

**DEEPHAVEN CITY COUNCIL MEETING  
THURSDAY, NOVEMBER 8, 2018  
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, Kent Carlson, and Tony Jewett

ABSENT: Councilmember Steve Erickson

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 15, 2018 Minutes
- B. Approve Verifieds
- C. Approve September 2018 Treasurer's Report
- D. Adopt Resolution No. 42-18, Approving Hennepin County User Agreement

Seconded by Councilmember Carlson. Motion carried 4-0.

**4. MATTERS FROM THE FLOOR**

Mayor Skrede read a letter asking residents to stop littering.

**5. PLANNING & ZONING REQUESTS**

**A. Conditional Use Permit request of Engel & Völkers to install a 20 square foot illuminated business identification sign for the property located at 18202 Minnetonka Boulevard**

Zoning Coordinator Cooney presented the staff report. Cooney said that Engel & Völkers is doing business at 18202 Minnetonka Boulevard and is seeking a conditional use permit to externally illuminate the existing non-illuminated sign on the property.

He said that the business owners replaced the previously non-illuminated sign on the building with the new sign. Cooney noted that Section 1115.05 of the city code allows the replacement of a business identification sign in the same location as long as the sign is not illuminated or prohibited. He said

that, in this case, it is the proposed external illumination that triggers the conditional use permit, not the sign itself.

Cooney said that the existing sign is 20 square feet in size and approximately 1.5% of the front façade area. He said the sign would be externally illuminated from above with two gooseneck lights.

He noted 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 and that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney said that he recommends approval of the conditional use permit request of Engel & Völkers to illuminate a 20 square foot business identification sign at 18202 Minnetonka Boulevard as proposed based on the following findings:

Upon review of the application, it was determined there would be no negative impact on development of the community, the character and development of the neighborhood, the health, safety, and welfare of occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities, on adjacent streets, and the effect on property values of the subject premises and in the surrounding area.

Cooney said that the recommendation is conditioned that the hours of illumination of the sign be as outlined in Section 1305.03 of the ordinance.

Cooney said that the Planning Commission held a public hearing at their October 16 meeting and on a 5-0 vote recommended approval of the request based on the findings and conditions of staff.

Cooney concluded the staff report.

Councilmember Jewett asked if internally illuminated signs require a conditional use permit. Cooney said that all illuminated signs require a CUP.

Chris Peters, Vice President of Business Strategy for Engel & Völkers said that it was his company's goal to be in the Lake Minnetonka area. He said that many of the staff at their downtown office lives in this area. He said that the business was primarily residential real estate but also some commercial real estate.

Motion by Councilmember Carlson to approve the request based on the recommendation, findings, and conditions of the Planning Commission. Motion was seconded by Councilmember Gustafson. Motion carried 4-0.

## **6. UNFINISHED BUSINESS**

### **A. Authorize Pay Estimate No. 6 to B. Streeter & Co. for the Warming House Project**

Administrator Young stated that the Contractor has submitted Pay Request No. 6 in the amount of \$33,905.00 for Council approval. He stated that the total invoices paid to date, including Pay Estimate No. 6, equals \$306,463.62, which leaves a balance of \$18,456.38 to be paid to the contractor on this project.

Mayor Skrede stated that he authorized the contractor to install of a water softener and filter, which had not been included in the bid, for approximately \$3,500.00. He stated that the Council had granted him authorization to spend up to \$5,000.00 towards unplanned project expenses without prior Council authorization.

Administrator Young stated that he has contracted with Midwest Asphalt to finish up the driveway and trail resurfacing. He stated that Midwest Asphalt was the only company who was able to do the work this year.

Councilmember Jewett stated that he would be willing to go back to the Hennepin County Youth Sports Authority to check into the possibility of receiving additional funding due to the higher than anticipated costs of the warming house.

Motion by Councilmember Carlson to authorize Pay Request No. 6 in the amount of \$33,905.00 to B. Streeter & Company for the 2018 Thorpe Park Warming House Project. Seconded by Councilmember Jewett. Motion carried 4-0.

**B. Authorize Pay Estimate No. 3 to GMH Asphalt for the 2018 Street Project**

Administrator Young presented Pay Estimate No. 3 to GMH Asphalt in the amount of \$185,857.60 for Council review. He stated that the original bid for this project was \$179,244.25 but due to an error in computing the correct quantity for bituminous wearing course, it is now estimated that the project will come in at approximately \$266,000.00. He stated that due to the low bid price, the Council authorized additional work on Mount Curve and Linwood Road, which added approximately \$33,000.00 to the cost of the project.

Councilmember Gustafson stated that this is the second mistake made by Bolton & Menk in the last two years. He stated that last year there was a miscalculation in the amount of curbing, which ended up coming in far higher than estimated. He stated that the City is being asked to pay for a mistake that the City didn't make. He stated that he is not prepared for the City to eat the additional cost.

Administrator Young noted that GMH was still the low bid for this project and even if the quantity for the bituminous wearing course had been accurate during the bidding process, the City would still have moved forward with awarding the project to GMH Asphalt because the bid would still have come in under budget.

Councilmember Carlson stated that it is our expectation that we get professional service.

Mayor Skrede stated that there are two points that need to be clarified. First, we added additional street resurfacing due to the presumed lower bid. And second, was the additional cost owing to the additional street work or to the miscalculation on the wearing course.

City Engineer David Martini enters at 7:25 p.m.

Administrator Young brought David Martini up to speed on the discussion that had been underway on the miscalculation of the estimate on bituminous wearing course.

David Martini stated that the error occurred when they combined the separate estimates on their spreadsheet for Linwood Road, Excelsior Blvd, Rosedale Avenue, Highcrest Drive, Hillside Street and

Maple Chase into the main spreadsheet used for bidding. He stated that the quantities for bituminous wearing course did not add onto the main spreadsheet.

Councilmember Carlson noted that this is when we decided we had the funds necessary to due additional streets.

Councilmember Jewett asked if the miscalculation occurred when moving the quantities from one spreadsheet to another.

David Martini stated that we had a different cost estimate on five individual streets. When we put them out for bid, we consolidated all of the estimates. He stated that the wearing course totals on all five streets didn't combine. He stated that it was our mistake in calculating but the City is still paying for work that was done.

Councilmember Gustafson stated that the project cost is approximately \$46,000.00 more than estimated. He stated that two years ago on the Vine Hill Road Project, we ended up paying for an additional 1,200 L.F. of curbing that had not been estimated. He asked what we are paying for in terms of engineering services. He stated that these errors are not tolerated in other professional services.

David Martini stated that he can't recall the specific details of the 1,200 L.F. of curbing on Vine Hill Road but wanted to own up to the mistake that was made on the wearing course calculations. He noted that he had worked with the Council last year to make an adjustment when it was determined that the engineering cost was too high. He stated that he believes his firm has done more excellent work for the City than not. He stated that he is more than willing to have a conversation to make this right. He stated that Bolton & Menk has enjoyed a long relationship with the City and will have a conversation on doing what's right for the City.

Mayor Skrede stated that Councilmember Gustafson is interested in not having us pay the entire overage. He stated that this discussion can be held at a later date. He noted that he can also recall that the original estimates for Excelsior Blvd did not include the entire street; it only included the west side of Excelsior Blvd.

David Martini stated that he understands the concerns but the quantities for Pay Estimate No. 3 have been verified and the work completed by the contractor.

Mayor Skrede asked if they had ever been called out by the contractor that the bids are not right.

David Martini stated that this can happen. He stated that it became obvious on this project that the contractor's quantities were coming in far higher on the wearing course. As soon as we realized the error, we met with the Mayor and Administrator. He stated that he realizes that the Council made decisions to do additional street work based on an original bid that was wrong.

Councilmember Carlson asked if it is fair to have contractors verify the quantities. He noted that several of the quantities exceed 10% of the bid amounts.

David Martini stated that it is common for quantities to be higher or lower than the estimated amounts.

Councilmember Carlson asked if we can ask contractors to verify quantities.

Councilmember Gustafson stated that he would not ask contractors to verify quantities. He stated that the contractor could have stopped at the quantity listed in the bid sheet. He asked when this error was discovered.

David Martini stated that they found the error in late October. He stated that he is not here to make excuses. He added that he agrees with Councilmember Gustafson that the contractor needs to get paid. He stated that he wants to keep a long term relationship with the City and wants to do what is right.

Motion by Councilmember Gustafson to authorize Pay Estimate No. 3 to GMH Asphalt in the amount of \$185,857.60 for the 2018 Street Improvement Project. Seconded by Councilmember Jewett. Motion carried 4-0.

Mayor Skrede stated that he and staff will meet with the City engineering firm on a resolution to these overages.

**C. Adopt Ordinance No. 07-11, Amending Snowmobile & ATV Regulations**

Administrator Young stated that Ordinance No. 07-11 was first reviewed at the October 15<sup>th</sup> Council meeting. He stated that the purpose of the ordinance is to provide additional clarity that driving snowmobiles and ATV's on city streets is prohibited with the exception of allowing snowmobiles and ATV's to access snowmobile routes to get to and from Lake Minnetonka during winter months.

He stated that a copy of the proposed ordinance was posted for ten days as required by law and, if adopted, the ordinance would be published and in effect on November 22, 2018.

Motion by Councilmember Carlson to adopt Ordinance No. 07-11, an Ordinance Amending Section 705 on Snowmobile & ATV Regulations. Seconded by Councilmember Jewett. Motion carried 4-0.

**D. Other**

There was no other Unfinished Business this evening.

**7. NEW BUSINESS**

**A. Approve 2019 Off Sale Liquor License – Great Bottle of Wine, LLC**

Administrator Young stated that Peter Carroll, owner of Great Bottle of Wine, LLC, has submitted an application for the renewal of his 2019 Off Sale License. He stated that Section 470.03 of the City Code entitled Sale, Consumption and Display of Intoxicating Liquor, Beer and Wine allows for the issuance of a an Off Sale Intoxicating Liquor License subject to the license being issued to an exclusive liquor store, in a property located within the C-1 or C-2 Commercial District, and limited to no more than three On Sale licenses granted at one time in the City. The applicant meets all three of these criteria.

He stated that the applicant is required to submit the City of Deephaven Intoxicating Liquor License Application and the Application for Off Sale Intoxicating Liquor License to the Minnesota Department of Public Safety. He stated that if approval of the license is granted by the City Council, the On Sale

Application will be forwarded to the Minnesota Department of Public Safety for approval by the Director of Alcohol and Gambling Enforcement.

Chief Johnson stated that he has had no issues with Great Bottle of Wine. He noted that most of their customers are by appointment only and they seem to have irregular hours. He added that their website is also not up and running. He stated that this has made it difficult for his staff to investigate their operations due to their irregular business hours.

Administrator Young stated that he will have Peter Carroll contact the Chief on these issues.

Motion by Councilmember Gustafson to approve the renewal of a 2019 Off Sale Liquor License to Great Bottle of Wine, LLC at 18281 Minnetonka Blvd, Suite G. Seconded by Councilmember Carlson. Motion carried 4-0.

**B. Adopt Resolution No. 41-18, Revising Resolution No. 28-18, Woodland Contract**

Administrator Young stated that the annual service contract between Deephaven and Woodland is typically established in mid-year to allow both cities the opportunity to include this cost and revenue in next year's budget. He stated that a revision in the 2019 contract should be made to reflect the fact that 2019 clerical service fees were based entirely on Kathryn McCullum's actual 2019 salary and benefits. He stated that Kathryn retired from the City of Deephaven on August 1<sup>st</sup> and the Council hired Sara Skalle as the new Woodland Clerk on September 5<sup>th</sup>. Sara's 2019 salary and benefits are significantly less than Kathryn's and this reduced expense should be reflected in the 2019 clerical service fee charged to Woodland.

He stated that Resolution No. 41-18 would amend the 2019 clerical service fee charged by the City of Deephaven to Woodland from \$4,277.67 per month to \$4,003.47 per month.

Motion by Councilmember Jewett to adopt Resolution No. 41-18, a Resolution amending the 2019 Clerical Service fee with Woodland. Seconded by Councilmember Gustafson. Motion carried 4-0.

**C. Approve 2018-2019 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).

He stated that there are currently only three deer management companies listed with the Department of Natural Resources (DNR), including NARS, the USDA, and White Buffalo, which is located out of the State of Connecticut. Staff contacted NARS to see if they would have any interest in returning to Deephaven to provide deer management services for the upcoming season. They stated that they are getting out of the deer management business and confirmed that the only legitimate agency that is active in deer management is the USDA.

He stated that Staff submitted a Wildlife Control Permit to the DNR on October 23<sup>rd</sup> for permission to remove up to 40 deer, which is the same total that we have requested in the past. Once the permit has been approved, staff recommends contracting with the USDA for the 2018-2019 season. Staff also is requesting permission to combine with the Cities of Minnetonka and Woodland on the costs of a fly-

over to try to determine a more accurate number of deer in our city. The City has budgeted \$13,000 for Wildlife Control Services in 2019.

Councilmember Jewett stated that he typically gets more complaints about goose control, particularly at the beaches.

Administrator Young stated that we can certainly look at doing more goose control. He stated that the City use to contract with the Canadian Goose Program for goose control with mixed results.

Councilmember Jewett asked if the USDA also provides goose control.

Administrator Young stated that we are meeting with the USDA in the next couple of weeks and we can certainly ask them.

Motion by Councilmember Gustafson to authorize entering into a contract with the USDA for 2018-2019 deer management services and to participate in the costs of an aerial fly-over with the City of Minnetonka at an estimated cost of \$700.00. Seconded by Councilmember Jewett. Motion carried 4-0.

**D. Select Date for the Canvass of Votes at the Municipal Election**

Administrator Young stated that Minnesota State Statutes require the City Council to serve as the canvassing board for city elections. The Council must meet to canvass the returns and declare the results within three to ten days after a general Election. This means that a City Council can hold a Special Council meeting to canvass the municipal election results beginning Tuesday, November 13<sup>th</sup> and ending on Friday, November 16<sup>th</sup>. The Council cannot meet to canvass the results of the election on Monday, November 12<sup>th</sup> due to the fact that it is Veteran's Day, a National Holiday.

He stated that the dates and times that are available for a Special Council meeting that week are as follows:

- Noon, Tuesday, November 13<sup>th</sup>
- Noon, Wednesday, November 14<sup>th</sup>
- 5:00 p.m., Wednesday, November 14<sup>th</sup>
- Noon, Thursday, November 15<sup>th</sup>
- 5:00 p.m., Thursday, November 15<sup>th</sup>
- Noon, Friday, November 16<sup>th</sup>

The Council selected 12:00 p.m. on Thursday, November 15, 2019 as the date and time to hold a Special Council meeting to canvass the municipal election results.

**E. Other**

Mayor Skrede stated that he would like to hold a Special Council meeting at 5:00 p.m. on Tuesday, December 5<sup>th</sup> to discuss 2019 City Goals.

**8. DEPARTMENT REPORTS**

**A. Police Department**

Chief Johnson presented the October Police Report for Council review.

**B. Excelsior Fire District**

Administrator Young noted that the final EFD Board meeting of the year will be held on November 14<sup>th</sup>.

**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
- 2019 Contract Renewals
- State of the Cities Meeting Update
- Finalization of the LMSS Grant Application
- Finalization of the Hennepin County Youth Sports Grant

**9. ADJOURNMENT**

Motion to adjourn by Councilmember Gustafson, seconded by Councilmember Carlson. Motion carried 4-0. The meeting adjourned at 8:30 p.m.

Respectfully submitted,  
Dana H. Young  
City Administrator