

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, SEPTEMBER 15, 2014
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, Josh Hackney, Keith Kask and Darel Gustafson

STAFF: Zoning Coordinator Gus Karpas and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Mayor Skrede requested that Item B. Adopt Resolution No. 25-14 to Appoint an LMCD Interim Representative be pulled from the Consent Agenda for further discussion next month.

Motion by Councilmember Hackney to approve the Consent Agenda, consisting of the following item:

- A. Approve September 2, 2014 Council Minutes

Seconded by Councilmember Kask. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Senator David Osmek - Senator David Osmek was present to provide highlights on the recent legislative session. Discussion was held regarding a bill that Senator Osmek sponsored that provided a process to expunge an individual's criminal record in certain non-violent cases. He stated that a felony stays on a person's record and can hamper that person's ability to get a job. This bill establishes a system to where a person can get their record expunged. He stated that you can't paint people with a scarlet letter forever and they should be able to move on with their lives and job opportunities. On another note, he added that the scorecard from the Minnesota Taxpayer's League came out and he again scored the highest in terms of safeguarding the public's money. He asked if the Council had any questions or concerns.

Councilmember Kask asked how the expungement bill would affect an applicant when asked a question regarding their criminal record on a license application.

Senator Osmek stated that there was another piece of legislation that required the removal of the felony box question on an application but noted it was a good question that might require a little more research.

Mayor Skrede asked if he had received any calls from cities that are now required to participate in the Met Council's I/I Mitigation program.

Senator Osmek noted that a number of cities are dealing with this issue. He added that he would like to deal with private inflow and infiltration issues. He stated that in many cases the public sewer lines are in good shape when it's the lateral lines that may be causing the problem. He stated that he is looking at legislation that would provide grant funds to assist private homeowners.

LMCD Update - Lake Minnetonka Conservation District (LMCD) Representative David Gross was present to provide an update on recent LMCD activities. He stated that the LMCD is looking into the possibility of establishing minimum wakes due to receiving positive public feedback when minimum wakes were established this past summer.

He stated that the LMCD is also looking to streamline their ordinances. He stated that commercial marina owners petitioned the LMCD to consider making certain rule changes that would make the operation of commercial marinas easier. He stated that the marina owners came up with three suggestions that resulted in ordinance changes, including:

1. The granting of a Special Density License currently requires amenity points but the marina owners successfully argued that the marina itself is an amenity. He stated that every commercial marina can now have a 1:10 ratio of boats to water frontage or up to their current number of Boat Storage Units.
2. Marina owners are now allowed to use more space by extending the setback from 100' from the shoreline to 200'.
3. Marina owners have more discretion within their dock use area to move mooring spaces around subject to the approval of the LMCD Executive Director instead of a required public hearing.

David Gross stated that the LMCD now intends to meet with Yacht Clubs, who are currently meeting to discuss their own common interests. He stated that the Minnetonka Yacht Club has come up with a number of requests that will affect the City and he wanted to get a better feel for those requests that the City would endorse. He stated that he was hopeful that the City would provide a letter of endorsement.

He stated that the Yacht Club first established definitions of a Yacht Club, Sailing School and an Education Boat and are requesting five amendments to LMCD ordinances.

1. Exempt Yacht Clubs and Sailing Schools from Special Density License requirements and set the density at the current licensed density as of the 2014 permit or at 1 BSU for every 10 ft of shoreline.
2. Educational boats that are stored completely on shore at a Sailing School site should be free of any restriction as to their number and location.
3. Sail Boats, exclusively powered by the wind, of less than 24 ft LOA, weighing less than 600 lbs and stored completely on shore, should be considered unrestricted watercraft and subject only to the 1:15 density of the current ordinance.
4. Licensed BSU's used for support boats, owned and used by a Sailing School or Yacht Club, should be allowed to change location within the approved site without requiring changes to the License.
5. Minor changes to the Yacht Club and Sailing School marinas may be approved by the LMCD Executive Director provided that there is no change in the BSU counts, the boundaries of the existing Dock Use Area or an increase in dock length.

David Gross stated that the impact of these requests could result in more kids enrolled at the Sailing School, more parking congestion, and an unlimited number of boats stored at Bug Island.

Mayor Skrede stated that he would be in favor of greater Yacht Club autonomy. He stated that the City would likely consider restricting the use of the Yacht Club property to parking only to prevent the over-storage of boats.

Jeff Richards, 3635 James Avenue - Jeff Richards was present to request that St. Therese Church no longer be used as a polling place for the City of Deephaven. He stated that at the last election, signs were posted at St. Therese asking people to vote no on a marriage amendment. He stated that he realizes that the Church was against this amendment and appreciates free speech, but thinks it was a conflict of interest. He stated that he realizes that the polling place can't be changed for this year and he could vote by absentee ballot. He stated that this just doesn't sit right with him and if you need a place to vote, he would bring in a trailer.

Mayor Skrede stated that he appreciates the spirit in which this was presented. He stated that the election judges took down the signs in question and noted that the St. Therese Community Room is a great polling place that is large enough to handle the crowds of people who are there to vote. He noted that school elections are now held at Deephaven City Hall due to the School District's concern over security issues. He stated that he talked to Father Doug about this issue and was informed that the Church offers us the use of their Community Room because they want to give back to the community.

5. PLANNING & ZONING REQUESTS

A. Variance, Mike Flannigan, 20560 Summerville Road – Request for variances of the minimum required accessory structure setback from a principle structure, to exceed the maximum permitted accessory structure area and to exceed the maximum permitted impervious surface area in conjunction with the construction of a new detached garage. Section 1310.10(1)(b) of the zoning ordinance requires a minimum accessory structure setback from a principle structure equal to the distance of the height of the accessory structure. The applicant proposes an accessory structure height of thirteen feet, six inches and a setback of nine feet from the principal structure. The applicant is seeking a variance of four feet, six inches (9'-6") of the minimum required accessory structure setback. Section 1310.10(1)(f) of the zoning ordinance permits a total area of accessory structures that contain walls and/or a roof on a property of seven hundred (700) square feet for properties zoned R-3. The applicant is proposing a total accessory structure area of seven hundred and ninety-eight (798) square feet. The applicant is seeking a variance to exceed the permitted accessory structure area by ninety-eight (98) square feet. Section 1350.06(2)(a) of the city ordinance permits a maximum impervious surface area of 25%. The proposed impervious surface area on the property would be 34.8%. A variance to exceed the maximum impervious surface area by 9.8% is sought.

Due to the absence of the applicant, the Council felt it was necessary to continue the variance requests to a time when he would be available to address any questions the Council may have.

Councilmember Kask moved that action on variance application of Mike Flannigan for variances of Section 1310.10(1)(b) of the zoning ordinance to encroach four feet, six inches into the minimum required eight foot, six inch principal structure setback and the variance request of Section 1350.06(2)(a) of the Shore land Management ordinance to exceed the maximum permitted impervious surface area by 10.5% for the construction of an attached garage addition at Summerville Road be continued to the October 6th Council Meeting with the understanding that if the city's statutory deadline for rendering a decision expires prior to that date this motion includes that the request is to be denied in that instance. The motion was seconded by Gustafson. Motion passed 5-0.

6. UNFINISHED BUSINESS

A. Update on Vine Hill Bridge Project

City Engineer David Martini was present to provide an update on the Vine Hill Bridge Project, the contractor pay estimate, and on engineering costs. He stated that Pay Request No. 6 in the amount of \$56,858.35 includes all work completed through September 5, 2014. He stated that this represents near final quantities with the exception of a few items that will require processing of a supplemental agreement. He estimated the total cost of these remaining items will be less than \$3,500. To date, the participating and non-participating costs are as follows:

He stated that based on these totals and assuming the remaining costs are \$3,500 or less, he estimates that the total project cost will be \$3,215 less than the bid. He stated that the Participating portion of the project will be approximately \$13,440 under budget and the City portion of the project will be \$10,225 over budget. The overrun is primarily due to the additional clearing and grubbing operations that were needed for the electric and gas relocations.

David Martini stated that the original estimate for engineering services was based on a 17 week construction schedule with an average of 40 hours per week for inspection services and 5 hours per week for project management. Based on the actual hours spent over the construction period, inspection on the project averaged nearly 42 hours per week and 6.5 hours for project management. In addition, the project length was 20 weeks instead of the estimated 17 weeks. He stated that due to these factors, he estimates that the project engineering will be approximately \$142,000, which exceeds the original estimate by \$23,680.

Councilmember Gustafson noted that there was an 18% overrun on project engineering yet the project cost came in under budget. He stated that he would have thought that the engineering cost would have come in under budget like the construction cost. He stated that as the construction crew shut down due to poor weather, he would have assumed that would have been the same case with the inspector.

David Martini stated that construction is impacted by unit costs and professional services are based on the actual hours worked. He stated that if it is raining, we are not inspecting the project but might be getting caught up on paperwork. He stated that the contractor doesn't get charged for working days. He stated that some weeks might include a 50-hour work week and some weeks were less. He thought that we had a fighting chance to have the project done by the end of July and be able to reduce the inspection hours. Instead, the reverse happened and they had to be on site every day for some scheduled work.

Councilmember Erickson stated that he is concerned that we are 17-18% over in engineering and, in his job, he would have to have a conversation with his client about why it took so much time.

David Martini stated that he would be more than willing to go through their costs in more detail.

Councilmember Erickson stated that he knows a good faith effort was made on this project, but in regards to the design and inspection work on this project, both costs exceeded the estimates that were given.

B. Authorize Pay Estimate No. 6 to Lunda Construction, Vine Hill Bridge Project

City Engineer David Martini recommended payment of Pay Estimate No. 6 to Lunda Construction in the amount of \$56,858.35, which accounts for amounts previously approved and a 5% retainage

Motion by Councilmember Hackney to approve the Pay Estimate No. 6 to Lunda Construction in the amount of \$56,858.35 for the Vine Hill Bridge Construction Project. Seconded by Councilmember Erickson. Motion carried 5-0.

C. Authorize Final Payment to Pipe Services Corp. for 2014 Sewer Cleaning & Televising

Administrator Young stated that the original bid for this project was \$28,096.15 and it came in \$6,369.90 higher than the bid due to televising and cleaning an additional 5,000 L.F. of sewer main.

Councilmember Erickson noted that an additional 5,000 L.F. equates to an additional mile of sewer main.

Discussion was held on how an additional 5,000 L.F. of sewer main could have been inadvertently added to this project, whether by inaccurate mapping or an error in the specifications.

David Martini stated that he is confident that the length of pipe he is authorizing for payment is accurate.

Councilmember Kask stated that it might have had something to do with the bid specifications or some newly found pipe.

David Martini stated that he would review the specifications to see if he can determine why so much additional pipe was cleaned and televised.

Administrator Young stated that this project was budgeted at \$30,000 in the Sewer Fund but the overall capital project cost should still come under budget since the 2014 Manhole Rehabilitation Project, which was also budgeted at \$30,000, is actually estimated to come in at around its bid of \$16,175.

Motion by Councilmember Hackney to approve the Final Pay Request to Pipe Services Corporation in the amount of \$34,466.05 for the 2014 Sewer Main Cleaning & Televising Project. Seconded by Councilmember Erickson. Motion carried 5-0.

D. Approve Grant Application for Municipal Inflow and Infiltration Projects

Administrator Young stated that the City of Deephaven is required to participate in the Metropolitan Council's On-going I/I Mitigation Program beginning in 2015 due to the fact that the City exceeded the maximum permitted contribution to the wastewater system of 0.60 Million Gallons per Day on June 19, 2014. Based on this exceedance, the City's preliminary 2015 I/I surcharge is \$62,250, which

is based on the Total I/I Work plan amount of \$249,000 that is spread over 4 years in the Ongoing Surcharge Program.

He stated that the overall amount of the surcharge can be appealed to the Met Council, which will allow the City to credit money that has already been spent in 2013 and 2014 on eligible projects. He stated that the City undertook three projects that total approximately \$75,759 the last two years. He stated that this \$75,759 in eligible project costs would be deducted from the overall surcharge of \$249,000 to establish a new Total I/I Work plan amount of \$173,241 or \$43,310 per year. City staff will send a letter to the Met Council the first week in October requesting a reduction in the surcharge due to these eligible projects.

He stated that in addition to the credit for eligible projects, Metro Cities secured a \$2 million bonding appropriation from the 2014 Legislature for I/I mitigation on local public infrastructure. The grant would fund approximately 50% of the eligible project costs for I/I mitigation in 2015. He stated that the Grant Application Form must be submitted to the Met Council no later than September 26, 2014. He stated that he is requesting approval to submit a grant application for Municipal Inflow & Infiltration Projects.

David Martini noted that a big portion of the I/I problem could potentially be located in private lines.

Mayor Skrede suggested televising the private lines and contacting Senator Osmeck regarding the availability of grant funds for repairing private sewer lines.

Motion by Councilmember Kask to authorize Staff to submit a grant application to the Metropolitan Council for Municipal Inflow & Infiltration Projects. Seconded by Councilmember Hackney. Motion carried 5-0.

E. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Approve Temporary On-Sale Liquor License for Cottagewood Foundation

Administrator Young stated that the Cottagewood Community Foundation is requesting a permit for a 1 Day Temporary On-Sale Intoxicating Liquor License for their annual Oktoberfest event to be held on Saturday, October 4, 2014. Section 470.03 of the City Code entitled Sale, Consumption and Display of Intoxicating Liquor, Beer and Wine allows for the issuance of a one day permit to "any club or charitable, religious or other non-profit corporation that has existed for at least three years".

He stated that the application has been included in the Council packet that provides more detailed information regarding the event. If approval of the permit is granted by the City Council, the Application and Permit is forwarded to the Minnesota Department of Public Safety for approval by the Director of Alcohol and Gambling Enforcement.

Chad Johnson, 4265 Jefferson Street, was present to represent the Cottagewood Community Foundation in their request. He stated that the plans for 2014 are very similar to what has been offered in the past. He stated that the event will be held from 6:00 p.m. to 10:00 p.m. on Saturday, October 4th

with beer sold in a fenced-off area that requires wristbands to enter. He added that there will be no outdoor food or eating area.

Mayor Skrede noted that certificates of insurance will need to be provided. He stated that the event has been well-attended in the past and has had a positive impact on the community. He also noted that there has been a problem with noise from the band in the past.

Chad Johnson stated that there will not be a band this year, just songs played over a speaker.

Motion by Councilmember Hackney to approve the Application and Permit for a 1 Day Temporary On-Sale Intoxicating Liquor License to the Cottagewood Community Foundation for Saturday, October 4, 2014 subject to providing a current Certificate of Liquor Liability Insurance. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Other

There was no other New Business this evening.

8. REPORTS FROM STANDING COMMITTEES

A. Park Committee

Administrator Young presented a review of the Park Committee meeting held on September 9, 2014 on the following items:

- The majority of the meeting was an update on previous discussion items or projects.
- Reviewed a request from Jason Stukel, Minnetonka High School Mountain Bike Team Assistant Coach, about the possibility of using a portion of Burton Park from 3:00 p.m. to 4:00 p.m. on Tuesdays, and possibly Thursdays, for no more than 4 days per month, as part of the overall trail for the Bike Team. They would not modify the trail or ride on it if it were wet or soft and would put signs at the entrances stating that there may be bikers on the trail.

Further discussion was held on the request from the Mountain Bike Team to use Burton Park. The Council stated that they would like more information before they could make a decision on whether to allow the Mountain Bike Team to use Burton Park.

B. Boat Committee

Administrator Young presented a review of the Boat Committee meeting held on September 10, 2014 on the following items:

- LMCD Representative David Gross stated that there may be an opportunity for municipal marinas to request:
 1. A mix a boats that best meets the needs of our residents, such as permitting powerboats on buoys. He noted that the LMCD allows the City of Mound the discretion to place boats wherever they would like. He stated that the City of Deephaven should have this same ability.

2. That municipalities be allowed the ability to reconfigure or reorganize their dock use area the way we would like.
3. A 200' setback. He stated that we may not need it now but may want this additional setback in the future. In addition, the Carson's Bay docks, which are currently at 140', would no longer require a variance.
4. He also recommended that the City consider submitting two District Mooring Permits – one for the renewal of the current District Mooring License without Change and the other a new District Mooring License that requests permission to moor powerboats on buoys.
 - Discussed illegal dock attachments
 - Reviewed a potential Boat Lift Policy
 - Discussed the Ten Year Rule / Waiting List
 - Discussed the possibility of city-owned slide spaces in order to access powerboats on buoys, if permitted.
 - Reviewed the 2015 Marina Fund Budget.

Further discussion was held on the future review of the Ten Year Rule by the City Council.

9. ADJOURNMENT

Motion by Councilmember Erickson to adjourn, seconded by Councilmember Hackney. Motion carried 5-0. The meeting adjourned at 8:55 p.m.

Respectfully submitted,
Dana H. Young
City Administrator