

MINUTES
HUTCHINSON CITY COUNCIL
HEARING – WADSWORTH PROPERTY (1209 LEWIS AVENUE SW)
WEDNESDAY, OCTOBER 28, 2009 – 6:30 P.M.

1. **CALL TO ORDER – 6:30 P.M.**

Mayor Cook called the hearing to order. Members present were Jim Haugen, Bill Arndt, Eric Yost and Chad Czmowski. Others present were City Attorney, Marc Sebor, City Administrator Gary Plotz and Building Official Lenny Rutledge.

2. **HEARING**

(a) WADSWORTH PROPERTY – 1209 LEWIS AVENUE

Mayor Cook noted that the purpose of this hearing is at the request of neighbors in the Lewis Avenue neighborhood pursuant to Hutchinson City Code 154.165. Neighbors in the area have raised issues with the current construction project at 1209 Lewis Avenue and decisions made by the Planning/Zoning/Building Department. Mayor Cook explained ground rules for the hearing.

Marc Sebor, City Attorney, reviewed the questions and issues raised by the Lewis Avenue Neighborhood.

The overall issues raised by the neighborhood include the decision made regarding the height of the turrets on the property exceeding the 25' height requirement, the suggestion by the building department of fill being brought in to allegedly circumvent the ordinance requirements, building permit processes, submittal of documents with building permit application, non-staff personnel making decisions regarding the project, construction equipment and debris on the property for an extended period of time, unfinished exterior and landscaping, lack of fencing and disregard for the neighborhood.

The general response by the City is that, according to current city code, fill may be brought onto the property in order to bring the height of the turrets into compliance, City staff generally try to work with property owners to make properties compliant with city code, the project is not yet complete so the actual height cannot be determined, the State of Minnesota and DNR have no prohibition of placing fill against a structure, neither the City nor the State require architectural or professional drawings/documentation with single family residential building permit applications, the City relies on the DNR's interpretation of issues pertaining to the shoreland district, a new nuisance ordinance has been adopted by the City addressing construction equipment and the like, building permits may be issued before another is taken out, safety fences are not required on this project and the disregard of the neighborhood is not enforceable by the city.

Lastly, Mr. Sebor reviewed the action that the residents are requesting of the Council. The actions requested by the residents include the City acknowledging their mistakes, paying for a surveyor to measure the height of the towers and existing elevations, bringing the towers into compliance, having the property condemned if the property owner is unable to complete the project in its entirety in a reasonable time frame.

Gary Plotz – Mr. Plotz talked about additional information Dr. Chris Wallyn had requested. These include final inspections and final measurements of the home at the original time it was built. Dr. Wallyn asked for the building permit for the first phase of the construction phase including the north turret and construction over the garage. Mr. Plotz explained that all the documentation contained in the file has been provided to Dr. Wallyn. Dr. Wallyn also requested a copy of the continuing education documentation for the building official. The building official is currently licensed by the State of Minnesota and does not have to report his continuing education credits to the city, but rather to the state only. Dr. Wallyn lastly requested a plan for surface water drainage. This type of plan is not required by the City.

Mr. Plotz spoke about a survey that was recently completed by Pellinen Land Surveying for the most current measurements of elevation on the property.

Mayor Cook talked about the elevations and fill being brought in. Mayor Cook provided elevations from the survey which ultimately show that the height of the turrets are currently approximately four feet too high without fill being added. Mayor Cook asked if the back of the home could be altered at all.

Julie Krenik, 1208 Lewis Avenue, asked what the relevance of the lowest level of the house is. Mayor Cook noted that fill could be brought in to aid in compliance with the height requirement. Dr. Krenik asked if a variance is required for more than 50 cubic feet of fill to be brought in. A permit is required, but not a variance.

No determination of height can be made until the project is completed.

Mayor Cook said that revising the shoreland ordinance should be looked at so that it provides a more consistent reference point from which height measurements can be made. An example given was the zoning ordinance which references the sidewalk or equivalent point in front of a house.

Christie Rock, 1210 Lewis Avenue, asked when the building permit will be reviewed. Ms. Rock stated that progress has been limited since the neighborhood meeting held in May.

Lenny Rutledge, Building Official, reported that he performed an inspection of the property on 10-14-09 for framing.

Julie Krenik noted that many meetings have been held with the city and past history with activities on this property makes the neighbors more frustrated on this particular project.

Mayor Cook noted that the Wadsworths seem to be complying within the framework of current ordinances and state law.

Dr. Krenik asked what happens if 50 cubic yards of fill cannot be placed on the property. Mayor Cook noted that more than 50 cubic yards can be placed with a permit.

Chris Wallyn 1204 Lewis Avenue. Dr. Wallyn noted that neighbors are bothered with an unoccupied dwelling that gets larger and larger, blocks morning sun, children playing by dumpsters, doors left open, etc. Dr. Wallyn spoke about construction debris, water runoff, and lack of fencing. He asked if a finished grading plan is required when a project is applied for. Dr. Wallyn stated that he feels it is the building inspector's job to ensure that a project is built to codes and laws and ensure that a project is completed as initially submitted. Dr. Wallyn asked if elevations can be changed from initial final inspection. Dr. Wallyn expressed that he feels this is a nuisance property. This has been an ongoing project for 3 ½ years of which the owners do not even occupy. He feels that this project could continue to progress for another 10 -15 years.

Mayor Cook asked Lenny Rutledge, Building Official, about housing requirements as listed in a document found on the city website. This talks about required plans and erosion control. Mr. Rutledge explained when silt fencing is required for erosion control. Housing requirement is for new homes being constructed on a bare lot.

Mr. Rutledge explained that there was some misunderstanding on the height of the proposed turrets with the initial application. Mr. Rutledge did admit that he was unaware of the height requirements in the shoreland ordinance.

Robert Hantge 1210 Lewis Avenue. Mr. Hantge noted that he has watched this project for five years from his front window. Mr. Hantge noted that when he was on the Planning Commission with the director being Julie Wischnack, professional drawings were always included with complete plans. Mr. Hantge asked how the Council can look out for the neighborhood's best interest. He asked if the same process would be followed in the future. Building permits going from one to the next with no completion between them seems to be an issue.

Mayor Cook – Suggested ordinance change requirement that Building Official can request a survey from a property owner. Ms. Rock also suggested that final grade and elevations be required as well.

Council Member Arndt asked Mr. Wadsworth when the project is going to be complete. Mr. Wadsworth answered that he cannot give a definite answer due to the economy. He stated he is

doing the best he can. Nothing was intentional with the project in reference to being noncompliant with height requirements.

Mayor Cook mentioned that there is nothing in the code that regulates appearance in residential neighborhoods.

Dr. Krenik noted that neighborhoods do not want to look at construction debris continually. Dr. Krenik noted that she believes the Wadsworths were aware of the neighborhood's frustrations.

Dr. Wallyn explained that confrontations have been had with the Wadsworths over the property issues.

Ms. Rock suggested it would be helpful for the Wadsworths to bring in fill on the north and west side to bring the turrets in compliance. In addition, she feels that final grading plans should be submitted. Lastly, she feels the project should be better monitored as it progresses.

It was noted that the new nuisance ordinance addresses some appearance issues.

Council Member Yost suggested that an action plan should be put in place.

City Attorney Marc Sebor spoke about a court of appeals case that involved the City of Mankato. Mankato tried to implement a timetable on a property owner that had an ongoing building project. The Court of Appeals decided that a building permit does not expire if work is completed within a six month timeframe.

Ms. Rock reiterated that the height of the turrets needs to be addressed with the addition of fill, a grading and fill plan should be submitted, and the building department needs to better monitor the work progressing on the project.

Dr. Wallyn spoke about how cities have adopted Minnesota Building Code, but then added their own regulations as well. These regulations may include the requirement of professional surveys, drawings, etc. He talked about work progressing "in good faith". Dr. Wallyn suggested that perhaps the permitting process could be reviewed and improved.

Dr. Wallyn noted that Wadsworth had previously obtained a permit to bring in fill for a berm. The requirement of that permit was that the fill had to remain within the berm and not be moved. Dr. Wallyn expects that the Wadsworths will be held to that permit and fill will not be taken from the berm to place around the house.

Council Member Haugen expressed that it would be to Wadsworth's advantage to provide information/documentation to assure that compliance is met. Mayor Cook noted that the benefits from this hearing include suggestions to the shoreland ordinance and a more efficient building permit process.

Council Member Arndt suggested leaving the height of the turrets noncompliant (i.e. bringing in no additional fill), just to get the project done. Wadsworth could then apply for a variance to continue on with the project.

Robert Hantge asked that a final plan be provided showing where the fill will be moved from.

Christie Rock asked if the City could find out the cost of getting a plan for bringing in fill and placement of fill.

Gary Plotz asked if the City should hire an engineering firm to develop a grading plan. No response was given.

Mayor Cook noted that this entire project will be taken under advisement.

3. **ADJOURN**

Motion by Arndt, second by Cook to adjourn at 8:55 p.m.