

MINUTES
Regular Meeting of Lake Shore City Council
Monday, September 22, 2014
7:00 PM Lake Shore City Hall

Acting Mayor Doug Miller called the September 22, 2014 Regular City Council meeting to order at 7:00 p.m. The pledge of allegiance was recited.

Roll Call: Council Members present: Doug Miller, Krista Knudsen, John Poston and Susan Amacher. City Attorney Steve Qualley; City Engineer Dave Reese; Police Chief Steve Sundstrom and City Clerk Patti McDonald were present. Mayor John Terwilliger and City Administrator/Planning and Zoning Administrator Teri Hastings were absent. There were 6 people in the audience. John Ingleman, Earl North and Kevin Egan represented the Board of Adjustment/Planning Commission.

APPROVAL OF MINUTES

MOTION BY KRISTA KNUDSEN TO APPROVE THE AUGUST 25, 2014 REGULAR CITY COUNCIL MINUTES AS PRESENTED. JOHN POSTON SECONDED THE MOTION. MOTION PASSED.

REPORTS

Police/Fire Report – Chief Steve Sundstrom

Incident Report - From August 25, 2014 to September 21, 2014 there were 149 incidents in the City. There were 83 traffic-related incidents and 66 were miscellaneous department activity.

Mayor's Report– John Terwilliger was absent.

Clerk/Treasurer's Report – Patti McDonald

Financials – MOTION BY JOHN POSTON TO APPROVE THE FINANCIALS AS SUBMITTED. KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Appoint Election Judges – The State of Minnesota general election is November 4, 2014. Seven people have attended the required training to be an election judge for the City of Lake Shore including: Carol Greaves, Earl North, Jo Quam, Robert Toborg, Linda Halverson, Dick Miles, and Mary Toms. There will be one student election judge (Rachel Cleveland) after she completes her training.

MOTION BY JOHN POSTON TO APPOINT THE ELECTION JUDGES THAT PREVIOUSLY SERVED AT THE 2014 PRIMARY ELECTION FOR THE GENERAL ELECTION ON NOVEMBER 4, 2014; AND ONE STUDENT ELECTION JUDGE UPON COMPLETION OF JUDGE TRAINING. KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED.

City Administrator/Planning & Zoning Administrator – Teri Hastings

Appeal of Variance Denial – Brad Miller – The denial of variance on behalf of Brad Miller for the purpose of constructing a 756 square foot two story addition onto the rear of the existing nonconforming structure. The proposed addition would be 6'6" from the southerly side lot line and 14' 5" feet from the northerly lot line where a 15' setback is required. The structure is less than 75 feet from the lake and on a nonconforming lot. The property is legally described as Lot 13, Pine Harbor (site address is 9178 Pebble Beach Road) and is zoned medium density residential.

John Ingleman, Chairperson of the Planning Commission read a statement representing the Planning Commission's reason for all three denial's for the Miller variance. John's statement: The Millers, through their builder, appeared before us three times. Prior to their first appearance, we visited the site to more fully

understand the nature of the set of variances requested. Each time that the matter came before us, the PC found itself focusing ultimately on the size of the footprint of the proposed addition and carefully considered what the variances sought would do to the character of the neighborhood if granted. The first time the project came before us, we denied the proposal and suggested that the builder attempt to persuade the Millers to shrink the proposal and downsize the footprint of the addition. This worked to a degree, as the Miller's second appearance saw us reviewing a modified proposal that had a smaller second story addition and a somewhat smaller footprint.

We supplied several elevations of other projects to the builder before our third consideration of the project; the idea was to suggest that a smaller proposal might be acceptable to the PC. The footprint of the proposed addition brought to us remained the same, as in the second proposal. What I heard from my fellow commissioners was consistent - the proposed addition was simply too large and didn't fit the character of the neighborhood so as to allow the requested variances to be granted. In conclusion, the size of the footprint regrettably alters the essential character of the locality.

John Koupal, Start to Finish Construction, came before the City Council to explain the Miller's side of the appeal. He agreed with John Ingelman's statement. They came before the Planning Commission because they need a variance due to a nonconforming lot. He said that with each proposal they were improving the sideyard setbacks.

Doug Miller asked if this is overturned will the sideyard setbacks come back into conformance. John K. said they will still be out of conformance. He also said they have been before the Planning Commission 3 times and denied 3 times and feel they have met the concerns of the Planning Commission each time. He said that Teri had given him photos of similar variances that have been passed with similar lot size. John K. said that Mr. Miller feels that he has done everything that has been asked and feels he is getting denied because this lot doesn't support this size structure. He said they are improving the property and passed out pictures of the existing condition to compare with the most recent plan. He said they have addressed each concern the Planning Commission had.

John Poston asked if the existing garage is still being removed. With the first proposed variance application there was an attached garage. At the advice of the PC they removed the attached garage from the plan and left the existing garage. John Poston asked what the impervious surface is calculated at. It is right at 20%.

Krista Knudsen asked what they have done about the drainage and water runoff concerns. John K. said they have proposed a plan that keeps the water runoff in stormwater ponds and gutter's on the structure directing the water to direct water to the retention areas. He said there is not a lot of elevation on the property so they have to be careful of the neighboring properties.

John Poston asked the placement of the well. John K. showed him on the site plan where the well and the septic will be located. Is this a mound system? Yes, it is. How many bedrooms? There are four proposed bedrooms.

Susan asked what will be done on the lake side of the home during construction. John K. said they will use silt fence.

Krista asked if the footprint of the addition has remained the same as the proposed six bedroom plan. John K. said it is the same.

John Ingleman said the Planning Commission still feels that not just the size but also the height doesn't fit the spirit of the neighborhood.

Earl North said that as a member of the Planning Commission they have guidelines they have to follow including the comprehensive plan and they went through a long and serious interview process in making their decision. Part of the comprehensive plan requires them to consider the essential character of the

neighborhood. In this case, the end product appears to be 2,300 square feet. He said the homes on each side remain modest and showed the council a marked up version of the north and south elevation indicating what the neighbors will be looking at with the finished product.

John K. said from his clients prospective and in reading the ordinance every governmental body, including Lake Shore, has the impervious surface allowance and the smaller lot you have the smaller project you can build. They have worked to keep within Lake Shore's allowable impervious surface and feel that this lot supports their proposed structure.

Steve Qualley said that he doesn't want to derail the discussion and said that variances have been tricky in nature. He said 10 or 15 years ago there were competing thoughts that went along with variance between cities and counties. In a city the applicant would have to show a 'hardship' and a county used the term 'practical difficulty'. The practical difficulty standard would appear to make it easier to make the finding that the variance was allowed. The legislature has changed the municipal variance statute to allow for practical difficulty; it doesn't mean that a variance is automatically granted. He said that this lot is of such limited size that the PC determined that this applicant's plan doesn't even meet the even more relaxed standard of practical difficulty; you could put another addition on this home that isn't necessarily of this size.

Dave Reese said that they look at the applications from an engineering stand point to determine if the lot is capable of self-sustaining from the standpoint of drainage and handling the runoff, is it able to have a safe water supply, large enough for septic without the option of city sewer. He said from the standpoint of drainage, with a 50-foot wide lot that the layout as it is proposed has to be taken seriously; can we direct water and keep it within this property so it's not impacting adjacent property or impacting surface water quality of the lake. He said he heard there is a drainage plan that had retention ponds on the corners of the building, but he hasn't seen the plan. Looking at this for the first time the question is, is there enough drainable soil to allow the pond to dry and accept runoff, then allow that to perk down into the ground? He said it appears to be a 4 bedroom plan being proposed with the mound sewer system being proposed for a six bedroom home. John K. said they did have a 6 bedroom plan; however, it was really too much for the system; he talked about a time dosed control for the mound septic system and if the alarm goes off the occupants would have to quit using water to allow the sewer to catch up or call for the sewer to be emptied. He tried to let the council know the limits off what the property could support from a septic standpoint. He said the plan is going beyond that by using some creative pumping techniques to create storage to spread it out over a longer period of time.

John Poston asked if Dave could tell by looking at the plan how deep the retention ponds are and does it show elevations. Dave didn't see elevations, although there are a couple contour lines that indicated they are a couple feet deep if that is the intent. John K. said their intent is if they get the permit to get these figured in on what it will take to make the retention ponds; they will work with Travis or whoever that needs to identify the specifics. Dave said to ask if this is feasible with the water table. John K. said they have to look at the elevations. Doug asked if there are any restrictions with the ponds being too close to the setbacks. Dave said there are well code restriction, isolation distances from wells to insure safety of the water supply. Generally the setback is 50-feet from the well; however, it should be checked. John K. said the well is proposed on the lake side of the property.

John Poston said that without elevations it may be too difficult to make a decision and he wants to make sure where the water will end up. He said the stormwater ponds don't mean anything without elevations. John K. said that if the denial is overturned it could be a stipulation for them to provide technical data designed by an engineer for the stormwater plan.

Earl North said in preparation of the appeal he and John Ingleman spoke with the Zoning Administrator and the Planning Commissions concern has always been that things be properly addressed; if in fact the Council chooses to overturn the Planning Commission's decision there is a series of stipulations that they talked to the Zoning Administrator about that she included as additions to the Council packet. He said the concerns

are critical to the decision. One being that the soil is saturated. Another reason of concern was the size of the septic tank/system and that no cars should drive over that area. He said they were diligent and careful with considering their concerns; he said the rules apply to everyone that lives in the city.

Kevin Egan summarized, as he understood, the findings upholding the reasons for the variance denial, he said there are no practical difficulties existing that would prohibit a reasonable (smaller) addition to be constructed or to use the property as is, (they weren't saying nothing could be built, they were just saying that something with this footprint didn't fit); the deviation proposed is not in keeping with the spirit or intent of the City's zoning ordinances because of the proposed addition's size; the proposed structure is not practical as sized, based upon lot size and configuration; the proposed structure alters the essential character of the locality; and other reasonable uses (smaller addition or no addition at all) exist for the property under Lake Shore's zoning ordinances.

Doug Miller has a hard time with the concept of the sewer line running under the road. Dave said it is a common thing along Pebble Beach Road; they can direction pressure boar under the road. Open cut means cutting and patching the pavement. They would be responsible for any damage to the city road. John P. asked how deep it would have to be; especially with the water table where it's at. Dave explained that typically the way a mound system is designed is a pump pumps up to the mound and when the pump shuts off water drains back into the tank. It is designed that way so there isn't water left in the pipe all the time where it would freeze and break in the winter time. He said with the water table being where it is, the pipe would probably be in the water and typically that doesn't lead to a freezing situation.

Doug Miller said he has worked with the zoning people and it is a thankless job; he has a lot of respect for all the time they put into the entire process. He said he agrees with Kevin's findings of fact. Steve Qualley said that one of the words should be changed to prohibit rather than permit a reasonable use. He said that when you're dealing with a lot of this size no matter what they were going to do was going to require some type of variance because of the fact that the lot is small and with the side yard issues any type of addition will require a variance. In the end, what is an appropriate addition to a home, not every lot can support the type of home somebody wants to build. There are simply limitations when something is too much.

John K. appreciates what the commission does. He wanted to summarize his client's views. Mr. Miller has read all the information provided. He's heard the term practical difficulty and the practical difficulty with this variance is they have an existing structure that is not within the ordinance. He said they have designed an addition and another structure that falls within all the rules of the ordinance, whether it's the structures height, setbacks, size, permeable surface, stormwater runoff, they've taken all of these into account throughout the planning process. They've done everything that they've been asked to do. There's that subjective term of what is reasonable in accordance with surrounding structures. He believes they have put together a case where they have neighboring structures or like structures on other lots in Lake Shore that are similar to this. So to state that it's not reasonable, he thinks they have the same right as everyone else. They designed it as such to improve the aesthetic value of the structure. It fits within the neighborhood; he said that it fits within accordance of the rules with what is in the neighborhood. The plan fits within the city of Lake Shore and with other building techniques in this area. Mr. Miller feels that this is very subjective. He said they are concerned about the neighbor's and what happens down the road and what precedence is being set.

For the record, Mr. Miller isn't a client who purchased recently; the property has been in the family for forty years and they plan on keeping it in the family. They are following the current building lines. They feel they are within the ordinance on everything they propose. As far as a two-story structure goes, they already have a two-story structure and he said they are going up instead of out. He wonders, if this was a bear lot and they built this structure within all the setbacks; have a septic that conforms to the guidelines and laws, would this be a deniable variance simply because it's too big. He struggles with someone telling them they can't build something that big. They consulted an attorney on the project, he gave them some things to look into for talking points for the appeal and the attorney said that they have a very good case if the appeal fails.

Doug Miller asked if he's hearing that the Miller's won't consider a modification to make the addition smaller. The Miller's said that rather than shrink this plan they will hire an attorney.

Teri's staff report indicated the following: The applicant is seeking an appeal for the variance denial for the construction of 756 square foot two story addition onto the rear of the existing nonconforming structure. The proposed addition would be 6'6" from the southerly side lot line and 14' 5" feet from the northerly lot line where a 15' setback is required. The structure is less than 75 feet from the lake and on a nonconforming lot (50' wide). John Koupal from Start to Finish Builders represented Brad Miller at the April, July and August Planning & Zoning meetings. At the April and July meetings the Planning Commission denied the applications with the allowance that the applicant be allowed to resubmit a revised plan without an additional fee.

The Planning Commission denied the application that the home with the proposed addition would be too large for the 50' wide lot. The commission felt it was still a lot of bulk for the property and the footprint had not been reduced from the second submission. Both homes on each side of the lot are smaller single story homes.

Teri attached the application packets (the same information submitted to the Planning Commission) for the August, July and April Planning Commission meetings. In addition, the meeting minutes are included as well.

Listed below are the criteria used to approve or deny a variance according to state statute 462.357 Subd 6.:

This approval meets/does not meet the ordinance requirements for granting variances. Practical difficulties have/have not been identified as _____ (list the practical difficulty/ies) and is based on the following findings of fact:

- The requested variance (is/is not) in harmony with the purposes and intent of the ordinance because...
- The requested variance (is/is not) consistent with the comprehensive plan because...
- The property owner (does/does not) proposes to use the property in a reasonable manner because...
- There (are/are not) unique circumstances to the property not created by the landowner because...
- The variance (will/will not) maintain the essential character of the locality because...

If the City Council decides to overturn the variance denial, the following conditions are recommended: That a new conforming deep well be drilled and the existing shallow well be sealed and documented according to the MN Department of Health.

That a grading and stormwater plan be submitted and implemented. All stormwater to be contained on the premises.

The electrical wires to be addressed as submitted in the proposal by Vision Electrical Services.

That the existing area used to park (just to the north of the garage) be eliminated for parking or vehicle traffic due to the proposed septic system tanks being located in this area and that the area be marked or defined to prevent vehicles from parking or traveling on the area.

John Poston said that like the Planning Commission the City Council are stewards of our City and he believes the size is really not practical for the lot.

MOTION BY JOHN POSTON TO UPHOLD THE PLANNING COMMISSION'S DECISION IN THEIR DENIAL OF THE BRAD MILLER VARIANCE (AT 9178 PEBBLE BEACH ROAD); BASED ON -- THERE ARE NO PRACTICAL DIFFICULTIES EXISTING THAT WOULD PROHIBIT A REASONABLE (SMALLER) ADDITION TO BE CONSTRUCTED OR TO USE THE PROPERTY AS

IS;--THE DEVIATION PROPOSED IS NOT IN KEEPING WITH THE SPIRIT OR INTENT OF THE CITY'S ZONING ORDINANCES BECAUSE OF THE PROPOSED ADDITION'S SIZE;--THE PROPOSED STRUCTURE IS NOT PRACTICAL AS SIZED, BASED UPON LOT SIZE AND CONFIGURATION;--THE PROPOSED STRUCTURE ALTERS THE ESSENTIAL CHARACTER OF THE LOCALITY; AND--OTHER REASONABLE USES (SMALLER ADDITION OR NO ADDITION AT ALL) EXIST FOR THE PROPERTY UNDER LAKE SHORE'S ZONING ORDINANCES. KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED.

Adopt 2015 Preliminary Levy and Budget – The proposed preliminary levy is at \$780,081.00 which is a decrease from 2014. The budget includes a 2.5 % cost of living increase for employees. The preliminary levy and budget must be certified to the county by September 30th along with the truth in taxation hearing date.

The capital outlay portion of the budget does include some increases. There is an increase in government buildings and sewer equipment as discussed at the special budget meeting last Thursday. The budget also includes donations to civic organizations, such as the Initiative Foundation.

Due to changes in personnel and the payoff of the sewer bond, there was a savings within the Public Works and Sewer portions of the budget. These savings in reality have allowed the increases in other areas of the budget such as capital outlay.

MOTION BY JOHN POSTON TO APPROVE AND CERTIFY TO CASS COUNTY THE 2015 PRELIMINARY LEVY AT \$780,081.00. KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED.

MOTION BY JOHN POSTON TO SET THE 2015 PRELIMINARY BUDGET AT \$842,962.00. KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED.

Set and Announce 2015 Truth in Taxation Hearing Dates – The city needs to set the Truth in Taxation meeting dates for the 2015 levy and budget. Teri's staff report recommended holding the Truth and Taxation meeting at the regular council meeting on December 22nd at 7:00 p.m.

MOTION BY KRISTA KNUDSEN TO SET AND ANNOUNCE THE 2015 TRUTH IN TAXATION HEARING ON DECEMBER 22, 2014 AT 7:00 P.M. AT LAKE SHORE CITY HALL. SUSAN AMACHER SECONDED THE MOTION. MOTION PASSED.

Cass County EDC Activity Report – The EDC activity report included for review.

August Minutes and Permit Summary – The August minutes and permit summary were included for review.

Wastewater/Road Committee – John Poston

Resolution Adopting Assessment for 72nd Street – A public hearing was held for persons owning property affected by Lake Shore Road Improvements of 2014 to 72nd Street easterly off of Jacobs Road; they were given an opportunity to be heard with reference to their total equivalent lot assessment of \$1,275.71.

MOTION BY JOHN POSTON TO ADOPT RESOLUTION 2014-09-01 ADOPTING ASSESSMENT FOR THE ROAD IMPROVEMENT TO 72ND STREET EASTERLY OFF OF JACOBS ROAD. KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED BY 4/5THS VOTE.

Monthly Report from PRASD – The operations report for the month of August was included for review.

Park and Recreation Committee – Krista Knudsen said the committee met in September and discussed the condition of Fritz Loven Park.

July Minutes – The July minutes were included for review.

Environmental Committee – Doug Miller said the committee didn't meet in August.

Trail 77 Team – John Poston/Susan Amacher – John Poston said there was nothing to report.

Personnel – John Terwilliger/Susan Amacher – Susan Amacher said there was no personnel business to report.

City Attorney – Gammello, Qualley, Pearson & Mallak – Steve Qualley had nothing to report.

City Engineer – Widseth Smith Nolting – Dave Reese said the punch list items were completed for the 2014 road projects. He hasn't been out to check for final approval. He suggested to release a portion of the retainage; possibly half of the retainage. Dave said he will check the project on Tuesday.

MOTION BY JOHN POSTON TO RELEASE HALF THE RETAINAGE HELD ON BEHALF OF DECHANTAL EXCAVATING. KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED.

The Wienzel Point drainage project has started.

Last month the council approved road improvements for Nottingham (\$2,500) and Robinhood Way (\$5,000). He hasn't heard back from the contractors they have contacted because they are very busy this time of year. Anderson Brother's may be able to finish this year, but can't promise completion.

OLD BUSINESS – There was no old business.

NEW BUSINESS

Hunting Map Revisions – Steve Sundstrom said that Pat and Teri Hastings, the mayor and some city residents have expressed an interest to allow people to take deer with a shot gun. He said there are definitely some areas within the city that would support this change to the hunting ordinance. They would still have to adhere to no shooting within 500 feet of a structure. Steve Qualley said it would require an ordinance change and thought it was within the zoning ordinance. He said the city could initiate the process tonight. The City Council will refer the change to the Planning Commission to get their input. The Chief said that this maybe a solution to thin the deer population within the city. He said the Park and Recreation Committee may want to discuss allowing this change in the park.

ANNOUNCEMENTS/PUBLIC FORUM – Earl North said he heard there have been antiquities found under Lake Shore with the archeological dig being done prior to the County 77 road improvement. John Poston said they found pottery pieces near the motel that are over 2000 years old. He said they are in phase 2 and don't anticipate moving into phase 3; they don't feel they would learn anymore.

MOTION BY JOHN POSTON TO PAY THE BILLS AS SUBMITTED (CLAIM NUMBERS 32837 THROUGH 32925 – TOTAL \$76,375.26). KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

MOTION BY SUSAN AMAHCER TO ADJOURN THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 22, 2014 AT 8:19 PM. KRISTA KNUDSEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald
Lake Shore City Clerk