

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, MARCH 6, 2017
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmembers Darel Gustafson, Tony Jewett, and Steve Erickson

ABSENT: Councilmember Kent Carlson

STAFF: Police Chief Cory Johnson, 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 February 6, 2017 & February 15, 2017 City Council Minutes
- B. Approve Verifieds
- C. Approve 2017 Street Sweeping Bids
- D. Approve 2017 Street Striping Bids
- E. Approve Use of Robinson's Bay Beach for Yoga Classes
- F. Appoint Kevin Wells & Tracy Whitney to Park Committee
- G. Reappoint Scott Ferguson to Park Committee
- H. Approve 2017 Park Committee Chair & Vice-Chair
- I. Approve January 2017 Treasurer's Report
- J. Approve 2017 Planning Commission Vice-Chair
- K. Reappoint John Studer to Planning Commission
- L. Appoint John Daly to Planning Commission

Seconded by Councilmember Erickson. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. PLANNING & ZONING REQUESTS

A. Conditional Use Permit request of Lakeside Nails and Spa to install illuminated and non-illuminated commercial signage at 18202 Minnetonka Blvd, Suite 101B

Zoning Coordinator Cooney summarized the staff report. He said that Lakeside Nails and Spa recently opened for business at 18202 Minnetonka Boulevard, Suite 101B and installed new signage without first getting a Conditional Use permit. He said that the business owner, Phong Tran, has been working with staff to get the required permit. Cooney said that the business is requesting a Conditional Use Permit to construct a 16 square foot illuminated business identification sign that would be attached to the structure and window graphics totaling 7.9 square feet. He said that the business, located in the C-1 (Commercial District 1) zoning district, is a permitted use within the zoning district. Cooney said that the image on page three of this staff report shows the existing signage on the property including the illuminated sign, the window graphics, and the temporary banner for the grand opening of the business.

Cooney said that the zoning ordinance states that no sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a Conditional Use Permit. He said that it further states the content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Cooney noted that the 8 foot x 2 foot illuminated business identification sign is lit internally with an LED light. He said that the size of the sign is the same as the sign approved in 2016 for Innate Health Chiropractic in the same building. Cooney said that Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM. He said that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate during business hours only and that the business hours listed on Lakeside's website were: Monday through Friday 9:30 a.m. to 7:30 p.m.; Saturday 9:30 a.m. to 6 p.m.; Sunday: 11 a.m. to 6 p.m.

Cooney said that Section 1115.09(a) states that the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs. He said that the front facade of this portion of the building totals 392 square feet. Cooney noted that the proposed sign area of the window graphics and illuminated sign total 23.9 square feet, which equals 6.1% of the front façade area.

Cooney said that he recommends approval of the conditional use request to install 23.9 square feet of commercial signage, including a 16 square foot illuminated sign. He said that there is a need to advertise the business and upon review of the application, it was determined there would no negative impact on the development of the community, the character of the community or on the health, safety and general welfare of the occupants of surrounding lands. Cooney said that the proposal would not impact traffic conditions or impact property values. He said that the recommendation is conditioned that the hours of illumination be as outlined in Section 1305.03 of the ordinance.

Cooney said that the Planning Commission held a public hearing on the Conditional Use Permit request at their February 21 meeting and recommended approval of the request based on the findings and conditions of staff.

Cooney concluded his staff report.

Councilmember Jewett asked if the banner sign was part of the square footage calculation. Cooney said that the banner was a temporary sign for the grand opening of the business and it was not calculated as part of the square footage.

Motion by Councilmember Gustafson to approve the Conditional Use Permit request by Lakeside Nails and Spa based on the recommendation and findings of the Planning Commission. Motion was seconded by Councilmember Erickson. Motion carried 4-0.

B. Variance request of Stinson Builders to exceed the maximum permitted grade alteration in conjunction with the construction of a new house at 3675 Northome Road

Zoning Coordinator Cooney summarized the staff report. He said that Stinson Builders, builder for property owners, is requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction a new house at 3675 Northome Road. Cooney said that the applicant is proposing land alteration of up to 6 feet and is seeking a variance of 3 feet from the maximum permitted land alteration.

Cooney noted that city records do not indicate that the property has ever had a house on it. He said that while a significant portion of the lot will need to be regraded to accommodate the house and the driveway, only those areas on the walkout/lakeside portion of the property trigger the need for a variance.

Cooney said that the applicant has stated that their principal reason for requesting the variance is to allow wheelchair accessible egress from the lower level. Cooney said that the home is designed to be accessible, and will include an elevator. He noted that the applicant states that much of the property will remain in its natural state, with areas outside the immediate vicinity of the house remaining wooded and unaltered.

Cooney said that the principal justifications for land alteration restrictions are to limit properties from circumventing the house height limitations by building up the grade around a property, or altering overall drainage patterns in a significant or detrimental way. He said that neither of these concerns are the case in this proposal.

Cooney noted that a portion of the property contains a wetland which will not be impacted by the building area. He said that the Minnehaha Creek Watershed District will review the survey and issue permits at the building permitting phase.

Cooney noted that the property was assessed \$2,400 for a sewer lateral and \$2,460 for sewer trunk fees when the sewer system was originally installed. He said that, for those properties that

were originally assessed, but upon which a home was not built, it is the policy of the city to charge an additional \$2,400 at the time of building permit to account for ongoing maintenance to the system during that time.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted grade alteration by 3 feet for the property at 3675 Northome Road, as presented. He said that his recommendation is based on the following findings:

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

Yes. The purpose and intent of the ordinance is to limit properties from circumventing the house height limitations by building up the grade around a property or altering overall drainage patterns in a significant or detrimental way, neither of which is the case in this proposal.

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

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage safe, healthy and quality housing that respects the natural environment of the community.

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

Yes. The proposed house and grading are reasonable for the property, and are comparable in scope and scale to surrounding properties.

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

Yes. The property has never had a house on it before, and therefore additional regrading is required to create the appropriate buildable area.

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

The proposed grading alterations would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to what exists today.

Cooney said that the Planning Commission held a public hearing on the request at their February 21 meeting. He said that the commission raised questions about the location and total impacted area of the variance request and the commission also raised questions about the delineation of the existing wetland. Cooney said that the Planning Commission recommended approval of the request conditioned that the applicant provide an updated site plan showing the areas and approximate square footage that trigger the variance request as well as documentation from the Minnehaha Creek Watershed District confirming the delineation and approval of the wetland areas. He noted that both items have been attached to this staff report.

Cooney concluded his staff report.

Councilmember Jewett asked if the elevations shown on the survey were before construction. Jason Stinson, of Stinson Builders, applicant, stated that the survey showed the existing elevation contours in light gray and the proposed elevation contours in a black dashed line.

Councilmember Erickson said that he was surprised that a home had never been built on this parcel.

Motion by Councilmember Erickson to approve the variance request of Stinson Builders to exceed the maximum permitted grade alteration in conjunction with the construction of a new house at 3675 Northome Road based on the recommendation and findings of the Planning Commission. Motion was seconded by Councilmember Jewett. Motion carried 4-0.

C. Variance request of the minimum front yard setback for the expansion of an attached garage at 3965 Walden Road

Zoning Coordinator Cooney summarized the staff report. He said that Matt and Lisa Keithly, property owners, are requesting a variance to expand an existing attached 2 car garage into a 3 car garage. He said that the expansion would require a variance of the front yard setback. Cooney said that the property is a triangular shaped, undersized R-2 property and at 18,832 square feet in size, it is 47% of the minimum lot size for an R-2 property.

Cooney said that the project proposes a 14' x 24'-2" garage addition which would sit 31'-1" off of the front property line. He said that the proposed addition maintains the existing line of the garage, but because of the triangular nature of the property, the addition is closer to the front property line by approximately 4 feet.

Cooney said that the zoning ordinance requires a front yard setback of 50 feet and that the applicant proposes a front yard setback of 31 feet, 1 inch. He said that the applicant is seeking a variance of 18 feet, 11 inches from the minimum required front yard setback.

Cooney noted that the requested encroachment is caused by the existing non-conforming setback coupled with the triangular shape of the lot, both of which are conditions unique to the property and not created by the homeowner. He said that the proposal complies with the remaining setback requirements, building coverage limitations, and height limitations outlined in Section 1302.04, and the maximum permitted grade alteration permitted in Section 1312.04. He said that no stormwater mitigation requirements are triggered by the expansion.

Cooney said that he recommends approval of the variance request to encroach 18 feet, 11 inches into the minimum required front yard setback for the proposed expansion of the principal structure at 3965 Walden Road, as presented. He said that his recommendation was based on the following findings.

(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 1958, per Hennepin County tax records.

(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 expansion of the non-conforming footprint of the house is reasonable, and the additions remain within the scope and scale of surrounding properties.

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

Yes. The existing house was constructed in 1958 and has legal non-conforming setbacks. The proposed encroachments are due to the both non-conformities of the existing structures and the triangular shape of the lot.

(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 a modest expansion of existing conditions.

Cooney said that the Planning Commission held a public hearing for the variance request at their February 21 meeting and recommended approval based on the findings of staff.

Cooney concluded his staff report.

Mayor Skrede said that he wanted to confirm that the height of the garage would not be taller than the existing garage. Cooney said that was what the plans showed, but that a condition could be added to the motion. Mayor Skrede said that was not necessary, but he wanted to make sure it was clear that was what is being approved.

Councilmember Jewett said that he would like future surveys to show the setbacks and buildable area instead of just measurements from the property line.

Motion by Councilmember Gustafson to approve the variance request of the minimum front yard setback for the expansion of an attached garage at 3965 Walden Road based on the recommendation and findings of the Planning Commission. Motion was seconded by Councilmember Erickson. Motion carried 4-0.

6. NEW BUSINESS

A. Approve Special Event Permit for Healthy Kids Running Series (Lindsay Vogt)

Administrator Young stated that Lindsay Vogt (18720 Lake Avenue) is sponsoring the 2017 Healthy Kids Running Series, a non-profit running event for kids from pre-kindergarten to middle school. He stated that this is the second consecutive year that this event has been held at Thorpe Park.

He stated that the events consist of a 50-yard dash through a one-mile run and will be held on five consecutive Sundays for one hour from 4:30 p.m. to 5:30 p.m. The dates of the running series are as follows:

- April 23, 30
- May 7, 14, 21

He stated that the event series does not require police, fire or emergency medical personnel in attendance.

Mayor Skrede asked Police Chief Johnson what factors determined that no public safety personnel are needed at this event.

Chief Johnson stated that the type of event dictates the level of public safety involvement. He stated that this event does not involve any high risk activities.

Mayor Skrede asked if the entire event will be held at Thorpe Park.

Lindsey Vogt stated that it will be held entirely at Thorpe Park using both the path and the grass area for the events.

Councilmember Jewett asked how the event is publicized.

Lindsey Vogt stated that they have sponsors, use social media, flyers, promotion at the High School, word-of-mouth, and Next Door Deephaven.

Mayor Skrede asked if she ever sees a time when the event gets too big.

Lindsey Vogt stated that she hopes to see the event grow, in which case they would find another venue.

Councilmember Gustafson stated that 80 participants is not an overly large number. He stated that there are often 120 kids using Thorpe Park when soccer and baseball are in full swing. He stated that this event will not overload the park.

Motion by Councilmember Erickson to approve the Special Event Permit for the Healthy Kids Running Series sponsored by Lindsay Vogt to be held at Thorpe Park from 4:30 p.m. to 5:30 p.m. on April 23, 30, May 7, 14, & 21. Seconded by Councilmember Gustafson. Motion carried 4-0.

B. Approve 12-Month Probationary Period for Officer Ethan Read

Police Chief Johnson stated that Police Officer Ethan Read will complete his one year mandatory probation period on March 21, 2017. He stated that Officer Read is an excellent young officer who has done a good job and is very professional at what he does. He stated that he recommends that Officer Read's employment status be changed to full-time permanent employee and his wage be adjusted to the next pay level subject to the satisfactory completion of his one-year probationary period on March 21, 2017.

Motion by Councilmember Gustafson to approve Officer Read's employment status from probationary employee to full-time permanent employee and his wage be adjusted to the next pay level subject to the satisfactory completion of his one-year probationary period on March 21, 2017. Seconded by Councilmember Erickson. Motion carried 4-0.

C. Approve City Purchase of Firearms for Police Officers

Chief Johnson stated that the City of Deephaven and Police Department policy has always been that the officer must purchase their own handgun at their expense when hired. He stated that the department is looking to move from .40 caliber handguns to 9mm handguns. He stated that the technology has changed in ballistics and the 9mm ballistic round is nearly identical to .40 caliber ammunition. He stated that the 9mm handgun is easier to shoot, has more rounds, and is lighter on the duty belt. He stated that carrying the same make and caliber of handgun also helps in extreme situations where one officer runs out of ammunition and another officer can give him/her one of his magazines.

He stated that during his research, most police departments purchase handguns for officers, although some still require the officer to pay for their own gun. He stated that it is his opinion that it is important to be uniform and have all officers carry the identical make and caliber of gun. He stated that this change to a new handgun will affect all the officers and he didn't think it was fair to require them to purchase the new gun, particularly in those instances where their current gun is not all that old.

He stated that he obtained a few quotes from Glock and the cost would be approximately \$3,300.00 to purchase seven new handguns. He noted that per department policy, officers will be responsible for holsters and accessories.

Mayor Skrede asked if the guns were the property of the City, would they be required to remain with the City.

Chief Johnson stated that this is something that he is still considering. He stated that few agencies restrict officers from taking their handgun home, but he is not concerned if this were the City's policy because the officers have their own personal guns. He stated that he is leaning towards keeping the guns here.

Mayor Skrede noted that since every officer checks in and checks out of the police office every day, it would be an easy policy to enforce.

Councilmember Erickson agreed that the guns could be kept in their locker.

Mayor Skrede stated that he likes the fact that the weapons stays here, as it would be much cleaner that way.

Chief Johnson stated that this purchase would be an unbudgeted expense and noted that they would receive an agency discount.

Mayor Skrede stated that he likes the idea of providing the officers with what they need and likes the idea that the weapons stay here. He noted that an unbudgeted expense happens every now and then.

Further discussion was held regarding the ballistics of the new Glock handguns vs. that of the current .40 caliber handguns.

Councilmember Jewett asked how long we would keep the new handguns before they were replaced.

Chief Johnson stated that he planned on keeping them for ten years.

Motion by Councilmember Erickson to authorize that the City to purchase seven Glock handguns for our seven Police Officers in the approximate amount of \$3,300.00. Seconded by Councilmember Jewett. Motion carried 4-0.

C. Approve Amendment to the LMCC Joint Powers Agreement

Administrator Young stated that the purpose of the proposed amendment to the Lake Minnetonka Communications Commission Joint Powers Agreement is to protect Member Cities in the event that an existing Member City decides to leave the Commission. The amendment states that if a city chooses to leave the LMCC, that city would be responsible for any costs incurred by the LMCC when they leave. He stated that this amendment is in response to the costs associated with rebuilding Mediacom's cable plant to allow the LMCC channels to be viewed only by residents of Member Cities.

Mayor Skrede asked if this amendment is new language.

Councilmember and LMCC Representative Gustafson stated that it is new language and simply a common sense change to the Joint Powers Agreement.

Councilmember Jewett asked if this amendment was supported by the LMCC Board.

Councilmember Gustafson stated that this amendment was supported by the entire LMCC Board. Motion by Councilmember Gustafson to approve the Amendment to the LMCC Joint Powers Agreements as presented. Seconded by Councilmember Erickson. Motion carried 4-0.

D. Other

There was no other New Business this evening.

7. UNFINISHED BUSINESS

A. Other

Councilmember Gustafson provided an update on recent LMCC activities. He stated that Frontier has expressed an interest in obtaining a franchise agreement to provide cable within their current footprint in the western suburbs. He stated that the LMCC has asked their attorney to draft a franchise agreement that would provide Frontier with the opportunity to operate within

their own existing footprint. He added that CenturyLink has also expressed an interest in locating within the franchise area as well.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided an update on the February Incident Report,

B. Excelsior Fire District

EFD Liaison Erickson stated that there has not been a meeting of the EFD Board since the last update.

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

9. ADJOURNMENT

Motion to adjourn by Councilmember Gustafson, seconded by Councilmember Jewett. Motion carried 4-0. The meeting adjourned at 8:10 p.m.

Respectfully submitted,
Dana H. Young
City Administrator