

Monday, January 12, 2015 7:00 PM
CITY OF MINNETONKA BEACH
CITY COUNCIL MEETING MINUTES

Roll Call: Mayor Joann Anderson, Council Members: Jill Bartel, Jaci Lindstrom, Rick Skalla, Mike Taylor. Absent: Randy Gilster, Treasurer

Staff Present: City Administrator Susanne Griffin; City Clerk Heidi Honey; Public Works Director Ben Young; Planning and Zoning Administrator Richard Krier

Guests: Police Officer Chad Stensrud

1. Mayor Anderson called the meeting to order at 7:05 p.m.

2. City Clerk Honey led the Pledge of Allegiance.

3. Oath of Office for Newly Elected Officials: Mayor Rick Skalla, Council Members Jill Bartel and Mike Taylor.

City Administrator Griffin administered the Oath of Office to Mayor Rick Skalla, Council Member Jill Bartel, and Council Member Mike Taylor.

4. Approve Agenda for the January 12, 2015, City Council Meeting.

4.1. Council Meeting Action Notes

A motion was made by Council Member Lindstrom and seconded by Council Member Bartel to approve the agenda as outlined. With all members voting in favor, the motion carried.

4.2. Council Meeting Action Notes

Council Member Lindstrom requested that the Planning Commission Wind Generator Study be moved from the Referrals section to the actual Council Action Notes with a deadline of December 2015.

Council Member Bartel requested adding researching the height of the steps at City Hall to the Council Action Notes. Public Works Director Young and Administrator Griffin will follow up with the contractor.

5. Approve Minutes

5.1. Regular Meeting of December 15, 2014

Mayor Skalla made a clarification to section 13.1 on page 6 that they attended a Planning Commission workshop rather than a meeting.

A motion was made by Council Member Bartel and seconded by Council Member Lindstrom to approve the Council meeting minutes of December 15, 2014 as amended. With all members voting in favor, the motion carried.

6. Appointment of Council Member and Oath of Office

Mayor Skalla discussed the process used for finding a new council member and felt there should have been communication to residents about who had applied for the position. At the December Council

meeting, Treasurer Gilster stated he would be interested in the open Council seat but afterwards withdrew. Mayor Skalla said that some residents of the Huntington Point area now feel they are not represented. Mayor Skalla requested pushing the process back 30 days to let residents have a voice and show fair representation across the City. Council Member Bartel disagreed. She stated the process was fine and anyone had the opportunity to run for Council Member at the election or apply for the open seat. Council Member Lindstrom believes the City is one city and not divided. She stated that Minnetonka Beach is small enough for each Council member to represent all of Minnetonka Beach and she emphasized that she represents all of Minnetonka Beach. Council Member Taylor thinks the City has been completely transparent and all interested parties had time to apply for the open seat. He also stated there are two great candidates to choose from. Mayor Skalla said that is a fair discussion and he asked for a motion to delay for 30 days. Council Members did not make a motion. Mayor Skalla wants it in the record that he believes the Huntington Point area will not be represented on the Council for the next two years.

Presentation of candidates:

Paul Kozloski – He is proud of the City and its leadership, guidance and direction. He feels residents have the ability to speak to City leaders, which is important to him. He wants to give back to the community that has provided for him and his family for the last 15 years. Council Member Lindstrom asked his availability. He stated his commitment to being a Council Member and has flexibility in his schedule allowing him to be present as required. Council Member Taylor asked if he has served on any committees. He stated he has not but feels now is the time to give back.

Steve Howarth - He has been a resident for 3.5 years. He stated it is the preservation of history and all the things that make Minnetonka Beach special that led him to want to serve. He wants to use his professional and personal strengths to make the City even better. He believes he can offer unbiased opinions because he is a relatively new resident. Council Member Lindstrom noted his strong financial experience and asked about other skill sets. He has served on non-profit boards as well as professional committees.

Mayor Skalla opened discussion to the public for comments with a limit of 2-3 minutes.

Eric Elliott – 3004 Northview Road. He is a neighbor to Paul Kozloski and believes he is a good person who would serve Minnetonka Beach well. He stated he had worked with Steve Howarth on the Heart Association's Twin Cities Heart Walk and Steve's efforts were instrumental in the event exceeding its goals. Steve had good ideas, different insights and ways to approach challenges while serving on the executive team.

Philip Mahowald - 3022 Westwood Road. He stated that Paul has demonstrated a passion for this community. He has the background and experience to be a good civic leader and, as a neighbor, he has a heart of gold. He is passionate, tenacious, fair and impartial.

John Gabos - 2928 Northview Road. He was supportive of both candidates.

Administrator Griffin passed out an email from Treasurer Gilster regarding an email from Ward Myers.

Council discussed the candidates. Council Member Taylor stated the decision is difficult given the two great candidates. He has received many emails and calls supporting Paul but that is probably due to his longer tenure in the city. The decision should be made on qualifications not on length of residency.

Council Member Bartel agreed both candidates are very qualified and also received many calls in support of Paul. Council Member Lindstrom stated these are extremely qualified candidates. They have high business experience, high character and high integrity. Council Member Taylor asked Council Member Lindstrom if anything was influencing her decision and she replied that Paul has been in the community longer and that may make a difference because it took her a while to get an understanding of how everything worked when she first became a Council Member. Council Member Bartel agreed with Council Member Lindstrom that the time frame is the only differentiation for her. Mayor Skalla requested a motion be made to adopt Resolution 2015-11.

A motion was made by Council Member Lindstrom and seconded by Council Member Bartel to adopt Resolution 2015-11 appointing Paul Kozloski to the City Council to complete the unexpired four year term of Rick Skalla, effective January 12, 2015 through December 31, 2016. Council Members Lindstrom and Bartel voted in favor, Council Member Taylor opposed. The motion carried.

City Administrator Griffin administered the Oath of Office to Council Member Paul Kozloski.

7. Police Report

8.1 Police Report – December

Sergeant Stensrud is the new point of contact for Minnetonka Beach. He stated last month was fairly normal with a few cars in a ditch, a cable wire was down, and a couple of medical situations. The police department is in the hiring process for 2 -3 part time officers who will eventually become full time.

8. Open Forum

8.1 No discussion

9. Treasurer's Report

9.1. Consider Motion to Approve Final December and January Checks

Administrator Griffin confirmed that 12 checks in the amount of \$27,072.56 were for 2014 expenses and budget. The Bartlett Tree expenditure was for Park Commission EAB treatment and it was in their CIP budget.

A motion was made by Council Member Bartel and seconded by Council Member Lindstrom to approve the final December 2014 checks numbered 14812 through 14823 in the amount of \$27,072.56. With all members voting in favor, the motion carried.

A motion was made by Council Member Bartel and seconded by Council Member Lindstrom to approve 37 checks numbered 14824 through 14860 in the amount of \$225,977.35. With all members voting in favor, the motion carried.

9.2. 2014 Final Budget Report

Mayor Skalla stated the City is in a positive state with over \$113,000 for the year end. Council Member Taylor asked if Line 2960 was in CIP because the City underspent \$43,000. Administrator Griffin clarified it is still in the general fund.

10. Consent Agenda

- 10.1. Fire Report – November
- 10.2. **Resolution 2015 – 01** Appoint 1st National Bank of the Lakes as Official Depository for 2015
- 10.3. **Resolution 2015 – 02** Designate the Pioneer as the Official Newspaper for 2015
- 10.4. **Resolution 2015 – 03** Weight Restriction Exemptions
- 10.5. **Resolution 2015 – 04** Approve Employee Floating Holiday
- 10.6. **Resolution 2015 – 05** Appoint LMCC Representative (Leonard MacKinnon)
- 10.7. **Resolution 2015 – 06** Set 2015 Board of Review Date for April 13, 2015
- 10.8. **Resolution 2015 – 07** Approve 2015 Staff Wages (as approved in 2015 budget)
- 10.9. **Resolution 2015 – 08** Annual Appointments

Council Member Lindstrom asked Public Director Young about the process to lift road restrictions in the spring. Public Director Young stated we usually follow the standard of the State MN DoT.

A motion was made by Council Member Lindstrom and seconded by Council Member Taylor to approve the Consent Agenda. With all members voting in favor, the motion carried.

11. New Business

11.1. Public Hearing Rules of Procedure

Administrator Griffin said it was suggested to her that Council adopt rules of procedure for conducting public hearings. Planning & Zoning Administrator Krier put together a set of suggested rules of procedure. Council Member Bartel recommended that copies of any written materials presented at Public Hearings should be provided to Council. Administrator Griffin requested a motion for Council to adopt the public hearing rules of procedure with the addition of any written material, pictures, drawing or illustration used in the hearing become public record and must be labeled by the Clerk as to who presented the information. All information presented must be left with the Clerk and a copy must be provided to the Council members.

A motion was made by Council Member Taylor and seconded by Council Member Bartel to adopt the City Council Public Hearing Rules of Procedure dated January 12, 2015 as amended. With all members voting in favor, the motion carried.

City Attorney Hilke asked to suspend the newly adopted rules of procedure for this meeting because people attending this meeting were not aware of the rules and may not have necessary materials. He asked that the rules of procedure be effective at the next City Council meeting.

A motion was made by Council Member Taylor and seconded by Council Member Lindstrom to adopt the City Council Public Hearing Rules of Procedure with the amended effective date of February 9, 2015. With all members voting in favor, the motion carried.

12. Civic Committee Report

Administrator Griffin reported for Civic Committee that they will attend the February 9, 2015 Council meeting and present a proposed membership plan. They want to discuss membership at their January meeting and have a proposal in February for Council. Mayor Skalla asked Council Member Lindstrom to follow up on that for the next meeting because they need to define the allotted number of members allowed as well as produce a list of members.

13. Park Commission Report

Park Chair Spurduto was absent. Council Member Bartel reported on her behalf that Park Commission discussed the swings and grant money for the pathway to the ADA swing at Half Moon. They have money in the CIP for this with a 50/50 grant. If the grant is denied, there may be substitute material available to allow the pathway to be completed within budget. EAB treatment is under budget. Commissioner Rezabek reported tree inventory is complete. Trees marked to be taken down are down and those marked for treatment are treated. This is a big accomplishment. There are no diseased ash trees that we know of at this time. Park Commission is working on hiring summer help at the beach. Council Member Taylor asked about the method for tree replacement. Park Commissioner Rezabek stated the arborist from Bartlett determines best placement of trees for them to flourish. Stumps will be removed in the spring. Council Member Bartel explained that Park Commissioners will be receiving updated packets with plans, surveys and materials so all members have consistent training and information.

14. Planning and Zoning (Board of Adjustment and Appeals)

14.1. Resolution 2015 - 09 Appeal Zoning Administrator's Determination Relative to AMBS Variance – 2932 Northview Road

Mayor Skalla opened the Public Hearing for the Planning and Zoning Board of Adjustment and Appeals to Appeal Zoning Administrator's Determination Relative to AMBS Variance – 2932 Northview Road. James Gilbert, attorney for Scott Dawson of 2932 Northview Road, requested 15-20 minutes for their presentation. Mayor Skalla noted that anyone wishing to speak from the public will fill out a card and will be allowed 5 minutes, and that anything presented will be left with the Clerk for documentation.

Planning & Zoning Administrator Krier stated the first issue is an appeal of the determination by Administrator Krier that a variance is needed and Mr. Dawson's house cannot be built as proposed without a variance because it is in violation of Section 207 of the City Code. Administrator Krier referenced requested actions listed in his letter dated January 12, 2015. The actions requested by Administrator Krier were to hold a public hearing and move to adopt Resolution 2015-09 making findings, providing interpretation and affirming the Planning and Zoning Administrator's determination that the proposed house would be in violation of the City Code of Ordinances.

Mr. James Gilbert, attorney representing Mr. Dawson, submitted a letter to Council outlining claimed facts and legal issues related to the property. He stated he thought Council had gone to the site to view it as well as studied the information he provided to Council prior to this meeting. Mr. Gilbert made the following comments on behalf of his client. He believes he and City Attorney Hilke have differences in interpretation of the legal issues. The materials he sent were quite voluminous because he wanted to not only address the issues with the Dawson property but also address another property with a similar situation, referencing exhibits F,G,I,J,K of the book relating to 2651 Woodbridge Road. This property was granted an AMBS variance by City Council at the Sept. 2014 City Council meeting. Mr. Dawson requested a similar variance three weeks after the variance for 2651 Woodbridge Road was approved. The statute relating to variances changed in 2011. The new standard is "practical difficulties". This standard was not used by Administrator Krier when making the recommendation on the Dawson property but was used by Bill Thibault when making the recommendation on the Woodbridge property. The Dawsons hired professionals to help them with plans and make recommendations to build their home knowing what went on at the Woodbridge property. One important factor is that the Dawson property is a flag shaped property and is unique with the driveway ½ the length of the buildable lot. The other most important factor is the 2928 Northview property to the east. It is 180' back from lake which is rare to not position a

house on a lake. This creates hardships for other residents wanting to build nearby and nearer to the lake. They had a variance to build that property in 1996. The home in the back at 2938 Northview also needs to be taken into consideration. The final factors making this very unique are the two lakeside access structures on the east and west of the property. Besides these factors, the Code needs to be examined to determine the interpretation of the Code for AMBS situations.

Mr. Gilbert distributed a letter to Council dated 1/12/14 which summarizes the Code sections and made the following further comments - In the Woodbridge property situation, the acting P&Z Administrator made a recommendation based on how he interpreted the Ordinance. On page 13- exhibit F, and page 14 - exhibit G, it states setbacks can be affected by the presence and location of conforming and non-conforming accessory dwelling structures in the immediate area. Administrator Krier felt accessory structures should be disregarded. This is inconsistent. Section 205 of the City Code defines AMBS as the average minimum building setback line shall be located by finding one point on each side lot line, each point at the distance of the setback of existing structures located on adjoining properties. City Code defines structures as anything constructed or erected in a fixed location for occupancy or to contain an accessory use. The City Code lists both structures with equal power and equal significance.

The City Code defines non-conforming use as “the use of a structure, land or both lawfully in existence on the effective date of this Ordinance which does not conform to the requirements applicable thereto contained in this Ordinance and as subsequently amended”. Are the two structures adjacent to the Dawson property permitted uses? Are they non-conforming uses? What are they? Mr. Gilbert thinks they are structures that need to be considered in making the determination.

In the 1990’s and 2000, Minnetonka Beach dealt with a different standard before the 2011 amendment. The determination on this property needs to be made on the current standard not the past standards. Permitted use is use authorized by right. How did the sheds get down there? Who authorized them? Are they permitted? Mr. Gilbert thinks the City has permitted them. The Gabos property has one of them and they use that structure. The sheds have to be construed as part of the calculation. The Ordinance requires you to determine the Setback area as defined in the City Code as the area between the lot line with the principal use or accessory use setback. Therefore, the sheds need to be part of this calculation. Mr. Gilbert stated the Ordinance is not clear and multiple interpretations exist in which structure to use to determine AMBS.

He believes Administrator Krier’s interpretation is wrong and he also believes they do not need a variance because they are within the 75 foot setback. That is a legal issue that may have to be decided later on. Mr. Gilbert wanted clarification about this being the first issue to be decided upon tonight and then the second issue of Resolution 2015-10 Denying AMBS Variance being decided as a separate issue.

Mayor Skalla confirmed they are two separate items. Mr. Gilbert requested the right to later discuss his comments relating to the second issue.

Mayor Skalla asked residents if any wished to speak about Resolution 2015-09 Appeal Zoning Administrator’s Determination Relative to AMBS Variance – 2932 Northview Road. City Attorney Hilke stated that the current issue for discussion is whether a variance is required and the second issue that will be discussed later is if the variance should be granted. Mayor Skalla stated the

Planning Commission has already spoken out about this. He asked residents if anyone wished to speak in favor of the resolution.

City Attorney Hilke stated he has listened carefully to Mr. Gilbert speak on behalf of the Dawson family and it does not change his legal analysis as the City Attorney. It is clear from the Ordinance that a variance is required under the circumstances and the City Code is not ambiguous. It is only ambiguous if you make the assumptions Mr. Gilbert made in his arguments. The variance is required, the accessory structures that were referenced are not authorized accessory structures, and, if you look at the actual language of the Ordinance, there is no evidence that the City Council took any separate action to authorize those structures. In the absence of that, they do not count in determining the setback based on the approved structures. It is a straight forward analysis. City Attorney Hilke explained to Council that Council is voting to either uphold Administrator Krier's determination for the variance requirement or to overturn it.

Council Member Taylor stated that is pretty clear and, if you remove objectivity, then there is no question that a variance is required. Council discussed the need to close the public hearing prior to discussing.

Mayor Skalla asked the public if anyone wished to speak prior to closing the public hearing for Council to discuss.

Janet Boschwitz, 2950 Northview – Ms. Boschwitz addressed Council stating she recognizes this is a legal issue but believes a variance is needed and asked Council to support Administrator Krier in his determination that a variance is needed. The referenced structures are a 3x3 closet on the Sween property which was built 2 or 3 generations back and the other is the Gabos structure by the lake. The Moleski home is further ahead than everyone else and this will allow the home to be even further ahead of that. She stated she would like the rules and ordinances be kept in place and not allow exceptions.

A motion was made by Council Member Taylor and seconded by Council Member Bartel to close the public hearing. With all members voting in favor, the motion carried.

A motion was made by Council Member Taylor and seconded by Council Member Lindstrom to approve Resolution 2015-09 Appeal Zoning Administrator's Determination Relative to AMBS Variance at 2932 Northview Road. With all members voting in favor, the motion carried.

14.2. **Resolution 2015 – 10** Resolution Denying AMBS Variance – 2932 Northview Road
Mayor Skalla opened the public hearing to consider Resolution 2015-10 Denying AMBS Variance at 2932 Northview Road.

Administrator Krier referred to documents in Council packets consisting of the Planning Commission recommendation letter dated November 3, 2015, Planning Commission meeting minutes dated November 3, 2014, Administrator Krier's letter dated January 12, 2015, and City Attorney Wally Hilke's memo dated January 8, 2015. After the Planning Commission held a public hearing, they recommended to City Council that the AMBS variance for 2932 Northview Road be denied. This was based on findings that the practical difficulties requirements were not met based on state statute and City Ordinance. State statutes require that the applicant show practical difficulties in using a property in a

reasonable manner that are prohibited by the Ordinance. The resolution the Planning Commission recommended to Council stated requirements were not met and the burden of proof was on the applicant and he did not meet that burden of proof. On December 8th, information was received from Mr. Gilbert on behalf of Mr. Dawson. In that book, several issues were brought forward. One was the practical difficulties of the views if the home was placed in front of the AMBS. The Dawsons would not have sunset views. Administrator Krier's letter dated January 12, 2015 had diagrams showing the home built behind the AMBS, and they will continue to have views. The other argument made by Mr. Gilbert in the information book provided December 8, 2015 stated the Woodbridge property was a similar variance. Administrator Krier provided drawings dated January 12, 2015 showing differences and similarities between the Dawson and Woodbridge properties. He also provided drawings showing the sight lines comparing the two properties and sightlines from each property to the east and west of the properties. Administrator Krier concluded both properties are significantly different from each other.

Mr. Gilbert spoke for Mr. Dawson and made the following comments. He was retained after the Planning Commission made their recommendation. His concern was how the City could grant the AMBS variance under the new statutory standards for the Woodbridge property and then not use that same standard for the Dawson property three weeks later. Administrator Krier used the wrong legal standard in his recommendation to the Planning Commission and they ignored the impact of the Woodbridge decision in their decision making for the Dawson property. Administrator Krier misstated the law on page 9, exhibit L of his report. Hardship is no longer part of the law and is irrelevant with the new statute so the Planning Commission was given wrong information. Any reference to the Dawson's not showing hardship at the Planning Commission hearing is irrelevant under the new statute so the discussion and decision by incorrect legal analysis was tainted by incorrect information given to the Planning Commission by Administrator Krier.

The new standard is practical difficulties. There are three elements of practical difficulties. The first element is the owner proposes to use the property in a manner not permitted by the zoning ordinance. The second element is the plight of landowner is due to circumstances unique to the property and not created by the landowner and the third element is if the variance is granted it will not alter the essential character of the locality. An area variance request is not an item under MN Supreme Court law that would alter the essential character of the locality. The proposal in front of the Council today does not have that so the third element is gone.

He then addressed the plight of the landowner. He talked about the flag design of this lot, the home in back, and the deep setback the Gabos' chose when building their property. All of these are circumstances were not created by the Dawsons but they impact how they are able to use their property. Regarding the first element, everything about the Dawson's plans is up to code except this issue of location of the home. He referenced a letter from Mr. Palm which states the same arguments as Mr. Gilbert presented. The focal point of the decision from the Planning Commission for Woodbridge was that the commissioners used the setback of homes to the east but not those to the west. They disregarded the outlier home from the calculation because it was so far back. There is no legal distinction between this property and the Dawson property. He asked Council to use the new standard and apply it uniformly to this issue as they did to the Woodbridge property under the Equal Protection Law. It is a Constitution issue. Cities are bound by this law and cannot discriminate for equal properties. Dawsons bought the property in good faith and thought they followed City Code. On Woodbridge, the outlier home was disregarded and, with the Dawson property, the outlier is the deciding factor for approval. He requested Council grant the Dawsons the same consideration as they give the Langs on the Woodbridge property. He sighted cases regarding uniqueness of properties.

Mayor Skalla asked anyone in favor of supporting the denial of variance to speak.

John Gabos - 2928 Northview - He stated Mr. Gilbert cited the ruling on Woodbridge was on Sept 25th and submitted the variance request on October 6th. He purchased his property long before this so the ruling would not play into this at all. This property is not unique because two properties across the street are flag shape. The applicant's request started with the home being closer to the lake than the Sween home to the left. If Dawson property is built where requested, Gabos will have tunnel effect. The Faschings have built a 6,000 square foot home on a 60 foot property so Dawsons can easily build a large home on the property but just can't build it exactly where they want to. Mr. Gilbert cited the Gabos variance. Mr. Gabos explained their variance was due to a storm sewer on their property. There is plenty of opportunity to build a home in that location. The city is not denying him reasonable use of the property.

Janet Boschwitz - 2915 Northview – Resident two homes down from the Dawson property and listing agent for Gabos property. Shape of the lot has not changed, position of lot has not changed, and realtors give potential buyers the setback information that is in place and explain it is for allowing all residents to have as close to 180 degree views. It has always been a north facing lot. It has always been a flag shaped lot. There is a 5,000 square foot area as a building pad and footprint for building. Others have asked how to build their home within the rules of Minnetonka Beach. Everyone has followed minimum setback rules in fairness to all residents and to keep property values up. When rules are not followed, it de-values properties because it is an unknown for potential buyers. Dawsons still chose to purchase the property. Ms. Boschwitz asked Council to deny the request for the variance as stated.

Colleen Finnegan – 11381 Landry Road, Eden Prairie She is under contract to buy the Gabos house. As buyers from outside the community, they were told of variances, Ordinances, setbacks and information. The Ordinances are there for a reason. The consistency of Council decisions is important. If Council randomly approves variances it may lower property values and deter people from wanting to buy here. Ms. Finnegan asked new Council Member Kozloski if he would feel prepared to vote because he is new and not having background information or would he abstain from the vote if he felt he was not educated on the issue.

Susan Wahman – Edina She is co-listing agent for the Gabos property with Janet Boschwitz. As an outsider watching the Council meeting, she stated the buyer knew what they were buying and any questions should have been part of their purchase agreement contingency. There is plenty of space to build. It does not seem to follow logic.

Mayor Skalla asked anyone in support of the variance to speak. Mr. Gilbert asked to comment. He believes in democracy and law. The opinion of a resident is not the law. The current home is 96' back from the lake and the proposed location is 115' back from the lake. The tunneling effect Mr. Gabos is concerned with is actually better by 19'. Administrator Krier recommended 160' back from lake. That is 45' more than Mr. Dawson's architect has planned. They tried to seek a compromise solution moving the line 10 to 25 feet and Mr. Krier said he could support it if the Gabos' approved it. The Gabos' did not want to compromise.

George Iaz – Mound He has dealt with this numerous times while serving on the Mound Planning Commission. It is common sense if one person moves their home from the common line it affects everyone in the line. From the lake into the land, you don't want a zig zag effect. You want to have homes in line so you would ignore the outlier. He is a builder and hopes to be building the home but his

comments come from experience as a previous planning commission member. He received the Ordinance from Mr. Dawson and told him what he could build based on common sense interpretation of the Ordinance. He said there were things he would approve and things he would not which he had explained to Mr. Dawson.

Administrator Krier commented on the application of the law. There was no mention of hardship in his letters or in the Resolution. Practical difficulties are what he has referred to, not hardship. In the Planning Commission meetings, others spoke of that but he did not. The letters talk about reasonable manner and if the property can be put to use in a reasonable manner. He met with Mr. Dawson's architect and examined alternatives that would require a lesser variance because this home is way out of the line of homes. He would be comfortable with a different location but would want to talk with Mr. Gabos about any other recommendations. He met with Mr. Gabos but nothing came of discussion.

Mayor Skalla asked if 50% of the house is on the variance. Administrator Krier referenced the Planning Commission letter on page 10, showing the location and the diagram with it being close to 50%. Mayor Skalla asked if the lot is usable and buildable. Administrator Krier stated there are several ways this can be done. Council Member Taylor asked about the alternative designs in the letter. Administrator Krier stated they are layouts for a home with no variance needed.

Mr. Dawson commented that the current home is over 50% in front of the variance line if you use the house to the east as a marker line. They want to move it back. The sightlines are improved for both neighbors. It would be in line with the Gabos property if they did that.

Mayor Skalla asked if there are differences in Ordinances regarding existing structures and building new structures. Administrator Krier stated a home that is demolished will have to meet current City Code which would include AMBS. If not torn down, it can be remodeled or repaired but it cannot be larger in volume or size or setbacks.

Council Member Taylor asked for clarification on the actual change in statute that they have been discussing. City Attorney Hilke referenced page 5 of his January 8, 2015 memo regarding actual rules that apply to Council's decision. Under the statute to grant a variance, this body must decide if these criteria are met. They are not required to grant a variance if the criteria are met. It is discretionary but you must find that each criterion is met except E because it doesn't apply under these circumstances. It doesn't matter if Planning Commission used the correct or incorrect criteria or if they used the term hardship. This body must determine if all the criteria are met. Criteria A through D come straight from the 2011 updated statute. Regarding the application of equal protection, the actual law is that if there is any material difference between the properties, you don't have to give a variance to the second property merely because you gave it to the first property. In your deliberations, you cannot base your decision on how many neighbors complain or support the issue but you can listen to what they say. You cannot deny a variance because of fear of it setting bad precedence down the road. You need to look at each unique criterion.

A motion was made by Council Member Taylor and seconded by Council Member Bartel to close the public hearing. With all members voting in favor, the motion carried.

Council deliberated. Council Member Taylor thinks the Lang and Dawson properties vary a great deal. The Langs didn't get entirely what they wanted but they came to an understanding of what would work. He feels the variance requested here is too much so he has a hard time approving the variance as

requested. Council Member Lindstrom agrees and would not mind exploring a compromise but it would depend on the compromise. Council Member Bartel agrees about the possibility of a compromise. She has difficulty with the amount of setback because it is crowding neighboring homes. It lacks common sense. She stated the first requirement is not met. She stated moving the house back that far is a detriment to the neighborhood and devalues the property and neighboring property. The comparison to the Lang property is not relevant because there is a road there. Mayor Skalla stated that the existing Ordinance is very clear. We know what we buy when we go into it. The Council needs to uphold the Ordinances we have in place for this specific issue. Council Member Kozloski stated that when they purchased their home, they went through the process of determining all issues to see if they could do what they wanted to do. He would like to meet on equitable terms for everyone. Mr. Gilbert requested a short recess to discuss with his client. City Attorney Hilke stated that procedurally, if you deny the variance it is a year before they can re-apply. If there is possibility of them coming back with a request for a lesser variance, then an agreement for an extension of time is needed. He recommended a recess for Mr. Gilbert and Mr. Dawson to talk. Council Member Taylor would want Administrator Krier's input on a compromised plan. City Attorney Hilke stated that Council is not committing to approving anything by allowing them to come back with additional information.

Mayor Skalla called for a 5 minute recess.

Mayor Skalla called the meeting back in session at 9:59pm.

City Attorney Hilke stated that they are up to the deadline for City review for the variance. Mr. Dawson agreed to extend the deadline for City review until the next Council meeting. This will be tabled until the February 9, 2015 meeting. City Attorney Hilke said there was discussion between Administrator Krier, Mr. Dawson and Mr. Gilbert and there may be a lesser variance to consider. Administrator Krier would work with Mr. Dawson and his architect, with some attention paid to sightlines. Mr. Dawson agreed that was accurate. Mr. Dawson signed an extension letter prior to leaving the meeting. City Attorney Hilke excused himself from the meeting.

A motion was made by Council Member Bartel and seconded by Council Member Taylor to table Resolution 2015-10 Denying AMBS Variance at 2932 Northview Road until the February 9, 2015 council meeting. With all members voting in favor, the motion carried.

Mr. Gabos asked about the procedure moving forward. Mayor Skalla stated there is an extension under the guidelines. If Mr. Dawson comes back with another proposal, Council will review it and make a determination. It will not go back to Planning Commission, just to City Council. Mr. Gabos fears it will continue to be challenged. Council passed the resolution that the variance is required. This extension allows Mr. Dawson time to come back with another plan. Administrator Krier stated the letter written tonight extends the review time until February 10, 2015.

15. Staff Reports

15.1. Public Works Director Young reported on new truck pricing and the Northview Road Sewer and Manhole repairs.

Public Works Director Young reported truck pricing of \$32,000 for a Ford 550. He recommends a stainless steel box so it won't rust. The cost is \$10,733 for stainless box. New trucks are electric and slow to raise the hoist and the plow, sander and box are all running off the battery so he recommends hydraulics instead. It is \$10,000 to hook up hydraulics. Recommends pump under hood. A sander is

\$5,328 hooked up. The total is \$59,056. He still needs a plow which is \$6,300 but it may be less. We are \$5,000 short of budget for the truck purchase. It should last 30 years.

A motion was made by Council Member Taylor and seconded by Council Member Bartel to purchase a truck, sander, and box for \$66,000. With all members voting in favor, the motion carried.

Public Works Director Young reported on the Northview Road Sewer and Manhole repairs. The joints were sealed. The camera they used did not show any pinholes. He was advised to televise the lines every 3 to 5 years to see if there are any pinholes but to not replace the lines now. Gerry Anderson thought there was a leak at his manhole but it is a spring in the lake causing the water issues. That is probably the issue at Mike Bloom's property as well. Mayor Skalla suggested telling Mike Bloom that is probably a spring popping up.

15.2. City Clerk Honey –

City Clerk Honey reported the Banyon utility billing software has been updated. Utility billing for 4th quarter went very well with only 6 meter head replacements needed. In the past it was 12-14 heads replaced per quarter. She has been transitioning responsibilities to Jane Burgess, the new postal clerk/office assistant.

15.3 Administrator's Report –

City Administrator Griffin stated the auditors are coming in this week. She requested a vacation in February.

16. Council Reports

- 16.1. Mayor's Report – Mayor Skalla is looking forward to working as Mayor. Council Member Kozloski asked about Administrator Krier retiring. Mayor Skalla explained the process the City is following for his replacement. Administrator Krier will be here until March 1, 2015.
- 16.2. Liaison Reports- Council Member Lindstrom attended the year end police meeting. There were 22,000 calls for service. They are well under budget for 2014. Several communities are looking at a social host ordinance. Mayor Skalla asked Administrator Griffin to look at the agenda for the next Council meeting and determine when the Police Chief should talk with Council about administrative citations and a social hosting ordinance.

Council Member Taylor – no report

Council Member Bartel – She gave Park Commission report earlier in the meeting.

Treasurer Gilster- absent from meeting

Mayor Skalla discussed an email regarding possible nominations for the Minnehaha Creek Watershed District Board of Managers. The Hennepin County Board appoints members to the board. Administrator Krier said you may want to consider having someone on the board from the lake area so Minneapolis doesn't dominate. Even though the deadline was January 7, City Administrator Griffin will check if there is someone representing the lake on the board and report that back to Council. Administrator Krier stated the former director of the watershed district spoke with him a while back about having more extensive comprehensive plans because of the lake. Lake Minnetonka is a regional resource. He suggested that maybe the MET Council should pay for part of the comprehensive plan updates. The cost was \$80-100,000 to update the comprehensive plan last time. Cities should jointly go to legislature to request this because Lake Minnetonka is regional resource. Mayor Skalla can reach out to other cities. Administrator Krier can write up some talking points.

17. A motion was made by Council Member Lindstrom and seconded by Council Member Bartel to adjourn the meeting at 10:40pm.

PUBLIC IN ATTENDANCE – The following individuals signed the sign-in sheet:

Cammy Skalla, Matthew Skalla, Jeremy Skalla, Patty Rezabek, Maxine Dunlap, Rita Howarth, Steve Howarth, Eric Elliott, Sue Kozloski, Paul Kozloski, Phil Mahowald, Darren Amundsen, Susan wahman, Dennis Klohs, Bob Beutler, James Gilbert, Adam Sienkowski, John Gabos, Janet Boschwitz, Jorj Ayaz, Colleen Finnegan, Michael Boschwitz, Gerry Boschwitz, Scott Dawson.

Respectfully submitted,

Heidi Honey, City Clerk