

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JUNE 6, 2011
MINUTES**

1. **CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 7:12 p.m.

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

ABSENT: Council member John Wheaton

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 May 16, 2011
- B. Approve Verifieds
- C. Approve 2011 Planning Commission Chair & Vice-Chair
- D. Authorize Final Pay Request to Minnetonka Portable Dredging for Carson's Bay Launch Ramp Improvements (\$18,250.00)

Seconded by Councilmember Gustafson. Motion carried 4-0.

Councilmember Kask commended Minnetonka Portable Dredging for their work on the Carson's Bay launch ramp.

Mayor Skrede noted that the ramp should be striped to enable two boats to launch at the same time.

4. **MATTERS FROM THE FLOOR**

Minnetonka Community Education Director Tim Litfin was present to provide a summary of the 2010 Tour de Tonka and planned activities for the 2011 Tour de Tonka. He stated that 2,425 riders participated in the event last year and the event will be capped at 3,000 riders in the future.

Mayor Skrede noted that the event has grown considerably since the first Tour de Tonka was held six or so years ago.

Tim Litfin stated that the first Tour de Tonka attracted 880 riders, which was seen as a tremendous success for the first year.

Steve Woodbury recommended that the City Council consider installing American flags on utility poles throughout Cottagewood for the summer months. He acknowledged that it would not be proper flag etiquette to leave an American flag up overnight without the flag being properly lit, so that perhaps arrangements would have to be made to install some sort of lighting on the utility poles as well. He stated that the residents of Cottagewood would be willing to pay for the costs of installing the flags.

Councilmember Kask stated that he would not support the installation of American flags on utility poles unless they were properly lit and would not support the City paying for the costs of installing the American flags only in Cottagewood. He suggested that banner companies often offer red, white and blue banners that, unlike the American flag, could be installed without having to adhere to any lighting requirement.

Mayor Skrede also noted that the City doesn't own the utility poles and Xcel Energy would have to be contacted regarding this request. He stated that the Council could continue to look into the possibility of this request.

5. PLANNING & ZONING REQUESTS

A. **Special Use** – Special Use Request of Minnetonka Community Education to attach twenty-four square feet of signage onto the south facing wall of their structure along Vine Hill Road. Section 1115.09(a) permits signage up to fifteen percent of the wall area of a structure with the issuance of a special use permit. Based on the wall area of the applicant's structure, they would be permitted a maximum sign area of one hundred and five feet. The applicant proposes a total of twenty-four square feet of signage and will place it under existing lighting; therefore no additional lighting will be required.

Zoning Coordinator Karpas presented his staff report stating the request was to attach twenty-four square feet of signage on the south side of the building under an existing light. The proposed lettering would vary in height from ten inches to four inches. The lettering would be dark brown to match the tone of the building.

Mayor Skrede noted the lettering would follow the same color scheme as the building and that lighting already exists.

Councilmember Hackney said he liked the idea of using the existing lighting and complimented the applicant on the use of Photoshop, which helped him visualize how the sign would look.

Tim Litfin, Director of Minnetonka Community Education, said the signage would go a long way towards identifying the building.

Councilmember Hackney said the Planning Commission unanimously recommended of the request.

Mayor Skrede feels the sign has been tastefully done and fits into the city.

Motion by Councilmember Hackney to approve the Special Use Request of Minnetonka Community Education to attach twenty-four square feet of signage onto the south facing wall of their structure at 4584 Vinehill Road, as presented. Seconded by Councilmember Gustafson. Motion carried 4-0.

6. UNFINISHED BUSINESS

A. Authorize Plans & Specifications for 2011 Mill & Overlay Project

Administrator Young stated that on December 6, 2010, the City Council authorized Plans & Specifications for the mill & overlay of Lake Avenue and Monaltrie Avenue. He stated that following a review of the overall condition of City streets this spring and the cost estimates provided by the City Engineer, the Public Works Committee has recommended changing the scope of the 2011 Mill & Overlay Project to include the following streets that are in most immediate need of a mill & overlay:

| <u>Project Area</u> | <u>Est. Cost</u> |
|--|------------------|
| Ridgewood Road (City Limits to Vine Hill Road) | \$124,775 |
| Monaltrie Avenue (Park Avenue to Lake Avenue) | \$ 64,556 |
| Lake Avenue (Talton Place to Hamilton Avenue) | \$ 86,760 |
| Total | \$276,091 |

He stated that while the estimated cost for the 2011 Mill & Overlay Project greatly exceeds the 2011 budget of \$180,000, it is important to note that the cost estimates provided by the City engineer also includes a 30% engineering and contingency factor, which the City Engineer concedes is likely too high. He stated that a more realistic cost estimate for this project is approximately \$244,234. He stated that with the estimated cost still exceeding the budget, the Public Works Committee has recommended that the City Council authorize the mill & overlay of Ridgewood Road (City Limits to Vine Hill Road) and Monaltrie Avenue (Park Avenue to Lake Avenue) with Lake Avenue (Talton Place to Hamilton Avenue) bid as an alternate. He stated that the Council could then decide whether to proceed with that portion of Lake Avenue depending on the bids that are received for the project.

Mayor Skrede stated that the Public Works Committee has recommended a broader scope of work because it is hard to get caught up with street improvements once you fall behind. He stated that they will also try to be more accurate on budget estimates for street projects in the future.

Councilmember Kask agreed that Ridgewood Road should be the first priority for a mill & overlay due to its condition. He added that if the Public Works Committee has also selected those portions of Monaltrie Avenue and Lake Avenue for a mill & overlay, he would have to defer to the Committee.

Mayor Skrede stated that he would also like to re-stripe Ridgewood Road once the mill & overlay has been completed.

Councilmember Hackney asked about the expected life of streets following an overlay.

Mayor Skrede stated that an overlay can last approximately 15 years.

Motion by Councilmember Kask to authorize Bolton & Menk to develop plans & specifications for the project and the advertisement for bids for the 2011 Street Mill & Overlay Project to include Ridgewood Road, Monaltrie Avenue (Park Avenue to Lake Avenue) and with Lake Avenue (Talton Place to Hamilton Avenue) bid as an alternate. Seconded by Councilmember Hackney. Motion carried 4-0.

B. Present Liquor Control Ordinance

Zoning Coordinator Karpas presented a final draft of the ordinance created by the Planning Commission noting that the comments and changes suggested by the City Attorney were incorporated. He said since this ordinance is not in the zoning or subdivision ordinance, so it did not require a public hearing.

Mayor Skrede asked if there was any broad language that needed to be addressed. Councilmember Hackney said the Planning Commission felt the ordinance was a good one to adopt since it so closely parallels State Statute.

Zoning Coordinator noted the number of permitted licenses and asked if the Council was satisfied with five on-sale and three off-sale licenses. Councilmember Kask felt that five on-sale licenses may be a bit excessive and suggested a better number would be three. He discussed the diversity of establishments that sell liquor in the City of Excelsior, including Dunn Brothers coffee shop.

Mayor Skrede said the Planning Commission discussed boutique type of businesses and wrestled with potential locations for these types of businesses. Councilmember Hackney noted that the definition of restaurant allowed for a minimum of ten seats with the thought that smaller types of businesses being more likely to locate in Deephaven. He said there were a number of license types permitted by State Statute that were excluded from the ordinance.

Councilmember Hackney discussed how the referendum came about with potential business owners submitting a petition to put the question on the ballot. He believes the impression given to those signing the petition was that a particular genre of restaurant would be permitted. He believes the vision of a small Italian restaurant serving pasta with a bottle of wine was what people were voting for. Councilmember Kask agreed and said the ordinance should be tailored to fit that vision.

Councilmember Gustafson asked if there would be the potential for sidewalk seating. City Administrator Young stated that sidewalk seating would not be allowed without prior approval of the Council if the sidewalk was located within the City right-of-way.

Councilmember Hackney asked about the procedure for adopting the ordinance and if the Council would go through it page by page. Mayor Skrede didn't believe there was a need for redrafting of the ordinance. He said he appreciated the work done by the Planning Commission and didn't want to minimize that effort by starting on page one to review the entire ordinance.

Councilmember Kask asked if the Council was ok with five on-sale licenses and three off-sale licenses.

Councilmember Hackney questioned the need for on-sale intoxicating licenses stating the on-sale wine license would be sufficient to cover what he believes people have in mind when they voted for the referendum. City Administrator Young stated that an on-sale wine license would not permit the sale of wine over 14% alcohol.

Mayor Skrede said the number of on-sale can be reduced to three and increased later if necessary. He said it would be easier to increase the number than to reduce it later.

Councilmember Kask said the sale of spirits versus wine and beer was not the initial conversation the Council had. He said the ordinance has morphed to allow bars rather than a restaurant. He would like to restrict the sale of alcohol to just wine and beer. Councilmember Gustafson noted the requirement that 60% of the sales must be food, which would prevent bars.

Councilmember Hackney said he's not convinced that the city needs full intoxicating liquor licenses and that he understands that would restrict the sale of wine over 14% alcohol. Mayor Skrede said an on-sale license is a catch all to permit a diversity of businesses. Hackney asked if it would be a business owner's responsibility to monitor the alcohol percentage. Skrede said he would hope business owners would follow the rules and obtain the proper license for their business.

Councilmember Kask questioned if the Council was missing the direction it was supposed to take from the referendum. He supports on-sale wine and beer because he believes that was what was suggested by the initial petition. Mayor Skrede noted that by limiting the alcohol level of wine could create an enforcement issue. He said the Planning Commission tried to provide flexibility to grow into the ordinance since no one knows what types of businesses could be coming to town.

Councilmember Gustafson asked if anyone else sees a value in having off-sale liquor sales in the city. He noted the referendum passed by a good majority and he doesn't like the idea of trying to figure out what the voters intended since the sale of wine with pasta was not what the referendum said on the ballot.

Councilmember Hackney said that no one from the community attended any of the Planning Commission meetings while this was being discussed. He said people voting for the referendum put trust in their City Council that they would adopt regulations that limit the use to those suitable to the city. Mayor Skrede said anyone really interested in the issue should have known what was all entailed when they voted for the referendum.

Councilmember Kask asked about restricting off-sale licenses. Mayor Skrede said the Planning Commission discussed the issue and felt there would not be any benefit to arbitrarily not permitting them. Kask discussed the commercial properties located on Highway 7 and his concerns that the city could create traffic patterns that aren't desirable. He wouldn't want to waste taxpayer money to create safer access due to an ordinance the Council adopted.

Councilmember Hackney asked if the size of an off-sale establishment could be limited. Zoning Coordinator Karpas said that could be included in the amendment of the Zoning Ordinance. He said there are a number of changes to the Zoning Ordinance coming before the Planning Commission at their June meeting.

Councilmember Kask suggested that the ordinance be continued until the Council has the opportunity to review it along with the proposed zoning changes so it can take a more comprehensive approach. The Council agreed.

On a separate matter, Mayor Skrede said a group of developers met with the city to discuss senior housing in the City of Deephaven. He said the proposal would require an amendment of the Comprehensive Plan, rezoning of the property, ordinance amendments and variances. He said the site plan was proposed to be brought to the Planning Commission for conceptual and informational purpose. He said he was opposed to any attempt by the developers to try and poll the Commission to gauge their support for the project. He believes the developers wouldn't have minded if the Council

was also in attendance, but didn't feel that was necessary since the Planning Commission liaison could bring back any concerns the Commission has.

Councilmember Kask would not be supportive of incurring staff costs reviewing a concept plan that doesn't fit into the existing code without a formal application. He's uncomfortable and hates the idea of putting the Planning Commission in a position to have to give insight on a concept, basically providing direction to the developer on what may or may not be acceptable.

Mayor Skrede said it was his thought that the Planning Commission could develop a complete inventory of the obstacles needed to be overcome and provide it to the developer to help them determine whether they would like to proceed with the process.

Councilmember Hackney said he's not clear on what the objective is for the Commission. Mayor Skrede said the presentation is purely informational and is intended to air the request.

Councilmember Kask said the ordinance book is available for all developers so they can understand what the regulations are. City Administrator Young said the city doesn't typically deal with something of this scope and thought if the developers went through the application process initially it may be overwhelming to the Planning Commission since there would be a lot to digest in one meeting. He said the project has a lot of components and felt it would be beneficial to the Planning Commission to understand the project before they review an application. Councilmember Hackney said he wants it made clear that the Mayor did not want the Commissioners polled.

Mayor Skrede said a project of this size is going to impact other services and the developers need to provide information to address those concerns.

Councilmember Kask said he supports the notion that there would be only a short presentation which the Commission would take under advisement and then they would discuss it amongst themselves. Mayor Skrede said the discussion should focus on the issues the developers need to address in order to submit an application.

Mayor Skrede noted that the city has a history of staying close to the ordinance requirements. Councilmember Gustafson said the developers come to the Commission meeting, make a presentation and then what. Skrede said it would then be up to the developers as to whether they want to proceed. Gustafson said he doesn't think the Commission can provide good feedback on how to proceed and the developers should dig through the ordinance themselves since it's not the city's job to do their work. He doesn't see a value in having them meet with the Commission. Skrede agreed.

Councilmember Hackney said the Commission may not know the right questions since they have never had to deal with a project like this before.

Councilmember Kask would like presentation to be brief, noting that every resident has the right to make a presentation once they have submitted an application.

Councilmember Hackney will bring back a report from the Commission meeting.

C. Review 2012 Budget Schedule

Administrator Young presented the following 2012 Budget Schedule for Council review:

D. Approve 2012 LMCD Budget

LMCD Liaison David Gross provided a brief overview of the proposed 2012 LMCD Budget. He stated that the 2012 LMCD budget proposed a 2.6% decrease, which was owing to a \$20,000 transfer from the Administration Reserve Fund to reduce the levy to member cities and a second transfer of \$25,000 to the Eurasian Watermilfoil Equipment Fund to be used towards the depreciation of the mechanical harvesting equipment. He stated that the 2012 Budget includes a 1½% salary increase for staff but otherwise was very similar to last year's budget. He recommended that the City Council adopt the 2012 LMCD Budget as presented.

Councilmember Kask stated that he appreciated the LMCD's continuing efforts to hold back on any increases to its levy.

Motion by Councilmember Kask to approve the 2012 LMCD Budget as presented. Seconded by Councilmember Hackney. Motion carried 4-0.

E. Discuss Prohibiting Dogs at Deephaven Beach

Administrator Young stated that Ken & Pat Paul (19100 Highland Avenue) voiced their concerns at the May 16th Council meeting about dogs running at large at Deephaven Beach and recommended prohibiting dogs from the beach area entirely. He stated that dogs are currently permitted to walk only on the pathway next to the beach as a walking path connection between Lake Avenue and Park Avenue.

He stated that the Council requested that this item be included on the agenda at the June 6th meeting to continue discussions on whether to:

- Continue to allow dogs to have access to the pathway under the control of their owner.
- Prohibit dogs from the entire beach area, including the pathway.
- Prohibit dogs from the entire beach area from May – October, during that period of time when the beach is open.
- Or implement some other type of solution.

Councilmember Gustafson stated that he would prefer to continue to allow dogs to have access to the pathway under the control of their owner. He stated that efforts should be made to keep dogs off of the beach with stronger enforcement from the police.

Councilmember Hackney stated that he would agree with Councilmember Gustafson. He stated that no matter how large the sign might be, people who are inclined to ignore the rules will continue to do so. He stated that most of the people walking their dogs on the path at the beach are following the rules.

Councilmember Kask stated that he doesn't feel a lot differently about this issue than the other members of the Council. He stated that the concrete path at the beach was extended for walkers and

for the Public Works Department to access the beach with their vehicles for maintenance. He stated that Deephaven is no different from other cities that are attempting to address this problem. He added that he felt it would be too draconian to prohibit dogs on the pathway.

Pat Paul (19100 Highland Avenue) stated that she swims at Deephaven Beach every day and within the last couple of days noticed a woman at the beach with her dog who allowed her dog to poop on the grass area near the beach. She stated that she also noticed two incidents at the beach today with people allowing their dogs to go to the bathroom on the grass area at the beach. She stated that she didn't think that people have to walk their dogs at the beach.

Further discussion was held on the City of Minnetonka's recent efforts to require owners to clean up after their pet.

Mayor Skrede stated that he would agree with Pat Paul on this issue and would also agree with Councilmember Hackney that the size of the sign doesn't necessary lead to compliance. He suggested that more signs might need to be posted specifically next to the grass area and beach area as a reminder to pet owners.

Pat Paul suggested that a greater police presence would be beneficial as well.

F. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Other

Councilmember Kask stated that Xcel Energy made a presentation before the Lake Minnetonka Communications Commission on moving towards standardized utility poles, which would be either a galvanized silver steel pole or a rust colored pole. He asked the Council to consider these potential color options for future discussion.

Mayor Skrede provided an update on a meeting that was held on May 24th to discuss the recent survey sponsored by the LMCC on internet, phone service, and cable TV service. He stated that the LMCC was generally pleased with the survey results and will be looking to contract for the development of a business and financing plan. He added that the LMCC has no current plans to request funding from the member cities for the development of the business and financing plan.

8. DEPARTMENT REPORTS

A. Police Department

There was no Police Department report this evening.

B. Excelsior Fire District

Excelsior Fire District Liaison Darel Gustafson provided a brief summary of the June 1st EFD Board meeting, including:

- Excelsior City Councilmember Greg Miller has been appointed to replace Wendy Berghorst, who has resigned from the Excelsior City Council. In addition, Greg Miller has been appointed as Vice Chair to continue the position with the City of Excelsior.
- EMS training has been provided to the firefighters.
- ISO recertification has been scheduled for this August.
- The Fire Relief Association reported that the estimated mandatory contribution for 2012 has dropped to \$3,000 as of May 31, 2011.
- 2012 EFD Budget discussions were held with an additional \$8,500 in cuts made to the Operating Fund Budget.
- Discussion was held on the impact of medical response throughout the Fire District.

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:

- Filing of the State Audit Report
- Distribution of the 2012 City Budget
- June 2nd LMCD Budget Meeting
- July Newsletter
- 2010 Population & Household estimates
- Benilde-St. Margaret tax exempt bond issue update
- Update on the CenterPoint Energy Project on Northern Road, Jefferson Street, Cottagewood Avenue & Lakeview Avenue to complete the installation of a new gas main.
- Mayor Skrede, Mayor Doak and Administrator Young met on May 24th to begin preliminary discussions on the 2012 Woodland Contract. Initial discussions went very well.
- Mayor Skrede and Administrator Young met with Minnetonka School Superintendent Dennis Pederson on May 24th to discuss the traffic problems at the Elementary School and have established a preliminary framework for future review of possible solutions to the traffic congestion between the staff of both organizations.
- Initial contract discussions with the Public Works union began on June 2nd.

Administrator Young stated that a school district representative has asked for permission to conduct the annual School Board election on November 8, 2011 at Deephaven City Hall due to continual conflicts with activities at the Elementary School gym. The Council stated their approval for the use of City Hall for the November 8th School Board election.

Councilmember Kask and Mayor Skrede requested that staff review Beacon Bank's collateralization policy to ensure the safety of the City's investments and deposits at the bank.

9. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Hackney. Motion carried 4-0. The meeting adjourned at 10:00 p.m.

Respectfully submitted,
Dana H. Young, City Administrator