

SPECIAL COUNCIL MEETING
CITY OF CROSSLAKE
TUESDAY, FEBRUARY 24, 2004
1:00 P.M. - CITY HALL

Pursuant to due notice and call, the Council for the City of Crosslake met in a Special Session on Tuesday, February 24, 2004 at 1:00 P.M. at City Hall. The following Councilmember's were present: Mayor Darrell Swanson, Dean Eggena, Chuck Miller, and Irene Schultz. Councilmember Dick Phillips was absent. Also present was City Administrator Tom Swenson, City Engineer Dave Reese, City Attorney Paul Sandelin, Sewer Chairman Dean Swanson, Public Works Director Ted Strand, Community Development Director Ken Anderson and Clerk/Treasurer Darlene Roach. There were three individuals in the audience.

Mayor Swanson called the special meeting to order at 1:00 P.M. The first item on the agenda was to continue discussion regarding improvement to Edgewater Lane.

City Attorney Sandelin prepared a letter for Council review which explained how the right-of-way along Edgewater Lane was acquired by the City through a deed from the surviving spouse of the original developer of the plat of "Lindquist Addition". During discussions with property owners at Sewer Committee Meetings, it was determined that in the context of providing sanitary sewer service to the property owners within the plat, the most cost effective manner would be to acquire the necessary right of way to install the utility. The City did not previously have right-of-way based on unique language contained in the plat. It was during these discussions, that improving the road to City standards and acceptance of the road by the City began. Sandelin stated that as a result of obtaining the deed, the City has the necessary right-of-way to proceed with the road improvement project if the Council wishes to proceed with the project. If the Council does not proceed with the improvement, the City continues to have the necessary right-of-way for the sewer utility and the road, however, the City has not committed to maintaining the right-of-way as a City road. Based on this information, the Mayor called for a motion to allow the Council to reconsider improvement to Edgewater Lane. MOTION 02S-01-04 WAS MADE BY DEAN EGGENA AND SECONDED BY CHUCK MILLER TO ALLOW THE COUNCIL TO RECONSIDER THE PROPOSED IMPROVEMENT TO EDGEWATER LANE AND ACT ON THE RESOLUTION IF SO DESIRED. MOTION CARRIED WITH ALL AYES. City Administrator Swenson read all correspondence received by the City in regards to this proposed improvement. This correspondence consisted of a letter from Al and Betty Thorpe in support of the improvement, a letter from Bruce Olson, on behalf of Luella Olson, supporting the improvement, a letter from Fred Richter who does not support the improvement requesting that the assessment be determined in advance if the project does proceed, and a fax from George Moore in favor of the improvement. City Administrator Swenson commented that it is an option to assess prior to the project being completed or bids let, but this is not the typical process used by the City in the past. Mayor Swanson stated that when Mr. Richter was in attendance at the public hearing, he had inquired about that portion of road that was previously paved and City Engineer Dave Reese stated that WSN has reviewed information prior to sewer construction and the road was paved to the residence with the concrete driveway on the left. City Engineer Reese pointed the area out on the map. Councilmember Eggena asked what the proposed assessment would be

per lot if the City doesn't assess the property owners who had blacktop prior to construction of the sewer project. City Engineer Reese stated that four lots in their entirety and a portion of two lots did not previously have blacktop. Reese further stated that the policy in the past has been to hold a preliminary improvement hearing which provides estimated costs based on ERU's. The actual costs would be determined and the assessment roll adopted at the final assessment hearing after all costs have been compiled. Reese stated that the cost per ERU would change depending on the number of lots being assessed. Mayor Swanson confirmed that the scope of the project in this situation would diminish not increase. City Engineer Reese stated that there is about 100' of roadway that would be diminished and paid for by the Sewer Project. MOTION 02S-02-04 WAS MADE BY DEAN EGGENA AND SECONDED BY CHUCK MILLER TO APPROVE RESOLUTION NO. 04-05A ORDERING IMPROVEMENT AND PREPARATION OF PLANS FOR IMPROVEMENT TO EDGEWATER LANE. Al Thorpe addressed the Council and stated that there were two reasons for his not attending the public hearing, first he assumed it was an automatic that the road would be improved and turned over to the City and, secondly, it was 20 degrees below zero. He also stated that he thinks it is important to put the storm sewer in or there will be ponding in the area in front of his house. Councilmember Eggena stated that the Council will be deciding the assessment at a later date and he would like the Council to find a fair way to assess the property owners. Charley Schwartz addressed the Council and stated that if an adjustment will be made on behalf of the property owners, he would be okay with that since it would be fair to everyone. MOTION CARRIED WITH FOUR AYES.

City Administrator Swenson stated there was a letter to the Lake Country Echo Editor, which contained incorrect information regarding the improvement to Edgewater Lane as it relates to Brita Lane and direction from the Council was requested. MOTION 02S-03-04 WAS MADE BY DEAN EGGENA AND SECONDED BY CHUCK MILLER TO AUTHORIZE THE CITY ADMINISTRATOR'S FORWARDING A COPY OF THE CITY ATTORNEY'S LETTER ADDRESSING RIGHT-OF-WAY TO THE RESIDENTS ON BRITA LANE IN ORDER TO ALLOW THEM TO WORK OUT THEIR RIGHT-OF-WAY ISSUES WITH THE CITY WHICH WOULD ALLOW THE CITY TO PROCEED WITH IMPROVEMENT TO BRITA LANE. MOTION CARRIED WITH ALL AYES.

Councilmember Miller left the meeting at 1:35 P.M. and after a short recess, the meeting was reconvened.

Sewer Committee Chair Dean Swanson addressed the Council and stated that the Committee has been waiting for a commitment from the Corps of Engineers in regards to hooking up to the City Sewer. A conference call is planned with representatives from the City, WSN and the Corps of Engineers. City Attorney Paul Sandelin stated that an agreement needs to be reached in regards to what the Corps is going to pay in connection charges. Sandelin stated that he is waiting for direction from the Council before reviewing the contract received from the Corps of Engineers. He stated that the two parties have not reached an agreement on the number of connection charges they are willing to pay. City Administrator Swenson stated that approximately four years ago Colonel Kasparisin met with City and Corps representatives and stated that the Corps would be interested in connecting into the City's system since their plant is in need of upgrading. Therefore, for the past three plus years the City has been operating under the

assumption that the Corps would be connecting into the City's system. City Engineer Dave Reese stated that based on the Corps flow, 60 ERU's is appropriate based on each season's flow data through 2003. Reese stated that the Corps of Engineers Contracting Office is trying to understand the principle on how the flow rates will be applied against the number of connection charges. Mayor Swanson asked if there was any information the Corps needs from the City in order to make a decision and City Engineer Reese stated that WSN has been providing information to the Corps of Engineers on a regular basis and most recently provided flow data based on the 2003 season. This information was faxed to both the St. Paul Corps Office and the Grand Rapids Corps Office earlier this date. Crosslake Corps Manager Ray Nelson stated that he agrees with the accuracy of the data provided by City Engineer Dave Reese and is confident the issues can be resolved. Nelson stated that he has provided projected future maintenance costs for the current Treatment Facility, which should assist the Contracting Office in making a decision. Councilmember Eggena stated that he would not want to engage in any type of negotiation with the Corps in regards to connection fees. He stated that no Federal or State money is being utilized for this project and there should be no negotiation. He stated that these 60 connection charges can be used elsewhere in the City by taxpayers of Crosslake. He also stated that he wants the Corps of Engineers to know his position regarding this issue. Chairman Dean Swanson stated that he concurs with Councilmember Eggena's position on this. Mayor Swanson stated that he agrees there should be no negotiation. If the most recent data shows flow usage consistent with 55 connection charges, that will be the charge to the Corps. City Administrator Swenson stated that even though the number fluctuates, the City has the right to check flows from any party discharging into the system as the City sees fit. Councilmember Eggena stated that he would rely on the data provided by the City Engineer for a three-year average. MOTION 02S-04-04 WAS MADE BY DEAN EGGENA AND SECONDED BY IRENE SCHULTZ TO GIVE WSN THE AUTHORITY TO ESTABLISH THE NUMBER OF ERU'S FOR THE CORPS OF ENGINEERS CAMPGROUND BASED ON FLOW DATA THEY HAVE RECEIVED FROM THE CORPS OF ENGINEERS. MOTION CARRIED WITH ALL AYES.

Bills for approval – MOTION 02S-05-04 WAS MADE BY IRENE SCHULTZ AND SECONDED BY DEAN EGGENA TO APPROVE THE BILLS FOR PAYMENT AS SUBMITTED IN THE AMOUNT OF \$25,876.14. MOTION CARRIED WITH ALL AYES.

City Administrator Swenson stated due to Mayor Swanson, Clerk Roach and himself being out of the office during several days in March, an additional signatory on City accounts is needed. MOTION 02S-06-04 WAS MADE BY DEAN EGGENA AND SECONDED BY DARRELL SWANSON TO AUTHORIZE IRENE SCHULTZ AS A SIGNATORY ON THE CITY AND UTILITY COMPANY CHECKS. MOTION CARRIED WITH ALL AYES.

Discuss Changes to Chapter 8, Section 8.10, Subdivision 4, Non-Conformities - Mayor Swanson requested Community Development Director Ken Anderson provide some background on possible changes to the language related to non-conformities in Chapter 8 of the City Code. Anderson referred to a memorandum he prepared dated February 24, 2004 which discussed non-conforming uses/structures. He noted that there was enclosed a League of Minnesota Cities Bulletin dated February 18, 2004 regarding House File

2057 Non-Conforming Use Bill, Minnesota Statutes Chapter 462.357 related to non-conformities, copy of the Crosslake City Code related to Section 8.10, Subdivision 4, Non-Conformities, a report to the Planning and Zoning Commission related to non-conformities, Section 8.50 Performance Standards, Subdivision 2F, Non-Conforming Signs and the letter dated October 16, 2001 to Bob Hamilton from Paul Larson regarding a non-conforming billboard. Anderson noted that the legislature was considering a bill submitted by Representative Ron Abrahms of Minnetonka to make non-conforming uses allowed to "improve, replace or restore" a non-conforming use. Currently, the State only allows the repair or maintenance of a non-conforming property. Anderson noted that the Council's direction at the previous meeting may conflict with State laws governing non-conformities.

Anderson explained as an example a situation in which Steve Peterson owns property fronting on County Road 3. On this property there exists a billboard sign for Kurt Anderson's insurance business. The sign was in disrepair and at least one of the posts was damaged and the sign was falling over. The sign was later repaired and the property owner would like to allow the sign to be used to market other businesses in the community. He reported that a realtor noted that businesses were willing to pay \$10,000 to advertise their product or service on a sign such as the one on Mr. Peterson's property. It was Anderson's impression that the non-conforming provisions of the ordinance would not allow this sign face to be replaced nor would it allow the structure of the sign to be repaired and replaced if damaged because it is non-conforming. He further noted that the property for which Kelly Sartor has interest in purchasing is also non-conforming and by State Statute may be prohibited from being expanded in the commercial district. Based upon these issues, the City Attorney requested to meet directly with the City Council to obtain direct input and dialog to clarify the intent of the Council's wishes so that new language will accurately reflect the City Council's policies. The City Attorney discussed the background on non-conformities in the State law. Councilmember Eggena noted that "use" is affected by the State's non-conforming language not non-conforming conditions as it affects zoning regulations as to the location of the structure on the site. He believes that we can deal with location of cabins and other structures on the site at a local level and allow the State Law to govern the "use" of properties within the various zoning districts. Mayor Swanson asked if the ordinance did not comply with the Statute. Councilmember Eggena replied that the Statute applies to uses such as a gas station that could not be rebuilt as a result of a recent change to a city's zoning making the gas station a non-conforming use. Councilmember Eggena noted it could not be rebuilt if it was significantly damaged by a fire or other natural disaster which rendered it damaged by more than 50%. City Attorney Sandelin noted that the City could be more restrictive than the State Statute. Councilmember Eggena assured the Council that we won't be challenged by anyone and reaffirmed his belief that this Statute has to do with use and not non-conforming location of structures. He further explained that the DNR Shoreland Management Act allows the City the right to grant variances and if the City so chooses we could approve a 0-foot lake setback, if it meets the requirements. Community Development Director Anderson stated that he was concerned about the situation in which if the Council sets all existing structures at their current locations as conforming and allowed to expand provided it meets all other ordinance performance standards such as setbacks, impervious coverage, etc. that the City may be argued to be arbitrary and capricious in its standard and the City could face litigation as a result of a double standard being applied to properties located in a similar zoning district. Mayor Swanson noted a

sample of how the DNR Shoreland Management Act does not allow boathouses to be constructed within the shoreline areas. He explained it as a pet peeve of his and that when one looks at the lakeshores from the lake with the shore stations and other lifts and boat storage devices, the City would be better off to let a property owner have their boat house back and reconstructed if it happened to be damaged beyond 50% of its value. Paul Sandelin explained that in our current society, the public is becoming more litigious and we could expect the potential for lawsuits to occur depending on how the ordinance language was crafted. Dave Reese, City Engineer, explained that in addition to setback and use issues, there were also concerns with on-site conditions such as septic systems, character of the area on the Whitefish Chain as such that the goal is to maintain a high environmental quality standard as well as high performance standards. He explained some cities are very restrictive because that's the goal of the community. He noted that some cities are referenced as "the board of non-adjustment" because they do not apply any consistent standard when considering variances and other such requests. He thought it would be important to strive to keep some conformity between uses, structures and property. Councilmember Eggena explained that suddenly we have Big Brother telling us what to do. He said it's created a lot of problems in the community. He noted that a septic system is allowed to be 50 feet from the lakeshore but houses have to be 75 feet from the lakeshore. He questioned where the logic was in that. He further explained we adopted a model ordinance and now through his 32 years of experience that he would wager that we won't get all of the property on the Whitefish Chain at the 75-foot setback as designed in the model DNR Shoreland Management Act. He stated the push by the public is in fact the other way, to allow the properties to be closer to the lake. He questioned why we should review 100 variance application requests and approve 98 of them. City Engineer Reese asked the question, "What is the danger?" The danger with moving closer to the water will cause more harm to the quality of the lake as a result of more runoff from higher density and the adjoining land uses. He further explained that the MPCA is getting stricter and stricter in their interpretation of existing laws and they're looking at regional storm water treatment. He noted that the City would be doing itself a favor to keep the setback further back rather than causing more runoff to occur at a faster rate within the lakeshore areas.

In summary, the Council felt that if there was a disaster that affected non-conforming structures, property owners should be allowed to rebuild at their present location. Secondly, the Council felt that there should be a change to the 25% rule to make it something else provided it meets other requirements such as impervious setbacks, septic, and well location for an existing house. The existing structure or home should not be allowed closer to the lake than the building currently exists, but it should be allowed to expand providing the encroachment is not closer to the lake setback. Furthermore, the Council would be very firm in its desire to not allow the existing building to encroach closer to the lake than currently exists through a variance or any other means. The Council also wishes to allow an existing structure to be totally torn down and rebuilt within the same perimeters. The Council noted that the variances to date have been somewhat arbitrary and that we should interpret the language of non-conforming situations as it relates to use and not to structures. City Attorney Sandelin noted that something similar was done in the City of Nisswa in which they carved out a separate district for such situations. Councilmember Eggena noted that East Gull Lake did the same thing. Finally, in regards to signs the non-conforming language should be

incorporated into the comprehensive plan and the zoning ordinance and that existing signs should be allowed to be rebuilt and new sign faces installed as businesses change.

Council set the next meeting on the comprehensive plan for Tuesday, March 30, 2004 at 1:00 P.M. Purpose of the language would be to review non-conforming language proposals and summarize the land use maps and propose text changes. MOTION 02S-07-04 BY DEAN EGGENA AND SECONDED BY IRENE SCHULTZ TO ADJOURN AT 3:35 P.M. MOTION CARRIED WITH ALL AYES.

Respectfully submitted,



Darlene J. Roach
Clerk/Treasurer



Kenneth R. Anderson
Community Development Director

SPECIAL COUNCIL MEETING – February 24, 2004.doc

CITY OF CROSSLAKE
RESOLUTION NO. 04-05A

RESOLUTION ORDERING IMPROVEMENT AND PREPARATION OF PLANS

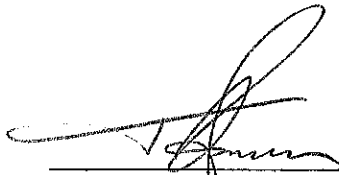
WHEREAS, a Resolution of the City Council adopted the 23rd day of December, 2003, fixed a date for a Council Hearing on the proposed improvement of Edgewater Lane, within Lindquist Addition and adjacent to Block One, Lots 1 through 8, by constructing road and drainage improvements,

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon on the 28th day of January, 2004, at which all persons desiring to be heard were given an opportunity to be heard thereon,

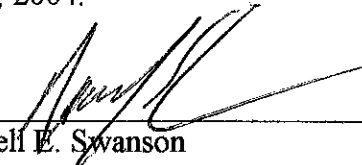
NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CROSSLAKE, MINNESOTA;

1. Such improvement is necessary, cost-effective, and feasible as detailed in the Feasibility Report.
2. Such improvement is hereby ordered as proposed in the Council Resolution adopted the 10th day of November, 2003.
3. Widseth Smith Nolting is hereby designated as the engineer for this improvement. The engineer shall prepare plans and specifications for the making of such improvement.

Adopted by the Council this 24th day of February, 2004.



Thomas N. Swenson
City Administrator



Darrell E. Swanson
Mayor

BILLS FOR APPROVAL
24-Feb-04

VENDOR	DEPT	AMOUNT
Ace Hardware, primer paste	P&R	3.08
Ace Hardware, drill bit set	PW	66.86
Ace Hardware, nuts and bolts	P&R	0.34
Allsafe Lock and Key, install door closer, keys	PW	106.93
Ameripride, towel dispensers and towels	Sewer	49.39
Ameripride, mats	PW	140.16
Blakeman Pumping Service, jet sewer line	P&R	100.00
Bob Castle, repair bridge guard rail	PW	112.50
Bob Castle, repair snowblower	PW	112.50
Bob Castle, siren mounting brackets	PW	230.00
Breezy Point Police Dept., taser training cartridges	Police	432.00
Cellular One, cell phone charges	PW	28.03
Cross Tech Manufacturing, acetylen, oxygen	PW	57.00
Crow Wing County Chiefs of Police, participation dues	Police	50.00
Echo Publishing & Printing, public hearing notice 2-27	P&Z	68.75
Echo Publishing & Printing, ordinance 187	Sewer	31.25
Fire Instruction & Rescue Education, live burn	Fire	700.00
Holiday Station, tank and propane fill	PW	45.77
Jon Henke, reimburse mileage to class	P&R	25.50
League of MN Cities, directory of city officials	Admin	42.60
Mac Queen Equipment, trailer jetter	PW	20,503.99
Makit Drafting Service, city maps	P&Z	712.30
Mastercard, Fleet Farm, torch, drill, chuck	PW	233.20
Mastercard, Home Depot, painting supplies	P&R	123.95
Mastercard, Initiative Foundation, workshop fee	P&R	45.00
Mastercard, JCPenney, uniform	PW	39.08
Mills Ford, oil change	Police	23.74
M R Sign, street signs	PW	454.19
Nautilus Health & Fitness, tripleflex spare hardware kit	P&R	45.15
Pequot Auto Parts, howes cond	PW	66.78
Pine River Carpet, cover base	P&R	325.21
Reed's Market, sentence to serve	P&R	20.87
Reed's Market, sentence to serve	P&R	14.91
Reed's Market, sentence to serve	PW	33.99
Reed's Market, sentence to serve	PW	34.36
Reed's Market, sentence to serve	PW	53.21
Robert Hartman, reimburse fee to transfer title	Police	13.50
Simonson Lumber, nap roller	P&R	7.35
Streicher's, uniform	Police	38.90
Streicher's, uniform	Police	47.27
The Office Shop, cleaner, clips, ink cartridges	P&Z/Admin	120.69
The Office Shop, calendar, pens	P&Z/Admin	56.90
The Office Shop, rolodex, cards, key cabinet	PW	234.01
Viking Coca Cola, pop	P&R	40.90
Viking Coca Cola, pop	PW	184.03
TOTAL		25,876.14