

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, DECEMBER 5, 2011
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 Darel Gustafson, John Wheaton, Keith Kask and Josh Hackney

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

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Councilmember Hackney requested that Item 3H to Authorize Plans & Specifications on 2012 Improvement Projects be withdrawn from the Consent Agenda and added under Unfinished Business for further discussion.

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

- A. Approve November 21, 2011 Minutes
- B. Approve December Verifieds
- C. Adopt Resolution No. 36-11, Authorizing 2012 Group Health Plans
- D. Adopt Resolution No. 37-11, Approving 2011 Transfers
- E. Adopt 2012 Investment Policy
- F. Adopt 2012 Internal Control Policy
- G. Approve Tort Liability Limits

Seconded by Councilmember Hackney. 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 presented the proposed 2012 General Fund Budget revenues and expenditures. He said that the city is proposing a 0% levy increase in 2012 to support General Fund activities and the Capital Improvement Fund. He presented a PowerPoint that detailed 2012 General Fund revenues, expenses, a review of each General Fund Department budget, the Capital Improvement Fund, the proposed tax levy of \$1,922,219 and the property tax impact of the 2012 Budget.

Mayor Skrede asked if there were any questions from the public. Hearing no questions, Mayor Skrede closed the public hearing at 8:08 p.m.

B. Adopt Resolution No. 38-11, Adopting the Final 2012 Tax Levy

Motion by Councilmember Kask to adopt Resolution No. 38-11, A Resolution Adopting the Final 2011 Levy, Collectible in 2012 in the amount of \$1,922,124. Seconded by Councilmember Hackney. Motion carried 5-0.

C. Adopt Resolution No. 39-11, Adopting the 2012 Budget

Motion by Councilmember Hackney to adopt Resolution No. 39-11, A Resolution Adopting the 2012 Budget in the amount of \$3,861,345. Seconded by Councilmember Wheaton. Motion carried 5-0.

6. PLANNING & ZONING REQUESTS

A. VARIANCE - Request of Thomas and Aija Meehan, 20350 Lakeview Avenue, to remodel an existing non-conforming single family home which would encroach into the minimum required lake yard setback. Section 1310.02 of the Zoning Ordinance requires a minimum lake yard setback of one hundred feet in the Shoreland District. The proposed single family home modification would be setback seventy-five feet from the Ordinary High Water Level. A variance of twenty-five feet is sought of the required lake yard setback.

Zoning Coordinator Karpas presented his staff report noting the City Council approved a variance request to permit the construction of the home within the required lake yard setback in 1980. He recommended approval of the request because the proposed use is in harmony with the purpose and intent of the ordinance, that the applicant proposes to use the property in a reasonable manner, the alteration of the existing home is consistent with adjacent single family homes, the plight of the landowner is due to circumstances unique to the property and not created by the homeowner, due to the approval by the city for the placement of the home within the required lake yard setbacks, and the existing structure exists as a non-conforming structure and the proposed alteration and addition would not increase any existing encroachment and the requested variance would not alter the essential character of the locality. The applicant has maintained the existing lake setback.

Tom Meehan was available to answer any Council questions.

The Council agreed the plan looked nice and that the proposal is essentially seeking what already exists on the property.

Motion by Councilmember Kask to approve the variance request to encroach twenty-five into the required one hundred foot lake yard setback for the proposed remodel project as presented for 20350 Lakeview Avenue, based on the findings of Staff and the recommendation of the Planning Commission. Kask noted that the measurement is done in a linear manner, which does not take into account the fact that the property has a steep slope which would make the actual setback greater than what is being requested. Seconded by Councilmember Wheaton. Motion carried 5-0.

B. ORDINANCE – Consider the proposed amendment of Section 13 of the Deephaven Code, to regulate uses related to liquor licenses. Changes will include adding permitted liquor uses into the schedule of uses, setbacks from residential structures, hours of operation, signage and parking requirements.

Zoning Coordinator Karpas stated that the proposed ordinance includes four major changes including type of use by zoning district, physical location from residential structures, business hours and parking. He said the Planning Commission held a public hearing at their last meeting and recommended the Council adopt the proposed ordinance.

Councilmember Hackney suggested the amendments be reviewed at the same time at the proposed liquor control ordinance. Mayor Skrede suggested the Council could look at the proposed amendments as a first reading of the ordinance.

Mayor Skrede said he liked that liquor stores and restaurants had special designations. He also asked, in terms of parking, if an applicant may seek to use the city owned lot in Chowen's Corner. He asked if this could be done on an application basis.

Councilmember Hackney discussed hours of operation and said he personally felt there should be defined hours in the ordinance instead of leaving it open for the Council to decide. He said that would set a clear expectation for residents and applicants.

Councilmember Kask said he had a couple of issues with the proposed language. He did not feel a one hundred foot structure to structure separation was enough. He said it has to be noted that there is no buffer between the commercial district and residential uses. He said the current ordinance protects residents by not permitting outdoor lighting after business hours. He felt that residents would be impacted by additional noise and cooking odors. As to hours of operation, he did not feel that just because a business sold alcohol, they should get extended hours not afforded other businesses in the city. He feels this creates a double standard and would punish businesses that don't sell alcohol.

Councilmember Wheaton agreed that a hundred foot setback was not enough between structures. He also agreed that business hours should be consistent for all businesses. He said he didn't see bars as a use that fits into the nature of the city.

Mayor Skrede said he understood why the Planning Commission gave the Council latitude for the regulation between the types of businesses. Councilmember Hackney said the Commission also didn't want to appear to exclude any type of use.

Councilmember Gustafson asked if the hundred foot setback eliminated the majority of properties in Chowen's Corner from selling liquor. Councilmember Wheaton felt there would still be a large number available for this purpose. Zoning Coordinator Karpas said the structure to structure setback was chosen since it was similar to the requirements for cell towers and the Commission felt a setback from the actual property line would eliminate all the commercial properties in Chowen's Corner.

Councilmember Gustafson brought up a scenario where an existing residential structure which currently exceeds the required setback is reconstructed in a manner in which an existing liquor type business no longer meets the setback. Councilmember Hackney noted that could be one of the problems with a structure to structure setback. It is too loose.

Councilmember Wheaton felt the setback should be from the property line. Mayor Skrede agreed, noting it would be consistent with the regulation of other structures in the city.

Councilmember Kask said the intention of the city ordinances is to protect residential areas. He said the hours of operation become a bigger issue if they are permitted to extend past the current requirements and that the impact on the residential areas would become more burdensome.

Councilmember Wheaton agreed, stating the language should reflect the current business hours with a caveat that they could be amended by the City Council. He feels this would give both residents and potential business owners a sense of security. Mayor Skrede also noted that since it's a special use permit, residents would have the opportunity to comment on any proposal.

Councilmember Wheaton said he would like to see a scaled map of the area to get an idea on how different required setbacks would impact the area.

Councilmember Hackney said another issue, which is not addressed by the Zoning Ordinance or the liquor control ordinance, is the concept of outdoor dining. Zoning Coordinator Karpas said this is not currently addressed in the ordinance but is currently being done by at Beanhaven. Hackney felt this should be directly addressed as part of the special use process. The Council agreed.

Zoning Coordinator Karpas said he would gather some information for the next Council meeting including a scaled map, current liquor applications used by other cities and an amended special use application form which includes business selling liquor.

7. UNFINISHED BUSINESS

A. Adopt Resolution No. 35-11, Approving Bid to Construct Carson's Bay Docks

Administrator Young stated that three bids have been received for the construction of Carson's Bay docks:

<u>Contractor</u>	<u>Bid Price</u>
THN Enterprises	\$ 95,300.00
Concept Landscaping	\$ 96,600.00
Dock & Lift, Inc.	\$105,000.00

Councilmember Hackney noted that there have been some outstanding issues relating to the work done by THN Enterprises at the Carson's Bay launch.

Administrator Young stated that THN Enterprises will come back in the spring to repair some of the concrete planks that are not level. He added that THN Enterprises has also done a number of other projects for the city including the breakwater structure, installed ten docks onto the St. Louis Bay docks, and the fishing pier that turned out very well.

Motion by Councilmember Wheaton to adopt Resolution No. 35-11, A Resolution Accepting Bids and Awarding a Contract to THN Enterprises in the amount of \$95,300.00 for the construction of Carson's Bay Docks. Seconded by Councilmember Kask. Motion carried 5-0.

Mayor Skrede noted that the City intends to hire an electrical contractor to install the dock lighting and stated that staff had estimated a cost of approximately \$5,000.00 for the lighting installation. He stated that he would like staff to look into purchasing downcast lighting, even if the cost came in higher than the current estimate of \$5,000.00. Further discussion was held on the number of outlets that would be needed.

B. Accept Resignation of Police Officer Benjamin Nordell

Police Chief Johnson stated that he has received a letter of resignation from Officer Benjamin Nordell, effective December 31, 2011. He stated that Ben's wife recently gave birth and Ben intends to stay home with his child. He stated that although this is a great new opportunity for Ben, he will be sorely missed by the Department.

Motion by Councilmember Kask to accept the resignation of Police Officer Benjamin Nordell effective December 31, 2011. Seconded by Councilmember Wheaton. Motion carried 5-0.

Mayor Skrede stated that the Council wishes to express its appreciation for Ben's years of service with the Deephaven Police Department and wish him the best of luck with his future plans.

C. Authorize the Hiring of a New Police Officer

Motion by Councilmember Wheaton to authorize hiring a new Police Officer to replace Officer Benjamin Nordell, who has resigned from the City of Deephaven effective December 31, 2011. Seconded by Councilmember Kask. Motion carried 5-0.

Mayor Skrede noted that the Police Chief may not have a final candidate for the Council to approve by the January 4th Council meeting and a Special Council meeting may need to be held in mid-January.

D. Authorize Plans & Specifications on 2012 Improvement Projects

Councilmember Hackney stated that he had asked that this item be pulled from the Consent Agenda to discuss the proposed design work on the Vine Hill / Hwy 7 Intersection improvements. He stated that it was his understanding that a meeting was to be held with MNDOT and the cities of Shorewood and Minnetonka to discuss potential improvements at this intersection.

Administrator Young stated that he discussed this meeting with the City Engineer and he recommended putting together a rough plan for Deephaven's side of this intersection prior to organizing a meeting with MNDOT and the adjoining cities. He stated that the improvement plan will be reviewed before the Public Works Committee this Wednesday.

Mayor Skrede stated that the plan could then be presented for Council review on December 19th.

Police Chief Johnson stated that he has confirmed that the only project planned by MNDOT on Hwy 7 next year will be the installation of the turn signals. He stated that MNDOT is not planning any further highway or intersection improvements on Hwy 7 along with the installation of the turn signals. He also stated that he has been contacted by college student attending Gustavus Adolphus College about a paper she is writing on potential improvements to the Vine Hill / Hwy 7 intersection. He stated that he will be meeting with her, a MNDOT representative, and the City of Minnetonka on December 7th to review her findings.

Mayor Skrede asked that he report on the results of the meeting at the Public Works Committee.

Motion by Councilmember Hackney to authorize Bolton & Menk to develop plans and specifications on the 2012 Vine Hill / Hwy 7 Intersection Improvements, the 2012 Rutledge / Azure Road Storm Sewer Rehabilitation Project, the 2012 Sewer Main Cleaning & Televising Project and the 2012 Sewer Manhole Rehabilitation Project. Seconded by Councilmember Wheaton. Motion carried 5-0.

8. NEW BUSINESS

A. 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 Mark Redetzke and Gary & Linda Arnebeck have submitted an appeal to the City Council to request the reinstatement of their 2012 permit.

Mayor Skrede stated that he can't recall ever seeing a more severe violation of the ordinance since both Mr. Redetzke and the Arnebeck's weren't at their assigned space for any days during the 2011 Boating Season. He stated that he hasn't seen this circumstance occurring before.

Mark Redetzke stated that he would like to clarify some of the facts presented in his letter to the Council. He stated that he needed to relocate his winch system since the adjoining Slide No. 64 had a winch system that was skewed too closely to his slide space. He stated that the adjoining slide space had mounted his winch dead center and had to move his winch to accommodate a larger boat. He stated that before attempting to resolve the matter, his neighbor on the next slide offered him the opportunity to use his boat for the season.

Mayor Skrede asked if he had ever contacted city staff member Deborah Hicks on this issue.

Mark Redetzke stated the he was not well versed on the requirements of the 90 day rule.

Councilmember Gustafson stated that it was unfortunate that he didn't contact city staff because another resident could have used that slide space for the summer.

Councilmember Hackney asked why neither Mr. Redetzke or the Arnebeck's name came up in violation of the June 1st deadline requirement as they should have since they never had their boats at their assigned spaces for the year.

Administrator Young stated that both leaseholders must have contacted the City prior to the June 1st deadline.

Motion by Councilmember Kask to reinstate the 2012 Permit for Mark Redetzke, 18970 Highland Avenue, for Slide No. 65 in St. Louis Bay, subject to a penalty payable to the City of Deephaven in an amount equal to fifty percent of his 2012 permit fee and that there be no future violation. Seconded by Councilmember Wheaton. Motion carried 5-0.

Motion by Councilmember Kask to reinstate the 2012 Permit for Gary & Linda Arnebeck, 3745 Parkway, for Buoy No. 57 in Carson's Bay, subject to a penalty payable to the City of Deephaven in an amount equal to fifty percent of his 2012 permit fee and that there be no future violation. Seconded by Councilmember Wheaton. Motion carried 5-0.

B. Discuss Alternate Dates for 2012 Council Meetings

Administrator Young stated that there are four regularly scheduled Council meetings in 2012 that conflict with a major holiday and one meeting that conflicts with pre-Election Day preparations. He stated that staff would recommend that these five dates be rescheduled as follows:

<u>Holiday</u>	<u>Original Meeting Date</u>	<u>New Meeting Date</u>
New Year's Day	Monday, January 2 nd	Wednesday, January 4 th
Martin Luther King Day	Monday, January 16 th	Cancelled
President's Day	Monday, February 20 th	Cancelled
Labor Day	Monday, September 3 rd	Wednesday, September 5 th
Election Preparations	Monday, November 5 th	Wednesday, November 7 th

Councilmember Hackney recommended holding a Special Council Work Session as a replacement for the cancelled second Council meetings in either January or February to discuss 2012 Council goals & objectives.

Councilmember Wheaton suggested holding the Work Session prior to the January 4th Regular Council meeting.

Motion by Councilmember Hackney to approve the alternate dates for five regularly scheduled Council meetings, subject to the addition of a Special Council Worksession on January 4th to discuss 2012 Council goals & objectives. Seconded by Councilmember Wheaton. Motion carried 5-0.

C. Other

There was no other New Business this evening.

9. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson stated that the November Incident Report has been sent out for Council review, the Toys for Tots program is underway with delivery of the donated toys scheduled for December 10th, and briefly outlined the hiring process for a new officer to replace Benjamin Nordell.

B. Excelsior Fire District

Councilmember Gustafson stated that there hasn't been an EFD Board meeting since the last Council meeting. He stated that he had been requested by the Mayor at the last meeting to provide some factual information on the decision to replace Engine 22 with the Heavy Rescue truck back in 2008. He stated that in 2008, the decision was made to push back the purchase of Engine 22 until 2013. In March of 2008, the EFD Board approved the decision to purchase the Heavy Rescue vehicle but

couldn't find any information on the decision to postpone the purchase of Engine 22 in exchange for the purchase of the Heavy Rescue vehicle.

Councilmember Gustafson stated that in March 2007, the 2008 Capital Equipment Plan would have been sent to each City for their approval and the 2008 Capital Equipment Plan included the schedule to purchase the Heavy Rescue truck in 2009 and Engine 22 in 2013.

Mayor Skrede stated that his primary concern is that a decision may have been made after the Capital Equipment Plan was approved. He stated that when voting on the Capital Equipment Plan, cities are voting on a specific schedule of equipment.

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:

- Required reports and publications
- January Newsletter
- Deer Management Update
- Preliminary negotiations with the Police Union were held November 17th on 2012 city health contributions.
- Xcel Energy is considering an alternative route for their transmission line project. The original route was to upgrade their current transmission line along the LRT Trail. Xcel Energy is also considering a route along Hwy 7 and down Vine Hill Road to their substation across from the Elementary School.
- There is continued interest in undertaking Eagle Scout projects in Deephaven. Staff has been contacted by two potential candidates who are interested in undertaking projects in 2012.

Administrator Young stated that the annual holiday party will be held on December 21st.

10. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Wheaton. Motion carried 5-0. The meeting adjourned at 9:45 p.m.

Respectfully submitted,

Dana H. Young, City Administrator