

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, MARCH 2, 2015  
MINUTES**

1. **CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 7:00 p.m.

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

STAFF: Police Chief Cory Johnson, Zoning Coordinator Gus Karpas, and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Councilmember Kask stated that he would like to approve the Consent Agenda in separate motions.

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

- A. Approve February 2, 2015 Council Minutes
- B. Approve Verifieds
- C. Approve 2015 Street Sweeping Bid
- D. Approve 2015 Street Striping Bid
- E. Approve January 2015 Treasurer's Report
- F. Approve 2015 Consumption & Display (Set-Up) Permit for Mtka Yacht Club

Seconded by Councilmember Erickson. Motion carried 5-0.

Councilmember Kask thanked Scott Ferguson for his reappointment to the Park Committee and Scott Ferguson and Patrick Regan for serving as 2015 Park Committee Chair and Vice-Chair.

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

- G. Reappoint Scott Ferguson to Park Committee
- H. Approve 2015 Park Committee Chair & Vice-Chair

Councilmember Kask thanked Peter Onstad, John McGary, Scott Hemink and Barbarajean Brandt for their years of service on the Planning Commission.

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

- I. Adopt Resolution No. 14-15, Resolution of Appreciation to Peter Onstad
- J. Adopt Resolution No. 15-15, Resolution of Appreciation to John McGary
- K. Adopt Resolution No. 16-15, Resolution of Appreciation to Scott Hemink
- L. Adopt Resolution No. 17-15, Resolution of Appreciation to Barbarajean Brandt

Seconded by Councilmember Erickson. Motion carried 5-0.

Mayor Skrede stated that he would like Planning Commission Liaison Darel Gustafson to present these resolutions to the retiring members at the March Planning Commission meeting.

Councilmember Gustafson also thanked Peter Onstad, John McGary, Scott Hemink and Barbarajean Brandt for the time and consideration they gave to each variance request.

#### 4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

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

**A. Variance requests, Minnetonka Schools – ISD #276, 4584 Vine Hill Road – Request for variances of the maximum permitted fence/wall height and maximum permitted grade alteration in conjunction with the construction of a new outdoor classroom. Section 1310.08(a) of the city ordinance permits a maximum retaining wall height of six feet. The maximum proposed retaining wall heights along both portions of the south and west borders of the project are nine feet. A variance to exceed the maximum retaining wall height by three feet is being sought. Section 1312.04 of the city ordinance permits a maximum alteration of finished grade by up to three feet. The proposed grade alteration associated with the project would be up to eleven feet. A variance to exceed the maximum grade alteration by eight feet is being sought.**

Zoning Coordinator Karpas summarized the amended request, noting the amended plans, which indicate that the existing southwest retaining wall has a maximum height of nine (9) feet and tapers to a height of approximately one (1) foot over the span of fifty-seven (57) feet. The proposal would increase the height of the wall to nine (9) feet across the whole span.

The west side wall would tie into the existing wall at a height of nine (9) feet and span seventy-one (71) feet as it runs to the north, eventually reducing its height to grade.

The initial plan submitted by the School District designed a wall that would have encroached four feet onto city property. The Council agreed at their February 2nd meeting that the wall should be contained entirely on the school's property. The submitted plan shows the wall entirely on school property but would still require the use of city property for its construction.

He drew the Council's attention to the comments submitted by the public.

Mayor Skrede said the number of public comments he received, both for and against the request, prompts him to want to take a more deliberate review of the request.

Councilmember Jewett asked about the history of the request, stating he heard from residents there had been a previous presentation to the Council for an outdoor classroom. Mayor Skrede said a concept plan was presented to the Council that showed a trail system and some landscaping material on city property. Even at that time, the Council expressed its desire to see all physical landscaping be located on the school's property.

Councilmember Erickson asked about the overall impact of the nine foot wall and how far it would extend. Brent Bolter, Inspec, stated the wall has a maximum height of nine feet at the southwest corner, but an average height of four feet along the whole span of the wall. Mayor Skrede noted that only a portion of the wall would require a variance.

Councilmember Erickson discussed the reduction in impervious surface area and the applicant's plan for restoration of the city property after the construction of the wall. Mayor Skrede noted any approval would require this restoration be verified and approved by city staff. Erickson asked for clarification on the proposed shed. Mr. Bolter said the shed is not part of the proposed project at this time. The only thing related to the future structure included in this request would be to level the area for the shed.

Paul Bourgeois, ISD 276 - Executive Director of Finance and Operations, said the shed has not been designed at this time, but will be aesthetically pleasing. It has always been the school's intention to bring the shed before the city for its approval once it has been finalized.

Councilmember Jewett said the issue is very polarizing with one side seeing the request as an educational opportunity and the other as a negative impact on Burton Park. His overall impression is that the existing wall is an eyesore and the request to make it larger would make it even more of an eyesore. He questioned if there was some way to break up the impact, such as arborvitae. He feels it's important to protect the city assets and resources.

Councilmember Erickson agrees this is a polarizing issue. His concern about requiring plantings to break up or soften the wall is the potential tree loss which will require constant replacement. In terms of the request, he doesn't believe it's his responsibility to determine if the request is a reasonable expenditure of district funds, but rather determine the use's impact of the city.

Erickson feels it is reasonable for the district to reclaim the hill area along the south side of the building and noted there would be no loss of significant tree species in doing so. He walked the trail and said, even with leaf off conditions, he could not see a negative visual impact. He believes there will be a minimal impact on tree loss.

Councilmember Gustafson looked at the request as a request between neighbors and how the project would impact the city as the neighbor. He feels the proposal will negatively impact and alter the essential character of the neighborhood.

Councilmember Kask explained that the city is obligated to entertain requests from property owners, regardless if you personally support a request or not. The concern he has about this request is that when the city has viewed similar walls, they have been seen as monolithic and too large.

Kask discussed the original approval of the existing west side wall and how it was needed to create additional on-site parking spaces to eliminate the number of people having to cross the street from the adjacent parking area across Vine Hill Road that serves the education center.

Even though Kask is supportive of the wall being moved completely onto the applicant's property, he finds it ironic that such a large change in the natural environment is necessary to teach children about the environment. He's not convinced a practical difficulty has been demonstrated to approve the proposal.

Mayor Skrede said if the wall was originally wrapped around when the parking area was completed, this request wouldn't be an issue. He said only a small area of the wall surface exceeds the height requirement. He believes the request provides erosion control and the applicant is entitled to the use of their property, which in this case, he views as a reasonable use.

Councilmember Jewett asked if there would be any benefit to acting on the request at the next meeting, which would allow time to evaluate more input.

Mayor Skrede stated even though we did have more time if it were necessary, it appears most Council members have reached a decision based upon the information before them, and additional input would become one of correspondence either for or against the concept versus providing any additional solutions to the project.

Councilmember Jewett agreed to move forward with acting on the variance request.

Councilmember Erickson moved to approve the application of Minnetonka School District #276 for the variance request of Section 1310.08(a) of the city ordinance to exceed the maximum permitted retaining wall height along both portions of the south and west borders of the project three (3) feet and the variance request of Section 1312.04 of the city ordinance to exceed the maximum finished grade alteration by six (6) feet in conjunction with the construction of a new outdoor classroom at 4584 Vine Hill Road. The motion is conditioned that the retaining walls remain entirely within the property owned by Minnetonka Schools and that the restoration of the city property after construction of the wall be inspected and approved by city staff.

The motion is based on the following findings: (a) 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 applicant is seeking to expand a use that is regulated as a conditional use within the city and is requesting variances as part of that expansion; (b) the subject property is located within the R-2 Residential District and permitted as a conditional use. The 2030 Land Use Plan contained in the city's Comprehensive Plan lists the use of this property as Public/Semi-Public. The proposed variances would permit the further advancement of the educational goals of the Minnetonka Schools, which fall under that designation; (c) the proposed use of the property is reasonable and is an expansion of the current educational activities that take place on the site; (d) the circumstances causing the need for the variances are not caused by the property owner. The unique use of the property as an education center with varied curriculum and the current terrain of the property necessitate the need for variances to create the outdoor learning area; and (e) the proposal would not alter the essential character of the area, with the largest portion of the new project, the northward running retaining wall, screened from most public view.

Mayor Skrede seconded the motion. Motion carried 3-2. Councilmembers Gustafson and Kask voted nay.

## **6. NEW BUSINESS**

### **A. Review Cost Options on 2015 Lifeguard Services**

Administrator Young stated that Minnetonka Aquatics charged \$32,987.50 in 2013 and 2014 for Lifeguard Services that were provided over a 65-day period. He stated that Dan Berve, Director of

Minnetonka Aquatics, is proposing an increase in the 2015 Lifeguard Service Contract to account for operational cost increases and salary increases. He stated that his original proposal was a one-year contract fee of \$36,773.75. Administrator Young noted that we have also been presented with a number of two-year contract proposals that would be more affordable than the one-year fee of \$36,773.75.

He stated that after reviewing the two-year options provided, staff recommends selecting Option B. This option keeps the schedule and number of service days (65 days) the same at a cost of \$34,758.75 in 2015 (5.4% increase) and \$35,766.25 in 2016 (2.9% increase). The total cost over the two-year period would be \$70,525.00.

Administrator Young stated that the 2015 Budget for Lifeguard Services is \$33,978 and the proposed 2015 contract fee would be \$780.75 more than budgeted.

Councilmember Erickson stated that the Council has tried to control lifeguard costs by adjusting service hours. He asked if everyone was comfortable with the current level of service. He noted that Police Chief Johnson seems to be content with the service level.

Mayor Skrede agreed that we have made quite a few adjustments in the hours at the beaches and noted that the number of kids at the Deephaven Beach has gone up.

Councilmember Kask stated that he appreciates the fact that staff prefers Option B because it aligns most closely with the lifeguard service fees that are included in the 2015 Budget.

Councilmember Gustafson stated that he is generally happy with the level of service. He stated that he uses Deephaven Beach every day and notes that it is heavily used. He stated that when the lifeguards aren't there, there are a number of activities taking place at the beach that have gotten out of control. He stated that it is not fair to fund lifeguard services entirely on the back of residents and suggested increasing parking permit fees for non-residents. He stated that it is only fair to share the cost increase with non-residents.

Further discussion was held on current and proposed parking permit fees for non-residents.

Councilmember Erickson asked if there was a need to do something to monitor the beach when the lifeguards are no longer in service.

Mayor Skrede stated that he could entertain raising parking permit fees. He further recommended adjusting the proposed two-year lifeguard service fee by keeping the 2015 fee at the same level as the amount budgeted for 2015 and add the difference onto the proposed fee for 2016.

Councilmember Jewett stated that he was more supportive of Option C, which proposed uniform fees of \$35,262.50 for both 2015 and 2016. He stated that while Option B was better in the short term, Option C would be better in the long term.

Councilmember Erickson stated that it would have been helpful to have known about these proposed fees prior to establishing the 2015 Budget.

Councilmember Gustafson recommended increasing the number of service days at the beaches.

Councilmember Erickson stated that there really is only a need to increase service days at Deephaven Beach since it is significantly busier than the other two beaches.

Councilmember Gustafson suggested starting lifeguard services one week later than usual and extending it one week later into the season.

Mayor Skrede noted that back when there were two service providers for lifeguard services, it was noted that there is a problem with running lifeguard services too late into the summer because the lifeguards had to return to school.

Mayor Skrede suggested going back to Director Dan Berve with a two-year proposed lifeguard service contract at \$33,978.00 in 2015 and \$36,547.00 and requests a quote for an additional six days of service at Deephaven Beach.

Chief Johnson stated that part time police officers can assist with monitoring the beach and can help to evaluate how many hours of service would be most beneficial.

Motion by Councilmember Erickson to adopt Ordinance No. 4-55, An Ordinance Amending Annual Non-Residential Permit Fees. Seconded by Councilmember Kask. Motion carried 5-0.

**B. Adopt Resolution No. 13-15, Approving a Master Subscriber Agreement with the State of Minnesota**

Administrator Young stated that Paul Baertschi, who is City Prosecutor Steve Tallen's law partner, has requested that the City of Deephaven approve the attached Master Subscriber Agreement, which would enable them to access court records and documents through the new data management system provided by Court Data Services. While most of the Agreement is relatively routine, it should be noted that Section 13 of the Agreement does describes a monthly fee that could potentially be charged to the City. The amount of this monthly fee has not been provided and if this agreement is anything like an earlier agreement with for access to the criminal justice data communications network, there is a real possibility that the fee will never be imposed.

Mayor Skrede asked if the City Prosecutor would be able to access court documents and records without this agreement.

Chief Johnson stated that they would not. He added that there will not be a monthly fee because we are a municipality. A non-public agency would have to pay the monthly fee.

Further discussion was held on who is allowed access to the system.

Administrator Young stated that the City permits access through a data agreement with the City Prosecutor.

Motion by Councilmember Jewett to adopt Resolution No. 13-15, a Resolution approving a Master Subscriber Agreement for Minnesota Court Data Services with the State of Minnesota. Seconded by Councilmember Gustafson. Motion carried 5-0.

**C. Other**

Discussion was held on the difficulty in finding volunteers to serve on the Park and Boat Committees.

Mayor Skrede thanked Planning Commission Chairman Kent Carlson for his efforts in finding four candidates to serve on the Planning Commission.

Councilmember Jewett provided a brief summary of his participation at the Newly Elected Officials Seminar in January.

**7. UNFINISHED BUSINESS**

**A. Review Lake Minnetonka Communications Commission Survey**

The Council reviewed and submitted a survey from the Lake Minnetonka Communications Commission on service priorities. Further discussion was held on a variety of cable issues facing the LMCC.

**B. Other**

Discussion was held on improving the dissemination of information for the public to become more knowledgeable on issues coming before the Deephaven Planning Commission. Discussion was held on posting packets, plan details, and application information on the City Webpage.

Mayor Skrede recommended that the Planning Commission review ways to improve public awareness on variance requests and planning issues at an upcoming Commission meeting.

**8. DEPARTMENT REPORTS**

**A. Police Department**

Police Chief Johnson briefly discussed the February Incident Reports. Further discussion was held on assists provided to outside agencies.

Councilmember Gustafson noted that the number of assists indicate that our Police Department is subsidizing other agencies, which does not benefit the rapid response of our police to our own residents.

Chief Johnson agreed that this is not acceptable and our officers realize that fact. He stated that we seldom assist other agencies unless at least two officers are present so that one can continue to patrol in Deephaven.

Mayor Skrede noted that we are paid by Woodland for police service and not South Lake.

Further discussion was held on a burglary on Western Road and on an upcoming emergency management training session for elected officials.

**B. Excelsior Fire District**

Fire Board Liaison Steve Erickson stated that the Fire Chief provided a thorough update on staffing needs at the February 25<sup>th</sup> Work Session.

**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:

- April Newsletter
- Annual Financial Audit
- Five-year cost summaries of engineering fees and plan review / building permit inspection fees.

**9. ADJOURNMENT**

Motion to adjourn by Councilmember Kask, seconded by Councilmember Erickson. Motion carried 5-0. The meeting adjourned at 9:45 p.m.

Respectfully submitted,  
Dana H. Young  
City Administrator