

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, OCTOBER 7, 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, Steve Erickson, Tony Jewett, and Kent Carlson

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 September 10, 2019 City Council Minutes
- B. Approve September 23, 2019 Special Council Minutes
- C. Approve Verifieds
- D. Approve August 2019 Treasurer's Report
- E. Adopt Resolution No. 31-19, Approving Lot Combination at Grace Lutheran Church

Seconded by Councilmember Jewett. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Sharon & Kelsie Crow, 18505 Minnetonka Blvd, were present to discuss water runoff issues impacting their driveway and catch basin. Sharon Crow stated that there is an excessive amount of water running through their driveway, which clogs a catch basin on their property. She also noted that a retaining wall built by the City is deteriorating. She stated that the water from the Thorpe Park Pond outlets onto their property, which causes quite a bit of erosion. She stated that the placement of large rock around the catch basin would help reduce the erosion. She stated that she doesn't want to see any further erosion and suggested that a higher curb could also be built along the driveway.

Mayor Skrede stated that he will bring this issue up at tomorrow's Public Works Committee meeting and will stop by to review the problem before the meeting.

5. PUBLIC HEARINGS

A. Public Hearing on the assessment of delinquent sewer/storm sewer, water and garbage/recycling utility charges – Adopt Resolution No. 30-19

Mayor Skrede called the public hearing to order at 7:15 p.m. Hearing no comments, the public hearing was closed at 7:16 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 2020 are \$35,976.84, which is \$2,667.54 less than the assessments in 2019. He noted that residents have until November 15th 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 Carlson to adopt Resolution No.30-19, A Resolution Adopting Delinquent Utility Assessments. Seconded by Councilmember Erickson. Motion carried 5-0.

6. PLANNING & ZONING REQUESTS

A. Consider the variance requests of Douglas and Marcia Jolstad to encroach into the minimum side yard setback in order to construct a guest suite over an existing garage at 20770 Linwood Road

Zoning Coordinator Dale Cooney presented the staff report. Cooney said that Douglas and Marcia Jolstad, property owners, are requesting a variance to build a guest suite over an existing garage. He said that the guest suite would maintain the footprint of the current garage, which is attached to the principle structure via a breezeway. Cooney noted that the property is a 30,903 square foot R-2 lot and that the property currently exceeds impervious surface area limitations, but that no impervious expansion is proposed.

Cooney said the guest suite is proposed for the north side over the existing garage and no footprint expansion of the garage is proposed. He stated that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet. He said the applicants propose a side yard setback of 16.1 feet and are seeking a variance of 3.9 feet from the minimum required side yard setback.

Cooney said the garage currently is considered detached since the breezeway is not fully enclosed. However, he said that the applicant is within their rights, without a variance, to enclose the breezeway. This would allow the applicant to build the addition to the standards of the principal structure as long as the connection meets the requirements of Section 1310.10 Subd. 1(d):

An accessory structure shall be considered as part of the principle structure if the connection between the accessory and principle structure is above grade, fully enclosed with a full frost footing and has a minimum width equal to twenty five percent of the longest dimension of the accessory structure to be attached. In no case shall the length of the connection exceed fifty percent of the longest dimension of the accessory structure to be attached.

Cooney said that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25% and that the existing impervious area on the property is 31.4%. He said no impervious expansion is proposed, but noted that a balcony is proposed to cantilever over a portion of an existing patio area.

Cooney said that he recommends approval with conditions of the variance requests with the condition that the connection between the principal structure and the garage be attached to meet the requirements of Section 1310.10 Subd. 1(d). Cooney said that his recommendation is based on the following findings:

- (a) Is the variance in harmony with the purpose and intent of the ordinance?
Yes. The applicant is seeking to vary from the stated setback and impervious surface standards of the ordinance to improve an existing non-conforming house constructed in 1964, per Hennepin County tax records. The expanded conditions are minor and remain 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 encourage residents to maintain and/or improve older homes which will promote diversity of housing in Deephaven.
- (c) Does the proposal put property to use in a reasonable manner?
The minor expansion upward of the non-conforming footprint of the house is reasonable, and the additions remain within the scope and scale of surrounding properties.
- (d) Are there unique circumstances to the property not created by the landowner?
Yes. The existing house and garage were constructed in 1964, and the side yard setbacks are nonconforming. Expanding the legally nonconforming garage is difficult without a variance.
- (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 proposed project is of a scope and scale comparable to other properties in the neighborhood, while the area of proposed encroachment is minor.

Cooney said that the Planning Commission held a public hearing on the request at their September 17 meeting and, on a 5-0 vote, recommended approval of the request based on the recommendation, findings, and conditions of staff.

Cooney concluded his staff report.

Mayor Skrede said that, even if the breezeway met the city requirements, the applicant would need to come in to get approval for building up within the setbacks. Cooney said that was correct.

Councilmember Carlson asked if the breezeway would be connected on two stories. Doug Jolstad, applicant, said that it would be two stories. Councilmember Carlson asked if the shed area was staying the same. Jolstad said that it was staying the same.

Councilmember Erickson said that he had no objection and that it was great that the applicant could build without expanding the footprint.

Councilmember Jewett said that he is always concerned about going up another story and the possibility that the entire building needs to be demolished in the process. He said that, in this case, the builder indicated that the existing walls and foundation should be able to support the second story.

Motion to approve by Councilmember Carlson based on the recommendation, findings, and conditions of the Planning Commission. Motion was seconded by Councilmember Erickson. Motion carried 5-0.

B. Consider the variance requests of Michael and Kris Hickey to exceed the maximum permitted grade alteration in order to construct a new house on the property at 3216 Robinsons Bay Road

Mayor Skrede said that the applicant for item 6B, for the variance requests at 3216 Robinsons Bay Road, would like to table their application. Mayor Skrede said that the city would prefer that it be withdrawn until they are ready to come back before the city.

Peter Eskuche, architect for the property owners, said that they wish to withdraw the application.

C. Adopt Ordinance No. 13-79, Amending Deephaven Zoning code Section 1310.08 regarding Fences and Walls

Cooney said that the proposed changes are intended to restrict fences within the lake yard setbacks and that current city code is written in such a way that seems to allow fences up to 3 ½ feet within a lake yard. Cooney concluded his staff report.

Councilmember Erickson asked about the setback requirement for fences over 3.5 feet. Cooney said that language was moved to the subparagraph “b” of the revised ordinance.

Motion by Councilmember Erickson to adopt the Ordinance No. 13-79, Amending Deephaven City Code Section 1310.08 regarding Fences and Walls. Motion seconded by Councilmember Jewett. Motion carried 5-0.

7. UNFINISHED BUSINESS

A. Authorize Pay Request No. 2 to Bituminous Roadways for the Minnetonka Blvd Project

Mayor Skrede noted that the only items remaining to be paid to Bituminous Roadways are the final punch list and the retainage. He stated that there are not a lot of outstanding items on the final punch list. He noted that we could add the drainage issues at 18505 Minnetonka Blvd to the punch list.

Councilmember Erickson stated that these drainage issues don't necessarily relate to the street construction project.

Mayor Skrede stated that he has requested the City Engineer to provide a spreadsheet showing each line item bid compared with the final actual costs. He stated that he would like to see where we stand on the overall project costs for this year.

Mayor Skrede stated that when he was touring the project area with the City Engineer, it was recommended that a crosswalk be installed between St. Therese and David Steingas's office on Minnetonka Blvd. He stated that when they were discussing installing the crosswalk, David Steingas joined in the conversation and offered to put the crosswalk in at his cost if the City would cut the sidewalk and purchase the pads. He stated that he is very grateful for David's generous offer.

Motion by Councilmember Erickson to authorize Pay Request No. 2 to Bituminous Roadways for the 2019 Minnetonka Blvd Street Improvement Project in the amount of \$501,334.36. Seconded by Councilmember McNeill. Motion carried 5-0.

B. Other

There was no other Unfinished Business this evening.

8. NEW BUSINESS

A. Discuss American Tower Proposal

Discussion was held regarding a proposal from American Tower, owner of the Verizon cell tower site at the Chowen's Corner parking lot, which states that the site is losing money and proposing the following revisions to our existing lease agreement with Verizon:

- Lower the annual cell tower lease payment we receive from Verizon from \$28,981.86 in 2019 to \$21,600.00 in 2020.
- Lower the annual escalator from 3% to 2%.
- Add a revenue share of 10% for future subtenants.
- Provide 6 terms of 5 years each, final expiration date will be January 31, 2069.

Mayor Skrede stated that there are a lot of opportunities for a buy-out of this site. He stated that he is not in favor of American Tower's proposal but felt it should be brought to the Council for further discussion. He stated that we already have an existing lease agreement with Verizon on this site and felt it was unfair that we have to consider their proposal because their business model doesn't work. He added that they are offering a buy-out in the amount of \$318,805 in exchange for a perpetual easement. He noted that this one-time payment could be used to partially fund a new restroom at Deephaven Beach. He stated that he would not be in favor of using this money on streets.

Councilmember Jewett asked if there was something that could make this site more viable.

Councilmember Erickson stated that towers still have value even with the advent of small cell technology. He noted that he hasn't seen very many small cell antennas around the area.

Mayor Skrede reiterated that he would like the Council's specific input on American Tower's proposal.

Councilmember Erickson stated that it is his understanding that they are requesting a lower rent and are having a hard time selling additional space on the tower because the lease has only 20 years left.

Councilmember Jewett asked if there are any companies willing to buy the lease from the City.

Administrator Young stated that there are at least 10 companies who would be willing to purchase the lease from the City.

The Council requested that staff contact American Tower and inform them that the City Council is still reviewing our options on their proposal.

Councilmember McNeill stated that she has a number of ideas and doesn't like providing a perpetual easement.

B. Authorization to Proceed with 2020 Plans & Specifications

Administrator Young stated that the Street Improvement Project for 2020 includes both Hillcrest Road and Northome Blvd. These two streets are scheduled to be resurfaced in 2020 as part of the 2020 Capital Improvement Fund Budget at an estimated cost of \$391,000. He stated that Council authorization is needed in order to have the City Engineer to prepare plans and specifications to obtain competitive quotes.

He stated that prior to the preparation of plans and specifications, city representatives will meet with the City Engineer to tour these two streets in order to determine problem areas, where curbing may be needed, and potential storm water issues. This early review of these two streets will enable a more accurate project cost estimate and allow for an early bid letting in 2020.

Mayor Skrede stated that he would prefer to review the road with the City Engineer prior to having them proceed with the plans and specifications.

Motion by Councilmember Carlson to authorize Bolton & Menk to develop plans and specifications on the 2020 Street Improvement Project following a tour and review of the proposed streets with City representatives. Seconded by Councilmember McNeill. Motion carried 5-0.

C. Other

There was no other New Business this evening.

9. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided a summary of the September 2019 Incident Report.

B. Excelsior Fire District

Councilmember & EFD Board Representative Erickson provided a summary of the September 24th EFD Board meeting:

- The District's attorney agreed that the City of Greenwood has the right under the Joint Powers Agreement to appoint Mayor Deb Kind to serve as Greenwood's representative on the EFD Operating Committee.
- The District's attorney also confirmed that the Operating Committee is obligated to follow Open Meeting Laws.
- A credit card purchasing system was approved for use by the Fire Officers.
- Overnight duty crews are going very well, including here at Station No. 2.

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:

- 2020 Health Plan Rates
- Update on the hiring process for a Public Works employee and Deputy Clerk

10. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Carlson. Motion carried 5-0. The meeting adjourned at 8:18 p.m.

Respectfully submitted,

Dana H. Young, City Administrator