

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, DECEMBER 7, 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**

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

- A. Approve November 16, 2009 Minutes
- B. Approve Verifieds
- C. Approve Pay Estimate No. 2 to Midwest Trenchless Technologies (\$33,397.25)
- D. Adopt Resolution No. 34-09, Authorizing Save the Lake Grant Application
- E. Adopt Resolution No. 35-09, Authorizing 2010 Group Health Plans
- F. Adopt Resolution No. 36-09, Approving 2009 Transfers
- G. Adopt 2010 Investment Policy
- H. Adopt 2010 Internal Control Policy
- I. Approve Tort Liability Limits
- J. Approve 2010 Set-Up Liquor License for Mtka Yacht Club

Seconded by Councilmember Adams. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PUBLIC HEARING**

- A. **Truth in Taxation**

City Administrator Young discussed the proposed revenues and expenditures within the 2010 budget. He said that the city was proposing a 0% levy increase in 2010 to support General Fund activities and the Capital Improvement Fund. He presented a PowerPoint that detailed 2010 General Fund revenues, expenses, a review of each General Fund Department budget, the Capital Improvement Fund, the proposed tax levy of \$1,885,370 and the property tax impact of the 2010 Budget.

Mayor Skrede asked if there were any questions from the public.

John Pearson, 3850 Virginia Avenue, asked if there was any money budgeted for predator control, noting he has seen a number of coyotes recently. Zoning Coordinator Karpas said he was unsure if the DNR had such a program, but would check into it.

John DuPont, 4590 Linwood Circle, asked how the parks were funded now that park dedication fees have slowed due to the slowing economy. City Administrator Young said parks are also funded annually through the Capital Improvement Fund.

Councilmember Kask noted the budget process is a long slow process that began in June. He said the city is ranked as the twenty-fifth lowest taxed city out of eight hundred and fifty-three cities in the state. He feels the city does a good job at keeping tax rates low. He said a significant portion of the revenue in the budget is due to ongoing service contracts with the cities of Greenwood and Woodland.

Councilmember Adams commented that an important aspect of maintaining a zero increase in the levy was the contributions of the city employees whose wages have been frozen for 2010. Councilmember Crockett added that the same is true for the firefighters.

B. Adopt Resolution No. 37-09, Adopting the Final 2010 Tax Levy

Motion by Councilmember Kask to adopt Resolution No. 37-09, A Resolution Adopting the Final 2009 Levy, Collectible in 2010 in the amount of \$1,885,370. Seconded by Councilmember Wheaton. Motion carried 5-0.

C. Adopt Resolution No. 38-09, Adopting the 2010 Budget

Motion by Councilmember Kask to adopt Resolution No. 38-09, A Resolution Adopting the 2010 Budget in the amount of \$3,597,068. Seconded by Councilmember Crockett. Motion carried 5-0.

6. PLANNING & ZONING REQUESTS

A. SPECIAL USE PERMIT – Clearwire Communications, LLC, 20225 Cottagewood Road, (R-2, 40,000) to collocate on the existing one hundred and twenty foot monopole tower located on the City Hall Campus. 1311.04(10) requires that existing towers be available for the collocation of other telecommunications providers. 1315.05 require the issuance of a Special Use Permit for collocation of any telecommunications providers on an existing tower.

Zoning Coordinator Karpas presented his staff report. He said Clearwire was a broadband internet service that is expanding to the Twin Cities area. The request is to attach three antennas to the proposed one hundred and twenty foot tower to be constructed by T-Mobile and to place an equipment cabinet within the existing fenced area.

There were no questions from the Council pertaining to this request.

Councilmember Wheaton moved approve the special use request to collocate on the existing one hundred and twenty foot monopole tower located on the City Hall Campus, as shown on the submitted site plan at 20225 Cottagewood Road. The proposal complies with the ordinance requirements as they pertain to collocating on existing antennas. Seconded by Councilmember Crockett for discussion.

Councilmember Crockett said she does not have an issue with the request but would like to note she has had a number of conversations with neighbors who have concerns about the number of carriers and towers that could be located within the city. She would like to see some type of comprehensive plan showing the potential locations for future towers. She stated that she feels it makes sense to discuss the potential locations which would allow the city to better regulate telecommunications towers. She would also like some input from the Park Committee on the impact since most of the potential locations are parks within the city. She believes this would be a good item for a town hall meeting.

Mayor Skrede did not disagree and a discussion could be put on a later agenda.

Mayor Skrede called the question on a motion to approve the Special Use request for Clearwire Communications to collocate on the tower located on the City Hall campus. Motion carried 5-0.

B. SPECIAL USE PERMIT – Clearwire Communications, LLC, 18325 Northome Boulevard, (R-3, 20,000) for the construction of a new one hundred foot monopole telecommunications tower to be located on the median of the city owned parking lot. 1311.05(1) permits the construction of cell towers with the issuance of a Special Use Permit. Section 1311.04(8)(a) permits a maximum tower height of one hundred (100) feet.

Zoning Coordinator Karpas presented his staff report. He said the request was to construct a new one hundred foot communications tower in the median of the city owned parking lot on Northome Boulevard. The proposal includes a small equipment cabinet. The proposal complies with the requirements of the ordinance in terms of tower construction.

Councilmember Crockett said she had a number of concerns and questions. She noted the proposed tower, along with the tower at the City Hall site, were not sufficient to provide coverage to the entire city. She asked if the applicant submitted a coverage map. Zoning Coordinator Karpas said he had not.

Councilmember Crockett discussed future collocation on the pole and the needs for an additional carrier to construct an equipment structure and asked what would typically be needed to meet that need. Zoning Coordinator Karpas said there doesn't seem to be a standard size shed used by all carriers. Mayor Skrede noted the next carrier would not need a new pole, just space for their equipment.

Councilmember Crockett said the proposed pole and equipment cabinet are about as unobtrusive as it can get, but that is due to the technology, noting the pole is co locatable and the needs of future carriers should be considered. Mayor Skrede said the city does not have an application for any other carrier. He said when the site was selected, it was because it met the needs of the applicant. Any additional carriers would need to approach the city to discuss their needs. He used the example of how the City Hall site has evolved as how the city can't predict the needs of any one carrier.

Councilmember Crockett said there seems to be another location in the general area, Pump Park, which would be less obtrusive than the site selected. She feels the process is progressing quickly, noting there is an agenda item to approve leases for Clearwire on tonight's agenda, and that the city needs to take a moment to assess other suitable locations.

Mayor Skrede explained it has been standard procedure to negotiate lease agreements prior to the submittal of an application. He said it makes no sense to take Council time on a request if the terms of

the lease are not agreeable to both parties, noting the cost for the lease review is borne by the applicant. He said if there is a change in location for the proposed tower, the only provision of the lease that needs to be amended is the legal description of the property. Mayor Skrede discussed the site selection process stating the original site preferred by the applicant was Thorpe Park. He said through discussions with the applicant and city staff, it was decided to select another site, because he didn't want to open up the park for towers, noting it would be difficult to explain to future carriers why they couldn't also erect a tower in the park. Skrede said, personally, Thorpe Park is the last place he would like to see telecommunication towers.

Councilmember Crockett feels the entire Council needs to be kept in the loop when a carrier approaches the city. She agrees the Council may not like to see towers in Thorpe Park, but that should be included in the city's Comprehensive Plan.

Councilmember Wheaton understands there is no cost to the city for the review of the lease agreements, but he would still like time to look at alternate sites. He said he also has an issue with the coverage limitations. He asked if Clearwire is currently on the tower located at Highway 101. Christopher Coughlin, Selective Site Consultants, said they are not. Wheaton asked about the service provided by Clearwire. Mr. Coughlin said that Clearwire is expanding its services into new markets. He said the plan is to build out the area and then begin an ad campaign for subscribers. He said the limitation in coverage is due to the type of signal used by broadband which is different than the signal used by voice carriers.

Councilmember Wheaton asked about the coverage radius. Mr. Coughlin said the transmission radius is hampered by the tree coverage and topography. Given these factors in Deephaven, the anticipated coverage radius is one half of a mile. He said the goal is to overlap the signal with signals from other towers. He distributed a map showing the typical overlap of towers. He said the original plan was to site three towers in the City of Deephaven, but due to the ordinance restrictions, were able to come up with only two that would comply with the ordinance.

Councilmember Wheaton asked how Clearwire's service compared to DSL. Mr. Coughlin said it has significantly faster download speed.

Councilmember Adams asked if the Special Use application was for this carrier only. Zoning Coordinator Karpas said it was and the only thing the Council would be acting on is shown on the site plan submitted by the applicant. Mr. Coughlin noted there had been a change and that the equipment cabinet would not be located in a parking space but is now proposed to be located entirely within the median.

Councilmember Crockett verified the ordinance required the ability to collocate additional carriers on the tower. Mayor Skrede said it was. He said the only issue before the Council tonight is the Clearwire request and that storage capacity for an additional carrier is a separate issue. Mr. Coughlin said he could provide documentation that the proposed tower has the ability to hold another carrier.

Councilmember Crockett said the original thought behind the ordinance was to limit the number of towers in the city. She said the city thought in order to do this, the towers were required to hold more than one carrier. She questions the need to locate on this particular site and not Pump Park, which is in close proximity and questioned whether its feasibility has been assessed.

Mayor Skrede said the site selection is conducted by the applicant. He said a number of sites were evaluated and this site selected because the pole could be constructed without any variances. He said the applicant could have approached the city for a variance, but any additional carriers would also have to seek variances.

Mr. Coughlin said the ordinance drives carriers to a select few city sites. Councilmember Crockett said it is the Council's job to select a superior location for tower construction. She asked what the assessment of Pump Park yielded. Mr. Coughlin said the ordinance requires a one foot setback for each foot of tower height, which is not possible in Pump Park. He said he is directed by Clearwire to find suitable sites which do not require variances. Crockett reiterated her concern that future carriers are going to have equipment needs and those needs should be addressed at this time.

Councilmember Kask said the proposed site meets the city's criteria in that it is city owned, noting the site has the best road access of all city owned properties and has flexibility. He feels the site is well suited for a tower. He said Pump Park is limited, though he understands the concerns of the neighbors about the proposed site. He said he's not sure the city can deny any type of particular service under the Federal Communications Act. He noted the large gap in the service coverage and said it is confusing why Clearwire wouldn't want to select a site that provided wider coverage. He feels the Council can only speak on the request that is before them tonight.

Councilmember Crockett still questions the selection of the site and asked if the FCC regulations covered broadband providers. Mr. Coughlin said it did. Crockett said she would like confirmation from staff if there was any case law where cities can say no to a request due to an unsuitable location. She thinks the pole and equipment proposed are reasonable, but knows something else is coming in the future. She wants to feel confident that the city has assessed all the sites available to service the applicant.

Councilmember Wheaton noted the limited coverage ability and location of the proposed tower that it seemed to benefit the City of Woodland more than Deephaven. He said he disagrees with the applicant's assessment that three sites would be needed to service the city, rather he believes at least five sites would be required to do so. He said that based on the ordinance, the city would have to consider a site in Thorpe Park, if approached.

Mayor Skrede noted that when T-Mobile first approached the city, they desired three locations and have settled for one up to now. He said if Clearwire is content with one or two poles with limited coverage, who is the City Council to question their business plan.

Councilmember Wheaton said the Council has to act on the application before them, but he would like to see a comprehensive plan so the bigger picture can be assessed. He said the FCC can't tell the city where towers had to go and it is up to the city to determine the best sites. Mayor Skrede said he wants to make sure the city is looking at the application before them and not trying to predict the needs of a future carrier. Councilmember Wheaton agreed, but said he wants to make sure the benefit to the city outweighs the burden.

Councilmember Kask understands the concerns of the neighbors, stating he wouldn't want to look out his window and see a tower. He said the city needs to comply with the FCC regulations and the sixty day state requirement for applications. He said he was surprised to find out the coverage radius was only a half a mile instead of three quarters of a mile.

Councilmember Wheaton said the issue of aesthetics needs to be reviewed and that he's not prepared to act on the request tonight. Mayor Skrede said the Council needs to decide if it's prepared to act on the request at tonight's meeting and questioned whether aesthetics was enough to say no to the request.

Councilmember Kask said issues such as vehicle access and clearance from residential properties also needs to be considered.

Councilmember Adams said the city has an ordinance in place and a request before it and asked what additional information other Councilmembers would like to see in order to act on it. Councilmember Crockett said she wants to assess available sites and doesn't want the applicant to dictate location. Councilmember Wheaton said he wants to hear what residents have to say.

Mayor Skrede said the residents will get to give their feedback regardless of the site selected, but what's before the Council now is the process it wants to follow to allow it to act on the request in the near future. He asked what specific information would be required to make the Council comfortable to act on the request.

Councilmember Crockett said there are not a lot of sites on the north side of town to accommodate this applicant. She would like to know what other locations are available that would be suitable, even with variances. She said the city knows there will be an additional carrier on the tower and in her opinion, the selected site is unsuitable to accommodate that. She said the city has to have a better understanding on the needs of other carriers to assess the space needed to accommodate them.

Mayor Skrede discussed the other land available in the area and summarized their suitability for location of a telecommunications tower.

Councilmember Wheaton said there are at least two other avenues the city could take, one would be to take private property with just compensation and the other is to amend the ordinance to allow towers on private property.

Councilmember Kask discussed the tower ordinance stating the Council agreed that towers are to be located on publicly owned land. He hasn't seen anything in this request that has changed his opinion on that issue. He disagrees with Councilmember Crockett that this site is unsuitable for the request.

Councilmember Adams noted that when the city has an application before them for a variance, the Council does not design the project for the applicant. He said the city has an ordinance and a request before the Council. He said the only problem with the process is that the minutes from the Planning Commission were not included in the Council packets.

Councilmember Crockett moved to direct staff to send a letter to the applicant extending the deadline in which the city has to act on the request to construct a new tower on the city owned parking lot located at 18325 Northome Boulevard. Seconded by Councilmember Wheaton for discussion.

Councilmember Adams said before he can vote on the motion he would like to understand what the city was going to do during this time period. Councilmember Crockett said she would like staff to come up with other available sites and to research under what conditions a city can deny an application under the Federal Communications Act.

Councilmember Kask said he would like to see a decision made in a timely manner and would not like to take the whole sixty day extension to do so. He said the Council has the application documents and now only needs alternate sites and clarification on the FCC rules.

The Council agreed to discuss the item at the December 21st Council meeting and to allow staff to approach the attorney who currently reviews the lease agreements to provide clarification on the FCC rules.

Mayor Skrede called the question on the motion to extend the deadline in which the city has to render a decision on the request. Motion carried 5-0.

C. ORDINANCE AMENDMENT – to consider the amendment of the Zoning Ordinance, establishing provisions for the regulation of temporary fences.

Zoning Coordinator Karpas presented the proposed amendment. The ordinance as presented to the Planning Commission would limit the placement of a temporary fence. Alternate language has been found that also includes language on what constitutes a fence, along with a provision limiting the placement of temporary fences.

Councilmember Adams commented that the proposed alternate language is totally different than the language reviewed by the Planning Commission. He said he would not act on any amendment that has not been reviewed by the Commission and not commented on by the public. Zoning Coordinator Karpas thought the alternate language was in the spirit of the discussion held at the Planning Commission.

Mayor Skrede said the intent was to get a fix on temporary fencing in order to solve a particular issue. He said the Planning Commission also found value in defining what a fence is which would limit future issues.

Councilmember Crockett said the critical issue is giving the city the authority to act when a violation occurs.

Councilmember Adams said he doesn't like to adopt amendments geared at solving one issue. He said the amendment recommended by the Planning Commission most closely represents a scalpel, getting to the single issue of temporary fencing, while the alternate language was more like a broadsword addressing much more than just temporary fencing.

Councilmember Kask agreed with Councilmember Adams and suggested some changes to the ordinance amendment clarifying the term snow fence.

Councilmember Wheaton noted there was at least one other issue he knew about related to fences. Zoning Coordinator Karpas said he was also aware of this issue, but was unable to enact enforcement due to the lack of an existing ordinance allowing him to do so.

Councilmember Adams said he has issues with the term private nuisance. He felt it was too vague. Mayor Skrede noted it would leave some discretion to staff for interpretation. Adams said it would lead to litigation, since what constitutes a private nuisance would be left to the complaining party. Councilmember Wheaton asked if he would support the alternate language without the term private nuisance. Adams said he would not without a public hearing.

Councilmember Kask discussed additional changes to the proposed amendment limiting the placement of construction fences. The Council agreed to set a deadline of one year or the end of a particular construction project.

Councilmember Adams moved approve the first reading of Ordinance No. 13-53 as amended, amending the fence ordinance to include language defining what constitutes and provisions regulating the placement of temporary fences. Seconded by Councilmember Crockett. Motion carried 5-0.

7. NEW BUSINESS

A. Approve 2010 Prosecution Rates (Steve Tallen)

City Prosecutor Steve Tallen was present to discuss his proposed rates for 2010 and to request his reappointment as City Prosecutor for 2010. He stated that last year he had requested a cost of living increase but this year he proposed to keep 2010 rates at the same rate as 2009 due to economic pressures on cities.

He stated that it has generally been a pretty quiet year and there haven't been many substantial or time-consuming cases that have dominated the year. He stated that he was hopeful that the federal courts could have come up with a definitive ruling on breath testing equipment, but it doesn't look like this issue will be resolved any time soon.

Police Chief Johnson stated that Mr. Tallen has done an outstanding job as the City Prosecutor and his officers enjoy working with him.

Mayor Skrede thanked Mr. Tallen for his efforts and stated that his reappointment would occur with the adoption of the annual appointments resolution in January.

B. Review Appeals from 90 Day Rule

Administrator Young stated that Section 900.07, Subd. 2 of the Deephaven City Code require all permit holders to use their watercraft space for a minimum of 90 days during the boating season. Failure to meet this requirement results in the non-renewal of their boating permit for the upcoming season unless they request an appeal in writing before the City Council. If the permit is reinstated, the condition of reinstatement is a penalty payable to the City of Deephaven in an amount equal to fifty percent of the normal permit fee. He stated that John Pearson and Charles Betz are here this evening to appeal to request reinstatement of his 2010 permit.

Councilmember Kask stated that these are not repeat infractions and was inclined to rescind the revocation of their 2010 permits, subject to payment of the 50% penalty.

Motion by Councilmember Adams to reinstate the 2010 Permit for John Pearson, 3850 Virginia Avenue, for Slide No. 117 in Carson's Bay, and for Charles & Marsha Betz, 18409 Minnetonka Blvd, for Slide No. 127, subject to a penalty payable to the City of Deephaven in an amount equal to fifty percent of their 2010 permit fee. Seconded by Councilmember Wheaton. Motion carried 5-0.

John Pearson requested Council consideration towards waiving the penalty since he was only two days short of complying with the 90 day rule.

Councilmember Kask stated that the boating season lasts approximately 150 days, and it shouldn't be too difficult to have a boat at a mooring space for 90 days. He added that Mr. Pearson could also avoid the penalty by dropping to the bottom of the waiting list and see if he gets recalled sometime in 2010. However, he noted that he wouldn't be in favor of waiving the penalty since it has been imposed on every other individual in similar circumstances.

C. Discuss Alternate Dates for 2010 Council Meetings

Administrator Young stated that there are four regularly scheduled Council meetings dates in 2010 that conflict with a major holiday and one meeting that is scheduled the evening before the General Election that staff is recommending be rescheduled. They include:

Date	Holiday / Event	Alternate Date
Monday, January 18th	Martin Luther King Day	Cancel
Monday, February 15th	President's Day	Cancel or Special Worksession
Monday, July 5th	4th of July	Thursday, July 8th
Monday, September 6th	Labor Day	Thursday, September 9th
Monday, November 1st	Election Eve	Wednesday, November 3rd

Motion by Councilmember Adams to approve the alternate dates for Council meetings that conflict with major holidays and the General Election in 2010. Seconded by Councilmember Kask. Motion carried 5-0.

D. Approve Clearwire Lease Agreements

Administrator Young stated that the preliminary draft of the Ground Site Lease Agreement with Clearwire for collocation on T-Mobile's tower at City Hall (20200 Minnetonka Boulevard) was initially negotiated by he and Mayor Skrede based on the terms and payments in past lease agreements. He stated that following the initial negotiations, City Staff once again retained the services of Attorney Steven DeRuyter, with the firm of Leonard, Street and Deinard, to conduct a more extensive legal review of the draft documents and to give us his recommendations on the proposed Lease Agreements.

Motion by Councilmember Adams to approve the Ground Site Lease Agreement with Clearwire for collocating on the T-Mobile tower at City Hall (20200 Minnetonka Blvd). Seconded by Councilmember Wheaton. Motion carried 5-0.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson stated that he didn't have a police report this evening.

B. Excelsior Fire District

Councilmember Crockett provided a brief review of the November 18th Fire Board meeting. She stated that the Board decided to leave the overage for the mandatory Fire Relief contribution in the 2010 budget as was approved in order to maintain flexibility.

Administrator Young stated that a final decision would be made when better information is available on the potential size of the 2011 mandatory Fire Relief contribution.

C. Public Works

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

The Council requested the installation of holiday lights in the White Pine tree at the entrance to City Hall.

D. Administration

Administrator Young provided a brief summary on the following items:

- Required reports and publications
- January Newsletter
- Deer Management Update
- Warming House Operations
- Certificate of Achievement

Administrator Young stated that the annual employee party will be held Friday, December 24th at noon.

9. ADJOURNMENT

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

Respectfully submitted,

Dana H. Young, City Administrator
Gus Karpas, Zoning Coordinator