

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JUNE 5, 2017
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmember's Kent Carlson, Darel Gustafson, Tony Jewett, and Steve Erickson

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

- A. Approve May 15, 2017 City Council Minutes
- B. Approve Verifieds
- C. Approve April 2017 Treasurer's Report
- D. Adopt Resolution No. 27-17, Acknowledging Lot Combination

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 of David & Katie Naab to encroach into the side yard setback for a home addition at 4960 Highcrest Drive.**

Zoning Coordinator Cooney presented the staff report. He said that David and Katie Naab, property owners at 4960 Highcrest Drive, are requesting a variance to build a home addition onto a legal non-conforming house. Cooney said that the addition creates the need for a variance from the minimum side yard setback. He said that the height of the house will increase by 4 feet; however the footprint of the house will remain the same.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet, while the existing footprint of the house has a setback of 10 feet, 11 inches. He said that the applicant proposes to build upward on the footprint of the existing side yard encroachment. He said that the applicant is seeking a variance of 9 feet, 1 inch from the minimum required side yard setback.

Cooney said that he recommends approval of the variance request to encroach 9 feet, 1 inch into the minimum required side yard setback, for the proposed home addition at 4960 Highcrest Drive, as presented based on the following findings:

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

Yes. The applicant is seeking to vary from the stated setback and dimensional standards of the ordinance in order to modify a non-conforming house built in 1952, according to Hennepin County records.

Is the variance consistent with the comprehensive plan?

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage residents to maintain and/or improve older homes which will promote diversity of housing in Deephaven.

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

The proposal puts the property to use in a reasonable manner. But for the existing non-conforming setback, the scale of the house is consistent with zoning limitations for the property.

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

Yes. The 1952 house was built prior to the city's zoning requirements. The narrow side yard setback impedes work on this portion of the house without first obtaining a variance.

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 consistent with the single-family character of the neighborhood.

Cooney said that the Planning Commission held a public hearing on the request at their May 16, 2017 meeting and on a 6-0 vote recommended approving the request based on the findings of staff.

Cooney concluded his staff report.

Councilmember Jewett asked if the two neighbor comments were from the same neighbor. Mayor Skrede said that they were from the same neighbor.

Motion by Councilmember Gustafson to approve the application as presented based on the recommendation and findings of the Planning Commission. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Variance Request of John & Linda Haugen to exceed the maximum permitted grade alteration in conjunction with the construction of a new house at 20720 Linwood Road.

Cooney presented the staff report. He said that John and Linda Haugen, property owners, are requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction a new house at 20720 Linwood Road. Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than three feet at any point. He said that the applicant is proposing land alteration of up to 8 feet, and is seeking a variance of 5 feet from the maximum permitted land alteration.

Cooney said that the plans in front of the City Council have been revised from those reviewed by the Planning Commission. He said that the layout of the patio, proposed retaining walls, and side yard grading has all been modified. Cooney said that the applicant has also added three rain gardens to the proposal.

Cooney said that the lot is relatively flat; however there is a “shelf” in the middle of the lot as it drops towards the lake. He said that, typically, property owners see this as an opportunity to create a walkout level for the property. In this case however, Cooney pointed out, it is the desire of the property owners to have lakeside access via the main level. He said that they are also attempting to minimize the perception of mass from the lake yard and create an overall visual appearance of a 1.5 story house.

Cooney said that there is the opportunity to create an elevated deck in this area that would allow for the property owners to achieve main level lakeside access without requiring a variance. He said, however, that the principal justifications for land alteration restrictions are to limit properties from circumventing the house height limitations by building up the grade around a property, or altering overall drainage patterns in a significant or detrimental way and that neither of these concerns are the case in this proposal. He said that, apart from the rear patio portion of the proposal, the plan is sensitive to the conditions of the existing grade.

Cooney noted that in July of 2013, the property to the immediate north at 20710 Linwood was granted a conditional use permit to regrade the rear patio/pool area by up to 4 feet, 8 inches.

Cooney said that the city engineer reviewed the original proposed plans and asked for revisions to the side yard grading to further define the swales and maintain the drainage towards the street and the lake. He said that in an attempt to address drainage concerns, the applicant resubmitted plans that show a revised patio layout, revised grading, and the addition of three rain gardens on the property. Cooney said that he city engineer stated that the revised plans have adequately addressed his original concerns.

Cooney noted that Section 1310.01(2) of the zoning ordinance states “*A structure may be built on any lot or tract of land of a size less than that required by this Section if such lot or tract of land is included in a plat or registered land survey filed for record after May 4, 1960 in accordance with all applicable laws, ordinances and regulations, and if there is compliance with all of the other dimensional requirements. If a new structure is to be built on any other lot or tract of land of a size less than that required by this Section, a variance must first be obtained in*

accordance with this Section.” He said that city records do not indicate that the property has ever had a house on it. Cooney pointed out that although the 37,235 square foot property is substandard by current R-2 zoning requirements, the property was subdivided in 1969 and is therefore not subject to a lot size variance.

Cooney said that he has conducted a plan review of the proposal and has determined that the proposed house complies with the setback, height, and building coverage limitations outlined in the zoning code. He also said that no stormwater mitigation requirements are triggered by the proposal.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted grade alteration by 5 feet for the property at 20720 Linwood Road, as presented.

He said his recommendation was based on the following findings:

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

Yes. The purpose and intent of the ordinance is to limit properties from circumventing the house height limitations by building up the grade around a property or altering overall drainage patterns in a significant or detrimental way, neither of which is the case in this proposal.

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

Yes. The request is consistent with the Comprehensive Plan’s Housing Elements Goals and Policies which encourage safe, healthy and quality housing that respects the natural environment of the community.

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

Yes. The proposed house and grading are reasonable for the property, and are comparable in scope and scale to surrounding properties.

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

Yes. The existing grade of the property has a “shelf” in the middle which creates challenges for providing main level lake yard access for the house.

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

The proposed grading alterations would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to what exists today.

Cooney said that the Planning Commission held a public hearing at their May 16 meeting and, on a 5-1 vote with Sharpe voting against, recommended denial of the variance request as presented. Cooney pointed out that some Planning Commissioners were primarily concerned with potential drainage issues and did not feel the proposal provided enough information as submitted, while other Planning Commissioners were primarily concerned with the discretionary nature of the grading request and did not feel it met the Practical Difficulty standard.

Cooney concluded his staff report.

Councilmember Jewett asked why the grading process was for a Conditional Use Permit in 2013. Cooney said that the code was amended, but he did not have the specific reasons why there was a change from a CUP to a variance process.

Mayor Skrede said that the decision was made to move to a variance process since the burden of proof was on the applicant. He said that he also thinks a Conditional Use Permit would be a sufficient approach as well.

Councilmember Gustafson said that he believes that the variance process is the correct process since the nature of building houses and grading properties is more permanent.

Mayor Skrede said that he does not disagree, but that a practical difficulty might be more difficult to justify in this case.

Councilmember Carlson said that he feels that a practical difficulty is easy to justify on larger lots. He said that a three foot grade change may be significant for a small property, but that changes of three feet or more do not have as much of a meaningful impact on the larger lots. He stated that he is comfortable with the three foot limitation in the ordinance, but also understands that it can be hard to alter the grading on a larger lot without triggering a variance.

Councilmember Erickson said that he agreed with Councilmember Carlson and that people used to cheat the previous system.

Councilmember Gustafson said that someone might look at the plan and ask why the applicants don't just set the house back further. He said that design would create a burrowing of the structure into the existing grade and that this is a better design. He said that a house much further back from the lake would not be in harmony with the surrounding neighborhood. He added that the plan also manages the drainage on the property.

Mayor Skrede said that the applicant addressed the issues of the Planning Commission and City Engineer.

Councilmember Carlson said that he likes the revised plan and thinks they did a nice job listening to input.

Councilmember Erickson said that the drainage is well-managed since the water from the house is captured underground, as well as with the addition of the rain gardens.

Councilmember Jewett said that some of the Planning Commissioners concerns were with the plans themselves. He said that he met with two other Planning Commissioners and that they were visibly happier with the updated plans. He said that there might have been a different outcome at the Planning Commission level if the plans were similar to those seen by the City Council. He said that, regarding the practical difficulty standard, it is reasonable to want main level access. He said that a deck or grading would both work; but that he preferred the grading solution and that the rain gardens are also a good addition.

Motion by Councilmember Carlson to recommend approval of the variance requests as presented, based on the findings of staff. Seconded by Councilmember Jewett. Motion carried 5-0.

C. Variance requests of Matt Hendricks to rebuild a non-conforming accessory structure at 19865 Lakeview Avenue

Mayor Skrede introduced the item and said that the applicant would like to slightly reorient the structure that was approved in May in order to save a tree and to make parking the boat inside the structure easier. He asked if the City Council had any objections to the proposed changes.

Councilmember Erickson asked about the distance from the lot lines. Cooney said that they were either staying the same or getting more code compliant.

The City Council expressed support of the proposed changes.

D. 4325 Cottonwood Lane Easement and Encroachment Agreements

Mayor Skrede introduced the item and said that during a title search it was revealed that the property did not have appropriate easement agreements for access and encroachments. He said that the property owners must cross a small sliver of city property in order to access the driveway and garage. He said that there is also a sport court that encroaches into a drainage easement. He said that this was mostly a bookkeeping item and that the property owners need to access their property.

Councilmember Carlson asked about the origins of the sliver of property. Cooney said that he did not know, but that the legal description made it look like it was a portion from a different parcel.

Councilmember Gustafson asked about the circular driveway. Mayor Skrede said that it might have been the original driveway in the past, but that the house had been reconfigured over time to have garage access on the opposite side of the house.

Mayor Skrede asked if there were any objections to the agreements with the understanding that it would be finalized by the city attorney and staff. The City Council expressed support of the proposed agreements.

Motion by Councilmember Carlson to approve easement and encroachment agreements for 4325 Cottonwood Lane, with final agreements to be finalized by the City Attorney and city staff. Seconded by Councilmember Gustafson. Motion carried 5-0.

6. NEW BUSINESS

A. Approve Homes by Architects Tour at 20200 Lakeview Avenue, September 16-17

Cooney summarized the staff report. He said that the property located at 20200 Lakeview Avenue is a new construction single-family home and the builder and architect would like to

include it in the AIA Homes by Architects Tour which is being held Saturday, September 16 and Sunday, September 17 from 10 a.m. to 5 p.m. each day.

Cooney said that Section 1355.03 of the zoning ordinance permits the public showing of residential structures with the issuance of a Showcase Event Permit and that city code does not require Planning Commission action on Showcase Event requests.

Cooney said that Section 1355.04 limits Showcase Events to three consecutive weekends and that the AIA Homes by Architects Tour is a one weekend event. He said that city code requires the submittal of a detailed site plan and that a copy of the survey was included in the staff report. He said that the applicant has stated that there will not be any special accommodations for guests at the property itself.

Cooney said that Section 1355.06(b) requires the submittal of maps showing the pick-up points and shuttle routes to the showcase property. He said that the applicant shows a shuttle route to and from the site using the city hall parking lot.

Cooney said that Section 1355.06(c) requires a letter of approval from the Police Department stating that all of their conditions have been met. He said that the applicant has spoken with the Deephaven Police Department regarding their plan to provide shuttle service from the city hall parking lot and paddle ball lot, with 2-3 employee parking spaces along Lakeview Avenue. He said that the Police Department has approved the proposal.

Cooney said that Section 1355.06(d) requires the applicant to provide general liability insurance to cover injury and property damage and that the applicant has submitted proof of insurance coverage that exceeds the city's required coverage amounts. He said that the applicant has notified adjacent neighbors of the event via a letter.

Cooney said that he recommends approval of the Showcase Event Permit for Peterssen/Keller Architecture and Streeter & Associates for the property located at 20200 Lakeview Avenue to participate in the AIA Homes by Architects Tour which is being held Saturday, September 16 and Sunday, September 17 based on the following findings:

Section 1355.07(a) – the Showcase Event will not endanger the public health, safety or general welfare of its (City of Deephaven) residents: The applicant has worked with city staff to create a safe environment for including the home in the showcase event.

Section 1355.07(b) – the Showcase Event will not cause undue traffic hazards, congestion or parking shortages: The applicant has submitted the proposed parking information and has worked with the police to address potential safety issues.

Section 1355.07(c) – the Showcase Event will not impose an excessive burden on the City or its residents or cause damage to private property, parks, streets, right-of-ways or other public property: The City is within its rights to impose conditions on any approval that the applicant is responsible for the cost of any of the above-mentioned damage.

Motion by Councilmember Gustafson to approve the request based on the findings of staff. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Approve 2018 LMCD Budget (Chris Jewett)

LMCD Liaison Chris Jewett was present to review the 2018 LMCD Budget. He stated that two years ago, there was a 10% reduction to the LMCD levy. He stated that in 2017 and in 2018, the LMCD Board has recovered this levy reduction by 5% per year. He stated that other highlights of the 2018 LMCD Budget include:

- The Budget will be revenue neutral for the first time in 2018.
- The LMCD will no longer be conducting Watercraft inspections in 2018.
- Fines & Forfeitures had been shown as revenue and it is now shown as expense neutral, to offset the costs of prosecution.

Mayor Skrede asked when the AIS levy came into play.

Chris Jewett stated that he is not sure when the AIS levy began or why they even had to separate out the levy since all the funding goes into one account. He stated that funding from Hennepin County is getting more difficult, which is one of the reasons why the LMCD Board continues to cut expenses. He stated that discussions have already been held on whether to continue milfoil harvesting, which costs approximately \$100,000 per year. He stated that the LMCD Board wants to get back to 2015 levels and has made the appropriate cuts to get there. He stated that we are in a better place for that.

Councilmember Jewett stated that with the upcoming elimination of watercraft inspections, will the program ever come back if grant funds become available.

Chris Jewett stated that the MN Department of Natural Resources is moving away from inspections but the LMCD may be able to conduct watercraft inspections if more grant funds were available.

Councilmember Jewett stated that with the Legacy Fund providing for clean water projects, would this be an avenue for more grant funding?

Chris Jewett stated that the new staff at the LMCD may well look into it. He added that the Board wants to make sure how we are going to fund a project or program before it is included in the budget.

Mayor Skrede stated that he thinks it's disingenuous that the MN Department of Natural Resources is no longer supporting watercraft inspections.

Chris Jewett stated that he doesn't know what the answer is.

Councilmember Erickson stated that his boat only stays on Lake Minnetonka and his boat was inspected last year. He stated that the LMCD reviewed the rules and regulations pertaining to commercial marinas and yacht clubs and asked if the LMCD intend to provide the same review for municipal marinas.

Chris Jewett stated that this is still to be determined by the new staff. He stated that the Board is going through a re-codification of the LMCD code, which may make it easier to address issues once the code becomes easier to understand. The LMCD could then address city concerns.

Mayor Skrede stated that he is just happy that the LMCD allowed the City to moor powerboats on buoys.

Motion by Councilmember Jewett to approve the 2018 LMCD Budget as presented. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Review 2018 EFD Budget

EFD Boardmember Steve Erickson presented the 2018 EFD Budget for Council review. He provided the following highlights on the 2018 Operating Fund Budget, which is proposed to increase \$58,773 or 5.88% over the 2017 Operating Fund Budget. He stated that the increase is attributable to the following expense items:

- \$39,695 increase in Personnel Services, largely owing to a \$26,844 increase in Duty Crew Pay due to a 10 hour per week increase in Duty Crew hours.
- 2% salary increases firefighters and officer pay.
- Building Maintenance projects are currently funded from the Operating Fund. This is intended to change in 2018 as funding for building maintenance projects will be transferred from the Operating Fund into a new Building Maintenance Fund, which will work very similarly to the Capital Equipment Fund. This will enable the District to set aside specific funds each year for building maintenance projects and maintain a steady contribution of \$24,000 per year into the Building Maintenance Fund for building repair or replacement items. A copy of the 2018 Building Maintenance Fund is attached.
- For the fifth consecutive year, the Operating Budget does not include a Required Firefighter Relief Association (Pension) contribution in 2018.
- Wage increases for Fire Chief (2.0%), Fire Inspector (2.0%) and Administrative Specialist (4.5%) according to wage policy.
- Continuing the use of a Part-Time Fire Inspector for Special Events
- Employer benefit increases including health insurance and PERA.
- \$3,250 increase in the clothing allowance for additional turnout gear.
- \$5,760 increase in Conference for employee training purposes.

He stated that in looking at the 5.88% increase for next year in the Operating Fund, much of the increase is attributable to increases in salaries, Duty Officer pay and Duty Crew pay. He stated that the 2018 Budget proposes to increase Duty Officer pay from \$50 per day to \$75 per day.

Mayor Skrede stated that in regards to excess Bond Funds, he would favor all of it being returned to the member cities as it was specifically designated for payment of bonded debt. He asked if the cost of resurfacing the concrete apron was known.

Councilmember Erickson stated that the cost is not known at this point although the cost will be shared with the South Lake Minnetonka Police Department.

Mayor Skrede stated that each city should be given their share back and each city can decide what to do with it.

Councilmember Erickson stated that he has made it clear that we want our share of the excess Bond Funds back and the Board has asked each representative to discuss this issue with their City Council.

Further discussion was held on the old debt schedule vs. the new debt schedule that resulted in the excess funding into the Fire Facilities Fund.

Councilmember Erickson stated that he won't spend much time on the Capital Equipment Fund as it remains unchanged from the prior year. He noted that this budget is a draft and any questions on the budget can be directed to him.

Councilmember Jewett noted the section of the budget pertaining to Future Full Time Staffing Considerations.

Mayor Skrede noted that he never wanted personnel costs in the Excelsior Fire District to exceed 35% and that is already occurring.

Councilmember Erickson stated that the increase in Duty Crew hours will continue to increase personnel costs.

D. Adopt Ordinance No. 04-60, Amending Liquor, Zoning & Special Event Fees

Administrator Young stated that the amount of a permit fee is intended to directly relate to the amount of staff time, copier cost and other related work needed to process an application. An analysis of the Zoning Coordinator's salary, benefits and number of hours needed to process subdivision plats, variance applications, rezoning applications, street vacation applications, and condition use permit applications has shown that the current fees for these applications are not high enough to cover the costs of presenting an application to the Planning Commission and City Council.

He stated that in regards to the Off-Sale Intoxicating Liquor License, the current \$40.00 license fee is too low. He stated that the typical fee for an Off-Sale Intoxicating Liquor License is \$100.00

He stated that after a couple of years of administering Special Event Permit applications, the current fee of \$100.00 is too high for the amount of staff time it takes to process the application. He stated that staff recommends a more realistic fee of \$50.00 for Special Event Permit applications.

Councilmember Gustafson expressed concern that the fees will get so high that residents will reconsider whether they want to pursue a variance. He stated that the variance request the Council reviewed this evening from the Naab's certainly could not have warranted a variance fee of \$450 and that the variance request from the Haugen's may have exceeded \$450. He asked if there couldn't be some sort of sliding scale.

Administrator Young stated that the proposed fees are based on the average cost of processing these applications. He stated that the fee is paid up front, before staff really knows how much time it will take to process the application.

Motion by Councilmember Gustafson to adopt Ordinance No. 04-60, Amending Off-Sale Intoxicating Liquor License Fee, Planning & Zoning Application Fees, and Special Event Permit Fees. Seconded by Councilmember Erickson. Motion carried 5-0.

E. Other

There was no other New Business this evening.

7. UNFINISHED BUSINESS

A. Review 2018 Budget Schedule

City Administrator Young presented the following proposed schedule for the Council's review of the 2018 Deephaven City Budget:

Monday, June 19th - 2018 Budget Overview, 2018 Salaries, General Fund Revenues, General Fund Expenditures, Capital Improvement Budget, General Government, Elections, Administration, City Hall, Police Budget, Fire Budget, Planning & Zoning, Streets & Roads, Public Works, Parks & Recreation, Wildlife Management

Thursday, July 6th - Budget Review & Revisions

Monday, August 21st - Budget Review & Revisions

Tuesday, September 5th - Final Budget Review, Adopt Preliminary Tax Levy

Monday, October 16th - Park Improvement Fund, Marina Fund, Recycling Fund

Monday, November 20th - Water Fund, Sewer Fund, Storm Water Fund

Monday, December 4th - Truth in Taxation Hearing, Adopt Final 2017 Tax Levy, Adopt 2017 Budget

The Council approved the proposed 2018 Budget Schedule.

B. Authorize Final Payment to Concept Landscaping for Swimming Dock Repairs

Administrator Young stated that Concept Landscaping has completed the ice damage repairs to the Deephaven Beach swimming dock according to the repair plan reviewed and approved by the City Council on April 3rd. He stated that the invoice includes two changes from their repair proposal that was reviewed on April 3rd. First, the contractor did not have to remove and reposition two pilings as was originally proposed for a savings of \$500.00. And second, the contractor added 10 diagonal stiffeners' as directed by the City Council for an additional cost of \$600.00. The repaired dock has been reviewed by staff, Mayor Skrede and Councilmember Carlson.

He noted that the total cost of this project from the initial installation and subsequent repair of the swimming dock comes to \$58,400.00.

Mayor Skrede stated that the repair work alone could have cost \$33,000 if the contractor hadn't been able to successfully water jet the pilings and widen the docks.

Councilmember Carlson stated that the docks seem to be very sound.

Mayor Skrede noted that he received a couple of calls from residents stating that they liked the wider docks. He added that he would like to thank the contractor for moving this project up on their priority list to get it done in time for the swimming season.

Motion by Councilmember Gustafson to Authorize Final Payment to Concept Landscaping in the amount of \$14,400.00 for the repair of the Deephaven Beach Swimming Dock. Seconded by Councilmember Erickson. Motion carried 5-0.

C. Other

There was no other Unfinished Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided an update on the May Incident Report.

B. Excelsior Fire District

There was nothing new to report on the Excelsior Fire District.

C. Public Works

Administrator Young provided an update on recent and upcoming public work activities. He reported on a water main break on May 22nd and damage to playground equipment at Cottagewood Children's Park from a fallen tree.

D. Administration

Administrator Young provided a brief summary on the following items:

- Population & Household Estimates
- AIS Inspections at the Carson's Bay Launch
- 2018 City Budget
- July Newsletter
- 2018 Woodland Contract Negotiations
- City Cleanup Day Update

9. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson.
Motion carried 5-0. The meeting adjourned at 8:59 p.m.

Respectfully submitted,
Dana H. Young
City Administrator