

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, FEBRUARY 2, 2009
MINUTES**

1. **CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 7:00 p.m.

PRESENT: Mayor Paul Skrede, Council members Steve Adams, John Wheaton, Keith Kask and Kim Crockett

STAFF: Police Chief Cory Johnson, Zoning Coordinator Gus Karpas and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Councilmember Adams requested that Item #3J to Authorize Bids, Quotes & Purchase of 2009 Projects & Equipment, be pulled from the Consent Agenda for further discussion.

Motion by Councilmember Adams to approve the Consent Agenda, consisting of the following items:

- A. Approve Minutes of January 5, 2009
- B. Approve Verifieds
- C. Appoint David Irwin to Boat Committee
- D. Reappoint Larry Parkhurst to Boat Committee
- E. Appoint Scott Hemink & John McGray to Planning Commission
- F. Reappoint Dan Dyb to Planning Commission
- G. Approve 2009 Contract with Lake Management for Aquatic Weed Control
- H. Approve Final Pay Request to Remodeling Inc. for Municipal Garage Project

Seconded by Councilmember Crockett. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PLANNING & ZONING REQUESTS**

A. **SPECIAL USE PERMIT – Eric and Melanie Murphy, 20735 Linwood Road, (R-2, 40,000)** Special Use request to alter the existing grade by more than one foot to create a level back yard. The requested Special Use would increase the grade of the rear yard by a maximum of four feet. Section 1345.26 requires the issuance of a Special Use permit for grade alterations that exceed more than one foot. Section 1350.05 requires a permit for any movement of more than 50 cubic yards of material in non-shoreland properties located in the Shoreland District.

Zoning Coordinator Karpas presented his Staff Report. He said the request adds approximately 155 cubic yards of fill to level off a portion of the back yard which currently slopes downward towards Bayview Court and Linwood Road. The request would remove the existing fence and replace it with a boulder wall with landscaping to screen it from the road. The applicants are proposing a drain tile, which will channel run-off to a rock garden area.

He stated that the Planning Commission recommended, by a 3-2 vote, that the request be conditionally approved. Since that action, the homeowners have hired a new contractor who has submitted more detailed plans for review. Karpas stated that the Planning Commission's approval was conditioned that no fence may be placed on the property, more specific elevation and drainage plans be submitted for Council review, and a landscaping plan be submitted indicating the type and amount of plantings.

Karpas said he recommended approval of the request. He said the proposal complies with the criteria set forth in Section 1320.03 of the ordinance for the approval of special use permits in that it does not appear to create a negative impact on the character and development of the neighborhood, it does not appear to create a negative impact on the health, safety and general welfare of the occupants of surrounding properties, it does not impact existing and anticipated traffic conditions and does not appear to have a negative impact on the subject premises or surrounding area.

Dave Klinger, with Afton Tree Works, was present to represent the applicants and provided a general overview of the proposed project.

Councilmember Crockett asked what was the City's primary concern with this request?

Councilmember Kask stated that the primary concern is with drainage.

Councilmember Crockett stated that she liked the landscaping plan and felt that it greatly improved the Murphy's property.

Councilmember Wheaton voiced his concern regarding the drop-off from the retaining wall. Councilmember Kask stated any drop-off of 48" or less typically does not require a fence. Mayor Skrede suggested that the Council might want to recommend that the Murphy's install a fence.

Councilmember Kask stated that he is not familiar with requiring a Special Use Permit for a grade change on a residential property.

Zoning Coordinator Karpas stated that the Council changed the ordinance a couple of years ago so that a Special Use Permit is now required for any grade change of more than one foot.

Councilmember Kask moved to approve the Special Use request to alter the existing grade by up to four feet to create a level back yard, as presented in the submitted plans for 20735 Linwood Road. The proposal complies with the criteria set forth in the ordinance for the approval of special use permits and there does not appear to be any negative impact on adjoining properties. The motion is conditioned on the City Engineer's approval of the final grade. Seconded by Councilmember Wheaton. Motion carried 5-0.

B. VARIANCE - Craig and Maggie Allen, 19860 Lakeview Avenue, (R-3, 20,000). A variance request to construct a fifteen square foot garage addition and to alter the roofline of the non-conforming portion of the existing garage which would exceed the maximum permitted impervious surface area and would encroach into the required south side yard setback.

Section 1350(2)(a) of the Shoreland Ordinance permits a maximum impervious surface area of twenty-five percent. The proposal is to exceed the permitted impervious surface area by four percent.

Section 1310.02 of the Zoning Ordinance requires a minimum side yard setback of fifteen feet in the R-3 Residential District. The proposed alteration of the non-conforming garage would be setback seven feet, nine inches from the south side yard setback. A variance of seven feet, three inches is sought on the required side yard setback.

Zoning Coordinator Karpas presented his staff report. He said the applicant sought to enlarge the garage so it could accommodate two vehicles and provide for some upper level storage. The applicant would also reconfigure a portion of the existing home to gain garage space. The request to alter the roofline would provide additional height in the garage along with allowing for a higher ceiling in the room over the garage.

Karpas stated that while the property currently exceeds the maximum permitted impervious surface area, the amount of impervious surface was actually being reduced by nearly nine percent.

Karpas said he recommended approval of the request. He felt the dimension and size of the lot, the placement of the home and the need to create a usable garage constituted a hardship under the ordinance requirements.

Karpas presented the Planning Commission report stating the Commission unanimously recommended approval of the requests stating a practical difficulty exists in the dimension and size of the lot, the placement of the home and the need to create a usable garage constituted a hardship under the ordinance requirements. The proposal would not alter the essential character of the neighborhood. The motion was conditioned that the dock encroachment be addressed prior to the Council meeting.

Councilmember Crockett stated that most of her questions concern the encroachment of the dock into the adjoining fire lane.

Mayor Skrede stated that the City would want to retain this alley as a fire lane and the encroachment of the dock might be more of an LMCD matter and they might request that it be removed.

Councilmember Kask stated that at some point the City might decide to delineate all fire lanes. He stated that the portion of the dock on public property should be removed. He added that the LMCD also typically requires a dock to be at least 10 feet off of an adjoining property but added that it would be hard to address this structure as a dock since it is more of a landing area than a dock.

Councilmember Kask moved to approve the variance requests to construct a fifteen square foot garage addition and to alter the roofline of the non-conforming portion of the existing garage, which encroaches seven feet, three inches into the required fifteen foot south side yard setback and would exceed the maximum permitted impervious surface area by four percent, as presented for 19860 Lakeview Avenue. A practical difficulty exists in the dimension and size of the lot, the placement of the home and the need to create a usable garage constituted a hardship under the ordinance

requirements. The proposal would not alter the essential character of the neighborhood. The motion is conditioned on the removal of that portion of the dock within the public alley. Seconded by Councilmember Adams. Motion carried 5-0.

C. ORDINANCE AMENDMENT – Regulation of Patios – Discuss Ordinance No. 13-51, an amendment to the Zoning Ordinance, establishing provisions for the regulation of at-grade patios, including the establishment of a required setback and site plan review process.

Zoning Coordinator Karpas presented draft language for the regulation of patios. The ordinance would require a minimum setback of ten feet for larger patios and a reduced setback for patios less than 120 square feet in area. He said no patio would be allowed in a required lake yard setback.

He said a site plan would be required for all larger patios showing spot elevations and that the City Engineer would review the plan to determine if there would be any issues with drainage. Karpas said there was a screening requirement, when feasible, for all patios.

Karpas presented the Planning Commission report stating that the Commission voted on this item at their December meeting even though it had not been noticed publicly. A new public hearing was held at the January 20th meeting where the Commission unanimously recommended approval of Ordinance 13-51, with the removal of Subdivision F, requiring screening

Mayor Skrede stated that he had attended the Planning Commission meeting and the nature of the discussion was that we currently have no regulations on the construction of patios and it would be appropriate to review any request that proposed the construction of a patio on the property line. He added that the Commission was also concerned with water run-off issues associated with a patio built on the property line.

Councilmember Adams asked if there were any specific instances of this occurring within the City.

Mayor Skrede stated that he is aware of the one example that was discussed at the Planning Commission meeting, which happened to involve a Planning Commission member.

Councilmember Adams stated that, prior to considering the adoption of an ordinance, we should ask ourselves whether we have a problem that needs to be fixed or whether we are simply creating a problem.

Councilmember Kask stated that the spirit of this ordinance is that a property owner should not burden another property owner by constructing right on the property line. He stated that this is similar to past consideration of establishing driveway setbacks. He stated that it is currently permissible to construct a driveway right up to the property line, which can add a burden to the adjoining property by having someone playing basketball right next to their property or by causing additional water run-off problems.

Councilmember Kask stated that the one provision of the proposed ordinance that he found difficult for a lake community such as ours to swallow would be not allowing patios within the required lake setback. He stated that he understood what the ordinance is trying to achieve and agreed that there should be a reasonable setback for patios but he was only cautiously supportive of the ordinance.

Councilmember Adams voiced concern that the site plan requirements for the construction of a patio would add significantly to the cost. He added that the requirement for impervious surface calculations should not be included in this ordinance if it is required elsewhere in the Zoning Code.

Following further review of the specific provisions of the proposed ordinance, the Council requested that the ordinance be revised with the intent to provide more reasonable requirements for patios such as for setback requirements.

6. UNFINISHED BUSINESS

A. Discuss February Worksession Agenda

Administrator Young stated that the City Council at the December 15th meeting decided to schedule a Council Worksession on Thursday, February 19th at 5:30 p.m. to discuss 2009 City Goals & Objectives.

Councilmember Adams stated that he had a conflict with February 19th and requested that the date of the Worksession be changed to Wednesday, February 18th at 6:00 p.m. The Council agreed with holding the Special Council Worksession on Wednesday, February 18th at 6:00 p.m. It was further acknowledged that the Council might have to move to the Fire Station in the event that their meeting extended into Greenwood Planning Commission meeting, which is scheduled to begin at 7:00 p.m. that same evening.

Discussion was held on additional items to add to the Worksession agenda. Councilmember Crockett requested a discussion on the 2010 Budget and Mayor Skrede requested a discussion on the EFD Operating Budget and the mandatory Fire Relief contribution.

B. Discuss Amendments to Cooperative Agreement

Mayor Skrede stated that the purpose of reviewing the latest amendments to the Cooperative Agreement is to see if the latest changes would be agreeable to all cities. He stated that these latest changes were the result of the last meeting of the Senior Funding Group held on January 23rd. Mayor Skrede provided a brief update on the latest changes to the Cooperative Agreement, including:

1. Capital Improvement Plan. Carpeting and the lighting fixtures would be removed from the list of items that would be considered a funding obligation of the cities. Establish a Capital Improvement Plan that includes specific cost estimates and a depreciation schedule for each item to enable a more accurate determination of future cost responsibilities.
2. Revised Funding Formula. Funding of the capital costs for the Center would be shared equally between the participating cities. This is a significant departure from the proposed Cooperative Agreement, which proposed to fund the capital costs through the original percentages that each City paid to construct the building.

In the event that a city chose not to participate in the Cooperative Agreement and with future capital contributions, that city would be repaid its original contribution to fund the construction of the building upon the sale of the building. However, all accrued equity over and above the original \$622,000 construction cost of the building would be shared equally between those cities who continued to participate in future capital contributions.

3. Financial Reports / Performance Standards. The Friends would be required to provide quarterly financial statements on the operating costs and revenues of the Center. In addition, the Friends would also be required to provide information on the usage of the Center to determine the viability of the Center.
4. Operations Committee. The roles and responsibilities of the Operations Committee, the Committee that oversees the operations of the Center and approves capital expenses, will be more clearly defined.
5. Amendments to Cooperative Agreement. Any amendments to the existing Cooperative Agreement would require unanimous consent from all participating cities.
6. Sale of Building. The proposed Cooperative Agreement would require 4/5 consent to sell the Center.

The Council voiced their support of the latest changes to the Cooperative Agreement.

C. Authorize Bids, Quotes & Purchases on 2009 Projects & Equipment

The Council discussed Item No. 3J that had been pulled from the Consent Agenda.

Councilmember Adams asked about future plans to overlay Old Kent Road, Ridgewood Road and the other roads that were identified as needing an overlay.

Mayor Skrede stated that six roads were identified as needing a street overlay and provided a brief overview on the deficiencies of each road. He noted that Talton and Virginia were selected for an overlay in 2009 over the other four roads due to budget constraints, estimated project costs and their overall condition was judged to be worse than the other roads. He added that the remaining four streets would be given strong consideration for an overlay in 2010.

Motion by Councilmember Adams to Authorize Bids, Quotes & Purchases on 2009 Projects & Equipment. Seconded by Councilmember Kask. Motion carried 5-0.

7. NEW BUSINESS

A. Approve 2009 Police Union Contract

Administrator Young stated that contract negotiations on the 2009 Police Union Contract began in December 2008 and were concluded the following month. He provided a brief summary of the final contract proposal and the proposed additions to the 2009 Police Union Contract. .

1. Article XXIX - Duration

It was mutually agreed that the contract should be one year from January 1, 2009 – December 31, 2009.

2. Appendix A - Wages

A 3.0% increase in 2009.

3. Article XIV – Court Time

Court time would be increased from 2 to 3 hours pay.

4. Article XXVI - Mileage

Article 26.2 would be amended to read: Employees who use a City vehicle to attend training or court shall be compensated for the travel time to and from the destination.

5. Insurance

It has been mutually agreed that insurance shall remain at 54% of the family group health premium.

6. New Article – Funeral Leave

It is proposed that the employee would be eligible to receive a maximum of five (5) scheduled work days leave with pay to be deducted from accrued Sick Leave because of a death in the immediate family of the employee. Immediate family is defined to include spouse, child, parent, parent-in-law, brother, sister, brother/sister-in-law, partner, grandparent or grandchild.

7. New Article – Cleaning Reimbursement

It was mutually agreed that there would be no additional pay for office cleaning duties.

Motion by Councilmember Crockett to approve the 2009 Police Union Contract as submitted.
Seconded by Councilmember Adams. Motion carried 5-0.

B. Adopt Ordinance No. 09-21, Amending the Watercraft Space Ordinance

Administrator Young stated that on January 14, 2009, the Deephaven Boat Committee recommended that Section 900.07 Subd. 2 (b) of the Deephaven Watercraft Space Ordinance be amended to change the deadline that a watercraft space must be used from June 15th to June 1st. This recommendation was made based on the following conclusions:

- (1) The Committee believes that it is realistic to expect any leaseholder with a legitimate interest in boating to be at his or her appointed watercraft space by June 1st.
- (2) Revising the deadline period to June 1st would enable appeals from those in violation of the Deadline regulations to be heard at the second Council meeting in June, rather than at the first Council meeting in July. This would give city staff additional time to find a new leaseholder before too much of the Boating Season was already over.

Boat Committee Chairman Pete Onstad concurred that the primary benefit of the change in the deadline from June 15th to June 1st is that it would give staff more time to contact people to fill up the mooring spaces. He stated that the Boat Committee also requested that every permit holder should be sent an individual notice if the ordinance were adopted.

Councilmember Kask agreed that there was a significant time delay in filling the mooring spaces following the June 15th deadline requirement.

Motion by Councilmember Crockett to adopt Ordinance No. 09-21, Amending the Watercraft Space Ordinance. Seconded by Councilmember Kask. Motion carried 5-0.

C. Discuss Unsolicited Material Ordinance

Administrator Young stated that Councilmember Wheaton had been contacted by Steve Ferrall (3840 Fairhomes Road) that his and his neighbor's snowplowers had been damaged when they were clearing their driveway and struck catalogues from the Better Business Bureau that were buried underneath the snow.

He stated that Councilmember Wheaton is requesting that the City Council discuss the distribution of unsolicited material and the possibility of adopting an ordinance that would provide better controls over its distribution within the City.

Steve Ferrall stated that not only is the distribution of unsolicited material a nuisance, it is also potentially dangerous, as the debris from the catalogue could have struck his granddaughter. He stated that the carrier's don't follow their own rules, which require the material to be dropped off on doorways.

Mayor Skrede stated that it is not entirely clear who would be culpable for the distribution of unsolicited material – whether it would be the carrier or the company that authorized the delivery? He stated that the police have to know who to go after and that the language in the proposed ordinance would have to have enforceability.

Councilmember Wheaton stated that he doesn't see a huge issue with enforcement. If the police happened to see a trail of catalogues on driveways, they can track them until they find the van delivering the material. He stated that these carriers are no different than peddlers and we regulate the manner in which peddlers deliver material.

Councilmember Kask stated that he understands the frustration because there is more of this material being delivered than ever before. He stated that this material, when it is not removed from the driveway, also helps to identify those homes that are not occupied. He asked how would you regulate this material.

Police Chief Johnson stated that there is a fine line in regulating this material. He stated that there are First Amendment considerations but cities can generally restrict the time, place or manner of expression. He stated that the City could require the material to be dropped off at the door or in an Ads Box.

Councilmember Kask stated that he would be reluctant to have it dropped off at the door noting that a number of homes are quite a distance off the street and it might be alarming to have some unknown person approach the door.

Police Chief Johnson noted that it is legal to conduct door-to-door deliveries.

Councilmember Wheaton stated that we should require the carriers to go door-to-door rather than leaving the material on the driveway for the homeowner to recycle or clean up.

Councilmember Adams stated that he doesn't see any reason why Deephaven has to be the first community to enforce this issue, attempt to defend First Amendment rights and have the police chase unsolicited material carriers. He stated that the City cannot legislate every potentially dangerous activity.

Councilmember Wheaton stated that marketers are always looking at new ways to deliver unsolicited material and he is offended that residents are left having to deal with this unsolicited material.

Councilmember Crockett stated that she would be interested in seeing what ordinances might be available to address this issue.

Mayor Skrede stated that there might be other ways of dealing with this issue that could be explored. He stated that he would like to find a more practical approach to this issue such as researching whether there are phone numbers that could call to place you on a list to curtail this type of activity. He asked Councilmember Wheaton to research whether any of these opportunities exist and to research any ordinances that deal with this on a practical level.

D. Approve Verizon Lease Agreement

Administrator Young stated that the Council packets contain the Memorandum of Land Lease Agreement, Land Lease Agreement and certificate of survey from Verizon Wireless for permission to collocate on T-Mobile's cell tower and to lease a 20' x 40' foot area to house their maintenance shed. The leased area would be located on the East Side of the hockey rink. In exchange, Verizon would agree to pay the City \$15,000 per year for the term of the agreement, with a 3% annual escalator. In addition, Verizon would agree to pay the City \$4,000 for attorney fees that have been incurred in the drafting of these agreements.

Administrator Young stated that staff has retained the services of Steven DeRuyter, with the law firm of Leonard, Street and Deinard, to review the documents. Their comments on the final lease documents are as follows:

1. It would be better if the Lease acknowledgements (p. 14) were eliminated. This is not critical, but it reduces the risk that the entire lease inadvertently gets recorded. The Lease acknowledgments were removed early in the negotiations, and they've now reappeared in the final copy.
2. Staff should confirm that the proposed access route (highlighted on the Exhibit A drawing) is acceptable. This is the first I've seen this route, and it's different than the two previously proposed routes. If acceptable, no changes are necessary. If not acceptable, then the survey and the legal descriptions in both the Lease and the Memorandum of Lease must be changed.
3. Staff should be sure the Lease "Effective Date" is inserted on Page 1 of the Memorandum of Lease before the City signs the Memorandum itself. I've found that completing this blank is often overlooked.
4. The description of the City's entire "Property" should be deleted from Exhibit 1 of the Memorandum of Lease. Section 26 of the Lease clearly states that the Memorandum legal description shall be confined to the "Premises" which includes only the "Land Space" where Verizon's equipment shelter will be located and the access "Rights of Way." The City is not granting Verizon blanket rights over its entire property.

Administrator Young stated that except for the items noted above, the executed copies appear consistent with the final negotiations between the parties.

Amy Dresch was present to represent Verizon Wireless with their request. She stated that the maintenance shed would be approximately 13' x 20' in size, with 10' high sidewalls. The building would be constructed in similar style to the other buildings at City Hall. The additional area needed for the leased area would be to access the building and for utilities.

Administrator Young stated that approval of the Lease Agreements would be the first step in the process for Verizon Wireless. They would also need to submit detailed plans on the design and location of the proposed maintenance shed in order to apply for a Special Use Permit and include any information related to the alteration of the existing tower which may require a Variance if there is a change in its height.

Further discussion was held on access to the maintenance building from the walking path and the extension of underground utility lines to the site.

Motion by Councilmember Adams to approve the Memorandum of Lease Agreement and Lease Agreement with Verizon Wireless, subject to a legal review of the amendments to the documents. Seconded by Councilmember Crockett. Motion carried 5-0.

E. Discuss Lake Management Ordinance

Mayor Skrede stated that the City Council adopted Ordinance No. 13-50, an ordinance establishing standards for Shoreland Conservation, with the intent to preserve the grandfathered status that Carson's Bay and St. Louis Bay have enjoyed since 1976 in regards to the control of aquatic plants. He stated that the ordinance was sent to the Administrative Law Judge with the purpose of convincing him that the rule changes proposed by the MN Department of Natural Resources (DNR) on aquatic plant management would be detrimental to the City of Deephaven. In January 2009, Administrative Law Judge Luis ruled in favor of the DNR.

Mayor Skrede stated that he and Administrator Young met with DNR Acting Director Steve Hirsch on January 29th to discuss the City's ordinance and on DNR's future plans for the development of a Lake Management Vegetation Plan for Carson's Bay and St. Louis Bay. He stated that Mr. Hirsch said that the grandfathered status of Carson's Bay and St. Louis Bay will expire in five years and the DNR is required to establish a Lake Management Vegetation Plan before the end of this five-year period specifically for the two bays. He stated that the DNR would welcome all interested participants, including the City of Deephaven, to participate in the development of the plan.

Mayor Skrede stated that Mr. Hirsch was also interested in knowing whether the City Council intended to rescind the ordinance, particularly now that the Administrative Law Judge has ruled in favor of the DNR. He stated that this effectively places the ordinance in conflict with DNR's authority over aquatic plant management and recommended that the Council consider whether to rescind the ordinance.

Motion by Councilmember Kask to schedule a public hearing on March 2, 2009 to rescind Ordinance No. 12-50, Establishing Standards for Shoreland Conservation. Seconded by Councilmember Adams. Motion carried 5-0.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Cory Johnson stated that the Police Department is currently at full staff, Officer Westgard is already working shifts on his own and he is working on the 2008 Police Report for Council review.

He provided an overview of the Tour de Tonka bike race that will be held on July 28th and August 1st. He stated that MCE Director Tim Litfin is seeking Council approval on the five bike races that will be held as part of the Tour de Tonka. He stated that one race would be a Kiddie Race held exclusively in Deephaven on July 28th. The other four races of varying lengths would be held on August 1st. He stated that the Tour de Tonka doesn't impact the Police Department as much as it did when the race began and ended in Deephaven. He stated that he expected to use all police manpower for about 1-1/2 hours on August 1st to patrol the race through Deephaven. He stated that he doesn't have an issue with the Tour de Tonka for a police standpoint.

The Council stated their agreement with the July 28th and August 1st Tour de Tonka Bike Race.

B. Excelsior Fire District

Bruce Duncan, the new President of the Excelsior Fire Relief Association, was present to introduce himself to the Council.

EFD Liaison Kim Crockett provided a summary of the January 21st Fire Board. She provided an update on the three new Boardmembers from Excelsior, Shorewood and Greenwood, the new heavy rescue vehicle, HCMC's use of Station #2 for its ambulance, 2010 Budget preparations and efforts to support legislation to mitigate the effects of the mandatory fire relief contribution.

C. Public Works

Administrator Young provided an update on recent and upcoming public work activities.

D. Administration

Administrator Young provided a brief summary on the following items:

- 2007 Financial Summary
- Annual Financial Audits for Deephaven, Woodland and the Excelsior Fire District
- Board of Review Training
- Other Meeting Notes
- Deer Management Update

9. ADJOURNMENT

Motion to adjourn by Councilmember Crockett, seconded by Councilmember Kask. Motion carried 5-0. The meeting adjourned at 10:15 p.m.

Respectfully submitted,
Dana Young, City Administrator