand the undue hardship because that cabin has been used for 40 years the way it is.

Mr. Jones said he feels the issue with Ms. Stellmaker is not the 55 feet from the lake but the fact he may block her view. Mr. Jones said he would not be willing to forego this variance because he would still be 55 feet from the lake and from what he hears of this council he will not get another variance.

Mr. Del Anderson was present to say that as a third party his observations are that the Council is not supporting the Commission they appointed. Councilmember Gallaway said that whatever the Council does this is an appeal and the Council has to respect the appeal process whether or not they agree.

Mayor Anderson said Planning and Zoning did nothing wrong they just did not have all the information available when they made their decision. Mr. Jones said he disagreed with Mayor Anderson because it was discussed at length by Planning and Zoning and they were fully aware of what was being applied for.

Mr. Anderson said it was his impression of this meeting that the Council is trying to run the City with opinions and not ordinances. Councilmember Bursham said he wanted to go on record as disagreeing with that statement.

Ray Midlo, Planning and Zoning Commission Member was present and asked each of the Planning and Zoning Commission Members present if they would still approve the variance with the information presented at this Council meeting. Three Commission members said yes they would and two said they probably would.

Councilmember Burshem asked those persons appealing the variance if they would appeal again with the information as presented at this meeting and two agreed they would still appeal the variance.

Mr. Gammello said at this point that he has not heard any obvious solutions so it is up to the City Council to decide whether the decision of the Planning and Zoning Commission was appropriate. In looking at the ordinance Mr. Gammello said it says variances may not be final so the Council is acting within their parameters by holding this public hearing today. Mr. Gammello said it might be possible to send it back to the Planning and Zoning Commission to impose some restrictions on it or the Council may choose to deny it.

Mr. Armond Gease said he was not a member of the Planning and Zoning Commission when this variance was granted but he would like to suggest at this time that the pitch of the roof may be able to be lowered so as to increase Ms. Stellmakers view. Mr. Fraser said that the proposed pitch was 7/12. Mr. Gease said if they change the pitch to a 4/12 pitch it would only be about 5 feet additional onto the present roof height. Ms. Stellmaker said she would have to take a look at it and see how it would affect her.

Mr. Fraser said the trusses cost approximately \$800.00. Mayor Anderson said that would be a lot cheaper than a lawsuit for all concerned.

Mr. Jones said the new pitch would be fine by him if Ms. Stellmaker would agree. Councilmember Miller said that compromise means a little give on both sides and this sounded like a good compromise to him. MOTION NO. 1192-03-89 WAS MADE BY MAYOR ANDERSON AND SECONDED BY COUNCILMEMBER MILLER TO LET THE VARIANCE STAND WITH THE STIPULATION THAT THE PITCH ON THE ROOF BE CHANGED FROM A 7/12 TO A 4/12 PITCH AND THE BASIC PERMIT REMAIN AS IS, ALSO THAT A COMPLETE SET OF PLANS BE SUBMITTED TO PLANNING AND ZONING TO BE PUT IN THE FILE SHOWING THE NEW ROOF DESIGN AND EXACT DRAWINGS OF WHAT STRUCTURE IS GOING TO BE BUILT. Mr. Gammello asked for the record if Mr. Jones was agreeable to this solution and Mr. Jones indicated that he was. Councilmember Burshem said he feels the decision should be put off until new plans have been submitted and approved. Ms. Stellmaker said

she would like to see the plans also. MOTION PASSED WITH COUNCILMEMBERS ARENDS, GALLAWAY AND MILLER VOTING AYE. COUNCILMEMBER BURSHAM VOTED NAY.

Mayor Anderson said he hoped everyone concerned ends up to be friends. Mayor Anderson requested a set of plans as quickly as possible in the file.

MOTION NO. 11S2-04-89 WAS MADE BY COUNCILMEMBER ARENDS AND SECONDED BY COUNCILMEMBER MILLER TO ADJOURN THIS PUBLIC HEARING AT 3:40 P.M. MOTION PASSED WITH COUNCILMEMBERS ARENDS, BURSHAM, GALLAWAY AND MILLER VOTING AYE.

The complete tape of this hearing is on file at the City Clerks office.

Mayor Anderson then called the special council session to order. Mr. Gammello said a Findings of Fact should be written and it was the consensus of the Council that Mr. Gammello should do it.

First item on the regular agenda was to approve a Certificate of Deposit through the 4-M Funds. MOTION NO. 11S2-05-89 WAS MADE BY COUNCILMEMBER GALLAWAY AND SECONDED BY COUNCILMEMBER ARENDS TO APPROVE THE CERTIFICATE OF DEPOSIT THROUGH THE 4-M FUNDS AT GREAT WESTERN BANK FOR 31 DAYS AT 8.45 PERCENT. MOTION PASSED WITH COUNCILMEMBERS ARENDS, BURSHAM, GALLAWAY AND MILLER VOTING AYE.

The next item on the agenda was a request from People's Security to review the building permits on a regular basis. Mr. Gammello said the information they are requesting is public information and a fee could be charged according to the fee schedule set up for looking into zoning violations. Mayor Anderson said he has a hang up with persons going through the files and he would like to have the names sent to the company. Mayor Anderson said he would like to have a letter written. MOTION NO. 11S2-06-89 WAS MADE BY COUNCILMEMBER MILLER AND SECONDED BY COUNCILMEMBER ARENDS TO SEND PEOPLE'S SECURITY A LETTER SAYING THE NEW CONSTRUCTION OR EXTENSIVE REMODELING PERMITS WILL BE SENT TO THEM ON A MONTHLY BASIS AT THE FEE OF \$15 PER HOUR WITH A MINIMUM OF \$15 PER MONTH. MOTION PASSED WITH COUNCILMEMBERS ARENDS, BURSHAM, GALLAWAY AND MILLER VOTING AYE.

Mayor Anderson said he would go through the correspondence quickly. The first one was from Dene Carney regarding the new access on Cross Lake and Duck Lake and how the residents are extremely unhappy with the way it was handled and the lack of public relations by the Department of Natural Resources throughout the

building process. It was a directive of the Council to send a letter to DNR and a copy of Mr. Carney's letter also.

Next was a letter from the Mayor of Brooklyn Center regarding the League of Minnesota Cities Insurance Trust monies being used to fund an institutional fee. Mayor Anderson requested that further information be obtained.

The next item was a letter from Jean-Paul Hudon stating that he would be unable to attend one of the Planning and Zoning ordinance reading meetings.

Next was a letter from Tom Fitzpatrick, Attorney for Paul Bilzerian regarding the Andolshek Bed and Breakfast. Mayor Anderson said he will work on this and maybe a meeting can be scheduled for January.

Clerk Buchite had written a letter to Larson, Allen, Weishair and Company requesting that the audit be done before June.

Mayor Anderson addressed a newspaper article from the Brainerd Daily Dispatch which incorrectly stated that the taxes would be going up by \$23,000.00 and he just wanted the Council aware of the mistake.

Next was a copy of the levy certification to the County from the City Clerk.

Ron Morreim, Area Hydrologist from the Brainerd Department of Natural Resources was present to state that there will be a letter sent to the City and the City would be required to adopt the Shorelines Management Act within two years. Mr. Morreim said that grant monies would be available to incorporate the Act into the city ordinances. There will be training sessions. Mayor Anderson said his goal is April 1, 1990 to have this done.

Mayor Anderson said a few things have come to his attention since the reading of these ordinances. Mayor Anderson said he gave Planning and Zoning Commission Members copies and he feels it will give them some parameters to go by. Mayor Anderson also heard that one of the local contractors is telling people even if they want to build 69 or 70 feet from the lake they should put 75 feet down on the application because no one goes out and looks at them. Mayor Anderson said he would like to have in the job description of the Planning and Zoning Coordinator that before a permit is issued a detailed drawing be submitted showing actual measurements of where that house is going to be located and it will be up to the property owner to set the

stakes for the building which is being constructed. The coordinator will have to check it out and initial the application. Mr. Kingstedt said the penalty portion of the ordinance may be used more frequently then also.

A citizen present asked if a boat house could be fixed up. It was the consensus of the Council that existing boat houses could be fixed up but cannot be added to size in any way including height, width, length, etc.

MOTION NO. 11S2-07-89 WAS MADE BY COUNCILMEMBER MILLER AND SECONDED BY COUNCILMEMBER ARENDS TO ADJOURN THIS SPECIAL COUNCIL SESSION AT 4:15 P.M.

Nancy Stellmaker was present and said she felt that Mr. Jones should submit plans and have them reviewed and notify all the neighbors before he commences construction.

Mayor Anderson said he feels the Council had four choices which they could have made. One was to have the neighbors come to an agreement, number two was to rescind the variance completely, number three was to let the variance stand just as it was issued and number four was for the Council to make an agreement with you two. Mr. Jones is agreeable to a 4/12 pitch and the drop of four feet in height should eliminate any view problems for the neighbors.

Ms. Stellmaker said she still feels there is a conflict according to how the permit was issued. It was the consensus of the Council that the Planning and Zoning Commission knew exactly what was to be built and approved the variance so it would have been very hard for the Council to rescind it.

Councilmember Miller informed Ms. Stellmaker that the reason Public Hearings are held is to have input from the neighbors and Ms. Stellmaker should have come to the Public Hearing.

Mayor Anderson assured Ms. Stellmaker that the Council will watch Mr. Jones' building to make sure it follows the plans.

MOTION TO ADJOURN PASSED WITH COUNCILMEMBERS ARENDS, BURSHEM, GALLAWAY AND MILLER VOTING AYE.

Recorded and transcribed by:
Arlene A. Buchite, City Clerk/Treasurer

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