DEEPHAVEN CITY COUNCIL MEETING
TUESDAY, JANUARY 2, 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 Tony Jewett, Steve Erickson, Kent Carlson and Darel Gustafson

STAFF: Zoning Coordinator Dale Cooney and City Administrator Dana Young

2. PLEDGE OF ALLEGIANCE

The Council recited the Pledge of Allegiance.

3. APPROVE CONSENT AGENDA

Motion by Councilmember Gustafson to approve the Consent Agenda, consisting of the following items:

A. Approve December 4, 2017 Council Minutes
B. Approve Verifieds
C. Adopt Resolution No. 01-18, Appointments & Assignments for 2018
D. Adopt Resolution No. 02-18, Authorizing an Extension of the EPDB License Agreement
E. Adopt Resolution No. 03-18, Est. Schedule of Administrative Fees
F. Approve November 2017 Treasurer's Report
G. Approve Appeal from 90 Day Rule

Seconded by Councilmember Erickson. Motion carried 5-0.

4. MATTERS FROM THE FLOOR

There were no Matters from the Floor this evening.

5. PLANNING & ZONING REQUESTS

A. Conditional Use Permit request of St. Therese Catholic Parish to replace an existing illuminated sign at 18323 Minnetonka Blvd.

Zoning Coordinator Cooney presented his staff report. He said that St. Therese Catholic Parish would like to replace its existing illuminated sign and that the proposed sign is very similar to the Deephaven Woods sign that was approved last year. Cooney noted that the overall square footage of the sign will be the same as existing, and a new stone base will be built for the sign. He said that a portion of the new sign is proposed to be replaced with an LED sign.

Cooney stated that Section 1115.03(12) defines Changeable Copy Sign as "A sign or portion thereof with characters, letters or illustrations that can be changed or rearranged without altering the face of the surface of the sign. Changeable copy signs do not include signs upon which characters, letters or illustrations change or rearrange only once in a 24-hour period." He said that changeable Copy Signs are considered prohibited signs under the sign ordinance. He said that the applicant has stated that they will be using similar messaging to what is currently shown on the Deephaven Woods sign. Cooney noted that the applicant has stated that they are comfortable with the limitations that the message can change only twice in a 24 hour period, which is how similar signs have been regulated.

Cooney noted that, unlike Deephaven Woods, the sign is in an area that is primarily commercial. He said that two residential properties to the south may be impacted, the closest of which is approximately 300 feet away. Cooney said that, for public safety reasons, the city allowed the non-LED areas of the Deephaven Woods sign to remain lit at all times and that the applicant would like the same exception for this sign.

Cooney said that he recommends approval of the conditional use request to replace the existing 134 square foot illuminated monument sign with a new sign of the same size.

He said that the recommendation is made with the following conditions:

(a) that there be no net increase in overall signage for the property;
(b) that 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)
(c) that the LED changeable copy area not change more than twice in a twenty-four hour period

Cooney said that the Planning Commission held a public hearing at their December 19 meeting and recommended approval of the CUP request based on the findings and recommendations of staff, with the added condition that the non-LED portions of the sign be permitted to remain illuminated at all times.

Cooney concluded his staff report.

Mayor Skrede asked if Deephaven Woods would be on this sign as well. Cooney said that Deephaven Woods would appear in the LED messaging, but not on the permanent part of the sign.

Councilmember Gustafson said that he felt it was disingenuous to ask for 24-hour illumination due to public safety needs and emergency vehicles since the location is not identified as Deephaven Woods and emergency vehicles would use the other entrance.

Councilmember Carlson said that people associate Deephaven Woods with St. Therese.

Councilmember Erickson said that he agreed with both points, but that there are a lot of after-hours church events on the property. Councilmember Gustafson said that the reasoning should then be for business reasons and not public safety reasons.

Councilmember Jewett said that the Planning Commission was in favor of the exemption in an effort to keep both signs the same.

Mayor Skrede said that he was not necessarily opposed to the exemption, but rather the reasoning used to justify it.

Motion by Councilmember Gustafson to approve the conditional use permit for the proposed sign as proposed, with the modified condition that in order to improve visibility for after-hours visitors to the facilities, the non-LED portions of the sign may remain illuminated throughout the night. Motion was seconded by Councilmember Erickson. Motion carried 5-0.

Mayor Skrede said that he thinks the new sign looks very good and is not too bright. Councilmember Erickson said that he drives by the sign often and that he thinks it looks good as well.

B. Wetland Determination Request at 18702 Heathcote Drive

Zoning Coordinator Cooney presented the staff report. He said that a wetland boundary determination request was made for the property at 18702 Heathcote Drive. He said that, at the time of application, the Riley Purgatory Bluff Creek Watershed District stated that the city was the Local Government Unit (LGU) for this type of request. The City of Deephaven, via Mark Perry of Bolton & Menk, completed the appropriate requirements to comply with the Wetland Conservation Act (WCA).

Cooney said that Mr. Perry's recommendations on the matter are attached to this staff report, and that staff defers to his expertise as far as a recommendation is concerned. Cooney noted that, since the application is only for a wetland boundary, and there is no application to build or otherwise disturb the area at this point, the only real objection to approval would be a misidentification of the boundary. Cooney stated that Mr. Perry believes the wetland boundary to be accurate.

During this process, Mr. Perry reached out to the Minnesota Board of Water and Soil Resources (BWSR) to get confirmation on who the responsible LGU is for enforcing the Wetland Conservation Act. BWSR has stated that there are no current records for who should be acting as the LGU in these matters, and that the city should create a resolution either stating that they will be acting as the LGU for the WCA or that they grant Riley Purgatory Bluff Creek Watershed district WCA authority.

Mayor Skrede asked if the city would still be able to make decisions on variances for a property that went through the Wetland Conservation Act process via the watershed district. Cooney said that zoning powers would still belong to the city, but that the wetland boundaries, wetland fill and replacement would be overseen by the watershed district. Cooney said that the majority of the city is regulated in this way by the Minnehaha Creek Watershed District, and that by making Riley-Purgatory Watershed District the LGU, it would simply expand that to the remainder of the city.

Mayor Skrede asked if, in the case of 18707 Heathcote, where the city did not want to permit the property as a building site, could the watershed district overrule the city. Cooney said that he was not an expert in the Wetland Conservation Act, but when it comes to filling in wetlands, he believed that the watershed district would have the final say in the matter and that the city could only continue to enforce its zoning requirements for the property.

Councilmember Carlson noted that determining wetland boundaries was as much an art as a science and that boundaries can change based on dry or wet weather patterns.

Councilmember Erickson said that he recalls the watershed district being supportive of the wetland infill and offsite wetland credits at 18707 Heathcote Drive. Cooney said that he recalls the Corps of Engineers approving the wetland credits, and that it did not think that came from the watershed district.

Cooney noted that the city does not have the in-house staff to process these applications, and that they are handled by the city's engineering firm, Bolton & Menk. He said that transferring oversight to the watershed district would minimize the costs of these applications for the city.

Councilmember Carlson asked if there is a fee for these applications. Cooney said that there is currently not a fee. Councilmember Erickson said that he did not think the taxpayers should have to pay for these applications. Councilmember Carlson said that if the city is the LGU, there should be some way to recover the costs.

Mayor Skrede said that, in the case of 18707 Heathcote Drive, the applicant wanted to build and the city denied the application. He asked if the city would give up that power. Cooney said that, the city would still be part of the Technical Evaluation Panel, but that he did not know how much power a city would have to object to an application. Cooney pointed out that the situation at 18707 Heathcote was rare, and that he was unsure how many similar parcels might remain in the city. Cooney said that most applications would be wetland boundary determinations.

Cooney said that he just wanted to raise the issue tonight, but that he will need to provide more thorough information at a future council meeting in order for the city to make an informed decision.

Councilmember Erickson said that the action taken by the city tonight is just to approve the proposed wetland boundary. Cooney said that the property owners prepared the delineation for the city to review, and that the city engineer has recommended approval of the application.

Motion by Councilmember Carlson to approve the wetland boundary at 18702 Heathcote Drive as delineated. Motion was seconded by Councilmember Erickson. Motion carried 5-0.

6. UNFINISHED BUSINESS

A. Present Ordinance No. 02-19, Deleting Section 240.01 Boat Committee

Administrator Young stated that over the course of the past decade, the City Council has assumed more and more of the responsibilities of the Boat Committee including enforcement of the June 1 Deadline Requirement and the 90 Day Rule, planning and implementation of marina capital projects, ordinance & policy amendments, and annual budgeting responsibilities. He stated that as a result, the Boat Committee began to meet less and less frequently due to the inability to obtain a quorum of members, which certainly denotes a growing lack of interest among the members, and to its gradually declining role. He noted that the Boat Committee only met 4 times in 2015 and 2016, and only once in 2017.

He stated that when the Boat Committee did finally meet in 2017, the members agreed that there simply weren't enough meaningful issues for the Committee to discuss on a regular basis to continue as a Standing Committee of the City. As an alternative to the Boat Committee, the members recommended establishing an ad hoc committee with no set meeting dates, with the limited role of reviewing dock facilities in the spring and reviewing finances and the past Boating Season in the fall.

He stated that Ordinance No 02-19 is presented this evening for adoption on February 5, 2018. If adopted at that time, it would formally eliminate the Boat Committee. He stated that the adoption of Resolution No. 04-18 this evening would establish a City Marina Advisory Committee that would

meet twice in 2018 to review dock facility maintenance issues in the spring and to review the past Boat Season in the fall.

Councilmember Erickson asked if establishing a Marina Advisory Committee was necessary and didn't see a reason for establishing such a committee. He stated that if the need arose, the Council could establish the advisory committee in 2019.

The Council unanimously agreed with Councilmember Erickson's comments.

B. Adopt Resolution No. 04-18, Establishing a Boat Committee Advisory Committee

No action was taken on Resolution No. 04-18, a Resolution Establishing a Boat Committee Advisory Committee.

C. Present Ordinance No. 04-61, Establishing ROW Permit Fees

Administrator Young stated that with the adoption of the Right-of-Way Management Ordinance on December 4, 2017, fees need to be established for:

- Excavation Permits
- Obstruction Permits
- Small Wireless Facility Permit, and
- Delay Penalty

He stated that this Ordinance is presented for Council review this evening and will be presented for adoption on February 5, 2018 after the required ten day posting notice.

D. Discuss Bikeway Feasibility Study / Park Usage Fees

Administrator Young stated that the Park Committee had a discussion at their December 5th meeting about the Bikeway Feasibility Study and whether to consider imposing park usage fees on various associations using City parks. He stated that the Committee would like feedback from the City Council on these two issues.

He stated that the Bikeway Feasibility Study Grant is a matching grant with Hennepin County and the City of Deephaven with Hennepin County providing up to $20,000 towards the feasibility study. He stated that the City Council has approved funding in the amount of $20,000 towards this study in the 2018 Capital Improvement Fund. He stated that Park Committee Chairman Patrick Regan is going to put together a Request for Proposals from engineering firms for the study and the Park Committee would like to know how much of the City's $20,000 the Council would like to spend towards this project.

In addition, he stated that Hennepin County also has an interest in extending the scope of the study into the City of Minnetonka to Hwy 101 & Minnetonka Blvd. The Park Committee would also like feedback from the City Council on the scope of the study and whether the focus of the study should include any or all of the following:

- Minnetonka Blvd – Chowen's Corner to Deephaven Elementary School
- Minnetonka Blvd – Chowen's Corner to Hwy 101 / Minnetonka Blvd

- Alternate routes – i.e. Minnetonka Blvd to Heathcote to LRT Trail or some other alternate route

Councilmember Carlson asked what do we want to know from this study?

Councilmember Erickson stated that he wanted to know how we can get shoulders along Minnetonka Blvd for a potential bike path. He noted that the cost of providing shoulders might prove to be unaffordable.

Councilmember Carlson asked if Minnetonka Blvd is the best and safest route for bike travel. He stated that there may be a better route.

Councilmember Erickson suggested a potential route from Thorpe to Heathcote to the LRT Trail. He added that he would also be interested to know if we could get 3-4 foot shoulders along Minnetonka Blvd.

Councilmember Carlson noted that the design team may come back with potential solutions to linking the community and then the Council could obtain community input on these potential solutions.

Councilmember Gustafson asked how much would we be willing to commit to this study. He stated that we could spend anywhere from $0 - $20,000 and still need to determine the scope of the study. He noted that option no. 1 from Chowen's Corner to Deephaven Elementary School does not have an adequate right-of-way, option no. 2 from Chowen's Corner to Hwy 101 may be worth exploring, and option no. 2 from Thorpe Park to Heathcote to the LRT Trail may not be able to accommodate all residents along Minnetonka Blvd but it's the safest route.

Councilmember Erickson stated that he would prefer all of the options except for the route from Chowen's Corner to Hwy 101 because he is not sure if the City of Minnetonka would commit to this portion of the project. He said that the study would certainly give us a better idea on what needs to be done on Minnetonka Blvd.

Mayor Skrede stated that he is concerned with the grant requirements that require the proposed designs to adhere to County and MNDOT construction, design, and ADA standards. He stated that this makes it difficult to determine what we want to study.

Councilmember Jewett stated that the study is a good idea if we plan to rebuild Minnetonka Blvd. He stated that he doesn't feel the need to rehash the funding for this grant. He stated that he prefers to focus on the segment of the trail through Deephaven and not Minnetonka. He stated that the study needs to determine how to get kids safety from Thorpe Park to the Elementary School.

Councilmember Erickson stated that he agreed with Councilmember Jewett's comments. He added that he has information that he will provide to Administrator Young on MNDOT"s road bikeway regulations. He added that the Heathcote shortcut is the pathway that his daughter has used many times to get to both the elementary and middle school.

Administrator Young noted that the Heathcote shortcut is not without several challenges including the fact that the pathway is very steep and privately owned.

Councilmember Carlson stated that we probably are not looking for full designs on a potential bikeway. He stated that we would just want to review various route options.

Mayor Skrede referenced the $16,000 Park & Recreation Strategic Plan that provided various options at each City Park and beach. He stated that he would be more interested in route options than how to design an ADA accessible bikeway.

Councilmember Gustafson asked if the Park & Recreation Strategic Plan has been used.

Councilmember Jewett stated that he used the Strategic Plan for the Thorpe Park grant and Councilmember Carlson noted that the Park Committee reviews the Strategic Plan fairly regularly.

Councilmember Carlson stated that he would like the study to provide alternates routes but not a full design. He stated that this could be a two-phased approach – determine alternative routes than do the design work in phase 2.

Mayor Skrede stated that he would like the study to also evaluate where to establish pedestrian crossings on Minnetonka Blvd.

Councilmember Erickson stated that he likes the two-phase approach by understanding our options first then establishing our execution plan.

Councilmember Carlson stated that he would not be opposed to reviewing the Chowen's Corner to Hwy 101 route as long as the City of Minnetonka was interested.

Mayor Skrede agreed that the Park Committee should feel free to discuss Minnetonka's potential participation in that segment of the bikeway that extends into Minnetonka.

Administrator Young stated that the Park Committee's second question concerns the possibility of establishing park usage fees to require those associations using our fields and tennis courts to pay a park usage fee. He stated that the Park Committee would like to know if the City Council supported a further examination of park usage fees.

Councilmember Erickson stated that there are not games played at Thorpe Park like there are at Freeman Park. He stated that the Thorpe fields are practice fields. He stated his concern that establishing park usage fees would create exclusivity on the part of the associations being charged a fee.

Councilmember Carlson stated that if an association requested exclusive use, there may be a reason to charge a fee. He noted that the City does not incur an unusually high cost to maintain our fields and we would be willing to consider any contribution to upgrade our fields.

Councilmember Gustafson stated that if an association offers to make an improvement at one of our fields, that would be fine as long as they understand that this is still a neighborhood ball field.

Councilmember Jewett stated that he does not feel that the Park Committee has to examine park usage fees.

Mayor Skrede stated that if a particular use is advertized, he felt that we could then lean on an association to donate something back to the City.

Councilmember Erickson stated that especially if the association was requesting the exclusive use of the facility.

Councilmember Carlson stated that the Park Committee could have a discussion with Minnetonka Community Education about some sort of contribution for their use of the tennis courts.

E. <u>Discuss the Use of the Williston Fitness Center</u>

Administrator Young stated that Councilmember Gustafson raised a question about whether the City of Deephaven could enter into a reciprocity agreement with the City of Minnetonka to enable Deephaven residents to use the Williston Fitness Center. He stated that the City of Minnetonka currently has a reciprocity agreement with St. Louis Park to allow residents from both cities to use the Williston Fitness Center and the St. Louis Park Aquatics Park. He stated that Minnetonka has adopted a policy freezing all other non-resident memberships due to concerns regarding membership numbers, facility use, overflow parking, and class participation at Williston Fitness Center.

Administrator Young stated that Councilmember Gustafson was wondering if we could establish a reciprocity agreement by offering a reduction or waiving the beach and boat parking permits fees purchased by Minnetonka residents. In 2017, Minnetonka residents purchased 91 beach permits in the amount of $5,460.00 and 35 boat parking permits in the amount of $4,200.00 – totaling $9,660.00 in 2017 parking permit revenues. This equates to 35% of our total parking permit fees.

He stated that the significant difference between the reciprocity agreements between Minnetonka & St. Louis Park and any proposed reciprocity agreement between Minnetonka & Deephaven is that both Minnetonka & St. Louis Park benefit financially by having each of their residents use their two facilities. In Deephaven's case, a reduction or waiver of our beach and boat parking permits to all Minnetonka residents would not only decrease city revenues by approximately $9,660.00, but even more significantly, could strain the already crowded parking capacity of our beaches by adding more Minnetonka residents who are attracted by the reduced or waived parking fees.

Councilmember Gustafson stated that his concept of reciprocity with Minnetonka was to prohibit the sale of parking and boat permits to Minnetonka residents. He stated that this would be more of a concept for the City of Minnetonka to consider when trying to decide whether to permit Deephaven residents to use the Williston Fitness Center.

Mayor Skrede noted that we are providing an opportunity for Minnetonka residents to have access to our beaches and boat launch. He stated that the City of Minnetonka may want to consider this benefit when discussing access to the Williston Center.

Administrator Young stated that he could certainly contact the City of Minnetonka and ask them to consider providing access to Deephaven residents at the Williston Center much like we do for their residents at our beaches and boat launch.

F. <u>Other</u>

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Discuss Notice of Peak Flow Exceedence from the Metropolitan Council

Administrator Young provided information to the City Council on a notice of peak flow exceedence from the Metropolitan Council Environmental Services regarding a rainfall event that occurred on August 17, 2017 in which the City conveyed 2.04 MGD into the wastewater system, exceeding the established peak flow of 2.02 MGD.

B. Other

Discussion was held regarding the purchase and installation of a CD3 Waterless Cleaning Station to help prevent AIS at the Carson's Bay ramp. The Council suggested checking with the Minnehaha Creek Watershed District or the Lake Minnetonka Conservation District to see if they have considered providing CD3 Cleaning Stations at any local access points around the lake.

Councilmember Jewett noted that the City Council has approved two changes in the message boards on signs within a 24-hour period for two recent sign requests. He stated that since the ordinance only provides for one permitted one change within a 24-hour period, the Council should consider changing the ordinance.

8. DEPARTMENT REPORTS

A. Police Department

The Council reviewed the December 2017 Police Incident Report.

B. Excelsior Fire District

Councilmember Erickson provided a brief update on recent activities of the Excelsior Fire District and the Fire Relief Association.

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:

- Certificate of Achievement for Excellence in Financial Reporting
- The upcoming audit schedule for the 2017 Financial Statements
- The 2017 Ranking of Deephaven as the #5 Best Suburb in which to live and the #1 Best Places to Raise your Family in Minnesota according to Niche.com.

9. ADJOURNMENT

Motion to adjourn by Councilmember Gustafson, seconded by Councilmember Erickson. Motion carried 5-0. The meeting adjourned at 8:59 p.m.

Respectfully submitted,

Dana H. Young
City Administrator