

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, OCTOBER 3, 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 September 19, 2011
- B. Approve Verifieds
- C. Approve 2011-2012 Deer Management Program
- D. Adopt Resolution No. 29-11, Amending the Appointment of Keith Kask to the LMCD
- E. Adopt Resolution No. 28-11, Resolution of Support to the City of Tonka Bay

Seconded by Councilmember Wheaton. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PUBLIC HEARINGS**

- A. Public Hearing on the assessment of delinquent sewer/storm sewer, water and garbage/recycling utility charges – Adopt Resolution No. 26 -11**

Mayor Skrede called the public hearing to order at 7:02 p.m. Hearing no comments, the public hearing was closed at 7:03 p.m.

Administrator Young presented the assessment roll on the delinquent sewer/storm sewer, water and garbage/recycling charges for Council review.

Motion by Councilmember Kask to adopt Resolution No. 26-11, A Resolution Adopting Delinquent Utility Assessments. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Public Hearing on the assessment to abate a Public Nuisance – Adopt Resolution No. 27-11

Mayor Skrede called the public hearing to order at 7:04 p.m. Hearing no comments, the public hearing was closed at 7:04 p.m.

Administrator Young presented the assessment roll on the public nuisance charges on mowing an unkempt property for Council review.

Motion by Councilmember Wheaton to adopt Resolution No. 27-11, A Resolution Adopting Assessments for Public Nuisances. Seconded by Councilmember Hackney. Motion carried 5-0

6. PLANNING & ZONING REQUESTS

A. VARIANCE – Request from Steven Streeter, 20240 Lakeview Avenue, to construct a new single family home which would encroach into the required lake yard setback and exceed the maximum permitted impervious surface area. Section 1310.02 of the Zoning Ordinance requires a minimum lake yard setback of one hundred feet in the Shoreland District. The proposed single family home would be setback sixty-one feet, two inches from the Ordinary High Water Level. A variance of thirty-eight feet, ten inches is sought of the required lake yard setback. Section 1350.06(2)(a) permits a maximum impervious surface area of 25%. The proposed impervious surface area on the property would be 35%. A variance to exceed the maximum impervious surface area by 10% is sought.

Zoning Coordinator Karpas presented his staff report and indicated he recommended approval for the proposed lake setback variance, but recommended denial for the proposed impervious surface variance. He felt that even though the overall amount was being reduced by seven percent, the applicant would still well exceed the permitted percentage if his lot met the minimum lot area requirement.

Karpas said the Planning Commission voted 3-3 on a motion to recommend approval for the request. Per State Statute, a tie vote on a motion to approve constitutes a recommendation for denial.

Mayor Skrede said he met with the applicant who indicated his intent was to handle all the runoff on the property by tying all his gutters to a drain tile system which would carry the water to an underground cistern. The water would be stored and used for irrigation. He said this solution intrigued him. He said when considering a variance the Council has to look at the spirit of the law and not the letter of the law. He feels the applicant's proposal to manage one hundred percent of the roof runoff goes quite a ways in addressing the spirit and intent of the impervious surface regulation.

Steven Streeter, 4200 North Lane, was present to answer any questions the Council may have. He distributed a site plan showing the proposed drainage system for the property.

Councilmember Wheaton agreed that the applicant has made a good faith effort to manage the additional impervious surface area on the property, per the Planning Commission's discussion.

Councilmember Hackney said the majority of the Planning Commissioners who voted against the request agreed that holding the applicant to the ordinance requirements may not be reasonable, but wouldn't commit to a specific percentage

Councilmember Wheaton asked staff about the use of cisterns as a means of controlling runoff. Zoning Coordinator Karpas said it's not a common solution, but appears to be better than the typical use of

permeable pavers. Mayor Skrede commented that a similar system was used in the construction of Deephaven One in Chowen's Corner.

Mr. Streeter said he has used similar systems in Minneapolis and that they're typically used in larger projects due to the cost of the system. He said the maintenance is minimal and the stored water would be used for irrigation so the system overflowing would be rare.

Mayor Skrede discussed the drainage calculations provided by the applicant's engineer, noting the system had the ability to handle a number of back to back storms.

Travis Van Liere, the applicant's landscaper, said the systems are usually oversized. He said if overflow is encountered, the water would be carried to a system of storage tanks. Mayor Skrede asked if the water would be properly filtered before use for irrigation. Mr. Van Liere said the system contains a number of filters and clean outs.

Councilmember Kask asked if the system was like a septic drain field. Mr. Van Liere said it was a cistern that holds the water with a number of overflow chambers.

Councilmember Gustafson asked about the size of the holding tank noting the applicant indicated a 2,200 gallon tank. Mr. Streeter said the size shown on the plan is what was recommended based on the project, but it can be oversized based on the direction of the Council. Gustafson noted there would still be a potential for overflow if there were a number of one inch rainfalls over consecutive days.

Councilmember Wheaton said the system sounds similar to sump pump, only on a grander scale. He feels it elevates the need to reduce the actual impervious surface on the property. Mayor Skrede commented that if the Council felt this was a reasonable means of handling the runoff, it could require the system be approved by the City Engineer prior to the issuance of a building permit. Mr. Streeter said the intent was to tie the system to the building permit.

Councilmember Hackney asked if the cistern was replacing the French drain system. Mr. Van Liere said it would not and that both techniques would be employed.

Councilmember Kask discussed what was being proposed, noting that the current home does not have a garage on the property and currently uses a detached garage across the street. He said since the subject property and the property across the street are under a separate PID, they could be conveyed separately. He feels the applicant's property should be viewed as a stand alone property with no consideration given to the lot across the street. He said the city has historically viewed the lack of an attached garage as a hardship. He noted the impervious surface has been reduced by seven percent and agrees the cistern meets the spirit and intent of the ordinance. He said the proposal addresses the need for a garage, reduces the impervious surface and pulls the structure further from the lake. He is supportive of the request.

Councilmember Hackney said he is also supportive, noting the impervious surface was being reduced and the addition of the cistern to handle runoff was a big improvement. He pointed out that the current State Statute would allow someone to purchase the property and essentially reconstruct what already exists, leaving the impervious surface level at its current percentage. Referencing the required finding, Hackney said the proposal is consistent with the comprehensive plan, is a reasonable use of the property and would not alter the essential character of the neighborhood. He said the Council should place conditions on any approval that the impervious surface area not exceeds thirty-five percent and that the City Engineer approves the stormwater management plan.

Mayor Skrede stated for the record that the proceedings are not a public hearing but welcomed any comments from the public.

David Gross, 20245 Lakeview Avenue, said he supported the request and believes it is a reasonable use of the property. He would like to ensure that if the cistern does overflow that the water be managed on the property rather than drained to the street.

Motion by Councilmember Hackney to approve the variance requests to encroach thirty-eight feet, ten inches into the required one hundred foot lake yard setback and to exceed the maximum permitted impervious surface area by 10% based on the site plan presented for 20245 Lakeview Avenue. The approval is based on the findings of staff and conditioned that the overall impervious surface area not exceed thirty-five percent, that the City Engineer approve the proposed drainage system and that all overflow be managed on the applicant's property. Seconded by Councilmember Wheaton. Motion carried 5-0

7. UNFINISHED BUSINESS

A. Discuss Amendment of Section 1300 of the City Code, Regulating Intoxicating Liquor

Zoning Coordinator Karpas said as part of the process of implementing a liquor control ordinance in the city, changes have to be made to the zoning ordinance outlining many aspects related to the sale of alcoholic beverages. He said he worked with Councilmember Hackney and Commissioner Carlson to develop a couple of options on how to address zoning ordinance changes. Two options have been developed, labeled Option A and Option B, which are included with the memo.

Both options require changes in the "Schedule of Uses" to permit the sale of liquor as a Special use permit. However, Option A would rezone the C-1 Commercial District along Highway 7 to C-2 Commercial. The schedule of uses would then permit all liquor related uses included in the liquor ordinance in the C-2 District, while only off-sale and wine licenses would be permitted in the C-1 District. The thought behind this was that restaurants selling intoxicating liquor would tend to have establishments with higher traffic which would be more suitable along the major arterials on the fringes of the city. Also, establishments issued a wine license would also be permitted, by ordinance, to sell intoxicating malt liquor, which would not exclude the current restaurant in the C-1 District from being permitted to offer alternatives that would match their current menu selections.

Councilmember Hackney said the thought was to have hours of operation limited at Chowen's Corner to preserve the residential character of the area while allowing extended hours on the outskirts. He said he has always thought the Council should set specific hours of operation for both districts as a starting point and extend/reduce them based on the proposed business. He said that way a potential business owner knows coming in what to expect. Police Chief Johnson agreed stating the city should set the hours and not leave it up to the State Statutes.

Zoning Coordinator Karpas said the proposed amendments were brought to the Council for feedback before too much time was invested into items such as rezoning if the Council was not supportive.

Councilmember Kask discussed the rezoning of the Highway 7 commercial area. He said the properties used to have direct access to the highway but no longer do, forcing traffic into an intersection with bad sight lines. He wouldn't like to see a situation where the Council makes a decision that forces traffic to

the area, finding later that the intersection was inadequate leading to the use of taxpayer money to correct the situation. Mayor Skrede commented that there was access further down Highway 7 onto Old Excelsior Boulevard.

Councilmember Wheaton believes an applicant would consider traffic flow before locating a site for their business. He believes the recommended option provides the opportunity for different types of establishments and places them in the proper place. He likes the concept of keeping the residential nature of Chowen's Corner.

Councilmember Hackney asked for a clarification on what closing time meant - did it mean all patrons would have to leave the premises or would they be permitted to remain after hours but no more customers are permitted to enter. Councilmember Wheaton suggested language that a business would have to stop serving beverages as a certain time.

Councilmember Gustafson referenced the Planning Commission discussion on what the residents thought at the time they were voting for the referendum. Councilmember Wheaton said residents have a duty to stay informed. Councilmember Hackney noted the petition gave the impression that the ordinance would permit the sale of beer and wine with a meal. Gustafson agreed and said there's always option C, allowing only wine and beer sales throughout the city.

Councilmember Kask is concerned that the whole issue has morphed from the selling of beer and wine with a meal to the sale of intoxicating liquor until 2 a.m.

Mayor Skrede said the Planning Commission was charged with vetting the ordinance options and that some options may have been left in without knowing the exact intent of the voters.

Councilmember Hackney agreed there could be some negative ramifications to rezoning the highway property. He would support a limitation on the sale of only wine and beer.

Councilmember Kask said there are a number of issues aside from the rezoning including required parking, distance from residential and church uses and hours of operation.

The Council discussed the concept of retaining option A without rezoning the highway property. This would permit the sale of intoxicating liquor only in the C-2 District. Mayor Skrede asked if the Council would support expanded hours for the C-2 District. Councilmember Wheaton said a case could be made for more liberal hours in that area.

Zoning Coordinator Karpas said he would bring the Council's comments to the Planning Commission and draft changes to the proposed amendments prior to scheduling a public hearing.

B. Discuss the use of Golf Carts on City Streets

Mayor Skrede stated that the Council briefly discussed the possibility of drafting an ordinance to permit the use of golf carts on city streets at the last Council meeting and decided to wait until hearing from the Police Chief before deciding whether to move forward with this proposed ordinance.

Police Chief Johnson stated that he and his Department would be opposed to the use of golf carts on city streets. He stated that there is no need to permit golf carts on the streets; they would present a hazard because they don't mix well with other traffic, and the city streets aren't conducive to accommodate golf

carts because many city streets lack a proper shoulder. He stated that the City's current ordinance on snowmobiles and ATV's is significantly different from a proposed golf cart ordinance because the ordinance is simply directing recreational vehicles to the lake by the most direct route. He stated that the snowmobile and ATV ordinance is not meant to include golf carts. He added that he felt that the potential problems with golf carts outweigh the positives.

Councilmember Kask stated that Section 705.03 of the City Code on snowmobiles and ATV's state that it is unlawful to operate a snowmobile or ATV on city streets, except when traversing to or from an approved snowmobile or ATV area by the shortest legal route. He stated that we would be creating a new class of use and he would not be supportive of drafting a new ordinance to accommodate golf carts.

Councilmember Wheaton stated that he would defer to the Police Chief's comments regarding golf carts on city streets. He stated that if an ordinance were drafted, he would want only licensed drivers to drive golf carts on city streets. He added that the proposed ordinance could also make beaches a destination point, like the lake is for snowmobiles and ATV's, and the Council could designate the use of certain streets. He stated that he didn't know if it would be worth trying to only designate certain streets to accommodate golf carts. He stated that while he would go either way on this issue, he would defer to the Chief. He added that, at this particular time, he was not excited about the possibilities of drafting an ordinance to allow the use of golf carts on city streets.

Councilmember Gustafson stated that he would also have to agree with the Chief Johnson's concerns.

Councilmember Hackney stated that he wasn't in favor of a proposed golf cart ordinance at the last meeting and would also agree with Chief Johnson's comments.

Mayor Skrede stated that it appears that a proposed golf cart ordinance lacks Council support to move forward.

E. Other

There was no other Unfinished Business this evening.

8. NEW BUSINESS

A. Adopt Ordinance No. 4-49 and Ordinance No. 7-8, Amending Load Limits

Zoning Coordinator Karpas explained that Staff has been concerned for a number of years that contractors, specifically those with larger projects, have not been obtaining the proper permits for the overweight vehicles associated with their construction projects. He said Staff is proposing two ordinance amendments to help ensure the appropriate fees are being collected.

The first change would amend Section 700.04 which gives the city the authority to require overweight permits. The proposed change would put this responsibility on the Zoning Coordinator, rather than the police department, and would specifically require a fee be paid. The current ordinance does not indicate a fee is required.

The second change deals directly with the fee itself and adding it to Chapter 4 of the code. Currently the city charges a fee of \$10.00 per round trip for overweight vehicles. Staff does not believe this fee adequately reflects the potential damage to the city streets. The proposed amendment would raise the fee

up to \$50.00 for an individual round trip, with a blanket fee of 20% of the building permit fee for construction projects in excess of \$20,000.

He said as of July 31st of this year, the city has collected a total of \$220.00 in load limit permit fees, noting this amount in no way reflected the actual number of overweight vehicles the roads had to endure. He said using the proposed ordinance amendment, the city would have collected \$4,638.12 upfront for just those projects exceeding \$20,000 in value. Construction projects less than \$20,000 and various other projects such as landscaping would still be required to obtain permits on a per trip basis. Enforcement would remain the same since the proposed ordinance still requires that sub-contractors provide proof of a permit in their vehicles.

One last amendment would authorize the issuance of individual round trip permits during March 1 – May 1, the period of road restrictions, at an increased rate of \$500.00.

Councilmember Hackney asked if the collected fees would be placed in the Capital Improvement Fund. Mayor Skrede said it would be put in the general fund, but the city could do an annual transfer of funds from the general fund to the roads fund.

Motion by Councilmember Wheaton to adopt Ordinance No. 4-49, An Ordinance Amending Fees for Load Limit Permits and Ordinance No. 7-8, An Ordinance Amending Section 700.04 Listing the Zoning Coordinator as the Issuing Agent for Load Limit Permits and Establishing the Requirement of a Fee for Load Limit Permits. Seconded by Councilmember Hackney. Motion carried 5-0

B. Discuss Request to Extend the Variance Approval at 19080 Azure Road

Mayor Skrede discussed the request of Jim and Karen Gemmill to extend the approval for the variance they were issued in 2010. The extension is necessary due to the current housing market which has made it difficult to sell their existing home and they don't believe it's prudent to begin construction on a new home until their old one has sold. Skrede noted there was no change in the substance of the variance, just a request for an extension for obtaining a building permit.

Motion by Councilmember Kask to approve the request for a year extension for the variances granted at 19080 Azure Road. Seconded by Councilmember Wheaton. Motion carried 5-0

C. Other

Councilmember Hackney stated that he had asked Zoning Coordinator Karpas to compile a history of hardcover variance requests since 1998. He stated that there were a total of 43 requests over this time period and 40 of the variance requests had been approved and 3 denied. He stated that perhaps the Council should ask the Planning Commission to review the section of our Code pertaining to hardcover standards if Council's have approved such a high percentage of variance requests. He stated that Cottagewood and Deephaven Park are the two areas that appear to have generated the most variance requests.

Councilmember Wheaton noted that a number of communities have impervious surface area standards of 30%. He added that the Council has probably granted a significant number of variances for Lake Yard setbacks as well.

Councilmember Hackney stated that he would like the Planning Commission to look at both standards.

Mayor Skrede noted that reviewing 43 hardcover variance requests over a 13 year period really hasn't taken up a great amount of the Council's time.

Zoning Coordinator Karpas stated that Deephaven's hardcover standards are some of the most restrictive of any other lake community. He stated that the Council could regulate hardcover standards as a Conditional Use rather than a variance, which could effectively increase the hardcover standard up to 30-35%. He stated that this would no longer require the applicant to find a hardship in their variance request. He stated that any request for 40% hardcover would require a variance from the MN Department of Natural Resources. He added that if we are governing through the use of a variance, perhaps there is no purpose in having a 25% hardcover standard.

Councilmember Gustafson stated that applicants would no longer have to bother to come up with a solution to their excessive hardcover if they could simply meet a higher standard. He stated that he would prefer to keep the 25% standard in place and the Council can deal with the four or so variance requests each year.

Councilmember Hackney stated that the cistern system proposed earlier tonight by Steven Streeter is not an affordable solution for most residents.

Mayor Skrede stated that he felt that the variance process really does help develop common sense solutions to excessive hardcover.

Councilmember Hackney noted that the State of Minnesota allows up to 40% hardcover standard.

Councilmember Wheaton suggested keeping this issue in mind if it becomes a more significant problem.

Councilmember Kask stated that we receive so many requests for hardcover variances and finds it odd that the City doesn't require permits for the installation of driveways. He stated that if we are so concerned about hardcover we should require permits for driveways. He noted that it is hard to deny a request to exceed hardcover standards when we have historically viewed the lack of a two-car garage on properties as a hardship.

9. DEPARTMENT REPORTS

A. Police Department

Police Chief noted that Oktoberfest held at the Cottagewood Store went very well last Saturday, the September Incident Reports have been distributed, Oktoberfest at St. Therese Church will be held this Saturday, and that his Department has noted very few traffic problems relating to the pick-up and drop-off of students at Deephaven Elementary School.

B. Excelsior Fire District

Excelsior Fire District Liaison Darel Gustafson provided a brief summary of the September 28th EFD Board meeting, including:

- Four out of five new recruits have successfully completed their training.

- The State of Minnesota has reduced the annual state training grant in the amount of \$9,300 to the Excelsior Fire District to a set amount of \$4,200 to each Fire Department throughout the state.
- A total of 785 businesses were surveyed on fire inspection services provided by the District and the survey results were very positive.
- Fire inspection fees are in the process of being re-evaluated.
- The annual Fire Prevention Open House will be held on October 13th.
- Repair work at Station #2 will begin shortly with the installation of siding & gutters and the repair of pillars.
- Provided a brief summary of the Board's discussion regarding the provision of annual funding to offset periodic fluctuations in the mandatory Fire Relief contributions.
- The next Board meeting will be held on November 16th.

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:

- A note of appreciation to Part-Time Summer Staff members Matt Bennis & Ben Jaffray.
- LMCIT invoice for litigation costs.
- LOGIS meeting on 2012 group health insurance.
- Recycling update.

Administrator Young stated that MCE Director Tim Litfin is requesting an appointment from the Deephaven City Council to serve as Deephaven's appointment to the MCE Advisory Council.

10. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Wheaton. Motion carried 5-0. The meeting adjourned at 8:58 p.m.

Respectfully submitted,
Gus Karpas, Zoning Coordinator