

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, DECEMBER 3, 2018  
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 Darel Gustafson, Kent Carlson, Steve Erickson, 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 Gustafson to approve the Consent Agenda, consisting of the following items:

- A. Approve November 19, 2018 Council minutes
- B. Approve December Verifieds
- C. Adopt Resolution No. 48-18, Authorizing 2019 Group Health Plans
- D. Adopt Resolution No. 49-18, Approving 2018 Transfers
- E. Adopt 2019 Investment Policy
- F. Adopt 2019 Internal Control Policy
- G. Approve Tort Liability Limits
- H. Authorize Purchase of 2019 Equipment & Vehicles
- I. Authorize Plans & Specifications on 2019 Improvement Projects
- J. Approve October 2018 Treasurer's Report
- K. Adopt Resolution No. 50-18, Designating 2019 Polling Place
- L. Adopt Resolution No. 51-18, Approving Lot Line Configuration
- M. Designate RBC Wealth Management as an Official Depository

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Jim Sulciner (19720 Vine Street) noted that the 2019 Budget, with a levy increase of 3.4%, includes an increase of \$58,000 for the Capital Improvement Fund next year and wondered where the resurfacing of Minnetonka Blvd was included in the budget. He stated that he had heard that the resurfacing of Minnetonka Blvd was estimated at \$1.2 million. He stated that he

would like to see sidewalks, dry hydrants and removal of power poles considered for this project. He stated that as he was campaigning, he heard a lot about arsenic levels in wells.

Mayor Skrede stated that the final levy adopted this evening cannot be increased over the preliminary levy set in September. He stated that the Minnetonka Blvd project does not show up in the budget because the Council may decide to use reserves and bonded debt for the project, which would show up in the 2020 Budget. He stated that a Request for Proposals for engineering services on this project will be sent out tomorrow.

Jim Sulciner asked about the plan to fix Minnetonka Blvd and whether the plan includes sidewalks and the burying of power lines.

Mayor Skrede stated that the last estimate he heard to bury the main power lines along Minnetonka Blvd would cost \$1.3 million. He noted that the cost is determined by Xcel Energy. He stated that in regards to sidewalks, the City is still trying to decide whether to do a mill & overlay or a reclamation on Minnetonka Blvd.

Jim Sulciner stated that the Park & Recreation Strategic Plan recommends a walkway along Minnetonka Blvd. He stated that you have to think about the future and do what's right for the future. He stated that, although originally skeptical, he is impressed with the new warming house at Thorpe Park. He stated that they may be the possibility of obtaining a federal grant to assist with beautification efforts. He added that we could also work with Xcel Energy. He asked Councilmember Erickson about the estimate he had used on the number of household in Deephaven.

Councilmember Erickson stated that he understands that the number is far higher than he had used and has already been chastised for this mistake. He asked if he was going to pontificate for the next ten minutes on his election platform.

Councilmember Erickson asked if they would be willing to research these grant possibilities if these issues are important to you. He asked if the research goes into August 2019, would you be willing to wait to resurface Minnetonka Blvd until the following year.

Jim Sulciner stated that he thought people would be willing to wait.

Councilmember Erickson stated that the grant could take up to five years before it is received.

Jim Sulciner stated that he agrees with the plan included in the Park & Recreation Strategic Plan.

Councilmember Erickson stated that he would like to see Minnetonka Blvd constructed to its full 36' width, allowing room for walkways similar to Vine Hill Road.

Mayor Skrede stated that the estimate on the resurfacing of Minnetonka Blvd varies between \$600,000 and \$1.2 million, depending on the type of construction.

Jim Sulciner stated that he would be happy to exhaust these efforts and would be happy to work with Mayor Skrede.

Mayor Skrede stated that with a project this large, we will need plenty of feedback. He stated that he has no interest in installing dry hydrants under Minnetonka Blvd. He stated that there are dry pipes under the Carson's Bay that have gone unused for 15 years and when the City requested water service to the new fire station using the dry pipe, Minnetonka told us no.

Nancy McRae (19680 Vine Street) stated that she witnessed a legitimate request treated rudely by Mr. Erickson. She stated that she noted this same tone in Mr. Erickson's emails. She stated that when people made comments on-line, they were not well-treated.

Mayor Skrede stated that he understands the spirit of what you are saying.

Nancy McRae stated that a lot of good ideas have been brought up and there has been a lot of shooting down of ideas.

Councilmember Erickson apologized for his comments.

Gabriel Rohde (18400 Minnetonka Blvd) stated that when people have complaints, you need to show up. She stated that Xcel Energy has confirmed that they do not pay for converting overhead to underground. She stated that Xcel also confirmed that many of their power poles are extremely old. She stated that the removal of overhead lines would certainly help in beautification efforts but also hates it when her power goes out, approximately 5 times per year. She stated that Xcel is spending a lot of money on trimming trees and having a crew come out to restore power. She stated that the individual she talked to at Xcel didn't have specific information on number and type of power outages and would have to send the request to someone higher up the chain. She stated that she would be more than willing to work on this issue.

Councilmember Erickson stated that we need to get outage statistics on main lines vs. distribution lines.

Gabriel stated that she requested that information.

Councilmember Jewett stated that he also has asked for that information and was told that Deephaven totaled 200 hours in outages per year. He stated that Plymouth ranked number 1 at 300 hours per year.

Mayor Skrede stated that we can ask Xcel those questions and obtain those numbers. He stated that he has always been assured that the problem is with the distribution lines.

Lynn Hooper (5005 Hooper Lake Road) stated that he would also volunteer to help. He stated that the City of Houston was able to bury power lines and install walking paths through the help of a grant. He stated that there are internet problems as well. He stated that he paid to put

internal lines to his house. He added that there is also a problem with the poles as some are owned by Xcel and others by Mediacom.

Mayor Skrede agreed that an inventory of the poles would be helpful.

Lynn Hooper stated that the dry pipes could run utility lines. He stated that Xcel would help get a grant to bury the lines.

Gabriel Rohde stated that the cost to bury your own lines is only \$500.

Councilmember Erickson agreed that the cost to bury your own line is not that expensive.

Mayor Skrede stated that we need to get the support of everyone who is fed power off of a power pole located in the back yard of properties.

David Irwin (18815 Heathcote Drive) stated that the City seems bound by the amount of money we spend. He stated that his own tax rate would be quite a bit higher if his home were dropped in Excelsior or Wayzata. He asked if we are trying to keep our taxes too low.

Councilmember Gustafson stated that a neighbor just moved in from Plymouth and told him that Deephaven does quite well with the money they spend. He stated that his neighbor paid \$14,000 per year in taxes and \$6,000 per year in water usage to live in Plymouth. He stated that this is just another resident who has a different take on taxes. He was told by his neighbor “don’t muck it up”.

David Irwin asked if we have overshot the mark when it comes to street improvements. He suggested asking residents if they would be willing to pay more. Maybe it is a discussion to have with residents. He stated that when he lived out east, there were more town hall discussions.

Mayor Skrede stated that we don’t get many residents attending our Council meetings and when a spending decision needs to be made, the Council attempts to make the most frugal decision possible. He added that perhaps we are hearing more complaints about the condition of city streets.

David Irwin suggested that we may not be paying enough.

Nancy McRae suggested a scientific poll or survey would be helpful. She stated that she is in marketing and could help tell your story.

Mayor Skrede stated that we have heard what you have to say and appreciate you coming to this evening. He stated that he will be having a website that will be providing updated information to the public. He stated that it won’t be interactive but it will be timelier than the newsletter.

## **5. PLANNING & ZONING REQUESTS**

**A. Consider the variance request of Autumn Huiras and Chad Kuha to encroach into the minimum front yard setback and exceed the maximum permitted grade alteration in order to build a garage addition at 18504 Heathcote Drive**

Mayor Skrede introduced the agenda item.

Zoning Coordinator Cooney presented the staff report. Cooney said that the property owners are requesting a variance to an additional garage stall on the property. He said that, as proposed, the addition would encroach into the front yard setback and exceed the maximum permitted grade alteration. The property is zoned R-2 and is 38,232 square feet in size. Cooney said that there is plenty of space for the garage alongside of the existing garage but there are also logistical challenges posed by the grading, the existing retaining walls, and the garage foundation.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than 3 feet at any point. He said the applicant is proposing land alteration of up to 6 feet, and is seeking a variance of 3 feet from the maximum permitted land alteration. Cooney noted that the excess grading will primarily be towards the northwest portion of the retaining wall and that the grading is necessary in this location to allow the expansion to match the existing elevation of the house. He said this portion of the property already hosts a series of retaining walls, and the proposed grading would slightly expand the retaining wall footprint. He said the topography drops away fairly quickly from the front of the house towards the northwest. Cooney said that he thinks this aspect of the proposal is a reasonable alteration of the grade to create a level garage pad adjacent to the house.

Regarding the setback variance, Cooney said that Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet. He said that the applicants propose a front yard setback of 45.1 feet and are seeking a variance of 4.9 feet from the minimum required front yard setback. Cooney pointed out that, while there is space towards the rear of the property, the applicants' architect has stated that reworking the grading and foundation towards the rear of the garage would likely undermine the existing garage structure. Cooney stated that, by offsetting the foundation footings and leaving the rear of the existing garage undisturbed, the architect believes that the existing garage will remain stable. Cooney said that construction considerations present a legitimate justification to move the garage forward. Cooney said that he might object if the impacts were to an adjacent neighbor, but since the encroachment is towards the street and the 50 foot front setback is relatively generous, the 4.9 foot front encroachment seems reasonable given the circumstances.

Cooney said that he recommends approval of the variance request to encroach 4.9 feet into the minimum required front yard setback and to exceed the maximum permitted grade alteration by 3 feet for the proposed garage expansion at 18504 Heathcote Drive, as proposed and 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 allow the orderly development and redevelopment of property but with procedures to vary from ordinance requirements when the standards cannot be met. The grading and setback request are related to practical logistical

challenges of the properties topography and existing structures which are in harmony with the purpose and intent of the ordinance.

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

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

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

Yes. The garage expansion is reasonable and comparable in scope and scale to that of surrounding properties. The relatively minor front setback request is reasonable given the logistical issues of the property.

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

Yes. The property's topography poses unique circumstances both in how to address the proposed garage expansion as well as how to preserve the existing structures on the property unharmed. The grade towards the northwest drops away fairly steeply relative to the existing elevation of the house. Retaining walls were required to create the existing house footprint, and additional retaining walls and associated grading impacts are required for the expanded footprint. The construction methods for the existing house pose challenges in integrating the garage expansion without undermining the integrity of the current structure.

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

The proposal would not alter the essential character of the locality. The proposed project is of a scope and scale comparable to surrounding properties and the proposed encroachment and grade change are relatively modest.

Cooney said that the Planning Commission held a public hearing at their November 15 meeting and on a 7-0 vote recommended approval of the request based on the recommendation and findings of staff.

Cooney concluded the staff report.

Carlson asked if the city engineer had reviewed the property for possible drainage issues. Cooney said that he had not requested a review from the city engineer. Carlson said that he would like to see a swale to help direct water towards the back wetland area.

Joy Martin, architect, said that there is already a bit of a swale in the area and that the garage would be primarily built over an existing parking pad.

Carlson asked if they were keeping the retaining walls. Martin said that, yes, they were keeping most of them.

Skrede asked Martin if she would be open to grade changes to protect the neighboring property if necessary. Martin said that she would be happy to make any required grade changes.

Jewett said that the Planning Commission saw the goal of the project as keeping the retaining wall mostly in tact which created the need for the variance. He said that they are taking the architect at their word that this is the best plan for this situation.

Erickson said that the plan seems reasonable and would not have a significant impact.

Motion by Gustafson to approve the request based on the recommendation, findings, and conditions of the Planning Commission. Motion was seconded by Erickson. Motion carried 5-0.

**B. Consider the conditional use permit request of Linvill Developers, LLC for a site plan review to reconfigure the parking, lighting, landscaping, and signage for the property as well as build a second story for a portion of one of the buildings at 18279 Minnetonka Boulevard**

Mayor Skrede introduced the agenda item.

Zoning Coordinator Cooney presented the staff report. He said that the applicant is proposing improvements to the property, some of which trigger site plan review via a conditional use permit. Cooney said those improvements include reworking the parking area (including lighting), new signage, and building a partial second story on the building facing Minnetonka Boulevard. He stated that the commercial property is zoned C-1.

Cooney said that Section 1310.09 (Subd. 3.) of the zoning code states that, “No building permit will be issued for improvements on land in a commercial district until the site plan has been reviewed by the Planning Commission and approved by the Council. The notices and procedures for such review and approval will be the same as those for consideration of an application for a Conditional Use permit.”

Regarding the building expansion, Cooney said the existing buildings on the property are 1 story (16 feet) tall at the roof peak and that the applicants are proposing to increase the height of a portion of the building facing Minnetonka Boulevard to 30 feet. He said the taller portion would be the western third of the building, away from the R-3 property to the east and that the height limit for commercial buildings is 30 feet.

Cooney said that the applicants have stated that the purpose of the expanded second story is to create a presence at the entry of the property. He said that, since the building expansion is zoning code compliant in terms of height and setback, he does not recommend any conditions for this portion of the request.

Regarding the parking area, the applicants are proposing to reconstruct the parking area with improvements that would include a reworked 26 foot wide entry with a single curb cut, and new curbing and landscape islands throughout.

He said that, based on the existing tenant mix, applicant calculates that there are 91 required spaces and 90 spaces provided. Cooney said that the applicant is anticipating the possibility of a different tenant mix that may include restaurants and additional retail and that, based on this

anticipated tenant mix, the applicant calculates required parking of 125 spaces, for a deficit of 35 spaces.

Cooney said that to make up this deficit, the applicants are proposing to share parking via the City of Deephaven municipal lot. He said that based upon the applicants survey of the current parking situation at the municipal lot, the parking area has 98 parking spaces with no fewer than 56 available parking spaces at any given time, with the most parking taking place during weekday business hours. He said that availability increases significantly on evenings and weekends with no fewer than 80 spaces available during these hours. Cooney said that the availability of parking at the municipal lot during all times of the day, but particularly in the evenings and on the weekends, seems complementary with the proposed tenant mix at Deephaven Court.

Cooney said that the current city code requirements for the existing properties adjacent to the municipal parking lot is 70. The Chowan's Corner area also has, by his count, 28 on-street parking spaces available.

He said that, while these commercial properties depend on municipal parking, the lot remains less than half-full during office hours. He said that potential retail or restaurant uses that may need to overflow into the municipal parking area would at likely peak during evening and weekend hours when current demand for parking is less. He said that the availability of parking at the municipal lot during all times of the day, but particularly in the evenings and on the weekends, seems complementary with the proposed tenant mix at Deephaven Court.

Cooney said that he is supportive of such a parking share arrangement. He said that, for reasons related to hardcover, aesthetics, and efficient land use, it is in the best interests of the city to fully utilize its existing parking areas before requiring the further expansion of parking (or the restriction of parking-intensive uses).

Cooney noted that allowing such a parking arrangement would necessitate that the city ensures that clear and safe pedestrian access is maintained between the properties.

Cooney said that the proposal exceeds the required number of loading spaces.

Cooney said that, per Section 1310.09 Subd. 1, at least 15% of the total area of a site in a commercial district must be landscaped. As proposed, 28% of the site would be landscaped.

He said that Section 1310.09 Subd. 2 outlines the screening requirements for commercial properties that abut residential districts. Cooney said that there is an existing fence and dense hedge to the east that meets the city's screening requirements but that no such fence or hedge exists along the southern boundary facing St. Therese Church. He said the property is zoned residential but is an institutional property. Cooney said that, in light of the possibility for future restaurant tenants, the city should determine if they feel that the current screening is adequate or if they would require additional screening.

Cooney stated that Section 1310.09 Subd. 5 and 6 outlines the exterior material and architectural compatibility requirements for commercial properties and that it was his opinion that the proposed exterior materials and architectural design meet the zoning code requirements.

Cooney said that the applicant has submitted a lighting plan for the property. He said for public safety reasons, the applicants have requested that the parking lot and wall sconce lighting remain illuminated from dusk to dawn. Cooney said that due to the secluded nature of the parking, staff is supportive of the justification for the dusk to dawn lighting, but the amount of lighting is an open question. Cooney said that he would recommend that the final approval of dusk to dawn lighting be evaluated after the installation of the site lighting.

Regarding stormwater mitigation, Cooney said that no mitigation is required by the city for the property since stormwater mitigation is required only for those commercial properties that exceed 75% impervious surface area. He noted that existing hardcover conditions on the property are 69.3% hardcover while proposed conditions are 72% hardcover.

Cooney noted that the Minnehaha Creek Watershed District has more restrictive thresholds for commercial properties, and the applicant will be required to comply with their mitigation requirements.

Cooney said that site runoff is currently managed via a stormwater inlet on just to the east of the main entry to the property and the storm sewer directs the water to Shavers Lake. He said the stormwater is generally managed by this inlet, but due to the size of the inlet, water can back up during larger rain events. Cooney said that the applicants are proposing a catch basin in the area adjacent to this inlet and that he recommends that the applicant replace the existing inlet to the stormsewer to better handle the water coming off of the property. He said the city would need to repair/replace the Shaver's Lake outlet which is in poor condition.

Regarding signage, Cooney said that the new signage requires a Conditional Use Permit. He said that Section 1115.09 (a) states that "the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs."

Cooney said that for the individual suites, the applicant has calculated the façade size and maximum permitted signage size that amounts to approximately 50 square feet per tenant. He noted that site drawings indicate signage of 20 square feet per sign with the tenant signs being illuminated. He said the current signage for the tenants is approximately 20 square feet, but the signs themselves are not illuminated.

Cooney said that the applicant has not yet determined if they would prefer internally or externally illuminated signage. He said that to streamline future signage requests, staff would support a templated signage agreement for the property based on a 20 square foot sign and standardized illumination. Cooney said that this would allow replacement of tenant signage via administrative approval versus the standard CUP process.

Cooney said that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate between the hours of 6 AM and 9:30 PM. He said all illuminated signage would be required to adhere to these hours of illumination.

Regarding the entry monument sign, Cooney said the current entry monument sign is a 2-sided, internally illuminated, 96 square foot sign (48 square feet per side). He said the applicant is proposing a new entry monument sign that would also be 2-sided and internally illuminated. Cooney said that the proposed monument sign is 213.75 square feet in size (106.9 square feet per side).

Cooney said that, at 94,884 square feet (2.18 acres) the property is the largest single commercial property within the city, and is currently configured to house 20 tenants. He said that it is staff's opinion that such characteristics could warrant larger site signage. Cooney said that he would not be supportive of an entry sign at the proposed scale. He said that while the property is in a commercial district, it is in close proximity to a residential neighborhood and the district should maintain its neighborhood commercial character.

Cooney said that a monument sign exceeding 100 square feet would require a variance and a separate public hearing and that it is beyond the scope of this site plan review (as a Conditional Use Permit) to grant a variance for the proposed monument sign.

Regarding a future restaurant, Cooney said the applicant intends to pursue restaurant tenants that serve beer and wine for the property. He said any such tenant would be required to be approved via a separate conditional use permit.

Cooney noted restaurants that include the sale of wine and intoxicating malt beverages must be located a minimum of 75 feet from a residentially zoned property line. He said that St. Therese Church is an institutional property but is zoned as a residential property. Cooney said that it is staff's understanding that the ordinance language regarding restaurants that sell beer and wine was drafted with the Deephaven Court property in mind. He said the city should confirm whether or not they deem all or portions of Deephaven Court as suitable locations for restaurants that sell beer and wine.

Cooney said that the applicant has noted that they would likely seek extended business hours for their restaurant tenants. He said that any specific extension of business hours would be decided via the conditional use permit process for the tenant but that in order to set appropriate expectations for the applicant, the city should discuss the general acceptability for extended business hours for restaurants that sell beer and wine.

Cooney said that he recommends approval with conditions of the conditional use permit request. He said that upon review of the application, his findings are that (a) due to the improvements proposed to the site and the buildings, the proposal will have a positive impact on the overall development of the community; (b) the character and development of the neighborhood will be improved by the project due to the upgrades to the existing structures, parking lot, landscaping, and overall aesthetics of the property; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands; (d) the parking conditions would be managed via

the use of the municipal lot; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

Cooney said that his recommendation is made with the following conditions:

- (a) That the applicant is entitled to count no more than 35 parking spaces in the Deephaven Municipal Parking Lot towards their parking requirements
- (b) Screening shall be installed along the north side of the property to meet the screening requirements of Section 1310.09 Subd. 2
- (c) Final city approval of any dusk to dawn lighting will be evaluated upon the installation of the lighting.
- (d) The applicant replaces the existing inlet to the stormsewer to better handle the water coming off of the property.
- (e) The front entry monument sign will be limited to 100 square feet in size unless a variance to exceed the maximum permitted site signage limitation is approved.
- (f) The hours of illumination for the sign be as outlined in Section 1305.03 of the ordinance (only illuminated between the hours of 6 AM and 9:30 PM)
- (g) The applicant comply with the mitigation requirements of the Minnehaha Creek Watershed District

Cooney said that the Planning Commission held a public hearing for the application at their November 15 meeting and recommended approval with conditions of the request based on the recommendation and findings of staff. He stated that the approval recommendation was based upon the following conditions:

- (a) That the applicant is entitled to count no more than 35 parking spaces in the Deephaven Municipal Parking Lot towards their parking requirements.
- (b) Final city approval of any dusk to dawn lighting will be evaluated upon the installation of the lighting.
- (c) The applicant replace the existing inlet to the stormsewer to better handle the water coming off of the property.
- (d) The hours of illumination for signage be as outlined in Section 1305.03 of the ordinance (only illuminated between the hours of 6 AM and 9:30 PM).
- (e) The applicant comply with the mitigation requirements of the Minnehaha Creek Watershed District.

Cooney noted that, separate from the specific conditions placed on the review of the site plan, the planning commission also made the further general recommendations for the property and the city's obligations to be considered by the city council:

- 1) All buildings at the Deephaven Court property are suitable for a restaurant except for building B (the building with the rear façade that is entirely adjacent to the residential property to the east).
- 2) Expanded restaurant hours shall not exceed midnight.
- 3) A larger monument sign than currently permitted by code is appropriate for the property, with specifics to be determined via a CUP/variance request for the signage.
- 4) To ensure proper drainage of the stormwater off of the Deephaven Court property the city shall repair the outlet to Shavers Lake.

- 5) The city shall install appropriate pedestrian safety measures between the municipal parking lot and the Deephaven Court property including a walkway, crosswalk, and appropriate street lighting.

Cooney concluded the staff report.

Jewett asked about the signage for building A. Cooney said that he felt those buildings should be allowed to have signage on both the street face and the parking lot face.

Skrede said that the signage at St. Therese has 67 square feet per side. He said that there are other examples of signage in that area for a sign larger than typically permitted.

Carlson asked about the numbers that drove the proposed parking calculation. Cooney said that would be a question for the applicant based upon their anticipated tenant mix.

Carlson asked about the signage and if the existing sign would be demolished and replaced where the dental office sign is. Skrede said that the signage for this property and the property at 18305 Minnetonka Boulevard would be consolidated.

Carlson asked about the trash enclosures. Patrick Regan of James Dayton Design, consultant for the applicant, said that the trash enclosures would be four-sided and would match the planned architecture for the property. Carlson asked if they were working with the adjacent property owners. Regan said that they were only providing enclosures for this property and that the extra enclosure is to be conservative in case there is excess.

Skrede said that he was not excited about a restaurant closing time of midnight, but that he wanted to have the restaurant be competitive with other restaurants in the area.

Police Chief Cory Johnson said that Spasso Restaurant is open 11 AM to 10 PM, Monday through Thursday, 11 AM to 10:30 PM on Friday and Saturday, and 10 AM to 9 PM on Sunday. He said that Excelsior and Wayzata are not good comparisons since they have a number of bars. Johnson said that he thought midnight was a bit late for closing in his opinion.

Erickson asked if Spasso chooses to close at 10:30 or if they are required to by law. He said that he would not be opposed to midnight, but that he did not think a Deephaven restaurant would not want to go later than Spasso as a business decision.

Skrede said that he would prefer to keep the closing earlier and expand it later if need be. He mentioned the lack of screening on the south side of property. Skrede said that he does not need to require it now, but that he would want to reserve the right to require it later.

Erickson agreed, and that a restaurant tenant may change how the back of the property is used.

Maggie Linvill Smith, applicant, thanked the city for working collaboratively. She said that her company is a 50 year-old company and that she currently lives in Orono. She said she was excited to be here. She said she remembers the previously vibrant shopping area of Deephaven that was known throughout the area. She said she wants to bring back that vibrancy. Smith said that potential tenants are

excited about this location as well. She said it would be intimate, unique, well-curated shopping location. Smith said she agrees with staff and the Planning Commission and would like the City Council to make a recommendation about the suitability of a restaurant at buildings A, C, and D at Deephaven Court, as well as parking and extended hours for a restaurant. She said the restaurant needs to have the same business opportunities as other restaurants. Smith said that parking is critical to the businesses success. She said that they would address the stormwater drainage. She said that the dusk to dawn lighting is important to protect the public. Smith said that the signage is important to identify the tenants and that local residents are currently unaware of many of the businesses in Deephaven Court. Smith requested that screening not be required along the south property line and that the current condition has existed without problems.

Carlson asked about the site lighting. Smith said that existing tenants don't feel safe. She said that the sconces, soffit lighting, and pole lights need to be addressed to make the property feel safe and welcoming.

Regan said that the light poles are 30 feet tall, as well as 12 foot tall poles in the drivelane. Carlson asked if they were downcast. Regan said that they were downcast and shielded.

Regarding parking, Regan said that many of the current office uses might change to retail which would increase parking. He said that the estimate includes three restaurants.

Carlson said that he thinks the current parking requirements for a restaurant are too high. He said that he would the city would review those particulars when the proposed restaurant tenant comes through the CUP process. He said that the property owner at 18300 Minnetonka is 80% leased and that property never has parking issues at the municipal lot.

Skrede said that Carlson would be the councilmember in charge of special projects. Skrede said that he would be willing to look at the ordinance as the commercial properties develop. He said parts of the commercial requirements might be out of date.

Skrede said that the city would replace the arborvitae within the city property along the east property line.

Regan said that he would like the hours of illumination to match the restaurant hours. Skrede said that the city would not have an issue with that.

Erickson said that no part of the front of the property faces a residential building. He said that the buildings face inward or to the street. He said this would be an argument for flexibility for some of these commercial restrictions such as extended hours and dusk to dawn lighting.

Jewett said that he would be in favor of focusing on the needs of the lot for parking variances. He said that the municipal lot would be over-promised if the 35 spaces were granted.

Skrede said that he had concerns about overpromising but that, based on city attorney input, these agreements were more like sophisticated handshakes.

Gustafson said that people will go where parking is easiest and that it doesn't matter unless there are signs designating parking spaces and that parking is enforced.

Jewett said that it would be easier to grant variances to the property itself rather than to give credit in the municipal lot.

Smith said that some of the restaurants might be during the day, such as a coffee shop. Skrede said that he appreciates the comment, but that the city is not in charge of who is leased at the buildings. Carlson said that the businesses will change over time.

Skrede said that his preference would be to allow the credit of 35 spaces. Carlson asked why the limit to 35. Skrede said that it would put a cap on the expectations for the property.

Erickson said that 35 is only the number needed to meet the code and actual parking may be more or less. Gustafson said that he would not use the word "entitled" which implies that the parking is guaranteed.

Jewett said that he was concerned about over-promising the municipal lot. Skrede said that the previous resolutions are just agreements that allow the buildings to not meet parking requirements and do not guarantee lot space.

Cooney said that this is not a guarantee for parking, but simply that the city is giving them flexibility to meet city parking requirements by giving them credit for 35 spaces in the municipal parking lot.

Jewett said that he still has reservations, but that he would not vote against the credit.

Regan said that the applicant does not expect guaranteed parking spaces in the lot, just flexibility from the parking requirements.

Skrede said that overnight parking in the municipal lot is not permitted.

Regarding dusk to dawn lighting, Skrede said that the lighting should be reviewed once it is installed.

Regan said that they could bring a lighting analysis before the lighting is installed.

Cooney asked about the individual suite signage and if the council is comfortable with that as proposed.

Regan said that they have settled on templated signage with external gooseneck lighting. Carlson asked if the lighting and look would be consistent for all tenants. Linvill said yes.

Erickson said that he was fine with the suite signage, and said that the monument sign should come back for a variance request at a later date.

Carlson said that he likes the sign concept, but that there would be details to be reviewed including sightlines.

Jewett said that St. Therese is a larger property with less signage. Carlson noted that the sign would be combined with the property on the corner.

Motion by Carlson to approve the request based on the recommendation and findings of the Planning Commission. The approval motion is based on the following conditions:

- (a) The applicant receives credit to count no more than 35 parking spaces in the Deephaven Municipal Parking Lot towards their minimum off-street parking requirements. This credit does not guarantee or reserve parking for patrons or employees at Deephaven Court, and all parking is on a first-come, first-served basis.
- (b) The city waives the screening requirements of Section 1310.09 Subd. 2 for the south property line, but reserves the right to require screening in the future should the unscreened property boundary begin to have adverse impacts upon the neighboring property.
- (c) Final approval of dusk to dawn lighting will be evaluated by staff and an appointed city council representative after the installation of the site lighting.
- (d) The applicant shall replace the existing inlet to the stormsewer to better handle the water coming off of the property.
- (e) Signage for individual tenants may be replaced without further conditional use permits as long as it is 20 square feet in size or less and is externally illuminated with three downcast light fixtures. Signage that exceeds 20 square feet, or for which the illumination is something other than three externally illuminated downcast light fixtures would be subject to a conditional use permit.
- (f) The hours of illumination for signage be as outlined in Section 1305.03 of the ordinance (only illuminated between the hours of 6 AM and 9:30 PM).

Motion was seconded by Gustafson. Motion carried 5-0.

Cooney said that the applicants would like a motion from the city on the suitability of the property for a restaurant and extended hours.

Skrede said that the Planning Commission supported the suitability of the entire property except building B rather than trying to measure from a property line.

Erickson said that most restaurants would want to be along the west side of the property where it is more visible.

Skrede said that the hours of Spasso Restaurant should serve as a guide for extended hours.

Erickson said that the choice should be either 11 PM or midnight.

Police Chief Johnson said that he would prefer 11 PM and that patrons must leave no later than 11:30 PM.

Motion by Jewett that the city would allow restaurants, which may include the sale of wine and intoxicating malt beverages, to be located in buildings A, C, and D, and subject to a conditional

use permit for each establishment. Building B (the building with the rear façade that is entirely adjacent to the residential property to the east) would be prohibited from hosting such an establishment. Jewett further moved that restaurants, which may include the sale of wine and intoxicating malt beverages, may have extended business hours not to exceed 6 AM to 11 PM. Motion was seconded by Erickson. Motion carried 5-0.

Cooney asked about pedestrian safety measures from the municipal parking lot recommended by the Planning Commission.

Skrede said that if the city lot ends up being essential to this property, he could see a more defined intersection at the corner and that the city would address it at the public safety meetings at the appropriate time.

Erickson said that these are reasonable upgrades and that there should be a nice clear path. Skrede said that if any upgrades are needed the city would address them.

## **6. PUBLIC HEARING**

### **A. Truth in Taxation**

City Administrator Young presented the proposed 2019 General Fund Budget revenues and expenditures. He said that the city is proposing a 3.4% levy increase in 2019 to support General Fund activities and the Capital Improvement Fund. A PowerPoint presentation detailed 2019 General Fund revenues, expenses, a review of each General Fund Department budget, the Capital Improvement Fund, the impact of the proposed sales tax exemption, the proposed tax levy of \$2,256,330 and the property tax impact of the 2019 Budget.

Hearing no further comments, Mayor Skrede closed the public hearing at 10:05 p.m.

### **B. Adopt Resolution No. 45-18, Adopting the Final 2019 Tax Levy**

Motion by Councilmember Erickson to adopt Resolution No.45-18, A Resolution Adopting the Final 2018 Levy, Collectible in 2019 in the amount of \$2,256,330. Seconded by Councilmember Gustafson. Motion carried 5-0.

### **C. Adopt Resolution No. 46-18, Adopting the 2019 Budget**

Motion by Councilmember Erickson to adopt Resolution No. 46-18, A Resolution Adopting the 2019 Budget in the amount of \$4,772,320 for expenditures and \$4,758,062 for revenues. Seconded by Councilmember Gustafson. Motion carried 5-0.

## **7. UNFINISHED BUSINESS**

### **A. Adopt Resolution No. 47-18, a Resolution of Appreciation to Darel Gustafson**

Motion by Councilmember Erickson to adopt Resolution No. 47-18, a Resolution of Appreciation to Darel Gustafson for his excellent and dedicated service to the City of Deephaven. Seconded by Councilmember Carlson. Motion carried 4-0. Councilmember Gustafson abstained.

Mayor Skrede presented Councilmember Gustafson with a plaque and read Resolution No. 47-18 thanking him for 14 years of outstanding service to the City of Deephaven.

**B. Adopt Ordinance No. 04-63, Adopting a Sewer Rate Increase**

Administrator Young stated that Ordinance No. 04-63 was first reviewed at the November 19, 2018 Council meeting. He stated that the ordinance proposes to increase sewer rates by \$10.00 per quarter beginning with the April 1, 2019 billing, thereby increasing sewer rates from its current rate of \$95.00 per quarter to \$105.00 per quarter. He stated that the rate increase will generate an additional \$66,080 in annual sewer revenues, which will be necessary to offset the \$43,622 increase in the 2019 Wastewater Disposal Fee from the Metropolitan Council.

Motion by Councilmember Erickson to adopt Ordinance No. 04-63, Adopting a Sewer Rate Increase. Seconded by Councilmember Jewett. Motion carried 5-0.

**C. Authorize Final Payment to B. Streeter & Co. for the 2018 Warming House Project**

Administrator Young stated that the Deephaven City Council approved the bid submitted by B. Streeter & Company on November 6, 2017 in the amount of \$299,190.00 for the construction of the Thorpe Park Warming House Project. He stated that the estimated contract cost was increased to \$324,160.00 due to the soil contamination cost and again to \$324,920.00 by Change Order No. 2. He stated that three additional change orders have subsequently increased the final contract cost to \$333,280.00.

He stated that the Contractor has submitted a Final Payment Request in the amount of \$26,793.38 for Council approval this evening, which results in a total payment to the contractor in the amount of \$333,257.00.

Mayor Skrede stated that he also has reviewed all the numbers and everything checks out fine.

Councilmember Carlson asked if the several of the doors have been readjusted by the Contractor since they were somewhat difficult to open.

Administrator Young stated that he will hold the check until the doors are repaired.

Motion by Councilmember Carlson to authorize Final Payment to B. Streeter & Company in the amount of \$26,793.38 for the 2018 Thorpe Park Warming House Project. Seconded by Councilmember Jewett. Motion carried 5-0.

Mayor Skrede stated that he thought the project turned out very well and thanked Councilmember Jewett for submitting the grant application and Councilmember Carlson for his project oversight.

**D. Authorize Payment Request No. 1 to Pipe Services for the 2018 Sewer Cleaning & Televising Project**

Administrator Young stated that the Deephaven City Council approved the bid submitted by Pipe Services on May 21, 2018 in the amount of \$49,874.25 for the Sewer Cleaning & Televising Project. He stated that the City Engineer has recommended Payment Request No. 1 to Pipe Services in the amount of \$42,478.87 for the near completion of the 2018 Sewer Main Cleaning & Televising Project.

Motion by Councilmember Carlson to authorize Payment No. 1 to Pipe Services in the amount of \$42,478.87 for the 2018 Sewer Main Cleaning & Televising Project. Seconded by Councilmember Jewett. Motion carried 5-0.

**E. Adopt Resolution No. 52-18, Approving a Note Amendment to Benilde-St. Margaret**

Mayor Skrede stated that we have participated in conduit financing on a number of tax exempt bond issues in order to create tax exempt debt for a number of different entities. He stated that back in 2011, the City issued tax exempt debt on behalf of Benilde-St. Margaret for some improvements to the school. He stated that Julie Eddington, with Kennedy & Graven, is here this evening to request that the City Council approve the refinancing of their existing debt to obtain a lower interest rate. He stated that since no other entity is requesting payment for this refinancing, he would not be requesting payment on a percentage of the refinanced issue.

Julie Eddington stated that their firm has used Deephaven in the past for other tax exempt issues and are already receiving a number of inquiries for tax exempt issues for 2019. She stated that this is only an amendment to the note and not a refinancing, so a public hearing is not required.

Motion by Councilmember Erickson to adopt Resolution No 52-18, Approving Amendments to the Educational Facilities Revenue Refunding Note (Benilde-St. Margaret's School Project), Series 2011 B, and Authorizing the Execution and Delivery of an Amended and Restated note. Seconded by Councilmember Carlson. Motion carried 5-0.

**F. Other**

There was no other Unfinished Business this evening.

**7. NEW BUSINESS**

**A. Discuss Appeals from 90-Day Rule**

Administrator Young stated that Section 900.07, Subd. 2 of the Deephaven City Code requires all permit holders to use their watercraft space for a minimum of 90 days. Failure to meet this requirement results in the non-renewal of their boating permit for the upcoming season unless they request an appeal in writing before the City Council on or before Thursday, November 29<sup>th</sup>.

He stated that one permit holder failed to comply with Section 900.07, Subd. 2 during the 2018 Boating Season but did not submit the required letter of appeal or appear at tonight's evening so no action is required by the Council since there was no appeal to the revocation of the 2019 Boating Permit of Paul Harvener, 19215 Azure Road, for Slide #67 in St. Louis Bay.

**B. Discuss Alternate Dates for 2019 Council Meetings**

Administrator Young stated that there are three regularly scheduled Council meetings in 2019 that conflict with a major holiday. He stated that staff would recommend that these dates be rescheduled as follows:

Date	Event	Alternate Date
Monday, January 21, 2019	Martin Luther King Day	Cancel
Monday, February 18, 2019	President's Day	Cancel
Monday, September 2, 2019	Labor Day	Tuesday, September 3, 2019

Motion by Councilmember Erickson to approve the alternate dates for the rescheduled 2019 Council meetings. Seconded by Councilmember Jewett. Motion carried 5-0.

**C. Discuss Cancellation of December 18, 2017 Council Meeting**

Administrator Young stated that he is recommending cancelling the December 17, 2018 Council meeting due to a lack of agenda items. He noted that there are few, if any, outstanding agenda items that need to be addressed before the end of the year. He stated that if any agenda items come up over the next week or so can easily be scheduled for the first Council meeting of the year on Monday, January 7, 2019.

Motion by Councilmember Erickson to cancel the December 17, 2018 Council meeting. Seconded by Councilmember Jewett. Motion carried 5-0.

**D. Present Ordinance No. 05-50, Sidewalk Clearing**

Administrator Young stated that the Deephaven Public Safety Committee has reviewed several requests from Tom Erdmann (20425 Lakeview Avenue) for the City to enforce Section 535.04 (a) of the Public Nuisance Code by requiring the removal of all snow and ice from the public sidewalk in Cottagewood from Carson Road to the Cottagewood Store. Section 535.04 (a) of the City Code states that it is a public nuisance for "All snow and ice not removed from public sidewalks 12 hours after the snow or other precipitation causing the condition has stopped falling."

In 2000, the City installed sidewalk on Cottagewood Road, Cottagewood Avenue, Lakeview Avenue, Western Road, Park Place (removed in 2017), and Northern Road as part of a street overlay project. Due to the width of the street, the sidewalk was installed along the street and at the same grade as the street, which causes two significant problems. First, the parking of vehicles on the sidewalk has caused sections of the sidewalk to breakup, particularly along Western Road. Second, the location of the sidewalk causes substantial amounts of snow and ice

to be plowed from the street onto the sidewalk. In most other instances, sidewalks are only installed where there is a grass boulevard between the street and the sidewalk that can serve as a snow storage area.

He stated that while the Public Safety Committee recognizes that the City Code requires the removal of snow and ice from all public sidewalks, the Committee believes that it is simply too difficult a task to ask residents to clear this much snow and ice from their sidewalk. For this reason, the Public Works Committee has recommended the following amendment to Section 535.04 (a) of the Deephaven City Code:

(a) All snow and ice not removed from public sidewalks within the C-1 and C-2 Commercial District 12 hours after the snow or other precipitation causing the condition has stopped falling.

He stated that this ordinance amendment will continue the requirement for business owners in Chowen’s Corner to clear their public sidewalk but it will no longer require public sidewalks to be cleared in residential areas.

The ordinance is presented for Council review this evening. It would be posted the required 10 days and presented for adoption on January 7, 2019.

**E. Present Ordinance No. 04-64, Amending Sewer, Heating & Electrical Permit Fees**

Administrator Young stated that during Staff’s review of Building Permit Fees, it was noted that the current minimum fees for Sewer Installer, Electrical Permits & Heating Permits were too low in comparison to the fees charged in neighboring communities and to the inspection cost.

The adoption of Ordinance No. 04-64 would propose the following minimum fee increases:

<b><u>Item</u></b>	<b><u>Current Minimum Fee</u></b>	<b><u>Proposed Minimum Fee</u></b>
Sewer Installer Fee	\$20.00	\$50.00
Heating Permit Fee	\$40.00	\$50.00
Electrical Permit Fee - Commercial	\$35.00	\$50.00
Electrical Permit Fee – Residential	\$40.00	\$50.00

The ordinance is presented for Council review this evening. It would be posted the required 10 days and presented for adoption on January 7, 2019.

**F. Discuss Thorpe Park Warming House Operations**

Discussion was held on the proposed operations of the Thorpe Park Warming House. After some discussion, it was decided to attempt to hire warming house attendants to work from approximately December 15 – February 15, with their schedule being from 4:00 – 9:30 p.m. Monday through Sunday. The Public Works crew will open the warming house on weekdays and volunteers will open the warming house on weekends and holidays in the morning.

It was further decided to not reserve the warming house for any particular groups during the ice skating season so the facility will be open for everyone.

**G. Other**

Mayor Skrede noted that the Request for Proposals for engineering services on Minnetonka Blvd will be sent out tomorrow. He stated that the Council should expect David Martini, our City Engineer with Bolton & Menk, to request individual meetings with the Council to discuss common issues and concerns.

**8. DEPARTMENT REPORTS**

**A. Police Department**

Chief Johnson provided a summary of the November Police Incident Report for Council review and discussed problems relating to identity theft.

**B. Excelsior Fire District**

Councilmember Erickson provided an update of the November 14<sup>th</sup> of the Excelsior Fire District meeting.

**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:

- Required reports and publications
- January Newsletter
- The annual Holiday party will be held on Thursday, December 20<sup>th</sup>
- The Fall Cleanup Day on November 10<sup>th</sup>
- And, the random selection of the City of Woodland for the Post Election Review.

**10. ADJOURNMENT**

Motion to adjourn by Councilmember Gustafson, seconded by Councilmember Erickson. Motion carried 5-0. The meeting adjourned at 11:00 p.m.

Respectfully submitted,  
Dana H. Young, City Administrator