

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, MARCH 7, 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, Tony Jewett, Keith Kask and Steve Erickson

STAFF: Police Chief Cory Johnson, 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 February 1, 2016 City Council Minutes
- B. Approve Verifieds
- C. Approve 2016 Street Sweeping Bids
- D. Approve 2016 Street Striping Bids
- E. Approve January 2016 Treasurer's Report
- F. Approve Revised 2016 LMCC Budget

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PUBLIC HEARING**

- A. **Conduct a public hearing on the proposed project on behalf of Minnetonka Youth Hockey Association and the issuance of a revenue note under Minnesota Statutes 469.152 to 469.1655 through the adoption of Resolution No. 11-16**

Julie Eddington, with Kennedy & Graven, stated that a public hearing is required to consider the adoption of a resolution, which provides final approval for the issuance of a revenue note to the Minnetonka Youth Hockey Association for an addition to the Pagel Center.

Mayor Skrede stated that the Loan Agreement states that the City of Deephaven would receive \$25,000 when the actual administrative fee that the City is requesting is ½ of one percent. He stated that if the bond issue is less than \$5 million, the City should only be receiving it's agreed upon percentage, not necessarily \$25,000.

Motion by Councilmember Gustafson to adopt Resolution No. 11-16, A Resolution Authorizing and Approving the Issuance and Sale of Revenue Bonds on behalf of Minnetonka Youth Hockey Association. Seconded by Councilmember Jewett. Motion carried 5-0.

6. PLANNING & ZONING REQUESTS

A. Consider request of the Landschute Group for a variance from the minimum lake yard setback for the construction of a stairway onto a non-conforming house footprint at 19940 Lakeview Avenue.

Zoning Coordinator Cooney presented the staff report. Cooney said that The Landschute Group, Inc., architect for the property owner, has applied for a variance to construct a stairway that encroaches into the required lake yard setback. He said that in April of 2015, a variance application to construct a new house within a non-conforming footprint was approved for this property. Cooney stated that the applicant would like to reorient the rear deck stairs towards the lake yard, rather than the previously approved side yard, and that since the lake yard encroachment is increasing, a variance is required for this change.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a lake yard setback from the OHWL of Lake Minnetonka of 100 feet. He said that the applicant proposes a lake yard setback of 91 feet, 5 inches for the proposed stairway and that the applicant is seeking a variance of 8 feet, 7 inches into the minimum required lake yard setback.

Cooney said that the previously approved stairs encroached into both the side yard setback, and the lake yard setback. He said that these encroachments were approved since they were part of the existing house's non-conforming footprint. Cooney said that the new proposal is an attempt to fix the design flaw of the previous stairway exit, which is near the side lot line. He pointed out that the practical utility of the property would be better served by having the stairs oriented towards the lake yard. Cooney stated that the newly proposed stairs are, in essence, proposing to trade the previously approved encroachment, which is mostly within the side yard, for this revised encroachment, which is mostly within the lake yard. He said that the total square footage of encroachment for the revised stairs is slightly more than that of the approved stairs. Cooney noted that, even taking into account this stair encroachment, the house remains setback from the lake yard further than each of the adjoining properties.

Cooney said that staff recommended approval of the variance request by The Landschute Group, Inc. to encroach 8 feet, 7 inches into the minimum required lake yard setback for the proposed stairway at 19940 Lakeview Avenue, as presented, based on the following findings:

- a) 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 stated setback standards of the ordinance to reorient a set of already non-conforming stairs. The magnitude of the encroachment would increase slightly, but would pull the stairs away from the narrow side yard setback.

- b) The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.
- c) The proposal puts the property to use in a reasonable manner; almost the same manner as that which was previously approved by the city.
- d) The property is being built within an existing non-conforming footprint. The setback from the lot line would only be 6 feet at the approved stair exit. The narrow setback reduces the practical utility of the stairs.
- e) The proposal would not alter the essential character of the locality. The proposed modification is only slightly different from the approved encroachments, and the stairway would remain setback further than the adjoining properties.

Cooney said that the Planning Commission reviewed the variance application at their February 16 meeting and recommended approval of the request, as presented, based upon the findings of staff. Cooney concluded his staff report.

Councilmember Jewett asked if the size of the stairs was increasing since the total overall encroachment was increasing slightly. Cooney said no, the stairs would be the same size. Cooney said that, by reorienting the stairs, slightly more of the footprint of the stairs falls beyond the required setbacks than the previously approved stair orientation.

Mayor Skrede said that, while this was a minor change, he was glad that the applicant asked instead of trying to sneak in the change.

Councilmember Kask made a motion to approve the application as presented based on the findings of the Planning Commission and staff. Motion was seconded by Erickson. Motion carried 5-0.

B. Adopt Ordinance No. 13-71, Amending Section 1310.02 Regarding Non-Encroachments – replacing current obsolete code with new code language regarding allowable yard setback encroachments

Zoning Coordinator Cooney summarized the staff report. He said that the City Council held a first reading of the ordinance at their February 1 meeting. Cooney said that, from that meeting, the Council requested additional language that would limit the degree of any encroachment permitted by the ordinance. He said that several possible ways to limit the encroachment were suggested, and staff was directed to present the City Council with the options. Cooney said that the options for the Council were shown in red in the updated ordinance. The options read "*Subd. 2: In no case shall any encroachment permitted by Subd. 1. of this ordinance be allowed to encroach such that (OPTION A) the setback from property line is less than a distance equivalent to 50% of the permitted encroachment depth, or (OPTION B) the setback from property line is less than two feet, or (OPTION C) the encroachment crosses a neighboring property line.*" Cooney concluded the staff report.

Councilmember Kask asked about proposed Option A of the ordinance where the setback of an encroachment could not be less than a distance equal to 50% of the permitted encroachment depth. Kask said the narrowest setback the city allows is 10 feet, and if a three foot roof overhang is allowed, this reduces the setback to 7 feet. Kask asked if the 50% would apply to the 10 feet or the 7 feet, or neither.

Cooney said that this scenario would only impact those houses that might have a non-conforming footprint where the setbacks from the lot line would come into play. He said that a house that is two feet from the lot line could theoretically have roof overhangs that cross the lot line. Cooney said that this section that was added was meant to avoid that scenario.

Kask said that he did not want these encroachments left up to the discretion of the homeowner. Kask said that he was concerned that the drip line from an eave would be up to the homeowner's discretion and could cause water issues.

Councilmember Erickson said that, under Option A, a house that is three feet off of the lot line could not have a three foot eave, but would have to have a two foot eave with a one foot setback.

Cooney said that this is why he favored the simpler approach of Option B that would avoid some of the confusion.

Kask asked if on a site plan, we are typically measuring from the roof or from the side walls. Erickson said that the measurements would be taken from the side walls.

Kask asked if there was some combination of Option A and Option B that could be considered. He said that he thought that the two feet requirement of Option B would be too close and a larger setback could be considered.

Mayor Skrede said that the City could make the requirement whatever it wants. Kask said that he would be more comfortable with Option B requiring a three foot setback. The other Councilmembers indicated that they would be comfortable with a three foot setback.

Councilmember Kask made a motion to adopt Ordinance No. 13-71, Amending Section 1310.02 regarding Non Encroachments, with the amendment that Subdivision 2 of the ordinance shall not allow permitted encroachment to be less than three feet from the property line. Councilmember Gustafson seconded the motion. Motion carried 5-0.

C. **First Reading of Ordinance No. 13-72, Amending Section 1302 Regarding Permitted Uses within Commercial Districts**

Zoning Coordinator Cooney summarized the staff report. Zoning Coordinator Cooney said that the city was approached by Rick Lee Anderson (who prefers to go by the name Rick Lee) who is in the process of leasing space at 18202 Minnetonka Boulevard, Suite LL1. Mr. Lee would like to operate a kickboxing/martial arts studio that would also include a retail and office component.

Cooney said that staff reviewed the C-1 uses applicable to the property, and while retail and office are permitted uses within the district, physical fitness establishments are not listed as either permitted, conditional, or prohibited uses. Cooney said that he has brought this matter to the city council in the form of a potential amendment to the C-1 and C-2 zoning districts.

Cooney said that the Planning Commission held a public hearing at their February 17 meeting. He said that he presented the ordinance to the Planning Commission listing physical fitness establishments as permitted uses, and the Planning Commission voted to recommend allowing physical fitness establishments as conditional uses within the C-1 and C-2 districts.

Cooney said that he also made a couple of additional changes to the C-1 and C-2 ordinances unrelated to Mr. Lee's request. He said that he proposed adding "Bank or other financial institutions." to the C-2 zoning district, since it appeared in the C-1 district and he could not think of a logical reason why it would not be a permitted use in C-2 as well. He said he also deleted the text "Section 1302.02(1) C-2 Uses." since it was redundant and not consistent with C-1 formatting.

Mayor Skrede said that the proposed use would be physical fitness establishment, which implied something like a Snap Fitness, but that this was more of a conditioning/training/skill enhancement facility. Skrede said that he thinks "physical fitness establishment" might be too broad of a description for the business.

Councilmember Erickson said that there would likely be sparring at the facility.

Skrede asked Lee how he described the business. Lee said that, for tax purposes, it is called a martial arts facility.

Skrede said that he is concerned about the term "physical fitness establishment" since he thinks it might misconstrue what type of business is being approved.

Councilmember Gustafson said that a broader term would be better since it would encompass a broader range of businesses. He said that this ordinance change is not for this particular business, but for other similar businesses as well. He said that the city would not want to have to do an ordinance amendment for every individual type of business. He asked why the city would have a narrow definition on something like this.

Skrede asked what kind of license Lee is required to have. Lee said that he is only required to have a business license. Skrede asked how Lee could lose his business license. Lee said he could lose his license by having unsanctioned fights. Lee also said that kickboxing is not a sanctioned sport in the state.

Skrede asked Lee about insurance. Lee said that he has insurance, and it is different than a place like Lifetime Fitness because of the combative nature of the business. He said that there are occasionally injuries that happen on-site.

Skrede asked Lee about any certifications for his training. Lee said that there are over 300 certifications offered for this type of training. He said that he has a number of different

certifications. He said that he has over 40 years of history in the sport, and also has boxing certifications.

Skrede said that he does not want a child with a broken nose or broken arm coming to the city to complain about Lee's business. Lee said that he has liability forms that he requires participants to sign. He said that he also does not just train anyone who walks in the door. Lee said that he is selective about the types of clients he allows at his facility.

Councilmember Jewett asked which organization sanctions kickboxing bouts. Lee said that the International Kickboxing Federation is one organization, and mentioned several other organizations. He said that the State of Minnesota currently does not sanction bouts since there is not a way for them to monetize it at the moment. He said the state is still trying to figure out how it wants to handle kickboxing.

Skrede said that he would be supportive of the ordinance amendment if it stated "physical fitness establishment/martial arts facility/studio"

Councilmember Erickson made a motion to adopt the ordinance as amended and to waive the second reading of the ordinance. Motion seconded by Gustafson. Motion Carried 5-0.

Police Chief Corey Johnson asked Lee if he did any mixed martial arts (MMA) training. Lee said that he has done both MMA and wrestling in the past, but that he does not do that anymore since he doesn't like rolling around on the ground. He said that he has trained a number of police officers who were training for certain required police certifications.

D. First Reading of Ordinance No. 13-73, Amending Section 1370 Regarding Watershed District Regulations and Permits

Zoning Coordinator Cooney said that the attached changes to Section 1370 were requested by the City Engineer as a compliance requirement of the city's MS4 permit. He said that the Riley-Purgatory-Bluff Creek Watershed District has only become active once again within the last couple of years, which is why this language had not been in the existing ordinance.

Councilmember Kask made a motion to adopt Ordinance No. 13-73, Amending Section 1370 regarding watershed district regulations and permits. Councilmember Gustafson seconded the motion. Motion carried 5-0.

7. NEW BUSINESS

A. First Reading of Ordinance No. 10-08, Illicit Discharge Detection Elimination

Administrator Young stated that this ordinance was provided to us by Bob Bean, Water Specialist with Bolton & Menk, for two purposes. First, this ordinance regulates non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by state and federal law. And second, the adoption of this ordinance is required for compliance with requirements of the National Pollutant Discharge Elimination System (NPDES) MS4 permit process.

He stated that the objectives of this ordinance are to improve the Waters of the State by:

- Regulating the contribution of pollutants to the municipal separate storm sewer system by stormwater discharges by any user.
- Prohibiting illicit connections and discharges to the municipal separate storm sewer system.
- And, establishing the legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this ordinance.

Councilmember Gustafson questioned the extent that this ordinance established the legal authority for the City to carry out all inspections, surveillance and monitoring procedures.

Administrator Young stated that the City only had the legal authority as granted under this ordinance to prohibit, monitor, and enforce illegal discharges.

Motion by Councilmember Kask to adopt Ordinance No. 10-08, Establishing Section 1025 Entitled Illicit Discharge Detection and Elimination for potential adoption and waive the second reading. Seconded by Councilmember Erickson. Motion carried 5-0.

Motion by Councilmember Kask to adopt Resolution No. 13-16, Approving the Publication of Ordinance No. 10-08 by Title & Summary. Seconded by Councilmember Jewett. Motion carried 5-0.

B. Authorize Job Title Change from Police Sergeant to Police Lieutenant

Police Chief Johnson stated that Chris Whiteside has been classified as a Sergeant for the Deephaven Police Department since 2007. He stated that his role in this department is Second in Command. He stated that in the majority of Police Departments, second in command roles are classified as a Deputy Chief or Lieutenant. He stated that he would like to change Chris's title to Lieutenant, as his job duties are reflective of what a Lieutenant does since Sergeants usually work the street consistently and have much less authority than Chris has. He stated that this is simply a title change and there is no impact or change to his pay or benefits.

Mayor Skrede stated that this title change should have been addressed several years back.

Councilmember Gustafson stated that the job description for Sergeant should still be kept. He stated that this would enable the Chief to have the option to promote an officer to Sergeant instead of Lieutenant, particularly if the Chief didn't want to promote this individual up to Lieutenant. He stated that this would enable several levels of command.

Councilmember Erickson stated that this would enable the Department to have patrol officers, Sergeant, and Lieutenant with no one filling the Sergeant position at this time.

Mayor Skrede added that this promotion is also indicative of the fine work that Chris Whiteside has provided to the Department.

Motion by Councilmember Kask to authorize a change in Chris Whiteside's job title from Sergeant to Lieutenant. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Other

There was no other New Business this evening.

8. UNFINISHED BUSINESS

A. Authorize Extension of Appeal Deadline

Administrator Young stated that the City of Deephaven reviewed and ultimately denied the Wetland Permit Application submitted by Jim & Debra Crooks for their property at 18707 Heathcote Road at the February 1, 2016 Deephaven City Council. He stated that since the City of Deephaven has no appeal process to review the denial of a wetland permit application, Jim & Debra Crooks have until March 7, 2016 to appeal the decision before the Board of Water and Soil Resources.

He stated that the Crooks have requested a 30-day extension in the appeal deadline in order to allow sufficient time for the Deephaven City Council to consider whether it would be in the city's interest to purchase the property at 18707 Heathcote Road. He stated that an extension in the appeal deadline has to be requested by both the applicants and by the Local Government Unit. He noted that the City Council will review the potential purchase of the property at 18707 Heathcote Road at a Special Council meeting on March 21st.

He stated that the Board of Water and Soil Resources would still accept this request from the Crooks and the City of Deephaven on a 30-day extension in the appeal deadline as long as the letter is sent in an envelope that is postmarked by March 7, 2016.

Motion by Councilmember Jewett to authorize a 30-day extension in the appeal deadline to the Board of Water and Soil Resources. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Authorize Hiring Ethan Read, Police Officer

Chief Cory Johnson stated Ethan Read has successfully completed a thorough Background investigation, Medical Exam, and Psychological Testing. Ethan has been working as a Prairie Island Police Officer for the past 4 years and brings with him a good work ethic and desirable qualifications. He is proficient in the use of our Records Management System and is an instructor in the use of force and firearms. He has received good training and will be an asset to our department.

He recommended that the City Council consider offering Ethan comparable pay because of his knowledge and experience and is recommending a starting wage of \$4,726.41/mo. or \$27.27/hr.

He stated that Ethan would be sworn in on March 21, 2016, and begins working shortly thereafter.

Motion by Councilmember Kask to authorize hiring Ethan Read as a Police Officer with the Deephaven Police Department at a starting wage of \$27.27 per hour. Seconded by Councilmember Erickson. Motion carried 5-0.

C. Other

There was no other Unfinished Business this evening.

9. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided an update on the February Incident Report,

B. Excelsior Fire District

EFD Liaison Erickson stated that there has not been a meeting of the EFD Board since the last update and reported on a house fire that had occurred in Deephaven.

C. Public Works

Administrator Young provided an update on recent and upcoming public work activities.

Councilmember Gustafson reported that the annual Platform Tennis Tournament fundraiser is underway.

D. Administration

Administrator Young provided a brief summary on the following items:

- April Newsletter
- Annual financial audit
- Engineering & Inspection service costs
- LMCC audio / video grants

Discussion was held on meeting with Jim Lundberg to discuss potential audio / video grants.

Mayor Skrede stated that former Councilmember Mark Thompson had recently passed away and noted that Mark had played an instrumental role in the forming of the Excelsior Fire District. He gave his condolences to Mark's wife and family.

10. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Kask. Motion carried 5-0. The meeting adjourned at 8:28 p.m.

Respectfully submitted,
Dana H. Young
City Administrator