

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, NOVEMBER 7, 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 John Wheaton, Josh Hackney, Keith Kask and Darel Gustafson

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**

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

- A. Approve Minutes of October 17, 2011
- B. Approve Verifieds
- C. Approve Final Pay Request to Schneider Excavating in the amount of \$9,079.00 for the 2011 Mt. Curve Project

Seconded by Councilmember Gustafson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PLANNING & ZONING REQUESTS**

A. **VARIANCE – Request from Karl Forsman, 3840 Deephaven Avenue**, to construct a detached garage which would encroach into the required front and rear yard setbacks. The proposed garage would encroach nine feet, six inches into the required thirty-five foot front yard setback and encroach seven feet into the required fifteen foot rear yard setback.

Zoning Coordinator Karpas presented his staff report noting the existing garage on the property was a single stall and undersized. He said he recommended approval of the request because the proposed use is in harmony with the purpose and intent of the ordinance, the proposed use the property is reasonable since the property currently has a small one-stall garage and any construction on the property would not be permitted by the zoning ordinance, that the plight of the landowner is due to circumstances unique to the property and not created by the homeowner due to the lot area and dimensions creating a practical difficulty in placing the proposed garage within the ordinance requirements and the existing garage is not suitable to serve the needs of the property, the request is reasonable given the need for a usable garage on the property and that the requested variance would not alter the essential character of

the locality since the size of lots in the area have been developed with encroachments within the required setbacks.

Karpas said he received one phone call from a neighbor who was not opposed to the request, but questioned what the garage would be used for and one response in writing opposed to the request which has been provided to the Council.

Justin Harvey was available to answer any Council questions.

Councilmember Gustafson expressed concern about the low visibility around the corner on Deephaven Avenue and asked if the Police had the opportunity to look at the proposal from a safety aspect. Police Chief Johnson agreed the visibility was poor and it would be tough to back out into the street from the property. Zoning Coordinator Karpas said the city has what is called visibility triangle when dealing with corner lots, meaning there can be nothing constructed or planted over three and a half feet in height within twenty-five feet of the point of the lot. He said the proposed structure complies with that requirement.

Mayor Skrede said it was his understanding that the driveway would be a hammerhead, which would allow a vehicle to turn around and exit the property facing the street. Mr. Harvey said that was correct. Zoning Coordinator Karpas noted the submitted structure elevations show the garage doors on the north side of the property which allows for vehicle to pull out and turn towards the street.

Mayor Skrede commented on the proposed structure noting he has heard a lot of concern from the neighbors regarding the non-traditional pitch proposed for the structure. Mr. Harvey said the applicant's intent is the match the pitch over the existing attached garage. Skrede said that was exactly the concern he was hearing and noted the height of the west wall makes the structure stand out. He feels the applicant should design a standard pitched roof which would soften the impact and would be more acceptable to the neighbors.

Councilmember Wheaton asked if doing so would make it comparable in height to the structure on the adjacent lot. Mayor Skrede said he was not sure but it would duplicate the spirit of that structure.

Councilmember Kask said the Council cannot draw that to get a visual. Mayor Skrede said a motion could be made restricting the height of the walls to twelve feet and limiting the degree of pitch. Kask asked why the garage loaded from the north side, rather than the south side. Skrede said there is no driveway present on the south side of the property. Skrede said he was sympathetic to the need for storage.

Councilmember Kask commented that twelve foot walls are large for a typical garage. Mayor Skrede said that it would enable the applicant to build internal knee walls to create a storage area. Skrede asked the applicant's representative if he thought the applicant would be agreeable to amendment of the plan as discussed. Mr. Harvey said he believed he would.

Councilmember Hackney commented the proposed garage is a fair distance from the house and believed if the structure was moved towards the house, the west side yard setback could be increased. He would like to see a minimum setback of ten feet along the west property line. Mayor Skrede noted that may impact the applicant's turning radius.

Motion by Councilmember Kask to conditionally approve the variance requests to encroach nine feet, six inches into the required thirty-five foot front yard setback and encroach seven feet into the required fifteen foot rear yard setback for the proposed detached garage as presented for 3840 Deephaven Avenue, based on the findings of Staff and the recommendation of the Planning Commission. The motion is conditioned that the garage load from the north side, that the applicant maintain a ten foot west side yard setback, that the maximum height for the garage walls not exceed twelve feet, that the roof pitch does not exceed a 6/12 pitch, that the gable of the garage run north to south and that staff review and approve the driveway layout to verify the ability to maneuver on the property and provide the necessary allowance for off street parking. Seconded by Councilmember Wheaton. Motion carried 5-0.

**B. VARIANCE – Request from Doug McNaught, 19820 Lakeview Avenue**, to construct a new roof over an existing non-conforming single family home and to expand the existing non-conforming garage which would encroach into the required front, north side, south side and Lake Yard setbacks and exceed the maximum permitted impervious surface area. The proposed alterations would encroach eleven feet, ten inches into the required thirty-five front yard setback, encroach five feet, eleven inches into the required fifteen foot north side yard setback, encroach three feet, five inches into the required fifteen foot south side yard setback, encroach thirty-five feet, eleven inches into the required one hundred foot lake yard setback and exceed the maximum permitted impervious surface area by 9%.

Zoning Coordinator Karpas presented his staff report. He noted the majority of the project would take place over the existing non-conforming footprint and the only additional encroachments would be into the required front and side yard setbacks for the proposed garage expansion. He said he recommended approval for the request because the proposed use is in harmony with the purpose and intent of the ordinance, the applicant proposes to use the property in a reasonable manner since the placement of existing home was constructed in a non-conforming manner and any alteration would not be permitted by the zoning ordinance, that the plight of the landowner is due to circumstances unique to the property and not created by the homeowner since the lot area creates a practical difficulty in placing/altering a home within the ordinance requirements and the existing structure exists as a non-conforming structure and even though the proposed alterations would increase two of the existing encroachments and increase the overall impervious surface area, the request is reasonable given the need for a usable garage on the property and that the requested variance would not alter the essential character of the locality. The existing home is a flat roofed structure, by altering the roof to a pitched roof, the structure will fit more closely with the character of the neighborhood. The increase in garage area will have minimal visual impact.

Zoning Coordinator Karpas said he had not received any correspondence regarding the request.

Doug McNaught introduced himself and his contractor Jon Monson and indicated they were available for any questions.

Councilmember Gustafson said he had some questions about variances in general and not specific to the request in front of the Council. He said he was surprised a request requiring five variances was sent forward to the Council. He said if the city consistently approved such requests, what the purpose of the rules where.

Mayor Skrede stated that in the case of the request before the Council, a number of the requested variances already exist. Referring to the submitted site plan, he noted the only changes in terms of setbacks are for the garage and the other variance requests are to increase the height of the already non-

conforming structure. He said it is difficult regulating non-conforming structures since the State provides protection to owners of non-conforming properties. He says that creates a dilemma for cities that would prefer to bring non-conformities into compliance with the ordinances.

Councilmember Hackney noted the ordinance was drafted with a minimum lot size of twenty thousand square feet in mind and did not take into account that the city has a large number of lots that contain less area. Councilmember Wheaton added that a number of the existing non-conforming properties were developed prior to the adoption of the ordinances. He noted the only variances seeking to increase the amount of non-conformance were to increase the size of the garage by three feet into the side yard and two feet into the front yard.

Councilmember Gustafson said with properties not meeting five of the six basic zoning requirements, the city may want to look at changing the ordinance. Mayor Skrede agreed and said approving that number of variances may seem lax, but the reality is most of them previously existed.

Councilmember Wheaton discussed the development of the city stating that most properties were developed as summer cottages that have morphed into year around dwellings. He said the modern ordinance deals with properties in the city with a one size fits all approach.

Councilmember Hackney asked the applicant about the existing wood shed on the property and what the plan was for that structure. Mr. Monson said it would be removed as part of the project.

Motion by Councilmember Kask to conditionally approve the variance requests to encroach eleven feet, ten inches into the required thirty-five front yard setback, encroach five feet, eleven inches into the required fifteen foot north side yard setback, encroach three feet, five inches into the required fifteen foot south side yard setback, encroach thirty-five feet, eleven inches into the required one hundred foot lake yard setback and exceed the maximum permitted impervious surface area by 9% for the proposed roof alteration and garage expansion as presented for 19820 Lakeview Avenue, based on the findings of Staff and recommendation of the Planning Commission. The motion is conditioned that the wood shed be removed as indicated by the applicant. Seconded by Councilmember Wheaton. Motion carried 5-0.

## **6. UNFINISHED BUSINESS**

### **A. Discuss MCWD Management of Aquatic Invasive Species (Eric Evenson)**

Eric Evenson, Administrator of the Minnetonka Creek Watershed District, was present to meet with the Council to discuss MCWD's potential role as the lead management agency in dealing with Aquatic Invasive Species in the region's lakes and streams.

He stated that the idea of broadening MCWD's role in the management of AIS came out of a community meeting that was held earlier this year with the Mayors of Deephaven, Woodland and Orono. He stated that he would like to talk about what the MCWD plans on doing in regard to AIS and, just as importantly, what the MCWD is not planning to do.

He stated that AIS has significantly increased costs to the users of the lake. He stated that Zebra Mussels are already in Lake Minnetonka and Minnehaha Creek, with Lake Nokomis likely to be next. He stated that AIS management is the charge of the Department of Natural Resources (DNR) and everyone would like them to take the lead on this issue. Unfortunately, the DNR doesn't have the staff

or the resources to deal with AIS on a statewide basis. He stated that the MCWD has been dealing with AIS for years and have begun discussions as to whether the MCWD could deal with it on a watershed level. He stated that the MCWD has worked on various AIS issues in the past, including efforts to eradicate Carp and Flowering Rush. He stated that the MCWD has led a successful effort to eradicate Flowering Rush by hiring divers to actually weed the plant out of the lake. He stated that further AIS efforts have included shared inspection point efforts at Lotus Lake and Christmas Lake. He added that the MCWD has also started the hiring process on an AIS specialist.

Eric Evenson stated that there are also a number of things that the MCWD is not doing. He stated that the District does not currently have an AIS management plan in place, and have started these discussions with communities because the development of a management plan is a very expensive proposition. He stated that the MCWD is not interested in privatizing the lakes. He stated that Zebra Mussels in Lake Minnetonka could cost boaters, lakeshore owners, and marinas as much \$2.5 million per year. He stated that the focus of the MCWD would not be on eradicating Zebra Mussels and is unsure if anything could be done for Lake Minnetonka in regard to Zebra Mussels. He stated that efforts would be directed toward preventing the spread of Zebra Mussels to other lakes. He stated that there are also other aquatic invasive species, such as Spine Water Flea and Hydrilla, which also pose a threat and should be prevented from spreading to Lake Minnetonka.

He stated that the MCWD is also not interested in replacing the LMCD or in advancing the agenda of any specific organization in this effort. He stated that the MCWD is simply trying to get input from communities on what they would like to see done.

Councilmember Wheaton asked if the LMCD has a position on the MCWD's efforts to manage AIS.

Councilmember & LMCD Board member Kask stated that there are a number of people on the LMCD who feel that the MCWD would be a good resource and would be interested in having the LMCD Board draft their own Resolution of Support. He stated that the LMCD would also like to be a participating member in this effort.

Eric Evenson stated that the MCWD would want the LMCD as a member of the task force and that the LMCD would be viewed as a valuable resource.

Councilmember Wheaton stated that he would also like to know if there was a spirit of cooperation with the LMCD. He stated that he would feel uncomfortable supporting the MCWD in this effort if the LMCD were also not supportive.

Councilmember Kask stated that there is some concern regarding reducing access but also noted that any attempt to restrict lake access would not be favorably received by the public. He stated that there also is the knowledge that there are many more AIS that are heading this way and there is a genuine fear about what is coming next.

Mayor Skrede asked if the Resolution of Support is adopted by a number of cities, what effect would this have on the MCWD.

Eric Evenson stated that the Board is not unanimous on this issue since it is a major new direction. He stated that it would also start the MCWD down the road in a very expensive new direction. He stated that the MCWD has been beaten up on some issues and want to be sure that they are heading in a direction that is supported by a number of cities.

Mayor Skrede asked whether the DNR would support the MCWD's efforts to manage AIS within their watershed.

Eric Evenson stated that it has been hard to read where the DNR is at on this issue. He stated that the MCWD tried to make Christmas Lake inspections into a community based effort only to find out that the DNR didn't want to work with the citizens, they only wanted to work with the MCWD. He stated that there is some turf protection going on and noted that some DNR staff members have been hurt by criticism that the DNR hasn't done anything regarding AIS management.

Mayor Skrede asked if those cities down Minnehaha Creek, such as Minneapolis and St. Louis Park, also support this effort.

Eric Evenson stated that Hopkins fully supports this effort but he hasn't talked a lot with the cities downstream about this issue. He stated that the District has heard mainly from the cities around Lake Minnetonka.

Mayor Skrede asked if the MCWD would require permits from the DNR to actively manage AIS.

Eric Evenson stated that he didn't think they would have to if the District received delegated authority. He added that there is also authority granted to watershed districts to manage AIS under Minnesota State Statutes.

Councilmember Wheaton stated that the lack of clarity on the MCWD's relationship with DNR is concerning. He stated that there could be some issues down the road unless this relationship is better defined.

Councilmember Hackney stated that while he thinks it's great for the MCWD to be proactive on AIS management, he thought that the effort might require something more significant on a statewide level. He asked how the MCWD would prevent AIS from spreading within the watershed.

Eric Evenson stated that you might be able to slow down the spread of AIS, thereby delaying the potential cost impact. He added that he also is somewhat a pessimist on whether AIS can be contained.

Councilmember Hackney stated that perhaps the MCWD could spearhead a coalition of watershed districts to participate in this effort.

Councilmember Wheaton added that it would help to get the DNR on board as well.

Eric Evenson stated that it's going to take a combination of tools, including research and capital projects, to address this issue. He added that while he is not anxious for the MCWD to take on yet another task, he didn't know whether you can afford to deal with AIS on a lake by lake basis.

Mayor Skrede stated that the Council would act on the Resolution of Support at an upcoming meeting and thanked Mr. Evenson for coming tonight to shed some light on this issue.

**B. Adopt the Fund Balance Policy & Resolution No. 32-11, Committing General Fund Balances**

Administrator Young stated that the Governmental Accounting Standards Board (GASB) issued *GASB #54 Fund Balance Reporting and Governmental Fund Type Definitions*, which requires cities to establish new classifications regarding fund balance information reported by many governments prior to January 1, 2012.

He stated that attached for Council review this evening is a proposed Fund Balance Policy and General Fund Balance Resolution for the City of Deephaven. He stated that the model policy and resolution were provided by the City's accounting firm of Kern, DeWenter & Viere (KDV) and modified by staff to pertain specifically to the City of Deephaven. He stated that both the Fund Balance Policy and Resolution Committing General Fund Balances have been reviewed and approved by KDV.

Discussion was held on the potential impact in committing or assigning fund balance reserves in both the General Fund and Capital Improvement Fund.

Motion by Councilmember Wheaton to adopt Resolution No. 32-11, A Resolution Committing General Fund Balances. Seconded by Councilmember Kask. Motion carried 5-0.

Motion by Councilmember Wheaton to approve the Fund Balance Policy as submitted. Seconded by Councilmember Gustafson. Motion carried 5-0.

**C. Approve Carson's Bay Dock Removal Bid**

Administrator Young stated that the Council authorized a request for proposals on October 17<sup>th</sup> for the removal of the Carson's Bay docks. Bid proposals were sent on October 20<sup>th</sup> requesting the submittal of bids on November 2<sup>nd</sup>. The following bids were received:

<u>Contractor</u>	<u>Bid Price</u>
Concept Landscaping	\$ 4,700.00
Dock & Lift, Inc.	\$ 9,000.00

Administrator Young stated that Concept Landscaping submitted the low bid in the amount of \$4,700.00 with the stipulation that the docks would be removed before ice formed on the Lake and a second bid in the amount of \$10,900.00 if ice had already formed on the lake. He stated that Dock & Lift submitted one bid in the amount of \$9,000.00, whether ice was in or out. He recommended that the Council approve the bid submitted by Concept Landscaping subject to approval of the Carson's Bay dock plan on November 9<sup>th</sup> and the Council could revisit the bid if the dock isn't approved by that date to reconsider the bid submitted by Dock & Lift.

Motion by Councilmember Wheaton to approve the bid in the amount of \$4,700.00 from Concept Landscaping for the removal of the Carson's Bay docks, subject to the LMCD's approval of the Carson's Bay dock plan on November 9, 2011. Seconded by Councilmember Hackney. Motion carried 5-0.

**D. Other**

There was no other Unfinished Business this evening.

**7. NEW BUSINESS**

**A. Adopt Resolution No. 31-11, Approving Third Amendment to JPA**

Administrator Young stated that a Third Amendment of the Joint Powers Agreement (JPA) with the Excelsior Fire District has been proposed by the Excelsior Fire District Board to modify the current budget schedule within the JPA to ensure that the actual mandatory Fire Relief contribution is included within the annual budget rather than an estimate, which had been required prior to 2011 due to budget timelines established in the JPA.

He stated that the Third Amendment intends to modify the current budget schedule listed in the JPA by the following proposed changes in the budget approval dates:

<u>Section</u>	<u>Item</u>	<u>Current</u>	<u>Proposed</u>
8.1	Approval of Capital Improvement Program	July 15	September 15
8.3	Submittal of proposed budget to Cities	June 15	August 10
	Budget approval by Member Cities	Sept 1	September 15

Councilmember & EFD Liaison Gustafson agreed that the amendment would provide for more flexibility for all organizations.

Motion by Councilmember Gustafson to adopt Resolution No. 31-11, A Resolution Approving the Third Amendment to the Excelsior Fire District Joint Powers Agreement. Seconded by Councilmember Wheaton. Motion carried 5-0.

**B. Discuss Request to Extend Subdivision Recording at 20595 Summerville Road**

Zoning Coordinator Karpas stated that Mary McCulloch has sent a letter requesting a one-year extension in the recording of her two-lot subdivision at 20595 Summerville Road that was approved on December 6, 2010. The extension is requested due to the current housing market which has made it difficult to sell her existing home.

Motion by Councilmember Wheaton to approve the request for a one-year extension until December 6, 2012 for the recording of the subdivision at 20595 Summerville Road with Hennepin County. Seconded by Councilmember Hackney. Motion carried 5-0

**C. Other**

There was no other New Business this evening.

**8. DEPARTMENT REPORTS**

**A. Police Department**

Police Chief stated that a Police Officer may be resigning on December 31, 2011 but the Officer needs to finalize some family-related matters before he is absolutely sure of his decision. He stated that the officer gave him advance notice of his potential resignation to give the department time to start lining up a replacement. He stated that a final decision on his resignation will be made at the December 5<sup>th</sup> Council meeting. He stated that he would like to create an eligibility list for potential future openings in response to the potential resignation and the fact that the current eligibility list is already three years old.

**B. Excelsior Fire District**

Excelsior Fire District Liaison Darel Gustafson provided a brief summary of the November 2<sup>nd</sup> EFD Board Work Session on the Fire Relief Association. He stated that discussion primarily centered on ways to control the variability in mandatory contributions. He stated that several representatives supported overfunding the Fire Relief Fund to increase investment income and that he and other representatives preferred to tackle the issue by addressing the expenditure side of the issue such as by possibly increasing the number of mandatory calls and/or by reducing the overall size of the staff.

Mayor Skrede stated that he would consider it punitive to increase the number of mandatory calls that firefighters must attend. He stated that he would prefer as many firefighters as possible at a fire but questioned whether there was a need for 35 firefighters at a medical call. He stated that in regard to additional voluntary contributions to the Relief Association, he would prefer that cities assign their own reserves instead of contributing additional funding to the 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:

- The City of Deephaven's tax capacity ranking
- Upcoming Performance Evaluations
- Building Permit Update
- Annual Comparisons of Parking Permits sold
- Fire Chief Gerber selected as Fire Officer of the Year by the Minnesota State Fire Chief's Association

**E. LMCD Update**

Councilmember Keith Kask provided a brief summary of the action taken at the October 26<sup>th</sup> LMCD Board meeting on the Carson's Bay dock plan and the two versions of the Carson's Bay dock plans that will be under further consideration at the November 9<sup>th</sup> LMCD Board meeting.

**9. ADJOURNMENT**

Motion to adjourn by Councilmember Wheaton, seconded by Councilmember Kask. Motion carried 5-0. The meeting adjourned at 9:41 p.m.

Respectfully submitted,  
Dana Young, City Administrator