

PUBLIC HEARING
CITY OF CROSSLAKE
MONDAY, JULY 22, 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 an appeal for Subdivision 2002-006 submitted by Charlie McCulloch. The request is an appeal to the City Council regarding a decision made by the Planning and Zoning Commission to deny a metes and bounds subdivision that would allow the subdivision of one parcel of land 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. 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 Subdivision 2002-006 for Charlie McCulloch. He 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 read the public hearing notice describing the reason for the appeal. Various documents were presented to the Council for their review prior to the hearing. These documents include: (1) Planning and Zoning Staff Report with attachments, dated May 16, 2002; (2) Final minutes from the May 24, 2002 Planning and Zoning Commission Public Hearing; (3) Planning and Zoning Staff Report with attachments dated June 19, 2002; (4) Draft minutes from the June 28, 2002 Planning and Zoning Commission Public Hearing; (5) Appeal letter from Charlie McCulloch; (6) Public hearing notice to adjacent property owners; and (7) Certificate of Survey of the subject property. Paul Larson noted that in addition to the information previously provided to the Council, a letter from Lois Buermann was handed out to the Council.

Community Development Director Paul Larson stated that the Planning and Zoning Commission denied the subdivision request at a hearing held on June 28, 2002. The reasons for denial were based on the fact that: (1) an increase in density is not good for the area; (2) the lot is useable as is; (3) in keeping with the spirit of the way the lots were divided earlier and; (4) the subdivision would create a limited building envelope on the lot for a garage and parking space without further variance.

City Attorney Paul Sandelin summarized the standards the Council needed to apply to the appeal request. Questions the Council needed to consider are: (1) Does the request meet

the subdivision requirements of the Ordinance: (2) is approval in the best interests of the public regarding health, safety and welfare; and (3) is the request consistent with the Comprehensive Plan. He stated that the decision has to be a factual decision and cannot be arbitrary. However, the Council does have the authority to apply appropriate conditions.

Ray Charpentier, Attorney for the applicant addressed the Council. He handed out a plat map of the City of Crosslake, a Certificate of Survey, a septic system design, a copy of the Staff Report dated May 16th, and a copy of a letter from City Attorney Steve Qualley. Attorney Charpentier stated that the Council may have already received these items, but wished for these documents to be noted as a part of the official record. Various photographs, which had been taken from various locations on the property, were handed out for the Council to view. Mr. Charpentier stated that it is his belief that everything that has been proposed by the applicant meets the requirements of the zoning ordinance. He stated that the property located within the proposed Tract A contains 20,101 square feet and the property located within the proposed Tract B contains 20,093 square feet. He stated that the current zoning ordinance requires 20,000 square feet of land. He stated that there are no wetlands or bluffs on the property. There is no impervious surface, no existing or unusual topography and drainage has been addressed on the survey.

David Landecker addressed the Council and stated that he agrees with what Attorney Charpentier has stated. He noted that the electric utility is located underground on the property and cable television lines are located in the right-of-way. He stated that both parcels are what they show on the survey. Councilmember Swanson asked if any elevations were done and Mr. Landecker stated that there were no elevations taken.

Mayor Swanson asked if the Staff had recommended approval of the subdivision and Paul Larson stated that the Staff had recommended approval on the subdivision. He stated that the property does meet the black and white standards of the ordinance. He stated that the Planning and Zoning Commission looked at other items when making their decision to deny the request. Mayor Swanson then asked Paul Larson whether anything that he has heard during this hearing would cause him to change his position. Paul Larson stated that he would still recommend approval. Mayor Swanson asked if there was any requirement in the ordinance to have a garage and Paul Larson stated that there is no such requirement. Councilmember Eliason asked if the property owner could build without a variance. Community Development Director Paul Larson stated that what the developer is proposing on the property, if the subdivision is approved, is a 720 square foot home. Councilmember Swanson asked if the Planning and Zoning Department has had requests in the past few years for this small of a home. Paul Larson stated that probably 95% of the permits issued are for homes larger than 750 square feet. Mayor Swanson stated that the 750 square feet would be one level. He stated that the property owner could construct a two level home. Mayor Swanson stated that he has a real problem with exclusionary zoning where the wealthy do not want the less wealthy in their area. Councilmember Swanson stated that he agrees with the Mayor to a point but can't intermingle the two. Councilmember Miller stated that he has studied the ordinance and feels that the request falls within the guidelines. He stated that the City has adopted the

Shoreland Ordinance which does allow for a minimum of 20,000 square feet. Councilmember Eliason asked if the Council wasn't concerned about the lake. Councilmember Miller stated that he was not here to judge that. Councilmember Eliason stated that they could have 1 – 2 boats docked on the lake. Councilmember Miller stated that the water belongs to the DNR and is not under the jurisdiction of the City. Councilmember Miller stated that if the covenants stated that there would be no further subdivision then that would be another issue, but the covenants do not state that. Councilmember Swanson stated that the neighbors have the opportunity to purchase the lot. Attorney Paul Sandelin requested consideration on whether there was a condition of approval on the plat that placed a requirement on larger lots. He also noted that the City has not adopted a docking ordinance nor should the City get involved in enforcing covenants. City Attorney Sandelin also stated that one of the requirements is that the developer identify the location of the septic system on the survey.

The hearing was opened to the public for comments.

Lynn Schmidt addressed the Council and stated that his house is the one shown on one of the photographs. He asked Mr. Charpentier if he had walked the property and Mr. Charpentier replied that he had not. Mr. Schmidt stated that the Planning and Zoning Commission members had walked the property. He also commented on the Comprehensive Plan and what vision it portrays. Mr. Schmidt stated that the property owners had contacted the DNR to find out how the shoreline is monitored and the DNR responded that since the City has taken over Shoreland Management, the City has the jurisdiction. Mayor Swanson stated that he did walk the property and agrees that it is a wonderful neighborhood. Mr. Schmidt then commented "so, if every tree has to be cut, that doesn't matter". Councilmember Swanson stated that the Comprehensive Plan is only a guide and is not the Ordinance. Councilmember Schultz asked if the septic system had to be in the building envelope and Paul Larson stated that it did not need to be in the envelope. It was noted that the septic system must be 50' from the lake for the drainfield tank and 10' from the lot lines. Mr. Schmidt stated that one day there could be new Staff and a new Council that would recommend approval of a variance. June Wallace addressed the Council and stated that when she platted the land, it was the same body (Council) that requested restricting the covenants to single family dwellings. She stated that every person who has bought lots in the plat is against this lot split. She doesn't understand why anyone can divide the property smaller than what they were platted. She stated that the reason was to keep the density down. She stated that this is a small crowded area and docking is a concern. Councilmember Swanson stated that he remembers the meeting where the plat was approved. Councilmember Swanson asked June Wallace who prepared the covenants and she stated Attorney Tom Borden. Mayor Swanson read into the record that portion of the covenants dealing with subdivision of lots as follows: "Lots in the subdivision shall be residential lots and all buildings erected on such lots shall be single family residences and structures incidental thereto and no multiple occupancy dwellings shall be allowed". Mayor Swanson stated that the covenants are silent regarding further subdivision. Councilmember Swanson stated that although it is not written in the covenants, that was the intent. City Attorney Sandelin stated one has to conclude that it is ambiguous and that the intent is not clear in order to

consider oral testimony regarding the intent of the Developer. He stated that the Council has to look at what reasons they would rely upon to say "no" to further subdivision of this lot. Mayor Swanson asked Attorney Sandelin if the Council would have to defend their position if the matter went to Court and Attorney Sandelin stated that they would be required to defend their position. Councilmember Schultz asked if there was anything found in past records that would indicate no further subdivision was intended. Paul Larson stated that the prior minutes were very brief and contained only a motion. Rob Richert, one of the lot owners within the plat, addressed the Council and stated that he had applied for a variance for his property and was denied the variance so felt the Council should put a condition that there can be no variance.

Attorney Charpentier handed out copies of a purchase agreement showing an intent to purchase the North tract of Lot 1 by a Daniel Schmidt who was being represented by Lynn Schmidt of Century 21, one of the owners of a lot in the Staley Shores Plat.

MOTION 07PH2-01-02 WAS MADE BY CHUCK MILLER AND SECONDED BY DARRELL SWANSON TO APPROVE THE LOT SPLIT AS REQUESTED BASED ON IT FALLING WITHIN THE CONFINES OF THE ZONING ORDINANCE WITH THE CONDITIONS THAT THE APPLICANT SUBMIT AN UPDATED, SIGNED COPY OF THE CERTIFICATE OF SURVEY, THAT BEST MANAGEMENT PRACTICES ARE USED DURING AND AFTER CONSTRUCTION TO PREVENT EROSION, ALL LAND ALTERATION AND VEGETATION REMOVAL WITHIN THE SHORE IMPACT ZONE SHALL BE REVIEWED AND APPROVED BY THE PLANNING AND ZONING STAFF, THAT ALL OF THE FEES ARE PAID TO THE CITY PRIOR TO THE SIGNING OF THE FINAL DEED FOR RECORDING CONSISTING OF PARK DEDICATION FEE, CITY ATTORNEY REVIEW FEES, CITY ENGINEER AND SURVEYOR FEES AND OUTSTANDING ROAD ASSESSMENT FEES PAID TO CROW WING COUNTY IN THE AMOUNT OF \$1198.79 AND THAT NO FUTURE VARIANCE CAN BE REQUESTED FOR THE PROPERTY. Lynn Schmidt requested to address the Council to explain the purchase agreement that was handed out to the Council. Mr. Schmidt stated the agreement was prepared early on in the process for his nephew. Councilmember Miller wanted the Council to be made aware that the City Attorney has provided direction to the Council on what they need to consider on this appeal. Mayor Swanson stated he does support the fact that the subdivision does meet the ordinance requirements and does meet the intent of the Comprehensive Plan. David Landecker was asked when the drawing and original survey was prepared and he stated that the original survey was prepared in the winter, but the property was re-measured again after the Planning and Zoning Commission Meeting so the survey has been verified as correct. MOTION FAILED ON A VOTE OF 3 TO 2 WITH COUNCILMEMBERS ELIASON, SCHULTZ AND SWANSON VOTING NAY AND MAYOR SWANSON AND COUNCILMEMBER MILLER VOTING AYE.

MOTION 07PH2-02-02 WAS MADE BY DEAN SWANSON AND SECONDED BY SANDY ELIASON TO UPHOLD THE DECISION OF THE PLANNING AND ZONING COMMISSION TO DENY THE SUBDIVISION REQUEST BASED ON THE FACT THAT THE INCREASE IN DENSITY IS NOT GOOD FOR THE AREA;

THAT THE LOT IS USEABLE AS IS; IN THE SPIRIT OF THE WAY THE LOTS WERE DIVIDED EARLIER; AND CREATING A LIMITED BUILDING ENVELOPE ON THE LOT FOR A GARAGE AND PARKING SPACE WITHOUT FURTHER VARIANCE. MOTION CARRIED WITH COUNCILMEMBERS ELIASON, SCHULTZ AND SWANSON VOTING AYE AND MAYOR SWANSON AND COUNCILMEMBER MILLER VOTING NAY.

MOTION 07PH2-03-02 WAS MADE BY DEAN SWANSON AND SECONDED BY SANDY ELIASON TO ADJOURN THIS PUBLIC HEARING AT 7:20 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and transcribed by,


Darlene J. Roach
Clerk/Treasurer

PUBLIC HEAR-McCulloch Variance July 22, 2002

MCCULLOCH APPEAL
PUBLIC HEARING
6:00 P.M.
JULY 22, 2002
SIGN-IN SHEET

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