

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JULY 5, 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 Steve Erickson, Tony Jewett, Darel Gustafson, and Keith Kask

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 Gustafson to approve the Consent Agenda, consisting of the following items:

- A. Approve June 20, 2016 Special & Regular Council Minutes
- B. Approve Verifieds
- C. Approve Westys Electrical Quote on Ice Rink Timer Lighting (\$2,065.00)

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PLANNING & ZONING REQUESTS**

- A. **Consider request of The Landschute Group for a variance for the alteration of a non-conforming structure at 20430 Lakeview Avenue – Applicant proposes to slightly modify the non-conforming structure that was previously approved in November of 2015. The modification would take place within the lake yard encroachment.**

Zoning Coordinator Cooney summarized the staff report. Cooney said that The Landschute Group was granted a lake yard setback variance in November of 2015 and that the applicant is requesting a slight modification of the approved footprint for the home.

Cooney said that, as approved, the variance for the house would sit 61 feet, 6 inches from the OHW. He said the modifications will not increase the maximum lake yard encroachment.

Cooney said that the applicant proposes the addition of a 25 square foot side entry stoop, which would increase slightly the overall footprint of the building area within the lake yard. Cooney said that a 32 square foot patio area is proposed to be removed, creating a net reduction in impervious surface area and that the property would remain below the 25% maximum impervious surface area.

Cooney said that since the variance for the house was approved, and the encroachment is not increasing, staff believes that the variance request would be for the alteration of a legal non-conforming structure.

Cooney said that staff recommends approval of the variance request by The Landschute Group, Inc. to modify the non-conforming structure at 20430 Lakeview Avenue, as presented, based on the following findings:

(a) Is the variance in harmony with the purpose and intent of the ordinance?

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 proposing a modest change to an existing non-conforming structure. The change will have minimal impact on the lake yard.

(b) Is the variance consistent with the comprehensive plan?

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) Does the proposal put property to use in a reasonable manner?

The minor change is a reasonable modification of the approved structure.

(d) Are there unique circumstances to the property not created by the landowner?

The lake yard encroachments on the house are legal non-conformities, and making modifications to this portion of the house cannot be done without impacting the setback in some way.

(e) Will the variance, if granted, alter the essential character of the locality?

The proposal would not alter the essential character of the locality. The change is a minor change to an approved variance.

Cooney said that the Planning Commission held a public hearing on the request at their June 21 meeting. He said the Planning Commission recommend approval of the request of The Landschute Group, Inc. for the alteration of a legal non-conforming structure at 20430 Lakeview Avenue, as presented, based on the findings of staff.

Cooney concluded his staff report.

Councilmember Jewett asked why the patio area is being removed and will it come back after the request is approved.

Joe Paetzel, representative of the Landschute Group, said that the proposal is a win/win since the patio area is being removed in order to help preserve a tree on the property. He said he did not expect the patio area to come back.

Councilmember Erickson said that the applicant is under the 25% impervious area with or without the patio.

Motion by Councilmember Kask to approve the request by the Landschute Group, Inc. for the alteration of a legal non-conforming structure at 20430 Lakeview Avenue, as presented, based on the recommendation and findings of the Planning Commission. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Consider request of Tom Preissing for a variance to exceed the maximum allowable impervious surface coverage in order construct a patio and expand a driveway at 4260 Jefferson Street – Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. Applicant is proposing an impervious surface area of 28.6%.

Zoning Coordinator Cooney summarized the staff report. He stated that Tom Preissing, the property owner at 4260 Jefferson Street, has applied for a variance to exceed the maximum allowable impervious surface area in order to expand a driveway and build a patio on the property. Cooney said that the lot area is 10,421 square feet in size, and the applicant is requesting 28.6% impervious surface area for the property. Cooney noted that the house was constructed last year without any variances. Cooney said that, at the time, the approved plans showed an impervious surface area of 24.9% and the applicant indicated that he might be interested in pursuing a variance for the driveway, but he did not want to delay construction.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 28.6% and is seeking a variance to exceed the maximum impervious surface area by 3.6%.

Cooney said that prior to construction of the new house, the previously existing conditions on the property were 23.6% impervious. Cooney noted that since previously existing hardcover on the property is less than proposed, “grandfathering” of excess impervious surface area is not a consideration in this case. Cooney pointed out that properties of similar sizes have been granted variances for comparable amounts of excess hardcover regardless of existing conditions.

Cooney said that the applicant has proposed a rain garden and an infiltration swale as part of the application materials. Cooney said that Section 1353.03 of the zoning code requires stormwater mitigation for those impervious areas over 25%. He said that the proposed mitigation will handle approximately 5 times the required volume. Cooney said that the applicant will be required to comply with the requirements of the city engineer for design and installation.

Cooney said that staff recommends approval with conditions of the request of Tom Preissing for a variance to exceed the allowable maximum impervious surface area by 3.6% for the property at 4260 Jefferson Street, as presented. He said that his recommendation would be conditioned that:

- The required stormwater management practices meet the requirements and specifications of the city engineer.
- The applicant enters into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney said that his recommendation was based on the following findings:

(a) Is the variance in harmony with the purpose and intent of the ordinance?

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 impervious surface standards of the ordinance in order to construct hardcover improvements on an undersized lot. The requested variances remain in harmony with the purpose and intent of the ordinance.

(b) Is the variance consistent with the comprehensive plan?

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) Does the proposal put property to use in a reasonable manner?

The proposal puts the property to use in a reasonable manner. The use of the property would be consistent with other similar sized properties in the community.

(d) Are there unique circumstances to the property not created by the landowner?

The property is an undersized lot, but of a size that is consistent with other single-family properties in the neighborhood. The undersized property creates difficulties in the hardcover restrictions of the ordinance.

(e) Will the variance, if granted, alter the essential character of the locality?

The proposal would not alter the essential character of the locality. The proposal is of a similar size and scale to other single-family houses within the neighborhood.

Cooney said that the Planning Commission held a public hearing at their June 21 meeting and recommended that the City Council approve with conditions the request of Tom Preissing for a variance to exceed the allowable maximum impervious surface area by 3.6% for the property at 4260 Jefferson Street, as presented, based on the findings and conditions of staff.

Cooney concluded his staff report.

Erickson said that the city received three letters regarding this application, although the third letter was not signed. He asked how the city should handle these opposing views.

Cooney said that the opposition to allowing excess impervious surface area is one of the most common comments he receives on variance requests. Erickson asked if staff informs residents about the mitigation requirements. Cooney said that he does, but that sometimes falls on deaf

ears since it sounds like an excuse to allow the impervious area. Cooney said perhaps residents don't understand or don't believe that the mitigation will work.

Skrede says that his philosophy on this is that the neighbors will have to live with these council decisions forever; while the homeowner may be gone is six months. He said he would prefer that people with concerns sign their names when they submit comments. Skrede said that many requests are handled at the staff level, and it is the tougher issues that make it to the City Council. He said that he does not think that 3.6% of mitigation is a big number, and that there is a need for the impervious area in this case.

Jewett asked if the shed on the property had been removed. Tom Preissing, applicant, said that the shed had been removed. Jewett said that he would prefer to see these requests from the beginning of the project rather than after the fact.

Erickson said that these are reasonable changes that he would have approved at the front-end of the project. He said that the owners are not duping the city in this case by asking for this after-the-fact. Erickson said that having the 35 foot setback allows cars to be off of the street, which is a city goal. He said that having a narrow driveway would force cars onto the street. He said that the property owners are required to mitigate as soon as they reach 25% impervious surface area.

Erickson asked if the city engineer was comfortable that the water off of the property will be directed towards the mitigation systems. Cooney said that he will confirm with the city engineer.

Skrede asked about the gutters on the property. Preissing said that the gutters would be directed towards the rain garden and the infiltration swale.

Skrede asked why they did not want to pursue the variance before they built the house. Preissing said that he would have been fine with waiting, but that his wife was pregnant and that she needed to be in the house when the child arrived.

Motion by Councilmember Kask to accept the recommendation, findings, and conditions of the Planning Commission to approve with conditions the request of Tom Preissing for a variance to exceed the allowable maximum impervious surface area by 3.6% for the property at 4260 Jefferson Street, as presented. Seconded by Councilmember Jewett. Motion carried 5-0.

C. Public Hearing for the Preliminary Plat at 19615 Manor Road - Aspect Design Build has made application for a Preliminary Plat at 19615 Manor Road. The property, proposed plat name of "Webb Pond", would plat the existing lot into two buildable properties.

Zoning Coordinator Cooney summarized the staff report. He said that Aspect Design Build has made application for a Preliminary Plat at 19615 Manor Road. Cooney said that the property, with a proposed plat name of "Webb Pond", would plat the existing lot into two buildable properties. He said that the property is in the R-2 zoning district and that the previously existing house on the property was demolished in May of 2014.

Cooney said that the proposal meets the minimum lot size, road frontage, and impervious surface requirements of the zoning code. He said that the plans show an area for a possible house within the building pad. Cooney noted that the proposed conditions are shown merely to demonstrate the viability of the lots to meet the zoning code requirements. He said that final house design, grading, and other considerations will likely be different than what is shown on the survey. Cooney said that, in the opinion of staff, future variance requests for these lots would be met with skepticism since any shortcomings the lots may have should have been identified and vetted as a part of this process.

Cooney said that the Deephaven Zoning Code defines “Lot Area or Lot Size” as “the area within the lot lines exclusive of land below the ordinary high water line of a public water body.” He said that the Deephaven Zoning Code defines “Public Waters” as “any water of the State which serve a beneficial public purpose, as defined in Minnesota Statutes 103G.005 Subd. 15 & 18. However, no lake, pond or flowage of less than 10 acres in size and no river or stream having a total drainage area less than two square miles shall be regulated for the purposes of these regulations.”

Cooney noted that the wetland on the property is just over 2 acres in size and that he interprets the above definitions to mean that the entire property should be included in the calculations for purposes of the subdivision. For these reasons, Cooney said, it is his interpretation that the proposed lots are zoning code compliant for lot size.

Cooney said that the previous house on the lot was situated toward the road in the middle of the lot. He said that some re-grading of the lots is required to accommodate the proposed house pads and driveways, but, as proposed, would not require a variance to do so.

Cooney said that proposal would require the acquisition of an additional sewer lateral. He said that the property was assessed for the trunk line (\$2,154) and one sewer lateral (\$2,400) in 1971 and that the applicants would be required to pay an additional sewer connection fee of \$2,400 as condition of approval. He said that this fee would be in addition to any SAC charges that the Metropolitan Council may require.

Cooney said that rear portion of the property hosts a Type 4, Deep Marsh wetland on the site, and that no disturbance of the wetland is proposed. He said that the applicants have completed a wetland delineation and submitted a wetland boundary application to the Minnehaha Creek Watershed District. Cooney said that MCWD has accepted the delineation as submitted. Cooney noted that in speaking with the staff at MCWD, they did not raise any specific concerns about the wetlands impacting the viability of the subdivision, but the applicants will be required to comply with any restrictions put on the property by the MCWD.

Cooney stated that the city requires 10% of the land to be subdivided be dedicated to the city parks system, or in lieu of land, the city may require 10% of the equivalent fair market value of the land to be subdivided. He said that the fair market value is determined by the City Assessor who has determined that the fair market value of the additional lot at 19615 Manor Road is \$180,000. Cooney said that as a condition of approval, the city will require payment of \$18,000 in park dedication fees prior to signature of the Final Plat.

Cooney said that he recommends approval of the Preliminary Plat for Webb Pond, with the following conditions:

- a) Prior to the signature of the Final Plat:
 - All fees incurred by the City for the review of the Preliminary and Final Plat must be paid prior to the release of the escrow submitted by the applicant.
 - All park dedication and sewer lateral fees must be paid.
- b) That the drainage and grading plans be approved by the City Engineer prior to the issuance of a building permit for each lot on an individual basis.
- c) The applicants comply with the requirements of the Minnehaha Creek Watershed District.

He said that in the opinion of staff, the proposed plat does not impact the integrity and general development of the community, does not impact the health, safety and general welfare of the neighborhood, will not negatively impact the traffic on adjacent streets, would not have an adverse impact on property values and will maintain the general character of the neighborhood.

Cooney said that the Planning Commission held a public hearing at their June 21 meeting and recommended that the City Council accept the conditional approval of the Preliminary Plat of the Webb Pond subdivision, as presented, based on the findings and conditions of staff.

Cooney concluded his staff report.

Skrede said that any dirt that is moved around would be assumed to stay on the site.

Shaun Winkler, of Aspect Design Build and the applicant, said that was the intention although they aren't certain what they will find on site.

Skrede asked if the city should require a rough grade of the lot to even out the grading prior to approval.

Kask said that he was not supportive of this idea. He said that the grading is based on the type of home design and that things can change. He said that if there are issues, the grade could be disturbed for a long time which is something that the city wants to avoid. He said that the plat meets the requirements and is of a suitable size and that he is not eager to require the additional condition. Kask asked if the houses would stay close to the proposed location.

Winkler said that they will keep the houses closer to the front setback line and that layout works best for the properties. He said that they chose to not pursue a grading variance. He said that the bowl in the front yard of lot could be filled, but that it was not necessary for the building pad since it was within the setbacks.

Councilmember Gustafson asked about the grading and said that if a variance were requested in the future for grading, that would be a condition created by the homeowner who created the problem by subdividing the lot.

Erickson said that the 3 foot limit for grading was more about builders using grading to cheat the height restrictions. He said that the intent of the ordinance was to only have the council review the grading and not to be overly restrictive. Erickson said that many properties would be challenged to stay under the 3 foot limitation.

Kask pointed out that the fee for a sewer lateral was \$2,400 in 1971 and is \$2,400 in 2016. He said that he thinks that might need to be addressed. Kask said that a septic system would cost \$30,000 and that tying into the city's system was an extreme bargain.

City Administrator Young said that the cost of the system was what it cost to build in 1971 and that those costs are fixed, and the \$2,400 fee reflects this.

Jewett asked about the 12 foot wide easement on the west lot, and if that would change the required setback. Kask said that it was likely a utility easement.

Skrede said that he would like to look up the easement document. He also said that the square footage does not match for the total properties and the subdivided properties. He said that this will need to be addressed.

Motion by Councilmember Kask to accept the recommendation, findings, and conditions of the Planning Commission for conditional approval of the Preliminary Plat of the Webb Pond subdivision, as presented, and further conditioned that the square footage for each parcel be confirmed. Seconded by Councilmember Gustafson. Motion carried 5-0.

D. Review Draft of Proposed Floodplain Ordinance

Zoning Coordinator Cooney summarized the staff report. He said that FEMA had updated their Flood Insurance Rate Maps for Hennepin County and that as a part of this update, FEMA is requiring that cities update their Floodplain Ordinance to be in compliance with new federal language. Cooney said that the new ordinance is required to be updated by November 4, 2016 and that FEMA has stated that "without exception" a community that has not adopted new language will be suspended from the National Flood Insurance Program.

Cooney said that the Minnesota DNR is the state agency in charge of administering the National Flood Insurance Program at the state level. He said the Minnesota DNR has created a model ordinance for cities to adopt. Cooney said to keep the process moving towards the November 4, 2016 timeline, the Minnesota DNR has requested that cities submit a draft ordinance to them by August 4, 2016.

Cooney said that based on the model ordinance, staff has formatted a draft ordinance for City Council review. He said that a public hearing for the ordinance will be held at a later date. Cooney said that, as presented here, the ordinance contains only the mandatory language, with all optional language shown in gray. Cooney said that the City Council may choose to incorporate any optional language, however all mandatory language must be retained.

Cooney concluded his staff report.

Skrede asked about the strikethrough items. Cooney said that these were mostly optional definitions and allowing certain conditional uses. He said that, as proposed, the ordinance is the bare minimum required, but that the city could include the entire ordinance if that were the preference.

Kask said that it was important that the city participate, otherwise city residents could not get flood insurance.

Jewett asked about the cost of flood insurance. Kask said that he knew of a policy for \$250,000 worth of coverage which cost \$6,600 annually.

Skrede asked if the ordinance would go to the planning commission in August if the DNR had not submitted comments by then. Cooney said that he would like to keep this moving regardless of whether or not comments were received.

The council agreed to submit the draft ordinance to the Minnesota DNR as presented.

6. UNFINISHED BUSINESS

A. Other

Administrator Young stated that he was contacted by Bryan Gilbert the evening the Council had acted on the reinstatement of the 2016 Boating Permits to those individuals in violation of the June 1st Deadline requirements. He stated that Bryan Gilbert, who leased Canoe Rack No. 19 in St. Louis Bay, was also in violation of the June 1st Deadline requirements and had been traveling extensively and had missed the opportunity to submit a letter of appeal, which he has done this evening.

Motion by Councilmember Kask to authorize the reinstatement of the 2016 Boating Permit to Bryan Gilbert (3554 Therese Street) for submitting a letter of appeal, subject to payment of an amount equal to 50% of his 2016 permit fee. Seconded by Councilmember Erickson. Motion carried 5-0.

7. NEW BUSINESS

A. Approve Four-Year Assessment Service Agreement with Hennepin County

Administrator Young stated that in June 2013, the City Council approved a three-year agreement with Hennepin County for providing commercial assessment services from 2014-2016. He stated that Hennepin County charged \$2,000 per year for providing this service. .

He stated that Hennepin County is proposing a new four-year contract from 2017-2020 to continue to provide commercial assessment services at a cost of \$2,300 per year. He noted that additional language has been included in Sections 1, 3, 9, and Exhibit A of the proposed 2017-2020 contract.

Mayor Skrede stated that he didn't know why we need to include Hennepin County's affirmative action statement in this agreement. He added that his reading of Section 9 would indicate that either party could extend this agreement for another four years at the same cost of \$2,300 per year. Administrator Young agreed with this interpretation.

Councilmember Erickson agreed that this agreement doesn't have to dictate the County's employment practices.

Motion by Councilmember Erickson to approve the 2017-2020 Assessment Service Agreement with Hennepin County subject to the removal of Section 3. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Adopt Resolution No. 35-16, Approving Joint Powers Agreement with State of MN

Administrator Young stated that on March 7, 2011, the City of Deephaven entered into a five-year Joint Powers Agreement with the State of Minnesota acting through the Department of Public Safety, Bureau of Criminal Apprehension to use the State's internet based system for a new E-Charging system for DWI offenders. In order to participate in the E-Charging system, the City was required to adopt a resolution that approved a five-year Joint Powers Agreement with the State of Minnesota. The five-year Joint Powers Agreement expired on March 21, 2016 and a new five-year Joint Powers Agreement with the State of Minnesota is required in order to maintain access to court data services for the Deephaven Police Department and for the City Prosecutor.

Motion by Councilmember Jewett to adopt Resolution No. 35-16, Approving the Joint Powers Agreement with the State of Minnesota as presented. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

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

B. Excelsior Fire District

Councilmember Erickson stated that he had nothing new to report of the Excelsior Fire District.

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:

- Minnetonka Youth Hockey Association Project
- City of Woodland Contract Update
- Election Preparations
- Pre-Hearing Settlement Conference on WCA Appeal
- Metro Area LED Rollout

9. ADJOURNMENT

Motion by Councilmember Jewett to adjourn the Regular Council meeting. Seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 8:34 p.m.

10. SPECIAL BUDGET WORK SESSION

Administrator Young presented the 2017 General Fund Budget for Council review.

11. ADJOURNMENT

Motion to adjourn the Special Council Work Session by Councilmember Erickson, seconded by Councilmember Kask. Motion carried 5-0. The meeting adjourned at 10:15 p.m.

Respectfully submitted,
Dana H. Young
City Administrator