

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, FEBRUARY 1, 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, Steve Erickson, Keith Kask, 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 the January 4, 2016 Council Minutes
- B. Approve Verifieds
- C. Approve December 2015 Treasurer's Report

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Julie Eddington, Bond Counsel with Kennedy & Graven, and Jim van Bergen and Sharon Morgan, with the Minnetonka Youth Hockey Association, were present to request that the City of Deephaven issue conduit bonds up to a maximum amount of \$5,000,000 to enable the Minnetonka Youth Hockey Association to build an addition with a new ice rink and practice facilities onto the Pagel Center. She stated that the City would not be responsible morally or financially for the payment of the bonds and that the City has up to \$10 million dollars that can be used each year in bank qualified bonds.

Jim van Bergen, 19200 Highland Avenue, stated that he is both a Deephaven resident and a member of the Minnetonka Youth Hockey Association (MYHA). He stated that MYHA has an all-time high of 977 participants and the demand of ice time has never been higher. He stated that the Pagel Center is their home rink and participation in MYHA has increased 36% over the past ten years. He stated that it is their goal to have kids start and stay with hockey and to provide opportunities for all kids to play. He stated that MYHA currently has the use of two

rinks and need an additional rink as well as off-ice facilities. He stated that the new facility will be entirely privately funded through MYHA and they plan to start construction this spring.

Sharon Morgan provided an overview of the construction and financing costs of the new facility.

The Council concluded discussion under Matters from the Floor and adopted Resolution No. 08-16, Calling for a Public Hearing on the MYHA Conduit Bond Sale under Item 8.B.

## **5. PUBLIC HEARING**

### **A. Continuation of Wetland Conservation Act Replacement Plan Decision, James & Debra Crooks, 18707 Heathcote Drive.**

Jim and Debra Crooks, 18761 Heathcote Drive, displayed a PowerPoint presentation. Jim Crooks said that this had been a long learning process. He said that he has a revised proposal to present to the City Council for their consideration. He also presented a petition in support of the proposal signed by over 20 of his neighbors. Crooks said that the state requires the applicant to avoid wetland impacts, but if impacts cannot be avoided, then the applicant would need to minimize the impacts, and then mitigate for the impacts. He said that at the meeting in January, Plan A was submitted as the preferred alternative, and that plan proposed 10,290 square feet of wetland impacts. Crooks said that since that time, he and his wife have come up with several alternatives to further minimize impacts on the property and shrink the footprint of the house. He showed Plan I, which would reduce the square footage of impact to 7,510 square feet.

Debra Crooks showed three iterations of Plan I with various scenarios to reduce the overall footprint of the house, including one scenario that showed approximately 3,000 square feet of wetland area created out of existing upland area. She also showed a scenario with two infiltration ponds. She said that the infiltration ponds could offset the additional hardcover created by the property, and could address some of the City Council's concerns about additional runoff.

Jim Crooks thanked the council for their time and effort on this application. He said that avoidance of wetland impacts was not possible within Deephaven. He said that through minimization, he would be impacting less than 10 percent of the lot. Crooks said that he has been diligent and strived to meet all of the requirements of state law. He said that the project would be a net positive for the neighborhood and that he wants to work the project creatively. He said that he does not see how the project does any damage to anyone.

Dave Martini, City Engineer, said that the issue is the impacts to the wetlands, and that the project would impact 7,500 square feet of wetlands and require 15,000 square feet of mitigation. He said that the 3,000 square foot wetland area on alternative I-A is not minimization, but rather partial mitigation of the wetland impacts on site. Martini said that the proposed infiltration areas in option I-C are stormwater management areas, not replacements for wetlands. He said that the main question remains the impacts to the wetlands.

Councilmember Jewett said that he did not believe that the applicants had crossed the first hurdle of avoidance.

Mayor Skrede asked if the new proposals would still require wetland credits. Jim Crooks responded that the project would still require wetland credits.

Mayor Skrede asked Councilmember Kask if his questions regarding assessments and legal rights conferred to the property owners by the subdivision have been answered. Kask said that he believed his questions had been answered.

Councilmember Erickson asked if the property was charged for sewer connection at the time of platting. City Administrator Young and Councilmember Kask confirmed that the subdivision as a whole was assessed at that time.

Mayor Skrede said that his questions had been answered as well. Regarding the ability of a City Council to bind a future council, he said that the City Attorney has stated that the previous council only conferred rights of the lot to exist. Skrede said that the development of the lot would be determined at the time of the development proposal, and subject to the laws in effect at the time of the proposal. Skrede said that, regarding the issue of grandfathered rights, the only grandfathered rights are for any conditions that exist today, not at the time of platting. He said that there are no grandfathered rights for a non-existent structure. Skrede said that rights are given to cities by the state and the state says that the city must to protect the wetlands and apply the current wetland regulations. He also pointed out that any lawsuit in this matter would be taken up by the State of Minnesota.

Bill Marceau, 18918 Carsonwood Avenue, said that his property is across the wetland from the property in question. He said that the people who signed the petition would not be directly impacted by the proposal, but that his property would be impacted. He said that he purchased his property in 1978 from the Pentom Company and that, at the time, he looked at both his current lot and 18707 Heathcote Road. He said that he purchased his lot because the soil borings showed the issues with his lot to be somewhat less than those at 18707 Heathcote Road. Marceau said that he had to haul in 250 dump trucks/10,000 cubic yards of sand to build on his lot. He said that he worried about the effects of the compaction for the wetland area. Marceau said that he had concerns about the additional water cause by the proposal that could impact his property values. He said that there have been problems with the culverts that had made the area more of a pond than it otherwise would be. He said that the area was more of a bog, but will turn into a pond with a heavy rain.

Councilmember Erickson said that he did not understand the compaction issue. Martini said that compaction would not allow for water absorption.

John Boyer of Boyer Building Corporation, builder for the applicant, said that compacted sand can retain water and also allows water to pass through it. He said that, on the property, there are 4 to 5 feet of organic soil and that below that there is clay.

Mayor Skrede said that he thought that this would be a slab on grade foundation, but now it appears to have a crawl space that would require further excavation. Boyer said that because the

first floor will be at a higher elevation than the existing elevation of the property, they would have enough room to create the crawl space without additional excavation.

Councilmember Gustafson said that this aspect of the conversation is premature and would be addressed by the Planning Commission and at the building permit phase.

Mayor Skrede asked if the Councilmembers felt that there was sufficient effort put forth to avoid the wetland impact.

Councilmember Erickson said that he met with the Crooks and discussed with them why they have not planned to simply move to a different house. Erickson said that the Crooks wanted a house that did not have any stairs in it and that nearly all existing houses have some kind of stairs, either as entryways, or for accessing multiple levels of the house. He said the Crooks wanted to build a flat property. Erickson said that the Crooks had been looking for a house that fits their needs for over two years and that they have determined what they want to do would require a new build.

Mayor Skrede said that while he is sympathetic to the issues the Crooks are facing, he asked how much of this is the city's concern. Erickson said that he agreed, and that his comments were related to their search for alternative housing in the city.

Councilmember Gustafson said that the Crooks would need a new home built, whether they bought a tear down on another lot or built on this lot. He asked if the costs of engineering the lot in the wetland would be more costly than buying a tear down on a buildable lot.

John Boyer of Boyer Building Corporation said that the costs would probably be less for the wetland lot but that he has not studied it.

Councilmember Jewett said that a buildable lot in the city is approximately \$300,000. He said that he shares the concerns of the TEP panel on the issue of avoidance. Jewett said that the property alternatives cited in the application might not be perfect, but they could work.

Councilmember Erickson said that he agreed, and that the applicant could also accomplish their goal outside of Deephaven.

Councilmember Kask said that each member of the City Council took an oath to uphold the laws of the State of Minnesota. He said that an application must be denied if it does not comply with all of the standards. He said that an application cannot just comply with some of the standards; it must comply with all of them. Kask said that the definition in the rules says that avoid means to prevent. He said that as the local government unit, the city is charged with avoiding the impacts. Kask pointed out that city laws give the city latitude to allow logical deviations from the standards. He said that this is not a city law, it is a state law. Kask said that the property has never been priced or assessed as a typical building site. He said that the city has no obligation to allow the applicant to put a building on that site. He said that he doesn't like that fact, but that is what state statute says.

Paul Gesme, 3860 Honeysuckle Road, said that the Crooks proposal could enhance the value to the entire community and that he does not see the damage that it would do by approving the project.

Mayor Skrede said that the credits for the wetlands would not be in Deephaven, but would be in a different county. He said that the state gave cities decision-making power on these issues, but that the decision-making is the most difficult part of the process. He said that if the applicants require senior living, there is Deephaven Woods. The city approved the Deephaven Woods project to address this type of issue for households with needs similar to the Crooks. Skrede said that he cannot tailor the decision making to fit each individual family's needs. He said that there is no perfect solution for the Crooks, but that there are reasonable alternatives. He said that the Crooks might have to settle for a rambler without wetland views. He said that these are the types of trade-offs everyone has to make, and that his current home is not exactly how he wants it to be. Skrede said that if the city were to approve this with a number of conditions, would those conditions limit the house that could be constructed to something that the Crooks would not be able to work with. Skrede said that if the city were to say yes, and then a heavy rain cause issues on the property or the culvert, the first call from the neighbors will come to city hall. He said he knows what the issues are on the property today if the city says no, but he cannot predict the possible and irreversible damage if the city says yes. He stated that members of the City Council were concerned about the lot in 1977 at the preliminary plat phase, and councilmembers tried and failed to have the lot removed from the development at that time.

Councilmember Erickson said that he learned that the culvert near the property is owned by the association. Skrede said that, after a heavy rain, sometimes the city will not be able to get to the culvert and clean it out and ensure it is not plugged-up. He said that he has concerns about the unintended consequences of approving the application.

Councilmember Gustafson said that he has struggled with the requirements of the law. He said that he believes that Boyer Building Corporation could build anything and make the site workable. He said that, however, the city also needs to listen to the opinion of the technical professionals from the Technical Evaluation Panel and the city engineer.

Councilmember Jewett said that his mind goes back to the struggles working through the new stormwater ordinance, and that approving this would contradict the efforts of that ordinance. He said that if he voted to approve the permit, he would be doing it because he liked the Crooks and not because it is the right policy decision.

Councilmember Erickson said that he was concerned about the unintended consequences and that he could not vote in favor of the project.

Jim Crooks asked if the city would consider buying the property.

Mayor Skrede said that he would need to look to the state for guidance on that issue. He said that he would not close the door to buying it, but that he does not want to set a precedent.

Jim Crooks said that, because of this outcome, he will be putting his current house on the market next month, as well as the 18707 Heathcote Drive property.

Councilmember Kask said that it is not the city's desire to take the land or make it a conservation easement. He said that the property's primary value comes from the fact that it is adjacent to the Crooks existing single family property.

Mayor Skrede asked for a motion on the application and noted that staff had included both an approval resolution and denial resolution within the council packet.

Councilmember Kask made a motion to deny the application based on the resolution provided by staff with the following revisions: 1) findings of fact #2 would be updated to reflect that the area of impact would be 4,500 square feet; 2) findings of fact #5 would be updated to reflect that the house pad would be 7,510 square feet; 3) add a finding about Minnesota Administrative Rule No. 8420.0520, upon which the decision was based, and detailing the specific avoidance criteria within the rule. Motion seconded by Councilmember Erickson. Motion carried 5-0.

## **6. PLANNING & ZONING REQUESTS**

### **A. Consider Conditional Use Permit Request for Signage, Innate Health Chiropractic, 18202 Minnetonka Boulevard, Suite 101A – Conditional Use Permit request of Innate Health Chiropractic to construct illuminated commercial signage at 18202 Minnetonka Boulevard, Suite 101A**

Zoning Coordinator Cooney summarized the staff report. He said that Innate Health Chiropractic will be leasing space at 18202 Minnetonka Boulevard, Suite 101A and that the business is requesting a Conditional Use Permit to construct a 16 square foot illuminated business identification sign that would be attached to the structure. Cooney said that the business, located in the C-1 (Commercial District 1) zoning district, is a permitted use within the zoning district.

Cooney stated that currently the space has a "For Lease" sign on the façade, and a two square foot window sign that serves as an address sign. He said that no other signs for the business have been proposed. Cooney said that Section 1305.03 limits the hours a business can sell goods and services to consumers to only those hours between 6 AM and 9:30 PM and that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney said that Section 1115.09(a) sets the maximum sign area for wall signs at 15% of the wall area of the front façade and sets the maximum wall sign area at 100 square feet. He said that the façade of the applicant's suite is approximately 210 square feet, and the proposed sign area of 16 square feet equals 8% of the front façade area.

Cooney said that the Planning Commission unanimously recommended approval at their January 19<sup>th</sup> meeting and accepted staff's recommendation and to recommend approval based upon the following findings: There is a need to advertise the business and upon review of the application, it was determined that (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 motion was conditioned that that the hours of illumination be as outlined in Section 1305.03 of the ordinance, and that the existing “For Lease” sign be removed.

Cooney concluded the staff report.

Councilmember Jewett asked if the zoning district for this property was the same district as the 19300 State Highway 7 property. Cooney said that he did not know and that he would have to look at the zoning map to know.

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

Mayor Skrede asked the applicant to come to the podium and introduce himself. Nick Wegleitner, owner of Innate Health Chiropractic, said that he has had two years of professional practice since graduating from Northwestern Health Sciences University in Bloomington, MN. He said that his previous practice was in Plymouth and many of his clients have followed him from there.

Mayor Skrede welcomed Nick Wegleitner to Deephaven, and said he asked him to the podium to make sure he was able to get seen on the video recording in order to help advertise his new business.

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

Zoning Coordinator Cooney summarized the staff report. He said that he regularly receives inquiries as to what types of building elements, if any, can encroach into yard setbacks. Currently, the city code only specifically allows encroachments of roof eaves up to 3 feet. He said that in the past, city staff has made exceptions for other types of encroachments, including fireplaces and cantilevers. He said that he would like to codify those building elements that the city is willing to allow to encroach into yard setbacks since this comes up frequently, particularly within the R-3 zoning district. Cooney concluded his staff report.

Councilmember Kask said that he would like to include language that would prevent these types of encroachments from crossing property boundaries. Kask said that language limiting the distance from the lot line to ½ the depth of the allowed encroachment could be a solution. Cooney asked if he would want something like a clear zone beyond which encroachments could not pass. Kask said that he would be open to a solution like that as well.

Mayor Skrede said that he would be comfortable with these elements going up to, but not beyond, the lot lines.

Cooney said that he would revise the ordinance as requested for the second reading.

**C. Adopt Resolution No. 07-16, Approving Lot Combination at 19365 Azure Road and 3785 Parkway**

Cooney said that he had received proposed revisions from Mayor Skrede on the lot combination resolution. Cooney distributed the revised resolution to the councilmembers.

Mayor Skrede said that since the city does not have oversight into lot combinations, he would like to remove language related to city approval. Instead, Skrede said that he preferred language that states that the city is simply notifying Hennepin County of the lot combination.

Councilmember Gustafson made a motion to approve the resolution as amended. Motion seconded by Erickson. Motion Carried 5-0.

**7. UNFINISHED BUSINESS**

**A. Park & Recreation Strategic Plan Presentation**

Terry Minarik, Principal Planner with Confluence, was present to provide a PowerPoint presentation on the Park & Recreation Strategic Plan.

**B. Authorize Final Payment for 2015 Pipe Lining & Sealing Project**

Administrator Young stated that the City Council authorized entering into a contract with Infratech Infrastructure Technologies (now Hydro-Klean, Inc.) on April 20, 2015 for the 2015 Pipe Lining & Sealing Project. The original bid for this project was \$36,126.30 and the Final Payment Request from Hydro-Klean, Inc. is in the amount of \$33,555.30 as submitted for approval by the City Engineer. He noted that the total current engineering cost for this project is \$11,509.00.

Motion by Councilmember Kask to authorize Final Payment to Hydro-Klean in the amount of \$33,555.30 for the 2015 Pipe Lining & Sealing Project. Seconded by Councilmember Erickson. Motion carried 5-0.

**C. Authorize Final Payment to Hennepin County for Vine Hill Bridge Project**

Administrator Young stated that the City Council authorized payment to Hennepin County in the amount of \$301,701.96 as the city's share of the Vine Hill Bridge Project on October 20, 2014. He stated that Hennepin County has invoiced the City for the balance of the city's share of the project cost in the amount of \$10,570.07.

Motion by Councilmember Kask to authorize Final Payment to Hennepin County in the amount of \$10,570.07 for the City of Deephaven's share of the Vine Hill Bridge Project. Seconded by Councilmember Erickson. Motion carried 5-0.

**D. Other**

There was no other Unfinished Business this evening.

**8. NEW BUSINESS**

**A. Authorize Hiring a New Police Officer**

Chief Johnson stated that he has been notified that an officer has been given a conditional offer of employment at South Lake Minnetonka Police Department. He stated that his 1<sup>st</sup> day of employment will be February 22, 2016, pending successful completion of the physical and psychological exams.

Chief Johnson stated that he would like to continue with the hiring process by interviewing ten qualified candidates from the recent posting. He stated that the interview panel intends on interviewing them on February 3 & 4. The interview panel will consist of Sgt. Whiteside, Officer Matt Case, Mayor Skrede, Woodland Mayor Doak and possibly another Deephaven Officer. He stated that he will take the panel's recommendations and interview the top candidate myself. He stated that when a candidate is selected, they will be given a background investigation and if the candidate passes the background, he stated that we intend to make a conditional offer pending Council approval.

Motion by Councilmember Gustafson to authorize the Police Department to interview candidates, select a candidate, complete a background investigation and offer a conditional offer of employment for a new police officer. Seconded by Councilmember Erickson. Motion carried 5-0.

**B. Adopt Resolution No. 08-16, Calling for a Public Hearing for the MYHA Bond Sale**

Motion by Councilmember Erickson to adopt Resolution No. 08-16, Calling for a Public Hearing on March 7, 2016 for the Issuance of a Tax Exempt Bond Issue on behalf of the Minnetonka Youth Hockey Association. Seconded by Councilmember Jewett. Motion carried 5-0.

**C. Other**

Motion by Councilmember Jewett to approve a 2016 Consumption and Display Permit for Minnetonka Yacht Club. Seconded by Councilmember Gustafson. Motion carried 5-0.

**9. DEPARTMENT REPORTS**

**A. Police Department**

Police Chief Johnson presented the January 2016 Police Report for Council review.

**B. Excelsior Fire District**

Fire Board Liaison Steve Erickson provided the following review of the January 27, 2016 Fire Board Meeting:

- There are no new boardmembers in 2016
- Tom Fletcher was reappointed as 2016 Chair and Deb Siakel as 2016 Vice-Chair
- There are currently 42 paid on-call firefighters
- There were a total of 810 calls in 2015 vs. 769 calls in 2014
- There were a total of 190 calls in Deephaven in 2015 vs. 141 calls in 2014
- 2016 is the 125 year anniversary of the Excelsior Fire Department
- Information regarding the Fire Reserve Program was presented
- The Fire Relief Association funded a CPR device and 1<sup>st</sup> Class Uniforms from dance proceeds
- The Fire Relief Association qualified for a 2% per year of service increase from \$6,900 to \$7,050
- Duty Crew concepts were discussed
- The retrofitting of the Fire Boat has come in \$11,000 over-budget and is now estimated at \$72,000, which is still 50% of the cost of purchasing a new fire boat

**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:

- 2015 Year End Financial Summary
- 2015 Building Permit Summary
- Deer Management Update

**10. ADJOURNMENT**

Motion to adjourn by Councilmember Kask, seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 11:05 p.m.

Respectfully submitted,

Dale Cooney  
Zoning Coordinator