

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, OCTOBER 1, 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, Tony Jewett, and Kent Carlson

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 September 17, 2018 City Council Minutes
- B. Approve Verifieds

Seconded by Councilmember Carlson. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

Bill Blagen, 3985 St. Louis Avenue, was present to complain about the condition of Wayne Vigor's neighboring property at 18880 Minnetonka Blvd. He stated that the City has not enforced its ordinances and noted that Vigor has installed an underground electric and sewer line across his property to access his trailer. He suggested creating a committee to handle neighborhood disputes.

Mayor Skrede stated that he returned Mr. Blagen's phone call on this issue a while back and would be delighted to meet with him to discuss this matter at greater length. He stated that the City is looking at different opportunities and can discuss this in more detail when they meet.

Terry & Gabriel Kerber, 20060 Minnetonka Blvd, stated that at the last Council meeting, his neighbor Jim Blakeway came to the meeting to complain about the fact that he is operating an AirBNB at his residence. He stated that what attracted him to purchase his property was the fact

that it had a mother-in-law apartment that he could rent out to help with the mortgage. He stated that his last renter moved out in December 2016 and he started to rent it out on AirBNB in March 2017. He stated that he has had 18 months of occupancy with his house booked 51% of the time. He stated that the bookings are typically over the weekend and a number of his guests know other residents in Deephaven or are here for a wedding or regatta.

He stated that his neighbor had mentioned safety concerns regarding his AirBNB and he noted that he never had one incident in all of his 81 bookings. He stated that he has the authority to tell his guests to leave immediately if there is a problem. He stated that he requires his guests to review a house manual, which outlines all the rules of the house regarding smoking, noise and parties. He stated that 98% of his guests are of higher quality than the three renters that they had previously stay at their house. He noted that a lot of cities are requiring a 30 day minimum stay for non-owner occupied properties. He stated that this would end their relationship with AirBNB if this was extended to owner occupied properties and would require them to go back to full time renters.

Mayor Skrede asked if he had met with his neighbor on this issue and whether his neighbor was more agreeable to his AirBNB.

Terry Kerber stated that it is hard to tell.

Gabriel Kerber stated that they want more harmony in their neighborhood and their neighbors weren't able to mention one incident that occurred with one of their guests.

Councilmember Carlson noted that in the last 18 months, their home has been booked 51% of the time. He asked if they are always at home when they have a guest.

Terry Kerber stated that they are there 100% of the time.

Councilmember Carlson asked who watches over the guests when they are on vacation.

Terry Kerber stated that his brother-in-law, who lives in Excelsior, watches over their place.

Councilmember Gustafson asked Police Chief Johnson if he had received any calls to their property.

Chief Johnson stated that his department had not received any calls.

Councilmember Jewett thanked the Kerber's for coming in to discuss their AirBNB.

## **5. PUBLIC HEARINGS**

### **A. Public Hearing on the assessment of delinquent sewer/storm sewer, water and garbage/recycling utility charges – Adopt Resolution No. 37-18**

Mayor Skrede called the public hearing to order at 7:24 p.m. Hearing no comments, the public hearing was closed at 7:26 p.m.

Administrator Young presented the assessment roll on the delinquent sewer/storm sewer, water, and garbage/recycling charges for Council review. He stated that the total assessments for 2019 are \$3,526.51 lower than the assessments in 2018 and noted that residents have until November 16<sup>th</sup> to pay off the assessment prior to submitting the assessments to Hennepin County.

He stated that Minnesota State Statutes grants cities the authority to assess delinquent utilities, garbage and recycling bills and the City of Deephaven has historically used this authority to recover past due bills.

Motion by Councilmember Gustafson to adopt Resolution No.37-18, A Resolution Adopting Delinquent Utility Assessments. Seconded by Councilmember Carlson. Motion carried 4-0.

## **6. PLANNING & ZONING REQUESTS**

### **A. Consider the variance request of Marcy Wicka to encroach 3 feet into the exterior side yard setback in order to build a new house at 18710 Azure Road.**

Zoning Coordinator Cooney presented the staff report. Cooney said that Marcy Wicka, property owner at 18710 Azure Road, is requesting a variance to build a new house on the property. He said that the new house would replace the existing nonconforming house on the property which was built in 1920 according to Hennepin County Records. Cooney noted that the property is an 8,750 square foot R-3 lot.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a 25 foot exterior side yard setback, and the applicant proposes a 19.3 foot exterior side yard setback and is seeking a variance of 5.7 feet from the minimum required side yard setback. He said that, as proposed, the wraparound porch, entryway, and a small portion of the stairwell would encroach into the setback.

Cooney noted that the existing house encroaches 6.3 feet into the exterior side yard setback. He noted that the front entryway and the front of the existing house encroach into the front yard setback. Cooney said that the front encroachment would be eliminated as part of the proposed house. He said that, overall, the proposed encroachment area is comparable to existing conditions while all encroachments are reduced or eliminated.

Cooney said that the property is 62.5 feet wide, and the combined setback requirements would limit the overall house width to 27.5 feet wide. He noted that while the majority of the house meets this requirement, the entry area and porch are, in his opinion, reasonable encroachments that allow for a better functioning main living area and outdoor area. Cooney said that the reasonableness of the encroachment is further enhanced by the fact that it is only the first level of the house that encroaches and that the encroachment faces the street.

Cooney said that, while the property exceeds 25% impervious area, it is located beyond the Shoreland Management District, and therefore a mitigation proposal is not required as part of the variance request. He said that the property owner will be required to submit a mitigation plan at the time of building permit to mitigate the property to the equivalent of existing impervious area or less.

Cooney said that he recommends approval of the variance request to encroach 5.7 feet into the minimum required exterior side yard setback for the new house at 18710 Azure Road, as proposed, based on the following findings:

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

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 applicant is seeking to vary from the stated setback and dimensional standards of the ordinance in order to replace a non-conforming house built in 1920 on a substandard lot with a new house that has comparable encroachments. The objectives are 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 encourages 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?

The proposal puts the property to use in a reasonable manner. The proposed house is a modest house on a substandard lot and the overall encroachment is comparable to what exists today. The first floor encroachment faces a street which minimizes the impacts to adjacent neighbors.

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

Yes. The property is 43% of the minimum lot size for the zoning district and is 62 feet wide. The exterior side yard setback requirement for a lot of this width creates unique circumstances that restrict the buildable area on this substandard property.

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 proposal is consistent with the single-family character of the neighborhood and is compatible with the size and scale of the surrounding houses.

Cooney said that the Planning Commission held a public hearing at their September 18 meeting and recommended approval of the request with the recommendation that the applicants submit mitigation plan to mitigate the impervious area to existing conditions or less.

Cooney concluded his staff report.

Councilmember Jewett asked about the steep driveway grade. Rick Storlien of RDS Architects, architect for the applicant, said that the garage is being lowered by 3 feet to reduce the driveway

grade and that a step will be added in the garage to the main level of the house. Storlien said that a rain garden would be placed in the northeast corner of the property.

Councilmember Jewett said that he disagreed with the comments in the variance application that this was a smaller-scale house. He said that this was actually a fairly large house for the property. Jewett said that the request was well received by the Planning Commission.

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

## **7. UNFINISHED BUSINESS**

### **A. Approve Pay Estimate No. 4 to B. Streeter & Co. for the Warming House Project**

Administrator Young stated that the Contractor has submitted Pay Request No. 4 in the amount of \$63,935.00 and Change Order No. 2 in the amount of \$760.00 for Council approval. He stated that approval of Change Order No. 2 would increase the estimated contract cost from \$324,160.00 to \$324,920.00. He stated that the total invoices paid to date, including Pay Estimate No. 4, equals \$255,106.88, which leaves a balance of \$69,813.12 to be paid to the contractor on this project.

Motion by Councilmember Jewett to authorize Pay Request No. 4 in the amount of \$63,935.00 and Change Order No. 2 in the amount of \$760.00 to B. Streeter & Company for the 2018 Thorpe Park Warming House Project. Seconded by Councilmember Carlson. Motion carried 4-0.

Discussion was held regarding the Ribbon Cutting Ceremony for the new warming house starting at 2:00 p.m. on Saturday, October 20<sup>th</sup>.

### **B. Approve Pay Estimate No. 2 to GMN Asphalt for the 2018 Street Project**

Police Chief Johnson asked if the contractor planned to restripe Excelsior Blvd.

Councilmember Jewett noted that the bid sheet called for striping.

Motion by Councilmember Gustafson to authorize Pay Request No. 2 to GMH Asphalt in the amount of \$49,162.50 for the 2018 Street Improvement Project. Seconded by Councilmember Carlson. Motion carried 4-0.

### **C. Discuss 2019 General Fund Levy Reduction**

Administrator Young stated that there will be a 2.9% decrease in group health insurance premiums from 2018 to 2019, which is significantly less than the 10% increase that was projected for the 2019 Budget. As a result of this decrease in group health premiums, General

Fund Expenditures have been reduced from \$3,047,907 to \$3,039,907 due to reductions in Administration, Zoning & Building Inspections, Public Works and the Police Department.

In addition, he stated that the favorable group health rates also allows the City to reduce the excessively high annual General Fund Balance from \$23,637 to \$11,714, which was left higher than usual in the event that group health premiums came in substantially higher than the 10% expected increase.

He stated that as a result of these two factors, the 2019 General Fund levy can be reduced \$20,000 from \$1,850,000 to \$1,830,000, thereby reducing the overall levy from \$2,250,000 (4.3% overall levy increase) to \$2,230,000 (3.4% overall levy increase). He asked if the Council would like to use the reduced General Fund levy of \$1,830,000 in the Truth in Taxation presentation.

The Council unanimously agreed to use the lowered 2019 General Fund levy of \$1,830,000 during the TNT presentation on December 3<sup>rd</sup>.

**D. Other**

There was no other Unfinished Business this evening.

**8. NEW BUSINESS**

**A. Adopt Resolution No. 38-18, Adopt Hennepin County Mitigation Plan**

Chief Johnson stated that the City of Deephaven participates in the Lakes Area Emergency Management Group and works closely with Hennepin County Emergency Management to review and update our Emergency Operations Plan and Hazard Mitigation Plan.

He stated that for the last few years, he has been updating our Hazards Mitigation Plan for Deephaven and the completed plan has been approved by Hennepin County Emergency Management. Each City in Hennepin County submitted a Hazard Mitigation Plan and they have all been approved. He stated that the next step is to have FEMA approve the Hennepin County All Hazard Mitigation Plan since Hennepin County Emergency Management needs formal approval of the plan, which is accomplished by each member city adopting the plan by Resolution.

He noted that the plan is the culmination of 3-4 years of work and the resolution must be passed for Deephaven to receive FEMA disaster funds.

Motion by Councilmember Carlson to adopt Resolution No. 38-18, a Resolution Adopting the Hennepin County Emergency Mitigation Plan. Seconded by Councilmember Gustafson. Motion carried 4-0.

**B. Other**

There was no other New Business this evening.

**9. DEPARTMENT REPORTS**

**A. Police Department**

Police Chief Johnson provided a summary of the following items:

- September 2018 Incident Report
- Noted that his staff has been doing stop sign & traffic enforcement on Linwood Road
- Reported that several motors stolen from the City marina have been recovered and the perpetrator arrested
- Noted that there have been 300 permit parking citations issued this past summer
- Provided a summary of the Vitals program.

**B. Excelsior Fire District**

Administrator Young provided a summary of the September 27<sup>th</sup> EFD Board meeting:

- The Board approved the 2019 EFD Budget that had been approved by all five member cities.
- An update was provided on the remodeling of Station No. 1 & No. 2 to add bedrooms for Duty Crews.
- An update was provided on the Station 1 concrete replacement
- An update was provided on the September 13<sup>th</sup> EMS Response meeting. Further discussion on the results of this meeting will be held at the November Board meeting.

**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:

- 2019 Health Plan Rates
- Update on the process of the Warming House Project

**10. ADJOURNMENT**

Motion to adjourn by Councilmember Gustafson, seconded by Councilmember Carlson.  
Motion carried 4-0. The meeting adjourned at 8:20 p.m.

Respectfully submitted,  
Dana H. Young, City Administrator