

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, OCTOBER 6, 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 Darel Gustafson, Josh Hackney, Steve Erickson, and Keith Kask

STAFF: Police Chief Cory Johnson, Zoning Coordinator Gus Karpas, and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Councilmember Gustafson requested that the September 15, 2014 City Council minutes be withdrawn from the Consent Agenda for further discussion.

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

- A. Approve Verifieds
- B. Approve 2014-2015 Deer Management Program
- C. Approve August 2014 Treasurer's Report

Seconded by Councilmember Erickson. Motion carried 5-0.

Councilmember Gustafson requested a change in the September 15, 2014 Council minutes involving the clarification of a statement he had made regarding Vine Hill Bridge engineering fees.

Motion by Councilmember Erickson to approve the September 15, 2014 Council minutes, subject to the requested correction. Motion seconded by Councilmember Kask. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Steve Krause, 4633 Bayswater Road, Shorewood, was present to express his concerns regarding the tree trimming by Xcel Energy along the LRT Trail. He asked if the Council had received any complaints from Deephaven residents.

Mayor Skrede stated that he heard from several residents that the trimming was overly aggressive.

Steve Krause stated that this trimming doesn't fit in with Deephaven's history or image and felt that the trimming was devastating to the trail. He stated that he was hoping that the Council had heard enough comments from Deephaven residents that the Council would be interested in restoring some of the plantings. He added that the City's public works yard should dump their materials further away from the trail.

Mayor Skrede stated that he would like to see Mr. Krause's photos of the clearing along the trail and added that this issue will be discussed at the upcoming Public Works Committee meeting.

Steve Krause stated that he would like to see a joint fundraising effort including Deephaven, Shorewood and Greenwood to fund the planting of some low growing plants or trees. He further added that the tree trimming was much more dramatic on public property than private property along the LRT Trail. He noted that on Labor Day there are 100 times more people on the LRT Trail than at all of Deephaven's parks and beaches combined. He thanked the Council for this opportunity to present his concerns.

5. PUBLIC HEARINGS

A. Public Hearing on the assessment of delinquent sewer/storm sewer, water and garbage/recycling utility charges – Adopt Resolution No. 25-14 & 26-14

Mayor Skrede called the public hearing to order at 7:16 p.m. Hearing no comments, the public hearing was closed at 7:19 p.m.

Administrator Young presented the assessment roll on the delinquent sewer/storm sewer, water, garbage/recycling and public nuisance abatement charges for Council review.

Motion by Councilmember Kask to adopt Resolution No. 25-14, A Resolution Adopting Delinquent Utility Assessments. Seconded by Councilmember Erickson. Motion carried 5-0.

Motion by Councilmember Hackney to adopt Resolution No. 26-14, A Resolution Adopting Delinquent Charges pertaining to the Abatement of a Public Nuisance. Seconded by Councilmember Gustafson. Motion carried 5-0.

6. 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.

Zoning Coordinator Karpas summarized the request. He stated that the house file indicates the property has not had a garage since the original garage was converted to living space in the mid-

seventies. The placement of the garage was selected to comply with the minimum required setbacks. The applicant indicates the shed directly adjacent to the garage has historic significance in that it was the original pump house for the water tower located in the neighborhood and he would prefer not to remove it since it has been in existence since WWII.

The applicant has connected the garage with a breezeway that runs underneath the above-grade deck, which will be reconstructed, and the basement. It meets the requirements outlined in Section 1310.10(1)(d) for a legal connection between an accessory structure and principal structure.

Pushing the garage forward to comply with the required accessory structure separation would move the structure out of compliance with the setbacks and do little to reduce the non-conforming impervious surface area.

The proposal complies with the setback requirements outlined in Section 1302.05(3), the height limitations outlined in Section 1302.05(4) and the maximum permitted grade alteration permitted in Section 1312.04 of the Zoning Ordinance.

Karpas said he recommended approval of the request based on the criteria that the request is in harmony with the purpose and intent of the ordinance, is consistent with the comprehensive plan, puts the property to a reasonable use, there are unique circumstances attached to the property not created by the landowner, and the variance will not alter the essential character of the neighborhood.

Confirmation was given on the height of the accessory structure and the existing and proposed impervious surface area.

Councilmember Erickson's stated that his only concern is about the drainage along the south side of the property. He feels the Council needs to be clear on where the water is going if it were to approve the request.

Mr. Flannigan explained the layout of the property to the south of the proposed garage addition. He said the city owns a ten foot strip between his property and the neighboring property. He is willing to install a pipe or something else to carry the water to the lake to keep it off the neighboring property. He discussed the historic nature of the accessory structure, stating it was built prior to the Spanish/American War and should be preserved.

Sally Hurd, 20580 Summerville Road, the property owner directly to the south, stated that she has no concerns with the request provided the runoff is kept on his property. Her concern is about how the city can ensure her property will be protected if the request is approved.

Zoning Coordinator Karpas said a condition could be placed on the request that requires the City Engineer to approve any storm water system prior to its placement and further require an inspection upon its completion to ensure its achieving the desired results.

Mayor Skrede suggested the conditional language that could be added to a motion. Councilmember Hackney asked if this was a normal procedure. Zoning Coordinator Karpas said all building permits require engineer review and the ordinance permitted the city to require such inspections even if variances aren't required for a project.

The Council discussed the placement of the existing accessory structure in relation to the proposed garage and questioned the application of the ordinance in this instance. Zoning Coordinator Karpas said it may not have been the intent of the ordinance to apply to a request like this, but according to the way it is written, it had to be applied in this instance. Karpas said the setback may have been intended for fire safety purposes and, in this case, since the garage will be located within six feet of the accessory structure, it will be required to have a fire rated wall which should address the intent of the ordinance.

Mayor Skrede suggested the Council review the conditions placed on the Planning Commission's recommendation for approval to see if any would need to be included in a motion made by the Council. Upon review a number of the conditions, it was found that the majority of the conditions were satisfied or no longer needed, while some would be included in any motion to approve.

Councilmember Kask approved the recommendation and findings of staff for the approval of the 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.

The motion for approval is based on the following conditions;

- a) That the applicant provides a drainage plan for the City Engineer's review and approval which includes a system that will convey water along the south property line so that it disperses on the applicant's property and does not drain onto the city owned property to the south. This system must be inspected and approved by the City Engineer prior to a final inspection on the garage.
- b) That the applicant provide an existing conditions survey, a proposed conditions survey and a site plan of the property with the application for a building permit.
- c) That the two properties that comprise the property be combined into to one PID number.
- d) That the applicant submits an "as-built" survey which includes the impervious surface calculations.

Councilmember Erickson seconded the motion. The motion carried 5-0.

7. UNFINISHED BUSINESS

A. Adopt Resolution No. 27-14, Approving Bid on Summerville Road Drainage Project

Mayor Skrede stated that on September 2, 2014, the Deephaven City Council authorized city staff to obtain bids on the Summerville Road Storm Water Improvement Project according to the plans and specifications prepared by the City Engineer. He stated that the City Engineer obtained the following quotes on the project for Council review:

<u>Contractor</u>	<u>Bid</u>
Barber Construction, Inc.	\$25,818.00
Northwest Asphalt, Inc.	\$29,537.00

Administrator Young stated that the City Engineer's original estimate for this project was \$30,541.50 and that this project would be funded from the 2014 Storm Water Fund and replace the 2014 Linden Road Storm Sewer Project, which will be rescheduled for 2015.

Motion by Councilmember Hackney to adopt Resolution No. 27-14, a Resolution accepting the Bid and Awarding a Contract to Barber Construction, Inc. in the amount of \$25,818.00 for the 2014 Summerville Road Drainage Improvement Project. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Adopt Resolution No. 28-14, Rescinding the Appointment of LMCD Representative David Gross

Mayor Skrede stated that both he and Councilmember Kask searched for potential candidates to serve on the Lake Minnetonka Conservation District during David Gross's absence during the winter months and recommend the selection of Chris Jewett for this position.

Chris Jewett stated that he had served on the LMCD Board of Directors for six years on behalf of the City of Minnetonka and has lived in Deephaven for one year. He stated that he would be willing to help out during David Gross's absence.

Councilmember Kask stated that Chris Jewett is a unique candidate and would be able to hit the ground running with all his past experience on the LMCD Board.

Mayor Skrede agreed that his familiarity and history with the LMCD is an important attribute.

Motion by Councilmember Kask to adopt Resolution No. 28-14, a Resolution Rescinding the Appointment of David Gross and Appointing Chris Jewett to the LMCD Board. Seconded by Councilmember Erickson. Motion carried 5-0.

C. Approve Amended 2015 EFD Operating Budget & 2015 Capital Equipment Plan

Mayor Skrede stated that he had met with Fire Chief Gerber to clarify that our vote opposing the 2015 Operating Budget and 2015 Capital Equipment Plan was not a reflection on the Fire Department but a concern with several EFD Board fiscal decisions.

Councilmember Hackney stated that the 2015 Operating Budget was approved on a 3-2 vote and the 2015 Capital Equipment Plan was voted down on a 3-2 vote. He stated that this would allow the Operating Budget to make a transfer to the Capital Equipment Fund in 2015 but the 2015 Capital Equipment Plan would not be able to make any expenditure.

He stated that the EFD Board tried to come up with a solution to this problem. He stated that after considerable discussion, and while there may not be full agreement on the decision, the Board was successful in reducing Operating Fund reserves in three ways. First, \$30,000 would be transferred into the Fire Relief Pension Fund. He stated that while this was the least desirable option, it would be used towards any future pension shortfall. Second, \$30,000 would be used to refund the cities according to the 2015 funding formula. And third, \$30,000 would be used to seal the floors at Station No. 1 and No. 2. He stated that the floor sealing would have been a potential Operating Fund budget item in 2016 but it was decided to utilize fund reserves to address this future expense next year. He stated that

both the 2015 Operating Budget and the 2015 Capital Equipment Plan have been revised and Deephaven is the first city to vote on the revised budgets.

Mayor Skrede asked if the vehicle leases in the Capital Equipment Plan have been lowered from 7 years to 5 years.

Councilmember Hackney stated that the leases have been lowered from 7 to 5 years as requested by our City Council.

Mayor Skrede stated that the EFD Board seemed to listen to our concerns and have tried to work to address the concerns of all five cities. He stated that he had originally hoped the EFD Board would consider lowering excess reserves by \$45,000 and the Board had actually proposed to lower excess reserves by \$90,000, even though we may not particularly agree with the decision to transfer \$30,000 for future pension fund contributions. He stated that he was pleased with the progress that was made.

Councilmember Hackney stated that he felt that there was a real understanding of the concerns of Deephaven & Tonka Bay and the EFD Board attempted to address those concerns.

Councilmember Erickson stated that he is pleased that the movement is heading in the right direction and could support the 2015 EFD Budget.

Councilmember Gustafson and Kask both agreed.

Mayor Skrede stated that although he would have preferred if the EFD Board would have lowered the levy rather than mailing a check to each of the cities, he also could support the 2015 EFD Budget.

Motion by Councilmember Hackney to adopt the amended 2015 EFD Operating Budget and the amended 2015 Capital Equipment Plan. Seconded by Councilmember Erickson. Motion carried 5-0.

D. Other

Mayor Skrede stated that we have received a proposal from the City Engineer concerning the Vine Hill Bridge engineering fees. He stated that City Engineer David Martini understands the Council's concerns that the construction administration fees for the bridge project have exceeded his estimate and Dave Martini proposed that Bolton & Menk drop all of Dave Martini's time after July 25th, which corresponds with the original estimate of a 17 week construction schedule, and all of Bolton & Menk's time after August 15th, which corresponds approximately with the opening of the bridge. This would equate to an \$11,032.00 reduction in engineering fees. In addition, Bolton & Menk would further propose to drop any future time associated with punch list items and final documentation.

Mayor Skrede stated that this proposal would put us under budget for the bridge project. He noted that David Martini heard us and is trying to address our concerns. He stated that he would be willing to accept this proposal.

Councilmember Gustafson stated that he felt this was an acceptable solution.

Councilmember Erickson concurred that this was a reasonable adjustment.

Councilmembers Kask and Hackney also agreed.

8. NEW BUSINESS

A. Authorize Purchase of 2015 Squad Cars

Police Chief Cory Johnson stated that the Police Department is scheduled to replace two Dodge Chargers in 2015. He stated that he spoke to the Dodge dealer who has the State Contract for Dodge and was advised that the vehicles must be ordered in October 2014 for delivery in February 2015. He stated that if we order after October, we may not get delivery until May 2015.

He stated that \$64,000 has been budgeted in the 2015 Capital Improvement Fund for two police vehicles. He stated that the vehicles will cost between \$25,577 and \$27,577 each, with the remainder of the \$64,000 used towards changeover costs. He stated that the retired police vehicles would be sold at an anticipated price of \$6,000 per vehicle.

Councilmember asked about the types of vehicles the Police Department currently uses.

Chief Johnson stated that the Department has three sedans and one sport utility vehicle.

Councilmember Erickson asked if all the vehicles are all wheel drives.

Chief Johnson stated that they are all wheel drives, which are needed for our narrow and hilly streets.

Further discussion was held on whether to purchase sport utility vehicles or sedans. Chief Johnson noted that the front seat interior room is about the same in both types of vehicles and SUV's are typically more expensive.

Motion by Councilmember Kask to authorize ordering two police vehicles in October 2014 for purchase in 2015 at a price range of \$25,577 - \$27,577. Seconded by Councilmember Hackney. Motion carried 5-0.

B. Adopt Ordinance No. 05-42, Amending Dog Owner Violations

Police Chief Johnson stated that there was a recent court case involving a dog biting incident that was dismissed by a Hennepin County Judge due to issues with the definitions of "molest" or "passersby" that are included in City Ordinance 510.03, subd. 1 (g), which states that an owner is in violation if a dog "molests passersby, bicycles, or vehicles."

He stated that in order to clarify the language in this subdivision, staff recommends deleting "Molests passersby, bicycles, or vehicles" and replacing it with:

- Any dog that snarls at persons, bites persons or other animals, or habitually exhibits vicious tendencies off of the owner's property.
- Any dog that chases vehicles or interferes with persons walking or the driving of automobiles, bicycles, motorcycles, motorbikes, snowmobiles, or other vehicles on public grounds, streets or highways.

Councilmember Erickson stated that he agreed with the Judge's interpretation of the language.

Chief Johnson stated that it is a rare occasion when someone gets charged under this section of the City Code.

The Council reviewed the proposed ordinance amendment and made several changes to the proposed language.

Motion by Councilmember Kask to adopt Ordinance No. 05-42, An Ord. Amending Dog Owner Violations, as revised this evening, and waive the second reading. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Other

There was no other New Business this evening.

9. DEPARTMENT REPORTS

A. Police Department

Chief Johnson reported on the findings and utilization of the monitoring reports from the speed trailer, which records traffic speeds and number of vehicles over a specific time period.

Chief Johnson presented the September 2014 Activity Report for Council review and noted that it had been a busy month with a lot of assists to neighboring communities for a number of serious calls.

B. Excelsior Fire District

EFD Liaison Councilmember Hackney stated that there is nothing new to report that hadn't been discussed earlier on the revised 2015 EFD Budget.

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:

- LOGIS group health meeting on September 23rd
- 2014 General Election preparations
- 2014 Project Update
- Minnetonka Blvd Curbing Quotes

10. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 9:00 p.m.

Respectfully submitted,
Dana H. Young
City Administrator