

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JANUARY 5, 2015
MINUTES**

1. OATH OF OFFICE

Mayor Paul Skrede, Councilmember Darel Gustafson and Councilmember Tony Jewett were administered the Oath of Office.

2. CALL MEETING TO ORDER: Mayor Paul Skrede called the meeting to order at 7:05 p.m.

PRESENT: Mayor Paul Skrede, Council members Tony Jewett, Steve Erickson, Keith Kask and Darel Gustafson

STAFF: Zoning Coordinator Gus Karpas and City Administrator Dana Young

3. PLEDGE OF ALLEGIANCE

The Council recited the Pledge of Allegiance.

4. APPROVE CONSENT AGENDA

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

- A. Approve December 1, 2014 Minutes
- B. Approve Verifieds
- C. Adopt Resolution No. 01-15, Appointments & Assignments for 2015
- D. Adopt Resolution No. 02-15, Authorizing an Extension of the EPDB License Agreement
- E. Adopt Resolution No. 03-15, Est. Schedule of Administrative Fees
- F. Approve November 2014 Treasurer's Report
- G. Approve April 20, 2015 as Date for Board of Review
- H. Approve Bids on 2015 Sewer Truck & 2015 Freightliner

Seconded by Councilmember Gustafson. Motion carried 5-0.

5. MATTERS FROM THE FLOOR

City Engineer David Martini thanked the City Council for the reappointment of Bolton & Menk as the City Engineer for 2015.

6. PLANNING & ZONING REQUESTS

A. Variance, Chris and Lauren Jandro, 3710 Hamilton Avenue – Request for variances of the minimum required front yard setback to construct a second story addition on the existing non-conforming footprint on their property and add a new open porch. Section 1302.05(3) of the zoning ordinance requires a minimum front yard setback of thirty-five (35) feet. The applicant proposes a closest front yard setback of twenty-nine (29) feet for the proposed front porch. The applicant is seeking a variance of six (6) feet of the minimum required front yard setback.

Zoning Coordinator Karpas summarized the request. He said the project includes a total remodel of the basement and existing first floor. A second story addition would be added onto the existing footprint, which currently encroaches approximately two (2) feet into the required thirty-five (35) foot front yard setback. The second story would maintain the existing encroachments.

He said the project also includes the addition of a roofed, open porch along approximately the south one half of the structure. It extends seven feet, four inches (7'-4") from the east face of the home into the front yard setback. The maximum encroachment into the required setback is six feet at its northernmost portion and it comes into compliance as it moves south. This is due to the shape of the easterly property line.

The proposal complies with the remaining setback requirements outlined in Section 1302.05(3), the height limitations outlined in Section 1302.05(4) and the maximum permitted grade alteration permitted in Section 1312.04.

Karpas said he recommended conditional approval of the request based on the criteria that the request is in harmony with the purpose and intent of the ordinance, is consistent with the comprehensive plan, puts the property to a reasonable use, that there are unique circumstances attached to the property not created by the landowner and the variance will not alter the essential character of the neighborhood. The recommendation was conditioned that a restriction be included in the finding of facts prohibiting the future enclosure of the open porch.

Councilmember Jewett clarified the purpose of adding a condition to the motion. Zoning Coordinator Karpas said it notifies future property owners and those who may be interested in enclosing the porch that they cannot do so without approval from the Council. In theory, they wouldn't be able to obtain a building permit since enclosing the porch would be structurally altering a non-conforming structure and would require a variance, the condition placed on the Resolution places that restriction right in the file so there is no ambiguity.

The Council was supportive of the request and felt the addition would add to the neighborhood.

Councilmember Kask approved the recommendation and findings of the Planning Commission and staff for the variance requests of Chris and Lauren Jandro to encroach two feet, one inch (2'-1") into the minimum required thirty-five (35) foot front yard setback for the proposed second story addition onto the existing non-conforming single family structure footprint and the conditional approval of the variance request to encroach six (6) feet into the required thirty-five (35) foot front yard setback for the proposed porch at 3710 Hamilton Avenue, as presented. The motion is conditioned upon the restriction that the open porch not be enclosed in the future.

Councilmember Erickson seconded. The motion carried 5-0.

7. UNFINISHED BUSINESS

A. Discuss 2015 Prosecution Rates (Steve Tallen)

Administrator Young stated that City Prosecutor Steve Tallen was not able to attend this evening due to a recent surgery.

Mayor Skrede stated that, according to the letter submitted by Mr. Tallen, it is his understanding that prosecution rates will remain the same for 2015. Further discussion was held on rescheduling Mr. Tallen for the March Council meeting.

B. Discuss Deer Management Program

Zoning Coordinator Karpas summarized the memo contained in the Council packet which outlined the current Deer Management program and how changes in the Department of Natural Resources (DNR) permit have negatively impacted it to the point where the city's contractor has terminated his services with the city. Karpas said the city was contacted by the US Department of Agriculture (USDA) to discuss their deer harvesting program. He said Mayor Skrede, Woodland Mayor Jim Doak, Administrator Young and he meet with representatives from the USDA and the pertinent information from that meeting has been attached to the memo.

Mayor Skrede summarized a portion of the discussion with the USDA and noted they include the harvesting of other nuisance animals. Councilmember Erickson asked how the USDA is different from the previous contractor. Karpas said the USDA shoots the animal without trapping.

Councilmember Jewett asked what the city did prior the initiating the Deer Management program in 2003. Mayor Skrede said there were a number of issues related to deer but the city didn't address the situation. Councilmember Kask said there are many cases where complaints come to the city regarding vegetation damage, noting that people invest thousands of dollars in the landscaping of their property only to have it destroyed in a matter of days. Mayor Skrede said the intent is not to eradicate deer in the city, rather manage the size of the herd.

Councilmember Gustafson said there are other ways to deter vegetation damage. He asked if there was any information on vehicle accidents contributable to deer. City Administrator Young said the Police Department is currently compiling those numbers at the request of the USDA.

Councilmember Kask said there are other health issues related to a large deer herd. His concern is the way the program would be conducted. The previous program was discreet in that the contractor checked his traps and disposed of any animal that was present. The proposal would have active hunting on site over a period of hours.

Councilmember Erickson shares that concern and questioned whether it would be wise to wait for a year before implementing the new program. Councilmember Kask asked if there was any type of deadline. Mayor Skrede said it was past the time for trapping even if the city could find a new contractor. Zoning Coordinator Karpas said the city has been issued a permit and the USDA said they would be able operate under that permit and come close to the permitted harvest.

City Administrator Young said the city doesn't have a lot of options. He said other cities contract with the USDA or have their own police departments conduct the harvesting. He is interested to see what the response will be from property owners. Councilmember Jewett asked about the number of property owners who consented to the placement of traps. Zoning Coordinator Karpas said there are currently about six or seven sites. He said there have been more property owners interested, but their properties did not lend themselves for the placement of a trap. The whole intent was to keep the program anonymous and the traps virtually invisible.

Mayor Skrede asked for Council feedback including their thoughts about the ability to include other nuisance animals such as coyotes. Councilmember Erickson doesn't have much confidence in the ability to effectively hunt coyotes. The Council generally agreed with that assessment.

Motion by Councilmember Kask to direct staff to contact the property owners who currently participate in the deer management program to gauge their interest in participating in the new program and bring that number to the USDA for their consideration for conducting a Deer Management Program in 2015. The motion further directs staff to enter into an agreement with the USDA, as presented to the Council for the administration of said Deer Management Program in 2015. Councilmember Erickson seconded the motion. Motion carried 5-0.

Mayor Skrede said it needs to be made clear to the residents that though they are signing documents for the USDA, they are participating in a program regulated by the city.

Howard Bennis, 18650 Minnetonka Boulevard, supports the action taken by the Council and has three points he would like to make; 1) the USDA carries liability insurance backed by the Federal Government; 2) based on the weapons they proposed to use, the range of most shots would be less than fifty feet; and 3) the use of suppressed weapons means the round used will fragment on impact. He feels the USDA is a competent entity to manage deer.

Roy Quaintance, 4630 Old Kent Road, understands the need to manage the deer, but feels the existing quantity needs to be evaluated prior to establishing the amount to be removed. He feels that the presence of some deer in the area is an asset. He said manage the deer, but leave some to be enjoyed by the residents.

C. Discuss Joint Work Session with Planning Commission

Mayor Skrede noted that the Joint Work Session has been rescheduled for Tuesday, January 27th at 6:00 p.m.

D. Adopt Ordinance No. 02-17, Establishing the Planning Commission Liaison as a Voting Member of the Planning Commission

Zoning Coordinator explained the proposed amendment. He said the proposed ordinance amendment would permit the Council Liaison to the Planning Commission to become a voting member in the event a quorum is not present. This is permitted under State Statute as a safeguard for cities to comply with the time requirements of Statute 15.99. Though it may never be used, it provides a degree of certainty to an applicant that their request will not be delayed due to a procedural issue outside of their control.

Motion by Councilmember Kask to approve Ordinance No. 2-17; An Ordinance Amending Section 230 of the Deephaven Code, Establishing the Planning Commission Liaison as a voting member of the Planning Commission in the absence of a quorum. Seconded by Councilmember Erickson. Motion carried 5-0.

E. Other

There was no other Unfinished Business this evening.

8. NEW BUSINESS

A. Adopt Resolution No. 04-15, Establishing a Limited Clean Up for Sewer Back-Ups

Administrator Young stated that the City of Deephaven has obtained optional no-fault sewer backup and water main breaks for the past three years. The coverage reimburses a property owner for up to \$40,000 for clean-up costs caused by a sewer backup or water main break. He stated that the City paid \$5,869 in 2014 for this coverage, which is paid from the Sewer Fund.

He stated that the League of Minnesota Cities Insurance Trust (LMCIT) have made changes to no-fault coverage that will effectively narrow the coverage, which are listed in the attached resolution. The reason for the increased restrictions is due to the significant cost of the claims made by those cities with no-fault coverage. Total premiums paid into no-fault insurance coverage last year totaled \$156,000 while the claims totaled close to \$500,000. He stated that adoption of the attached resolution is required for continued coverage in no-fault sewer backup and water main break coverage.

He stated the no-fault liability limits that would be available to the City of Deephaven beginning in 2015 are \$2,637 for \$10,000, \$3,108 for \$25,000 and \$3,549 for \$40,000. He added that the City Council initially chose a \$40,000 limit due to relatively high values of homes in Deephaven and the potential cleanup cost.

Councilmember Kask proposed a small modification in the language of the resolution.

Motion by Councilmember Kask to adopt Resolution No. 04-15, A Resolution Establishing a Limited Clean Up for Sewer Back-ups and Water Main Breaks. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Adopt Resolution No. 05-15, Calling for a Public Hearing for a Vacated Street

Administrator Young stated that a petition has been submitted requesting the vacation of a portion of St. Louis Avenue. State Law states that the vacation of all or a portion of a city street can be initiated by either the City Council or by a majority of the property owners abutting the street to be vacated. In this case, he stated that city staff has verified that the petition has been signed by the required majority of property owners abutting that portion of St. Louis Avenue to be vacated. He stated that the attached map shows the portion of St. Louis Avenue that has been requested to be vacated.

He stated that once a petition for a street vacation has been received; a resolution is adopted setting a public hearing to review public comment and the merits of the request. The public hearing is proposed to be held at the next regularly scheduled Council meeting on Monday, February 2, 2015.

He stated that prior to the public hearing, the following action will be taken:

- Notice of the hearing must be published and posted at least two weeks prior to the hearing.
- Notice of the hearing is mailed to all property owners within 350 feet of the proposed vacation.
- The merits of the proposed vacation are reviewed by city staff, the City Attorney and the City Engineer.

He noted that the Council's review of a petition for the vacation of a city street is not subject to the 60 Day Rule.

Mayor Skrede asked if there was an option for the city not to have a public hearing. Administrator Young said the city would not have to hold a public hearing if there was no obvious public benefit created by the vacation.

Jake Stein, Larkin-Hoffman, Attorney for the petitioners stated the land in question has been an unimproved street since 1887. He said though a garage may be one of the goals of the petitioners, the "street" currently runs through what appears to be their property. A vacation would allow for an alteration of the property lines to mimic a more traditional lot and also give them a sense of comfort that the land won't be developed in the future.

Mayor Skrede said he's not opposed to the request but wants to discuss what benefits there would be for both the city and the landowners. He said the vacation would permit the existing home to be removed and a larger one to be constructed. Mr. Stein said that is not the intent.

Councilmember Erickson asked why the proposed vacation does not include the entire unimproved road. He thinks if the area is to be vacated, it should be vacated the whole way.

Councilmember Kask said he's prepared to have a conversation on this issue. Councilmember Erickson asked if the city was compelled to hold a public hearing. Administrator Young said the Council doesn't have to hold a public hearing if there is a compelling reason to not vacate the street.

Councilmember Erickson stated that he is concerned about the needs of the city for future utility needs. Councilmember Kask agreed and noted this is not a unique situation in the city and the Council needs to proceed cautiously.

Mr. Stein said the city has the right to retain a utility easement across the property and noted that the city has approved a partial vacation of the street in the past.

Mayor Skrede is also concerned about retaining the utility rights over the property. He doesn't realistically see a street being constructed over that land in the future. Councilmember Erickson noted the petitioner's driveway already crosses the platted area and it could be extended across the area further if they were to build a future garage at the rear of the property.

Bridget Bury, 3870 Virginia Avenue, said the unimproved area along their property line has always been a gray area. She's unsure about insurance liability, snow removal, moving, etc. Mayor Skrede said he can empathize with Ms. Bury's discomfort, but there's a difference between granting an easement and approving a vacation.

Councilmember Jewett said he looked forward to a public hearing.

Councilmember Kask discussed the variance process and noted that the city has been pretty positive with lots like this with exterior side yard setback. He doesn't feel this request is unique and he's concerned others with similar circumstances may expect same consideration. He would like staff to provide a map indicating other unimproved roads that are similar to this in the Deephaven Park area. Councilmember Erickson agreed with Kask that it would be helpful to see what other properties would be impacted.

The Council agreed they would like to hold a public hearing on the vacation request and directed staff to prepare to the required notifications and to provide the Council a map showing other area that may have similar situations as that being proposed.

Motion by Councilmember Erickson to adopt Resolution No. 05-15, A Resolution Setting a Public Hearing on a Vacation Commenced by a Petition of a Majority of Abutting Property Owners. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Adopt Ordinance No. 10-07, Amending One House per Sewer Connection

Mayor Skrede stated that Section 1005.10 of the Deephaven City Code essentially allows more than one sewer connection to a house or garage with the permission of the City Engineer. He stated that it has come to staff's attention that the primary concern of the City Engineer is whether a second sewer connection is technically feasible from an engineering standpoint and often does not take into account other critical considerations such as neighborhood concerns or whether a second connection might evolve into a residential use. He stated that this can place the City Engineer in an untenable position.

Councilmember Gustafson asked if we should just allow one sewer connection.

Zoning Coordinator noted that the City has allowed a number of second connections for such legitimate uses as pool houses and for a sink in a garage.

Mayor Skrede stated that there are some lifestyles that may want to have multiple sewer connections. He further noted that requests for additional sewer connections would be approved by Council resolution.

Motion by Councilmember Kask to adopt Ordinance No. 10-07, An Ordinance Amending Section 1005.10 of the Deephaven City Code on Sewer Regulations and to waive the second reading. Seconded by Councilmember Erickson. Motion carried 5-0.

D. Adopt Resolution No. 06-15, A Resol. of Appreciation to David Irwin & Warren Nelson

The City Council thanked David Irwin and Warren Nelson for six years of service on the Deephaven Boat Committee.

Motion by Councilmember Gustafson to adopt Resolution No. 06-15, A Resolution of Appreciation to David Irwin & Warren Nelson for six years of service on the Deephaven Boat Committee. Seconded by Councilmember Erickson. Motion carried 5-0.

E. Adopt Resolution No. 07-15, A Resol. of Appreciation to John Flynn

The City Council thanked John Flynn for eleven years of service on the Deephaven Park Committee.

Motion by Councilmember Erickson to adopt Resolution No. 07-15, A Resolution of Appreciation to John Flynn for eleven years of service on the Deephaven Park Committee. Seconded by Councilmember Gustafson. Motion carried 5-0.

F. Review City Fiscal Report

Administrator Young presented the 2015 City Fiscal Report for Council review.

G. Discuss Attendance for Newly Elected Officials Conference

Administrator Young stated that the City of Deephaven has traditionally paid for newly elected Council members to attend the Leadership Conference for Newly Elected Officials sponsored by the League of Minnesota Cities. He stated that the cost of the conference is \$315.00, which has been included in the 2015 Budget.

Councilmember Jewett stated that he would be able to attend the Leadership Conference in Mankato on January 23-24.

Motion by Councilmember Jewett to authorize the attendance of Councilmember Tony Jewett at the Leadership Conference for Newly Elected Officials on January 23-24 in Mankato at a cost of \$315.00. Seconded by Councilmember Erickson. Motion carried 5-0.

H. Other

Administrator Young stated that he had received a late request from Kristin Gale to appeal the revocation of her 2015 Boating Permit for Slide No. 136 in Carson's Bay. He stated that Ms. Gale was unable to send the letter of appeal in time for the Council's review of appeals on December 1, 2015.

Motion by Councilmember Erickson to reinstate the 2015 Boating Permit to Kristin Gale, 19380 Lake Avenue, for Slide Space #136 in Carson's Bay, subject to payment of a penalty in the amount of 50% of the permit fee and that no future violations occur of the 90 Day Rule or the June 1st Deadline requirements. Seconded by Councilmember Kask. Motion carried 5-0

9. DEPARTMENT REPORTS

A. Police Department

Mayor Skrede noted that Police Chief Johnson had sent out the December 2014 Incident Report for Council review.

Councilmember Gustafson requested data on future Incident Reports on the number of assists provided by outside agencies to the Deephaven Police Department.

B. Excelsior Fire District

Administrator Young stated that the first EFD Board meeting of the year will be held on January 21st.

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:

- The upcoming audit of 2014 Financial Statements
- Certificate of Achievement for Excellence in Financial Reporting
- An update on the Met Council I/I Mitigation Program
- An update on Fall Cleanup Day expenses

10. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Dana H. Young
City Administrator