

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, AUGUST 21, 2017
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, Kent Carlson and Darel Gustafson

STAFF: 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 August 7, 2017 Council Minutes
- B. Approve July 2017 Treasurer's Report

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PUBLIC HEARING**

- A. **Public Hearing on a proposed project on behalf of Seven Hills Preparatory Academy ABC and the issuance of Revenue Bonds under MN Municipal Industrial Development Act, MN Statutes Section 469.152 to 469.1655 – Adopt Resolution No. 40-17, Authorizing the Issuance and Sale of Charter School Lease Revenue Bonds**

Grant Turpin was present from the law firm of Dorsey Whitney to represent the City in this request.

Mayor Skrede asked if the proposed purchase of the 55,000 s.f. building by Seven Hills Preparatory Academy was an existing or new facility.

Grant Turpin stated that it is an existing building and SHPA intends to add a gymnasium and playground to the building. He stated that the building currently houses the Minnesota School of

Business.

Mayor Skrede asked if two separate bond issues, a Series A and Series B, were intended by the applicant.

Grant Turpin stated that the Series A bond issue would be used towards the building acquisition and the Series B issue would be the private use portion. He stated that SHPA is still working on the financing and are considering leasing a portion of the building and determining the best use of potential cell tower revenue.

Mayor Skrede asked if SHPA intended to renegotiate the cell tower use and whether the potential use of the cell tower revenue would be used towards funding a portion of the bond payments.

Grant Turpin stated that he didn't think SHPA would need to use cell tower revenues to support the bond payments.

Mayor Skrede asked about SHPA's enrollment.

Grant Turpin stated that their students are primarily from Richfield.

Councilmember Jewett asked if this proposed \$15 million dollar bond issue would be bank qualified. He asked if SHPA could issue \$10 million in bank qualified bonds and \$5 million in non-bank qualified bonds.

Mayor Skrede noted that Section 4 of the resolution states that the bond issues will be non-qualified tax-exempt obligations. He stated that this would not preclude the City from doing other conduit bond deals.

Mayor Skrede opened the public hearing for public comment at 7:12 p.m. Hearing no comment, Mayor Skrede closed the public hearing at 7:12 p.m.

Motion by Councilmember Jewett to adopt Resolution No. 40-17, a Resolution Authorizing the Issuance and Sale of Charter School Lease Revenue Bonds. Seconded by Councilmember Gustafson. Motion carried 5-0.

6. PLANNING & ZONING REQUESTS

A. Review Proposed Stormwater Management Changes at 20760 Linwood Road

Zoning Coordinator Cooney presented the staff report. He said that in November of 2016, the property at 20760 Linwood Road was granted a variance to exceed the allowable impervious surface area of the property, with a total proposed impervious area of 29.45%. Cooney said that the landscape architect, Travis Van Liere, is proposing to make some changes to the stormwater management systems that were approved via the variance process. Cooney noted that Mr. Van Liere has also altered the location of the impervious areas; however, the total impervious surface area for the property remains unchanged.

Cooney said that, originally, both a cistern and French drain were proposed for the property, but that Mr. Van Liere is proposing to eliminate the cistern and create only a French drain system. Cooney said that total stormwater storage volume is increasing from 262 cubic feet in the original proposal to 481 cubic feet in the revised proposal.

Cooney pointed out that, in the past, it has been the contention of the city that mitigation systems that allow for infiltration (such as a French drain) are preferable to those systems that do not (such as cisterns). He said that the increased infiltration and increased storage volume are favorable to the city and staff would recommend approval of the proposed changes.

Mayor Skrede asked about the driveway that has now been moved to the property line. He said that it is a best practice to have a driveway setback from the property line to allow for snow storage and he believes that five feet is an appropriate distance. Cooney said that the driveway is setback somewhat since there is a hedgerow along the property line.

Van Liere said that the driveway is 4 feet off of the property line. He said that the goal of the changes was to preserve as many significant trees as possible.

Councilmember Jewett asked about the city engineer's comment. Cooney said that an inspection of the installation was requested. Mayor Skrede said that the point of the engineer's comments was that he was supportive of the changes.

Van Liere said that the reason for the changes was that the cistern became cost prohibitive due to the water table and the potential for heaving. He said that it was better to go with an all infiltration type of system and that, as proposed, this was a much larger storage volume than previously approved.

Mayor Skrede asked how the water would be collected for the French drain. He said that he liked the previous concept with collection directly from the roof and underground storage. Van Liere said that the roof water would be captured in the same way and directed to the system. Councilmember Erickson said that the collection would take place underground.

Councilmember Gustafson asked if the water table was too high to allow for infiltration. Van Liere said that there was five feet of soil that would allow for percolation.

Councilmember Jewett asked about the original patio that was changed to a deck. Van Liere said that the deck was only 6 inches above grade and was similar to the deck at 20200 Lakeview that was allowed to encroach.

Motion by Councilmember Gustafson to approve the changes to the stormwater management and the impervious footprint as presented. Mayor Skrede made a friendly amendment to require that the driveway be 5 feet off of the property line. Councilmember Gustafson accepted the amendment. Motion and amendment were seconded by Councilmember Erickson. Motion carried 5-0.

B. Discuss Request for a 3-Foot Grade Limitation Exemption at 20035 Manor Road

Zoning Coordinator Cooney presented the staff report. He said that Phil Smith is in the process of purchasing the property at 20035 Manor Road and that, due to the steep grades on the property, some grade alteration in excess of 3 feet is expected. Cooney said that the lot was created in 2007 as part of the Bowman 3rd Addition. He said that the subdivision is accompanied by a development agreement which includes language related to grading in Condition #1. Cooney said that Mr. Smith contends that the development agreement language outlines a grading review process which supersedes variance requirements.

Cooney noted that Section 24 of the development agreement states “Developer shall comply with all laws, ordinances, and regulations of all regulatory bodies having jurisdiction of the Subject property...” He said that, while the city council may desire to waive grading variance requirements, it is his opinion that Section 24 indicates that the city’s authority to require a variance remains in full effect.

Cooney said that the City Council should provide a determination for Mr. Smith if a variance would be required for any grade alteration beyond the 3 foot limitation, or if the language in the development agreement supersedes such a variance requirement.

Phil Smith, 20045 Manor Road, said that he is in the process of buying the property from Mrs. Bowman. He said that the property adjoins a private drive and that there is a significant grade change on the property. He said that the plat went through both Shorewood and Deephaven and that the property is served by Shorewood sewer and water. Smith said that the plat was unanimously approved and that it shows a driveway in a specific location and that he should not be required to ask for a variance to install the driveway as it was previously approved.

Mayor Skrede said that he was a part of that discussion and he did not remember getting into the specifics of grading during the platting process. He said that he was not sure he agreed with Mr. Smith. Mayor Skrede asked if Smith was proposing to subdivide this property. Smith said this is an existing vacant lot that was part of the plat.

Smith said that at the three foot grade alteration limitation came into effect after the property was subdivided and should not impact the development of the lot. Cooney said that prior to the 3 foot grade alteration limitation the city had in place a 1 foot grade limitation. Mayor Skrede said that the ordinance change was a relaxation of the previous code, not a new more restrictive code.

Councilmember Gustafson asked if Smith simply did not want to go through the variance process. Smith said that it would delay his project by up to two months. He said that the development agreement states that the City Engineer should review the grading.

Mayor Skrede said that he respects the fact that timing may be an issue.

Smith said that the driveway would be better and safer with a grade change beyond three feet. Mayor Skrede said that he is sympathetic to making the driveway safe and functional.

Councilmember Erickson said that he understands the plight and that if this came through as a variance request he would be supportive of it. He said that the development agreement does not trump the law and it would still require a variance.

Councilmember Carlson agreed that grade changes in excess of three feet would be needed. He said that this is mainly a process question, and that he would likely support a variance of some kind on this property.

Councilmember Jewett said that Section 24 of the development agreement requiring compliance with city law was put there for a reason.

Councilmember Gustafson said that the city can't approve the property improvements only as a concept, and a city council cannot tie the hands of a future council.

Mayor Skrede said that he doesn't like to have process for the sake of having process, but he would have to adhere to the ordinance requirements. He asked Cooney if the driveway could come as a separate variance request.

Cooney said that he would not have a problem with a variance request for the driveway and independent of the house since the property has access issues unrelated to any potential structure.

Councilmember Carlson said that he would prefer to see the project come before the council as a complete package.

Smith said that the variance could delay the purchase of the property. Councilmember Erickson said that there is nothing preventing the purchase of the property. Smith said that there is risk to him in buying a property that may need multiple variances. Councilmember Erickson said that if multiple variances are needed, the city should review the proposal, and that is why the process is important.

Mayor Skrede said that Smith has heard the consensus opinion about the issue and that he can work with staff on the timing of any variance application submittal.

C. Discuss Scope of Work for Planning Commission on The Pines Request

Cooney said that the conversation is intended to provide direction to the Planning Commission on potential zoning changes related to the Pines neighborhood.

Councilmember Jewett said that the Planning Commission was split on whether or not to make any changes to the code.

Mayor Skrede said that the Council should determine if they would like to see changes, and if so, what would be the likely scope of those changes.

Councilmember Carlson said that the neighborhood is split between Minnetonka and Deephaven and if the city should reach out to Minnetonka. He asked Cooney if Minnetonka had been contacted by the residents. Cooney said that the city planner he spoke with was unaware of any citizen initiated zoning requests in this area.

Mayor Skrede said that he did not feel the need to involve the City of Minnetonka. Councilmember Erickson said that the city council only reports to citizens of the City of Deephaven. Councilmember Gustafson agreed.

Councilmember Erickson said that he is not in favor of revising the R-3 district since they had just gone through that process recently. He said that there is too much variation and reopening that discussion is a can of worms. He said that he was open to looking at creating a new zoning district.

Councilmember Carlson said that it is important to understand what the neighborhood wants. Mayor Skrede said that it is also important to understand what they don't want. He said that in his conversations, they were not against two story houses but against houses that are as tall as currently allowed. Mayor Skrede said that perhaps there should be a working group formed from the residents.

Councilmember Carlson said that he thought a consultant should be hired that could facilitate a productive discussion about the vision for the neighborhood. Mayor Skrede said that the first meeting should be a listening session, and that the second meeting should be a facilitated discussion with the consultant.

Councilmember Erickson said that he was curious if the city was getting the majority opinion, or just that of a vocal minority.

Councilmember Carlson said that the city could create some uniformity for this neighborhood with an overlay district that would not be subject to the current R-3 height variation. Councilmember Jewett asked for clarification on how an overlay district would work. Cooney said that our Shoreland district is an overlay district and has more restrictive requirements than areas outside of the district.

Mayor Skrede said that the city should send a letter to the residents of the neighborhood notifying them of a listening session. Councilmember Carlson said that there should be an outline of the discussion questions with the letter in order to help create a meaningful and productive discussion around the neighborhood's concerns.

City Administrator Young suggested that the meeting be held on a weeknight since many people would not attend a Saturday session. He said that Thursday nights are usually open.

Councilmember Gustafson asked if there should be a building moratorium. Mayor Skrede said that he thought a moratorium was premature. He said that the city needs to understand if what percent of the neighborhood is in favor of these limitations first.

Administrator Young asked if the Planning Commissioners should be invited to attend. Mayor Skrede said that he felt that they should attend.

7. UNFINISHED BUSINESS

A. Adopt Ordinance No. 06-01, Amending Section 605 on Weapons

Administrator Young stated that Ordinance No. 06-01 was first read at the August 7th Council meeting and following revisions to the ordinance, it was posted for ten days as required by law. He stated that the ordinance is now ready for final adoption.

Motion by Councilmember Erickson to adopt Ordinance No. 06-01, Amending Section 605 on Weapons as presented. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Other

There was no other Unfinished Business this evening.

8. NEW BUSINESS

A. Approve 2018 LMCC Budget

Councilmember Gustafson stated that he believes the 2018 LMCC 5-Year Capital Plan and 2018 Budget is a reasonable and responsible budget.

Mayor Skrede asked if the LMCC intended to use fund reserves in 2018.

Councilmember Gustafson stated that the LMCC does intend to use fund reserves in 2018 and noted that they have sufficient reserves.

Councilmember Jewett asked if the LMCC were tax exempt.

Administrator Young stated that, as a Joint Powers Organization, the LMCC should be tax exempt.

Mayor Skrede asked Councilmember and LMCC Representative Gustafson to find out about the LMCC's tax exempt status.

Councilmember Gustafson further noted that the LMCC Board has voted to move the LMCC annual audit from an accrual to a cash basis.

Motion by Councilmember Gustafson to approve the 2018 LMCC Budget and 5-Year Capital Plan as presented. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Discuss Marketing Agreement with Service Line Warranties of America

Administrator Young stated that he has met with representatives of Service Line Warranties of America to discuss their external service line warranty and an in-house plumbing warranty that could be offered to Deephaven residents. He stated that while the City has been very proactive in televising and maintaining sewer mains, manholes and lift stations, the one critical component that is not maintained with any frequency is the residential side of the sewer line from the main into the house. Problems with the private sewer line are not uncommon and can come as a real surprise to homeowners who believe that this line is the City's responsibility.

He stated that Service Line Warranties provides a private sewer line warranty at a cost of \$7.25 per month and an in-home plumbing warranty at a cost of \$9.49 per month. This coverage includes:

- Educating homeowners about their service line responsibilities
- Provides up to \$4,000 coverage per repair incident
- Provides an additional allowance for public street (\$4,000) and public sidewalk (\$500) repair
- No annual or lifetime limits
- No deductibles, service fees, forms or paperwork
- 24 / 7 availability
- Repairs made only by licensed, local area contractors
- Affordable rates and multiple payment methods
- Program enrollment is strictly optional for our residents.

He stated that this program has become increasingly popular in Minnesota with cities such as Edina and Watertown recently entering into marketing agreements with Service Line Warranties. The proposed marketing agreement provides Service Line Warranties with a non-exclusive license to use the City's name and logo on their letterhead, bills and marketing materials to be sent to Deephaven residents. The City further agrees to not provide a similar license to any competitor of Service Line Warranties during the three-year term of the agreement.

He stated that he believes this program may be an excellent way to provide information and potential private service line coverage to our residents at a reasonable cost. The only caveat is that staff would recommend that the City provide sufficient notice to our residents of this opportunity in an upcoming Newsletter to make sure that the residents are aware of the City's relationship with Service Line Warranties.

Councilmember Carlson asked if he had heard any feedback from other cities in regards to Service Line Warranties payment of claims.

Administrator Young stated that he has not heard anything specific regarding claims. He stated that he does not intend for the Council to make a decision tonight on whether to enter into a marketing agreement with Service Line Warranties, he only intends to introduce this company and their services for future Council consideration.

C. Discuss Representative on the Lake Minnetonka Conservation District

Mayor Skrede stated that Chris Jewett has informed him that he would like to step down as Deephaven's representative on the LMCD Board. He stated that the City has not heard from any other residents who have expressed an interest in serving on the LMCD Board, so he asked the Council to contact those residents who they thought might have an interest. He asked Councilmember Jewett to ask Chris to put together some information on this position that it could be posted on the City website.

D. Other

There was no other New Business this evening.

9. REPORTS FROM STANDING COMMITTEES

A. Park Committee

Administrator Young presented a review of the Park Committee meeting held on August 8, 2017 on the following items:

- The Committee met with Al Farha and authorized further buckthorn removal at Cleveland Park. The city crew will mark the buckthorn with a yellow ribbon and the neighbors will removal the buckthorn.
- Discussed the Thorpe Park Grant Project, with particular focus on the new warming house / restroom.
- Discussed the Council's recent adoption of the fishing ordinance.

Mayor Skrede stated that any future suggestions on future fishing opportunities from the Park Committee would be welcomed.

Mayor Skrede stated that several members of the Park Committee commented that the City is running out of time in regards to constructing the new warming house this year. He stated that these comments lead to a discussion about a new bidding process called Best Value Contracting.

Councilmember Carlson provided a brief review of Best Value Contracting. He stated that this process would enable contractors to provide a proposal on a schematic design of the warming house, a committee would be established to interview potential candidates, and a final plan design would then be provided to the contractor to enable the contractor to obtain bids on each design component. He stated that the interview committee would then award points on a number of critical elements that the contractor would provide on the project.

Mayor Skrede stated that Best Value Contracting has been discussed with legal counsel. He stated that the City Attorney would draft the Request for Proposal. He stated that this bid process attempts to provide greater control over the contractor and project timelines. He added that he still doesn't know if this process would enable the warming house to be completed this year or not. He stated he would like to find out if the Council would be agreeable to a spring

construction or if they would prefer to try to fit the warming house construction in before the 2017/2018 skating season begins.

Councilmember Erickson stated that he wouldn't want to tear down the existing warming house unless it was certain that the contractor could finish construction of the new warming house prior to the 2017/2018 skating season.

Councilmember Gustafson asked how many calendar days it would take to get an operational warming house. Councilmember Carlson stated that construction could take 60 days. Councilmember Gustafson stated that it feels like we are rushing this process in order to achieve nothing. He recommended keeping the 2017/2018 skating season intact and waiting for construction until next year.

Councilmember Erickson agreed.

Councilmember Jewett stated that if construction is underway by November 1st, residents will wait until January 1st to have the new warming house.

Councilmember Gustafson stated that the Council could make a go or no-go decision by October 31st on whether to proceed with the warming house construction this year.

Mayor Skrede stated that he wouldn't be interested in trying to get a temporary warming house for the season.

Councilmember Gustafson and Erickson both voiced support of the Best Value Contracting bidding process.

10. ADJOURNMENT

Motion by Councilmember Jewett to adjourn the Regular Council, seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 9:37 p.m.

11. SPECIAL COUNCIL BUDGET WORKSESSION

Further discussion was held on final revisions to the 2018 General Fund Budget and Capital Improvement Fund Budget.

12. ADJOURNMENT

Motion by Councilmember Erickson to adjourn the Special Council Budget Work Session, seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 10:05 p.m.

Respectfully submitted,
Dana H. Young
City Administrator