

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, NOVEMBER 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, Councilmember's Darel Gustafson, Steve Erickson, Kent Carlson, and 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 Gustafson to approve the Consent Agenda, consisting of the following items:

- A. Approve October 16, 2017 Minutes
- B. Approve Verifieds
- C. Adopt Resolution No. 48-17, Designating 2018 Polling Place Locations
- D. Approve September 2017 Treasurer's Report
- E. Approve 2017 – 2018 Deer Management Program

Seconded by Councilmember Erickson. Motion carried 5-0.

4. MATTERS FROM THE FLOOR

There were no Matters from the Floor this evening.

5. PLANNING & ZONING REQUESTS

A. Consider the variance requests of Tom & Elisabeth Nicol to encroach into the minimum required lake yard setback, to exceed the maximum permitted impervious surface coverage, to exceed the maximum permitted grade alteration, and to exceed the maximum permitted eave encroachment in conjunction with the construction of a new house and pool at 19955 Cottagewood Avenue

Zoning Coordinator Cooney presented the staff report. He said that Tom and Elizabeth Nicol recently purchased the property at 19955 Cottagewood Avenue and are requesting variances to encroach into the minimum required lake yard setback, to exceed the maximum permitted impervious surface coverage, to exceed the maximum permitted grade alteration, and to exceed the maximum permitted

eave encroachment in conjunction with the construction of a new house and pool at 19955 Cottagewood Avenue.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet. He said that this setback requirement applies to the principal structure and accessory structures including swimming pools (as measured from the outside edge of the pool decking). Cooney noted that for the principal structure, the applicants are proposing a lake yard setback of 94 feet, 3 inches and are seeking a variance of 5 feet, 9 inches from the minimum required lake yard setback. He stated that for the pool/hot tub area, the applicants are proposing a lake yard setback of 80 feet, 3 inches and are seeking a variance of 19 feet, 9 inches from the minimum required lake yard setback.

Cooney said that the applicants state that the existence of an underground gun range, which they would like to keep and which would be difficult to remove, has forced portions of the house be constructed as much as 16 feet closer to the lake than would have otherwise been required. He noted that only a small portion of the southwest corner of the house encroaches into the lake yard setback (with approximately 115 square feet of total encroachment) and that this is significantly less of an encroachment area than the existing house on the property. He noted that the primary area of encroachment is caused by the proposed pool, which is comparable to the furthest encroachment of the existing house. He said that it was his opinion that the reduced above-grade structural encroachment of the new house coupled with the mitigating circumstances of the gun range, are enough to justify the practical difficulty for the lake yard setback.

Cooney noted that the applicants have stated that they hope to restore the disturbed area of the shoreline, which eventually would further reduce the lake yard encroachment. He said that decision would be in the hands of the DNR.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He stated that the applicants are proposing an impervious surface area of 26.9% and are seeking a variance to exceed the maximum impervious surface area by 1.9%. He said that the proposal maintains the existing hardcover percentage for the property, but that the property exceeds the minimum lot size for the zoning district, and substandard lot sizes are the typical justification for impervious surface variances.

Cooney stated that, as proposed, the impervious overage requires 53 cubic feet of mitigation volume, and the applicants are proposing to mitigate 151 cubic feet of stormwater. He said that the applicants would be required to sign a maintenance agreement for the mitigation which would be recorded against the property.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any grade alteration greater than 3 feet at any point. He said that the applicants are proposing land alteration of up to 5 feet, and are seeking a variance of 2 feet from the maximum permitted land alteration. Cooney said that the proposed grading would simply realign existing retaining walls and does not significantly alter the grading on the property.

Cooney said that Section 1310.02 of the zoning code allows roof eaves to encroach into a setback by as much as 3 feet and that as proposed, the roof eaves are 4 feet deep. He said that this only impacts the lake yard encroachment for the house.

Cooney said that he recommends approval of the variance requests as proposed and 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 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 applicants are seeking to vary from the setback standards on the lot to accommodate an existing condition and the proposal has attempted to accommodate these limitations. Grading issues and impervious surface areas are existing conditions on the property and the proposal does not exacerbate these existing issues.

(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 pool are reasonable uses of the property and the proposed conditions are less impactful than the existing nonconformities on the property. The grading is a reasonable realignment of existing retaining walls. The impervious area for the property matches existing conditions.

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

Yes. There is an underground gun range on the property made of reinforced steel and concrete which would be very costly to remove. The proposed house seeks to work around this structure to the extent practicable, but some lake yard encroachments are necessary to deal with the existing conditions. Impervious area and grading are existing conditions of the property and will not be expanded.

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

No. The proposed variances would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to other homes within the area.

Cooney said that the Planning Commission held a public hearing at their October 17 meeting and, on a 5-0 vote, recommended conditional approval of the variance request as proposed, based on the findings of staff, with the condition that the impervious surface area for the property does not exceed 25%.

Cooney noted that, in an attempt to address some of the concerns raised by the Planning Commission, the applicants have increased the proposed mitigation volume from 59 cubic feet to 151 cubic feet, which is the equivalent of a 19.9% hardcover property (assuming a 1 inch rain event).

Cooney concluded his staff report.

Councilmember Jewett asked about the house encroachment saying that he did not see it on the survey. Cooney said that it was located at the southwest corner of the house.

Applicant Tom Nicol said that they had increased the stormwater management to make the property approximately 20% impervious as a response to the concerns of the Planning Commission.

Councilmember Gustafson said that there was one neighbor who disagreed with the request, and particularly the pool. Gustafson asked about the pool encroachment. Cooney said that it was greater than the house encroachment and that he took his measurement from the contour on the survey at the modified beach. Cooney said that this is the worst case scenario and more reflective of the OWHL contour.

Councilmember Erickson said that, because of existing contours on the property the pool would be lower than the adjacent properties and that this would not be a sightline issue.

Motion by Councilmember Gustafson to approve the variance requests of Tom and Elizabeth Nicol as presented, based on the recommendation and findings of staff. Motion was seconded by Councilmember Erickson. Motion carried 5-0.

6. UNFINISHED BUSINESS

A. Hire Jace Rosenfeld as Full Time Probationary Police Officer

Police Chief Johnson stated that he is recommending that the City Council approve the hiring of Jace Rosenfeld for the position of Police Officer with the Deephaven Police Department. He stated that the Deephaven Police Interview Panel interviewed nine candidates on October 3rd and were asked to pass along the top candidates for him to interview. He stated that, following the interviews, he is recommending the appointment of Jace Rosenfeld. He stated that Jace has completed the background investigation, medical exam and psychological testing and has previously worked as a Transport Deputy for Winona County and as a Community Service Officer for the Marshall Police Department.

Mayor Skrede noted that he served on the Interview Panel and Jace was his top choice as well. He noted that Jace seems very eager to learn.

Motion by Councilmember Jewett to hire Jace Rosenfeld as a Full Time Probationary Police Officer effective November 7, 2017. Seconded by Councilmember Erickson. Motion carried 5-0.

Mayor Skrede administered the Oath of Office to Jace Rosenfeld.

B. Discuss Tree Removal within Manor Road Right-of-Way

Dale Cooney said that Bill Smith is the property owner at 19735 Manor Road. He said that in the spring of this year, Mr. Smith did tree and brush clearing on his property in preparation for construction of a new house and that, as part of that clearing, Mr. Smith removed 20 trees (8 inches in diameter or greater) from the city right of way. He said that, since then, Mr. Smith has abandoned plans to construct a house on this lot, and has listed the property for sale.

Cooney said that he has received correspondence from adjacent neighbors critical of the tree removal and that removal of right-of-way trees is prohibited by city code. He said that Section 805 of the City Code addresses removal and planting of trees within the public right of way:

805.02 Public Tree and Shrub Planting, Care and Removal. Only the City and its employees or agents will have the right to prune, maintain, remove or perform any other arboricultural practices on any public right-of-way or City-owned property, and no planting may be done on such property without the knowledge and consent of the City.

805.03 Damage to Public Trees. Unless specifically authorized by the City, no person shall intentionally damage any tree or shrub on any public right-of-way or City-owned property by cutting, carving, attaching any rope, wire, nails, advertising posters, or other contrivances to any tree or shrub. It is unlawful for any person to top any tree or severely cut back its branches, on any public right-of-way or City-owned property without prior authorization from the City.

Cooney said that he did not take action on the tree removal since the trees were not planted or maintained by the city, nor has there been similar enforcement of right-of-way tree removal for naturally occurring growth adjacent to private property. Cooney noted, however, that it is unusual for a property owner to remove trees adjacent to a wetland, and these areas often remain undisturbed during development.

Cooney said that the Smith lot is unique, since it encompasses approximately 650 feet of road frontage, much of which fronts a large wetland. He said the removal amounted to approximately 3 trees per every 100 feet of frontage. Cooney noted that, adding to the visual impact of the tree removal, additional undergrowth was also removed including buckthorn and sumac. He said that, due to the large lots and numerous wetlands, Manor Road is one of the more natural looking roads within the city, and the removal of the right-of-way trees was particularly striking since it revealed a wide-open expanse of wetland.

Cooney stated that Mr. Smith has stated that it has been his intention to replant this area on his property with trees that can withstand the road salt and that attached to this staff report are receipts of tree purchases intended for this area.

Cooney said that the City Council should make a determination on what action, if any, to take in this matter. Cooney concluded his staff report.

Councilmember Erickson said that you cannot clear-cut trees in the public right-of-way and did not think that an ignorance of the law defense had any merit. He said that he can see why the neighbors are upset.

Councilmember Carlson said that there needs to be replanting in the right-of-way and not simply the small trees proposed. Councilmember Erickson said that this would be a clear improvement in both the monetary value and visual appeal of the property.

Councilmember Gustafson said that there needs to be some kind of penalty for this behavior and that the arborist hired by the city estimated the damage at \$20,000 minimum. Councilmember Carlson said that maintenance of the trees to ensure their survival needs to be taken into account. Councilmember Gustafson said that the cost would be the total package.

Mayor Skrede said that trees typically are required to have a two-year maintenance agreement. He said that the trees planted need to be taller than the grass. Councilmember Erickson said that 3 to 5 foot trees are heartier.

Councilmember Jewett asked about the invoices for the trees. Cooney said that they were sent to him by the owner and that he did not request them.

Councilmember Carlson said that the arborist should develop a proposed planting plan and cost estimate. Mayor Skrede said that the prices should be through a reputable source. Mayor Skrede said that it is not fair to assume public works would plant the trees and that the price should include installation. Mayor Skrede said that he wanted to move ahead with the city attorney's suggestion of a special assessment.

Councilmember Erickson said that it was important to start the process to make the seller and potential buyers aware. Councilmember Jewett asked about the process. Administrator Young said that it was a formal process that required a public hearing. He said that typically there is a preliminary cost estimate and actual costs after installation. He said that the public hearing would only be with the impacted properties and that in this case, that is one property.

Councilmember Carlson said that the process would determine the term of the special assessment. He said that the new owner would benefit and it would be less expensive because of the low financing costs of the city.

Councilmember Jewett said that he still would like to hear the motivations of the property owner. Administrator Young said that there would be plenty of time to discuss this with the property owner in the formal process. Councilmember Gustafson said that the property owner has not been forthcoming with the city and that the city does not have an obligation to be kind in its response.

Councilmember Erickson said that, unlike similar issues in the city, it is the clear cutting that takes this to a different level.

Councilmember Carlson said that the city would need to confirm the number of trees and find the property line. Cooney said that the property was staked when he walked it this summer and that he is confident in his 20 tree count. Mayor Skrede said that Cooney should capture aerial images from Hennepin County as well.

Mayor Skrede said that it sounds like there is consensus to move forward with the special assessment. He directed staff to keep the process moving forward in consultation with the city attorney.

C. Other

Motion by Councilmember Jewett to approve Final Payment to Howard Bennis in the amount of \$8,913.00 for the installation of the Thorpe Park hockey boards. Seconded by Councilmember Carlson. Motion carried 5-0.

Mayor Skrede asked Howard Bennis to provide staff with the receipts totaling \$913.00 in miscellaneous expenses.

7. NEW BUSINESS

A. Adopt Resolution No. 49-17, Approving Warming House Construction Bid

Administrator Young stated that the Request for Proposals were advertised in the Lake Shore Weekly News on September 21, 2017 and September 28, 2017 for the construction of the Thorpe Park Warming House as per the plans and specifications reviewed and approved by the Deephaven City Council. Only one Request for Proposal was received from B. Streeter & Company. He stated that

Mayor Paul Skrede, Councilmember Kent Carlson, City Administrator Dana Young, and Public Works employee Jeff Kask met with Brandon Streeter to conduct an interview and review his proposal as required by the Best Value Contracting process. At the conclusion of the interview, a price of \$299,190 was negotiated for the construction of the warming house, which was a reduction of \$31,475 from his original bid. The reduction was due to the elimination of costs relating to winter construction (\$10,000), surveying costs that will be done by Bolton & Menk (\$2,500) and the renegotiation of his administration fee from \$58,000 to \$39,025.

He stated that as part of the interview process, the Contractor had originally proposed to begin work 30 days after the bid award and to complete the project within six months. It was obvious that this timeline would not work since we need to have the current warming house available for the 2017/2018 season. It was decided that a starting date of May 1, 2018 would work out best for both the Contractor and the City, and would also result in some cost savings for the City with the reduced costs associated with a summer construction. This revised construction schedule would push the project past the July 31, 2018 grant deadline, but after discussions with staff with the Hennepin Youth Sports Grant Program, an extension in the grant deadline can be requested.

He stated that there is always some concern when you only receive one bid or proposal. While it is legal for any municipality to accept the one submitted bid, it is uncertain as to whether the one bid would have been the lowest responsible bid if the City had received several bids. However, he noted that as further verification that this bid price was ballpark to the expected cost, the City did obtain a cost estimate from Streeter & Associates and they estimated the construction of the warming house to be \$392,610 on the low side and \$432,273 on the high side. He added that it was the overall consensus of the interview team that the City received a fair price and B. Streeter & Company is a responsible contractor.

Councilmember Gustafson asked what was the total square footage of the new warming house.

Mayor Skrede stated that it was approximately 1,500 S.F.

Councilmember Gustafson stated that \$200 per S.F. seems quite high. He stated that he is struggling with the cost and noted that it is a single storey building, which doesn't require a crane or basement.

Mayor Skrede stated that we are all surprised at the cost and noted that the original plan was to simply install restrooms onto the existing warming house.

Councilmember Jewett stated that a small structure like this is going to have a high square footage cost. But he agreed that it's hard to be satisfied with the square footage number.

Mayor Skrede stated that it would have been nice to have gotten a breakdown on the cost of the bathrooms. He added that if we had received more than one bid, we wouldn't know if the bids would have come in higher or lower than the bid we received.

Councilmember Carlson stated that the new warming house is a simple structure but it has a number of doors, dormers a fake chimney, and high quality bathroom fixtures. He stated that he also thought that the interview with Brandon Streeter went well and stated that it is a cost plus contract. He stated that we have specifications on the windows and may be able to find lower cost options before the project starts in May.

Mayor Skrede stated that the original budget for the warming house was a number that we backed into after deducting for the costs for the new hockey rink. He asked if the bid is a number that we can move forward with or do we go back to a different design.

Councilmember Gustafson asked if the contract prices will go up this spring.

Councilmember Carlson stated that the prices have been carefully vetted by the contractor. He noted that if something dramatic happens with the costs, we probably wouldn't move forward anyway.

Motion by Councilmember Carlson to adopt Resolution No. 49-17, a Resolution Approving the Request for Proposal submitted by B. Streeter & Company for the construction of the Thorpe Park Warming House Project in the amount of \$299,190.00. Seconded by Councilmember Erickson. Motion carried 5-0.

Motion by Councilmember Erickson to authorize staff to request a one-year extension in the grant agreement of July 31, 2018 to July 31, 2019 from Hennepin County Sports Grant Program to allow for adequate time to construct the warming house. Seconded by Councilmember Jewett. Motion carried 5-0.

B. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson reviewed the October Police Report.

B. Excelsior Fire District

Councilmember Erickson noted that 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:

- Performance Evaluations
- Building Permit Update
- State of the Cities Meeting
- LMSS Grant Application

9. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson.
Motion carried 5-0. The meeting adjourned at 8:25 p.m.

Respectfully submitted,
Dana H. Young
City Administrator