

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, OCTOBER 3, 2016
MINUTES**

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

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

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

- A. Approve September 19, 2016 City Council Minutes
- B. Approve Verifieds
- C. Approve August 2016 Treasurer's Report
- D. Approve 2016-2017 Deer Management Program

Seconded by Councilmember Gustafson. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

Hennepin County Commissioner Jan Callison was present to provide an update on recent County activities and to answer any questions from the City Council. She stated that the County has established a maximum 2017 levy increase of 4.5% primarily to increasing staffing to assist with child protection case loads and to upgrade the MET computer system.

Councilmember Erickson arrives at 7:04 p.m.

Commissioner Callison noted that the County property tax base is now back to 2008 levels, prior to the recession. She stated that apartments now make up the larger share of the residential housing market. She stated that most of this growth is due to new development rather than the restoration of prior market value. She noted that Deephaven, with average residential property values of over \$500,000, may see an actual decrease in their county taxes.

On a final note, Commissioner Callison stated that Ridgedale Library will be closing in the spring of 2017 for approximately one year due to some major renovations and Co. Rd. 101 should be open all the way to Hwy 12 by November 1st.

Councilmember Jewett asked if there will be any County road projects affecting this area next year.

Commissioner Callison stated that there will not be any County road projects in the Southlake area.

Mayor Skrede asked if the Government Service Center will remain open during the renovation of Ridgeview Library.

Commissioner Callison stated that both the Government Service Center and the Courts will remain open.

Mayor Skrede noted that he already had talked to Commissioner Callison earlier this evening about the reconstruction of Northome Bridge.

Councilmember Jewett asked if there would be any County funds available to assist with the reconstruction of Northome Bridge.

Commissioner Callison stated that this is not a County bridge and the City will have to obtain funding from the State.

Councilmember Jewett stated that the City is still working on the application for a Hennepin County Youth Sports Grant and look forward to any advice or assistance Commissioner Callison could provide.

Commissioner Callison stated that her office looks forward to working with the City.

Mayor Skrede thanked Commissioner Callison for doing such a great job.

Commissioner Callison stated that she values her relationship with Deephaven.

5. PUBLIC HEARINGS

A. Public Hearing on the assessment of delinquent sewer/storm sewer, water and garbage/recycling utility charges – Adopt Resolution No. 48-16

Mayor Skrede called the public hearing to order at 7:14 p.m. Hearing no comments, the public hearing was closed at 7:15 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 have been pretty consistent over the past few years:

2017 Assessment Roll	-	\$42,170.89
2016 Assessment Roll	-	\$40,238.62
2015 Assessment Roll	-	\$41,015.18
2014 Assessment Roll	-	\$39,584.06
2013 Assessment Roll	-	\$42,288.87

Motion by Councilmember Erickson to adopt Resolution No.48-16, A Resolution Adopting Delinquent Utility Assessments. Seconded by Councilmember Gustafson. Motion carried 5-0.

6. PLANNING & ZONING REQUESTS

A. Variance requests of The Landschute Group, Inc. to encroach into the minimum required lake yard setback in order to install an underground accessory structure and expand a legal non-conforming deck at 20430 Lakeview Avenue.

Zoning Coordinator Cooney summarized the staff report. He said that The Landschute Group is requesting a variance to install an underground accessory structure within the lake yard setback. He said that the accessory structure would be a sauna located 20 feet from the Ordinary High Water Level (OHWL) of Lake Minnetonka. He stated that Section 1302.04(3) of the zoning ordinance requires a lake yard setback from the OHWL of 100 feet and the applicant is seeking a variance of 80 feet from the minimum required lake yard setback. He said that, as proposed, the only visible elements of the sauna would be a door of the sauna, and associated planting beds for the structure.

Cooney said that the 216 square foot sauna and the existing 315 square foot accessory building would remain under the limits for accessory structures on the property. He said that even if the structure is considered as impervious area, the property would remain under the 25% impervious surface limitation. Cooney said that the city engineer has stated that he would not consider the sauna as impervious area.

Cooney said that because of the unique nature of the request, he sought comments from both the Minnehaha Creek Watershed District and the Minnesota Department of Natural Resources. He said that MCWD comments were related to the low opening of the structure, and the opening was adjusted to meet MCWD regulations so that the structure now meets MCWD requirements. Cooney said that the Minnesota DNR recommended against granting the variance and their comments are attached to this staff report.

Cooney said that the applicant is proposing a temporary deck in conjunction with the sauna and that city code does not make a distinction between permanent and temporary decks. He said that the property currently has a 100 square foot legal nonconforming deck in the lake yard setback and statute allows nonconformities to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. He said that, as proposed, the deck is approximately 178 square feet in size and staff would recommend that any new deck not exceed a 100 square foot footprint.

Cooney noted that to meet the practical difficulty standard, all of the factors in Section 1315.03 must be met. Of these factors, Cooney said that he has the most trouble finding justification for “*unique circumstances to the property not created by the landowner.*” He said that the request is for a lake yard amenity that violates the structural setback requirement. Cooney said that the property is over one-acre in size and, other than the apparent desire to be close to the lake, there is nothing preventing the applicant from relocating this 216 square foot amenity elsewhere on the property. Cooney said that, while the applicant states that the sauna must have easy access to water, there are other structural amenities that the city does not permit that also require access to water, such as boathouses.

Cooney noted that while the perceived benefit of the structure is its lack of visibility, it is nevertheless a highly invasive approach to a shoreland modification that would require the displacement of approximately 58 cubic yards of soil from the shoreland area.

Cooney said that based on a misinterpretation of the statute language, the applicant has attempted to claim that the practical difficulty standard does not apply to “earth sheltered construction” and that it only need to be “in harmony with the purpose and intent of the ordinance.” Cooney said that the language in statute is a state protection, similar to that for manufactured homes, to prevent cities from outlawing the construction method if the proposal otherwise complies with the ordinance requirements. He said that it does not give the construction method a special exemption from meeting all factors of the practical difficulty standard. He said that both the City Attorney and the League of Minnesota Cities agree that the proposal is not exempt from meeting the practical difficulties standards required by state statute.

Cooney said that he recommends denial of the variance request by The Landschute Group, Inc. to encroach into the minimum required lake yard setback in order to install an underground accessory structure and expand a legal non-conforming deck at 20430 Lakeview Avenue, as presented, based on the following findings:

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

No. The purpose of the ordinance is to provide for the wise development of the shoreland of public waters and to preserve the economic and natural environmental values of shorelands. Granting a variance for such an amenity would set a precedent and encourage further development within the shoreland areas. Also, the underground accessory structure within the lake yard setback would be unnecessarily invasive for what amounts to a lake yard amenity.

(b) Is the variance consistent with the comprehensive plan? No. The comprehensive plan states that it will be a city policy to “Continue to maintain or exceed Department of Natural Resources shoreline standards through locally adopted shoreland ordinance requirements.” Unless a clear practical difficulty can be demonstrated, the variance is not consistent with the comprehensive plan.

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

While an accessory structure of this size is reasonable, in the context of a variance request for a lake yard amenity, the sub-surface accessory structure 20 feet from the OHWL is not using the property in a reasonable manner.

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

No. The property could easily accommodate a sauna elsewhere. The circumstance is driven by the landowner's desire to have the sauna near the lake.

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

Due to the mostly hidden nature of the structure, the proposal would not alter the essential character of the locality.

Cooney said that the Planning Commission held a public hearing at their September 20th meeting and recommended denial of the request, on a 4-3 vote, as presented based on the recommendation and findings of staff.

Cooney concluded his staff report.

Mayor Skrede asked about the Minnesota DNR comments. Cooney said that he recognized that the interpretation of impervious was different from that of the city engineer. He said that he wouldn't want to try and assume any other meanings beyond what was written in the response from the DNR.

Councilmember Gustafson asked about the original intent of the ordinance. Councilmember Kask said that the reason behind the ordinance was to protect the natural characteristics of the lake for all users. He said that the rules on Lake Minnetonka are less restrictive than the rules for many northern Minnesota lakes since Lake Minnetonka is already highly developed.

City Administrator Young said that protection of the water body from erosion was another justification, as was allowing for infiltration of pollutants before reaching the lake.

Councilmember Erickson said that he agreed with Administrator Young about the rationale for limiting structures near the lake. He asked why new boathouses were being allowed in other cities such as Wayzata.

Mayor Skrede said that was the problem with this type of legislation. He said that it is important to understand the underlying justification for the law.

Councilmember Gustafson said that, as he read the comments from the Minnesota DNR, they were interested in protecting the health and quality of the lake, not simply the views of the lake.

Councilmember Erickson said that if the structure proposed were above ground, it would be denied in a heartbeat. He said that it is an intriguing and smart idea to put it underground.

Mayor Skrede agreed that it was a clever idea. He said the extra decking calls attention to the structure. He said that the topography was unique and that he did not think that a precedent would be set for many similar requests.

Councilmember Erickson asked about the temporary deck.

Jon Monson of the Landschute Group, applicant, said that there is no deck on top of the structure, only in front of it. He said that the structure is covered by grass. The deck is able to be removed when the ice begins to cause problems.

Councilmember Jewett said that he believes this is a structure and that the type of structure does not matter. He said that there are other areas of the city where he could see similar requests, such as the Northome area. He stated that he would expect more of these types of requests. He said that he would rather see the issue sorted out via revisions to the city code than via a variance.

Councilmember Erickson said that he could see similar requests, particularly for boathouse facilities. He agreed that looking at the code was the better way to sort out the issue. He said that he could go either way on the request. He asked how it changes the concept of a structure if it is buried.

Councilmember Kask said that the 18 x 12 foot structure was bigger than just a sauna and more similar in size to a boathouse. He said that he commended the architect, and that he sees that the spirit and intent of the proposal is for minimal impacts to the neighbors. He said that it is a structure, and that if permitted, other requests would come forth. He said that he is disinclined to approve this request since it is seen as a structure. He said that he does not approve of the temporary deck, since it infers that the city will accommodate decks in this area. He said that he would be open to working "earth sheltered buildings" into the code since they are extremely inconspicuous.

Mayor Skrede said that the sauna was not part of the original house plan, and that the homeowner requested the sauna after the building process had begun. He asked if the city could consider putting language for these types of structures in the ordinance and that he did not want to go through the process if it was something that would not be considered.

Councilmember Gustafson said that there will be a greater demand for structures like these than what has been discussed tonight. He said that the DNR requires a 50 foot setback at minimum, and that this would encroach by 30 feet from their standards. He read through staff findings and said that it was not in harmony with the purpose and intent of the ordinance, or the comprehensive plan, and that this was a convenience for the property owner. He said that three of the factors for a variance were clearly not being met.

Mayor Skrede said that he would be open to looking at the ordinance for these types of structures.

Councilmember Erickson said he wants to know more about how the DNR is allowing new boathouses. Councilmember Jewett said that it is worth looking at other cities are doing and find out why or why they are not allowing new shoreland structures.

Mayor Skrede said that researching this would put the city past the 60 day deadline.

Joe Ryan of 4600 Linwood Circle, future homeowner at 20430 Lakeview Avenue, said that he would be willing to table the issue while the city looked into potential ordinance revisions. He said that he was a resident of 13 years and had a sauna in his boathouse. He said that he is trying to do what is right, and that he doesn't want the structure to be visible. He wants it to be tasteful. He said that the neighbors don't want to look at a temporary structure.

Motion by Councilmember Erickson to direct staff to immediately draft written notice to the applicant stating the City Council needs to extend the 60-day time limit to December 13, 2016. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Preliminary Plat for 19655 Cottagewood Road – Joan Svoboda has made application for a Preliminary Plat at 19655 Cottagewood Road. The proposal would plat the existing lot into two buildable properties.

Zoning Coordinator Cooney summarized the staff report. He said that Joan Svoboda has made application for a Preliminary Plat at 19655 Cottagewood Road. He said that the property, with a proposed plat name of "Svoboda Addition", would plat the existing lot into two buildable properties. He said the property is in the R-2 zoning district. He said a legal, non-conforming house is currently located on the property and the applicant has indicated that it is their intention to remove the house before or soon after the subdivision process is complete.

Cooney said that, as proposed, both lots would be zoning code compliant, and exceed the minimum lot size requirement of 40,000 square feet for the R-2 zoning district. He said that both lots are zoning code compliant with R-2 setback and road frontage requirements. Cooney noted that the property is located within the Shoreland Management district, and both proposed lots are required to comply with the 25% impervious surface restriction and that, as proposed, both lots are well under any impervious surface limitation.

Cooney said that the main issue he found was that the submitted survey shows 13 feet of vacated Dyer Lane right-of-way but that Hennepin County records do not show this vacation. The right-of-way should be 40 feet wide, but Hennepin County shows a 66 foot wide right-of-way for Dyer Lane. Also, the survey shows a property size of 120,540 square feet, while Hennepin County shows a property size of 116,506 square feet.

He said that he has been unable to find a resolution that confirms the right-of-way vacation in the city records, but there is evidence that the city supported the vacation even if it was not formally approved. Cooney said that there is enough square footage for subdividing the property without the additional square footage, but that the discrepancy is significant in that it could require the houses to be set 13 feet further back from the road. Cooney said that, in light of this issue, the applicant submitted an alternate plat proposal that reoriented the proposed driveways towards Cottagewood and Manor Roads, thereby reducing the required setback on Dyer from 50 feet (for front yard) to 25 feet (for exterior side yard).

He said that the proposed properties both contain wetland areas and that a wetland delineation was completed in November of 2014 and submitted to the Minnehaha Creek Watershed District. He said that the MCWD approved the wetland boundary in December of 2014, and the decision

is good for 5 years. He said that the applicants will be required to comply with any restrictions put on the property by the MCWD and an MCWD permit will be required at the time of construction.

Cooney said that the proposed grading slightly exceeds the 3 foot limitation of the current ordinance, but that the City Engineer stated that these could easily be adjusted to accommodate this limitation.

Regarding the sewer, Cooney said that the property was assessed for the trunk line (\$3,120) and two sewer lateral units (\$4,800) in 1971. Based on these records, he said that the applicant is not required to pay an additional sewer connection fee in conjunction with this subdivision request, but that the Metropolitan Council may require additional SAC charges.

Regarding park dedication, Cooney said that for each new lot created the city is entitled to a park dedication fee. He said that the fair market value is determined by the City Assessor who has determined that the fair market value of the additional lot at 19655 Cottagewood Road is \$190,000. Cooney said that, as condition of approval, the city will require payment of \$19,000 in park dedication fees prior to signature of the Final Plat.

Cooney said that he recommends conditional approval of the Preliminary Plat for Svoboda Addition, with the following conditions:

- a) Proposed grading is revised to comply with the 3 foot grade alteration limitations of Section 1312.04 of the zoning code.
- b) All park dedication fees must be paid prior to Final Plat.
- c) The drainage and grading plans shall be approved by the City Engineer prior to the issuance of a building permit for each lot on an individual basis.
- d) The applicants comply with the requirements of the Minnehaha Creek Watershed District.
- e) All fees incurred by the City for the review of the Preliminary and Final Plat must be paid prior to the release of the escrow submitted by the applicant.

Cooney said that in his opinion, the proposed plat does not impact the integrity and general development of the community, does not impact the health, safety and general welfare of the neighborhood, will not negatively impact the traffic on adjacent streets, would not have an adverse impact on property values and will maintain the general character of the neighborhood.

Cooney said that he Planning Commission reviewed the proposal at their September 20th meeting. He said that the Planning Commission stated a preference for having the properties access off of Dyer Lane; however, they felt that there were viable alternatives for other access points should the right-of-way vacation issue remain unresolved and that for those reasons they did not request that preliminary plat be subject to any conditions regarding the Dyer Lane right-of-way issue. He said that the Planning Commission recommended conditional approval of the preliminary plat. Cooney concluded his staff report.

Councilmember Jewett asked if the Svoboda that completed the wetland delineation was a relative of the applicant. Joan Svoboda, applicant, said that they were not.

Councilmember Kask said that he was supportive of the request, and that the city should approve the preliminary plat allowing the owners to convey the property. He said that he thought Dyer lane was the better access point, and that the city could pursue the Dyer Lane vacation at the same time. He stated that corner lots only require one 50 foot setback, and one 25 foot setback, and that it didn't make a difference from a zoning perspective which was which.

Cooney asked if it mattered if the driveway came off of the exterior side yard setback. Councilmember Kask said that it did not matter. Cooney asked if the police and fire departments wanted the driveway location to be on the same street as the address. Police Chief Johnson said that it did not make a difference and was not a big deal.

Councilmember Gustafson said that the vacation can be done parallel to the platting, but that one should not impact the other.

Councilmember Kask said he would hate to have the Svoboda family redo the plat with the vacation at a later date. Joan Svoboda said that it would work better for their timing if the plat went through separate from the vacation.

Mayor Skrede asked if they would build on the property. Megan Rapraeger, daughter of the applicant, said that she did not know how it would go. She said that depending on the interest from the buyers, they may or may not want to build on one of the parcels.

Councilmember Jewett asked about the two laterals that were billed to the property. Cooney said that he did not know why they were charged for two at the time, but that the builder would bear the cost of making the connections to the laterals. Kask said that his property had two sewer laterals installed by the city long before it was ever subdivided.

Motion by Councilmember Kask for conditional approval of the preliminary plat with the following conditions:

- a) Proposed grading is revised to comply with the 3 foot grade alteration limitations of Section 1312.04 of the zoning code.
- b) All park dedication fees must be paid prior to Final Plat.
- c) The drainage and grading plans shall be approved by the City Engineer prior to the issuance of a building permit for each lot on an individual basis.
- d) The applicants comply with the requirements of the Minnehaha Creek Watershed District.
- e) All fees incurred by the City for the review of the Preliminary and Final Plat must be paid prior to the release of the escrow submitted by the applicant.

Motion was seconded by Councilmember Erickson. Motion carried 5-0.

Councilmember Jewett said that he would like to see the driveways as far away from the intersection as possible. Councilmember Kask said that was another argument for the public benefit for vacation of the Dyer Lane right of way.

Motion by Councilmember Erickson to adopt Resolution No. 51-16, A Resolution Calling for a Public Hearing on the Vacation of Dyer Lane. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Adopt Ordinance No. 1377, an Ordinance amending Section 1353 regarding Stormwater Management, New Home Construction.

Zoning Coordinator Cooney summarized the staff report. Cooney said that the ordinance revision was brought about based on the City Council review of the variance for 3700 Hamilton Avenue. He said that the proposed new house created a condition where the property would exceed 40% hardcover, but no stormwater mitigation was required since the expansion was less than 500 square feet.

He said that several members of the City Council felt that new home construction should not be granted the 500 square foot exemption and that the stormwater management performance criteria should be applied regardless of the amount of hardcover expansion. Cooney said that the performance criteria for the new construction houses would not change, only the 500 square foot exemption.

Cooney said that any new construction house would be required to mitigate for stormwater to the lesser of: the proposed impervious surface expansion or the portion of the proposed impervious surface expansion that exceeds 25% impervious surface area. He said that a new construction house on a property that already exceeds 25% would not be allowed to expand hardcover without some kind of stormwater mitigation.

Cooney said that, as written, unless a property remains under 25% impervious, the ordinance would not allow additional impervious expansion for new construction without some kind of mitigation. He said that unlike the Shoreland Management District, these requirements are not subject to a variance and mitigation is only required to account for the expansion of impervious beyond existing conditions regardless of the amount of impervious currently on a property.

Cooney concluded his staff report.

Councilmember Jewett asked if the 500 foot exception was going away for all improvements.

Cooney said that it was only going away for new house construction.

Motion by Councilmember Erickson to adopt Ordinance No. 13-77 as written and to waive the second reading. Seconded by Councilmember Jewett. Motion carried 5-0.

7. UNFINISHED BUSINESS

A. Other

There was no other Unfinished Business this evening.

8. NEW BUSINESS

A. Other

Councilmember Gustafson asked if the Council would be interested in having the Planning Commission review the possibility of establishing an R-4 District.

Mayor Skrede noted that during the Planning Commission's review of the massing issue, it was suggested that regulations could be established for an R-4 District that consisted of non-conforming lots.

Councilmember Gustafson stated that this could potentially help to limit the number of variances.

Councilmember Kask stated that he would recommend passing on this offer. He stated that our current zoning is relatively straightforward and an R-4 District would add complexity to our Zoning Map.

Mayor Skrede agreed that you can't catch all potential variances and thanked the Planning Commission for their offer.

9. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided a summary of the September 2016 Incident Report for Council review.

B. Excelsior Fire District

Councilmember Erickson stated that a full report will be presented at the next Council 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:

- Tax Capacity Ranking
- 2016 Contract Renewals
- Election Preparations
- Cell Tower Lease Buyouts
- Xcel Substation Maintenance
- Update on the Shorewood Decision

10. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson.
Motion carried 5-0. The meeting adjourned at 9:13 p.m.

Respectfully submitted,
Dana H. Young
City Administrator