

## EAST BETHEL PLANNING COMMISSION MEETING

September 23, 2014

The East Bethel Planning Commission met for a Regular Planning Commission Meeting on September 23, 2014 at 7:00 p.m. for their regular meeting at City Hall.

MEMBERS PRESENT: Randy Plaisance Eldon Holmes Lorraine Bonin Tanner Balfany  
Brian Mundle Lou Cornicelli Glenn Terry

MEMBERS ABSENT: None

ALSO PRESENT: Jack Davis, City Administrator  
Ron Koller, City Council  
Colleen Winter, Community Development Director

**1.0** Chair Mundle called the meeting to order at 7:00 p.m.  
**Call to Order**

**2.0 Adopt Agenda** Mundle, "Before we adopt the agenda, I have an item to introduce, 'Item 2.1, Introduction of Sue Irons, our new Recording Secretary.'"

**Mundle motioned to adopt the September 23, 2014 agenda as revised above. Terry seconded; all in favor, motion carries unanimously.**

2.1 Introduction of Sue Irons, Recording Secretary Davis, "I'd like to introduce Sue Irons. She's our new Recording Secretary. She's doing the minutes for the Planning Commission, Roads, Parks, and the EDA. So, we'd like to welcome Sue and are glad to have her aboard."

Mundle, "All right, welcome aboard." Cornicelli, "Good to meet you Sue."

**3.0** It was noted that the Planning Commission is requested to examine the petition of the Owners of 553 Lakeshore Drive to determine if their issue has merit for an application for a Variance Hearing.  
**Public Hearing for Variance**

### **Interpretation**

### **Requests**

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### **Background Information:**

Heidi Moegerle and Gary Otremba, hereinafter referenced as "Owner," purchased 553 Lakeshore Drive, PIN 36-33-23-21-0266 on February 11, 2013. This property was zoned R-1 at the time of the purchase and still retains that zoning designation. This property is in a Shoreland Overlay District and is 7,126 square feet in size.

At the time of purchase, the property was a non-conforming lot of record and the structure was non-conforming.

The purchasers of the property applied for and received a demolition permit on February 21, 2013. The demolition permit indicated that the work to be completed would be the removal of the entire portion of the structure used for habitation with only the garage portion of the structure to remain. Prior to the issuance of the demolition permit, the Owners met with Colleen Winter to discuss the use of this property. Ms. Winter provided a letter to the Owners

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(Attachment 1) that addressed the issue of lot combination and the use of 553 Lakeshore for storage use. There were no objections filed by the Owners relative to this letter.

Periods of demolition of the inside of the structure occurred between February 21, 2013 and April 2014. The Owners requested an extension and modification of the demolition permit on April 21, 2014. This request was to limit the permit to only the removal of the 1940's cabin section of the structure. This request was granted based on the Owner's previous statements concerning the use of the property and on a pending amendment to City Code that would permit an increase in accessory structure size on lots less than 0.99 acres to 960 square feet. The removal of only the "cabin section" would meet this requirement and leave the remaining structure at 960 square feet or less and was approved.

The City requested a letter of intent from the Owners as to the demolition timetable at the time this permit was extended. The letter of intent submitted by the Owner (See Attachment 2) provided notice, for the first time, to the City that the owner intended to utilize the remaining structure in a manner that was inconsistent with previous statements as to the described use of the property. The Owner, at a City Council Meeting on November 12, 2012 and Local Board of Appeals and Equalization meetings on April 17, 2013 and April 24, 2014, an e-mail to the City Assessor and an e-mail from the County Assessor's Office provide statements that the structure at 553 Lakeshore is uninhabitable and can only be used for "green space" and storage. On and after April 30, 2014, the Owners reversed their statement of intended use of the property as an accessory structure to that of a principle structure and served notice that compliance with City Code that mandates the combination of contiguous non-conforming lots would not occur.

The demolition on the structure that occurred between February 21, 2013 and April 21, 2014 was internal and consisted of the removal of and not limited to the kitchen, bathroom, plumbing and wall coverings. The Minnesota State Building Code, R306, requires the presence of working plumbing fixtures and a compliant sewage disposal system for a structure to be habitable. The septic system for this property was deemed non-compliant on October 13, 2011.

In the case where these facilities do not or no longer functionally exist, the facility is deemed uninhabitable. As it is no longer habitable based on this definition and prior statements to this affect made by the Owners, it loses its status as a principal structure and any 'grandfather' protection, it may have had, from requirements and regulations of City Code.

This interpretation was presented to the Owners in early May 2014 and reviewed personally with the Owners at a meeting on May 20, 2014. At the meeting, the City presented their interpretation of the land use issues and actions necessary for compliance with City Code. The Owners were notified of the City's position on this matter on June 11, 2014 (Attachment 3).

Subsequent correspondence and meetings on this matter continued through August 20, 2014 to attempt to resolve the issues in question. On August 20, 2014, the City sent an update (Attachment 4) to the June 11<sup>th</sup> memo that stated the

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City's final position and an option for appeal.

### **Attachments**

#### City Attachments

Location Map

Site Plan

Attachment 1---February 18, 2013 Letter

Attachment 2---Letter of Intent

Attachment 3---Memo, 553 Lakeshore Drive

Attachment 4---Final Memo, 553 Lakeshore Drive

Attachment 4 A---Lot Merger, Legal Opinion

#### Owner Attachments

Attachment 5---Memo to Commission Members

Attachment 6---Relevant Law

Attachment 7---Structural Requirements

Attachment 8---Timeline \*

\* The owner submitted a timeline of events and comments for 553 Lakeshore Drive. The contents of this attachment are the opinion of the owner and are in no way supported or accepted by the City.

### **Fiscal Impact:**

To be determined

### **Recommendation(s):**

It is the City's position that the change in use, by creation of the owner, from a nonconforming residential structure that existed prior to the demolition has resulted in following:

- 553 Lakeshore is currently occupied by an uninhabitable accessory structure with no principle structure on the lot; and,
- 553 Lakeshore has, therefore, lost the 'grandfather' protection afforded by its prior nonconforming use, structure and lot of record status and is now subject to all the requirements and regulations of the City Code.

It is the opinion of the City Attorney that even absent the facts as stated above, that the parcel is non-conforming and must be merged due to the adjacent ownership and lot size (Attachment 4.A). In addition, the DNR has provided an e-mail to the Owner that outlines the requirements for lot merger and 553 Lakeshore satisfies none of the requirements for exemption.

Staff is requesting the Owner's requests for this matter be denied on the basis that:

- The change in use created by Owner removes the 'grandfather' protection of the non-conformities and subjects the property to all other requirements of City Code;
- There are no "hardships" unique to the property and that any "hardships" that may be presented for discussion are by creation of the Owner;
- The mere non-conformity of the parcel related to the conditions of adjacent ownership and lot size require the merging of the two properties;
- Approval of the variance would be inconsistent with the Zoning Ordinance's requirements for Principal/Accessory Structures and therefore inconsistent with the Comprehensive Plan; and

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- The proposed use of the property as continuation of a residential use that does meet setback, impervious surface, intersection visibility, septic system, lot size and square footage building footprint requirements would be an unreasonable action on the part of the City.

Davis, “The original item on the agenda was for a Variance Interpretation Request and it was scheduled and I had indicated to Ms. Moegerle and Mr. Otremba on September the 10<sup>th</sup> that was the purpose of this. I did get an e-mail from them at 3:11 this afternoon that states, and you have a copy of that at your desk, that ‘We are not applying for a variance. The current law allows all that we have outlined to the City. The point is that the East Bethel Ordinance and Minnesota Statute allows for nonconformity to continue during repair, which is what the demolition has been all about. Repairing the structural defect to the building.’ This is not the variance request that we had anticipated. However, the central issue in this whole matter, whether it’s a nonconformity or an abeyance to this, is that it is the opinion of the City there is a change in use of the property and as there was a change in the use, then the nonconformity lost its grandfathered protection and, therefore, it is subject to all of the requirements of the ordinance, whether it’s a nonconformity issue or a variance issue. So, at this time, it’s up to the Planning Commission to decide how they wish to proceed on the matter.”

Mundle, “Is there any discussion on this new information that came in that Ms. Moegerle will not be applying for a variance and our agenda item is to discuss a potential variance. Is there any discussion about this from Planning?”

Balfany, “Well, if they are not applying for a variance, then do we need to discuss a variance?” Holmes, “Yeah, if we’re not applying for a variance, what is happening?” Moegerle, “Nothing.” Holmes, “Nothing?” Moegerle, “We are appealing from an adverse decision under Chapter 14. I’m sorry, it’s under Chapter 2 of the zoning. I think it’s in my document there, that I provided today, but my appeal.”

Mundle, “But, that’s not what we’re discussing. We’re discussing the information that was given to us. A Variance Interpretation Request. And, this e-mail states that you will not be, you are not applying for a variance.”

Moegerle, “The agenda item is characterized as *inaudible, off mic...* our appeal.”

Bonin, “I find this whole thing very confusing and I would like it if you could just state exactly what it is you want and not talk about what you don’t want or what anybody else wants. Tell us what you want and let’s move on.”

Heidi Moegerle, 179 First Road NE, “What is this about? This is about 63 square feet in the short term. I have a picture for you, a drawing. This also goes to, with regard to the effect of the laws of East Bethel and the State of Minnesota, with regard to nonconformities. Nonconformity law says, at 462...”

Balfany, “Real quick Heidi, before we get too deep into this, I think the question is just what is the purpose of tonight’s meeting?”

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Moegerle, "The purpose of tonight's meeting is to appeal what was determined by the Building Official with regard to where we are in the midst of a demolition permit. What has happened is, the Building Official has basically said, 'You got this permit. You're in the middle of the permit. The use has changed and you can't do anything more.' State Statute and East Bethel says that nonconforming uses are suspended during the period of repair. We're in the middle of a repair so for the City to now say to us, 'Oh, you disconnected the septic system, now you're not in compliance.' Well, we're in the middle of a repair. You know. So..."

Mundle, "I believe you have a demolition permit?" Moegerle, "Yes, we do."

Mundle, "Not a building permit." Moegerle, "Correct, and let me address that, although we're getting a little bit away from the short story. What happens is that the structure that we have, we'll call it a 'house.' Basically it is a cabin that was 360 square feet with an addition. Balfany, "A property with a primary structure on it." Moegerle, "Primary structure. Part was the cabin of 300 and some square feet and the other was 960 square feet of living space plus a garage. Okay? The cabin was built in 1940. All it had for a footing was concrete blocks. Okay? The addition from 1985 had a full foundation. What happened was that there was a structural defect at the point where the cabin and the addition, house addition from 1985, met. In fact, there was no foundation between the load bearing side walls, across that area. So, there was structural weakness at that joint. In addition, in 1940, all the studs and structural members are two feet on center. Current Code is 16 inches on center. So, there was a big discrepancy with regard to that. Frost had gotten in under the cabin and the floor was twisted and warped. So, there was..."

Balfany, "Something needed to happen with the property. I know. We don't need to get into the minutia of it all."

Moegerle, "So, we needed to relieve that stress in the structure and we could do that by putting a foundation under it or what. So, a building permit doesn't apply because we're not going to put on an addition. What we're going to do is remove structure. We're going to remove structure until we can get a point where it is structural. And, that's the whole issue. When you relieve the stress, how much is going to be left? So, are we going to have enough for a principle structure, which is principle building and principle use of 1,000 square feet? Or, are we going to have something less than that? What we found out is, and July 28 we're talking about this to staff, is that we can save 1,000 square feet. Actually, we're looking at 1,023 feet. So, that's what we're looking at. And, we discovered there was dry rot in the walls, et cetera, et cetera. So, that's where we are. We're in the midst of this situation. What I do know is that when you look at Minnesota Administrative Rules, and say, 'Okay, why'd you choose a demolition permit versus another one.' Well, we're not building. Two, an alteration permit does not apply to repair or an addition. So, obviously we're not doing an addition. We're doing a net reduction in total square feet and so that's where we are.

What I have for you is a drawing that I think will help you a lot. The first picture is a side view. What it shows is there's a 42-inch overhang, what appears to be an overhang. That roof is a structural roof from the 1940 structure. The walls beneath that were rotted and there was, of course, no footing or foundation. So, in

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order to save that, we have to put a footing and foundation under and replace those walls. This is a repair replacement, which is provided under East Bethel Statute, or East Bethel Ordinance, and Minnesota Statute, and it specifically says that, 'nonconforming uses may be continued, including through repair, replacement, restoration, maintenance, or improvement not including expansion.' And, so, what we're..."

Balfany, "Under which permit though?" Moegerle, "It doesn't say and here's the thing, there's not a, East Bethel does not have a repair permit. We're not doing an addition. We're not building. The net effect of all of this is demolition and then repairing underneath it. In fact, the City has allowed us to put in the foundation that was missing at the joint between the cottage, or the cabin, and the addition. So, that was missing and that was causing some structural issues. So, all we're asking is to be permitted to put, under the footing and the foundation, to put the sidewalls, replace and repair those sidewalls from the cabin for a total of 42 inches and enclose that. And, that's the total of 63 square feet."

Balfany, "So, it sounds like you're still asking for a variance if the Code doesn't allow you to do that. Because you're asking for something. I think it's still up to the discussion of what we're actually discussing here. We need to know what your intent is from us tonight. If I'm wrong, correct me."

Moegerle, "No, so, we're not appealing from a variance. We're appealing from a precipitous decision of the Building Official in the middle of all this. When we started this, we had on there, and you read the documents, that there was a septic system in there that had a failed drainfield."

Cornicelli, "Now hold on. Can I say, when we started this at our meeting, you said on the minutes, the verbatim minutes from April 23, 2014, three or four different occasions, that this house was never habitable, was being purchased for green space, and it looks like you're spending Council time trying to get the taxes reduced because it is not a household. So, I'm confused as to where you changed your mind."

Mundle, "And, on the original demolition permit here, it shows you're removing the habitation, not the garage. The roofing you crossed out, that states it needs a separate permit. You're demolishing, 'this permit is for demolition of house only.'"

Cornicelli, "So the record reflects your intent to destroy the building, not referb it. And, I think we're spending a lot of time talking about plumbing and sewer and all the other stuff when the verbatim minutes clearly reflect your desire to flatten the building to reduce...and one thing that you wanted to reduce your taxes. So, if you did, then why did you spend Council time on this issue if you really never wanted to do that in the first place? Somewhere along the line, things changed."

Moegerle, "Things did change, and things changed about April this year. One of the things..." Cornicelli, "So, after the meeting?" Moegerle, "I don't know. I couldn't tell you right off hand. But, one of the things that happened is from the beginning, staff has talked about this house is uninhabitable."

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Cornicelli, "Again, I'm not buying it Heidi. I'm sorry." Moegerle, "Okay, and I'll tell you, and this is why they told us it was inhabitable, because the septic system had a noncompliant drainfield." Cornicelli, "The record reflects you saying it's not inhabitable." Moegerle, "Absolutely." Cornicelli, "Repeatedly saying it's not inhabitable." Moegerle, "And, I absolutely agree. Okay? New facts, new information came in. One thing was that Anoka County came in and took a look at it." Cornicelli, "But you just talked that you never wanted to demolish it. You always wanted to rehab it. You just said that."

Balfany, "Um hum, that's why whichever improvement (*inaudible words*) septic system from the get-go and made it habitable." Moegerle, "Okay, because here's the thing. The question was how much, through the demolition, can we keep. Can we keep 1,000 square feet? We didn't know. It's a structural issue. Gary's the carpenter. I'm not the carpenter. So, yes, we did..."

Cornicelli "Do I need to read this?" Moegerle, "Huh?" Cornicelli, "Do I need to read this?" Moegerle, "No." Cornicelli, "Okay. Because that's not what it says. What it says is that it was never habitable. Your intention was to destroy the property and turn it into green space, and use it as such. Use the garage as cold storage. Again, reduce your tax burden because it's not a structure. What you're saying now is not, in fact it's the opposite of what you said in the verbatim minutes while you're sitting up here at the dais."

Moegerle, "Okay, and I'm trying to respond." Cornicelli, "You're not responding in any kind of clear articulate or thoughtful manner." Moegerle, "Okay, I'll try to be clear, articulate, and thoughtful." Cornicelli, "Okay." Moegerle, "So, with all that went before, with the people who came before Council, what we knew was the drainfield was bad and we were told by staff it's uninhabitable because the drainfield does not work. You cannot move into this house. Okay? So, 'uninhabitable' meant to us you can't live in the house now. Okay?"

Cornicelli, "I'm not buying it Heidi. I'm sorry." Moegerle, "Well, let me finish. And that continued through August of this year, or I'm sorry April of this year. I misspoke. That was April of this year. So then we have Anoka County come in. They take a look at it. They say, 'Well, you can't use it as a rental space now.' Got that. We're in the middle of a demolition permit...repair. So, no we can't do that. So the question is, is this septic system repairable and useable. Well, what I found out is that you can disconnect a drainfield, and I think it's even in the minutes from before. And, then you have a holding tank that was originally septic tank. So, our decision making, and we've said this with staff, is look, we don't know what we're going to have..."

Cornicelli, "But, you said you didn't want a holding tank because you have to drain it every month."

Mundle, "And, that's in there too."

Cornicelli, "I can flip to the page but I remember reading that pretty clearly." Moegerle, "Right." Cornicelli, "So, that's not consistent with what you are saying now." Moegerle, "Well, we're not going to be living in there. Okay?" Cornicelli, "But it says you're going to be living in there. You've said in further

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documentation that you're going to be living in there, for entertaining."

Mundle, "In fact, in your timeline, you're saying that you're living there now." Moegerle, "We have meals in there. We have TV in there. We've had people over. Absolutely. There's no septic system, obviously. So, we're continuing that use but you know what, that's completely irrelevant because what the Statutes say, as well as the Ordinances, is that a nonconforming use is suspended during a period of repairs." Mundle, "But you are not repairing."

Cornicelli, "You have a demolition permit. By your own words, you are demolishing. You've now changed your mind and it sounds like you're trying to put that on the City." Moegerle, "No, we're not putting that on the City and we didn't cha...when we went and got for the renewal, that's about the time we're changing things."

Mundle, "At the time that you went to get the renewal was the plumbing already out of the structure?" Moegerle, "No. In fact..." Mundle, "Jack, was it?" Davis, "I didn't inspect it but we were told the plumbing had been removed, that the bathroom had been removed, that the kitchen had been removed. One other thing I'd like to state too is that the first time staff indicated that the building was uninhabitable was on June the 11<sup>th</sup>. Prior to that, all the indications came from the Owners that the building was uninhabitable. And, we determined that the building was uninhabitable on June the 11<sup>th</sup> because we were told that all the plumbing had been removed, the kitchen had been removed, and the bathroom had been removed. Under the State Building Code's definition, that makes it an uninhabitable structure."

Mundle, "Okay, so by that understanding, at that point the use of it had changed and that you wanted to keep a portion of the structure after the plumbing had been removed. After, once the plumbing had been removed, it changed the use of that structure and you cannot go back."

Moegerle, "And, I beg your pardon. What I have here is a picture from September 13<sup>th</sup> that shows the septic system was still connected to the house. And, I did misspeak. Absolutely. Okay? And, here's a picture from September 13<sup>th</sup>, the sewer line is connected to the house. We had removed the fixtures. They were ugly, nasty, disgusting and filthy. If you want to look at this, it speaks for itself. It's the septic line. The demolition occurred August 18<sup>th</sup> at about 8:05 a.m."

Bonin, "When you talk about demolition, how much are you talking about?" Moegerle, "We're talking 300 square feet, a total of, you want to know the length?"

Bonin, "I'm confused as to, well I'm just totally confused." Moegerle, "Okay. Sometimes I am on this too." Bonin, "What I would really like is to know what was there to start with and then what are you going to remove and what's supposed to be there when you're done."

Moegerle, "What's there at this point is 960 square feet with an overhang of 42 inches in front of it. Okay? So, we can save the roof. We couldn't save the

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sidewalls. On the north side, it was rotted. There was a window there. It had concrete block.” Bonin, “I don’t care about (*inaudible*).”

Moegerle, “Right, so we couldn’t save the walls. We had to put foundation under them to save them anyway. Okay? After June 11<sup>th</sup>, I corrected myself with staff many times and said, ‘Look, I did misspeak. I repeated something that I shouldn’t of.’ My husband said, ‘Oh, when I disconnected the toilets I disconnected it from the system.’ That’s what he said but that’s not what he meant. The septic tank was still there. They’re still in place. The fixtures were out. We weren’t going to keep the fixtures. They were filthy and disgusting. So, they were always going to go. We’ve done a considerable amount of tearing out. The porcelain would have broken any way. We also needed to get behind where the tub was as well. We recycled the appliances in April of 2013. So, absolutely. Now, here’s where we are. The question is, the septic tank was crushed because we were ordered to crush it. It could have been turned into a holding tank. We didn’t address...”

Cornicelli, “But, you didn’t want a holding tank.” Moegerle, “Well, no, we don’t want a holding tank. We preferred a septic system.” Cornicelli, “Well, then why are we quibbling about whether it was crushed or not?” Moegerle, “Well, because that would have made it a whole lot simpler in the short term.” Cornicelli, “But, you didn’t want it.” Moegerle, “Well, in the short term, it would have made things a lot more simple than where we are right now.”

Moegerle, “So, the situation is this. We know we can get a holding tank in there that meets all the setbacks. We can...all we’re asking is that we can put the footings in, put in the 42 inches, the 63 square feet. Put that in, under roof, seal it in. We’ve got, what you have on your pictures there shows the windows that would go in. We’d get a septic system in and bring it up to Code. We’re going to bring it up to Code regardless of what’s left of it. But, one of the things from the beginning, when I got this with my husband, is that, you know, we want to use this for storage. We want to use it for ‘man cave,’ whatever, that kind of stuff. But, they’re not making that kind of land any more along the lakeshore. So, if we can at all possible keep the potential for that to be used as a residence, we would like to do that. Frankly, until in July when we got the demolition going further and we started tearing things apart and seeing what the structure was, we didn’t know. About the end of July, we did know. At that time we had corrected with staff that, no, the septic system is still intact. Obviously, it is even to this point. That pipe is still connected to the house.”

Bonin, “But, there’s no toilet or something to go to it.” Moegerle, “We have a toilet, we have a shower to put in there. Okay? So, basically, the nonconformity law says that a nonconforming use can continue during repair. The problem is there is not a repair permit. You can’t buy a repair permit. According to Minnesota Administrative Rule, I think it’s 1311, an alteration permit only, does not apply to repair or additions but only applies to construction and renovation. So, it didn’t...”

Mundle, “So, what you’re doing is not renovation?” Moegerle, “Well, umm...” Mundle, “Or, remodeling?” Moegerle, “See, and that’s what we’ve asked. We’ve asked, Do we want it? Can we get a different permit?”

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Balfany, "But, shouldn't that have been asked at the beginning?" Moegerle, "Well, yeah, I think we did it. But, you know, because part of it is when you don't know what you're going to get into with a construction standpoint."

Cornicelli, "But you repeated on numerous occasions that it was inhabitable and you'd reassess once it was flattened. So, you knew what you were going to do with it. It wasn't unclear at the time." Moegerle, "Well, that isn't the intent of what my point was."

Cornicelli, "You said it several times. You said the same thing several times." Moegerle, "Right, and the point is that once we've gotten this stuff away, then we can see. The net effect of this demolition will be a net reduction of impervious surface by 300 square feet. Okay? Where, and we were clear with staff. Certainly this spring forward. We don't know where the point is going to be where we can feasibly repair and put the footings in and the foundation. So..."

Balfany, "So, you wanted to repair without knowing what you were going to repair?" Moegerle, "Well, what we said was, is that, um..."

Balfany, "I mean, wouldn't you have assessed that from the get-go before starting any construction? I mean, we had a similar incident come up before us what, eight months ago, with the gentleman who wanted a bathroom remodeled and he pretty much tore down his house and, unfortunately, in that circumstance, he didn't do the right things in order to get him what could probably have been accomplished. But, unfortunately, couldn't of because of the extent that he had brought it to. And, it sounds very similar to that case now."

Moegerle, "I certainly understand. What happens is we're still under the repair permit and we were told that you can repair the footing foundation under the permit. Okay? We were told that. Whether that has changed, that's a different thing."

Cornicelli, "I thought there wasn't a repair permit."

Davis, "If I would say one thing on that, the footing was permitted because that was where the demolition terminated so there was an open end of the building that had to be walled up. That's part of the demolition and part of that there's a footer required. But that's the only thing that we permitted is the footer."

Balfany, "Okay, and to me that sounds like that would be the part that would apply in the stipulation you're talking about where the nonconformity still...or, doesn't apply. When you tear down that portion of the house and you still have to repair that last piece of footing and put the wall up. Just because you've made the house exposed for that temporary period of time, you don't lose your status." Moegerle, "Right."

Balfany, "That, to me is what that's saying. But, it sounds like you've gone beyond that point with some of the things you've disconnected in the house, or on the property. You've made it more uninhabitable than what you needed to." Moegerle, "Well, we're in the process and, you know, we're ready to buy the permits for the mechanicals and the plumbing and those kinds of things."

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Balfany, "But, those things weren't identified early on that that's what you were trying to do." Moegerle, "Okay, but that's where we are now. Okay? And, this is where we've been all summer." Balfany, "But, you've taken the house to the point that it's uninhabitable so, therefore, it no longer qualifies under the grandfather status." Moegerle, "No, well, and that's where we disagree. We disagree because when you take a look at this nonconformities, nonconformities continue to exist during repair, replacement, restoration. And, that's what we are trying to do. We're trying to restore the walls that were so rotted."

Balfany, "But, you demoed the, part of the house. You didn't apply for a building permit to remodel. Or, there's no indication of that. Actually, I think Brian indicated on the demolition application 'to make it uninhabitable.' To me it's pretty clear. You put it right on the application."

Mundle, "You want to take away the habitation." Moegerle, "Well, right, but that's not what it says on the..."

Balfany, "But, as soon as you take away the habitation, it no longer has the grandfathered status." Moegerle, "Well, but you see we're still under the Stat...if that were true, if the repair, if the permit were gone, I would agree with you. Okay? But, we still have an active permit. It's sort of like..."

Cornicelli, "You have an active demolition permit." Moegerle, "But, it's sort of like this. If you're going to repair something, say you have a dent in your car. Okay? You have to remove the fender in order to repair it. Any repair that goes on, and my husband does a lot of restorations down in the cities on these really old houses. What do you do? You take out the bad stuff so you have room to put in the good stuff."

Balfany, "So, you're saying you took out a demolition permit to take out this portion of your house and remodel the rest of it, all underneath the demolition permit? That, to me, wouldn't make sense."

Cornicelli, "Okay, by your argument, I'd have the car crushed in order to fix the dent. That's what you are essentially saying."

Mundle, "If I may question, I'm looking on a City website right now. There is a residential permit application for alterations or general remodeling. Do we know when this application existed in the City?" Winter, "The residential addition and alteration permit application?" Mundle, "It's titled, 'The Residential Permit Application for Alternations or General Remodeling.' Otherwise it says, 'Residential Alteration Permit Application Under the Building Permit Application.'"

Plaisance, "So, you're asking when that process was put in place? "When did they start using that?" Mundle, "When did this Remodeling Permit come to be in the City." Winter, "Well, we've always had Building Permits. They've been around for a very long time."

Mundle, "And so, remodeling was covered under..." Winter, "Every remodeling

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was always covered under a very general permit and that's how we used to do it. And, then what we did is redid all of our Building Permit forms and put our new ones on the website. And, they've been on there. So, you've always had the ability to come in and do remodeling, additions, or alterations but it was under more of a generic permit. Then we just recently broke all those out." Balfany, "So, again, it sounds like..." Winter, "Actually, we've had it not recently, it's been probably a year."

Balfany, "So, again, even going back to the timeframe when you discussed with the City what your plans were to do, at that time based on what you're describing now, you should have applied for a demolition and a building permit of some sort. But, you didn't. You applied for just a demolition and then took away part of the house. Now you're trying to apply for a different permit now that the structure has changed."

Moegerle, "Well, actually, we were originally told that you can put the footings and foundations in under the repair permit. Okay? I understand that that's changed but that shaped our..." Terry, "You keep saying 'repair permit' but you don't have one. You have a demolition permit."

Plaisance, "Just as a clarification, you did say 'repair permit.' Are you meaning that you can replace the foundation under the demolition permit?" Moegerle, "That's what our understanding was." Plaisance, "Okay, because that's not what you said. So, I wanted to clarify whether or not..." Balfany, "But, again, that sounds like only the one portion in order to finish the wall to cap off the end of the house." Moegerle, "That was not our understanding. Okay? So, I understand that..."

Balfany, "So, due to a misinterpretation, is that really what you're asking? That due to a misinterpretation of the Code and the permit is what you're asking for from us?" Moegerle, "What I'm saying is that let us continue under this demolition permit to get this thing back under wraps in the 63 square feet." Balfany, "I'd be hard pressed to have to agree with that because, unfortunately, and as you know from sitting up here creating precedence is a very serious issue. I think that everybody on this board takes that as an issue. If we were to send something forward and say, 'Yeah, go ahead and continue under a demolition permit,' anybody..."

Mundle, "City staff has given their opinion and the City's Attorney has already agreed with City staff."

Cornicelli, "And, I would add this conversation alone creates a certain level of difficulty with this Commission, with the Council, with the City, because this is...you know, I'm reading through these minutes and I've got concerns about what a conflict of interest might be, quite frankly. There's a lot of time spent up here...don't roll your eyes...I mean, I serve at your pleasure, you being a Councilmember. So I, my speaking for the Commission is in an awkward position right now. One that we really shouldn't be in." Moegerle, "I agree with that."

Cornicelli, "Well, either way we decide, it's an awkward position because we

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serve at the pleasure of the Council. The amount of time that I read in just this one set of minutes indicates a fair bit of time that the City and the Council spent on your personal issues. I don't think other people in the City are afforded that luxury, quite frankly."

Moegerle, "And, that's why we have gone ahead with this appeal. Again, it seems to us that the law on the nonconformities is the nonconformity use continues during the period of repair. So, the idea of taking a 'snapshot' right now and saying, 'You can't do anything.' We haven't finished the demolition permit. We haven't closed that out. We've been told we can't apply for a permit to close in the 63 square feet. That's what we'd like to do but we've been told we can't do that because the 'snapshot' is that now you're nonconforming. Well, how am I going to repair this?"

Cornicelli, "Well, you argued passionately that the building is uninhabitable. Then you argued passionately that your taxes should be lowered because it's uninhabitable. Now you're arguing passionately that we should somehow discuss a variance that you should get because somewhere along the line, you changed your mind. And, we did this for that gentleman who had that nonconforming structure that Tanner mentioned. But, we don't have the authority to do that. It doesn't meet the qualifications for a variance."

Moegerle, "And, we're not asking for a variance. We're appealing from the determination of the Building Official that we can't apply for a permit to close in that area. We're in this..."

Mundle, "Jack, from my understanding, they could repair a wall under the demolition permit. Correct?" Davis, "The wall repair is part of the demolition work because it has to be closed back in. They can't leave part of the building open."

Balfany, "So, it just becomes an accessory structure, which, therefore, no plumbing, heating, et cetera. It's a building on a lot that is attached...or next to your current lot."

Moegerle, "We're trying very hard to go ahead and bring that up to Code so it's a residential structure. One of the things that's real important, if you look at the site that I got you for 62357H, this is where this inhabitability becomes an issue. I think, really, Lou kind of hit on it and that was when you look at Subdivision 1Eh. They talk about un-inhabitability or habitability in a little bit different way. It says, 'notwithstanding paragraph f' (which talks about minimum impervious sizes and those kinds of things) it says, 'contiguous nonconforming lots of record in Shoreland areas under a common ownership must be sold or purchased individually if each lot contained a habitable residential dwelling.' So, 'habitable.' Then, it separates it out. At the time the lots came under common ownership and the lots are suitable to serve for sewage treatment systems. So, until I found this, I was using 'uninhabitable' in a reckless way. And, that was in the terms of, it doesn't have a conforming septic system. Okay? Absolutely, bad, bad thing to use words imprecisely. And, relative to..."

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Balfany, "But, again, your misinterpretation is now calling for us to make a decision that can ultimately make major effects anytime somebody wants to pull a demolition permit, let alone going against recommendations of City staff and attorneys."

Moegerle, "No, because if you take a look at, and I know that you got the information from when Anoka County went in there. And, again, they're going in there in the middle of...we're planning to pull permits. We don't have a problem with pulling permits. We've been told we can't pull permits. That's what we want the Planning Commission to say, is that we can go ahead and pull the permits to bring this up into compliance. But, what's important is that the Legislature, when they looked at this, they decide 'habitability' is, you know, what's the structure. And, they separate it out from the septic system. Both individually are capable of being repaired. For that matter, theoretically, we can get a building permit and add another floor to it. It's not economically feasible to do that. What we'd like to do is get a permit, close in the 62, 63 square feet, and go ahead and make it useable."

Bonin, "When you say 'usable,' what do you mean?" Moegerle, "We would use it as a glorified man cave. My, you know..." Bonin, "So what you've got is your house on one lot and this building on the lot next to it." Moegerle, "Right." Bonin, "And the lots are not joined on the taxes?" Moegerle, "No, they're not." Bonin, "They're two separate lots." Moegerle, "Right." Bonin, "And, you're going to keep them that way? Or, are you joining them?" Moegerle, "Well, what, this law under Shoreland Overlay District says is that if both are habitable dwelling and suitable or a septic system, then they can remain separate. Even before we purchased this, it indicated that it was suitable for a septic system. So, that's a possibility." Bonin, "But, you want to leave it for a man cave now but with the possibility at some time in the future it could be turned into a residence." Moegerle, "A house, yeah."

Balfany, "But then that's not a glorified man cave. That's having a residence." Moegerle, "Well, it's a, it's a cabin. Yeah, it's just a cabin. And, it's north of our house by 30 feet. But, so, you know, it would have a toilet, it would have a shower. We're talking about putting in, you know, the usual kitchenette kind of things. So, our use of it would be a man cave. It would have the capabilities of being habitable for somebody at some future point as a cabin. But, yes, our plans do change. I admit that. But, we've also found a different law. What we really want to do is buy the permits."

Balfany, "Okay, so you now admit that you did have a different plan and now your plans have changed and you are utilizing whatever laws you can find to back you up in order to get us to give you what you want?" Moegerle, "No."

Balfany, "Because, that's, did I hear that wrong?" Cornicelli, "I think you did...no, you heard it correctly." Balfany, "Okay. Thank you." Moegerle, "We...no..."

Balfany, "That's what it sounds, I mean, you said, yes, you changed your mind." Moegerle, "Yeah, we did change our mind." Balfany, "Okay, so which would

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solidify the fact that you did have one intent and now you have a different intent and, therefore, wouldn't it be a reasonable argument to say that you, as you just stated, that you're finding new law to use to your advantage to get us to give you what you want under the current demolition permit." Moegerle, "No. No, and I disagree."

Bonin, "I find this whole discussion very disgusting. It sounds to me like you're 'third degreeing' rather than trying to find out what the real issue is and resolve it. I don't think we're getting anywhere with this kind of direction."

Moegerle, "The point is that for a Building Official to come in, in the middle of an existing permit, we're still doing the work, and saying, 'Oh, that's it. You can't do anything more.' It's like, well, it's like you're building a house. Okay? You framed it, you sheathed it, oh, does it have a septic system? Well, you can't have your house. We feel that way. We feel as if here..."

Mundle, "When, now that doesn't happen when you build a house because when you build a house you get a new construction permit. When you get a new construction permit, you have to have septic specs with it." Moegerle, "I understand that." Mundle, "So..." Moegerle, "But, the situation is that what we've been told is, we've taken this 'snapshot' and you can't get any more permit. Well, wait, we wanted to put in a permit for, you know, we have to put in the door and windows. We want to do that. We want to put in the walls around the 63 square feet. We want to get the plumbing. We want to get the electrical. We want to get all of those things but we've been told, 'Well, you can't close in that area that you saved under the roof because we've already made this decision.'"

Mundle, "Well, does the area that states the 960 or the possible 999 was that introduced before you're going to enclose this certain section? Because, when you came in to have your permit extended, that's when the additional saving of the house was granted to you. A certain amount of square footage was told that you have to have or be under. Correct?" Moegerle, "Umm..."

Mundle, "Jack?" Davis, "This, actually if you'll look in your packet, you'll see there's a letter dated, I believe, February of 2013 from Colleen that addresses many of these issues about the combining of the lots and the fact that this has to be an accessory structure. This was addressed and presented in February of 2013. When they came in for the extension of the building permit, they did ask for a modification to tear down the cabin section only. Based on what we had heard at previous Council meetings and the Board of Assessment meetings that this structure was to be uninhabitable, we granted that extension and modification based on the premise that it's uninhabitable, it would be an accessory structure. Plus, there was a pending amendment to the City's Zoning Ordinance, which would allow for accessory structures on this acreage to be 960 square feet. So, based on those two things, we did approve the extension of the permit with that modification based on those conditions."

Mundle, "Okay, and is the amount of square footage that Ms. Moegerle's requesting larger than what was granted?" Davis, "Yes. She's requesting now

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1,032 square feet and I think the key issue here is in order to qualify to be a residence in the R-1 zone, you have to have a minimum of 1,000 square feet. Now, again, the question on this structure is, through, what is remaining now is probably, what, 270 square feet? And, the rest of it is garage. So, even if they boxed in the other 42 inches, most of the structure is still going to be garage. So, to me, it's still not meeting the intent of the Code. The Code says you have to have 1,000 square feet to be a residence and you have to have a two-car garage."

Mundle, "Are there any other questions for Ms. Moegerle?"

Plaisance, "I have some questions just based on kind of where we're at currently. So, the way I understand it, the way we're currently sitting, because I'm really less interested in all the bickering that's gone on before, as to how can we get to the final conclusion of what we're dealing with here. So, my first question is, in order to fulfill the current demolition permit, what do they need to do in order to finish it. My understanding is, from what you're saying, is they need to get under the, forgive me for not exact dimensions, 960 whatever feet in order to complete that. Then beyond that, if they want to make this a habitable structure, they could then apply for a building permit or a septic system or whatever else to make changes at that point. Or, is this, are we kind of beyond that as well?"

Davis, "I think, again, the central issue is, is this a principal structure or an accessory structure. Our interpretation is the use changed once it was demolished, once all the plumbing fixtures were taken out. If you'll look in your write up, it gives a definition of what the State Building Code defines as a habitable structure and it has to have a working plumbing system and a sewage disposal system. This house has neither. So, from that interpretation, we also agreed that the house is uninhabitable. This is what was first brought out on June the 11<sup>th</sup>. And, it backs up the statements that were made in a pattern two years previous to this in at least three different meetings. We deemed it uninhabitable and, therefore, it lost its use as a residence. When it loses its use as a residence, it is a nonconforming structure and lot, then it loses all of its grandfather protection. So, therefore, it has to meet all the requirements of the Ordinance. And, there's about seven or eight requirements that it doesn't meet so we say if it's classified as an accessory structure and the lots are combined, then everything is going to be okay. That's the way we see the solution to this issue."

Bonin, "So, you're saying they have to combine the two lots to make an accessory building." Davis, "That's correct and it's also the opinion of the City Attorney that even without this discussion about principle structure use, the combination of the lots is required regardless. Because of the common ownership, there's ownership of 179 Lakeshore, 179 Forest, and 553 Lakeshore. So, that's the opinion of the City Attorney."

Bonin, "And, you don't want to combine them?" Moegerle, "Well, the law doesn't require us to combine them. Okay? First of all, again, back to the nonconformities law of East Bethel and the State, it says that, '...nonconformity including any lawful use or occupation of land, a premises existing at the time of adoption of additional control under this chapter may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not

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including expansion.' So, what we're saying is that what we're trying to do is repair through demolition and then reconstructing what was not structural, repair replacement, restoration, maintenance or improvement. Okay? So, that's the first part. The second part says, and again what I read to you about 'H,' the State separates out the structure from the septic system. When I was speaking that it was uninhabitable, that was because that was, you couldn't get an occupation permit to get in there. You know, a permit of occupancy, because the septic system was noncompliant. So, from that standpoint, it was uninhabitable. What it wasn't was not un-repairable. And, it's not un-fixable."

Mundle, "You can repair anything." Moegerle, "Absolutely, absolutely. And, that's what our point is. So we're trying to do that repair." Mundle, "But, you've got the wrong permits." Moegerle, "But, we still have time to get permits. Again, because..."

Mundle, "But, you can't get a remodeling permit now to make it as a home because the City deems it's no longer grandfathered." Moegerle, "And, see, and I think that's circular and I don't think that's the intent of where it says that this continues during repair, replacement, restoration, maintenance, or improvement. That's what we're still doing under this demolition permit. The job is not done. It's like if you pound out the dent but you still haven't painted it, the job's not done. We're taking steps towards getting this done."

Bonin, "But when you're done, you're not going to have a residence. So, you can't have a lot. A lot has to have a primary residence before you put anything else on there." Moegerle, "Exactly right. And that's..." Bonin, "And, if you don't put, if you don't have a primary residence on there, you can't have a cabin. That's why you want them combined. Isn't it?" Davis, "Correct."

Moegerle, "And, here's what our point was. That whatever we kept of that cabin that would get us over that 1,000 square feet would all have to be replaced. So..." Bonin, "And, you're saying it can't be over 1,000." Moegerle, "Well, but for it to be a principle structure." Bonin, "Yes." Moegerle, "And what we're saying is that under the law, that since it was a dwelling and the septic system were separate, that the property is very clear. It is suitable for a septic system. So, the question was, can we repair the building so it can be the size of 1,000 square feet. And, that's what we found out. We can. So, that's why we saved the overhang. Okay? We have not abandoned the fact that we want to put the walls down. So, what we're saying is that the Building Official has 'jumped the gun,' because we have all these other permits to pull that can bring this into compliance as anticipated by the Statute. But, they're saying, 'We're not going to give them to you.' So, that's where we're stuck. We want to go ahead and pull the permits, close in the 63 square feet, move forward with getting a septic system, put the plumbing in because we're going to reconfigure the interior since it's substantially smaller. So, all those things are just parts of the steps."

Bonin, "Well, it seems to me that if the lot is buildable but you don't want to build a house on it now, if you combine the two lots then you don't have any more problem. If sometime in the future you want to sell one lot, you can still subdivide them then, can't you?" Moegerle, "No, we can't because it's not

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allowed by Ordinance or by Statute. Once they're combined, they're combined. And, technically, it's not a buildable lot. That's why it's 'now or never.'"

Bonin, "So, it's not a buildable lot." Moegerle, "Right."

Mundle, "It's not buildable without the grandfathered protection." Bonin, "Right, right."

Moegerle, "Right now we've got the grandfathering in because the use has not been discontinued for a year. It's been continuing during the period of this rehabilitation/restoration, et cetera. So, that's why now is of the essence."

Terry, "To me, this whole thing falls apart because you applied for a demolition permit. Your intention was to have an accessory structure. You went forward to do that and then you changed your mind and you want to now make it seem as though the demolition permit covers everything else that would make it transform into a habitable space. But, you had determined, and the City had determined, that it was uninhabitable. And, you were fine with that and you argued before Council that you wanted it uninhabitable. It was uninhabitable and you wanted your taxes lowered. So, you're extending the permit and you're saying, 'We're still doing work.' But, the work that you're wanting to do is changing from the intention of the permit and the intention that you came at it with."

Moegerle, "Thank you for bringing up that good point. One, we applied for one thing in February of 2013, made good progress towards it, in April we changed our mind. A couple reasons for that. One is that when Anoka County came through, one of the things they said in there, I think you said, 'It's not suitable for a rental property right now.' And, that's true because we're in the middle of demolition and there's those kinds of things. But, they also said, 'Well, we're going to re-categorize this.' Well, as of today, they haven't. And, the other thing is they haven't reduced our taxes. In fact, the Council spent a good deal of time trying to raise our taxes. Well, shoot, you know, they're going to tax us like it's a house."

Mundle, "Heidi, please stay on topic."

Moegerle, "I am. So, then that did drive some of our decisions. If you're going to tax it as a house, then let's do that now as opposed to preserve it for some future owner to use it as a cabin. So, yeah, you know, that did drive some decisions."

Terry, "But, that has nothing to do with us." (*Several words inaudible.*) Cornicelli, "So, bickering among the Council has forced this today? I think that's kind of a non-reality. Even though we're working for free, it's not a valuable use of our time."

Mundle, "If certain work was already done to the house that removed the grandfathering protection, then we can't go back." Moegerle, "And I'm saying to you the grandfathering protection has not disappeared."

Mundle, "And, it's the opinion of City staff and the City Attorney that it has."

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Moegerle, "Okay, and you have the ability to take 'fresh eyes' and take a look at what that says about a nonconformity continuing through repair, replacement, restoration, maintenance, or improvement." Mundle, "But, you've got a demolition permit, not a remodeling permit."

Bonin, "It doesn't matter what we think because the Council is going to make the decision any way. So, why are we spending time...what are you hoping to accomplish by talking to us? We don't have any power." Moegerle, "Well, one, it's required by Ordinance. And two, you can say, 'Go ahead.' Tell staff, 'Let them buy the permits to get it done.'" Bonin, "But they still don't have to do it."

Plaisance, "I don't think we have the power here to tell City staff." Bonin, "That's what I mean. We can recommend."

Plaisance, "Ignore the ordinances. Is that correct...is it not?"

Plaisance, "I'm thinking along these lines, is that I think everybody had made some very valid points. But, when it comes down to it, I don't really see a firm request that we can act on at this point. Because it sounds to me more like you have a disagreement with the City on a legal interpretation rather than whether or not you need to have some kind of variance or something along those lines. So my question is, is this the proper format or venue in order to solve this issue?"

Moegerle, "And, I agree. There are three ways to appeal from a decision of the City Administrator or the staff. And, this is one of them. We've got, there's another one through a Board of Building Officials. However, you know, it seems to me that the law is pretty clear. That nonconformities do continue during the varied activities that we're in the midst of. And, to preemptively prevent us from getting the permits we need to complete the repair, to get this into compliance, is, again, preemptive and too soon. I would certainly agree if, after we closed out the demolition permit and hadn't applied for permits and those kinds of things, then, you know, the 'door's shut.' I think the 'door's still open.' What my point is, is that to make the decision while we're still in the midst of all of these other things that are going on with the structure is too soon. And so, you know, what I'm hoping is that you would recommend that staff reconsider the ability for us to purchase permits to close in the 63 square feet."

Holmes, "Well, I guess it's my turn. I've listened to quite a bit of it. It's really hard for me to see where you're coming from. You've been on Planning & Zoning, you've been on City Council, so you know what a problem that area is. Before you bought it, you should have looked into it, I would have thought. And, hopefully you did. But, I don't think you did. I also noticed that on your permit, it was under Indiana Minnesota Construction Company LLC. And, you are the registered agent with one employee. I'm assuming that's your husband?" Moegerle, "Um huh."

Holmes, "For eight years and two months, it's been filed under the State so, obviously, you've taken tests or whatever to get this through the State to get your license and everything. You should know a little bit about construction after eight years. And, it sounds like you knew nothing about it, to me. I've been in

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construction for 45 years and if I would have bought this lot, I wouldn't have bought a demolition because a demolition permit strictly is to demolish everything. It's always been that way. Demolition companies, they come in, they demolish everything. That's a demolition permit. What you should have bought, or purchased, was a building permit, tore part of it down and built it back up. Or, whatever, if you had to. You state that two-foot space between the studs, that's grandfathered in. I don't care what the Code says now. That would have been grandfathered in." Moegerle, "But it was twisted and wrecked and all those kinds of things under the existing...Building Code." Holmes, "Well, so be it. You could put a stud along side of it." Moegerle, "Sure."

Holmes, "Okay. And, if you're a construction company, you should know these things. To me, it's just a waste of our time. Looks like a waste of City's time. It's very confusing and if you're a construction company, you should know a lot of this stuff that you apparently don't know. I..." Moegerle, "Well, and..."

Holmes, "Now let me finish...because I'm really above here right now. I have a feeling that this is going to be tried to ram through just like previous, many years ago, a Mayor tried to do in the same area down at Coon Lake Beach, only because he was on City Council. That's just the way I feel. I'm sorry if it hurts your feelings but to me, everything was totally wrong. Demolition permit is demolish it. That's it. You're done. And, when you're done demolishing, you don't have the nonconforming. You don't have nothing. You've just got a vacant lot. And, if you're on Planning & Zoning, you're on the City Council, you should know this by looking at our Ordinance. All I can say is, I think if it was up to me, I'd say, 'Tough luck.' This is ridiculous for us to argue about this. It's not even, it's not a variance. Even if you change your mind, you should have known as a construction company what to do with the structure. You know the structure is in bad shape so when you go in, if you're a remodeling contractor, whatever, you buy a building permit. And, you tear it down and you rebuilt it back up. That's what a building permit is. If you're a construction company, you should know that. And, apparently, you are because you've been in business for eight years."

Holmes, "The other thing I question, and I haven't seen it and it's something that probably shouldn't even be brought up here, but do you have a Home Occupation Permit?" Moegerle, "No we don't and we've asked the staff about that and since we don't work at home, all I have is a home office, it's just a mail drop. So, there's nothing else."

Holmes, "But, you're working out of the house." Moegerle, "I've asked staff very many times, 'Do I need a Home Occupation Permit?'" Holmes, "It says here, 'principle address.'" Moegerle, "It's a mailing address for taxes. Yup." Holmes, "But, okay, so you get business mail there, that's working out of your house. I mean, you're on the City Council. And, it's strictly against the Ordinance." Moegerle, "We don't have people show up there. My husband leaves from there and he works elsewhere. I've asked many times, 'Do I need one? Do I need to apply for one?' So, your point is well taken."

Holmes, "You should have known that being on the City Council. I'm sorry, I'm not going to accept that excuse. But, as far as I'm concerned, I think we should

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quit discussion. This is ridiculous.”

Mundle, “Would you like to make a motion Eldon?”

**Holmes, “I’d like to make a motion to deny whatever she wants and go on with the meeting.”** *Note: This motion was subsequently withdrawn.*

Cornicelli, “Can I clarify that?” Mundle, “Sure.” Cornicelli, “I’d like to make a motion to affirm the City’s decision...” Mundle, “Well wait, withdraw your motion first, Eldon. If Lou is going to make one.” Terry, “We need a more specific motion, really.” Holmes, “Yeah, okay, I’ll withdraw my motion.”

**Cornicelli, “I’d like to make a motion to affirm the City’s position, along with the City Attorney’s position, along with the other opinions that were rendered by other individuals that there is no variance to be granted. This issue is closed from our perspective. None of this was the fault of any Council, Commissioner, or staff member and just kind of close it out there.” Balfany seconded. Opened for discussion.**

Mundle, “Okay, is there any discussion? Any further discussion?”

Holmes, “I just would like to say on behalf of the Planning Commission, seeing as our Attorney has basically told us what is his decision on this whole thing, our hands are tied anyhow.”

Mundle, “Okay. Now how does everybody vote? Is there any other discussion? All in favor of the motion?” **All in favor.** Mundle, “Opposed? Motion carries.” **Motion carries unanimously.**

Moegerle, “Thank you.” Mundle, “Thank you Jack.”

**4.0  
Discussion of MPCA  
Landfill and  
Potential Zoning  
Changes**

It was noted that the Planning Commission is requested to consider the MPCA Proposed Land Use changes as follows:

**Requested Action:**

For information only – Public Hearing to be scheduled

**Background Information:**

The City has been working with the MPCA regarding the closed East Bethel Landfill. MPCA is asking us to consider designating a zoning classification for a Land Management Area. From a planning perspective it really does not change anything as this area is already part of the Sandhill Crane Natural Area. There is one private property owner Thomas Kurak that has land in this area.

Discussion of MPCA  
Landfill and Potential  
Zoning Changes

**Attachments:**

MPCA maps

Winter, “I think that we’ve probably talked about this before.”

Mundle, “Do we need to take five?” Winter, “No, we’re good. We don’t have that much left so let’s keep moving. If you guys are all right with that, let’s get

through this.”

Winter, “Basically, what we need to do is hold a public hearing whether it’s next month or the month after. There’s not a definite timeline but one of the things that the MPCA has said is that we have, where the landfill is, this is a copy of where that is, the Sandhill Crane Natural Area is a big part of where that landfill is. But, in addition to, what they want us to be able to do is designate this property and give it as a zoning designation overlay, if you will. We know that there’s nothing that you can do on this property for the next 30 to 40 years. But, what they want us to do is actually put that into a zoning designation so that that doesn’t happen. Although it wouldn’t happen anyway because we’re not allowed to do any sort of development in here.”

Mundle, “So, they just want us to reclassify it?” Winter, “Basically, that is what it is. There is a couple property owners that would be affected by this. But, they’re already affected by this and they have been as long as the Landfill Management Area has been in place.”

Mundle, “Can we zone it Recreational so we can go sledding out there in the winter?”

Winter, “We can ask them that. So, this is the methane area of concern, which is kind of good news in a way because this area has kind of been shrunk up a little bit. Before, it was a larger area. Now, it’s actually contained well within where that landfill is. Again, there’s only one, I believe, there’s only one private property owner that is affected by this.”

Plaisance, “Colleen, did the property owners get notice of this meeting?” Winter, “They will when we call the public hearing. I just wanted to give you a little bit of a heads-up on it. So, just to kind of put it into perspective for you here, this is where the closed landfill is. Here’s Ned’s Lake down here. I can’t read that. I have to look at it on my map because I can’t see what it says. In that little square that you see the blue, they’re just saying there’s no drinking water wells allowed in that area at all. So, there’s an explanation in your packet on it. The bottom line is I just wanted to give you a little bit of a heads up on this. I think it’s going to be relatively uncontroversial. So, it’s going to be something that folks who are in this area, I think, are aware of it. The landfill’s been there quite a while. It’s just the PCA would really like us to designate it as something, another overlay on top. Again, it’s the Sandhill Crane Natural Area. That’s primarily what it is.”

#### Discussion of MPCA Landfill and Potential Zoning Changes

Plaisance, “I have a question, if you don’t mind, at this point. My first question would be, does the City have a classification in mind? One they’re considering?” Winter, “Actually I think what we do is just put the overlay on top of it. That’s what the PCA is recommending. So, it’s actually a protected land use area or a landfill designation.”

Plaisance, “And, if we do that and the current owner who is going to be affected, I’m assuming at least by a portion of the overlay on this, how that might affect that person’s tax status going forward?” Winter, “We’d have to look at that and, you know, that is a good question. It’s something that we can check with the

County on.” Davis, “If I may, that person can come before the Local Board of Appeals and Equalization in the spring of each year and apply to have his taxes reduced based on any type of liens or encumbrances on the property that may affect the value.”

Plaisance, “What is it currently zoned as?” Winter, “He’s got a couple different zoning designations. He owns quite a bit of land. So, he’s got an R-1, I believe, and there might be a Rural Residential as well.”

Terry, “And the landfill area itself, what is that zoned?” Winter, “It falls under a couple different categories. I think it’s actually Rural Residential primarily. But, you can’t develop in there at all. It’s a protected area so that’s why, part of it, why the Sandhill Crane Natural Area is also part of it. I think that’s kind of why, maybe partially why, it got that designation.”

Terry, “What is the reason then, if you can’t do anything with it, what’s the purpose of rezoning?” Winter, “You know, it’s something that the PCA, I think actually they came before you guys, probably was it three years ago maybe? Or, four years ago? And, they made a presentation? Or, was it City Council? Okay, it was City Council. Where they just really, with all these landfill areas that they have, they’re just cleaning them up, if you will. It’s kind of like with any of the designations that we have in the City. For example, anything that’s up in the 5,000 square foot area of the University of Minnesota, you can’t really do anything on. So, that’s got that designation. You’ve got several natural areas within the City that have those designations. We have some significant natural environment areas that are overlays on top of zoning that have some protections on them. I think that they feel that this is just an additional protection that we would have for this area. Again, you know, there’s not anything you can do in here so I don’t know as it’s necessary. I just think it’s something the PCA would like us to look at.”

Terry, “The concern I have about changing it is just the amount of paperwork in changing of our ordinances and everything to accommodate a new zoning area. If it’s not going to change the practical effect, then I don’t see why we need to spend time and money to go through and do all that.” Winter, “Maybe what would be really helpful, and we certainly can entertain this idea, is perhaps we can have the PCA folks come out and give a presentation to the Planning Commission at the next meeting. I think that would probably really help.”

Plaisance, “I’m assuming by bringing this before this body that you have had a formal request from the MPCA?” Winter, “They’ve sent us the maps, yes. And, they’ve asked us to look at doing something with this designation out here.”

Terry, “It would save their time and our time if they were to just summarize on a sheet the reasons for why they would want this.” Winter, “All right.”

Bonin, “And, is it a request or a requirement?” Winter, “That’s a good question Lorraine.” Davis, “It’s probably a little of both. I’ll bet the main reason they’re looking for it is it’s an extra layer of protection that we afforded them on this landfill property so that no development is going to be able to happen within this

area that they think is going to be the extent of this contamination plume in the last, probably 20 to 50 years.”

Terry, “So, if you could ask them to point to any area in our ordinance where they feel that would be at risk.” Winter, “Okay. I can do that.”

Mundle, “Is there any more discussion?”

**Informational; no action required.**

**5.0 Approval of Meeting Minutes August 26, 2014 – Regular Meeting**

Mundle, “Approval of the meeting minutes of August 26, 2014, the whole two pages of them.” Winter, “Yes, the tape, we didn’t have a Recorder at the last meeting and…” Mundle, “So be it.” Winter, “So be it.” Cornicelli, “Life goes on.” Winter, “That’s the best you can get from me.” Mundle, “We’ve got our new Recorder now.” Cornicelli, “Let’s blame the new gal.”

**Mundle motion to approve the August 26, 2014, minutes as revised above. Balfany seconded; all in favor, motion carries unanimously.**

**6.0 Other Business**

Mundle, “Does anyone else have other business?”

Winter, “I do, Mr. Chair, if I can please. If you remember at the last meeting, we talked about the Resident’s Guide, I believe, and this went live on Friday at 4:05.”

Cornicelli, “And, she incorporated all of our comments?” Winter, “She did, actually, a lot of them are in here.” Mundle, “Except for yours Lou.” Cornicelli, “I’d expect that.”

Winter, “If you look, and if you go on the website, you can see it. If you go on the website and you can see it, there’s an alphabetical index. There’s also a categorized index. This has, since it went live on Friday, it’s gotten more hits than anything else on the website in September.”

Cornicelli, “Perfect.” Mundle, “Cool. She did a very nice job on this.” Winter, “So, you can see the tabs for Community Information, the timelines, all these things.” Cornicelli, “And, all the headers look perfect on the pages.”

**Other Business**

Winter, “Yeah. And, if you go then this is actually, for example, I’ll just find something…these are all hyperlinks that will bring you back to the event calendar and then you can review it there. This is one of the things that we’re doing that we talked about before. So, the Resident’s Guide is something we’re excited about. The other thing that we’re going to be doing, when we talked about, we had mentioned about the building permits. That’s the one area that got changed. This building inspections and permits, this thing is kind of wonky here, it doesn’t want to cooperate. Here we go. So, then if you look here, you know, building permit applications, demolition, electrical, so they’re all spelled out. If you go to permit tabs in the corner and you go here, you’re going to find this information. We also have hard copies out there. But, now, people can download these, fill them out, bring them in. What is nice is that it has all of the requirements on here.

So, let's just take this one as an example and it will tell you exactly what your requirements are."

Cornicelli, "I can get a demolition permit." Winter, "A demolition permit and what the requirements are." Cornicelli, "How random was that?"

Winter, "So that was just to give you a 'snapshot' of what we have. What we're going to do is actually, this building permit is going to go under, instead of being under these mega-menus, it's going to be one of these buttons over here. So, it's Contact Us, City Code, Economic Development. Instead of Find it Fast, it's going to have Building Permits and Applications. Because, when we ran our Piwik analysis, now the Resident's Guide is the most looked at thing but the second thing that people, the highest thing that they look at is getting building permits off the website, City maps, and the Code."

Mundle, "How many hits has it had since it went on line?" Winter, "Um, I don't know that but I could find out."

Mundle, "It was only today though?" Winter, "No, it was Friday that it went live. The Resident's Guide went live on Friday. Amy did tell me that it's had more hits than anything else on the website since it went live."

Mundle, "And that went out in the newsletter too?" Winter, "Yep. Well, I shouldn't say that. I don't know if it's in the newsletter or not. Actually, I think we do mention it in the newsletter."

Winter, "In addition to the Resident's Guide there's also going to be all the Planning Permits. It used to be that you had to fill out a Land Use Application Permit and then you had to fill out a separate permit for a Conditional Use Permit and an Interim Use Permit and a Variance. So, you almost, essentially, had two permits, which we've now combined that. When you come in for a Variance Permit, it's all on one and it's seamless. When you come in for an Interim Use Permit it's all on one form. We have also, we're in the process of doing a Developer's Handbook. So, from start to finish, if you were going to come in here and do a development, it would take you from beginning to end as far as what all the requirements are and what you need to do. We also are looking at a very comprehensive Site Plan Checklist that we've already implemented parts of. And then the other area is, we're going to have a Business Resource and Financial Assistance Directory. Under the Economic Development page, we're raising sort of the level of that page as far as what we can do there. So, those are some of the things that, hopefully, within the next month we'll be able to, you know, next month when we're here we'll be able to debut that and show you."

#### Other Business

Holmes, "When you have a button that says, Permits and Applications, do you want to put Applications on there? Because, what if there's a job application? You don't want them going to that...you see what I'm saying?" Winter, "Yeah, I do. That probably is a little bit confusing. That's a good point and that maybe is a little bit confusing, or maybe it's a little bit redundant."

Cornicelli, "Permit Applications." Winter, "Yeah, Permit Applications, maybe

that's what we should...yeah." Cornicelli, "Building Permits. There you go." Winter, "That's a good point. Thank you." Bonin, "Will that button be on the Home page?" Winter, "Yes, that button will be on the Home page."

Plaisance, "So, the Resident's Guide, in previous discussions, you were discussing the fact that you were talking about making some paper copies. Is that still your plan? Are you still thinking about that? Or, have you already..." Winter, "Yup, we actually have the ability in-house to be able to make colored copies. We do have one. I should have brought them in so you could see them. They are very nicely...they look nice. And then we can bind them because we have the ability here to be able to bind those copies. I'm also, the East Bethel Chamber of Commerce has actually asked to sponsor getting those published and we're going to talk about it at the next Board meeting, about potentially getting those published. They would be the ones that would do the publication on that so it would probably be a higher level, sort of, standard for that. And, then they would distribute them to their Chamber member businesses. We didn't look at doing the whole ad thing. We just looked at just doing this the way we've done it simply because the idea is that we want to make this practical. We want it be something that's relevant and something that somebody could change relatively quickly. We were concerned that if we had to rely, sort of, on that sponsorship, it's just not something, we just feel as a City that it is a service that we should be providing. So, that's kind of where we're at. But, if the Chamber wants to market the community and wants to support or provide funding to have certain amount of hard copies, I think that would be fine. That's all I have Mr. Chair."

Mundle, "Okay, thank you for that."

Cornicelli, "Can I bring up one more thing if we still have Other Business? I just want to go back to Item 3 real quickly. I need to clear my conscience a little bit, I think. I'm having great difficulty with what happened tonight. As I read some of the minutes, you know, I look at this through different lens. I'm a public employee who's more than occasionally in the news. So, I kind of look at these things, probably, a little differently than other folks do just by the nature of my employer and my position. I'm troubled greatly by the conflict of interest. I say that because when a person is sitting up here arguing for their position, and then abstaining from the vote, that does not clear you from the conflict of interest. Simply engaging in the discussion, in my opinion, when you're a member of a Council or a Commission is a conflict of interest. I would like the City Attorney to render an opinion on that if there's time and if it's feasible from the City's perspective. But, I would also ask that in future matters, if it's a personal issue, whether it's a Councilmember or Commission member, that they be censored from the discussion, asked to sit in the audience, be quiet. I don't think you can legitimately argue your case as a sitting Councilmember or Commission member and then abstain from the vote. The example I'll give is the transmission line incident that I was on the Transmission Line Work Group. You know, we had our work that we did. I got on the Planning Commission later, it came back to us, and I opted not to even engage in the discussion and then I abstained from the vote because I had an interest in that ultimate determination. So, I view that as, you know, we do this for free and I take that real seriously. And, it bothers me greatly that, you know, it's someone who sits in a higher office than we do. We're

Other Business

having to argue over something that never should have come before us in the first place. So, I'd like, kind of take that to heart. It's important to me, again, as a public employee who's in the news. It just doesn't reflect well on the City. And, I'll just leave it at that. I'm done. My 'soapbox' is clean."

Mundle, "Thank you Lou."

Holmes, "I'd like to say one thing. I apologize to the whole Commission and everybody else in the room. I don't think I've been this livid since I've been on this Commission. And, if somebody else wants to talk about something else, I'm sorry for making the motion. But, I just, I'd had it. I'm sorry. I don't like being manipulated. Like Lou said, by a higher person. That's not the place of the Commission or anything. It just aggravated me, big time. And, I hope I never get that mad ever again. And, thank God I held back my true emotions."

Mundle, "You did fine. Actually, I was surprised by how calm you were."

Holmes, "I was pretty 'hot.'" Mundle, "Thank you both for those words."

## Council Reports

Mundle, "Yes. If there's nothing else? Council Report?"

Koller, "Well, our last Council meeting was very short so there isn't much to say there. I'm also on the Sunrise River Watershed and you probably all know about Lexington. They did a lot of re-work on culverts because there's a lot of flooding. The City got some nasty letters from one resident, for sure, who wants to sue for damages because of the high water and the plugged up culverts. And, that should be all taken care of now. Plus, the Watershed is working on carp traps for Coon Lake, Typo, trying to get that taken care of. And, October 11<sup>th</sup>, the Fire Department is having an open house at Fire Station #1 from 10 to 1...10 to 2, I believe. That's about it."

Mundle, "Thanks. Well, if there is nothing else, I'll make a motion to adjourn."

Winter, "Sorry, did you make a motion to approve the last meeting minutes?" (*Inaudible, several conversations overlapping.*) Mundle, "Yeah, we did." Winter, "I'm sorry." Holmes, "I 'thirded' that motion." Mundle, "It's more than approved."

## 7.0 Adjournment

**Mundle made a motion to adjourn the meeting at 8:26 p.m. Holmes seconded; all in favor, motion carries.**

Submitted by:

Carla Wirth

*TimeSaver Off Site Secretarial, Inc.*