

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, AUGUST 7, 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 Steve Erickson, Tony Jewett, and Darel Gustafson

ABSENT: Councilmember Kent Carlson

STAFF: Police Chief Cory Johnson 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 July 17, 2017 Council Minutes
- B. Approve Verifieds
- C. Approve June 2017 Treasurer's Report

Seconded by Councilmember Erickson. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

Lindsey Carr, 3610 Lowell Street, was present to state her concern that the builder at 3542 Leroy Street has sent out letters from his attorney "bullying" neighbors. She stated that many neighbors have had cordial conversations with the builder so these letters came as a surprise to everyone. She asked if the Council had given consideration to establishing a new zoning district. She stated that she and her neighbors don't have an issue with revitalization; they just aren't in favor or gigantic home on small lots. She stated that height limitations are their primary concern.

Mayor Skrede stated that he is aware of just one letter that has gone out. After the Mayor was provided with a more recent letter, he noted that it is very similar to the other letter he read.

Chief Johnson stated that he talked with the owner and builder of this property, and the owner was concerned about the somewhat volatile nature of the neighborhood meeting he attended. He stated that the owner thought that it was a hostile meeting and decided to have his attorney write

letters to the neighborhood. He stated that he understands that it would be somewhat shocking to have received the letter.

Mayor Skrede stated that the owner is not from this area and doesn't realize how tight this town is. He stated that he is also upset by the letter.

Chief Johnson stated that the owner doesn't know our neighborhood and perhaps he is use to more unruly behavior elsewhere.

Lindsey Carr stated that we have no intention of damaging his property. She asked if the Council had made any progress on their request for a separate zoning district and noted that they have checked in establishing a homeowners association but found that they would need 100% agreement with a homeowners association.

Mayor Skrede stated that some of the neighbors have contacted him and stated that they are not in agreement with a homeowners association. He stated that the Planning commission also didn't seem that excited about a separate zoning district. He stated that he would be more than willing to look at the size of a home in relation to the size of a lot. He stated that the Planning Commission needs direction from the City Council on this issue.

Councilmember Jewett stated that the Planning Commission didn't have a lot of appetite to look at this issue. It was felt that lowering the height on single family homes would cap the value of the property.

Mayor Skrede noted that creative designs can add space without adding height. He stated that we could re-look at the height issue. The fact that this neighborhood is located right next to the City of Minnetonka is a minor issue.

Councilmember Gustafson stated that two-story colonials would work if they didn't have a peaked roof. He stated that straight peaks aren't needed.

Dan Shanesy, 3608 Lowell Street, stated that he feels like the Mayor really understands the issue. He stated that we are looking for a geographic zone, which would include their neighborhood. He stated that we are just not talking ramblers. He stated that even though this issue doesn't whet the appetite of the Planning Commission, it does whet the appetite of our neighborhood. He stated that he talked with a real estate attorney and we would have to have 100% buy-in on a homeowners association. He stated that we are looking for the City Council's help on this issue and understand that a future Council could change any ordinance.

Mayor Skrede stated that the Council was hoping that a homeowners association would be the silver bullet with this issue. He stated that he will ask the Council to have the Planning Commission address height and proportionality.

Councilmember Jewett noted that the Planning Commission was only briefed on this issue for the first time at their last meeting.

Councilmember Erickson suggested that the Council have a discussion at our next meeting to direct the Planning Commission's review of this issue.

Councilmember Gustafson asked why we couldn't have this discussion tonight.

Mayor Skrede stated that he would like to have Councilmember Carlson in on this discussion and that we really wouldn't do this issue justice by the August 15th Planning Commission meeting.

Mike Zegarac, 3608 Therese Street, stated that he would like to go back to the city's Comprehensive Plan, which states that tear downs deplete the inventory of affordable houses. He stated that this was enough of a concern to include it in the Comprehensive Plan or the language should be eliminated.

5. PLANNING & ZONING REQUESTS

A. Conditional Use Permit request of Minnetonka Glass & Mirror to operate a glass and mirror replacement and sales business and to install illuminated commercial signage at 3644 County Road 101

Administrator Young stated that Andy Puchner, owner of Minnetonka Glass and Mirror located at 3644 County Road 101, is requesting a Conditional Use Permit to operate a glass and mirror replacement and sales business and to install a 53.5 square foot illuminated business identification sign that would be attached to the structure. The business, located in the C-2 zoning district, is allowed as a conditional use within the zoning district with the acquisition of a conditional use permit. The business would share the building with Jerry's Automotive.

He stated that Section 1302.02, Subd. 2u lists the following under conditional uses "Limited auto and home glass replacement and sales, and/or home window and door replacement, repair and cleaning services, with no outside storage of materials or refuse by the tenant."

He stated that according to the staff report prepared by Zoning Coordinator Dale Cooney, the applicant would be in compliance with Section 1305.03 on Business Hours, Section 1310.04 on Parking, and on the applicable provisions pertaining to his signage request.

He stated that staff recommends approval of the conditional use permit request of Minnetonka Glass and Mirror to operate a limited auto and home glass replacement and sales business and to install a 53.5 square foot illuminated sign at 3644 County Road 101, as presented. The recommendation is conditioned that : (a) the hours of illumination for the sign be as outlined in Section 1305.03 of the ordinance; (b) that there be no outside storage of materials or refuse; and (c) business hours be restricted to between 6 AM and 9:30 PM

He stated that approval is based on the following findings: it was determined there would be no negative impact on development of the community, the character and development of the neighborhood, the health, safety, and welfare of occupants of surrounding lands, existing and

anticipated traffic conditions, including parking facilities, on adjacent streets, and the effect on property values of the subject premises and in the surrounding area.

He stated that the Planning Commission held a public hearing at their July 18 meeting and recommended approval of the conditional use permit based on the findings and conditions of staff.

Councilmember Jewett noted that there two Conditional Use Permit applications are included in the Council packet.

Mayor Skrede noted that one application was from the business owner and the other from the property owner.

Motion by Councilmember Erickson to accept the recommendation, findings, and conditions of the Planning Commission to approve the Conditional Use Permit requests of Minnetonka Glass and Mirror to operate a limited auto and home glass replacement and sales business and to install a 53.5 square foot illuminated sign at 3644 County Road 101, as presented. Seconded by Councilmember Jewett. Motion carried 4-0.

B. Conditional Use Permit request of Peter Carroll to operate an off-sale liquor store called Great Bottle of Wine at 18281-G Minnetonka Blvd

Administrator Young stated that Peter Carroll will be leasing space at 18281-G Minnetonka Boulevard (Deephaven Court) and he would like to operate a boutique wine selling business. The business will be located in the C-1 zoning district and per Section 1302.01(Subd. 2) an “off-sale liquor store” is allowed as a conditional use within the district.

He stated that the applicant has enclosed a narrative describing the scope and purpose of the business. As proposed, the business would occupy a 600 square feet space which would have limited hours with additional hours by appointment only. The applicant states that a principal focus of the business will be online sales, and that the retail space will be primarily a showroom with limited inventory. Applicant has stated that there may be walk-in customers, but that will not be the bulk of their sales.

He stated that according to the staff report prepared by Zoning Coordinator Dale Cooney, the applicant would be in compliance with Section 1305.03 on Business Hours, Section 1310.04 on Parking, and on the applicable provisions pertaining to his signage request. He stated that the primary impact staff expects from the business would be delivery traffic. The applicant has stated that deliveries would be minimal with direct delivery to the purchasers. Nevertheless, staff would recommend that shipments and delivery of products occur only in single rear axle straight trucks or smaller vehicles.

He stated that staff recommends approval of the conditional use permit request of Peter Carroll to operate an off-sale liquor store at 18281-G Minnetonka Boulevard, as presented. Approval is based on the following findings: it was determined there would be no negative impact on development of the community, the character and development of the neighborhood, the health,

safety, and welfare of occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities, on adjacent streets, and the effect on property values of the subject premises and in the surrounding area.

Administrator Young stated that the Planning Commission held a public hearing at their July 18 meeting and recommended approval of the conditional use permit based on the findings of staff, but with modified conditions. Their recommendation of approval is conditioned that:

- (a) the business be limited to the sale of wine only
- (b) business hours, including customer appointments, be limited to between 10 AM and 6PM, Monday through Saturday; closed Sunday.
- (c) pick-up or delivery of the product is limited to single rear axle straight trucks or smaller vehicles typically used to serve office and residential areas
- (d) applicant complies with all state and local licensing requirements for the business

Councilmember Erickson asked about the hours of operation.

Peter Carroll stated that they will have restricted hours, with internet sales primarily. He stated that this is a boutique type of business and he wanted to keep his feet wet with an off sale wine business. He stated that this will be a different way of selling wine and they plan on being open a couple of days per week from 10:00 a.m. to 3:00 p.m. He stated that in order to comply with state regulations, they need to have a front door, a bathroom and a sink, all of which they have with their rental property.

Mayor Skrede noted that, in theory, the applicant could sell wine over the internet with the doors closed.

Councilmember Erickson stated that the hours are limited from 10:00 a.m. to 3:00 p.m. and people are not going to visit the business regularly or customers would be coming at a specific time. He stated that he thought the time was awfully limited.

Peter Carroll stated that this was the reason the Planning Commission gave them a little more latitude with the hours.

Police Chief Johnson asked if they are going to have much in the way of stock at their store.

Peter Carroll stated that they are not planning on having a lot of wine in stock and would only have a certain amount of product for display.

Councilmember Gustafson stated that the applicant only intends this operation to be a small boutique offering wine. He wondered about the use of an off sale liquor license continuing at this location if the Council grants a Conditional Use Permit.

Councilmember Erickson noted that the next applicant would still need to obtain a liquor license.

Administrator Young noted that any future applicant would be limited to wine sales only.

Motion by Councilmember Jewett to accept the recommendation, findings, and conditions of the Planning Commission and approve the Conditional Use Permit request of Peter Carroll to operate an off-sale liquor store at 18281-G Minnetonka Boulevard, as presented. Seconded by Councilmember Gustafson. Motion carried 4-0.

6. UNFINISHED BUSINESS

A. Authorize Payment No 1 to MNDOT for TH 7 Signal Light Project

Administrator Young stated that the City of Deephaven entered into the Traffic Control Signal Agreement with the Minnesota Department of Transportation on March 20, 2017, which obligated Deephaven to pay 25% of the cost of installing a new signal light and undertaking ADA construction. He stated that MNDOT has submitted their request to the City for partial payment in the amount of \$116,711.28. This is an increase from their earlier preliminary estimate of \$105,303.63. He stated that the project is officially starting today.

Mayor Skrede stated that he is somewhat annoyed since this project should have started back in June.

Motion by Councilmember Erickson to authorize Payment No. 1 to MNDOT in the amount of \$116,711.28 for the TH 7 Signal Light & ADA Construction Project. Seconded by Councilmember Gustafson. Motion carried 4-0.

B. Adopt Ordinance No. 08-07, Establishing Public Fishing Locations

Administrator Young stated that Ordinance No. 08-07 was first read and revised at the July 6th Council meeting. He stated that after revisions were made to the ordinance, it was posted for ten days as required by law and the ordinance is now ready for final adoption.

Motion by Councilmember Gustafson to adopt Ordinance No. 08-07, an Ordinance Establishing Public Fishing Locations, Hours & Conduct. Seconded by Councilmember Erickson. Motion carried 4-0.

C. Adopt Resolution No. 36-17, Authorizing 2017 Transfer & Budget Amendment

Administrator Young stated that the purpose of this resolution is twofold. First, this resolution proposes to transfer the proceeds from the sale of the Southshore Center to Shorewood (\$139,639.00) from the General Fund, where it was originally deposited this past February, to the Park Improvement Fund. He stated that the Park Improvement Fund will be the fund designated to handle all the expenses and revenues relating to the Thorpe Park Grant Project.

He stated that the second purpose of this resolution is to amend the 2017 Budget Documents, which proposed a \$100,000 transfer from the General Fund to the Storm Water Fund, with repayment to the General Fund scheduled in 2019. He stated that with the postponement of the Minnetonka Blvd Storm Water Control Project and the fact that this project might be much less expensive than was originally thought, the transfer is no longer necessary at this time.

Motion by Councilmember Erickson to adopt Resolution No. 36-17, A Resolution Authorizing the Transfer of Funds and Amending the 2017 Budget. Seconded by Councilmember Gustafson. Motion carried 4-0.

D. Approve 2018 EFD Operating Budget & Capital Equipment Budget

Councilmember Erickson provided a review of the 2018 EFD Operating Budget & Capital Equipment Plan. He stated that the Operating Budget is increasing \$36,865 or 3.69%, primarily owing to salary increases for full-time staff, firefighters and the duty crew and the restoration of several items that were eliminated from the 2017 Budget. He noted that this would include the increase in radio maintenance fees from Hennepin County. He stated that there would be no increase in the 2018 Capital Equipment Budget.

Councilmember Jewett asked about the proposed reimbursement of excess bond fund payments.

Councilmember Erickson stated that he convinced the EFD Board to approve the return of the excess bond funds to the member cities. He added that any shortfall in the concrete project would be funded through the use of fund reserves.

Motion by Councilmember Erickson to approve the 2018 EFD Operating Fund Budget as presented. Seconded by Councilmember Jewett. Motion carried 4-0.

Motion by Councilmember Erickson to approve the 2018 EFD Capital Equipment Fund Budget. Seconded by Councilmember Jewett. Motion carried 4-0.

E. Discuss Thorpe Park Project

Mayor Skrede provided an overview on the progress of the Thorpe Park Grant Project and requested the following approvals from the City Council on the various components of the project:

New Hockey Rink Boards

Motion by Councilmember Gustafson to approve the verbal bid submitted by Howard Bennis in the amount of \$8,000.00 to construct the new hockey rink boards. Seconded by Councilmember Erickson. Motion carried 4-0.

Councilmember Gustafson recommended including start and end dates in the contract for this work.

Mayor Skrede stated that it was recommended to him that construction days be included in a contract rather than end dates, since many contractors will not agree to list an end date for a project.

Overhead Hockey Rink Lights

Discussion was held regarding the two bids for overhead lights received from Musco Sports Lighting and Westy's Electric.

Councilmember Jewett noted that there are too many variables between the two bids, including pole height, number of poles, warranty periods, foot-candle lamination, and work product that he recommended going out for bids.

Motion by Councilmember Erickson to authorize staff to obtain bids on overhead hockey rink lights. Seconded by Councilmember Jewett. Motion carried 4-0.

Warming House / Restroom

Motion by Councilmember Jewett to authorize the advertisement for bids on the construction of the Warming House / Restroom once the plans and specifications have been completed. Seconded by Councilmember Gustafson. Motion carried 4-0.

Well Upgrade

Motion by Councilmember Gustafson to approve the quote submitted by Motzko Well Drilling in the amount of \$2,819.71 for the well improvements needed for the water supply to the restrooms. Seconded by Councilmember Erickson. Motion carried 4-0.

Sewer Extension

Motion by Councilmember Jewett to approve the quote submitted by Schneider Excavating in the amount of \$9,425.00 for the sewer line extension to the restrooms. Seconded by Councilmember Gustafson. Motion carried 4-0.

F. Authorize Pay Estimate No. 1 to Wm. Mueller & Sons for the 2017 Street Project

Motion by Councilmember Gustafson to authorize Pay Estimate No. 1 to Wm. Mueller & Sons in the amount of \$53,558.46 for the 2017 Street Improvement Project. Seconded by Councilmember Erickson. Motion carried 4-0.

G. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Approve an Off Sale Intoxicating Liquor License for Peter Carroll

Administrator Young stated that Peter Carroll, owner of Great Bottle of Wine, LLC, has applied for a Conditional Use Permit to operate an Off Sale Liquor Store at 18281 Minnetonka Blvd, Suite G. With the approval of his Conditional Use Permit by the Deephaven City Council earlier this evening, he is requesting approval of an On Sale Liquor License to operate his business.

He stated that, as described in his application for a Conditional Use Permit, Peter Carroll is not proposing a typical liquor store. He plans on being open very selectively, 3-4 days per week, from 10:00 a.m. to 3:00 p.m. or by appointment. He believes his customer base will order wine online, with product delivered directly to his customers or picked up at his store.

He stated that Section 470.03 of the City Code entitled Sale, Consumption and Display of Intoxicating Liquor, Beer and Wine allows for the issuance of a an Off Sale Intoxicating Liquor License subject to the license being issued to an exclusive liquor store, in a property located within the C-1 or C-2 Commercial District, and limited to no more than three On Sale licenses granted at one time in the City. He stated that the applicant meets all three of these criteria.

He stated that the applicant is required to submit the City of Deephaven Intoxicating Liquor License Application and the Application for Off Sale Intoxicating Liquor License to the Minnesota Department of Public Safety. He stated that Section 470.05 of the City Code also requires an initial investigation of the applicant and Police Chief Johnson has completed his investigation with no issues.

Motion by Councilmember Gustafson to approve an Off Sale Liquor License to Great Bottle of Wine, LLC at 18281 Minnetonka Blvd, Suite G, subject to providing a current Certificate of Liquor Liability Insurance. Seconded by Councilmember Erickson. Motion carried 4-0.

B. Adopt Resolution No. 37-17, Approving an Agreement with HCMC

Police Chief Johnson stated that the Police Department would like to start carrying Narcan, which would be used for emergency treatment of persons suffering from an opioid overdose. He stated that opioid addiction has turned into a huge epidemic and the police have already had two uses for Narcan in the past month.

He stated that HCMC requires that the City enter into an agreement before we are allowed to carry Narcan. The agreement provides Deephaven with physician services and medical direction. He stated that some changes to the agreement were recommended by Administrator Young. He stated that kits have been purchased for \$575.00 and the cost for this service is \$500.00 annually and the initial training for each officer is \$60.00.

Mayor Skrede noted that HCMC requires ten people to attend the training and the Police Department only have seven members.

Chief Johnson stated that the Medical Director is OK with this.

Mayor Skrede asked about security concerns with the Narcan.

Chief Johnson stated that Narcan is not a narcotic and shouldn't pose a security problem. He noted that most habitual users can obtain Narcan for free but the police have to purchase it.

Motion by Councilmember Gustafson to adopt Resolution No. 37-17, a Resolution approving an agreement between the City of Deephaven and Hennepin Healthcare Services, Inc. for the provision of opioid training and protocols. Seconded by Councilmember Erickson. Motion carried 4-0.

C. First Reading of Ordinance No. 06-01, Amending Section 605 on Weapons

Chief Johnson stated that this ordinance is presented with the intent of cleaning up some of the language in this section of the City Code.

Mayor Skrede asked if the changes have been reviewed by the Prosecuting Attorney.

Chief Johnson stated that the Prosecuting Attorney will be fine with these changes.

Councilmember Gustafson had a question regarding Section 605.05 of the ordinance which prohibited minors under the age of 18 from carrying weapons and whether this would impact student trap shooters.

After further discussion on the merits of this section, the Council recommended deleting Section 605.05 in its entirety.

D. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson presented the July Incident Report for Council review and provided highlights of the National Night Out block parties held on August 1st and the Tour de Tonka held on August 5th. He noted that the Tour de Tonka went well except for the fact that he could hear the PA system at the Minnetonka Education Center all the way down at Chowen's Corner.

B. Excelsior Fire District

There was nothing new to report regarding 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:

- 2017 Year to Date Summary
- Building Permit Update
- Hennepin County Bikeway Participation Grant Update
- Conduit Financing Proposal

9. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson.
Motion carried 4-0. The meeting adjourned at 9:54 p.m.

Respectfully submitted,
Dana H. Young
City Administrator