

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, JULY 18, 2011  
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmembers Darel Gustafson, Josh Hackney and Keith Kask

ABSENT: Councilmember John Wheaton

STAFF: Police Chief Cory Johnson and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE JULY 6, 2011 COUNCIL MINUTES**

Motion by Councilmember Kask to approve the July 6, 2011 Council minutes. Seconded by Councilmember Gustafson. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

Jan Mjor, Environmental Specialist with CenterPoint Energy, was present to present a \$2,500 check to the City of Deephaven from the CenterPoint Energy Community Partnership Grant to be used towards the purchase of a speed trailer. She stated that the Community Partnership Grant provides CenterPoint with the opportunity to partner with the Deephaven Police Department and the City of Deephaven to assist with the purchase of a speed trailer.

Mayor Skrede thanked Jan Mjor and CenterPoint Energy for their donation.

5. **UNFINISHED BUSINESS**

A. **Discuss Sewer Backup at 4235 Northern Road**

Administrator Young stated that Carrie Bell (4235 Northern Road) had a sewer backup that occurred on May 2<sup>nd</sup>. After hiring a plumber for several days to try to locate the problem, Ms. Bell eventually contracted with Widmer Construction to excavate that portion of her private line that connected to the stub line off the City main. It was eventually discovered that the blockage occurred due to an improperly installed stub line. He stated that staff is presuming that this stub line was installed incorrectly back in 1972 during the installation of the entire sewer system in Deephaven.

Administrator Young stated that Carrie Bell is requesting reimbursement from the City in the amount of \$2,650.00 for the improperly installed stub line. He stated that the amount is for Ms. Bell's deductible (\$2,500.00) and the cost of the sleeve pipe (\$150.00) that was installed by Widmer Construction to repair the stub line that her insurance company will not cover. He stated that her insurance company will be picking up the remainder of the cost.

Administrator Young stated that the City is not responsible for any blockage that occurs in a private line or in the stub off of a sewer main. He stated that this is due to the fact that the City has no way of monitoring the type of waste products that are flushed down the toilet or of televising private lines to determine if there are problems with tree roots growing into the line. He stated that the City's only responsibility is the sanitary sewer main and manholes. He stated that the blockage that occurred in this instance, however, is not quite so easily determined to be either the homeowner's or the City's responsibility since the blockage occurred due to an improperly installed stub line.

He stated that it is staff's recommendation to reimburse Carrie Bell in the amount of \$2,650.00 for her costs associated with the sewer backup that occurred on May 2<sup>nd</sup>. He stated that, in this instance, the City would have had to pay Widmer Construction \$5,290.00 to repair the faulty stub line anyway.

Carrie Bell stated that she also included some information in her packet to the Council regarding the condition of a Birch tree on her property, which was damaged during the excavation. She stated that she loves trees and is concerned that this tree might eventually die due to damage to its roots. She stated that it was her intention to place her house on the market but this sewer blockage caused her two and half months of lost time. She stated that her insurance company has been great in response to this claim and has paid for almost all her costs except for the deductible and the cost of the sleeve pipe. She stated that she is looking to be compensated for these costs.

Councilmember Kask asked if this stub line had been inspected at the time of excavating or is it our assumption that it was incorrectly constructed at that time.

Administrator Young stated that staff is assuming that it was incorrectly installed at the time of construction as there isn't any other information to confirm that the stub might have been installed at a later date.

Mayor Skrede stated that it appears we cannot unequivocally prove that the stub line was inspected.

Carrie Bell noted that the public works crew was able to confirm that the stub line was incorrectly installed when Widmer Construction excavated the line. She added that the stub line was even sloped in an upwards position when it connected to the City's manhole.

Councilmember Hackney stated that the City ended up saving over \$2,000.00 through this outcome. He stated that at some point, someone had to make the decision to excavate the sewer line when the problem was not discovered in the private sewer line. He asked if it would set precedence in compensating Ms. Bell.

Mayor Skrede stated that the City Council would have the opportunity to review each future issue on a case-by-case basis.

Carrie Bell stated that she had originally thought the problem was in her line since she had experienced a problem around 6 years ago when she had some tree roots growing into her line. She stated that the problem was uncovered when she had a contractor televise the line.

Councilmember Gustafson stated that people have the choice in life to be either consistent or fair. He stated that the City has to be consistent. He stated that this does seem to be a City caused problem. He stated that he did have some questions of Ms. Bell regarding the question marks she had added on some of the information she provided.

Carrie Bell stated that these were listed in a semi-humorous fashion but noted that she did lose a lot of her own time in cleaning up this problem.

Councilmember Kask stated that we can address Ms. Bell's request for the Council to consider the future condition of her tree within the motion.

Carrie Bell stated that she listed her concern for the health of the tree because she wanted it on the table for future discussion.

Councilmember Kask stated that in discussions with public works personnel, it sounded like the contractor used a variety of available parts to construct the stub line. He stated that in regards to the tree, he would not be interested in including the cost of the tree with the request for compensation. He stated that the correction of the stub line is an improvement to the property, so much so that the City requires homes that are 50 years or older to install a new sewer connection when they are undergoing extensive remodeling.

Motion by Councilmember Kask to compensate Carrie Bell in the amount of \$2,650.00 for the repair of the sewer connection without admission of the City's fault or responsibility in this matter. Seconded by Councilmember Gustafson. Motion carried 4-0.

**B. Approve Street Entrances at Deephaven Elementary School**

Administrator Young stated that discussions between City and School District staff have reached the point where the School District is requesting permission from the City to proceed on the internal design plan by requesting permission to:

1. Close the current driveway entrance across from Ridgewood Road.
2. Construct a new driveway entrance further south to accommodate bus traffic only.

He stated that the internal design plan is intended to accommodate an increased number of parents coming to the school to drop off and pick up their children by allowing for increased vehicle stacking along Vine Hill Road and within the internal paved area of the school. The existing and proposed driveway entrances are redesigned to accommodate this increased stacking capability by providing:

- one entrance for vehicles at the south end. Buses would also exit from this entrance.
- one exit for vehicles at the north end
- one exit for buses only
- close the existing entrance at Ridgewood Road

He stated that the School District is requesting permission from the City Council to close the existing entrance at Ridgewood Road and open a new entrance for buses as shown on the proposed plan. In addition, the School District would like some direction regarding the stacking shoulder along Vine Hill Road and whether the City Council would require the shoulder to be entirely paved and at whose cost.

Mayor Skrede thanked both staffs for working together on this issue. He stated that the request to widen the shoulder along Vine Hill should make it more navigable but wouldn't want to see it striped for a turn lane. He stated that he didn't object to the school using the existing 5' paved shoulder as a stacking lane but questioned adding another 3-5 feet of blacktop to widen the lane and voiced concern

about the drainage impact and the presence of trees in close proximity to the stacking lane. He stated that he would prefer the City adding some crushed rock and not adding additional hardscape. He stated that it would look better aesthetically as well.

Mike Condon, Building Supervisor with Minnetonka Public Schools, stated that the additional asphalt might also encourage parking other than the stacking of vehicles.

Mayor Skrede agreed that the public would know it was for stacking rather than parking without the asphalt.

Councilmember Hackney asked if parking in this stacking lane would be allowed for certain school events.

Mayor Skrede stated that he would leave that decision to the discretion of the police.

Councilmember Hackney suggested that the entire stacking lane should be plowed and recommended that no parking signs be posted on the Vine Hill bridge.

Police Chief Johnson stated that he is hopeful that the new design will eliminate parking on the bridge but agreed that there parking on the bridge should be prohibited.

Mike Condon stated that the only revision from the proposed plan is that the new bus entranceway is now an entrance for buses rather than an exit. He stated that buses would now exit from the southern entranceway.

Councilmember Hackney agreed that this was a better solution to keep buses separate from the other vehicles.

Mayor Skrede summarized the overall entrance design plan and stated that the City will add crushed rock to widen the stacking lane.

Councilmember Kask stated his concern about the small parking lot on the south side and the ability of vehicles to exit from this lot.

Mayor Skrede stated that the south entrance should be made wide enough to accommodate the internal traffic plans at the school.

Mayor Skrede asked if all efforts will be made to have these improvements in place by the upcoming school year.

Mike Condon stated that it is their every intention to have it ready for the upcoming school year.

Motion by Councilmember Kask to approve the Street Entrance Plan at Deephaven Elementary School as presented this evening with the proposed revision for the bus entrance. Seconded by Councilmember Hackney. Motion carried 4-0.

### C. Other

There was no other Unfinished Business this evening.

6. NEW BUSINESS

A. Review Request for Temporary Parking Permits (Minnetonka Yacht Club)

Minnetonka Yacht Club members Tony Jewett, Hans Larson and Chris Jewett were present to request temporary parking permits for their out-of-town guests attending the upcoming sailing regatta hosted by Minnetonka Yacht Club from August 11-21 and to discuss options for sailboat trailer storage during the event.

Councilmember Hackney asked how many boats usually participate in a normal regatta.

Tony Jewett stated that there are typically 40 boats participating in an average regatta. He stated that this event is going to be the largest they have held since 2001 because it is combining four classes of boats. He stated that they are estimating approximately 200 boats, which equates to around 800 people participating in this event. He noted that a lot of businesses in this area, including the Cottagewood Store, should benefit from this influx of visitors to our area.

Mayor Skrede noted that the two requests before the Council this evening are for temporary parking permits and to approve trailer parking in the Village Hall hockey rink.

Tony Jewett stated that he, Hans Larson and Chris Jewett have met with Chief Johnson on the development of a parking plan and noted that Cottagewood is expected to be overloaded with vehicles during the regatta.

Chief Johnson stated that he has met with this group to discuss the parking plan and noted that they are very well organized but this event is going to be a lot of work. He stated that they have discussed which areas of Cottagewood could be cordoned off during the event.

Mayor Skrede recommended passing the word to Cottagewood residents by posting a sign at the Cottagewood Store and apologizing in advance for the upcoming inconvenience.

Tony Jewett stated that letters have been sent to Cottagewood lakeshore owners and agreed that posting a notice would be a great idea.

Further discussion was held on the potential use of the hockey rink to store trailers.

Councilmember Kask stated that perhaps parking could be allowed on the south side of Cottagewood and near Haralson Park as an alternative to using the hockey rink.

Mayor Skrede suggested using the area along Minnetonka Blvd as a pick up and drop off area only and using the grass area near the former bus stop as a parking area for vehicles.

Chief Johnson stated that his only concern about using this area is that there is a gas main located on the property and the potential damage to the sod. He suggested that the Yacht Club could request the use of the school parking lot in order to provide parking as close as possible to the boats and could shuttle people to and from the Yacht Club. He noted that the Yacht Club is probably not interested in being in the shuttle business.

Tony Jewett stated that the grassy area across from Haralson Park would be a preferred location.

Mayor Skrede stated that the City Council has historically been very concerned about issuing temporary parking permits because this gives non-residents license to park anywhere, including in such crowded areas as Park Avenue.

Councilmember Gustafson stated that he would prefer to keep the two requests separate. He stated that he would be fine with the Yacht Club using the hockey rink as long as they use a 4-wheeler to move the trailers.

Councilmember Hackney suggested that they could use the entire ball field for trailer storage.

Councilmember Kask stated that he would be concerned about damage or ruts to the sod. He stated that there must be agreement that the applicant will restore any damage to the sod or hockey rink.

The Council voiced their support of the Yacht Club using the hockey rink for trailer storage. Discussion turned to the request for the issuance of temporary parking permits.

Councilmember Kask stated that temporary parking permits provide the assumption that you can park anywhere in Deephaven. He stated that he would be reluctant to give out permits and would want to safeguard spaces for our residents.

Mayor Skrede also noted that non-residents are also paying \$100.00 for parking permits to use our facilities as well. He stated that the issuance of temporary parking permits causes an internal quagmire but would be more than willing to look at trying to find parking accommodations elsewhere.

Further discussion was held on the possible use of the grass area across from Haralson Park.

Mayor Skrede suggested that Councilmember Kask serve as Council liaison and Chief Johnson work with the applicants to try to find the appropriate parking accommodations.

Councilmember Gustafson stated that he doesn't have an issue with parking across from Haralson Park but would like the access to the parking to be consistent and would not be enamored with our own residents not being able to park there or have them prohibited by a sign stating regatta parking only.

Mayor Skrede suggested a sign stating non-stickered parking only.

Councilmember Hackney stated his concern that much of the parking is targeted for Cottagewood. He stated that he didn't think that Cottagewood should be the launch point for this event and we should try to alleviate parking in a residential area.

Chief Johnson stated that portions of Cottagewood, particularly Lakeview and Keewaydin, have always been the rallying point for the regatta.

Councilmember Hackney stated that Cottagewood shouldn't be the official jumping off point for this event.

Hans Larson stated that Cottagewood would not be a point of emphasis.

Councilmember Kask stated that he would certainly appreciate any assistance the School District could provide in regards to parking.

**B. Review Storm Water Repair Bid on Mt. Curve**

Administrator Young stated that the Deephaven Public Works Committee has been reviewing two potential stormwater repair projects on Lakeview Avenue and on Mt. Curve for the last several months. He stated that quotes on the two projects were requested and reviewed by the Committee on July 6<sup>th</sup>.

Administrator Young stated that after considerable discussion, the Public Works Committee fine tuned the overall scope and cost of the project by issuing the following recommendations:

1. The proposed drainage project at 20505 Lakeview Avenue has been discarded due to the fact that the overall scope of the project was relatively limited to one property.
2. Eliminate all costs pertaining to the installation of blacktop on the Mt. Curve project and focus solely on the installation of the storm water pipes. The public works crew would install the relatively minor patch work needed on Mt. Curve and the adjoining property owner at 20415 Lakeview Avenue (the Bowers) would install their own blacktop across their driveway when they replace their driveway this fall.
3. The proposed storm sewer work would be in advance of a proposed street reconstruction of Mt. Curve next year.

He stated that the revised cost of undertaking just the storm sewer repairs was submitted by Schneider Excavating in the amount of \$9,261.50. He stated that the primary purpose of the storm sewer project is to pipe all the surface water, which is presently ponding on Mt. Curve and causing damage to the street, under the driveway of Tom Bowers at 20415 Lakeview Avenue and eventually outletting into the natural drainage area next to Lakeview Avenue.

Mayor Skrede stated that the Public Works Committee has been working on this issue for a couple of months and it wasn't until the City Engineer shot some elevations that the Committee could realize the scope of the project. He added that the Public Works crew offered to do the patch work and noted that an easement would be needed from the Bowers to extend and maintain the pipe across their property.

Councilmember Gustafson asked if the proposed project at 20505 Lakeview Avenue has been permanently discarded.

Mayor Skrede stated that perhaps not permanently discarded but the Committee would certainly like the opportunity to discuss other, less costly solutions.

Councilmember Hackney stated that he doesn't see any other solution to correcting the water runoff problem. He stated that his only objection is to commit to undertaking a street improvement at Mt. Curve in 2012 at this time before all the City streets have been evaluated. He noted that Mt. Curve is a very short street and an improvement wouldn't have a lot of impact. He stated that a commitment to improve the street shouldn't be part of this discussion.

Motion by Councilmember Hackney to approve the Stormwater Repair Bid for Mt. Curve in the amount of \$9,261.50 from Schneider Excavating. Seconded by Councilmember Kask. Motion carried 4-0.

**C. Discuss Fence Damaged by City Blvd Tree**

Administrator Young stated that there were high winds on July 1<sup>st</sup> that blew down a boulevard tree that landed across one small section of a metal fence owned by Brian and Linda Ross at 3960 Walden Road. The Public Works crew removed the fallen tree on July 5<sup>th</sup>. He stated that the cost to repair the fence has been estimated at \$700.00 and the Ross's are asking who is responsible for the damage to their fence.

He stated that the League of Minnesota Cities Insurance Trust's position on this matter is that the City is not responsible for any damage caused by a city-owned tree unless it can be demonstrated that the City was made aware prior to the incident that it had been a hazardous tree. He stated that the LMCIT would deny the claim to reimburse the Ross's for the damage to their fence.

He stated that the City has never developed a specific policy on damage caused by city-owned trees. He asked if a tree goes down due to some weather-related event, should the City feel some sort of obligation for reimbursing a property owner for the damage or is the event simply considered an Act of God, in which case there has been no negligence on behalf of the City and therefore no obligation to reimburse a property owner for the damage?

Brian Ross (3960 Walden Road) stated that he was surprised that there wasn't a precedent on how to deal with damaged caused by boulevard trees. He stated that wouldn't he be responsible for damage caused by one of his trees to a neighboring property?

Councilmember Kask stated that trees that fall under the peril of wind are usually not covered unless the insurance company decides to make a good will payment of approximately \$500.00 or so. He stated that you don't even have an obligation for clearing a tree that has fallen across a property line.

Brian Ross stated that he hasn't even talked to his insurance company yet but has a \$1,000 deductible on his homeowner's policy. He stated that he spent Saturday, along with a few of his neighbors, removing the tree from his property and placing the debris along the boulevard. He stated that the public works crew removed the debris and the remaining portion of the tree the following Tuesday.

Councilmember Kask stated that it is very difficult for the City to accept responsibility on an otherwise healthy tree. He stated that whatever lands on your property is your responsibility. He stated that in some other cities, particularly following a widespread wind storm, the city will pick up the debris if you get the debris to the curbs. He stated that the City of Deephaven hasn't had to face widespread damage of this nature as of yet. He stated that it would be difficult for him to agree to pay for a section of fence but not for some other structure, such as a utility shed, if it were damaged.

Councilmember Gustafson stated that he felt this was an act of nature and was not the responsibility of the City.

Councilmember Hackney referred to the Council handout material on trees and agreed that it should be considered as an Act of God.

Mayor Skrede stated that if the tree had been marked for removal he would think differently on the matter or if the tree had come down and the tree was hollow. He noted that a couple of other trees

went down during that same storm, including one tree that fell on the roof of the house, and he was unaware of this resident approaching the City for reimbursement for tree damage.

Councilmember Kask stated that he thought it would be a bad precedent for the City to make payment on something that is not the City's responsibility.

Brian Ross stated that he couldn't disagree with this position and that the whole reason they have a fence is to keep deer out of their yard. He inquired about the City's Deer Management Program.

Mayor Skrede summarized the program and offered to have the contractor review his site for its suitability for a deer trap.

**D. Discuss LMCIT No-Fault Sewer Backup Coverage**

Administrator Young stated that the LMCIT offers No-Fault Sewer Backup Coverage that is intended to:

- Reduce health hazards by encouraging property owners to clean-up backups as quickly as possible.
- Reduce the frequency and severity of sewer backup lawsuits.
- Gives cities a way to address sticky political problems that can arise when a property owner learns the city and LMCIT won't reimburse for sewer backup damages because the city wasn't negligent and therefore not legally liable.

He stated that "no-fault" coverage would reimburse the property owner for sewer backup damages regardless of whether the city was legally liable, if the following conditions are met:

- The backup must have resulted from a condition in the city's sewer system or lines. A backup caused by a clog or other problem in the property owner's own line would not be covered.
- The backup is not caused by a "catastrophic" type event, such as any event for which FEMA assistance is available, any interruption in the electric power supply to the city's sewer system or city sewer lift station which continues for more than 72 hours, or rainfall or precipitation that constitutes a 100-year storm event.
- The coverage limit has not been exceeded.

He stated that the coverage would reimburse the property owner for the cost of cleaning up the backup, and for any damage to the property, up to the coverage limit. However, there are certain costs that would not be reimbursed under the no-fault coverage:

- Any costs which have been or are eligible to be covered under the property owner's own homeowner's or other property insurance; and
- Any costs that would be eligible to be reimbursed under an NFIP flood insurance policy, whether or not the property owner actually has NFIP coverage.

He stated that the basic limit is \$10,000 per building per year but the city also has options to purchase additional limits of \$25,000 or \$40,000 per building at the following cost: \$10,000 - \$2,160, \$25,000 - \$2,541, and \$40,000 - \$3,176.

Councilmember Kask stated that most homeowners have this coverage but it is usually only offered up to a limit of \$5,000.00 although additional coverage is usually available. He noted that this would be a relatively inexpensive policy for the City to acquire.

General discussion was held on the circumstances under which a claim could be made under this no fault policy. Councilmember Gustafson noted that electrical problems at a lift station wouldn't apply if the outage continued for more than 72 hours. He requested additional information on when that 72 hour period would begin.

Councilmember Hackney asked if the Council is assuming that we would go with the \$40,000 coverage limit.

Mayor Skrede stated that for the marginal cost increase between the \$40,000 and \$10,000 coverage, he would go with the higher coverage.

Councilmember Kask provided an illustration on the cost of a claim that cost \$6,100 just to remove and replace the carpeting. He stated that those homeowners with a higher level of finish in their basements should consider their own policy. He stated that a \$10,000 policy would at least pay for the initial cleanup.

Councilmember Gustafson stated that it would make sense to have a \$10,000 limit policy for the cleanup and the homeowner would be responsible to pay for their own policy for damage over and above this amount.

Councilmember Hackney stated that he met with a public works employee a couple of weeks ago and was brought up to date on several sewer-related issues, including ongoing problems with the lift station in Summerville that experiences continual problems with the pumps clogging. He stated that if we are aware of continual problems with one lift station, then maybe acquiring no fault coverage isn't a bad idea.

Councilmember Kask noted that the premium cost on a \$40,000 limit would only cost about \$3 per resident per year.

Motion by Councilmember Kask to adopt Resolution No. 20-11, A Resolution Establishing Limited Clean Up and Property Damage Protection for Sewer Back-Ups and Water Main Breaks. Seconded by Councilmember Gustafson. Motion carried 4-0.

**D. Other**

There was no other New Business this evening.

**7. REPORTS FROM STANDING COMMITTEES**

**A. Public Works Committee**

Administrator Young presented a review of the Public Works Committee meeting held on July 6, 2011 on the following items:

- Request for additional stop signs at the intersection of Cottagewood & Water Street. The Committee recommended no specific action other than the additional posting of the speed trailer on this street.
- Reviewed Mt. Curve and 20505 Lakeview Avenue drainage bids.
- Reviewed drainage concerns on Woodhaven Place.

**8. ADJOURNMENT**

Motion by Councilmember Hackney to adjourn the Regular Council meeting. Seconded by Councilmember Kask. Motion carried 4-0. The meeting adjourned at 9:26 p.m.

**9. SPECIAL COUNCIL BUDGET WORK SESSION**

Mayor Skrede called the Special Council Budget Work Session to order at 9:26 p.m.

The Council continued their review of the 2012 City Budget.

**10. ADJOURNMENT**

Motion by Councilmember Kask to adjourn the Special Council Budget Work Session. Seconded by Councilmember Hackney. Motion carried 4-0. The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Dana H. Young  
City Administrator