

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, SEPTEMBER 9, 2010
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, Kim Crockett, John Wheaton and Keith Kask

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 Minutes of August 16 & 23, 2010
- B. Approve September Verifieds
- C. Approve 2011-2013 Fiscal Agent Agreement
- D. Approve 2011 LMCC Budget

Seconded by Councilmember Adams. Motion carried 5-0.

4. MATTERS FROM THE FLOOR

Mayor Skrede introduced Hennepin County Commissioner Jan Callison. Commissioner Callison informed the Council that the County Commission approved their preliminary property tax levy with a 0.7% increase over the prior year. She stated that this marginal increase will result in another year of county cuts and reduced services. She stated that Hennepin County will be holding its Truth in Taxation hearing on November 30th and the final budget scheduled for adoption on December 14th.

Commissioner Callison discussed a pilot program in which the county will collect unwanted medicine from residential homeowners in an effort to keep medicine out of the water treatment system where it can have a detrimental environmental impact. She said the unwanted medicine will be collected at a drop-off site in St. Louis Park and eventually transported to Illinois to be incinerated.

Commissioner Callison provided a brief update on the property the county has purchased in Excelsior for a new library. She said a community meeting on the future library will be held September 30th at the Southshore Center.

The final item Commission Callison discussed concerned a study which compares statistical data such as demographics and income with the suburbs and the United States. She distributed a copy of the report for the Council's review.

Councilmember Crockett stated that she is delighted with the direction that the county is taking regarding its 2011 Budget. She stated that she believes the Hennepin County Budget is very rich and appreciates the efforts taken by the County Board.

Mayor Skrede noted that the Hennepin County Budget is higher than the budget of 12 states.

Mayor Skrede thanked Commissioner Callison for her time.

State Senator Gen Olson was present to discuss legislation that had been proposed at the end of the last legislative session proposing to abolish the Lake Minnetonka Conservation District and the White Bear Lake Conservation District. She stated that the legislation was proposed at the bequest of fishing lobbyists. She stated that while this particular legislator is not on the ballot for the upcoming election, this issue still remains open. She stated that it is her belief that whatever changes are made to the LMCD should be made by the member cities and not legislators or lobbying groups outside of our district. She stated that she has met with a number of LMCD member cities and was looking for feedback on whether there was a need to make any changes at the LMCD.

Mayor Skrede stated that he would be interested in receiving a summary of the comments made by the other member cities and stated that our Council's main concern about the LMCD is regarding representation on the Board. He stated that he felt the LMCD Board should be an elected position since the LMCD is a quasi-taxing authority. He stated that the City of Deephaven is fortunate to have as its current representative someone who is acutely aware that he is acting on behalf of the interests of the City of Deephaven.

Councilmember Crockett stated that the City of Deephaven had been very much involved with the LMCD regarding a change in Deephaven's representative when Councilmember Kask had been appointed to replace our current representative David Gross when he departs to Florida for the winter months. She stated that it had been quite an effort to convince the LMCD attorney that it was permissible for the City of Deephaven to select an alternate representative.

Councilmember Crockett further noted that as the number of elected officials serving on the LMCD Board has increased, budgeting accountability has improved dramatically. However, she noted that it is very difficult for an elected official to serve as the City's representative to the Board because of the tremendous time commitment. She stated that she would support a re-examination of the enabling legislation as a way to eliminate mission-creep and have individual cities deal with their own dock issues.

Councilmember Kask stated that he didn't particularly favor having individual cities administer dock issues because there are so many cultural differences and differing values between the 14 lake communities that there would be a real hodgepodge of dock setbacks and standards. He stated that he supports the fact that the LMCD provides uniformity on dock placement and setbacks. He stated that he would agree that the LMCD is guilty of mission-creep and noted that, as a representative on the LMCD Board, there is a huge time commitment with two board meetings per month and four separate subcommittees. He added that the Department of Natural Resources can be a very intimidating agency and would much rather deal with the LMCD on lake issues than the DNR.

Senator Olson stated that without the LMCD, enforcement on Lake Minnetonka would have gone to the State of Minnesota and the DNR due to the fact that Lake Minnetonka crosses county lines.

She noted that in regards to mission-creep, she has met with an LMCD board member who confessed that he has struggled with the LMCD's strategic plan because it doesn't always coincide with the LMCD's enabling legislation. She stated that this is clearly the case with the fact that the LMCD has no clear authority to deal with invasive species.

Senator Olson stated that she does commend the LMCD in their recent efforts following the introduction of the proposed legislation to eliminate their agency. She stated that the LMCD has held several meetings with representatives from member cities to elicit their comments and has been very proactive in meeting with various fishing groups on outstanding issues.

Mayor Skrede stated that his primary concern is over accountability. He stated that he would like to know who is in charge and in what area. He stated that it is frustrating for residents when both the Water Patrol and the LMCD have jurisdiction over speed limits on the lake.

Senator Olson thanked the Council for their time in discussing this issue and asked them to forward any thoughts they might have on the LMCD to her at any time.

Mayor Skrede thanked Senator Olson for her efforts.

5. PLANNING & ZONING REQUESTS

A. VARIANCE – Jim and Karen Gemmill, 19080 Azure Road, (R-3, 20,000) Request to demolish the existing non-conforming single family home and construct a single family home that encroaches into the required west side corner lot setback and the required east side yard setback. The requested variances are for the proposed single family home to encroach eleven feet into the required twenty-five foot west side corner lot setback and to encroach five feet into the required fifteen foot east side yard setback.

Zoning Coordinator Karpas presented his staff report, noting that the applicant has removed the proposed garage from the request and is seeking only variances for the proposed home. The applicant has maintained the previously presented encroachments, which are less than what currently exist. He said he recommended approval for the request and outlined his findings.

Councilmember Crockett asked how the recent Minnesota Supreme Court decision governing variances impacts this request. Zoning Coordinator Karpas said decision focused on cities using a reasonable use standard in granting variances. The Court said action on variances must be based on the criteria in the State Statutes which call for an undue hardship. Karpas said he feels the request before the Council meets the State's criteria since the property needs to be granted a variance of the either the setbacks or the minimum house width required by the city in order to be developed. He noted the property has an established use and the request is to continue that use.

Councilmember Crockett asked about the proposed screened porch. Mayor Skrede explained there was always a deck proposed on the plan with a notation that there would be a future screened porch constructed. He said in light of the recent Court decision, the applicant requested to include the porch at this time since it would be very difficult to argue a hardship for just the porch in the future. Mayor Skrede discussed the location of the proposed steps alongside the porch saying the property has a utility easement that cuts it in half, limiting the options for placement of the steps. He called the Council's attention to a letter submitted by the neighbor who is most impacted by the steps indicating their support.

Councilmember Crockett asked if there were any concerns regarding drainage. Mayor Skrede said the initial neighbor opposition to the plan was based on the applicant's desire to construct a detached garage in the primary drainage area for the neighborhood. The applicant has since removed the garage from the request and the neighbors have indicated their support for the new plan.

Councilmember Wheaton discussed the concept of massing raised by the Planning Commission and stated the home is within the maximum permitted height requirement. Mayor Skrede noted that massing is not addressed in the city code and said the question is whether the proposed home is too large for the neighborhood. Wheaton said he looked at a number of the adjacent properties and didn't feel the proposed home was out of character with the neighborhood.

Councilmember Crockett said in many cases the opposition is due to being uncomfortable with change. She agreed with the comments of Planning Commissioner Kent Carlson regarding investment in our neighborhoods. She understands the massing concerns but believes the proposed home will be a nice addition to the neighborhood. She said the applicants have worked within the rules the best they could and that she supports the request.

Councilmember Adams understands the Court's ruling regarding hardship. He said the mathematical issues tied to the required setbacks and minimum house width makes it easy to determine a hardship in this request. He feels the home is consistent with the other houses in the area and is not concerned about massing.

Councilmember Wheaton feels the applicants have done a good job to construct a new home near the existing footprint and have shifted it on the lot in a way the lessens encroachments into setbacks.

Councilmember Kask moved to approve the variance requests to build a new single family home which would encroach eleven feet into the required twenty-five foot west side corner lot setback and to encroach five feet into the required fifteen foot east side yard setback, as presented for 19080 Azure Road, based on the findings presented by the Planning Commission and Staff. He said a hardship exists in the lot dimensions as they related the required setbacks and that the home is consistent with others in the neighborhood. Seconded by Councilmember Adams. Motion carried 5-0.

B. SPECIAL EVENTS PERMIT – The Landschute Group, 20260 Lakeview Avenue, (R-3, 20,000) request to include the property in the Remodeler's Showcase which would be held the weekend of October 1-3. Section 1355 of the Zoning Ordinance permits limited participation in Showcase Events with the issuance of a Showcase Events Permit.

Zoning Coordinator Karpas presented his staff report. He said the request was to include 20260 Lakeview Avenue in the upcoming Remodeler's Showcase. He said the applicant has worked with the Police Department to minimize the impact of parking. He recommended approval of the request, since the applicant has satisfied the requirements of the ordinance.

The Council had no questions or concerns about the request.

Councilmember Crockett moved to approve the Special Events Permit to include 20260 Lakeview Avenue in the Remodeler's Showcase to be held the weekend of October 1-3, based on the findings presented by staff that the applicant complies with the requirements outlined in the ordinance to participate in a Showcase Event. He said a hardship exists in the lot dimensions as they related the

required setbacks and that the home is consistent with others in the neighborhood. Seconded by Councilmember Wheaton. Motion carried 5-0.

C. SPECIAL USE PERMIT – The Cottagewood Community Foundation, Cottagewood Store, 20280 Cottagewood Avenue, (R-3, 20,000) request to amend the existing Special Use Permit to the permit the year around operation of a delicatessen and to allow for private parties within the permitted hours of operation of 7 am to 10 pm.

Zoning Coordinator outlined the request.

Mayor Skrede said he met with the applicant and discussed an expanded Special Use Permit which more closely regulated private parties. Councilmember Crockett as about the provision requiring notification of the Police Department and whether it was necessary. Councilmember Kask said that the store is a commercial use in a residential district and the Special Use Permit is a means to try and avoid conflicts between the uses.

David Sigel, Chairman of the Cottagewood Community Foundation, said private parties are a small part of the overall operation of the store. He said the store hosts a number of events during the year, but the number of private parties is relatively low, and the majority of the parties are youth oriented. He said is not aware of any past issues with private parties at the store. Mayor Skrede questioned the need to require an “of age” employee to present during youth parties and suggest changing the language to require them only at parties that are not adult supervised youth parties. The Council agreed to the change.

Mayor Skrede said the nature of the current parties fit the neighborhood, but he doesn’t want to create a situation where the business plan could change to rely more on these types of parties. He noted, without restriction, theoretically there could be 365 parties a year. He said the notification of the police is necessary so they are aware of any potential safety issues in the area.

Councilmember Crockett said the only complaint she has heard about is during Oktoberfest, which isn’t a private party. She likes the idea of bringing the Special Use Permit up to date and didn’t have any more questions.

Councilmember Wheaton said the city needs to consider parking and safety issues and asked if there has been any thought about controlling parking around the area in the interest of safety. Police Chief Cory Johnson said most of those attending store events are local residents; even so the streets get pretty congested with vehicles from outside the neighborhood. Mayor Skrede said police notification gives us an opportunity to post some of the streets “no parking” if necessary. Wheaton asked if the Police Department would consider directing parking to the City Hall parking lot. Johnson said notification would allow them to post streets if there is an anticipation of a lot of vehicles. Skrede said posting the streets would not put any additional burden on the store and the police can serve as consultants to help control parking.

Councilmember Wheaton asked if the permit should include a provision on frequency of private parties, to prevent them from becoming problematic for the neighborhood. Mayor Skrede said he would want to limit them right away, but noted that provision four of the Special Use Permit allows the Council to revisit the permit if an issue with frequency arises. Mr. Sigel said the store does not have the capability to host large numbers of private parties.

Councilmember Kask noted the requested hours of operation exceed those permitted in commercial districts. In the interest of consistency, he would like to see the proposed hours reduced to 9:30 p.m. Councilmember Crockett asked if the hours needed to go beyond that time. Mr. Sigel said they did not for private parties, but some store hosted events like Oktoberfest go until ten p.m. It was noted the hours for special events are typically set by the Council on a case by case basis.

Mr. Sigel asked about the insurance requirement and the addition of the city as additional insured and if that would make their policy the primary policy. Councilmember Kask said it would, but he's not sure if damage to city property is legal insurance liability under their policy. Mayor Skrede asked why insurance is required for events such as Oktoberfest. City Administrator Dana Young said it's required by ordinance for the issuance of a temporary liquor license. Councilmember Kask said he's not sure it's necessary to require a separate rider for each party. He said the store could just provide an up to date policy on an annual basis. The Council agreed to amend the Special Use language to require a certificate of insurance to be provided to the city on an annual basis. Kask reminded the applicant that a separate policy would still be required for special events.

Mr. Sigel asked about the temporary liquor license requirement and why it was required if the liquor was consumed on private property. He asked if there was an easier process to follow to obtain a temporary license. Mayor Skrede said that State Statute requires City Council approval for all licenses and noted that, under the current ordinance, the city can only issue licenses for non-intoxicating malt liquor, which does not cover wine. Councilmember Crockett noted that could change since the city has a ballot question coming up in the November election. Mayor Skrede said the issue can be revisited at that time.

Councilmember Wheaton asked if the restriction that all consumption of alcohol be limit to on premises since that would be a condition of the license anyways. The Council agreed to remove the unnecessary language.

ACTION: Motion by Commissioner Carlson to recommend the City Council Councilmember Kask moved approve the request to amend the existing Special Use Permit for Cottagewood General Store, 20280 Cottagewood Avenue, to permit the year around operation of a delicatessen, to allow hosting or private parties and to extend the permitted hours of operation to ten p.m. The motion is conditioned that the permit language amended to read that the hours of operation are 7 a.m. to 9:30 p.m., that an employee of legal age be present only at private parties that are not adult supervised youth activities, that the applicant submit a certificate of insurance to the city on an annual basis and that the language pertaining to on site consumption of alcoholic beverages be removed. Seconded by Councilmember Wheaton. Motion carried 5-0.

6. UNFINISHED BUSINESS

A. Adopt Resolution No. 25-10, Approving 2010 Levy, Collectible in 2011

Administrator Young stated that the proposed 2011 levy for the City of Deephaven is \$1,922,219, which represents a 2.0% or \$36,849 increase over the 2010 levy. He stated that the proposed levy remains unchanged from the levy amount reviewed by the City Council at their earlier budget meetings. He stated that as a result of the continuing decline in the City's tax capacity, the tax capacity rate will increase from 15.601% in 2010 to 17.223% in 2011.

Motion by Councilmember Wheaton to adopt Resolution No. 25-10, Approving the 2010 Levy in the amount of \$1,922,219, Collectible in 2011. Seconded by Councilmember Kask. Motion carried 5-0.

B. Approve Carson's Bay Dock Design

Mayor Skrede stated that he would prefer to have the discussion of the Carson's Bay Dock design at a public meeting in order to give residents the opportunity to provide feedback and comments on the proposed design.

Boat Committee representative Warren Nelson stated that his only concern regarding a public meeting is that he wouldn't want to have 150 people offering their own particular dock designs.

Mayor Skrede stated that the purpose of the meeting would be informational only. He suggested placing notice of the meeting in the October Newsletter and holding the meeting at the October 18th Council meeting.

Councilmember Kask inquired about the proposed design of the dock. Warren Nelson stated that it would be designed in the same style as the St. Louis Bay docks.

Councilmember Kask requested that a cross section of the proposed dock design be provided at the meeting.

Mayor Skrede added that he would also like to have some pictures of the St. Louis Bay dock shown at the meeting for comparison purposes. He stated that the focus of the meeting would be specifically on the dock design recommended by the Boat Committee, although the other alternative designs could also be available for review.

C. Carson's Bay Launch Ramp Bid

Mayor Skrede stated that he has added this item to the agenda due to the fact that Administrator Young just received a bid today from Minnetonka Portable Dredging for the repair of the Carson's Bay Launch in the amount of \$16,250.00 for a 30' reinstalled ramp and \$18,250.00 for a 40' reinstalled ramp.

Councilmember Kask stated that he would like clarification that the width of the improved ramp would be 24'. He also noted that he felt the ramp should be 40' in length to help prevent continual maintenance issues relating to prop wash.

Administrator Young stated that it was his understanding that the width of the ramp would consist of two 12' concrete pads.

Motion by Councilmember Kask to approve the bid submitted by Minnetonka Portable Dredging in the amount of \$18,250.00 for a 40' ramp. Seconded by Councilmember Adams. Motion carried 5-0.

D. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Adopt Resolution No. 26-10, Adopting Special Assessment

Administrator Young stated that staff received a request from Jody Kostron, 3815 Deephaven Avenue, on the possibility of the City of Deephaven financing the repair of her well and assessing the cost of the repair on her property taxes. He stated that the special assessment would be for a term of ten years at a rate of 5% per annum. If approved, staff would recommend funding from the Deephaven Water Fund to finance the construction of the well.

Mayor Skrede stated that the City of Deephaven has adequate reserves in the Water Fund to support this assessment request, it would draw an interest rate well above the rate the City is currently receiving in investment rates and that the assessment would be secured by the annual repayment of property taxes.

Councilmember Crockett stated that she would have no interest in pursuing this arrangement.

Councilmember Adams agreed and stated that the City has no basis in which to offer this assessment.

Councilmember Crockett stated that while her heart goes out to the homeowner, she stated that it is not her money to lend and this project does not qualify as a public nuisance, such as with the need to assess for the removal of diseased or hazardous trees. She added that this would just open up a Pandora's box.

Councilmember Kask stated that he agreed with Councilmember Crockett. He stated that this would open up the City's treasury to similar requests. He stated that some people might consider this as a financing option and didn't think the City should be involved in this request. He added that the City also could not guarantee the adequacy or long-term suitability of the proposed private improvement. He stated that he would respectfully decline the request.

Councilmember Wheaton stated that he agreed with the Council's comments.

No action was taken on the request.

C. Other

Councilmember Crockett stated that she had read a recent Letter to the Editor requesting that the City of Minnetonka consider including a number of fees, such as stormwater fees, state water testing and recycling fees, onto the property tax levy. She stated that this would give residents who itemize deductions on their federal income tax return the opportunity to reduce their state and federal taxes. She stated that she would be interested in having our staff review the advantages of including more of our City's fees under the property tax levy.

Administrator Young stated that the City of Deephaven doesn't have a large number of fees that are charged uniformly to each and every homeowner with the exception of the \$5.00 per month stormwater fee. He stated that the only concern he would have is that once the fee is rolled into the property tax levy, each resident would pay a disproportionate share of that fee based on the value of their property. This would lead to some residents in higher valued homes paying substantially more for that fee and service than another resident.

Councilmember Kask asked if any progress has been made with the Waste Management contract. Mayor Skrede stated that we have already met with Waste Management officials once and will be holding a follow-up meeting next week.

Motion by Councilmember Adams to cancel the regularly scheduled September 20, 2010 Council meeting due to the lack of agenda items. Seconded by Councilmember Crockett. Motion carried 5-0.

8. DEPARTMENT REPORTS

A. Police Department

Chief Johnson stated that the August Incident Report has been distributed this evening and that police-related activities have slowed down considerably.

B. Excelsior Fire District

EFD Liaison Kim Crockett stated that the Excelsior Fire District Board will be meeting on September 22nd. She stated that discussion for the balance of the year will center on the Fire Relief Fund.

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:

- October Newsletter
- 2011 Budget Meetings
- 2010 Project Updates

He stated that the requirements to hold a special Truth in Taxation hearing, continuation hearing, and levy adoption meeting were repealed last year and the only requirements still in effect are that cities are required to hold a single meeting in which the public is allowed to speak and the budget and levy is discussed.

He stated that the requirement to publish a notice of a Truth in Taxation meeting and the proposed property taxes were also repealed last year. Cities are now only required to announce the time and location of the meeting that will be held to discuss the budget, the final levy and provide the public with the opportunity to speak on the budget.

He stated that the City of Deephaven will hold its annual Truth in Taxation hearing on Monday, December 6, 2010 at 7:00 p.m. at which time information on the 2011 budget and levy will be given and the public will be provided the opportunity to comment on the budget and levy.

9. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Crockett. Motion carried 5-0. The meeting adjourned at 9:30 p.m.

Respectfully submitted,
Dana Young, City Administrator