

**DEEPHAVEN CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 8, 2009
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmembers Kim Crockett, Keith Kask and John Wheaton

ABSENT: Councilmember Steve Adams

STAFF: Zoning Coordinator Gus Karpas, Police Sergeant Chris Whiteside and City Administrator Dana Young

2. PLEDGE OF ALLEGIANCE

The Council recited the Pledge of Allegiance.

3. APPROVE CONSENT AGENDA

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

- A. August 17, 2009 Minutes
- B. Approve September Verifieds
- C. Adopt Resolution No. 26-09, Approving 2009 Levy, Collectible in 2010
- D. Approve Pay Estimate No. 2 to Midwest Asphalt Corp for Street Overlay (\$37,293.03)
- E. Approve Pay Estimate No. 1 to Pearson Bros., Inc. for 2009 Seal Coating (\$71,827.56)
- F. Approve Non-Intoxicating Malt Liquor License for Cottagewood Store

Seconded by Councilmember Crockett. Motion carried 4-0.

4. MATTERS FROM THE FLOOR

There were no Matters from the Floor this evening.

5. PLANNING & ZONING REQUESTS

A. VARIANCE – Dominic & Angela Gallagher, 18505 Minnetonka Blvd, (R-2, 40,000) variance request to construct an addition to the west side of the existing non-conforming structure which would encroach into the required west side yard setback. Section 1310.02 of the Zoning Ordinance requires a minimum west side yard setback of twenty-five feet in the R-2 Residential District. The proposed construction would be setback twenty feet, three inches from the west property line. A variance of four feet, nine inches is sought of the required west side yard setback.

Zoning Coordinator Karpas presented his staff report. He said the request was to expand the master bedroom area by adding a bathroom and additional closet space. The proposed addition would maintain the existing encroachment. He said he recommended approval for the request and outlined his findings.

Mr. Gallagher was present to answer any questions.

Councilmember Wheaton asked staff if they were supportive of the condition to limit the height to one story. Karpas said he was.

Councilmember Crockett noted the property was listed for sale and asked if this variance request was for a potential buyer. Mr. Gallagher said it was not and if granted the variance, the property would be taken off the market.

There was no further discussion from the Council.

Councilmember Kask moved to approve the variance request to construct an addition to the west side of the existing non-conforming structure which would encroach four feet, nine inches into the required twenty-five foot west side yard setback, as shown on the submitted site plan at 18505 Minnetonka Boulevard, based on the findings of staff, including the condition that the addition be no greater than one story in height, with the additional notation that the approval extends to a continuous foundation if required by the building code. Seconded by Councilmember Crockett. Motion carried 4-0.

B. VARIANCE – Mitch and Nancy Landis, 19025 Lake Avenue, (R-3, 20,000) variance request to demolish an existing non-conforming structure and construct a new single family home which would encroach into the required east side yard setback. Section 1310.02 of the Zoning Ordinance requires a minimum side yard setback of ten feet in the R-3 Residential District. The proposed construction would be setback five feet from the west property line. A variance of five feet is sought of the required west side yard setback.

Zoning Coordinator Karpas presented his staff report. He said the request was to construct a new structure to replace an existing non-conforming structure. The proposed structure would lessen the degree of encroachment along the east property line, reducing the encroachment by seven inches. This was done on the advice of staff to permit enough area between the structure and property line to allow for construction and continued maintenance of the structure.

He said he recommended approval for the request and outlined his findings.

Mr. Landis was present to answer any questions.

Councilmember Kask said the Planning Commission had concerns about the proposed fireplace located on the west side of the property. He asked if it was still part of the proposal. Mr. Landis said the proposal was for a gas fireplace and the bump out shown on the plan was located off the ground and was not part of the foundation. He said it may have been represented incorrectly on the site plan provided to the Planning Commission. Kask asked if the bump out was contained wholly underneath the eave. Mr. Landis said it was and he felt it was an aesthetically nice detail along the west wall, which would otherwise be flat.

Councilmember Wheaton asked how issues like this were addressed in the ordinance. Karpas said the ordinance allowed such cantilevering for bay windows, but was not sure if it extended to chimneys.

Mayor Skrede suggested the Council take a look at permitting the bump out provided it did not extend a specific distance from the outer wall of the home.

Councilmember Kask said the setbacks are to the foundation and cantilevered areas were typically exempted provided they fell underneath the eaves. He said this technique has been used in the past on

challenging lots such as this one. Mayor Skrede clarified that the bump out would be completely under the eave. Mr. Landis said it was.

Councilmember Wheaton noted the Planning Commission had a lot of discussion on the proposed garage, noting the side loading garage was preferred over a front loading garage. He agree that aesthetically it would be more pleasing, but noted if design alternatives existed that permitted the home to be constructed within the ordinance requirements, they should be considered. He doesn't want to set precedence since there are many similar lots located in the neighborhood.

Mr. Landis presented a drawing showing the garage and how it was purposely located away from the living areas on the adjacent homes.

Councilmember Wheaton said a neighbor raised the concern about using the variance process as a means to develop these types of lots. Even though he likes the design, he's worried about the procedure used to develop the property.

Councilmember Kask noted the garage is closer to the property line, but there is an aesthetic value to having a side loading garage. He said it is not uncommon for homeowners to create a de facto parking space alongside a front loading garage which would put vehicles closer to adjacent properties. He noted this design eliminates that issue. He said this may be a benefit to the neighborhood, but that it's a judgment call the Council has to make.

Mayor Skrede commented that even if the garage was moved to comply with the setback, the bulk of the living space on the home is still located within the required setback.

Councilmember Wheaton asked about the existing driveway. Mr. Landis said about half of the driveway would be removed.

Mayor Skrede recommended the existing and proposed elevations be reviewed and approved by the City Engineer so they would not be in violation of the grade portion of the ordinance used to limit run-off onto adjacent properties.

Councilmember Wheaton moved to approve the variance to demolish an existing non-conforming structure and construct a new single family home which would encroach five feet into the required ten foot east side yard setback, as shown on the submitted site plan at 19025 Lake Avenue, based on the findings of staff. The motion was made with no conditions. A practical difficulty exists in the narrowness of the lot which limits design alternatives for the construction of a modern home. Seconded by Councilmember Crockett. Motion carried 4-0.

Mayor Skrede noted for the record that the city cannot deny the redevelopment of a property and felt the proposal created minimal intrusion on the adjacent properties.

Councilmember Wheaton said he's in favor of improving properties and feels the applicant has done a good job in redeveloping a challenging lot.

C. Regulation of Play Structures

Mayor Skrede informed the Council that the Planning Commission would like to revisit the issue of regulating play structures, but was hesitant to do so without some sort of assurances that the Council

would be favorable to such a review. He said the Council has discussed this issue in the past and essentially adopted ordinance language which exempted them from regulation, but some recent play structures have brought the issue back to the forefront.

Councilmember Wheaton commented that it appears play structures have gotten much larger over time.

Mayor Skrede said he has heard comments about how some people spend more money on their personal play structures than the city does on its parks. He said the difficulty in regulating these structures is determining what is an acceptable square footage and height. He said placement is also an issue.

Councilmember Kask said some of the Planning Commission members expressed a desire to revisit the issue, but wanted Council direction. He said the issue in the past was how to measure the size of a structure. He said if the Planning Commission would be able to design a size limitation that considers lot size, he would be willing to revisit the issue.

Councilmember Wheaton stated that he is not opposed to discussing the issue. He believes it is best that the Planning Commission develop some language for the Council to review.

Mayor Skrede said play structures have been taken out of the category of accessory structure. He said he would be willing to give the Planning Commission an opportunity to define play structures and figure out how to limit their placement. He would prefer a standalone ordinance. Councilmember Wheaton suggested a time limitation could be part of the discussion.

Councilmember Crockett said the Council looked at this issue from many different angles and concluded it was difficult to craft an ordinance regulating play structures that took into consideration the homeowner's preference for location. In the end it was left to the homeowners to take into consideration the issues that their neighbors might have prior to construction of such a system. She's concerned that a change in this approach will take the decision away from the property owner and puts the Council in the position of representing the neighbors. She said she would be willing to listen to what the Planning Commission has to say on the issue.

Mayor Skrede noted there are other ordinances, such as the fence ordinance, where the Council has had to step in on behalf of neighbors. He would like the Planning Commission to look at some common sense regulations regarding placement, size and maintenance.

Councilmember Kask said he is hopeful that the Planning Commission would be able to present something that is complete and not in need of multiple meetings to wordsmith the ordinance.

Councilmember Crockett felt it would be helpful to have examples of existing properties within the city. She said the Council needs to recognize the choice for placement may be left to the City Council, which will be difficult in some cases.

Councilmember Wheaton said the city has to be proactive and feels a revision may be worth looking at.

The Council agreed to have the Planning Commission research and present an ordinance to the Council.

6. NEW BUSINESS

A. Approve 2010 LMCC Budget

Councilmember Kask stated that the 2010 LMCC Budget is projecting \$611,670 in revenues in 2010 and \$563,449 in expenditures, resulting in a 2010 fund surplus of \$48,221. He stated that the LMCC is projected to have a 2010 Fund Reserve of \$420,636. He stated that the LMCC Budget is not funded by tax dollars or municipal contributions, but rather through a cable company franchise fee that is paid annually to the LMCC and through a public, educational, governmental (PEG) access fees for the community use of the production studio.

He stated that the LMCC is a very well managed organization and he supports their 2010 Budget request.

Motion by Councilmember Kask to approve the 2010 LMCC Budget as presented. Seconded by Councilmember Wheaton. Motion carried 4-0.

B. Review 2010 – 2019 Capital Improvement Plan

Administrator Young presented a review of the 2010 – 2019 Capital Improvement Fund to the City Council

7. DEPARTMENT REPORTS

A. Police Department

Sergeant Chris Whiteside stated that he didn't have anything to formally report to the City Council on the Deephaven Police Department this evening, but wanted to remind everyone that school has started and care needs to be taken where schools buses are traveling.

B. Excelsior Fire District

Councilmember Crockett stated that the Fire Board will be meeting on September 23rd to review the Capital Equipment Plan and to discuss the \$23,000 excess levy in the 2010 EFD Budget resulting from the lower than expected mandatory contribution to the Fire Relief Association.

Administrator Young stated that the annual Excelsior Fire District is requesting the opportunity to conduct live burn training at 19250 Walden Trail on Saturday, September 26th from 7:30 a.m. – 1:30 p.m. Training would include search and rescue, "hot drill burning", fire suppression, equipment operations, and water supply training. He stated that the District would notify all residents within 350 feet of the structure and give all residents the opportunity to voice any concerns.

Motion by Councilmember Crockett to approve the burn training at 19250 Walden Trail on Saturday, September 26th from 7:30 a.m. to 1:30 p.m. subject to the Excelsior Fire District contacting all residents within 350 feet of the training site to inform the residents of the opportunity to meet with the City Council on September 21st if they had any questions or objections to the burn training. Seconded by Councilmember Wheaton. Motion carried 4-0.

C. Public Works

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

Mayor Skrede provided an update on the flooding conditions at Thorpe Park during the last heavy rain. Further discussion was held on the need to mow down the drainage ditch through Thorpe Park to provide for better water flow.

D. Administration

Administrator Young provided a brief summary on the following items:

- October Newsletter
- Verizon Cell Tower
- 2010 Budget Schedule
- Truth in Taxation Requirements

Truth in Taxation Requirements – Administrator Young stated that there are several significant changes to the Truth in Taxation process. First, cities must announce the time and place of the council meeting at which the 2010 budget and levy will be discussed, which will be held on Monday, December 7, 2009.

Second, the time and place of the meeting that allows for citizen input and deals with the budget and levy must be included in the minutes.

And third, cities have the option of adopting the final budget and levy at the same time that the Truth in Taxation meeting is held on December 7th.

Mayor Skrede noted that he has been invited to attend the League of Women Voter's Mayor's Forum on Thursday, September 10th to discuss a variety of "lively issues" and invited the Council to email him if they have any suggestions for topics.

8. ADJOURNMENT

Motion to adjourn by Councilmember Wheaton, seconded by Councilmember Crockett. Motion carried 4-0. The meeting adjourned at 8:28 p.m.

Respectfully submitted,

Dana H. Young
City Administrator