

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, FEBRUARY 1, 2010
MINUTES**

1. CALL MEETING TO ORDER: Mayor Paul Skrede called the meeting to order at 7:07 p.m.

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

STAFF: 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 December 21, 2009
- B. Approve Minutes of January 4, 2010
- C. Approve Verifieds
- D. Appoint David Matteson to Boat Committee
- E. Reappoint Susan Jerutis to Boat Committee
- F. Appoint Cindy Hunt Webster to Park Committee
- G. Approve 2010 Park Committee Chair & Vice-Chair

Seconded by Councilmember Crockett. Motion carried 5-0.

Mayor Skrede thanked David Matteson, Susan Jerutis and Cindy Webster for volunteering to serve on the Deephaven Boat Committee and Park Committee.

4. MATTERS FROM THE FLOOR

There were no Matters from the Floor this evening.

5. PLANNING & ZONING REQUESTS

A. VARIANCE – Jon and Mary Monson, 20260 Lakeview Avenue, (R-3, 20,000) variance requests to enclose two screened porches, remove an existing roofed porch on the lakeside of the structure and construct an addition on the west portion of the existing non-conforming home which would encroach into the required west side, corner lot and lake yard setbacks.

The requested variances are to enclose the west side screened porch which encroaches approximately fourteen feet into the required one hundred foot lake yard setback, to enclose the east side screened porch which encroaches approximately twenty-seven feet into the required one hundred foot lake yard setback, to remove an existing enclosed porch that encroaches thirty-five feet into the required one hundred foot lake yard setback and to construct a new fifty square foot addition that would encroach

seven feet into the required one hundred foot lake yard setback and eight feet into the required twenty-five foot west side corner lot setback.

Zoning Coordinator Karpas presented his staff report. He said the request was to enclose two existing screened porches, remove an existing roofed porch and to construct a small addition. The proposed addition would not increase the existing encroachment. He said he recommended approval for the request and outlined his findings. He said he felt it was a reasonable modification and kept the character of the home.

Councilmember Kask said the Planning Commission recommended unanimous approval of the request. They felt a hardship existed in the dimensions of the lot and the fact the only material change was a triangular addition that encroached into a corner lot, side yard setback.

Jon Monson said they have begun interior alterations on the structure that didn't require variance approval. Mayor Skrede asked what the applicant planned for the lakeside porch, since he had indicated at the Planning Commission the plan was to retain the porch rather than remove it as shown in the submitted plan. Mr. Monson said the plan was to restore the original balcony that existed before the porch, but after thinking about it, they decided to keep the porch and modify it from a three-season porch to a year around porch.

Commissioner Wheaton asked what portion of the patio would be removed on the lakeside to comply with the impervious surface standards. Mr. Monson said they are still deciding how much of the patio to remove, only a portion or all of it. Regardless, enough will be removed to comply with the impervious surface standards.

Councilmember Kask moved to accept the recommendations of staff and the Planning Commission to approve the variance requests to enclose the west side screened porch, which encroaches approximately fourteen feet into the required one hundred foot lake yard setback; to enclose the east side screened porch, which encroaches approximately twenty-seven feet into the required one hundred foot lake yard setback; to remove an existing enclosed porch that encroaches thirty-five feet into the required one hundred foot lake yard setback and to construct a new fifty square foot addition that would encroach seven feet into the required one hundred foot lake yard setback and eight feet into the required twenty-five foot west side corner lot setback. A hardship exists in that the property is a corner lot and the home was constructed prior to the city's regulations. It was noted the footprint of the home was not materially changing and that the impervious surface would be brought into compliance with the ordinance. Seconded by Councilmember Adams. Motion carried 5-0.

B. VARIANCE – Kevin and Rebeccah Klodt, 3765 Northome Road, (R-1, 60,000)

variance requests to partially demolish an existing non-conforming home and construct a new single family home which would encroach into the required front, north and south side and lake yard setbacks.

The requested variances are to encroach eleven feet, four inches into the required fifty-foot front yard setback, to encroach fourteen feet, two inches into the required thirty foot south side yard setback, to encroach three feet, eight inches into the required thirty foot north side yard setback and to encroach six feet, nine inches into the required one hundred foot lake yard setback.

Zoning Coordinator Karpas presented his staff report. He said the request was to partially demolish the existing home and construct a new home, while maintaining the existing encroachments. He said he recommended approval for the request and outlined his findings.

Councilmember Crockett asked about the drainage concerns raised by a neighbor at the public hearing. Zoning Coordinator Karpas said the plan would be reviewed by the City Engineer prior to the issuance of a building permit and verified after construction. Mayor Skrede noted that an erosion control permit would also need to be obtained from the Minnehaha Creek Watershed District prior to the issuance of a building permit.

Councilmember Kask said that one of the neighbors in support of the request had ties to the neighborhood association, though she was not speaking on behalf of it. A concern was raised about traffic and construction parking and said the applicant indicated they would work to keep the vehicles off the road. The Planning Commission unanimously recommended approval for the request. They felt the hardship was not caused by the property owner, rather it was caused by the size of the lot and the placement of the existing home. If the setbacks were strictly applied, the allowable home would be out of character with the homes in the neighborhood. The proposed flat roof was done intentionally to lower to house and address massing concerns. Kask felt the design of the home shows thoughtfulness on the applicant's part to design a modern home in a restrictive space.

Councilmember Kask moved to approve the requests to construct a new home, which would encroach eleven feet, four inches into the required fifty-foot front yard setback; to encroach fourteen feet, two inches into the required thirty foot south side yard setback; to encroach three feet, eight inches into the required thirty foot north side yard setback and to encroach six feet, nine inches into the required one hundred foot lake yard setback; as shown on the submitted site plan at 3765 Northome Road, based on the findings of staff and that the dimensions of the lot hinder the ability to develop the property and the proposal would not alter the essential character of the neighborhood. Councilmember Wheaton suggested that an amendment be added conditioning that the cantilevered deck overhangs extend no more than thirty inches into the lake setback. Councilmember Kask accepted the amendment. Seconded by Councilmember Wheaton. Motion carried 5-0.

6. UNFINISHED BUSINESS

A. Approve Clearwire Tower Design

City Administrator Young summarized the design options available, indicating examples of a stand-off pole, a stealth pole and a camouflage pole were included in the Council's packet.

Mayor Skrede noted that the original motion to approve the special use permit included a standard stand-off pole. There was no discussion on additional camouflaging for the pole. The question in front of the Council is, based on the options available, would the Council like to see another design.

Councilmember Wheaton said he was opposed to the camouflaging, especially the "tree look." He felt such a design would tower over the other trees in the neighborhood. He prefers the stealth look, though he knows that could create some issues with co-location.

Councilmember Adams feels the stealth arrangement is best for the site since it has the lowest profile. He's opposed to the "Christmas Tree" design.

Councilmember Crockett strongly prefers the stealth pole.

Councilmember Wheaton would like to discuss the issues with co-location associated with a stealth pole.

Councilmember Kask said he could support a stealth pole in the location and feels it may be premature to discuss a third vendor and the issues they may cause with a stealth pole. He said the Council only has one applicant before it at this time and the stealth pole can accommodate the applicant.

Mayor Skrede said he could go with either with a stealth pole or stand-off pole. He noted a stealth pole would have a larger equipment cabinet and greater circumference.

Christopher Coughlin, representing Clearwire Communications, said a pole is ordered from the vendor with the soil types and required loading in mind, which are the main issues that determine the circumference of the stealth pole. He said they have roughly a twenty-five percent greater circumference than a stand-off pole.

Mayor Skrede asked if Mr. Coughlin has ever encountered a situation where a second carrier attached standard antennas on the outside of a stealth pole. Mr. Coughlin said conceivably they could, though the stealth pole would be designed to hold two carriers inside the pole. Any modification from that would need to be negotiated between the new carrier and the city.

Mayor Skrede said he was making the point that selecting a stealth pole does not exclude other carriers whose needs may differ.

Councilmember Wheaton asked if the pole could be modified to add bays for a third carrier. Mr. Coughlin said it could, it's just a matter of how much steel is in the base. He noted the proposed pole would be built to accommodate two carriers.

Mayor Skrede noted it sounds as though at least three Councilmembers were in support of a stealth pole.

Councilmember Wheaton asked about the circumference of the stealth pole. Mr. Coughlin said it would not be that different than a typical stand-off pole and depends on the soil conditions.

Councilmember Kask moved to add an exhibit to the lease agreement between the City of Deephaven and Clearwire Communications indicating the use of a flagpole type, monopole stealth tower, not to exceed one hundred feet in height, constructed of galvanized steel with the inclusion of the a light fixture as previously approved. Seconded by Councilmember Crockett.

Councilmember Adams asked about the proposed timeline for the installation of the tower. Mr. Coughlin said it would be based on the total network plan, saying it would most likely be in the 3rd or 4th quarter of the year.

Mayor Skrede called the question on the motion to amend the lease agreement. Motion carried 5-0.

B. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Discuss Impact of Proposed Minnehaha Creek Watershed District Rules

Mayor Skrede summarized the proposed rule changes and informed the Council that he had received communication from the Mayors of Mound and Orono asking if the City of Deephaven agreed with the proposed changes. They were hoping that the city would take some official action in opposition to the rule. He said, theoretically, the comment period on the rules has ended, but the Watershed District has extended it due to the volume of comments they have received.

Dave Poggi, Bolten and Menk Engineering, highlighted some of the proposed rule changes, noting the Watershed District has proposed to reclassify wetlands into four designations and to increase replacement ratios for disturbed wetland areas. He explained that the ratio would expand from the existing 1:1 up to potentially 16:1 based on the type of wetland being disturbed. Mayor Skrede asked about instances where replacement could not be done on the property where the wetland was disturbed. Mr. Poggi said there would have to be replacement elsewhere or credits would need to be purchased from a wetland bank. He noted the replacement ratio increases the further you get away from the impacted wetland.

Councilmember Wheaton commented that most residents would have to purchase wetland credits. Councilmember Crockett said it is not typical to disrupt wetlands since the city has a setback requirement.

Mayor Skrede said the buffer requirements would come into play if someone subdivides a parcel larger than an acre.

Mr. Poggi discussed the proposed buffer requirements, noting the size of the buffer will be based on the new classification system and ranges from twenty feet to seventy-five feet. He said the buffer would be required to contain native planting and a five year management plan submitted by the property owner to the Watershed District outlining the steps that will be taken to maintain the buffer.

Mayor Skrede discussed the current zoning ordinance requirements and stated it is conceivable that the buffer requirement could exceed the city's required setback.

Councilmember Adams asked about the monument requirements and who was responsible for the cost of placing them. Mr. Poggi said that would be the responsibility of whoever was doing the project.

Councilmember Crockett asked about the justification for the proposed rule changes since the lake is cleaner than it has been for years. Mr. Poggi said the intent was to lower the phosphorus levels. He said there have been studies that suggest that the most significant benefit from a buffer is typically in the first five to twenty-five feet, with about ninety percent of the phosphorus removed in that distance. Mayor Skrede said the ninety percent reduction could be accomplished by the city's existing setbacks and asked how large a buffer would be necessary to reach a one hundred percent reduction in phosphorus, if that was even feasible.

Councilmember Crockett believes these rules constitute a regulatory taking and are very hostile to the normal use of property on the lake.

Mayor Skrede said some cities have identified that forty to forty-five percent of their lots would be rendered unbuildable and agrees that would constitute a taking, though he's unsure if there is a grandfather clause in the rules.

Mr. Poggi said the buffer requirement is usually triggered by wetland disruption and also by the need for a stormwater permit. The proposed rule changes would require a stormwater permit for lots greater than one acre.

Mayor Skrede noted that Bolten and Menk have done extensive work in Mound, crafting letters and findings of facts in opposition to the rule changes. He asked if the Council would be interested in having them draft a similar letter on behalf of the City of Deephaven.

Councilmember Crockett was in support of the idea, though she didn't think Deephaven's letter needed to be as in depth as Mound's. She questioned how Watershed board members were appointed and questioned their right on regulating how people live in this area.

Councilmember Kask would support directing staff and the city engineer to prepare a letter objecting to a number of the proposed rules before the Council. He feels they amount to a regulatory taking. He said Deephaven is a typical city on the lake and that he could point out a number of properties that would be rendered unbuildable by the rule changes. He doesn't support the costs that would have to be borne by homeowners to maintain and report on the buffers and believes the rules would deprive property owners of their property rights.

Councilmember Adams supports the comments of Councilmember Kask and further supports a letter objecting to the changes. Though the Mound letter was great, he doesn't believe the city needs to get that in depth.

Councilmember Wheaton agreed and feels the residents who will be impacted should be notified.

Mayor Skrede said information could be posted on the city's website. Councilmember Wheaton suggested a Letter to the Editor. Mayor Skrede said he would be willing sign a joint Letter to the Editor with other local Mayors. He said staff should identify the affected properties and send them notification.

Councilmember Crockett asked about the notification requirements for the Watershed District. Mr. Poggi said they have the information on their website and a public hearing notice in the paper. Mayor Skrede commented that notice can be placed on the city's website also.

Councilmember Kask said he would like the letter to address the city's concerns regarding the buffer requirements, rip rap changes and replacement ratio. He discussed how the erosion experienced Lake Minnetonka is due to the wake created by boats rather than naturally occurring forces and is concerned the proposed rip rap rules would do more to create erosion than help lessen it. Mr. Poggi said the Watershed District has tried to address that with a matrix included in the proposed rule change. He said the Watershed District feels there are areas where rip rap has been overdone and they are trying to address that issue with this rule change.

Mayor Skrede said the City of Deephaven has always acted as stewards of the lake.

B. Adopt Ordinance No. 09-23, Amending the Watercraft Space Ordinance

Administrator Young stated that on January 13, 2010, the Deephaven Boat Committee recommended that Section 900.06 Subd. 2 (c) of the Deephaven Watercraft Space Ordinance be amended to change the final deadline that an application, permit fee and late penalty fee must be submitted from November 20th to November 30th. He stated that the recommendation was based on the following conclusions:

- (1) The change in the deadline period from November 20th to November 30th will not have an adverse impact on the proposed cash flow of the Marina Fund.
- (2) Revising the final deadline period from November 20th to November 30th for the submittal of an application, permit fee and late penalty fee would give staff additional time to provide notice to those residents who missed the first deadline period of November 15th.

Motion by Councilmember Kask to adopt Ordinance No. 09-23, Amending the Watercraft Space Ordinance, subject to waiving the second reading. Seconded by Councilmember Adams. Motion carried 5-0.

C. Discuss Potential Amendments to the Wireless Communications Tower Ordinance

Mayor Skrede said this issue was before the Council for a couple of reasons. He wanted to get the Council's opinion on the need for amending the current Wireless Communications Tower ordinance, beginning with a change in the notification radius and the Council's thoughts on the current properties available for placement of towers and whether they should be further restricted or expanded.

Mayor Skrede discussed the current notification process and noted that official notification is also placed in the Lakeshore Weekly News. He asked if the Council felt the current process was adequate or should it be expanded to include more residents due to the use.

Councilmember Crockett discussed the current public hearing process, stating it leaves a number of residents feeling like accessibility to Councilmembers is left at the Council's discretion. She feels this is a weakness in the system. She's not sure what the "right" notification radius is, but would support a 1,000' foot radius since the impact is not only felt by those located near a tower site, but also by those who have to look at it. She believes it would be helpful to hear from more residents.

Councilmember Kask supported an increase in the radius even though official notice is published in the paper; he has heard issues raised by citizens about the availability of the paper and whether they are being properly notified. He feels a good case could be made for increasing the radius, even though Deephaven's is similar to other cities, the city doesn't have the same public facilities, such as water towers, to locate antennas.

Councilmember Wheaton said there is an appreciable difference between a cell tower and a house. He noted there is not an appreciable difference in the number of properties notified between 350' and 500'.

Councilmember Adams said he has not strong feelings on changing the ordinance and doesn't see a need in having a different requirement from surrounding cities.

Mayor Skrede discussed the differences between a Special Use permit and Conditional Use permit, noting that once the conditions are set, if an applicant complies with the conditions, the city is limited in its discretion in reviewing a request. He said the conditions are set at the time the ordinance is drafted and when a request is before the city, the Council only verifies that the conditions have been met. He said in reference to the Clearwire request, that a number of citizens wanted to speak to the location of the proposed tower, but the Council had an applicant who complied with the ordinance. The city is not allowed to consider issues outside of the conditions set forth in the ordinance. He said that if you find yourself wanting to vote no on an issue and don't like the way the ordinance is written, the ordinance should be changed, but your opposition cannot be placed on the application before you.

Councilmember Crockett disagreed stating the city still has control over what is done on city property. She doesn't believe the city loses control over the property just because the applicant complies with the conditions set forth in the ordinance. If she's incorrect she thinks the ordinance needs to be revisited so the process is driven by the Council and citizens.

Mayor Skrede said the current ordinance allows the placement of towers on city owned properties but does not indicate a review on whether a property is suitable for the placement of a tower or not. Councilmember Crockett reiterated she doesn't believe the city loses control of the use on a city owned piece of property.

Councilmember Adams doesn't want to create a situation where the city micromanages tower requests. He said the current ordinance sets out what an applicant can do and doesn't support changing the ordinance. He doesn't want the Council to lose sight of the fundamental issue which is bad cell reception in the city. Residents continue to demand cell service that works in their homes. The city won't get that by placing unnecessary restrictions and arbitrary roadblocks on applicants. He doesn't believe this serves the greater good of the community.

Mayor Skrede said under the current ordinance, if the process is followed and the conditions are met, the city does not have the luxury of managing the location. He reiterated that the Council can't vote no if it doesn't like the current regulations. He said he was in favor of listening to proposed changes in the ordinance.

Councilmember Crockett would like to get ahead of the process by finding suitable sites before future applicants are submitted. She believes the process got ahead of the Council on the last request and felt the city should have taken the full statutory time before making a decision. Mayor Skrede said the applicant was still within their right to place the tower because they complied with the ordinance.

Councilmember Crockett would like the Council to determine where they want the providers to locate and is more interested in carriers that provide cell service. She said she would not be opposed to expand the definition of what city owned property means to include properties leased by the city. She noted that a number of the neighboring communities may not want to have the hands on process that Deephaven want.

Mayor Skrede said the City's hands on process, when it comes to special uses, is in developing the Comprehensive Plan and Zoning Ordinance, not so much in the application process. He said the city can exclude certain properties within the ordinance if they don't believe they are suitable for towers. He said, under the current ordinance, an applicant can request to place towers on properties the city views as unsuitable and there's little it can do about it if the applicant complies with the conditions in the ordinance.

Councilmember Crockett asked how the city can lay out a process that contains greater detail in the ordinance. Mayor Skrede said the Council needs to decide what parts of the ordinance it would like to address.

Councilmember Wheaton said he feels the notification process needs to be revisited.

Mayor Skrede said another issue is whether the Council wants to include, under the definition of city owned properties, those properties that the City may have a ground lease on. Councilmember Wheaton was supportive to keeping the circumstances open in cases here it would benefit the city.

Councilmember Kask rejects the notion that the city was behind the curve on this issue. He said the ordinance, as drafted, is adequate. If there is an objection to the placement of a tower or more than one tower in the parking lot site there needs to be a discussion on what site would then be agreeable to the Council. He said the City cannot force an applicant to a site that is not feasible and also needs to provide equal opportunity to all applicants. He said the City can't play favorites when it comes to long term leases and questions what would happen if a second applicant approaches the city seeking a lease near another property that has been granted one. Mayor Skrede agreed that if the city was approached and denied the request we might be creating a legal issue.

Councilmember Crockett said if the City was looking to expand the opportunity, the land lease option would be the way to do it and noted some cities use eminent domain. She said her intent was to raise issue of land leases to the Council before expending any fees for legal services to determine its viability.

Mayor Skrede said the city needs to seek legal advice on what it can do in terms of placement and also if it would be reasonable for the city to establish an ordinance limiting the actual number of towers in the city. He said the city may have to look at how it can restrict the placement of towers rather than expand the opportunities to do so. He said he would like to explore the concept of when the city can determine that enough is enough in terms of the number of towers. Councilmember Wheaton agreed there should be a point where the city has been reasonable in the placement of towers. He thinks the city should be the one to determine when that point has been reached.

Councilmember Crockett said the City wants cell service, but it's a real balancing act in providing that service and protecting the interests of the residents.

Mayor Skrede said that while the city is investigating its right to limit the number of towers, it could place a moratorium on new towers.

Councilmember Wheaton feels if the city can provide a good rationale and isn't being arbitrary and capricious in regulations, it could limit the opportunities for the placement of new towers and still provide a number of options for carriers. Councilmember Crockett said carriers typically don't approach cities to create legal issues. Wheaton noted that the regulations should be reasonable for current technologies.

Mayor Skrede asked how the Council would like to proceed. Councilmember Crockett said she intends on approaching the Planning Commission and Park Committee regarding the issue.

Councilmember Kask said the Council current views city owned land in the realm of it being parkland. He said, realistically, not all of that land is serving that purpose. He said the City needs to determine what constitutes parkland and develop a plan that identifies those lands suitable for towers. He supports a dialogue with the Planning Commission and Park Committee. Mayor Skrede agreed, stating the city may want to look at its land and create a land inventory.

Councilmember Kask said he's not eager to dispose of the parcels the city owns, but noted most of the property was gained through park dedication, though it may have never been suitable for park use. He agrees the city needs to classify its land as to its usability. Mayor Skrede said it could be classified as to whether it is acceptable or unacceptable for tower use.

Councilmember Adams feels the Council is moving in the right direction though he has a couple of concerns. He feels any changes should not negatively impact the revenue source gained by the placement of towers in the city and he also doesn't want the city to be viewed as "difficult" to work with by carriers so they just bypass any attempts to locate in the city. He wants to be able to provide the service to the residents while benefiting from the revenue.

Mayor Skrede said the city has not been difficult to work with up to this point and only looks to amend its ordinances to protect its interests.

D. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Mayor Skrede noted that Police Chief Cory Johnson was not feeling well and wasn't able to attend this evening's meeting.

B. Excelsior Fire District

EFD Liaison Kim Crockett provided a summary of the January 27th Fire Board. She stated that the Fire Board has all returned all of last year's Board Members, which will make a significant difference in regards to continuity. She stated that Fire Chief Gerber is attending the National Fire Chief's Training Institute for the next two weeks and discussion on the 2011 EFD Budget will begin at the March Fire Board meeting. She added that the Fire Board is also discussing establishing a Capital Building Fund in order to develop specific funding to maintain the fire facilities. She stated that she has asked Administrator Young to send out a memo to our Council from the Operating Committee on the Capital Building Fund.

C. Public Works

Administrator Young provided an update on recent and upcoming public work activities. He added that the 1987 Loader requires an engine overhaul that will cost \$23,076.18 to repair.

D. Administration

Administrator Young provided a brief summary on the following items:

- 20087 Financial Summary
- Annual Financial Audits for Deephaven, Woodland and the Excelsior Fire District
- Deer Management
- Other Meeting Notes
- Park Survey Results

9. ADJOURNMENT

Motion to adjourn by Councilmember Crockett, seconded by Councilmember Adams. Motion carried 5-0. The meeting adjourned at 9:58 p.m.

Respectfully submitted,
Gus Karpas, Zoning Coordinator