

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, APRIL 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, Tony Jewett, and Steve Erickson

ABSENT: Councilmember Keith Kask

STAFF: City Administrator Dana Young

2. PLEDGE OF ALLEGIANCE

The Council recited the Pledge of Allegiance.

3. APPROVE CONSENT AGENDA

Councilmember Erickson requested that Item 3E and 3F be removed from the Consent Agenda so that the Council can act individually on the resolutions of appreciation to Brandon & Leslie Gustafson.

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

- A. Approve March 21, 2016 Minutes
- B. Approve Verifieds
- C. Approve Special Event Permit for Firecracker Run
- D. Approve Special Event Permit for Healthy Kids Running Series

Seconded by Councilmember Gustafson. Motion carried 4-0.

Motion by Councilmember Erickson to adopt Resolution No. 19-16, a Resolution of Appreciation to Brandon Gustafson for his years of service on the Deephaven Planning Commission. Seconded by Councilmember Jewett. Motion carried 4-0.

Motion by Councilmember Erickson to adopt Resolution No. 20-16, a Resolution of Appreciation to Leslie Gustafson for her years of service on the Deephaven Park Committee. Seconded by Councilmember Jewett. Motion carried 4-0.

4. MATTERS FROM THE FLOOR

Brian Vogt, 18720 Lake Avenue, thanked the City Council for their approval of a Special Event Permit for the Healthy Kids Running Series and answered several questions regarding the event. He stated that he is here tonight representing his wife, Lindsay Vogt, who is organizing the event.

Mayor Skrede offered the use of the city website to help promote the event.

5. PUBLIC HEARING

A. Public Hearing to receive public comment regarding the City of Deephaven's Storm Water Pollution Prevention Program. Comments will be included in the City's annual report to the Minnesota Pollution Control Agency.

Administrator Young stated that one of the main requirements of the Storm Water Pollution Prevention Plan (SWPPP) is to hold an annual hearing to solicit public comments on the plan. He stated that the City has been required since 2003 to develop a Storm Water Pollution Prevention Plan to reduce pollution entering into area water bodies by establishing best management practices. He noted that our SWPPP and related documents are available for public review.

He stated that the primary accomplishment over the past 12 months in the City's SWPPP Plan was the adoption of the ordinance on illicit discharge detection and elimination last month.

Mayor Skrede opened the public hearing for public comments. Hearing no comments, Mayor Skrede closed the public hearing.

6. PLANNING & ZONING REQUESTS

A. Conditional use permit request of Rumble Roy Kickboxing Club to operate a physical fitness establishment at 18202 Minnetonka Blvd, Suite LL1.

Mayor Skrede outlined the request. He stated that the City Council met with Rick Lee Anderson last month during his request to include physical fitness establishments / martial art facility/studio as a conditional use within the C-1 Commercial District.

Administrator Young stated that Zoning Coordinator Dale Cooney recommended approval of the conditional use permit request of Rumble Boy Kickboxing Club to operate a physical fitness establishment at 18202 Minnetonka Boulevard, Suite LL1. He stated that Zoning Coordinator Cooney determined there would be no negative impact on development of the community, the character and development of the neighborhood, the health, safety, and welfare of occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities, on adjacent streets, and the effect on property values of the subject premises and in the surrounding area.

He noted that Zoning Coordinator Cooney recommended the following conditions be placed on the business: (a) the use of the physical fitness/martial arts component of the facility is for training, sparring, and physical fitness only, and fights or bouts will be prohibited from taking place on-site, and (b) keypad access for clients and customers will be limited to business hours.

He stated that the Planning Commission reviewed the application on March 15th and recommended approval of staff's recommendation and approval of the conditional use permit request as submitted based on the findings of staff, conditioned that: (a) the use of the physical fitness/martial arts component of the facility is for training, sparring, and physical fitness only, and fights or bouts will be prohibited from taking place on-site; (b) keypad access for clients and customers will be limited to business hours; and (c) class size shall be limited to no more than 25 students at any one time.

Mayor Skrede asked the applicant if he had any problems with those stipulations.

Rick Lee Anderson stated that he has no problems with the conditions. He stated that members will adhere to the hours of operation whether he decides to use a keypad or give out keys to his long time customers.

Mayor Skrede asked if access to his facility would be through the upper or lower level.

Rick Lee Anderson stated that access would be through the lower level and that his customers would park on the lower level as well. He added that no one would be able to get in after hours.

Councilmember Gustafson noted that in regards to parking, the class sizes would only be 7-9 people, so there wouldn't be 25 cars coming in all at once.

Councilmember Erickson stated that the Planning Commission's discussion was well-laid out and a limit of 25 students seems reasonable. He stated that he doesn't see an issue with this request.

Mayor Skrede asked if the applicant would consider installing a new sign advertising his business.

Rick Lee Anderson stated that the Leasing Agent assured him that a new sign would be included in the lease but he will meet with Zoning Coordinator Cooney to ensure that he follows the proper sign requirements.

Motion by Councilmember Erickson to approve the recommendation and findings of the Planning Commission and staff to approve the conditional use permit request of Rumble Boy Kickboxing Club to operate a physical fitness establishment at 18202 Minnetonka Boulevard, Suite LL1.

The motion for approval is based on the following findings: (a) The proposal will have no impact on the overall development of the community; (b) there will be no impact on the character and development of the neighborhood; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands; (d) there will be no impact on traffic or parking conditions due to this signage; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

The business will be subject to the following conditions:

- (1) the use of the physical fitness/martial arts component of the facility is for training, sparring, and physical fitness only, and fights or bouts will be prohibited from taking place on-site
- (2) keypad access for clients and customers will be limited to business hours
- (3) class size shall be limited to no more than 25 students at any one time

Councilmember Gustafson seconded the motion. The motion carried 4-0.

B. Variance request, Brian Stephenson, 19760 Lakeview Avenue – Request for a variance From the minimum lake yard setback to expand an existing non-conforming deck at 19760 Lakeview Avenue.

City Administrator Young provided the staff report. Brian Stephenson, builder for the property owners, has applied for a variance to expand a non-conforming deck that would further encroach into the required 100 foot lake yard setback. The existing deck encroaches 26 feet into the setback, and the applicant is requesting that the deck be extended an additional 3 feet, 4 inches into the lake yard

setback. He stated that Section 1302.05(3) of the zoning ordinance requires a lake yard setback from the OHWL of Lake Minnetonka of 100 feet. The applicant proposes a lake yard setback of 70 feet, 8 inches for the proposed deck expansion. The applicant is seeking a variance of 29 feet, 4 inches into the minimum required lake yard setback.

He stated that the existing non-conforming deck encroaches 26 feet into the lake yard setback and the existing home has a cantilever that encroaches 29 feet into the lake yard setback. He noted that the proposed request would encroach slightly further than the furthest existing encroachment. Overall, the proposed deck would add 122 square feet of lakeyard encroachment.

He stated that it is Zoning Coordinator Dale Cooney's opinion that while the overall additional encroachment is relatively minor and a portion of the house already encroaches nearly as far as the proposed deck, the property already has a 320 square foot non-conforming deck. And while the city has given credit for non-conforming footprints in the past, this is not the same as grandfathering the full width of the furthest encroachment. Also, since a lake yard encroachment is the most desirable, the city must be careful in granting these types of variances, particularly for requests of a less essential nature. He stated that Zoning Coordinator Cooney also felt that the practical difficulty standard has not been met.

For these reasons, he stated that Zoning Coordinator Cooney recommended denial of the variance request of Brian Stephenson, to encroach 29' 4" inches into the minimum required lake yard setback for the proposed non-conforming deck expansion at 19760 Lakeview Avenue, as presented. He stated that the findings of Zoning Coordinator Dale Cooney are included in his staff report.

Administrator Young stated that the Planning Commission reviewed and approved the application at their March 15 meeting subject to the condition that the deck would not be allowed to be converted to an enclosed space in the future.

Councilmember Erickson questioned why the existing deck was covered.

Brian Stephenson stated that it is temporarily covered to protect it from some of the work going on at the site. He said that the cover will be removed shortly.

Mayor Skrede stated that he understands the spirit of the Planning Commission's decision since there are other portions of the house that extend further than the proposed deck.

Councilmember Erickson also noted that there is no hardcover expansion with the deck expansion.

Mayor Skrede stated that the request looks innocuous since the stairs are already there and extend further into the setback than the proposed deck. He stated that he doesn't view it as an encroachment in excess of the existing encroachment due to the location of the stairs. He stated that he is trying to understand Zoning Coordinator Cooney's rationale for recommending denial of the request.

Councilmember Gustafson stated that a rationale for its denial could be due to the fact that we have a comprehensive plan that has setback requirements and didn't feel that there was an overwhelming need for this deck expansion as the existing deck is already there. He stated that he also has a hard time with the rationale that approval should be granted because there are unique circumstances not caused by the property owner.

Mayor Skrede noted that there are two other encroachments that extend even further into the setback than the proposed deck.

Councilmember Jewett compared this request with the other recent request that had been approved on Lakeview Avenue. He asked if this house were torn down, would we give them the entire area of the expanded deck as a non-conforming use.

Mayor Skrede stated that if this house were torn down, he wouldn't give them the second floor deck because he would only give them the footprint on the ground.

Councilmember Jewett stated that he would struggle with the next applicant requesting a wider deck.

Further discussion was held on how much of the building structure would be considered a non-conforming use.

Brian Stephenson stated that the foundation is the footprint and the patio would not be allowed as the footprint for a non-conforming use. He stated that this has been his experience in other cities.

Councilmember Erickson stated that in the other circumstance, we gave additional hardcover as additional footprint. He stated that each request is so unique that it's hard to determine precedence. When we approve variances, they do have long term impacts. He stated that if this house is torn down in the future, we wouldn't give them the patio as footprint.

Brian Stephenson stated that decks are hardcover not footprint.

Mayor Skrede agreed and noted that we have to look at this issue consistently.

Councilmember Gustafson approved the recommendation and findings of the Planning Commission to approve the variance request of Brian Stephenson for a variance from the minimum lake yard setback to expand an existing non-conforming deck at 19760 Lakeview Avenue, as presented. The motion is conditioned that the deck would not be allowed to be converted to an enclosed space in the future.

- (a) **The motion for approval is 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 stated setback standards of the ordinance to expand an already non-conforming deck. The overall expansion is modest and is nearly the same as the furthest encroachment of the house itself. The hardcover of the property would not increase as a result of the expansion; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city; (c) the proposal puts the property to use in a reasonable manner; (d) There are unique circumstances not caused by the property owner since the deck is currently non-conforming within the lake yard setback, and expansion of any kind is not possible without a variance; and (e) The proposal would not alter the essential character of the locality. The expansion would not be visible from neighboring properties, and the setback is nearly the same as the furthest encroachment of the house.

Councilmember Erickson seconded the motion. The motion carried 4-0.

C. Adopt Ordinance No. 13-74, Amending Section 1310.03 regarding Building Coverage

Administrator Young stated that this is the first reading of an ordinance amendment proposed by Zoning Coordinator Dale Cooney in order to clarify the existing Building Coverage language. Current language within the ordinance limits building coverage to the area covered by “all structures”. As currently defined by the city code, the term “structure” is very broad and leaves much open to the interpretation of staff to determine which “structures” should be considered when making this calculation.

He stated that staff has typically interpreted the ordinance as a way to limit the massing of buildings on a property. But some structural elements such as decks, pergolas, and porches have characteristics that may or may not be considered as adding mass.

He stated that staff is also proposing to delete item No. 4 under Subd. 3(b) Exceptions since the hardcover issues are addressed elsewhere in the code, and those exceptions to building coverage restrictions are best demonstrated via a variance request subject to the practical difficulty standard.

He stated that the Planning Commission initially reviewed the ordinance at their February 16 meeting and recommended limiting the building coverage calculation to only those structural elements that have a permanent roof. This would include items such as covered entryways, covered porches, covered decks, gazebos, and sheds but it would exclude elements such as uncovered decks, uncovered porches, pergolas, arbors, walls, monuments, and areas beneath temporary or retractable awnings. The Planning Commission held a public hearing at their March 16 meeting and recommended the adoption of the ordinance as written.

Mayor Skrede questioned the deletion of item No. 4 under Subd. 3(b) and asked where this deleted language was addressed in the Zoning Code.

Councilmember Jewett questioned whether decks should be included in determining building coverage.

Councilmember Erickson asked what is considered a structure. He stated that it is defined in this proposed ordinance as anything with a permanent roof.

Councilmember Jewett stated that he is concerned that someone might have an outdoor kitchen that is not included in determining building coverage that could add to water runoff issues.

Councilmember Erickson stated that water runoff issues are covered by the recently adopted hardcover standards. He stated that this proposed ordinance doesn't include hardcover standards.

Mayor Skrede recommended that staff should re-look at the definition of structures. He added this this might be how we could address this issue.

Councilmember Gustafson reiterated that this ordinance is not intended to deal with hardcover; it deals exclusively with how to determine building coverage.

7. **UNFINISHED BUSINESS**

A. **Adopt Resolution No. 17-16, Approving 2016 Linden Road Storm Water Bids**

City Engineer David Martini was present to review the following bids for the 2016 Linden Road Storm Water Project:

<u>Bidder</u>	<u>Total Bid Amount</u>
Valley-Rich Co., Inc.	\$66,343.20
Schneider Excavating and Grading, Inc.	\$76,353.80
Kusske Construction Company	\$86,216.00
G.F. Jedlicki, Inc.	\$111,469.50

Administrator Young stated that \$60,000 has been budgeted in the 2016 Storm Water Fund for this project and another \$9,000 for engineering.

Mayor Skrede noted that the bids came in higher than anticipated.

David Martini stated that it is not a very straightforward project. While it is simple fix on the road, it gets a little more complicated outletting the water through the woods. He stated that every bidder likely had a different take on that portion of the project. He stated that his recommendation is to award the bid to Valley-Rich Co. for providing the lowest responsible bid.

Motion by Councilmember Erickson to adopt Resolution No. 17-16, A Resolution Awarding the bid to Valley-Rich Co., Inc. in the amount of \$66,343.20 for the 2016 Linden Road Storm Water Project. Seconded by Councilmember Gustafson. Motion carried 4-0.

B. **Adopt Resolution No. 18-16, Approving the 2016 Manhole Repair Bids**

City Engineer David Martini was present to review the following bids for the 2016 Manhole Repair Project:

<u>Contractor</u>	<u>Bids</u>
Pride Construction & Excavating, Inc.	\$24,800.00
Hydro Klean	\$31,746.00

David Martini stated that this project is part of the ongoing sewer system and I/I correction. He stated that last year we did some pipe work and manhole work. He stated that the manhole repair project will fix the top of the manholes, replace seals and generally tighten up manholes to lessen the impact of inflow and infiltration. He stated that all this work gets credited to the I/I workplan plus engineering.

Mayor Skrede noted that the spreadsheet on the plan documents showed the number of manholes scheduled for repair.

Councilmember Jewett asked how this manhole project compares with last year's project.

David Martini stated that it was a much larger project last year. He stated that the scope of this project has been designed to align with the budget.

Further discussion was held on the impact of inflow and infiltration.

Motion by Councilmember Erickson to adopt Resolution No. 18-16, A Resolution Awarding the bid to Pride Construction & Excavating, Inc. in the amount of \$24,800.00 for the 2016 Manhole Repair Project. Seconded by Councilmember Gustafson. Motion carried 4-0.

C. Discuss Vine Hill Road Improvement Costs

City Engineer David Martini stated that we have prepared cost estimates for various resurfacing options for Vine Hill Road between Excelsior Blvd. and the new bridge. In general, the options being considered are a mill and overlay, which is expected to have a life of approximately 10 to 15 years or a reclamation project, which is expected to have a life of 20 years or more with ongoing maintenance. Based on recent bid prices from other projects, the following are the estimated construction costs for Vine Hill Road:

2" Mill and Overlay	-	\$198,850
3" Mill and Overlay	-	\$277,270
Reclamation with 4" Surface	-	\$366,000
Reclamation with 5" Surface	-	\$434,820

David Martini noted that in addition to the work on Vine Hill Road, we are also planning to remove and replace the pavement on Harper Street and the Vine Street Cul-de-Sac. This work has a combined estimated construction cost of \$40,220. The City's budget for streets in 2016 is \$353,000.

He stated that plans and specifications are 95% complete and we are prepared to advertise the project for bidding once we receive direction on which resurfacing option the Council prefers for Vine Hill Road.

Mayor Skrede noted that reclamation wasn't offered back in 2004 when Minnetonka Blvd was improved with a 3" mill & overlay. He stated that the square yard estimate provided by the City Engineer on Vine Hill Road is significantly higher than the square yard estimate used to establish the \$353,000 budget. He stated that, for this reason, he asked the City Engineer to provide cost and design options on the resurfacing of Vine Hill Road. He stated that the Council will have to determine the benefits of a percentage increase in cost vs. a percentage increase in street life.

Councilmember Gustafson noted that we could do two 2" mill & overlays for the cost of one 5" reclamation. He stated that two 2" mill & overlays would cost approximately \$398,000 versus \$434,820 for a 5" reclamation.

David Martini stated that maintenance is more effective on a reclamation project due to the available base. He noted that Vine Hill Road and Minnetonka Blvd are quite a bit different than other residential streets due to the heavy traffic and weight on these roads. He stated that Vine Hill Road has approximately 7" of bituminous and if we take all the bituminous down to the base, we have to put in 7" of blacktop to carry the traffic. He stated that we would only need to replace residential streets with 2" of blacktop. He added that roads would be a couple of inches higher with a mill & overlay.

Further discussion was held on the merits of a reclamation project vs. a mill & overlay project.

Mayor Skrede stated that we may not see as much surface cracking so soon after a reclamation as you would after a mill & overlay. He reviewed the per unit costs of the estimates provided and questioned the sequencing work needed with a reclamation project.

Councilmember Erickson asked if we could do a reclamation from the school to the bottom of the hill where the street is in the worst condition and do the rest of Vine Hill Road with a mill & overlay.

David Martini stated that we could absolutely do certain sections as a reclamation and the other sections as a mill & overlay.

Mayor Skrede stated that assuming 50% of Vine Hill Road as a 4" reclamation and 50% as a 3" mill & overlay, the project cost would be estimated at \$321,600.

Further discussion was held regarding posting Vine Hill Road as a 7 ton road and ensuring that the shoulders are clear from any obstructions.

Mayor Skrede stated that David Martini could determine the limits of the reclamation and mill & overlay based on a total project cost of \$361,000 that included Vine Hill Road, Harper Road and the Vine Street cul-de-sac.

David Martini stated that we could always reconfigure the unit costs after the bids are received to stay within the \$361,000 budget.

Mayor Skrede added that he would like the mill & overlay on the Vine Street cul-de-sac to extend into Vine Street and noted that we have already blacktopped one half of Harper Road and don't need to resurface the entire road.

D. Other

There was no Other Unfinished Business this evening.

8. NEW BUSINESS

A. Other

There was no other New Business this evening.

9. DEPARTMENT REPORTS

A. Police Department

Mayor Skrede asked if there were any questions regarding the March Incident Report.

B. Excelsior Fire District

Fire Board Liaison Steve Erickson stated that there will be a 2017 EFD Budget Work Session on April 19th.

C. Public Works

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

Mayor Skrede requested that the public works staff provide quotes on the purchase of an iron filter system for the City Hall water system to help eliminate the discoloration of City Hall.

D. Administration

Administrator Young provided a brief summary on the following items:

- April Mailings
- 2016 Contract Renewals
- Upcoming dates of interest
- 2017 Budget
- 2016 Project Schedule
- Mooring Buoy Update

10. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Jewett. Motion carried 4-0. The meeting adjourned at 9:33 p.m.

Respectfully submitted,
Dana H. Young
City Administrator