

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, AUGUST 3, 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 Darel Gustafson, Keith Kask, Steve Erickson, and Tony Jewett

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 July 20, 2015 Council Minutes
- B. Approve Verifieds
- C. Approve June 2015 Treasurer's Report

Seconded by Councilmember Gustafson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PLANNING & ZONING REQUESTS**

- A. **Variance Request, Robert J. Kline, 5105 Hooper Lake Road – Request for a variance from the required R-2 side yard setbacks in conjunction with the construction of a garage addition.**

Zoning Coordinator Cooney summarized the request, noting that Robert J. Kline, architect for the Cantu household, has made application for a variance to build a third stall onto an existing two stall attached garage which would encroach eight feet into the minimum required twenty foot side yard setback. He stated that the applicant seeks to add on to an existing conforming attached garage.

He stated that the proposal complies with the remaining setback requirements, building coverage limitations, and height limitations outlined in Section 1302.04, the maximum permitted grade

alteration permitted in Section 1312.04. The parcel is not within the Shoreland Management District and therefore hardcover restrictions would not apply. The city water engineer has also reviewed the proposal.

He stated that the applicant claims to meet the “practical difficulties” standard by virtue of the property being an undersized lot. The lot is zoned Residential District 2 (R-2) and the minimum required lot area is 40,000 square feet whereas the property at 5105 Hooper Lake Road is 31,604 square feet, or 79% of the R-2 minimum lot area. He stated that staff recommends denial for the variance request to encroach eight feet into the minimum required twenty foot side yard setback for the proposed garage addition at 5105 Hooper Lake Road and outlined the reasons presented in his staff report for the denial.

Zoning Coordinator Cooney concluded his report by stating that the Planning Commission accepted the recommendation of staff to deny the variance request of Robert J. Kline to encroach eight (8) feet into the required twenty (20) foot side yard setback to build a third stall onto an existing two stall attached garage and outlined the Planning Commission’s findings of fact.

Councilmember Jewett asked if consideration had been given to rezoning the property. Zoning Coordinator Cooney said that the property was located within a large area of R-2 properties and rezoning would be equivalent to spot zoning.

Councilmember Erickson asked the homeowner about the location of the fence that was approximately fifty feet in front of the rear property line. Erickson said that there was a large amount of unused space that could accommodate an accessory structure. He also said that there was ample space near the front yard turnaround. Erickson said he understood the rationale for wanting to put the garage where the homeowner requested.

David Cantu, 5105 Hooper Lake Road, said that they believed that the location of the proposed garage would be the best aesthetic location and would improve the look of the neighborhood. He also said that the locations in the rear yard were difficult to get to.

Councilmember Kask questioned the practical difficulty. He said that there were options for the homeowner. Kask said they could redesign the existing garage as side loading garage if they wanted it to be attached. He said that the R-2 district side setbacks had already been relaxed from 25 feet to 20 feet in the early 2000’s. Kask said that he would be cautious in approving a variance for a house that already had a two-car garage.

Cantu said that he was trying to improve his home and that a detached structure was not as useful in Minnesota. Cantu said that he had letters from neighbors who were supportive of the garage. He asked if the Council might consider approving a variance but limiting it with stipulations.

Councilmember Jewett said that he struggled with this application because he understood the aesthetic argument. Jewett said that the third stall was too much of a stretch, and that a denial would still allow the applicant to build elsewhere on the property.

Councilmember Gustafson said that he did not see a practical difficulty here. He said that at the Planning Commission meeting the Commission was sympathetic to the homeowner’s issue.

Cantu asked what would be acceptable.

Mayor Skrede said that, in Deephaven, there are properties that struggle to find room for one or two stall garages. He said that a third stall is a stretch. Skrede said that he recognized that the homeowner had a narrower lot.

Robert Kline, architect for the project, said that he realized that this was not an easy decision for the council. He said that the proposed design was in keeping with the neighborhood. Kline said that the practical difficulty standard is subjective. He said that the property is zoned R-2, but that R-3 allows for combined setback totals where R-2 does not. Kline said that the proposal would meet the combined setback totals of 40 feet for setbacks. He said that, even with the addition, the adjacent house would be nearly 50 feet away. Kline asked the council to keep the big picture in mind and that he didn't just want to plop an accessory structure down anywhere. Kline said he didn't want to do that to the neighborhood.

Councilmember Gustafson said that this expansion would penalize his neighbors and the homeowner must take that into account.

Councilmember Erickson said that there was plenty of room in the back of the property that would be invisible to the neighbors. Cantu said that the property was land locked and that they couldn't get back to that part of the property. Erickson said that there was 25 feet on the side yard of the property and that they could get back there.

Councilmember Kask said that setbacks for this district had already been relaxed and that there were other design alternatives.

Councilmember Kask motioned to deny the variance request based on the findings of the Planning Commission and staff.

The motion is 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. Those standards include adequate setbacks at property lines. The goals of the homeowners could be achieved while also meeting the purpose and intent of the ordinance. (b) The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development of residential property within the city. (c) The construction of an additional attached third garage stall on the property is reasonable and continues the single-family use of the property. (d) The substandard lot size argument made by the applicant as a unique circumstance is not a valid justification for the variance. While the property is somewhat undersized based on the minimum lot size requirements, it is not so narrow that the side setbacks have impinged on a reasonable use of this property. There are also a number of areas throughout the property that could accommodate a structure similar in size to the proposed addition, and those areas are reasonably accessible based upon the existing lot size and housing configuration. (e)The proposal would not alter the essential character of the locality.

Councilmember Erickson seconded the motion. Motion carried 5-0.

6. UNFINISHED BUSINESS

A. Update Planning Commission discussion on Impervious Surface Coverage

Zoning Coordinator Cooney summarized the memo that was included in the City Council packet. Cooney said that the Planning Commission had been discussing this issue at the last two meetings. He said that the June meeting was a big-picture discussion about overall goals and objectives and included a review of ordinances from a number of neighboring Lake Minnetonka cities. Cooney said that the July meeting included a conversation with the City Engineer, Dave Martini. Cooney said that Martini discussed stormwater issues generally within the city, the pros and cons of various stormwater mitigation systems, and had the Planning Commission take a deeper look at the City of Orono's stormwater ordinance.

Cooney said that out of these discussions came several broad policy recommendations from the Planning Commission: 1) Impervious surface regulations should be expanded to include the entire city. 2) Impervious surface regulations will incorporate a tiered system. 3) Variances from impervious surface limitations will require stormwater mitigation. 4) Stormwater mitigation systems will not be credited for reducing impervious surface coverage unless approved through the variance process.

Zoning Coordinator Cooney concluded his report.

Mayor Skrede asked that if the city learned that a property was over hardcover when they applied for a permit for a different issue, would the city require a variance for the hardcover. Zoning Coordinator Cooney said, in that situation, the hardcover would be a legal non-conformity.

Councilmember Gustafson said that he discussed with the planning commission a credit for stormwater management systems based on how well a system could function with no maintenance, and how frequently a property would have a request for an impervious surface coverage variance. Gustafson said that those two factors would allow the city to come up with the percentage of credit allowed for any stormwater management system.

Councilmember Erickson said that the city should assume that these systems will not be maintained. Erickson said that annual maintenance and inspections would be burdensome and that the city should require inspections every five years. Erickson said that he has a French drain on his property that would take one hundred years to fill up with sediment since it drains from his roof which carries very little sediment.

Planning Chairman Kent Carlson said that he is familiar with these types of maintenance and inspection requirements through the marina he owns in Greenwood. Carlson said that he has 65% hardcover on his marina property and that he has a permit from the watershed district which requires annual self-reporting. Carlson said that he takes photos of the property's rain gardens immediately after a 1 inch rain event and then the next day to show that the rain gardens are functioning.

Mayor Skrede said that there should be different performance levels, and therefore, different credits given based on the different mitigation systems.

Councilmember Gustafson said that he had some reservations about having the entire city under some kind of hardcover limit. He said that there are situations where a home or an addition is dumping a lot of water onto a neighboring property and they could still be well under the hardcover limit.

Councilmember Jewett said that perhaps there could be fees for over-improving a property. Jewett said that the city wouldn't restrict the development, but that the property owner would need to pay fees into a stormwater fund.

Mayor Skrede said that the city was fined \$240,000 because the city's sewer system could not handle last year's flooding. City Administrator Dana Young said that the city could pay the fine or use the money to improve the city infrastructure.

Mayor Skrede said that fees could be part of the solution, but asked how the city would calculate an impervious surface fee. Chairman Carlson said that the fees could be used to fund some regional systems within the city, but that would be a bigger and more expensive project. Mayor Skrede said that he was not in favor of a regional system. Administrator Young said that the city's issues are less about a regional system and more about retrofitting.

Councilmember Gustafson said that the two issues are getting the water to the lake and keeping it from draining onto the downhill neighbor. Chairman Carlson said that, while important, the water quality issue is secondary to controlling the amount of stormwater runoff.

Councilmember Erickson said that systems such as rain gardens can filter the water, but his French drain is more of an erosion control device. He said that overall, the mitigation process would be for controlling erosion and stormwater runoff. Erickson said that larger lots, even with a large amount of hardcover, will still have areas for infiltration.

Mayor Skrede said that a tiered system is the only way to handle the problem.

Councilmember Erickson said that perhaps renovations over a certain limit would require a stormwater management plan.

Mayor Skrede said that the city is primarily looking at trying to keep the water on the property.

Councilmember Kask said that he was troubled by the administration related to these issues. He said that there were two main issues: slowing the flow of water and keeping water on site. He said that in order to give credit for a system, the city must be sure it works. Kask said that the city should make the requirements for going over hardcover somewhat punitive. Kask said that he also favors a policy that discourages mechanical systems and encourages simple, natural systems such as ponds and rain gardens. Kask said that he was not as concerned about the larger sites and reluctant to bring the entire city under impervious limits.

Mayor Skrede said that the ordinance could trigger a review that could stop the process on problem projects, or decide that there is not a problem.

Administrator Young said that structures can cause problems because of proximity, not because of an overage of hardcover.

Councilmember Kask said that properties that didn't start with good drainage often come back to haunt the city. Kask said that in the past, these properties were considered unbuildable. Kask said that city should not be held accountable for people who build on marginal properties.

Mayor Skrede asked what opportunities the city would be managing. Would it be teardowns/rebuilds, or would it include remodeling.

Kask asked where the greatest need in the city was for stormwater management. Gustafson said that Deephaven Park and Heathcote were two problem areas. Erickson said that Lake Avenue and Azure Road were problem areas. Mayor Skrede asked if there were areas that the city did not need to look at. Kask said that the city should focus on the problem areas only.

Chairman Carlson said that if we don't have any regulations, the city is not in a position to say "no" to a project. He said that the Planning Commission discussion focused on the ways development might be changing the drainage within the city. Carlson said that the standards could be high enough that most projects would not need to be heavily reviewed.

Councilmember Kask said that the city has probably spent the most of its stormwater funds managing properties within the R-3 districts.

Councilmember Jewett said that the 2014 rains were significant and that that history could tell us what areas were most problematic and those that don't need as much attention. Mayor Skrede said that we should ask the public works staff where the biggest problem areas were.

Administrator Young said that complaints are not the best way to determine problem areas, since many of these were merely nuisance complaints and not significant runoff issues.

Councilmember Erickson said that once the water gets to the street it becomes the city's problem. Young said once the water gets to the street it has no place to go. Chairman Carlson said that property owners need to recognize that changes that they propose will cause problems.

Councilmember Jewett said that the city should find out how the mitigation systems the city has already approved are functioning. Jewett said that to simplify administration, the city should inspect only in years that end in a 5 or a 0, regardless of when the system was installed.

Mayor Skrede asked if we would require the owners to self-report. Jewett said yes, and that if they didn't report the city would know. Administrator Young said that any maintenance agreement should put the costs on the property owners.

Chairman Carlson said that the City Engineer will provide information to the Planning Commission in order to calculate partial credit for the various stormwater mitigation systems. Carlson said that new systems may be developed five to ten years from now that would change how we calculate these credits.

Mayor Skrede closed the discussion.

B. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Adopt Resolution No. 42-15, Authorizing an Amendment to the Recycling Grant Agreement with Hennepin County

Administrator Young stated that the Hennepin County Board adopted a resolution on June 16 2015 to amend the Residential Recycling Grant Agreement Policy. The following changes were approved:

- Extend the contract period from December 31, 2015 to December 31, 2016
- Incorporate state requirements to expend additional SCORE funds on organic recycling

He stated that in order for the City of Deephaven to receive our annual \$12,000 grant from Hennepin County to fund our Spring and Fall Cleanup Day, as well as other recycling educational programs, the City is required to adopt Resolution No. 42-15 approving the attached Amendment No. 1 to Agreement A120103.

He stated that there is little change in the amended Residential Recycling Funding Policy from the current Policy. The amended Policy now includes a funding mechanism for organics recycling, which the City will not likely participate in. He noted that the City of Deephaven's obligations under the current and amended Policy are shown on page 4 & 5 of the Policy listed under City Requirements, Use of Funds, and Reporting Requirements.

Motion by Councilmember Kask to adopt Resolution No. 42-15, A Resolution Authorizing an Amendment to the Residential Recycling Grant Agreement with Hennepin County. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Review 2016 EFD Operating Budget & Capital Equipment Plan

Administrator Young stated that the Deephaven City Council first reviewed the 2016 EFD Operating Budget and Capital Equipment Plan on June 15th and had the opportunity to attend the EFD Board Budget Work Session on June 17th. He stated that following the review of the 2016 EFD Budget by all member cities, the EFD Board recommended forwarding the 2016 EFD Operating Budget & Capital Equipment Budget to the member cities for their review and final approval at their July 22nd Board meeting.

Administrator Young presented the following highlights of the 2016 EFD Budget and 2016 Capital Equipment Plan:

Operating Fund Budget - \$967,177 / \$73,997 increase (8.28%) from the 2015 Budget to the 2016 Budget. The increase is attributable to the following expense items:

- Change in Administrative Specialist position. Full time with EFD and shared services with the City of Chanhassen for 50% of costs. District cost for this position is \$57,792, of which the City of Chanhassen will be contributing \$31,696 towards that cost. The net expense to the District is \$26,096.
- Building Maintenance projects are included in the operating fund. The most significant maintenance project in 2016 will be repairing the concrete apron at Station 1 at a cost of \$21,000.
- For the third consecutive year, the Operating Budget does not include a Required Firefighter Relief Association (Pension) contribution in 2016.
- Wage increases for Fire Chief (4.5%), Fire Inspector (9.6%) and Administrative Specialist according to wage policy.
- 2.0% wage increases for Firefighters
- Continuing the Part-Time Fire Inspector for Special Events
- Employer benefit increases including health insurance and PERA.

Capital Equipment Fund - \$170,000 (No change from 2015 funding)

- Includes the following purchases in 2016:
 - Year three lease payment for new Engine 22 - \$87,337
 - Purchase of new command vehicle - \$39,500
 - Completion of refurbishment of new Boat 11 - \$61,000

Fire Facilities Fund - \$549,098 (\$ 2,007 increase or 0.37%)

Total 2016 Budget - \$1,686,275 (\$13,996 decrease or 0.82 %)

2016 Municipal Contributions - \$44,307 or 2.79% increase over 2015 contributions

- 2016 Proposed Municipal Contribution – \$1,635,079
- 2015 Proposed Municipal Contribution – \$1,590,772

Councilmember Erickson noted that due to the legislature's decision to delay the implementation of the sales tax exemption for Joint Powers Agencies until January 1, 2017, \$9,000 in potential sales tax savings within the 2016 Operating Budget were offset by equal reductions in expenditures in order to keep the municipal contribution at the same level as was previously presented.

He stated that the 2016 Capital Equipment Plan includes a new command vehicle due to the addition of a part-time fire inspector, the third year lease payment towards Engine 22, and \$61,000 to outfit the used boat that was purchased this year from Hennepin County. He noted that approval of the 2016 Capital Equipment Plan might raise expectations that the City of Deephaven is in agreement with the plan to replace the aerial truck in 2018.

Mayor Skrede stated that although he doesn't want to have a discussion tonight on the aerial truck, approval of the 2016 Capital Equipment Plan only grants the City's approval of those specific expenses in 2016.

Councilmember Kask stated that while the budget packet includes general information on the aerial truck, he doesn't have an issue with the proposed purchase of 2016 items such as the lease payment for Engine 22, outfitting the boat and purchasing a new command vehicle.

Mayor Skrede agreed that he considered the material on the aerial truck as informational only at this point, much like the other information that was presented on staffing issues.

Motion by Councilmember Erickson to approve 2016 EFD Operating Budget in the amount of \$967,177 as presented. Seconded by Councilmember Kask. Motion carried 5-0.

Motion by Councilmember Erickson to approve 2016 EFD Capital Equipment Plan in the amount of \$170,000 as presented for the 2016 expenditures. Seconded by Councilmember Kask. Motion carried 5-0.

Mayor Skrede stated that he would like the Council kept abreast of any further discussion on the replacement of the aerial truck.

C. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided a summary of the July Police Activity Report, National Night Out, and the Tour de Tonka.

Mayor Skrede stated that he would like to have the 100 mile bike race start and finish at Minnetonka High School next year rather than at the Minnetonka Community Education Building due to parking and public safety concerns. He stated that Minnetonka Community Education will need to obtain approval from the Deephaven City Council in order to conduct the race in Deephaven.

Councilmember Jewett stated that the Minnetonka Yacht Club used 15 of the City's buoys during last week's regatta. He stated that the regatta went very well and, on behalf of the Minnetonka Yacht Club, thanked the City Council for the use of the City buoys and thanked the Deephaven Police Department for their assistance with the event.

Councilmember Gustafson had several questions regarding mutual aid assists to South Lake Police Department. Administrator Young noted that South Lake is planning to add a couple of additional officers next year.

B. Excelsior Fire District

EFD Liaison Steve Erickson provided an update on the EFD Board meeting held on July 22nd, including:

- July was an exceptionally busy month due to the dance and storm damage call-outs.
- The Firefighter's Dance was very successful.
- A used boat was purchased from Hennepin County in the amount of \$11,000 and will be outfitted over the winter.

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:

- June 30, 2014 Year to Date Summary
- Building Permit Update
- Northome Bridge Meeting

9. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 9:40 p.m.

Respectfully submitted,
Dana H. Young
City Administrator