DEEPHAVEN CITY COUNCIL MEETING
MONDAY, FEBRUARY 3, 2020
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 Melissa McNeill, Steve Erickson, Kent Carlson, 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 Erickson to approve the Consent Agenda, consisting of the following items:

A. Approve the January 6, 2020 Council Minutes
B. Approve Verifieds
C. Approve 2020 Consumption & Display Permit for Minnetonka Yacht Club
D. Approve December 2019 Treasurer's Report
E. Approve Special Event Permit for the 2020 Firecracker Run

Seconded by Councilmember Carlson. Motion carried 5-0.

4. MATTERS FROM THE FLOOR

There were no Matters from the Floor this evening.

5. PLANNING & ZONING REQUESTS

A. Consider the variance requests of David Marantz and Bari Kessler to exceed the maximum permitted impervious surface coverage at 20425 Carson Road

Cooney presented the staff report. He said the property owners are building a new house and pool on the property and are seeking a variance from impervious surface area limitations. Cooney said that the property is currently nonconforming for impervious area at 27.82%. He noted that the property is a 22,870 square foot R-3 property.

Cooney said that the builder for the applicant reached out to staff about the impervious limitations for the property and that he incorrectly stated that this property was beyond the Shoreland Management zoning district. Cooney noted that a portion of Carson Road is within the district and a portion is beyond the district. He said that at building plan submission, he noticed the error and informed the applicants that a variance would be required. Cooney said no formal plans were reviewed or submitted prior to catching the mistake, but the contractors for the applicants did exactly the kind of due diligence the city hopes contractors will perform, and the property was designed in good faith in an attempt to meet code limitations.

Cooney said that in spite of staff errors, the city is not obligated to approve the variance request. He said that per the League of Minnesota Cities: *"Error by city staff in approving plans does not entitle a person to a variance. While the result might be harsh, a municipality cannot be estopped from correctly enforcing a zoning ordinance even if the property owner relies to his or her detriment on prior city action."*

Cooney said Section 1302.05(2) of the city ordinance limits maximum impervious surface area to 25% of the lot area and the applicants are requesting an impervious surface area of 32.18% and are seeking a variance of 7.18% from the impervious surface limitations. He stated that existing conditions on the property are 27.82%.

Cooney said the originally submitted plans showed an impervious area of 27.81%, which was a slight reduction from existing conditions, but that upon review of the documents, he informed the builder that the city has typically viewed all patio areas as impervious and that for the sake of the variance application, the patio areas shown in the plans should be considered impervious. Cooney said the applicants subsequently modified their mitigation to account for the proposed patio areas.

Cooney said that in conversations with the city engineer, "disconnected impervious"—where green space is 50% or more of the surface area—may be considered pervious area. He said that the city has typically taken a strict view of impervious systems, particularly permeable pavers. Cooney said that many of these patio areas are not a pervious paver system, the landscape stones have significant green space between them to allow for percolation, and there are not the maintenance concerns that one finds for a typical pervious patio system. Cooney said the city council should determine if they feel such a design merits consideration as pervious area, or if these areas are to be considered impervious areas that require mitigation.

Cooney said the applicants are also providing 906 square feet of green roof area. He said this has always been a part of the project concept, and was not a component intended to provide mitigation for the property. Cooney noted that the green roof accounts for a net reduction from impervious areas of approximately 4%. He said the city engineer has stated that these types of systems are effective and can last indefinitely as long as there are plants growing in them.

Cooney said that the applicants are making the case that due to the corner lot conditions, there is an unusually large amount of green space that is unaccounted for within the property boundaries. Per the survey documents, applicants show an additional green space area of 4,237 square feet. He said that he conducted an aerial survey of similarly sized zoning code compliant corner

properties; he has concluded that right-of-way green space area is highly variable. He said that along Carson and Linden Road, most properties had between 1,900 and 2,600 square feet of right-of-way area but that 20425 Carson Road was not the only property in the neighborhood to have over 4,000 square feet of right-of-way green space. He said that the green space may be one factor for consideration, but the city has typically not applied any credit for right-of-way areas.

Cooney said that per Section 1353, the applicants are required to provide stormwater mitigation for those areas in excess of 25%. He said that, as proposed, the sizing of the French drain meets city mitigation volume requirements. Cooney said that the greenroof accounts for an additional 4% reduction in impervious area which would provide additional mitigation beyond city requirements.

Cooney said that, in and of itself, the proposed French drain system mitigates the property to an effective impervious percentage of 25%. He said that the sod and stone areas that meet a 50% green space threshold would reduce the impervious areas by an additional 4.37%. Cooney said the green roof area may also merit some credit, as it would further reduce effective impervious areas by 4% and is above and beyond any required mitigation.

Cooney said the Planning Commission held a public hearing at their January 21 meeting and on a 6-0 vote, recommended that the City Council approve with conditions the variance requests to exceed the maximum permitted impervious surface area by 7.18% for the property at 20425 Carson Road, as proposed.

He said that the Planning Commission recommendation is conditioned that:

- Patio areas in excess of 27.81% impervious must be at least 50% sod.
- Retaining walls within the required setbacks must be less than 3.5 feet tall.
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney said that the recommendation is based on the following findings:

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 within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The request is in harmony with the purpose and intent of the ordinance since the applicant is proposing no net increase in impervious area while also providing significant stormwater mitigation to reduce the impacts from existing conditions.

Is the variance consistent with the comprehensive plan?

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

Does the proposal put property to use in a reasonable manner?
Yes. The impervious surface area percentage is reasonable given the existing nonconforming conditions on the property and the effective impervious area based on the proposed green roof, mitigation, and right-of-way green space.

Are there unique circumstances to the property not created by the landowner?
Yes. The property has existing nonconforming impervious surface area conditions as well as a significant unaccounted for pervious area within the public right of way.

Will the variance, if granted, alter the essential character of the locality?
No. The proposal would not alter the essential character of the locality. The proposal matches existing conditions and would reduce the effective impervious areas from existing conditions thereby improving the impacts within the locality.

Cooney concluded his staff report.

Councilmember McNeill asked about the paver patio and said that it could potentially excluded from impervious calculations. Cooney said that he included it since it is a city council decision and he was taking the most conservative estimate.

Councilmember Erickson asked if the 1,000 square foot patio area is within the 27.82% impervious area. Cooney said that it is not and including it in its entirety would increase the impervious request to 32.18%.

Councilmember Erickson asked for confirmation that the mitigation system accounts for the patio area. Cooney said that it did and would bring the effective impervious area on the property to 25%.

Councilmember Erickson asked if this is the same plan that the Planning Commission saw. Cooney said it was the same plan.

Councilmember Carlson said that the mitigation plan accommodates all of the patio areas as if they were impervious areas.

Councilmember Jewett asked about the minimum house width requirement and if that applies here. Cooney said that when he has brought similar requests before the council, they said that the intent of the ordinance was to regulate the main body of the house and not areas of connection between house and garage.

Councilmember McNeill asked about the effective impervious area of the property. Cooney said that his best-case-scenario calculations excluded the patio areas as "disconnected impervious" but did not give any credit for the right-of-way green space.

Councilmember Carlson said that the applicant has done a nice job and that he is supportive of the proposal, but would like to keep the green roof out of any mitigation requirement or the maintenance agreement.

Councilmember Erickson agreed that the green roof should be excluded since future buyers may not want to maintain that roof. He said that he would be comfortable with a proposal where any patio areas beyond 32.18% must meet the disconnected impervious standard of 50% green space between landscaping stones.

Mayor Skrede said that the 1,000 square feet of patio allotment acknowledges that the landscaping is not yet designed but that it gives the builder flexibility to make something work.

Councilmember Erickson said that he has met with the applicant and is comfortable with the proposal.

Councilmember Carlson made a motion to approve the variance request to exceed the maximum permitted impervious surface area by 7.18% as proposed based on the findings of the Planning Commission. The motion was subject to the following conditions:

- Patio areas in excess of 32.18% impervious must meet the disconnected impervious standard of being at least 50% green space.
- Retaining walls within the required setbacks must be less than 3.5 feet tall.
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Motion was seconded by Councilmember McNeill.

Kyle Hunt, builder for the applicant, asked for clarity about the patio limitations. Cooney said that they have 1,000 square feet of patio area to work with that does not need to be disconnected impervious.

Motion carried 5-0.

B. <u>Consider Ordinance No. 13-80, Amending the Deephaven Zoning Code Section 1321 regarding Planned Unit Developments</u>

Cooney presented the staff report. Cooney said that updates are required to the current PUD ordinance (Section 1321) in order to consider the request for a PUD rezoning at 5023 Vine Hill Road. He said the PUD ordinance was originally drafted limiting PUD requests to the city's Chowen's Corner and Highway 101 Commercial areas. He said that also a number of references are made to the zoning code standards in Section 1310 which have since been moved to other sections of the zoning code.

Cooney said that, per the City Attorney, if the City Council is not amendable to amending the geographic limitations of the PUD ordinance, it is not appropriate to hear the PUD request for 5023 Vine Hill Road and that request should be withdrawn or denied. He said that if the city council is amendable to amending the geographic limitations of the PUD ordinance, the City Council may hold the public hearing and consider the request but may not make a formal decision until the ordinance changes have been adopted.

Cooney said that the goal of this ordinance amendment was to allow the PUD application to be heard if that was the direction the city council wanted to go.

Cooney concluded his staff report.

Councilmember McNeill said that this is not something that the city is advocating, but rather a required first step if the city wanted to review the Lake Minnetonka Care Center PUD request. Cooney said that is correct.

Mayor Skrede addressed the audience and said that the ordinance amendment proposal was to get the conversation started if the Planning Commission felt that the PUD ordinance was something that needed amending. He said that he did not think that the city-wide ramifications were appropriately considered. Mayor Skrede said that this is one of the unintended consequences of trying to facilitate the process for the PUD application. He said that he thinks the city made some mistakes in this regard. Mayor Skrede said that an ordinance that impacts the entire city should have had more notification and more consideration.

Mayor Skrede said that he thinks the language is too vague and that he is not sure the language needs amending at all. He said that a final vote cannot be taken this evening.

Councilmember Carlson said that the Planning Commission recognized that if PUD ordinance changes were to be made, those decisions were to be most heavily deliberated at the City Council level, and that the Planning Commission focused their discussion on the merits of the PUD Concept Plan request. He said that the Planning Commission did ask questions about the long-term benefit of changing the ordinance or if there should be a vote on the ordinance changes.

Councilmember Carlson also noted that the existing PUD language was driven by properties that had been previously identified in the Comprehensive Plan. He said that some aspects of the PUD ordinance aren't really applicable to a city-wide application such as 70% impervious surface area. Councilmember Carlson said that a PUD expansion could facilitate multifamily and alternative housing options, but that for over 100 years, Deephaven has been a historically single-family community. He said that if changes were to be considered for the PUD ordinance, it would involve a series of community-wide meetings as part of a heavily deliberated planning process. He said that he cannot support the language as drafted and that there is a lot of hard work to do to consider amending the PUD ordinance.

Mayor Skrede said that when the Amesbury development was proposed in Deephaven, there were single-family and multi-family components. He said that the city was only supportive of

the single-family components. He said that the PUDs for the Deephaven Cove and Deephaven Woods served a need in the city, but that those needs were anticipated by previous councils and were incorporated into the city's comprehensive plan well in advance of the actual PUD request. He said that any PUD ordinance changes should start with the comprehensive plan and assessing the needs of the city via that plan. He said that the city has been doing single-family housing for a long time and that is what people want. Mayor Skrede said that he is not in favor of any snap decisions on this.

Councilmember Jewett said that when the city tried to clean up commercial language there was community push-back on that. He said that this is much more sweeping and that he is not ready to move forward with any changes.

Councilmember McNeill said that she cannot get behind the language as written and that it needs to be vetted as part of the comprehensive planning process. She said that this would be a big change. Mayor Skrede asked if she agreed that the comprehensive plan should come first before looking at PUD language changes. Councilmember McNeill said she absolutely agreed.

Councilmember Erickson said that he agrees with the other comments. He said that removing the limits on the PUD geographic restrictions should be preceded by looking at redevelopment areas within the city and then modifying the comprehensive plan to reflect those identified areas. Councilmember Erickson said that he is not even sure he would support that, but that would be the appropriate process for doing this sort of thing. He said that he is not supportive of the language as written and that he is not sure that there is language expanding the geographies of the PUD ordinance that he would support.

Councilmember Carlson said that the language is too broad and too open and that he is not sure that this is the direction to go. He said that he would recommend hiring a planning consultant if the city wanted to look at options for alternative housing types. He said that Deephaven Woods was a good example that served the needs of the residents and was thoroughly vetted and incorporated into the comprehensive plan. He said that these types of things do not happen quickly within the community and that the slow process is a benefit to the community.

Councilmember McNeill said that the city council's job is to hear these types of requests and consider them when they are submitted to the city.

Mayor Skrede said that the reason the ordinance amendment is before the city is because Cooney found that the existing ordinance would not allow for the PUD request to even be heard. Mayor Skrede said that the applicant submitted a legitimate application and that the city processed it which has brought us to this point.

Administrator Young said that city staff does not act as gate keepers and does not make decisions about the merits of an application before it can be heard by the city council. He said that city staff might have an idea that an application is not going to pass, but that the city council may feel much differently once they look at the facts. He said that the city has not even considered a PUD request since Deephaven Woods. He said that single-family housing is paramount in Deephaven

and that, moving forward, the city will be more mindful about similar requests and have more clarity to offer feedback to a potential applicant.

Mayor Skrede said that it appears that the city does not want to act on the language.

Motion by Councilmember Jewett to maintain the ordinance as currently codified and not to amend the PUD ordinance language. Motion was seconded by Councilmember McNeill. Motion carried 5-0.

C. Consider the Planned Unit Development (PUD) Concept Plan Review request of the Lake Minnetonka Care Center to locate a 21-bed nursing home on the property at 5023 Vine Hill Road

Mayor Skrede said that the city cannot review this item since it is inconsistent with the zoning code.

Cooney said that is correct and the application would need to be withdrawn or the city could deny the request based on the following written findings:

- The application is inconsistent with the geographic limitations stated in city code section 1321.01 and the Council has acted to deny text amendments to the Zoning Code to remove such geographic limitations.
- The application is inconsistent with the Comprehensive Plan in that the future land use map for the City of Deephaven 2030 Comprehensive Plan shows the use of the property to be single family housing.

Jeff Sprinkel, applicant, said that he is disappointed with the outcome of the meeting and that he withdraws the application.

Mayor Skrede said that, regarding future PUD requests, the city will not review or support future request that have not been previously incorporated into the city's comprehensive plan and that any amendment to the PUD language or locations would be preceded by an extensive notification and public engagement process. He said that the city would not accept future PUD applications that are inconsistent with the ordinance or the comprehensive plan. Mayor Skrede said that the notification process for these types of changes needs to be updated so that the people being impacted are able to have a voice in the process.

6. UNFINISHED BUSINESS

A. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Accept Resignation of Dale Cooney, Zoning Coordinator

The Council thanked Dale Cooney for his years of excellent service with the City and wished him the very best in his new job with Hennepin County.

Motion by Councilmember Carlson to accept the resignation of Zoning Coordinator Dale Cooney effective February 7, 2020. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Discuss Distribution of City Newsletters

Mayor Skrede stated that he received a request from a resident that we have a discussion about the possibility of discontinuing the mailing out of our quarterly Newsletter in favor of posting a copy on the City Website.

He stated that staff's main concern is that the newsletter is one of our primary means of communicating with our residents and this could be lost with only providing an electronic copy on the website.

Councilmember Erickson stated that the city website has currently been updated by GovOffice and he reached out to them about acquiring a package called Connect that collects email addresses that can be used to deliver emails, including newsletters. He stated that this would also have the benefit of providing public hearing notices beyond the required 350 feet. He stated that the annual cost for this package is approximately $1,800.00 per year.

Councilmember McNeill noted that the cost of purchasing the Connect package would cost the City $1,800.00 per year versus the potential savings of $950.00 per year in going with an electronic copy of the newsletter.

Administrator Young stated that this program would also be helpful in sending out agendas and minutes.

Mayor Skrede added that the program could also send out staff reports.
Councilmember Erickson stated that this program would provide the City with the opportunity to provide a larger announcement vehicle. He stated that he would provide the cost proposal at the March 16th Council meeting.

C. Other

J.D. MaCrae, 18900 Rutledge Road, stated that he is an architect and planner and has many years of experience working with PUD's. He stated that the City currently has two PUD zones that have language that is still too open. He noted that there are a number of properties around Chowens Corner that could be developed as a PUD. He stated that he is concerned that the Council needs to start educating themselves sooner rather than later on PUD's.

Mayor Skrede thanked Mr. MaCrae and noted that the City Attorney advised the establishment of a PUD on this particular site.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson presented the January 2020 Police Report for Council review.

B. Excelsior Fire District

Fire Board Liaison Steve Erickson provided the following summary of the January 22, 2020 meeting of the Excelsior Fire District Board:

- Total 2019 Fire Calls were up approximately 45 calls over 2018, which is an all-time high.
- There are a number of firefighters who are on medical leave, which leaves only 32 active paid on call firefighters. In response to this, the District is greatly expanding recruitment efforts.
- He noted that the District is considering implementing a vehicle lease program, which should save the District in terms of both vehicle and maintenance costs.

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:

- 2019 Year End Financial Summary
- 2019 Building Permit Summary

He noted that the public meeting on the Bikeway Feasibility Study will be held tomorrow evening at 7:00 p.m.

9. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember McNeill. Motion carried 5-0. The meeting adjourned at 8:25 p.m.

Respectfully submitted,

Dana H. Young
City Administrator