

DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JULY 6, 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 Josh Hackney, Keith Kask, John Wheaton and Darel Gustafson

STAFF: Police Chief Cory Johnson and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Councilmember Wheaton requested that Item 3C to Authorize Final Payment to Upper Midwest Athletic Construction in the amount of \$21,870.00 for the Thorpe Park Tennis Court Project be withdrawn from the Consent Agenda and added under Unfinished Business for further discussion.

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

- A. Approve Minutes of June 20, 2011
- B. Approve Verifieds
- C. Authorize Payment Request No. 1 to Midwest Trenchless Technologies in the amount of \$23,026.39 for the 2011 Sewer Rehabilitation Project

Seconded by Councilmember Kask. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Mark Haarmon was present to discuss his interest in helping to eradicate Buckthorn. He stated that Buckthorn has taken over in the City of Minnetonka and he has noticed it spreading as well in Deephaven, Robinsdale and in the Boundary Waters. He stated that he is a master Buckthorn remover, would be willing to sign the necessary liability waiver from the City in order to volunteer to remove Buckthorn on public property in Deephaven.

He stated that he has seen a number of Buckthorn trees at Robinson's Bay Beach and the Carson's Bay launch area. He also mentioned that Doug Cooley, a resident at Robinson's Bay, would love to work with the City on the construction of a joint fence bordering Robinson's Bay Beach. He added that Mr. Cooley would be willing to pay for the entire fence. He stated that he loves Deephaven and he would like to institute an Adopt-a-Beach program at Robinson's Bay Beach, where he is already picking up trash.

Mayor Skrede stated that Mr. Haarmon's Buckthorn removal efforts could be coordinated through the Public Works Committee. He noted that the removal efforts would be limited to city-owned property.

5. PLANNING & ZONING REQUESTS

A. Special Use - Special Use request from the Deephaven Academy to place twenty-four square foot free standing sign along the east side of Minnetonka Boulevard on the St. Therese property, 18325 Minnetonka Boulevard. Though the sign is located on the St. Therese property, it is intended to identify the Deephaven Academy which is a K-8 private school which leases space from the Parish. Section 1115.09(a) permits signage of up to one hundred square feet with the issuance of a special use permit. The proposed sign would be five foot in height and have a sign area three foot in height by four foot in width. The proposal is for a v-shaped sign with no illumination. The lettering would be dark blue set on a white background.

City Administrator Young provided a summary of the request. He stated that the Deephaven Academy, located within St. Therese Parish, is requesting a Special Use Permit to construct a twenty-four square foot, v-shaped sign along the east side of Minnetonka Blvd. He stated that the proposed sign would be a total of five feet tall with a three foot by four foot sign area. The proposed lettering would be dark blue set upon a white background and would not be illuminated.

He added that St. Therese currently has two eleven foot, seven inches wide by seven foot high monument signs on the property and the ordinance does not have any requirements on the total amount of signage permitted on individual properties.

He stated that Zoning Coordinator Gus Karpas recommended approval of the special use request. He stated that staff could find no negative impact on the development of the community, the character of the community or on the health, safety and general welfare of the surrounding properties, and the proposal would not impact traffic conditions or impact property values.

Jim Hadley, School Board representative for Deephaven Academy, was present to answer questions from the Commission members.

Councilmember Hackney provided a summary of the Planning Commission meeting. He stated that the Planning Commission supported the sign with the exception of requesting a better description and professional rendering of the proposed sign.

Jim Hadley stated that it was his original thought to design and construct the sign himself in order to keep the costs at a minimum. He stated that the Planning Commission requested that the sign be professionally constructed.

Motion by Councilmember Kask to approve the Special Use Request of Deephaven Academy to place a twenty-four square foot free standing sign along the east side of Minnetonka Boulevard on the St. Therese property, 18325 Minnetonka Boulevard, as presented in the attached material. Seconded by Councilmember Wheaton. Motion carried 5-0.

Mayor Skrede asked for a clarification on the proposed location of the sign and stated that the Council's approval was subject to payment of the Special Use Permit fee.

B. Ordinance Amendment - To consider the amendment of Section 1306 of the Deephaven Code, permitting the sale, lease, trade or other transfer of firearms or ammunition by a licensed firearms dealer as a special home occupation.

Administrator Young provided a brief summary of the Ordinance Amendment. He stated that the ordinance would amend Section 1306, Subd. 8 of the Home Occupation Ordinance to enable a federally licensed firearms dealer to conduct this activity as a Home Occupation upon the issuance of a Special Use Permit. He stated that the Commission recommended the adoption of the Ordinance Amendment at the June 21st Planning Commission meeting but was unaware of how much research had been conducted on why the sale of firearms and ammunition hadn't been included as a permitted or prohibited business under the commercial district.

Councilmember Hackney stated that Zoning Coordinator Karpas did review prior Council and Planning Commission minutes and presented a summary of neighboring cities that permit the sale of firearms. He noted that a number of the cities were silent on the sale of firearms and ammunition. He stated that it would be incorrect to interpret the Commission's support of the ordinance amendment as a strong endorsement for the sale of firearms and ammunition. He stated that many of the Commissioners expressed concern regarding this activity and the only reason the ordinance amendment passed was due to the "safety net" provided by the Special Use Permit requirement.

Mayor Skrede stated that if the Council felt comfortable that all the potential restrictions would be listed in the Special Use Permit, then perhaps the Council would feel comfortable with adopting the ordinance amendment. He stated that Jay Tucker was at the Planning Commission and expressed some real concerns that he summarized in his letter to the City Council. He stated that it is important for the Council to take the specific individual who is interested in obtaining a federal firearm's license out of the discussion because the ordinance amendment would apply to anyone seeking to sell firearms from their residence. He noted that, in many respects, it is similar to what the Council has had to deal with the liquor control ordinance when there were specific individuals requesting a liquor license.

Councilmember Hackney stated that it would be safe to say that this Council doesn't want to limit property rights. He stated that this isn't a Second Amendment argument, however. He stated that the Council is having a more practical discussion on whether a residence is an appropriate location for a firearm's dealer. He stated that there are a number of activities that are prohibited in Deephaven, including a number of home occupations that are prohibited under Section 1306.07 of the Home Occupation Ordinance. He stated that the main point of his argument is that the City Council prohibits a lot of things that are considered a nuisance. He stated that the sale of firearms is not just a nuisance but a safety issue as well. He stated that firearms raise concerns of fire, theft, and the fact that the names of all individuals with a federal firearm's license would be public knowledge. He stated that he would not want this potential attractive nuisance in Deephaven and felt that it would be appropriate for the Council to prohibit the sale of firearms in a residential area.

Councilmember Gustafson stated that he is not aware that any homeowner is limited in the number of rounds of ammunition that they can store at their home. He stated that any individual can have an unlimited quantity of ammunition stored at his or her house. He stated that while the location of an individual with a federal firearm's license would be advertized, this could be just as much of a problem for a diamond dealer. He stated that the Council shouldn't insert the emotion of guns into the equation and would have preferred Mr. Tucker's letter to have been sent if it didn't specifically involve the sale of guns.

Councilmember Wheaton stated that the purpose of the Home Occupation Ordinance is to maintain the character and integrity of the community without jeopardizing the health, safety and welfare of the community. He stated that, in his opinion, this is the key to whole discussion. He stated that there are some safety issues that are real and shouldn't be presumed. He stated that the Council could address the issues relating to the sale of firearms and ammunition in a residential area through careful deliberation as part of the Special Use Permit process. He added that the Council can narrowly define how this would work and could legally allow the sale of firearms in a residential district.

Councilmember Kask stated that he would not be in support of broadening the Home Occupation Ordinance to include federally licensed firearms dealers. He stated that the list of businesses that are permitted to operate within the commercial district, while not all inclusive, does not include the sale of firearms. He stated that he was here when the Home Occupation Ordinance was drafted and he is not interested in broadening the use. He stated that you would also have to broaden the uses under the commercial district. He stated that he would not allow something in a residential district that is not permitted in a commercial district.

Councilmember Gustafson asked if a business is not specifically included as a permitted use in a commercial district, would it mean that this business is not permitted to operate within the commercial district.

Mayor Skrede stated that wouldn't necessarily be the case, the individual would have to obtain a Special Use Permit.

Councilmember Hackney stated that Zoning Coordinator Karpas stated that if a business is not specifically listed as a permitted use, it would be prohibited.

Mayor Skrede stated that he agreed with Councilmember Kask's comment that he would prefer to see this type of business addressed in a commercial district. He stated that the Home Occupation Ordinance was adopted to address home occupations that were a nuisance due to complaints received from neighbors. He stated that the ordinance wasn't designed to include every type of business.

Councilmember Wheaton stated that he would prefer that to be the case as well. He stated that especially due to the continual changes in how business is conducted from out of a home.

Mayor Skrede stated that he would prefer to not include the sale of firearms and ammunition as a home occupation but would rather see it located within the commercial district. He stated it would be far easier to monitor the activities in a commercial location.

Councilmember Hackney noted that a transfer by a federal licensee must take place at the address of the license holder. He stated this must cause some traffic at the residence. He stated that the City requires certain businesses with foot traffic, such as dentists or doctors, to have a commercial space. He stated that he didn't think it would be unreasonable to expect that from a firearms dealer.

Mayor Skrede questioned how much enforcement would be needed by our Police Department to oversee such an operation in a residential area. He stated that he really doesn't trust federal oversight in providing suitable enforcement. He stated that this type of operation would be much more suitable in a commercial district.

Councilmember Gustafson stated that Councilmember Hackney made a good point in regards to the potential foot traffic and it would make sense to consider a commercial location for this type of business. He stated that the City is not restricting his business, only the location.

Councilmember Wheaton stated that he doesn't necessarily disagree with the arguments for not including the sale of firearms and ammunition as a home occupation but philosophically is not opposed to the sale of firearms.

Motion by Councilmember Kask to retain the existing Home Occupation Ordinance without the proposed amendment to permit a federally licensed firearms dealer to obtain a home occupation permit with a Special Use Permit. Seconded by Councilmember Hackney. Councilmember Wheaton opposed. Motion carried 4-1.

Mayor Skrede asked staff to write a letter to the applicant outlining the Council's decision.

6. UNFINISHED BUSINESS

A. Approve Application for On-Sale 3.2 Beer License for St. Therese

Ed Smith, Parish Administrator for St. Therese, was present to request a Temporary 3.2 Beer License for St. Therese. He stated that St. Therese is on the same page as the City, which is to run a fun family event. He stated that Oktoberfest is a major source of funding for the church and school, and wants it to be a community event. He stated that there was an incident last year, which occurred at the very end of the event that has lead to discussions with the Police Chief and Administrator about the need to hire private security. He stated that Chief Johnson has recommended hiring 10 private security staff, which may be too many or not enough but it certainly recognizes that the event has grown to the point where more than one police officer and CSO is needed.

Mayor Skrede asked if the security will be in uniform.

Ed Smith stated that they will be in uniform and clearly identified.

Chief Johnson stated that the Deephaven Police Department will also be adding two officers and one supervisor to the event.

Councilmember Wheaton asked if the Deephaven Police would provide the enforcement at the event.

Chief Johnson stated that his officers will be in communication with the security officers and would work together at the event.

Councilmember Wheaton stated that the communication is a key element and noted that providing a stronger security presence was his only concern after last year's incident.

Chief Johnson agreed that the additional security will act as a deterrent. He stated that he talked with his officers who worked the event last year and they agreed that 10 private security personnel was a good number. He stated that the number of security personnel will be reevaluated following the event.

Ed Smith stated that every year they try to improve the event and mentioned efforts to improve the serving of 3.2 beer.

Councilmember Gustafson noted that a significant portion of Deephaven's police force has been allocated to work this event. He stated that the City should obtain some sort of insurance coverage in the event that an officer is injured and the City has to pay for an additional officer's salary.

Councilmember Kask stated that he was unsure how you could arrange for that sort of indemnity. He added that the Church is trying to address the risk of potential injury by providing additional security personnel.

Chief Johnson stated that the Deephaven Police officers are not required to attend this event and we could simply require more security at the event. He stated that the Department is suggesting that our officers be present to ensure the safety of the Deephaven residents at this event.

Councilmember Wheaton stated that there would not be any more risk than we currently have due to our contract for police services with Woodland.

Mayor Skrede stated that this is an excellent issue to discuss and we might need to look into what type of insurance might be offered to reduce the City's risk.

Councilmember Hackney stated that the music from the band affects a lot of people and felt that 10:00 p.m. would be an appropriate time to stop the music.

Councilmember Wheaton stated that the music has typically ended at 11:00 p.m. in the past.

Councilmember Hackney asked about specifying a time to cut off beer sales.

Ed Smith stated that this event is a major fundraiser for the Church and in the past the Church has also sold wine with the event, which they are not doing this year. He stated that the addition of security and the lack of wine sales will cut into their revenues and noted that they receive relatively few complaints while hosting several thousand people at the event.

Councilmember Hackney noted that the wine sales were not something that had been approved by the Council.

Mayor Skrede stated that the beer sales and music is something that kind of goes with an event of this nature, although we should be aware of all that is going on.

Further discussion was held regarding timelines and notification provided to nearby residents.

Motion by Councilmember Wheaton to approve a Temporary 3.2 Beer License to St. Therese for October 8, 2011 for the hours of 3:00 p.m. to 11:30 p.m. Seconded by Councilmember Kask. Motion carried 5-0.

Mayor Skrede noted that the Council may want to monitor several upcoming public events, including the upcoming regatta, Cottagewood Store Oktoberfest, and St. Therese's Oktoberfest.

B. Adopt Resolution No. 18-11, Approving 2011 Mill & Overlay Bids

City Administrator Young presented the following bids for the 2011 Street Improvement Project for Council review:

<u>Bidder</u>	<u>Base Bid</u>	<u>Alternate Bid</u>	<u>Total Bid Amount</u>
Midwest Asphalt	\$117,427.50	\$ 46,332.00	\$163,759.50
GMH Asphalt	\$122,805.00	\$ 49,660.50	\$172,465.50
Northwest Asphalt	\$133,604.50	\$ 56,160.00	\$189,764.50
Bituminous Roadways	\$140,852.50	\$ 57,900.00	\$198,752.50

Administrator Young stated that the Base Bid includes the mill & overlay of Ridgewood Road (City Limits to Vine Hill Road) and Monaltrie Avenue (Park Avenue to Lake Avenue) and the Alternate Bid includes Lake Avenue from Talton Place to Hamilton Avenue. He stated that the bid proposal included an alternate bid due to concerns that the total cost of the project would exceed \$250,000. However, the actual bid came in under the budgeted amount of \$180,000 for this project. For that reason, staff recommends accepting the total bid of \$164,227.50 submitted by Midwest Asphalt.

Councilmember Kask stated that he appreciated receiving the bid abstract in the Council packet so that he could review specific quantities.

Motion by Councilmember Kask to adopt Resolution No. 18-11, a Resolution Accepting the Bid & Awarding a Contract to Midwest Asphalt in the amount of \$164,227.50 for the 2011 Mill & Overlay Project. Seconded by Councilmember Wheaton. Motion carried 5-0.

C. Review Carson's Bay Dock Design

Administrator Young stated that the Deephaven Boat Committee has completed its final review of the design options for the renovation of the Carson's Bay Docks and has recommended the attached design for Council review. As part of the final review process, the Boat Committee reviewed two additional plans. The first was a design similar to the docks constructed by the City of Excelsior. The second was a design similar to the design of our existing docks at Carson's Bay. Both were rejected due to the potential loss of dock slip spaces. He stated that the current Carson's Bay docks have 38 dock slips.

Administrator Young stated that with the exception of numbering each dock slip and adding dolphin poles, the attached design is ready for Council approval. Following Council approval, an application would be submitted to the LMCD for Board review of the Carson's Bay docks at their August or September meeting. Following LMCD approval, plans & specifications on the dock design would be developed and bids requested in October or November for the removal of our existing dock and the reconstruction of the Carson's Bay dock in February 2012.

Councilmember Kask requested adding an additional finger to the outside of the northwestern slips.

Further discussion was held on project timelines and the potential removal of the existing docks.

Motion by Councilmember Hackney to approve the attached Carson's Bay dock plans and authorize staff to submit an application to the LMCD for the reconstruction of the Carson's Bay docks.

Seconded by Councilmember Wheaton. Motion carried 5-0.

Councilmember Wheaton thanked the Boat Committee for all their work on the design of the new docks.

D. Authorize Final Payment to Upper Midwest Athletic Construction

Administrator Young stated that the Council awarded the bid on May 16, 2011, to Upper Midwest Athletic Construction in the amount of \$21,870.00 to repair and install Armor Crack Seal on the set of two courts at Thorpe Park.

Councilmember Wheaton stated that Upper Midwest did a good job on the courts but there were a couple of depressed areas on the court that needed to be repaired.

Administrator Young stated that he has discussed this issue with the contractor and they have agreed to return and repair these two areas of the court at no cost to the City.

Administrator Young stated that the full payment owing to Upper Midwest Athletic Construction is \$21,870.00 and he recommended withholding 5% or \$1,093.50 from their payment until these two areas have been repaired.

Councilmember Wheaton authorized Final Payment to Upper Midwest Athletic Construction in the amount of \$21,870.00 for the repair and installation of Armor Crack Seal on the Thorpe Park Tennis Courts, with \$20,776.50 payable immediately and the balance of \$1,093.50 payable upon the repair of the two areas of the court. Seconded by Councilmember Hackney. Motion carried 5-0.

7. NEW BUSINESS

A. Other

Councilmember Hackney asked, in light of this evening's approval of a sign for Deephaven Academy, if the Council would be interested in establishing criteria on the number of signs that are permitted on a property.

Councilmember Wheaton stated that the Council could simply control the number of signs by denying a request for a Special Use Permit for a sign.

Councilmember Kask noted the discussion at the last Planning Commission meeting regarding obtaining aerial surveys of the commercial district and stated that it would be helpful to know what type of costs have been incurred in establishing the Liquor Control Ordinance in order to establish permit fees at the appropriate level.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided a summary of 4th of July activities, upcoming Emergency Management training for the City Council, and on Safe and Sober activities.

B. Excelsior Fire District

Councilmember Gustafson stated that there was nothing new to report on the Excelsior Fire District since his last report in June.

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:

- Xcel Energy Transmission Line Project Tree Replanting Efforts
- 2010 Population & Household Estimates
- Tax Exempt Issue
- Deephaven Elementary School Traffic Issue

Discussion was held on the preliminary plan design to reduce the traffic congestion on Vine Hill Road due to the pick up and drop off of students at Deephaven Elementary School.

9. ADJOURNMENT

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

Respectfully submitted,
Dana H. Young, City Administrator