

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JANUARY 4, 2016
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmembers Darel Gustafson, Steve Erickson, Keith Kask, and Tony Jewett

STAFF: Zoning Coordinator Dale Cooney 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 the December 21, 2015 Regular & Closed Council Minutes
- B. Approve Verifieds
- C. Adopt Resolution No. 01-16, Appointments & Assignments for 2016
- D. Adopt Resolution No. 02-16, Authorizing an Ext. of the EPDB License Agreement
- E. Adopt Resolution No. 03-16, Est. Schedule of Administrative Fees
- F. Approve April 18, 2016 as Date for the Board of Appeals Meeting

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Senator David Osmek was present to provide an update on legislative activities and to answer any questions from the Council.

Senator Osmek stated that there may be a Special Session called by Governor Dayton in order to address several issues including Real ID legislation.

He noted that the legislation to make Joint Powers organizations tax exempt effective January 1, 2016 has been pushed back to 2017. He stated that he will be looking to draft legislation to make Joint Powers organizations tax exempt retroactively to January 1, 2016.

He asked if the Council had any questions.

Mayor Skrede asked if the purchase of a new fire truck would be exempt from sales tax under any proposed legislation. He stated that if fire trucks are not exempt, he asked Senator Osmek to include this as a provision in his bill.

Tony Jewett asked if funding for road maintenance aid that was provided to small cities in 2015 would be continued in future years.

Senator Osmek stated that he thought this funding had been extended into 2016 but would have to check into it.

Senator Osmek thanked the Council and noted that he will be back to visit with the Council this same time next year.

5. PUBLIC HEARING

A. Review Wetland Conservation Act Replacement Plan Decision, James & Debra Crooks, 18707 Heathcote Drive.

Mayor Skrede introduced the agenda item and the public hearing. He said that before opening the public hearing up to the general public, he wanted to hear from a representative of applicant, and the City Engineer in order to help give some background information on the request for people in attendance that might not be familiar with the project.

Jim Crooks, 18761 Heathcote Drive, said that he has lived in the neighborhood since 1992 and that he bought the property at 18707 Heathcote Drive in 2001. He said that he would like to build a new single-story house on the property for him and his wife. He said that since they are both getting older, stairs have become an issue for the two of them. Crooks showed pictures of signs that had gone up on the property showing that the lot was for sale and that a builder would have built a house on the lot that he did not think suited the neighborhood. He said that in conversations with the previous Zoning Coordinator, he was told the only way to control what happens on the property was to buy it. Crooks said he bought it with the belief that it was a buildable property. Crooks said that there had been a failed culvert that had led to atypical flooding on the property. He said that the culvert was repaired in 2014 and that the property has now returned to more typical water levels. He said that he had his wetland delineation completed several months after the culvert was repaired. Crooks added that he has gone through the process required by state law and he has received a permit from the Army Corp of Engineers. He said that the single-story house would fit with the neighborhood. Crooks said that he believed that the platted property was a buildable lot when he bought it and he made financial decisions based upon this assumption.

Dave Martini, the Deephaven City Engineer, said that the city is the local government unit (LGU) that is authorized to make a determination on the wetland impacts. He said that the application had been reviewed by the technical staff at Bolton & Menk and has gone through the Technical Evaluation Panel (which included representatives from BWSR and Hennepin County), which is required by state law as part of the Wetland Conservation Act. Martini said that the first step of the process is to look for ways to avoid the wetland impacts. If impacts cannot be avoided, the process looks at ways to minimize the impacts. He said that impacts are preferably

mitigated on site, and if they cannot be mitigated on site, then credits can be purchased from a wetland bank. Martini said that a house could not be built on the lot without significant wetland impacts.

Mayor Skrede opened the hearing for public comments.

Dave Irwin, 18815 Heathcote Drive, said that he bought his lot in 1980 because his lot did not require additional fill, but that he also looked at the lot in question at the time. He said that he always thought a house would be built on the lot. Irwin said that he is in favor of the proposal. He said that he is an environmentalist, and has solar panels on his house, but that this proposal would not materially change the wetland. He said that his house looks out over the wetland, and that if he thought it would have negative impacts, he would say so. He said that this is a property rights issue. Irwin said that this is a procedural issue, not a practical issue.

Sandy Hanf, 18864 Heathcote Drive, said that she is in favor of the request. She said that, to her, it is a matter of trust and that she trusts the Crooks to build a beautiful, structurally sound house that will be pleasant to look at.

Susan Jerutis, 18869 Carsonwood Avenue, said that she was concerned initially, but is not any longer since the culvert issue has been addressed.

Councilmember Kask questioned the investment-based decision based upon a low price for the site. He questioned if there were efforts to market the property as a speculative development opportunity and that the price of the lot reflected the potential challenges of building on it. Kask said he is aware of other properties that have built near but not on wetlands within the city. He said that the City wetland maps were first created for the sanitary sewer maps and were drawn during the drought conditions of the mid-1970s. Kask said that fill would need to be added to make the lowest level of the house two to three feet above the highest known water level. He said that the construction on the property would be challenging even without the extensive conditions that might be placed on it. Kask said that the subdivision of the original parcel does not confer the suitability of the lot for residential construction.

Councilmember Erickson said that he walked the lot and that the lot is challenging. He said that he had concerns similar to those of Councilmember Kask. He said that the current taxable value of the property of \$34,000 reflects the problems with the lot. Erickson said that there needs to be a balance between property rights, the wetlands, and feasibility. Erickson asked the Crooks why they don't just buy a different house in Deephaven. He said that there are a number of single story houses available within the city.

Councilmember Jewett asked if there is a way to know the changes that have taken place over time to the wetland. He asked if the same wetland review process has been in place since 2001. City Engineer Martini said that the process would have been the same in 2001. Jewett said that, in doing some research, he found four 1 acre, non-lakeshore properties in Deephaven that sold in 2001 for between \$130,000 and \$260,000. Jewett asked if "buildable lot" was a defined term. Zoning Coordinator Cooney said that it was not a defined term.

Councilmember Gustafson said that a real estate sign does not mean that a lot is buildable. He said that his house was marketed as having rights to a dock slip, which actually meant rights to get on a waiting list for a dock slip. He asked what the unintended consequences of the request might be.

City Engineer Martini said that the infill of the wetlands might seem relatively small, but that the city's drainage issues have been caused by the incremental removal of areas for water storage.

Julie Belisle, 18693 Heathcote Drive, said that she lives on the other side of the culvert and that the culvert flows to her property. She said that she is concerned about the potential impacts this project might have. She said that since the culvert was fixed, there really is not a good understanding of what the future water situation will be.

Mayor Skrede asked if the city would have to answer to any other government agencies about this decision. Brian Johnson of Sambatek, engineer for the applicants, said that the watershed district would have some oversight, but that otherwise, there would be no other government agencies involved.

Mayor Skrede asked how this request might set a precedent for new requests that impact wetlands.

Councilmember Kask said that the sale price of the lot was much less than one might pay for a standard lot. He asked what legal obligation the city has to allow the parcel to be built upon based on the original subdivision of the parcel. Kask said that some earlier subdivisions do not pass the smell test today. He said that undersized lots of record have some rights and added that the city has wetland setback requirements that would impact the lot.

Mayor Skrede said that the ground is still squishy on the property even though the culvert was fixed in 2014. He asked how the house would be built.

John Boyer of Boyer Building Corporation, builder for the applicant, said that there is 4 to 6 feet of organic soil and that below that there is a clay base. He said that they would remove the 6 feet of topsoil and replace it with the appropriate amount of fill. He said the removed topsoil would be reused on site as much as possible. Boyer said that they would not need to use helical piles to support the foundation. He said that he has worked on sites with soil conditions much worse than this. He said that construction would not impact the existing drainage easement on the property. He said that the site has a lower valuation since these types of building issues will drive up the costs of making a buildable site.

Brian Johnson of Sambatek said that the proposed project would not impact the drainage and utility easements. He also said that city wetland maps are general and that once you get on site, the wetlands need to be delineated.

Mayor Skrede said that the city wetland maps are just for guidance to make people aware of possible wetland issues and conflicts. He said that if the Crooks had come into City Hall and

asked about the property, they would have clearly seen that there were wetland issues with the property.

Brian Johnson said that the Crooks had done the sequencing for avoidance and alternative analysis required by the Wetland Conservation Act.

Councilmember Erickson said that the submitted comparable properties were only new construction. He asked why the applicants did not consider existing single-story houses within the city, of which there were many available.

Mayor Skrede said that he felt the comparable properties were cherry picked and not representative. He said that, while this might meet the requirements of the WCA, he was not impressed.

Jim Crooks said that the cost of the property was so low because of the requirements it would take to make it suitable for building. He said he knew it was a challenging site when he bought it, but that he thought it was buildable. He said that they were not planning to put a basement in the house because it doesn't work with the site and that they are trying to avoid having stairs in the house anyways.

Councilmember Jewett asked if the property could be reconfigured in such a way that there would be no net loss of wetland on the property, but just a relocation of the wetland area. John Boyer of Boyer Building Corporation said that it was possible, but that he would need more information to know if it was feasible.

City Engineer Dave Martini said that now the conversation has moved beyond the question of avoidance of wetland impacts and into the question of mitigation.

Councilmember Kask asked if there was an assessment for the sewer at the time of subdivision. He said that he also wanted to get the City Attorney's opinion on whether or not the city is obligated to allow a platted lot to be built upon. He asked if this fell under the legal concept that past City Council actions cannot bind those of future City Councils.

Charlie Belisle, 18693 Heathcote, said that he went through a similar process a few years ago. He asked if there was a specific plan being considered. He asked how potential impacts would be mitigated and what the process was for city review.

Mayor Skrede said that there is not a specific building or mitigation proposal being considered. He said that the City Council is trying to evaluate and work through the issues related to this unique situation and unique property.

Charlie Belisle asked if he needed to stay involved. Councilmember Erickson said that any concerned resident should stay involved in the process. Mayor Skrede said that the city would do everything possible to make sure neighbors are not impacted by placing conditions on any potential approval.

Mayor Skrede asked if the City Council was ready to vote tonight or if they would follow the request of the applicant to wait until the February 1 meeting to vote.

Councilmember Erickson said that he would prefer to see a proposal that had less impact on the wetlands and that would likely require variances. He said based on the submitted site plan he was leaning towards a “no” vote.

Councilmember Jewett asked about Kask’s questions from earlier regarding the sewer assessment and the legal question on the platting.

Mayor Skrede said that he was comfortable waiting to get those questions answered and continuing this item at the February 1st meeting. He said that he will keep the public hearing open for the next meeting.

Councilmember Kask said that he would like to limit the conversation at the February 1st City Council meeting to new information and not have a repeat of the discussion covered at tonight’s meeting.

Motion by Councilmember Erickson to continue the public hearing until the February 1, 2016 Council meeting. Seconded by Councilmember Gustafson. Motion Carried 5-0.

6. PLANNING & ZONING REQUESTS

A. Consider Variance Requests, Jeffrey and Michelle Hinck for 19550 Cedarhurst Avenue– Request for variance from the required R-1 maximum building coverage limitation in conjunction with the construction of a shed and variance from the lake yard setback in conjunction with the construction of an in-ground swimming pool within an existing non-conforming footprint.

Zoning Coordinator Cooney presented the staff report. Cooney said that Jeff and Michelle Hinck have made application for variances to build a 500 square foot shed and to construct a new swimming pool. Cooney stated that the shed would require a variance from the maximum building coverage limitation, and that the pool, which is being built within the footprint of a non-conforming sport court, would require a variance from the lake yard setback.

Regarding the 500 square foot shed, Cooney said that Section 1302.03(2) of the zoning ordinance limits the maximum allowable building coverage to 8,000 square feet for an R-1 property. The applicants are seeking a variance to exceed the maximum allowable building coverage restriction by 428 square feet.

Cooney said that, as proposed, the shed would be under the 1,000 square foot accessory structure limit for R-1 properties. He added that while there are a number of accessory buildings on the property, the zoning code does not limit the number of accessory buildings, simply the total square footage of the buildings. He said that the proposal complies with the remaining setback requirements, impervious surface limitations, height limitations outlined in Section 1302.03, and the maximum permitted grade alteration permitted in Section 1312.04.

Cooney said that the applicants are claiming to meet the practical difficulty standard to exceed the 8,000 square foot limit based on the single-story construction of their house. He stated that the house, constructed in 1957, was built in a contemporary architectural style common to that era that favored larger, single-story residential footprints instead of more compact, multi-story home footprints. He said that while the house has a large footprint, the overall massing of the home on the property is less impactful than the footprint would indicate, and would remain relatively modest compared with other lakeshore properties. Cooney stated that if a variance were to be granted, nothing would prevent the homeowner from adding a second story to the house and increasing the massing.

Cooney said that the applicants' property size is 125,000 square feet, which is more than double the 60,000 square foot minimum lot size for R-1 properties. Cooney noted that the maximum building coverage limitation is an effort to keep properties proportionate to their lot size. He said that, in this case, because of the larger lot size, an argument could be made that, even with the variance, the overall footprint of the structures remain proportionate to the property.

Regarding the proposed pool, Cooney said that the applicants are proposing to build a new in-ground swimming pool within the footprint of a non-conforming tennis court. He said that state law allows non-conformities to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. Cooney said that once the nature of the non-conforming use is changed, the non-conformity loses its legal status. He said that, therefore, to construct the pool, the applicant would need a variance of the lake yard setback.

Cooney stated that Section 1310.10(2) (a) of the zoning ordinance requires that all swimming pools, spas and hot tubs comply with the setback standards of the zoning district in which they are located as measured to the outside edge of the pool decking.

Cooney said that Section 1302.03(3) of the zoning ordinance requires a lake yard setback from the OHW of Lake Minnetonka of 100 feet. He said that the applicant proposes a lake yard setback of 52 feet for the proposed pool and that the applicant is seeking a variance of 48 feet from the minimum required lake yard setback.

Cooney said that the proposed pool would continue the recreational nature of the previous non-conformity. He also noted that, as proposed, the applicant would bring the impervious surfaces into zoning compliance and eliminate the side setback encroachment. He said that the pool would be 46 feet further from the lot line than the sport court. Cooney said that the impacts of a pool could be greater than those of a sport court, particularly noise. Cooney said that a pool is a more invasive use of the land, requiring excavation, below-grade utility connections, etc.

Cooney stated that the submitted survey shows an existing pool near the rear of the house, but that pool is actually a water feature with fountains and is not meant for swimming.

He said that the proposal complies with the remaining setback requirements, impervious surface limitations, and height limitations outlined in Section 1302.03, and the maximum permitted grade alteration in Section 1312.04.

Cooney said that he recommends approval of the variance requests of Jeff and Michelle Hinck to exceed the maximum building coverage limitation by 428 square feet for the construction of a detached shed, and to encroach 48 feet into the minimum required lake yard setback for the construction of an in-ground pool within the existing non-conforming footprint of a sport court at 19550 Cedarhurst, as presented, based on the following findings:

a) The variance is in harmony with the purpose and intent of the ordinance, since the purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The applicant is seeking to vary from the maximum building coverage limitation and accessory structure setback requirements. The maximum building coverage variance is in harmony with the purpose and intent of the ordinance since the purpose of the ordinance is to ensure that the buildings on a property are of a scope and scale proportionate to the overall lot. In this case, due to the single-story nature of the construction and the large lot size, the proposal would be in harmony with the intent of the ordinance.

The proposed pool would be placed within the footprint of an existing non-conforming sport court. In the process, the applicant is eliminating the impervious surface and side yard setback non-conformities. The new non-conforming use will still be of a recreational nature.

b) The variance is consistent with the comprehensive plan since the Comprehensive Plan's Housing Elements Goals and Policies promote the redevelopment of residential property within the city.

c) The proposal puts the property to use in a reasonable manner. The building of the shed accessory structure that does not exceed the accessory structure footprint limitations is reasonable and continues the single family use of the property. The proposed in-ground pool is a reasonable use for a residential structure and continues the recreational nature of the existing non-conformity.

d) There are unique circumstances to the property not created by the landowner. The existing one-level home was built in 1957 in an architectural style that favored a large, sprawling foundation footprint. The home itself remains relatively modest in its overall massing on the property. The pool is to be built within the existing footprint of a legal, non-conforming sport court.

e) The variance, if granted, will not alter the essential character of the locality. The additional shed structure is of a reasonable size, while the overall massing on the property is at a scope and scale consistent with neighboring properties. The proposed pool is also of a size and scale that is compatible with the character of the locality.

Cooney said that the Planning Commission voted to recommend that the City Council approve the variance requests subject to the City Engineer's review and approval of the final construction plans for the pool. Cooney said that the City Engineer has since reviewed and approved the submitted pool plans.

Cooney concluded the staff report.

Mayor Skrede asked about the depth of the pool relative to the water table. Cooney said that the City Engineer stated that having a pool that sat below the water table was not an issue so long as the building plans were reviewed by the building inspector. Applicant Jeff Hinck said that, as designed, the bottom of the pool would sit approximately two feet above the water table.

Councilmember Kask requested that future staff reports refer to structures such as sheds and garages as accessory structures.

Motion by Councilmember Kask to approve the application, as presented, based on the findings of staff and the Planning Commission. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Ordinance 13-69, Amending Section 1350 – Shoreland Management District – Ordinance amendment adding language related to impervious surface variance requirements including stormwater mitigation and maintenance agreements.

Zoning Coordinator Cooney presented the staff report. He said that this was the first reading of the ordinance. He said that this ordinance codifies the current practice of requiring stormwater mitigation to be installed as a condition of approval for any impervious surface variances within the Shoreland Management District. Cooney said that a maintenance plan for the required stormwater mitigation practices will also be a condition of approval, which is also the current practice of these types of approvals.

Cooney said that he has also removed the language from Section 1350.04, Subdivision 3 related to height restrictions within the Shoreland Management District, which are no longer applicable. Staff also fixed a typo, changing “7” to “75” in Section 1350.06, Subdivision 2(b).

Cooney concluded his staff report.

Councilmember Jewett asked about the height change. Cooney said that, at the time, the city-wide height restrictions would allow a building to be measured from the average height (midpoint) of a gable roof. Current code has changed that measurement to the peak of the roof, making the Shoreland height restrictions outdated. Cooney said that when the new height definition was passed, the Shoreland Management District height restrictions were overlooked and that this ordinance would correct that omission.

Motion by Councilmember Gustafson to waive the second reading and adopt ordinance 13-69, an ordinance amending Chapter 13 of the Deephaven City Code regarding Section 1350: Shoreland Management District, as written. Seconded by Councilmember Jewett. Motion carried 5-0.

C. Ordinance 13-70, Creating Section 1353 – Stormwater Management – Ordinance amendment creating stormwater mitigation requirements for impervious surface expansions that exceed certain defined thresholds.

Zoning Coordinator Cooney said that this was the first reading of the ordinance. He said that because this item has been presented to the City Council a number of times, most recently in November, he would not go through it in detail tonight. He said that he would be happy to answer any questions the Councilmembers might have.

Motion by Councilmember Kask to waive the second reading and adopt ordinance 13-70, an ordinance amending Chapter 13 of the Deephaven City Code by adding Section 1353: Stormwater Management, as written. Seconded by Councilmember Gustafson. Motion Carried 5-0.

7. UNFINISHED BUSINESS

A. Adopt Resolution No. 04-16, A Resolution of Appreciation

Administrator Young stated that the purpose of Resolution No. 04-16 and 05-16 is to thank those members of the Boat Committee and Park Committee for completing their terms of office. He stated that in addition to these Resolutions of Appreciation, he will also be giving each of these retiring members a plaque in appreciation of their many years of service to the community.

Motion by Councilmember Jewett to adopt Resolution No. 04-16, A Resolution of Appreciation to Jim van Bergen, David Matteson, and Tom Drummond for their excellent service on the Deephaven Boat Committee. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Adopt Resolution No. 05-16, A Resolution of Appreciation

Motion by Councilmember Jewett to adopt Resolution No. 05-16, A Resolution of Appreciation to Scott Ferguson, Jim Elvestrom, and Cindy Webster for their excellent service on the Deephaven Park Committee. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Other

There was no other Unfinished Business this evening.

8. NEW BUSINESS

A. City Fiscal Policy

Administrator Young presented the City Fiscal Policy for Council review.

B. Other

There was no other New Business this evening.

9. DEPARTMENT REPORTS

A. Police Department

In the absence of Police Chief Johnson, Mayor Skrede presented the December 2015 Police Report for Council review and provided an update on the potential hiring process.

B. Excelsior Fire District

Fire Board Liaison Steve Erickson noted that there will be a Fire District Board meeting on January 27th.

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:

- For the 20th consecutive year, the City of Deephaven has been awarded the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association of the United States and Canada (GFOA) for the Fiscal Year ending December 31, 2014.
- Presented the timelines pertaining to the Audit of the 2015 Financial Statements
- Presented a list of contracts expiring in 2016.

10. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 10:13 p.m.

Respectfully submitted,

Dana H. Young
City Administrator