

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, FEBRUARY 4, 2019
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: 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 January 7, 2019 Council Minutes
- B. Approve January 8, 2019 Special Council Minutes
- C. Approve January 22, 2019 Special Council Minutes
- D. Approve Verifieds
- E. Approve 2019 Consumption & Display Permit for Minnetonka Yacht Club
- F. Appoint Wendy Duren as 2019 Park Committee Chair
- G. Reappoint Patrick Regan to One-Year Term on Park Committee
- H. Approve December 2018 Treasurer's Report
- I. Approve Special Event Permit for the 2019 Tour de Tonka

Seconded by Councilmember Jewett. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Senator David Osmek was present to provide an update on recent legislative activities. He stated that he has submitted legislation requesting \$750,000 for the replacement of the Northome Bridge that will be included in the bonding bill.

Mayor Skrede asked if this funding would be separate from the State Bridge Bond Fund.

Senator Osmek stated that this would be separate funding and that the reconstruction of the bridge is a necessity due to public safety concerns. He recommended putting together information relating to the bridge for presentation to the legislature.

Senator Osmek stated that he is sponsoring a Distracted Drivers Bill that would provide stiffer penalties for texting while driving. He stated that people need to get more serious on the consequences of texting. He added that if the bill is approved, the Commissioner of Public Safety would require distracted driver training at Driver's Ed classes.

He stated that he has recently met with Nora Slawik, the Chair of the Metropolitan Council, and came away from the meeting very impressed with her. He noted that she has excellent prior experience as both a Mayor and legislator. He stated that that the Metropolitan Council needs to be more responsive to the communities they represent.

Councilmember Jewett asked about whether legislation might be enacted to address the fact that neither Hennepin County nor Ramsey County is eligible to receive Motor Vehicle Lease Sales Tax.

Senator Osmek stated that he is hopeful that the legislature can make that happen. He stated that he would like this sales tax revenue spent on roads.

Mayor Skrede asked if there was a common interest in both parties on infrastructure issues.

Senator Osmek stated that it is too early to tell but the new Governor seems more receptive.

Mayor Skrede stated that the City of Deephaven doesn't usually make requests of our representatives.

Senator Osmek stated that there is a certain feeling that the Lake Area cities are very wealthy and don't need any assistance. He stated that he is hopeful that the Small Cities Road Assistance Account will go through to assist small cities with street funding.

Mayor Skrede asked if the Northome Bridge exceeds \$750,000, would the City have to pay the difference.

Senator Osmek stated that the City would have to pay for any cost above \$750,000, so he urged the Council to let him know if the bridge might cost more than \$750,000 and he would amend his proposed legislation.

Mayor Skrede stated that he appreciates all the work that Senator Osmek has done on the Northome Bridge issue.

5. PLANNING & ZONING REQUESTS

A. Consider variance request of Peter and Wendy Lee, to exceed the maximum permitted impervious surface coverage in order to construct a home addition for the property at 3275 Robinsons Bay Road

Zoning Coordinator Cooney presented the staff report. Cooney said the property owners have applied for a variance to expand portions of their house at 3275 Robinsons Bay Road. He said

the existing house was built in 1972 according to Hennepin County Records. Cooney said that the property is currently at 34.5% impervious and the applicants are proposing an impervious surface area of 33.9%. He noted that in 2008, the property was approved for a variance to be at 33.8% impervious.

Cooney said that, while no imperious expansion is proposed, a variance is required to alter the impervious footprint. He said the nonconformity is only considered legal in its current footprint and reconfiguring the impervious area requires triggers a variance. Cooney stated that several small areas of the property will be covered by the new additions, while patio and walkway areas will be removed to reduce the overall hardcover from existing conditions.

Cooney said that the city should consider if stormwater mitigation should be required for this property as part of this request. He said that staff would recommend against requiring stormwater mitigation since the applicants are primarily working within the existing, legal nonconforming conditions of the property. He noted that the applicants also own the adjacent property at 3203 Robinsons Bay Road, but since it is a separate PID that may also likely a buildable property, the city cannot give the applicants credit for those pervious areas.

Cooney said that the southeast side of the house currently has a nonconforming setback that is not impacted by the proposed additions.

Cooney said that he recommends approval of the variance requests of Peter and Wendy Lee to exceed the maximum allowable impervious surface area by 8.9 for the property at 3275 Robinsons Bay Road, as proposed. He said that his recommendation is based on the following findings:

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

Yes. The requested excess impervious surface area is comparable to the approved variance request from 2008. The impervious areas are simply being reconfigured and not expanded.

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

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

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

Yes. The manner of use is reasonable and essentially the same manner of use as that which was approved by the city in 2008.

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

Yes. The property requires a long access driveway which elevates the impervious areas for the property. The property is already legal nonconforming in this regard.

(e) 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 impervious conditions are less than exist today and comparable to what was approved via variance in 2008.

Cooney said that the Planning Commission held a public hearing at their January 15 meeting and on a 6-0 vote recommended approval of the request based on the findings and conditions of staff.

Cooney concluded his staff report.

Councilmember Jewett asked if eliminating the walkway to the front door would require more hardcover in the future. Tom Henjum, builder for the applicant, said that the front door is being moved directly adjacent to the driveway.

Motion by Councilmember Erickson to approve the request based on the recommendation and findings of the Planning Commission, and that no stormwater mitigation is required for the request. Motion was seconded by Councilmember McNeill. Motion carried 5-0.

B. Consider the variance requests of Mark and Patricia Goodburn, to exceed the maximum permitted impervious surface coverage, exceed the maximum permitted structural coverage, and to encroach into the minimum required lake yard setback in conjunction with home additions at 20050 Lakeview Avenue

Cooney presented the staff report. Cooney said the he property owners are building additions to the existing house which triggers several variance requests. He said that the variances needed are to exceed the maximum permitted impervious surface coverage, to exceed the maximum permitted structural coverage, and to encroach into the minimum required lake yard setback. Cooney said that overall hardcover will be reduced from existing conditions and a nonconforming detached garage will be removed as part of the project. He said that the property is a 27,487 square foot R-3 property.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 27.55% and is seeking a variance to exceed the maximum impervious surface area by 2.55%. Cooney noted that, currently, the property is at 35.72% impervious area. He said that the overall impervious areas are being significantly reduced by reducing the size of the driveway and removing plastic landscaping materials.

Regarding building coverage, Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum building coverage to 4,500 square feet. He said the applicant is proposing a building coverage of 5,653 square feet and is seeking a variance to exceed the maximum building coverage by 1,153 square feet. Cooney noted that, at 5,064 square feet of existing building coverage, the property is legal nonconforming. He said that a number of additions are proposed for the home including a lake yard covered deck, an attached garage stall, additions on both the east and west side of the house, and an expansion of the front entry area. He stated that the house footprint is expanding from 3,896 square feet to 4,954 square feet. Cooney said the deck area is expanding from 587 square feet to 700 square feet. He said a 581 square foot, nonconforming detached garage is being removed. Cooney said that the city approved a deck expansion in 1997, and a reconfiguration of the deck to the current extent in 2013. He said that the structural coverage issue was not raised in 2013.

Cooney said that he does not have an issue with removing the existing garage and reallocating that structural coverage elsewhere on the property, but he had difficulty justifying a further expansion of the already nonconforming house footprint. Cooney said that, at 27,487 square feet in size, the property is somewhat larger than the R-3 minimum lot size of 20,000. He said that, if the city code regulated building footprint proportionally by lot size, the property would need to be 35,400 square feet in size to accommodate the proposed building footprint. He noted that, as proposed, the house footprint would be 94% of the maximum allowable within the R-2 zoning district (minimum 40,000 square foot lot size).

Regarding the lake yard setback, Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet. He said the applicant is proposing to modify an existing nonconforming house with expansions that include numerous lake yard encroachments. He said much of the existing house beyond the garage is within the lake yard setback. Cooney noted that, due to the configuration of the shoreline, the maximum encroachment would remain the same even as the additions change the overall total encroachment for the property. He said that the closest new encroachment (the proposed covered deck) would be setback 45.75 feet from the shoreline.

Cooney said that, if the total building footprint were not an issue, he could justify supporting the house additions that are beyond the furthest lake yard encroachment. But he said he is not supportive of the covered deck expansion. He said the existing deck already quite generous and the covered porch would expand the depth of the deck from 11.33 feet deep to 13.33 feet deep. He noted that it is not merely the deck footprint that is expanding, since the proposal is for a large covered deck over a portion of the existing deck footprint. He said that the addition would amount to 1.5 stories, 250 square foot addition within the lake yard setback.

Cooney said that he is generally supportive of the removal of the nonconforming garage and reallocating that structural footprint elsewhere. He said that the reduced impervious area is a benefit to the city and staff is supportive of that as well. Cooney said that, due to the building footprint and lake yard encroachment issues, staff does not support the remainder of the proposal. He said the house footprint already exceeds zoning district maximums and the impacts from the new covered deck area would be significant. Cooney said that since it is difficult to separate one aspect of the proposal from another, staff recommends denial of the entirety of the request.

Cooney said that he recommends denial of the variance request to exceed the maximum allowable impervious surface area by 2.6%, to exceed the maximum permitted building footprint by 1,153 square feet, and to encroach into the minimum required lake yard setback by 61 feet for the property at 20050 Lakeview Avenue, as proposed, based on the following findings:

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

No. The purpose and intent of the ordinance is to maintain a structural footprint proportional to the property size and to set reasonable limits on the development within the lake yard setback. The proposed expansion would be out of scale with similar properties in this zoning district and create several further encroachments into an already overbuilt lake yard.

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

No. The request is not consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage housing that respects the natural environment of the community and maintains or exceed Department of Natural Resources shoreline standards.

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

Yes. The deck is a reasonable use and a minor expansion of existing conditions. The impervious surface expansion is reasonable in the context of the substandard lot size.

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

Yes. The existing house is built within the lake yard setback and is currently nonconforming for structural coverage. Altering the footprint of the home is challenging to do without a variance. However, the applicant is proposing expansions of existing nonconformities, further exacerbating the nonconforming conditions.

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

Yes. The proposal would be a significant expansion of an already nonconforming structural footprint, and would create further encroachments towards the shoreline on a property that is already heavily built up within the lake yard setback.

Cooney said that the Planning Commission held a public hearing at their January 15 meeting and on a 5-0 vote recommended denial of the request based on the findings and conditions of staff. Subsequent to the Planning Commission's decision, Cooney said that the applicants have reduced the lakeside setback on the covered deck by 2.5 feet which has also reduced the structural coverage by 48.75 square feet. The rest of the proposal remains unchanged from that which was submitted to the planning commission.

Cooney concluded the staff report.

Councilmember Carlson asked if the garage was included in the building coverage calculation. Cooney said yes it was.

Mayor Skrede said that they were basically trading the detached garage for the attached garage, but then adding extra to the house. Councilmember Erickson said that they are squaring off the east side of the house and infilling a large area on the west side.

Councilmember McNeill asked if the calculations reflect the new iteration of the proposal. Cooney said that they do.

Councilmember Jewett said that there was a requirement in an earlier variance that the house and deck be no closer than 50 feet from the lakeshore, but that there are parts of the house that are closer than that. Councilmember Erickson said that the question is what is the lakeshore and that the little indent on the property may not have been considered the line of the lake at that time.

Councilmember Erickson said that the basic question is how the council feels about squaring off the house. Mayor Skrede said that this is a large project and that they are not just trading one garage for another garage.

Councilmember Erickson said that they have worked hard to eliminate the hardcover which is being significantly reduced.

Councilmember Carlson said that they are being penalized for having the deck included as part of the structural footprint. Mayor Skrede said that this was a second level deck.

Councilmember Erickson said that this would be a different conversation if this were a smaller lot.

Councilmember McNeill said that the Planning Commission's main objection was to any further encroachment on the lake yard and that the conversation would have been different without that encroachment.

Mayor Skrede says that he has less of an issue with the lake yard setback, but more with the overall lot coverage. He said that there are many 30,000 square foot R-3 lots.

Councilmember Carlson said that needs today might be different than when the 4,500 square foot building limitation was put in place.

Councilmember Erickson said that the city has approved what has already been done to this point for the nonconforming house. He said that he can understand why they want to square off the house. He said that there are some practicalities to how it sits on the lot, but that the bulk of the house is already there.

Councilmember Jewett said that building coverage is the city's massing ordinance. He said that, given the size of the lot, the current conditions reflect a building footprint that is almost perfectly proportionate to the increased lot size.

Councilmember Erickson said that the city needs to consider how much impact this would have on the neighbors since this is forever.

Mayor Skrede said that he was more concerned with people coming to the city asking for increases in building coverage based on the proportionate size of their lot. Councilmember Erickson said that the city has approved proportionate changes in the past.

Councilmember Carlson said that the vast majority of R-3 lots are less than 20,000 square feet. Mayor Skrede said that the city does not ask the undersized lots to reduce the size of their building footprint. Councilmember Carlson said that the 35 foot front yard setback, height limitations, and the hardcover limitations are all restrictions limiting the scale of the building on these undersized properties.

Councilmember Jewett said that he loves the design, is fine with the stairs and deck expansion but has difficulty justifying a footprint expansion from 5,064 to 5,653 square feet.

Councilmember McNeill said that the removal of the lake yard encroachment would have led to a different vote at the Planning Commission, and that the applicants have worked to address those concerns.

Councilmember Erickson said that the changes, while large, don't have much impact on the neighbor.

Jennifer Young, 20035 Lakeview Avenue, said that the indented lakeshore area was not previously as defined and was exaggerated when the rip rap was installed. She said that the house is massive and that the city is granting variances on top of variances. She said that the existing garage is a 3 car garage. Young said that garage is the only thing remaining from the original house and that it is a good buffer from the noise of the pool equipment next door. She asked when is enough going to be enough and said that the house keeps expanding.

Peter Eskuche, architect for the property owner, said that they tried to find a way to work with the nonconforming issues.

Mark Goodburn, property owner, said that they had looked for a property in the neighborhood for 10 years, and would like to make this their permanent home. He said that they took the Planning Commission's guidance and pushed the deck back. He said that the property used to be nonconforming on three sides, but now is only nonconforming on the lake side. He said that they are reducing hardcover by a good degree. Goodburn said that they are turning an unattractive house into a Cottagewood house.

Motion by Councilmember McNeill to approve the request with the condition that the applicants update the survey to reflect the most recent changes. Motion was seconded by Councilmember Erickson. Motion carried 3-2 with Skrede and Jewett voting against.

6. UNFINISHED BUSINESS

A. Authorize Public Meeting on the Abatement of Nuisance at 18880 Minnetonka Blvd

Administrator Young stated that a letter was sent to Wayne Viger, 18880 Minnetonka Blvd, on November 29, 2018 requesting the voluntary abatement of two storage containers that have been stored on his property for several years. He stated that Mr. Viger had until January 28, 2019 to voluntarily remove the storage containers.

He stated that if the nuisance is not abated during the voluntary abatement period, the City Council may then issue a formal abatement order. The order must be provided to Mr. Viger at least 10 days prior to the date on which the Council will consider the matter. He stated that the Council must hold a public meeting on the abatement proposal, at which Mr. Viger can testify if he wishes. He stated that Mr. Viger will be sent a formal abatement order and the date of the public meeting on the abatement proposal would be held on March 4, 2019.

Motion by Councilmember Carlson to issue a formal abatement to Wayne Viger at 18880 Minnetonka Blvd and hold a public meeting on March 4th to discuss the abatement proposal and to allow Mr. Viger to testify if he wishes. Seconded by Councilmember Erickson. Motion carried 5-0.

C. **Other**

There was no other Unfinished Business this evening.

7. **NEW BUSINESS**

A. **Discuss Webpage Design Proposal**

Mayor Skrede stated that the City has received a proposal from GovOffice for an upgrade to the City's webpage. He stated that the proposal would go into effect beginning in August. He stated that he didn't particularly want to wait until August and that both Councilmember Erickson and Jillian McGary have already made significant changes to the webpage.

Councilmember Erickson stated that an update to the webpage is overdue. He stated that he reached out to GovOffice to put together a proposal to upgrade the webpage and to make it mobile compliant. He stated that the proposal includes four different levels that the City could purchase, all of them hosted and supported by GovOffice so the webpage would be easy to manage. He stated that he would recommend either the progressive or premium package. The only difference between the two is that the premium package also offers the carousel and alert options.

Councilmember Carlson asked if we could upgrade at a later date if we purchased the progressive option.

Councilmember Erickson stated that this was probably an option.

Councilmember Jewett asked who would manage the carousel option.

Councilmember Carlson asked who would manage the site.

Councilmember Erickson suggested that the City could find a third party vendor to manage the site.

Nancy McRae suggested that the City could create a library of photos for the carousel option and residents would be delighted to provide photos of Deephaven.

Councilmember McNeill asked why the Council wouldn't consider the premium package, which is only \$2,000 more than the progressive option.

Councilmember Carlson stated that he would like to contract with a vendor for one year to manage the site.

Councilmember Erickson stated that he will try to find volunteers to assist with the site. He stated that staff updates the minutes, agendas, and calendar on a routine basis but the rest has to be done by someone who is both technical and artistic.

Motion by Councilmember McNeill to authorize the purchase of the premium package from GovOffice in the amount of \$8,905, payable over three years. Seconded by Councilmember Carlson. Motion carried 5-0.

B. Adopt Resolution No. 05-19, Motor Vehicle Lease Sales Tax Allocation to Hennepin County

Administrator Young stated that an email was received by Dave Callister, the Plymouth City Administrator, regarding state legislation that was passed in 2015 that reallocates \$32 million of the sales tax collected from leased vehicles from the State's general fund – 50% to Greater Minnesota transit and 50% to metro counties - through the County State Aid Highway Fund. In an effort to balance the funding for transit and roads/bridges, the law excludes Hennepin and Ramsey counties from receiving their percentage of funding. Instead, the other five metro counties split the proceeds generated in Hennepin and Ramsey counties.

He stated that the attached resolution would add the City of Deephaven's support to the reallocation of the Motor Vehicle Lease Sales Tax allocation to Hennepin County.

Motion by Councilmember Jewett to adopt Resolution No. 05-19, Supporting the Reallocation of the Motor Vehicle Lease Sales Tax Allocation to Hennepin County. Seconded by Councilmember McNeill. Motion carried 5-0.

C. Adopt Resolution No. 06-19, Approving Gift

Mayor Skrede stated that Robert Woodburn, 20180 Cottagewood Road, has offered to donate a print of the Minnehaha, an old streetcar boat currently being used on Lake Minnetonka after a great deal of volunteer time and effort refurbishing the craft, to the City of Deephaven with the hope that the print would be hung in the City Council chambers. He added that Mr. Woodburn is also requesting that a list of volunteers that refurbished the boat and the list of volunteers that currently operate the boat be included along side or below the print.

Motion by Councilmember Erickson to adopt Resolution No. 06-19, Resolution Approving the Gift from Robert Woodburn. Seconded by Councilmember Carlson. Motion carried 5-0.

D. Minnetonka Blvd Resurfacing Project Update

Administrator Young stated that the proposed schedule for the Minnetonka Blvd Project is as follows:

- End of February – Meet to review Braun report and determine rehabilitation method.
- End of March – Meet to review plans prior to Open House.
- April 4th – Open House
- April 15th – Approve plans & specifications
- May 14th – Open bids
- May 20th – Award bids

He stated that City Engineer David Martini would like to tour Minnetonka Blvd with the Mayor and others to review potential problem areas.

Mayor Skrede stated that it is his understanding from a conversation with Hennepin County Commissioner Jan Callison that the City acquired Minnetonka Blvd from Hennepin County in or around 1972, likely in conjunction with the installation of sewer throughout Deephaven. He stated that Commissioner Callison informed him that the County would likely never want this portion of Minnetonka Blvd back from Deephaven, even after it is brought up to proper condition, due to the fact there is too little traffic on the road.

Further discussion was held on the geotechnical review to be performed by Braun Intertec to determine the overall condition of the subsurface.

Mayor Skrede stated that he had a conversation this past week with Ehlers on potential financing options.

Further discussion was held on the upcoming public meeting on the Minnetonka Blvd Project, the other 2019 street projects, the proposed bikeway / Sidewalk feasibility study, and a review of the other amenities proposed for the project including burying power lines, dry water lines and sidewalks.

E. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

The January 2019 Police Report for Council review. Mayor Skrede noted that the process to hire a new Police Office is going well as 8 candidates have been interviewed with two finalists going through a background check.

B. Excelsior Fire District

Fire Board Liaison Steve Erickson provided the following summary of the January 23, 2019 meeting of the Excelsior Fire District Board:

- Adam Jennings of Tonka Bay was elected 2019 Chairperson
- Jennifer Labadic of Shorewood was elected 2019 Vice-Chairperson

- The low bid on the Room Remodeling Project was awarded
- Overnight duty crews were activated during the recent spell of cold weather
- Fire Chief Gerber has accepted a position with Eden Prairie and efforts will soon be underway to hire a new Fire Chief.
- He noted that the Fire Relief Fund is 118.3% funded at the end of the year, which makes the firefighters eligible to receive a 3% pension increase due to the approved funding formula.
- There were 844 service calls in 2018, an all-time high

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:

- 2018 Year End Financial Summary
- 2018 Building Permit Summary
- 2018 street patching summary

9. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Carlson. Motion carried 5-0. The meeting adjourned at 9:25 p.m.

Respectfully submitted,

Dana H. Young
City Administrator