

**DEEPHAVEN CITY COUNCIL MEETING
THURSDAY, MARCH 5, 2020
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmember's Melissa McNeill, Kent Carlson, and Tony Jewett

ABSENT: Councilmember Steve Erickson

STAFF: Police Chief Cory Johnson and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

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

- A. Approve February 3, 2020 Council Minutes
- B. Approve Verifieds
- C. Approve 2020 Street Sweeping Bid
- D. Approve 2020 Street Striping Bid
- E. Reappoint John Studer, John Daly & Doug Nagle to Planning Commission
- F. Approve Special Event Permit for Tour de Tonka
- G. Authorize Hiring New Zoning Coordinator

Seconded by Councilmember McNeill. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

Senator Dave Osmek was present to provide the updated on recent legislative activities:

- He worked on a bi-partisan effort to update a light bulb incentive bill that includes LED bulbs
- He stated that SF 39, which includes the Northome Bridge Bond funding, is going to be put into the bonding bill. Mayor Skrede asked if there is going to be a bonding bill this session. Senator Osmek stated that he is optimistic. He stated that the \$1 billion has been discussed as the overall cost for the bonding bill, which he thinks is too high and wants a more realistic number. He stated that he wants the bonding bill to include money for bridges and roads.

- He will be working on legislation to allow cities with little or no population or land mass change to be exempt from having to revise their Comprehensive Plan every ten years, which is currently required by the Metropolitan Council. He stated that it is an expensive process for those cities that do not have any substantial changes to their Comp Plan and to the Metropolitan Council who have to review the plans. He stated that he is looking to draft legislation that would allow cities of a certain size to simply submit a one page document if there are no changes to their Comp Plan.
- He stated that he would like to make the agenda, minutes and video recordings of the Metropolitan Council and their citizen advisory boards more available to the public.
- He stated that he voted against the opioid bill and explained that he didn't support the bill due to the proposed funding mechanism for the bill, which proposed a fee on doctors and pharmaceuticals. He stated that this is a global problem and should be funded from the \$1.5 billion dollar surplus. He stated that the opioid bill has a relatively minor cost of \$20 million. He concluded by saying that he just wants the fee to be fair.

Mayor Skrede asked if there were any questions from the Council.

Councilmember Jewett stated that he had talked to Senator Osmek earlier about the historic designation issue where the homeowner's consent would be needed if something is declared historic.

Senator Osmek stated that there wasn't anything he could do about this issue at the time but will see what he can do. He stated that you should have rights as the property owner.

The Council thanked Senator Osmek for his update.

5. PLANNING & ZONING REQUESTS

A. Consider the Variance Request of Lawrence & Rebecca Parkhurst to encroach into the front yard setback in conjunction with a garage addition at 4015 Heathcote Road

Administrator Young presented the staff report. He said that the property owners are requesting a variance to build a garage addition on their property. The proposal would replace the existing attached 2-car garage with an attached 3-car garage. The property is a 48,579 square foot R-2 lot. He stated that the house was constructed in 1961 according to Hennepin County Records. The existing closest front encroachment of the house is 42 feet and the proposed garage addition would be 48.3 feet from the front property line. Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet. The applicants are seeking a variance of 1.7 feet from the minimum required front yard setback.

He stated that the location of the proposed garage is set further back than the front face of the house and the alignment of the garage is reasonable given the existing location of the house on the property. There is also a sanitary sewer easement that runs through the property just behind the proposed addition. The encroachment is a minor change from existing conditions and staff is supportive of the request.

Administrator Young stated that Staff recommends approval of the variance request of Lawrence and Rebecca Parkhurst to encroach 1.7 feet into the minimum required front yard setback in conjunction with the construction of an attached garage at 4015 Heathcote Road, as proposed.

Young listed the possible findings for approval:

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

Yes. The applicant is seeking to vary from the stated setback standards of the ordinance to improve an existing non-conforming house constructed in 1961, per Hennepin County tax records. The expanded conditions are minor and remain in harmony with the purpose and intent of the ordinance.

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

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

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

The minor encroachment of the garage addition is reasonable and is setback further than the front façade of the existing house.

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

Yes. The existing house was constructed in 1961, and the front yard setback is nonconforming. There is also a sewer easement to the rear of the proposed expansion. Expanding the garage that aligns with the house and does not interfere with the sewer easement is difficult without a variance.

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

The proposal would not alter the essential character of the locality. The proposed project is of a scope and scale comparable to the existing conditions on the property, while the area of proposed encroachment is minor.

Young concluded his staff report.

Councilmember McNeill noted that this was the easiest variance request to come before the Council all year.

Motion by Councilmember Carlson to approve the request based on the recommendation, findings, and conditions of the Planning Commission for the garage addition at 4015 Heathcote Road. Motion was seconded by Councilmember Jewett. Motion carried 4-0.

B. Consider the variance request of Rodney & Kristen McCormick to encroach into the side yard setback in conjunction with a garage addition at 4224 Heathcote Road

Young presented the staff report. He stated that the property owners are requesting a variance to build a garage & house addition on their property. The proposal would replace the existing attached single-story, 2-car garage with an addition that includes attached 3-car garage, mudroom, and living space above the garage. The property is a 44,899 square foot R-2 lot. The house was constructed in 1965 according to Hennepin County Records.

The house sits 38.5 feet off of the east property line, and the applicants are proposing an addition that would be as close as 14.3 feet from this lot line. Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet and the applicants are seeking a variance of 5.7 feet from the minimum required side yard setback.

He stated that the existing 22 x 24 foot garage is small by modern 2-car garage standards and the applicants are proposing a 3-car garage with living space above as well as a mudroom area. While the property has ample space to the west, the configuration of the house makes the addition to the east a logical choice. The proposed 3-car garage width is reasonable at 12 feet wide per stall. It is the addition of the mudroom that staff views as the feature of the addition that could be modified if the city felt that the encroachment was problematic. However, staff appreciates the desires of the property owners to have a mudroom area rather than a direct entry from the garage to the kitchen.

Taken as a whole, the proposed house would be modestly sized for the property, and it is simply the positioning of the house on the lot that is creating issues for the property owners. The neighboring house to the east is approximately 45 feet off of the shared property line, and the proposed addition would be less than 24 feet tall. Cheryl Wilson, the neighbor to the immediate east, sent an email in support of the project.

Young stated that Staff recommends approval of the variance request of Rodney and Kristen McCormick to encroach 5.7 feet into the minimum required side yard setback in conjunction with the construction of an attached garage at 4224 Heathcote Road, as proposed.

Young listed the possible findings for approval:

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

Yes. The applicant is seeking to vary from the stated setback standards of the ordinance to improve an existing house constructed in 1965, per Hennepin County tax records. The expanded conditions remain in harmony with the purpose and intent of the ordinance in that they generally seek to maintain appropriate separation distances between the houses given the existing constraints.

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

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

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

Given the position of the house and the overall size of the house relative to the lot size, the request is reasonable. The overall scale of the house is modest relative to the property size and other houses within the neighborhood, and the addition is an appropriate modernization of an existing house.

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

Yes. The existing house was constructed in 1965, and is positioned within the southeast quadrant of the property. The existing configuration of the house and the positioning of the house in the property create unique circumstances that limit the options to expand the house without encroaching into the side yard setback.

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

The proposal would not alter the essential character of the locality. The proposed project is of a scope and scale comparable to the neighboring properties and, as proposed, there would be approximately 60 feet of separation between the adjacent houses.

Administrator Young concluded his staff report.

Councilmember Carlson stated that he thought it was a reasonable request to have a mudroom off of the garage.

Councilmember McNeill added that she was okay with the proposed 3-car garage.

Motion by Councilmember McNeill to approve the request based on the recommendation, findings, and conditions of the Planning Commission for the garage & home addition at 4224 Heathcote Road. Motion was seconded by Councilmember Carlson. Motion carried 4-0.

C. **Consider the variance request of Karen Schreiber to exceed the maximum permitted impervious surface coverage, exceed the maximum permitted grade alteration, and to regrade within a bluff impact zone at 19745 Lakeview Avenue**

Administrator Young presented his staff report. He stated that Section 1302.05(2) of the zoning ordinance limits maximum impervious surface area to 25% and the applicants are requesting an impervious surface area of 34.5% which is a reduction of 35.6%. Section 1312.04 of the city ordinance limits the maximum grade alteration to 3 feet and the applicants are requesting to alter the existing grade by up to 4 feet in some areas. Sections 1345.67 and 1350 of the city ordinance restrict grading within steep slope and bluff areas. The existing and proposed stairway is located within a bluff.

He stated that the property owner is building a stairway to the lake which will require re-grading of the bluff area to accommodate retaining walls. The stairway is slightly different than the

existing stairway and is within a bluff impact zone. The property is currently nonconforming for impervious area at 35.6%. The property is a 19,420 square foot R-3 property.

He stated that Section 1302.05(2) of the city ordinance limits maximum impervious surface area to 25% of the lot area and the applicants are requesting an impervious surface area of 34.5%. Existing conditions on the property are 35.6%. The city does not typically count retaining walls in impervious calculations and removing these from the calculations gives an existing impervious area of 34.4% and a proposed impervious area of 31.9%. The proposal is a reduction from existing conditions.

Technically, the impervious surface area variance would require mitigation to 25% impervious. In this case, however, the applicant is simply reconfiguring and reducing existing at-grade impervious areas and staff is recommending that mitigation not be required for the property.

He stated that Section 1312.04 of the zoning ordinance requires a variance for any grade alteration greater than three feet at any point. The applicant is proposing grade alteration of up to 4 feet, and is seeking a variance of 1 foot from the maximum permitted grade alteration. The proposed stairs are supported by a series of retaining walls. Two of the twenty walls have heights of 4 feet. Given the slope change, staff sees this as a minor and unavoidable situation and is supportive of this aspect of the request.

He stated that Section 1345.04 of the city code defines “Bluff Impact Zone” as a bluff and land located within 20 feet from the top of a bluff. Section 1350 of the city code regulates grading within the bluff and bluff impact zone. The stairs themselves meet the requirements of Section 1350 which outlines the limitations of stairways, lifts, and landings.

He stated that the city engineer reviewed the proposal and requested that erosion control measures should be indicated on the plan, and that disturbed green areas should be restored with plantings, staked sod, or seed and erosion control blanket with 7 days of completing construction.

He stated that Staff is supportive of this aspect of the proposal since it generally maintains the footprint of the existing stairway without disturbing other areas of the bluff impact zone.

He stated that Staff recommends approval with conditions of the variance requests to exceed the maximum permitted impervious surface area by 6.9%, exceed the maximum permitted grade alteration by up to 1 foot, and to regrade within the bluff impact zone for the property at 19745 Lakeview Avenue Road, as proposed.

The recommendation is conditioned that the applicants meet the requirements and specifications of the city engineer.

Young listed the possible findings for approval:

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

Yes. The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The project is attempting to replace a stairway within a bluff area. The proposal is in harmony with the purpose and intent of the ordinance since it is generally replacing the stairway within the existing footprint and avoiding additional grading and impervious impacts.

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

The request is consistent with the Comprehensive Plan's Protection Elements Goals and Policies which seeks to maintain natural features and major assets such as lakes, woodlands, drainage ways, slopes and wetlands.

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

Yes. A stairway to the lake is reasonable and legal request. The grading impacts are in support of a stairway that is generally a replacement of existing conditions and the impervious area is a reduction from existing conditions.

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

Yes. The property has an existing stairway and deck in the same general area of the bluff. The impervious conditions are existing conditions to the property. The stairway is in bluff area and meets the "slopes prone to severe erosion criteria" and creating an at-grade stairway is difficult without exceeding the grading limitations.

(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 proposal is similar in scope and scale to the existing stairway on the property.

Administrator Young concluded his staff report.

Mayor Skrede asked if this project was just re-doing the stairs, with minimal disruption, and that was all.

Bob Renaud, with MN Green, stated that there will be minimal disturbance with this project.

Mayor Skrede asked if he was replacing the retaining walls.

Bob Renaud stated that the existing timber walls need to be replaced and they plan on replacing them with stone walls, which are much more durable.

Mayor Skrede stated that he would prefer to see the use of sod over seed and the use of erosion control blankets.

Bob Renaud stated that some areas are not conducive to using sod. He stated that they will use erosion blankets in these areas.

Councilmember Carlson asked what they intended to plant.

Bob Renaud stated that they will work with Prairie Restoration on the plantings and will have them do the hydro seeding as well. He stated that they plan on entering into a 3-year maintenance agreement with Prairie Restoration. Councilmember Carlson noted that Prairie Restoration is a good company.

Councilmember McNeill asked about the need for soil engineering to ensure slope stability.

Bob Renaud stated that they will not be disturbing the whole hillside, just those portions that need to be repaired.

Councilmember McNeill asked how the new concrete walls, which are much heavier, will affect the slope stability.

Bob Renaud stated that they will be working with heavier rocks at the bottom and will work their way up the hillside. He stated that they will use field stone around the bigger rocks and drain tile to prevent water infiltration.

Councilmember Jewett asked how they planned to get the heavy rocks to the bottom.

Bob Renaud stated that they planned to use an excavator.

Mayor Skrede asked if all timber walls in this area were to be removed.

Bob Renaud stated that this was correct and they planned to replace the timber with rock walls.

Mayor Skrede noted that the disturbance appears to be minimal.

Councilmember McNeill stated that she was still concerned regarding soil stability.

Bob Renaud stated that he could add this to their plan.

Councilmember Jewett noted that the City Engineer addressed this issue by requiring erosion control measures on the plan and that disturbed green areas should be restored with plantings, staked sod, or seed and erosion control blanket with 7 days of completing construction.

Councilmember McNeill stated that she was fine with that requirement.

Motion by Councilmember McNeill to accept the recommendation, findings, and conditions of staff and the Planning Commission to approve with conditions the variance requests to exceed the maximum permitted impervious surface area by 6.9% (the impervious surface area calculation is 31.9%, which reflects the City of Deephaven's calculation of hardcover), to exceed the maximum permitted grade alteration by up to 1 foot, and to regrade within the bluff impact zone for the property at 19745 Lakeview Avenue Road, subject to the condition that the applicant meet the requirements of the City Engineer. Seconded by Councilmember Jewett. Motion carried 4-0

D. Consider adoption of Ordinance 13-80 amending Deephaven zoning code Section 1310.03 regarding Short Term Rental.

Administrator Young provided an update on the Planning Commission's discussion during their public hearing on the proposed adoption of this ordinance. He stated that the Planning Commission supported the ordinance because they thought that the timing was right to adopt this ordinance before the problem got out of hand. He noted that he had recently received a call from the City of Prior Lake, who were also discussing problems associated with short term rentals, and a call from a realtor stating that she had a client interested in purchasing a property in Deephaven to use for short term rentals.

Councilmember Carlson stated that the Planning Commission was pleased that the ordinance would allow short term rentals for such events as a future Ryder Cup or regatta.

Councilmember McNeill stated that she felt it was better to get in front of this issue.

Councilmember Jewett stated that he had a problem with the ordinance limiting short term rentals to only two tenant groups. He stated that he rents properties and has occasionally gone through more than two tenant groups if a tenant leaves early.

Councilmember Carlson stated that the ordinance prohibits short term rentals. He stated that Councilmember Jewett has renters enter into long term leases, they just happen to leave early.

Police Chief Johnson noted that there are 30-day rentals in town already.

Councilmember McNeill stated that the ordinance gives us enforcement action, which we didn't have before.

Councilmember Carlson added that it is concerning that we're getting calls from realtors asking about short term rentals. He stated that we are a single family bedroom community.

Mayor Skrede stated that he is concerned with the enforcement of this ordinance.

Councilmember Carlson suggested that we could ban short term rentals entirely.

Councilmember McNeill noted that the ordinance needs to include the limit of two tenant groups to prevent people from renting their home multiple times if you only restrict rentals to less than 30 consecutive calendar days.

Motion by Councilmember Carlson to adopt Ordinance No. 13-80, an Ordinance amending the Deephaven Zoning Code Section 1310.03 regarding Short Term Rentals as amended. Seconded by Councilmember McNeill. Motion carried 4-0.

6. UNFINISHED BUSINESS

A. Adopt Resolution No. 08-20, Approving Bid on 2020 Street Improvement Projects

Administrator Young stated that the following bids were received in compliance with an advertised notice for bids for the 2020 Northome Blvd & Hillcrest Road Street Improvement Project:

<u>Bidder</u>	<u>Total Bid</u>
Northwest Asphalt	\$351,781.20
Wm. Mueller & Sons	\$372,332.70
GMH Asphalt	\$376,565.75
Valley Paving	\$377,753.30
S.M. Hentges & Sons	\$386,181.90
Molnau Trucking	\$401,851.50
Park Construction	\$413,050.00
Omamm Contracting	\$424,113.50
C.S. McCrossan	\$467,364.93
Asphalt Surface Technologies	\$469,151.50
Bituminous Roadways	\$492,723.00

He stated that the 2020 budget for this project was \$509,000.

Mayor Skrede noted that CenterPoint Energy will need to do some gas main work on both streets but will start their repair work on Northome Blvd first to allow the contractor to get started on Northome Blvd as soon as possible.

Motion by Councilmember McNeill to adopt Resolution No. 08-20, Approving the Bid submitted by Northwest Asphalt in the amount of \$351,781.20 for the 2020 Street Improvement Projects. Seconded by Councilmember Jewett. Motion carried 4-0.

B. Adopt Resolution No. 09-20, Approving Bid on 2020 Shuck Park Tennis Court Project

Administrator Young stated that the following bids were received in compliance with a request for bids for the 2020 Shuck Park Tennis Court Resurfacing Project:

<u>Bidder</u>	<u>Bid Price</u>
Minnesota Roadways	\$ 84,295.00
Sunram Construction	\$ 85,700.00
Omamm Contracting	\$ 88,009.40
K.A. Witt Construction	\$ 90,347.00
Northwest Asphalt	\$ 99,000.00

Blackstone Contractors	\$113,320.00
Barber Construction	\$120,200.00
Urban Companies	\$158,740.00

He stated that the 2020 budget for this project was \$100,000.

Motion by Councilmember Jewett to adopt Resolution No. 09-20, Approving the Bid submitted by Minnesota Roadways in the amount of \$84,295.00 for the 2020 Shuck Park Tennis Court Project. Seconded by Councilmember McNeill. Motion carried 4-0.

C. Approve Probationary Period for Officer Jace Rosenfeld

Police Chief Johnson stated that Officer Jace Rosenfeld's one-year probation ends on March 12th. He stated that he is very happy that Jace is back with the department. He has done a good job and will serve as Field Training Officer to train all future police officers.

Mayor Skrede agreed that Jace Rosenfeld has been a great addition.

Motion by Councilmember Carlson to approve the successful completion of the probationary period for Officer Jace Rosenfeld. Seconded by Councilmember McNeill. Motion carried 4-0.

D. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Other

Discussion was held on holding a Council Work Session on April 6th at 5:00 p.m. to discuss a variety of 2020 issues.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson presented the February 2020 Police Report for Council review and discussed a recent case involving mail theft.

B. Excelsior Fire District

There was nothing new to report on the Excelsior Fire District.

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
- Engineering & Inspection Service Costs
- Update on Fiscal Agent Services for the Excelsior Fire District

Administrator Young stated that 414 voted at Precinct 1 for a voter turnout of 32.5% and 462 voted at Precinct 2 for a voter turnout of 31.4%. He stated that this does not include absentee voting.

9. ADJOURNMENT

Motion to adjourn by Councilmember Carlson, seconded by Councilmember McNeill.
Motion carried 4-0. The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Dana H. Young
City Administrator