

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JULY 20, 2015
MINUTES**

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

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

STAFF: City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE JULY 6, 2015 COUNCIL MINUTES**

Motion by Councilmember Kask to approve the July 6, 2015 Council minutes. 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. **Public Hearing on the Partial Vacation of St. Louis Avenue – Adopt Resolution. No. 41-15**

Mayor Skrede stated that the City Council held a public hearing last February to act upon a petition requesting the vacation of a portion of St. Louis Avenue. He stated that the Council denied the petition at that time.

He stated that the Council decided to re-examine this issue and that is the reason why there is a public hearing this evening to review the vacation of that portion of St. Louis Avenue from the east edge of Monaltrie Avenue to the west edge of Virginia Avenue, which is a larger area than what was proposed in the petition.

Mayor Skrede called the public hearing to order at 7:03 p.m.

Bill Griffith, an attorney with Larkin & Hoffman who is representing the Bury's, thanked the Council for the opportunity to re-examine this issue. He stated that he believed that the vacation was justified due to the fact that the right-of-way had not been improved for 128 years, it would clarify the maintenance of the easement area, reduce issues with property trespassing, and

complete the partial vacation that was initiated back in 1948. For these reasons, he asked the Council to vacate this portion of St. Louis Avenue.

Michael Sikorra, 3890 Monaltrie Avenue, stated that he has never had an issue with trespassing. He stated that this vacation would cause a paradigm shift and asked why the Council felt the need to change this property in comparison with any other property owned by the City, such as the city lot on Monaltrie & Lake.

Cindy Barland, 3875 Monaltrie Avenue, asked from which property did this portion of St. Louis Avenue originate from and who owns it. She stated that this has to be part of the public record. She asked who has to pay for the property survey for these new lot lines and didn't think it was fair that we have to pay for it.

Discussion was held on how this vacated street would appear on an abstract of title.

Administrator Young stated that he thought that language referring to the vacation would appear on the abstract along with the general legal description.

Councilmember Erickson stated that it was his understanding from discussions with the City Attorney that the City doesn't own the dirt underneath the easement and the owners have always had title to the land.

Mayor Skrede agreed that it is described on the title.

Councilmember Kask noted that the Council agreed to conduct a public hearing on this issue but not necessarily to approve the vacation.

Mayor Skrede stated that the entire Council agreed that this vacation was an issue worth re-examining. He stated that, in response to Michael Sikorra's question about why this portion of St. Louis Avenue is different from other City property, is that the Monaltrie & Lake Avenue lot does not have the encumbrance that this easement has. He stated that the Council asked this same question and came to the conclusion that each city property is distinct. He stated that the Council is concerned about street ends but noted there is a definite need for access to the lake for these fire lanes.

Administrator Young stated that the Monaltrie & Lake Avenue is also significantly different from St. Louis Avenue in that the City actually holds title to that lot.

Jerry Laughlin, 3865 Monaltrie Avenue, asked if vacating the easement would allow the former street to become taxable property.

Administrator Young stated that it would.

Jerry Laughlin asked if the only significant change would be each property owner's setbacks.

Councilmember Erickson stated that this change in the setbacks would be a benefit to the properties owners when they reclaim this property.

Jerry Laughlin asked if the vacated street would have to be surveyed.

Councilmember Erickson stated if there was going to be a building on the property, it would have to be surveyed.

Mayor Skrede stated that the City would pay for the cost to file the vacation with the county. He stated that another question came up at the last public hearing about whether the City was simply doing a favor to a couple of property owners with the vacation petition. He stated that the City Attorney noted that the opportunity to petition to vacate St. Louis Avenue has been available to any previous property owner.

Councilmember Jewett asked if the partial vacation back in 1948 involved the west side of Park Avenue.

Mayor Skrede stated that the partial vacation was on the west side of Virginia Avenue near 3870 Virginia Avenue.

Cindy Barland stated that she had been told it was a land swap and not a vacation.

Bill Griffith stated that the 1948 partial vacation was an actual vacation and referenced document no. 2498566.

Further discussion and clarification was held on the portion of St. Louis Avenue to be vacated.

Mayor Skrede stated that there was no intention to vacate anything beyond the east line of Monaltrie Avenue.

Councilmember Gustafson stated that he doesn't have any particular questions and noted that valid points have been made on both sides. He stated that the issue becomes somewhat clearer in his mind when you understand that the City doesn't truly own the land. He noted, however, that he struggles with the language in state statutes that states no vacation shall be made unless it appears in the interest of the public.

Mayor Skrede stated that he also has a question on what is meant by the interest of the public. He noted that state statutes don't say how high the bar has to be to meet the interest of the public. He asked if trespassing is an issue and if a fence along the property line desirable, he could see where that would be a benefit. He stated that state statute states that it has to be in the public interest and not a benefit for the street to be vacated. He stated that the flip side of the question is what's the harm in the City vacating the street.

Councilmember Kask stated that the argument that was made by the City Attorney is that since the property owners own the dirt, there is no harm-no foul. He asked who is going to pay for the

survey work. He also noted that we didn't receive this request from all five people. He stated that he is not convinced that he wouldn't define the public as all the affected property owners.

Councilmember Erickson stated that he looks at this in comparison with trying to establish a land use agreement or with litigation costs if this goes to District Court. He asked who is the public in this instance. He stated that he is a member of the public but he neither gains nor loses from this vacation. He stated that there are four or five property owners that gain from this vacation. He stated that this is the conclusion that the Council came up with when we realized that we would never put a road over St. Louis Avenue. He stated that he thought we had already hacked this issue to death.

Mayor Skrede stated that if we would have approved the petition, we would have required the petitioners to survey this easement area. He stated that a survey isn't necessary because the property is already in the deed. He added that a survey would be done whenever an improvement is made to their property.

Councilmember Kask stated that he is uncomfortable with the public benefit standard that we aren't losing something by not setting a precedent. He stated that he is not convinced that this might not happen. He stated that his is uncomfortable that this request didn't include all the property owners.

Mayor Skrede stated that some of his neighbors do things that don't necessarily affect him. He added that maybe everyone doesn't understand that they are the fee title owners to this property. He stated that he is not totally surprised that everyone isn't involved in this request.

Jaime Hansen, 18860 Park Avenue, asked about the impact of a future water line. She stated that it doesn't mean we would never use that particular easement for some use. She added that it is already used by neighborhood kids to cut across from Virginia Avenue to Monaltrie Avenue.

Mayor Skrede stated that any water line would go down the street where the City could work on it.

Bill Griffith also noted that the easement that was granted was specifically for a roadway easement and can only be used as a roadway easement.

Further discussion was held on the potential impact of the vacation on the location of Mark Kelley's driveway.

Hearing no further comments, Mayor Skrede closed the public hearing at 7:55 p.m.

Mayor Skrede stated that the Council needs to vote upon the resolution in principal.

Councilmember Erickson stated that he has come up with the following three findings that support the fact that the vacation is in the interest of the public.

- The vacation would remove an unusual encumbrance.

- The vacation would eliminate additional expense to the City through the further development of a land use agreement or potential litigation.
- The vacation would increase the City's tax base.

Councilmember Kask stated that he would be very supportive of the vacation if there were agreement among all property owners.

Councilmember Erickson stated that we have just held a public hearing and it can be assumed that those not in attendance are in agreement with the vacation or simply don't care enough to attend. He noted that the abutting property owners are already using the property.

Councilmember Kask questioned how much of an increase this vacation will have on the property tax base of the City. He added that he hates the fact that we didn't get universal approval.

Mayor Skrede stated that since adoption of the vacation resolution only requires a 4/5 vote of the Council, it's hard to argue that we need every property owner's approval for the vacation. He agreed that he doesn't see much of a property valuation change due to the vacation.

Councilmember Erickson noted that the property value will only likely change with a property reconfiguration and the construction of a new garage. He stated that he doesn't see any change along Monaltrie Avenue.

Councilmember Jewett stated that he agrees with the benefits listed by Councilmember Erickson. He stated that since we haven't done anything in 128 years with the unimproved road, what makes us think that we will add more roads. He stated that he agrees it is in the best public interest to vacate this street and noted that we can do this without the homeowner's having to petition us.

Mayor Skrede noted that when we reviewed the petition last February, we made the decision to deny the petition without understanding the underlying issues.

Motion by Councilmember Erickson to adopt Resolution No. 41-15, A Resolution Vacating a Portion of St. Louis Avenue, noting that the findings in support of the fact that the vacation is in the interest of the public are as follows:

- The vacation would remove an unusual encumbrance.
- The vacation would eliminate additional expense to the City through the further development of a land use agreement or potential litigation.
- The vacation would increase the City's tax base.

Seconded by Councilmember Jewett. Councilmember Kask opposed. Motion carried 4-1.

Councilmember Kask stated that he hopes that there will not be any unintended consequences by the vacation and did not want to see a loss of driveway egress when the land is vacated.

Mayor Skrede called for a recess at 8:13 p.m. The Council reopened the meeting at 8:18 p.m.

6. UNFINISHED BUSINESS

A. Authorize Final Payment to Lunda Construction on the Vine Hill Bridge Project

City Engineer David Martini presented the final payment to Lunda Construction in the amount of \$29,521.29 for the Vine Hill Bridge Construction Project. He stated that the final payment included the final retainage, completion of the punch list work, and an additional cost of \$176 for striping. He added that the City still has a warranty on the project.

Motion by Councilmember Kask to approve the Final Payment to Lunda Construction in the amount of \$29,521.29 for the Vine Hill Bridge Construction Project. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Discuss Ordinance No. 06-01, Amending the Use of Weapons by Minors

Administrator Young stated that the Council had some questions at their last meeting during their review of Ordinance No. 06-01, which proposed to delete Section 605.05 of the City Code on the use of weapons by minors. He stated that, since the last meeting, Police Chief Cory Johnson has done some research into the Weapons laws in Minnesota and on the recommendation of the City Prosecuting Attorney, recommended leaving the Ordinance as is and he will re-train our department on its use and meaning.

C. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Other

There was no other New Business this evening.

8. REPORTS FROM STANDING COMMITTEES

A. Park Committee

Administrator Young presented a brief review of the Park Committee meeting held on July 16, 2015, which included the Kick-Off meeting with Confluence on the development of the Strategic Park & Recreation Plan.

Councilmember Jewett provided an update on the Yacht Club's use of the City's buoys during the last regatta.

Administrator Young provided an update on the recent storm damage.

9. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson.
Motion carried 5-0. The meeting adjourned at 8:35 p.m.

Respectfully submitted,
Dana H. Young
City Administrator