

PUBLIC HEARING
CITY OF CROSSLAKE
MONDAY, OCTOBER 14, 2002
6:00 P.M. - CITY HALL

Pursuant to due notice and call, the City Council met in the Chambers of City Hall to hear Appeal 2002-006 for Conditional Use Permit 2002-014 submitted by Chester Miracle. Mr. Miracle is appealing a decision made by the Planning and Zoning Commission to approve the Conditional Use Permit application submitted by Mark and Kay Eidem. The Conditional Use Permit request was to allow a pre-existing, non-conforming lot that does not meet the minimum lot width requirement to be deemed a buildable lot. The property is zoned Medium-Density Residential (R-3) and is located on the west side of Cross Lake at 36298 Robert Street. The property is described as Part of Lot 1, McLin, Section 17, Township 137N, Range 27W. Present at the hearing was Mayor Darrell Swanson, Councilmembers Sandy Eliason, Chuck Miller, Irene Schultz and Dean Swanson. 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 6:00 P.M. and stated that the purpose of the meeting was to hear an appeal of Conditional Use Permit 2002-014, which was approved by the Planning and Zoning Commission on July 26, 2002. Mayor Swanson stated that the order of events would include a presentation by the Planning and Zoning Staff, a legal opinion by the City Attorney, a presentation by the Applicant, comments from the public and final questions and comments by the City Council.

Community Development Director Paul Larson addressed the Council and stated that the Planning and Zoning Commission reviewed and approved a Conditional Use Permit request from Mark and Kay Eidem to allow the construction of a single-family residence on a pre-existing lot that does not meet the current zoning requirements as they relate to lot width. The Planning and Zoning Commission reviewed the request at a public hearing held on July 26, 2002 and approved the Conditional Use permit since the site plan showed that the placement of the proposed buildings met all of the required setbacks from lot lines, lake and road right-of-ways. The site plan also included an on-site sewer design showing adequate location for a sewer and well which was prepared by a Minnesota licensed sewer designer.

The applicant proposed the use of the Robert Street public access for a driveway off of the portion of Robert Street that is maintained by the City. The Public Works Commission reviewed this request at two separate meetings and approved the request with conditions.

A letter dated October 14, 2002 from City Attorney Paul Sandelin stated that he has reviewed the Staff Report and Minutes of the Planning Commission, the City Code requirements for a Conditional Use Permit and the Applicant's request. He stated that the following items need to be considered when granting a CUP: 1.) the use or development is an appropriate conditional use in the land use zone; 2.) the use or development with conditions conforms to the comprehensive land use plan; 3.) the use with conditions is

compatible with the existing neighborhood; and 4.) the use with conditions would not be injurious to the public health, safety, welfare, decency or overall comfort, convenience, appearance or prosperity of the City. Attorney Sandelin stated that the Council has to have a basis as to why the applicant can't meet the four items.

City Administrator Swenson stated that the floor plan that the Council received this date appears to be different than the original floor plan reviewed by the Planning and Zoning Commission.

Gerry Brine, attorney for the applicant, addressed the Council. Attorney Brine stated that the appeal is unusual from most other appeals since it is an appeal from someone other than the applicant. Mr. Miracle was led to believe that the Eidem's were going to build on the same site as the original cabin was located. In July, 1963 a survey of the property was done which showed the location of all of the properties including that of the Miracle's. Four years ago, when the Miracle's wanted to replace their cabin, they were told they had to build at the same setback since this is what was in keeping with the sub-standard lot. In 2000, the Eidem's purchased their property, demolished the cabin and placed a travel trailer on the property. At the time of demolition, the septic system was damaged and Mr. Miracle wonders whether the system is still conforming. The Eidem's have cut trees on the public access owned by the City and cleared the beach. The Eidem's are using the public access for parking and have installed a fire pit within 20' of the OHW mark. Mr. and Mrs. Miracle feel that the Eidem's are in violation of City Code and should be required to correct the violations. The Miracle's believe the floor plan where the applicant is proposing to build is a moving target since it keeps changing. One plan showed an attached garage and another plan showed a house without a garage. The Miracle's are, therefore, requesting Council review of the CUP based on the following: 1.) cutting of trees on City property; 2.) personal property situated on the public access; 3.) parking on City property; 4.) change in drainage patterns; 5.) a variety of house plans; 6.) grading and alteration of the shoreland; 7.) filling of the public access with sand and gravel and; 8.) building a screened area within the shore impact zone as well as installing a fire ring in the same area.

Mayor Swanson felt that the issue should go back to the Planning and Zoning Commission for further review since what was being heard during this hearing appears to be something entirely different than what was heard at the Commission meeting. City Attorney Paul Sandelin asked Paul Larson whether the applicant has changed anything between the Planning and Zoning Commission Hearing and this hearing and Paul Larson stated that the floor plan has changed but the new plan still meets all of the required setbacks without a variance. He stated that the Commission was not aware of the violations as these were not brought up during the Public Hearing since neither the Miracle's nor other neighbors were in attendance. Councilmember Miller asked if the Miracle's were opposed to the first floor plan or only to the revised floor plan. Paul Larson stated that one of the conditions of approval required that a licensed land surveyor stake all building corners prior to excavation, however as far as the CUP goes, there are no changes.

Councilmember Eliason asked what the City does to changes made on public land by property owners. Paul Larson stated that the City usually writes a letter to the property owner regarding the violation or have Public Works address the violation.

Chester Miracle addressed the Council and stated that there are clearly two different sets of plans. One set that was presented to the Planning and Zoning Commission and a second set of plans that is being presented at this hearing. Mr. Miracle stated that they did not attend the public hearing because they were under the impression that the house had to be constructed in the same location as the previous house. Mayor Swanson commented that if the house is moved forward would the property owners look at the back of the house and would this be in keeping with the character of the neighborhood. Councilmember Swanson stated that the proposed house is set back 140' when only a setback of 75' is required under the City's Ordinance. He wondered if the City could require a further setback than what the Ordinance requires. Mr. Eidem addressed the Council and presented the Certificate of Survey that had been prepared. Paul Larson noted that the Ordinance does not require a Certificate of Survey for a Conditional Use Permit and was not part of the original application. The Eidem's prepared a certificate of survey for their own purposes.

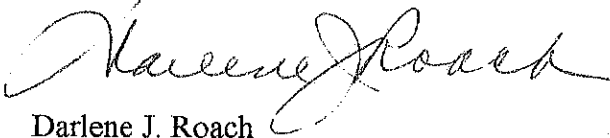
Tom Fraser addressed the Council and stated that he didn't attend the Commission Hearing since he thought the Eidem's had to build in the same footprint as the prior house. He is concerned with the 26' distance closer to the lake. Steve Olson, who owns the cabin on the other side of Eidem's, addressed the Council and stated that his Dad wasn't allowed to move his home either backward or forward from the original location when he rebuilt. There were no plat conditions or covenants that require the house to be constructed in line with other houses, it was just assumed. Attorney Gerry Brine stated that this was a requirement when the permit was issued approximately 25 years ago.

Mayor Swanson stated that he is recommending that the matter be referred to the Planning and Zoning Commission for further review since the neighbor's considerations were not reviewed at the public hearing.

MOTION PH01-10-01-02 WAS MADE BY SANDY ELIASON AND SECONDED BY CHUCK MILLER TO DIRECT THE PLANNING AND ZONING COMMISSION TO RECONSIDER THE CONDITIONAL USE PERMIT REQUEST BASED ON NEW INFORMATION. MOTION CARRIED WITH ALL AYES.

MOTION PH01-10-02-02 WAS MADE BY CHUCK MILLER AND SECONDED BY IRENE SCHULTZ TO ADJOURN THIS PUBLIC HEARING AT 6:55 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and transcribed by,



Darlene J. Roach
Clerk/Treasurer

CHESTER MIRACLE APPEAL
PUBLIC HEARING
6:00 P.M.
OCTOBER 14, 2002
SIGN-IN SHEET

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