

**DEEPHAVEN CITY COUNCIL MEETING  
THURSDAY, NOVEMBER 4, 2019  
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 Steve Erickson

ABSENT: Councilmember Tony Jewett

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 Erickson to approve the Consent Agenda, consisting of the following items:

- A. Approve October 21, 2019 Minutes
- B. Approve Verifieds
- C. Approve September 2019 Treasurer's Report
- D. Approve Amendment to Lease Agreement on Lakeview Street End
- E. Adopt Resolution No. 34-19, Designating Polling Places
- F. Adopt Resolution No. 35-19, Selecting to Not Waive Tort Liability Limits

Administrator Young stated that MN State Statutes has established tort liability limits for municipalities that limit the amount an individual claimant can recover to no more than \$500,000 on any claim to which the statutory tort limits apply. Each year, the City has to provide documentation to the League of MN Cities Insurance Trust whether the Deephaven City Council prefers to waive or not waive these tort liability limits. He stated that the Deephaven City Council has always chosen to not waive these statutory tort limits in order to protect the City from excessive liability claims and avoid the cost of acquiring excessive liability coverage.

Seconded by Councilmember McNeill. Councilmember Carlson abstained. Motion carried 3-0.

**4. MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

## 5. PLANNING & ZONING REQUESTS

### A. Consider the variance requests of Minnetonka School District No. 279, for the Minnetonka Community Education Center property, to exceed the maximum permitted grade alteration, exceed the maximum permitted impervious area, exceed the maximum allowable structural footprint, encroach into a rear yard setback, and exceed the maximum allowable structure height in conjunction with a building addition and retaining walls at 4584 Vine Hill Road and retaining walls at 4452 Vine Hill Road

Zoning Coordinator Cooney presented the staff report. He said that Minnetonka School District No. 276 is requesting a number of variances in conjunction with a building addition for the Minnetonka Community Education Center. He noted that the property is zoned R-2 and the use of the property as a school is a conditional use within the zoning district. Cooney said the applicants are proposing a 2,130 square foot building expansion for the property. He said the expansion will also require that some of the parking and drive areas on the property be reconfigured to accommodate the new building footprint.

Cooney stated that Section 1302.04(4) of the city ordinance limits the maximum building height to 36 feet. He said the applicants are proposing a building height of 42 feet and are requesting a variance of 6 feet from the maximum permitted building height. Cooney stated that the building height of the addition would match the height of the existing building, and the footprint expansion is minor relative to existing conditions for the property.

Cooney said that Section 1302.04(2) of the city ordinance limits the maximum structural footprint for the property to 6,000 square feet and the applicants are proposing a structural footprint of 28,905 square feet which is an increase of 2,130 square feet from existing. He said the applicants are seeking a variance of 22,905 square feet from the maximum allowable structural footprint. Cooney noted that the property is highly nonconforming in this regard, and the proposed footprint expansion is an 11% increase from existing conditions. He said the size and location of the proposed addition seem appropriate given the current configuration of the property. Cooney said that unless the city were to take the position that the property is unable to support further expansion, the proposed footprint expansion is reasonable and staff is supportive of this aspect of the request.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a rear yard setback of 25 feet and a side yard setback of 20 feet. He said the applicants propose a rear yard setback of 44.67 feet and a side yard setback of 47.38 for the building. He noted that retaining walls over 3.5 feet are regulated as structures and the proposed retaining walls would have a 2-foot setback from the rear property line and a 0-foot setback for the north side property line. Cooney said that the applicant is seeking a variance of 23 feet from the minimum required rear yard setback and 20 feet from the minimum required north side yard setback. Cooney noted that the retaining wall to the north would continue on into the Deephaven Elementary School property at 4452 Vine Hill Road and the variance would apply to that property as well.

Cooney said that Section 1302.04(2) of the city ordinance limits the maximum impervious area on a property to 25%. He said the applicants are proposing an impervious area of 74% and seeking a variance of 49% from the maximum permitted impervious surface area. He noted that the existing property is at 71% impervious surface area, and the impervious area on the property is proposed to be expanded by .09 acres (approximately 3,920 square feet).

Cooney said that, as a property within the Shoreland Overlay District, city code would require that the property mitigate to 25%, but staff does not feel that level of mitigation is justified given the existing conditions for the property. He said the Minnehaha Creek Watershed District will require mitigation and that they submitted a letter of conditional approval for the proposal. Cooney said the applicants are proposing a significant amount of mitigation for the property and that the city engineer estimates that the proposed system would be able to handle a mitigation volume of up to approximately 50% of the water volume in excess of 25%.

Cooney said that the city engineer has expressed concerns about the location of the mitigation area as well as the outlet for the mitigation due to the proximity to a steep slope (approximate 20% grade) adjacent to Burton Park. Since those concerns were raised, the applicant has revised the proposal and prepared preliminary designs on two different options to relocate the mitigation area.

Cooney said that there was initially some concern that the proposed retaining walls may encroach into a bluff impact zone, which is defined as a bluff and land located within 20 feet from the top of a bluff. He stated that the applicant provided information confirming that the location of the retaining walls is not within the bluff impact zone.

Cooney said that he recommends approval with conditions of the variance requests of to exceed the maximum permitted grade alteration by 6 feet, exceed the maximum permitted impervious area by 49%, exceed the maximum allowable structural footprint by 22,905 square feet, encroach into a rear yard setback by 23 feet, encroach into a side yard setback by 20 feet, and exceed the maximum allowable structure height by 6 feet in conjunction with a building addition and retaining walls at 4584 Vine Hill Road and retaining walls at 4452 Vine Hill Road, as proposed.

He said that the recommendation is conditioned that:

The location and outlet for the proposed mitigation system be relocated, and that the relocated system would be subject to the review and approval of the City Engineer.

All proposed parking and drive areas be beyond the bluff impact zone.

Cooney said that his recommendation is based on the following findings:

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

Yes. 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. The variances are consistent with the current use of the property as an educational building. The scale of the use is a modest expansion from existing conditions, and the city has previously determined that the existing conditions are in harmony with the purpose and intent of the ordinance.

Is the variance consistent with the comprehensive plan?

The subject property is located within the R-2 Residential District and permitted as a conditional use. The 2040 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.

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

The proposed use of the property is reasonable and is an expansion of the current educational activities that take place on the site. The overall expansion is modest relative to the existing nonconforming conditions on the property.

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

The circumstances causing the need for the variance are not caused by the property owner. The unique use of the property as an education center that serves a growing community on a limited site, the existing location and size of the building, and the challenging grades on the rear of the lot are unique circumstances not created by the landowner.

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

The proposal would not alter the essential character of the area since the project is a relatively modest expansion of an existing building, fits within the design and height of the existing building, and is in an inconspicuous location on the property.

Cooney concluded his staff report.

Mayor Skrede asked about the two different options for the mitigation. Cooney said that the city engineer determined that both options would be acceptable but that he wanted to present both to the city council if they had a preference. Mayor Skrede asked Cooney what his preference was. Cooney said that he preferred Option 2 that drained northward and did not release directly adjacent to the Burton Park property.

Councilmember Erickson said that he leaned towards Option 2 as well. Councilmember Carlson agreed and said that there was more room to work with to manage the water with this option.

Mayor Skrede asked Tim Litfin, Executive Director of Minnetonka Community Education, about the change in impervious area. Mayor Skrede said that he thought the expansion was being built over existing impervious. Litfin said that the expansion did not change its location, but that the new impervious came from rerouting the drive lane around the building and replacing lost parking spaces.

Mayor Skrede asked if the parking would be angled parking. Ron Spoden of ATS&R architects, landscape architect for the project, said that the parking is 90 degree parking which is the most practical and least hazardous.

Spoden asked about giving more consideration to mitigation outlet Option 1 per the city engineer's comments. He said that there are greater costs and impacts from Option 2 and that both options outlet near city property.

Councilmember Erickson said that the city engineer only said that Option 1 was acceptable, not preferred.

Paul Bourgeois, finance director for the school district, said that Option 2 allowed more room for outflow and was probably a better long-term solution. He said that the mitigation system takes into account the additional impervious areas. He said that the system will have the opportunity to percolate into the ground before it outflows.

Councilmember Erickson asked about the additional impervious areas. Spoden said that it was due mostly to the additional parking. Litfin said that they were adding 9 additional parking spaces with 6 on site and 3 in the lot across the street.

Mayor Skrede asked about the height. Cooney said it was 42 feet tall. Mayor Skrede said that matches the existing building and it is not getting any taller. Cooney said that was correct.

Councilmember McNeill said that the planning commission was supportive of the request, but did share the concerns about the original mitigation system.

Councilmember Carlson asked about the bluff situation. Cooney said that the exhibit submitted by the applicant determined that there was not a bluff impact.

Mayor Skrede asked about the retaining wall and the site lines. Councilmember Erickson said that this is generally hidden from view. Cooney said that the additional parking spaces create the need for the tall retaining wall and it could be much shorter without them. Councilmember Erickson said that the parking is a positive and it should be kept.

Mayor Skrede asked about the watershed district approval. Cooney said he would follow up on the process and when a building permit could be issued.

Mayor Skrede asked about spring load limits and when they plan to start. Bourgeois said that they hope to have this operational for the next school year. Mayor Skrede said that the city just fixed the roads in the area and would like to keep them in good shape. He said that he would want to see an escrow to protect the roads if they started during load limit restrictions.

Bourgeois said that they need to start in May at the latest. He said that the school district has done letters of credit that the city could draw on to make repairs.

Councilmember Erickson said that pre-staging construction could help but might be problematic within the school year.

Litfin asked what the road restriction dates were. Administrator Young said the dates were March 1 to May 1.

Councilmember Carlson said that the city should inspect the road prior to construction.

Motion to approve by Councilmember Carlson based on the recommendation, findings, and conditions of the Planning Commission with the additional conditions that 1) Option 2 from the stormwater drainage exhibit submitted on 10/30/2019 be constructed for the mitigation system, 2) documentation of road conditions is verified prior to construction, and 3) that an escrow in an amount sufficient to the city be provided if construction were to take place prior to the May 1 road restriction end date. Motion was seconded by Councilmember Erickson. Motion carried 4-0.

**6. UNFINISHED BUSINESS**

**A. Authorize Pay Request No. 2 to Northwest Asphalt for Easton & Northern Project**

Administrator Young stated that the City Engineer has approved the second pay request from Northwest Asphalt in the amount of \$92,996.42 for the 2019 Easton Road & Northern Road Project. He stated that the first pay request was approved last month in the amount of \$173,648.67.

Motion by Councilmember Erickson to authorize Pay Request No. 2 to Northwest Asphalt in the amount of \$92,996.42 for the 2019 Easton Road & Northern Road Street Improvement Project. Seconded by Councilmember McNeill. Motion carried 4-0.

**B. Other**

There was no other Unfinished Business this evening.

**7. NEW BUSINESS**

**A. Approve 2019 – 2020 Deer Management Program**

Administrator Young stated that the City of Deephaven has contracted with the United States Department of Agriculture (USDA) since the 2015-2016 season for deer management services. Prior to that time, the City had contracted with Nuisance Animal Services (NARS), who no longer provides deer management services. The total number of deer harvested by the USDA the past four years is as follows:

- 2015-2016                      23
- 2016-2017                      8
- 2017-2018                      11
- 2018-2019                      0

He stated that due to the lack of results this past season, the Public Safety Committee recommended searching for additional deer management companies. The only other agency that Police Chief Johnson found who would be willing to participate in our deer management program is the Minnetonka Police Department.

He stated that the Minnetonka Police Department uses their SWAT Team to shoot deer in the City of Minnetonka and would be willing to provide that same service for Deephaven. They would have their Park Department bait certain areas of the City that have good shooting backdrops the week of November 25<sup>th</sup> and a two-person SWAT team would attempt to remove deer from those selected areas in the late evenings over a four day period from December 2-5. They would be responsible for removing any deer that have been killed. The cost would be approximately \$300 per deer. The other option would be to remain with the USDA. We don't know how whether it would be sustainable to maintain this arrangement on a yearly basis with the Minnetonka Police Department.

He stated that staff submitted a Wildlife Control Permit to the DNR on October 29<sup>th</sup> for permission to remove up to 40 deer. This is the same total that we have requested in the past. The City has budgeted \$13,000 for Wildlife Control Services in 2020.

Mayor Skrede noted that this may not be an ongoing relationship with the City of Minnetonka for deer management. He stated that if the program is moderately successful this season, they may be interested in doing it again. He stated that he is very disappointed in the USDA's performance last year.

Councilmember McNeill stated that the City of Minnetonka couldn't do any worse.

Police Chief Johnson stated that it is a group of police officers that do this work and come out in a marked squad car, which he prefers. He stated that he has a better connection with the Minnetonka Police Department than the USDA. He added that we are somewhat limited in these deer management efforts due to the limited number of available sites and backstops.

Motion by Councilmember McNeill to authorize entering into a contract with the City of Minnetonka for the provision of 2019-2020 deer management services. Seconded by Councilmember Erickson. Motion carried 4-0.

**B. Other**

There was no other New Business this evening.

**8. DEPARTMENT REPORTS**

**A. Police Department**

Chief Johnson presented the October Police Report for Council review.

**B. Excelsior Fire District**

Councilmember Erickson noted that the final EFD Board meeting of the year will be held on November 20<sup>th</sup> and noted that Chief Mackay will be appearing on the LMCC cable channel to discuss fire services.

**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:

- Building Permit Update
- Local Board of Appeals & Equalization Training
- Projected 2019 Budget Balance
- Street Patching Summary

**9. ADJOURNMENT**

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Carlson. Motion carried 4-0. The meeting adjourned at 8:00 p.m.

Respectfully submitted,  
Dana H. Young  
City Administrator