

GREENWOOD CITY COUNCIL MEETING
Tuesday, October 5, 2010, 7:00 P.M.
Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331

1. CALL TO ORDER – ROLL CALL – APPROVAL OF AGENDA

Mayor Kind called the meeting to order at 7:00 P.M.

Members Present: Mayor Kind; Councilmembers Fletcher, Page, Quam and Rose

Others Present: City Attorney Kelly, City Zoning Administrator/City Clerk Karpas

Members Absent: None.

Rose moved, Quam seconded, approving the agenda as presented. Motion passed 5/0.

2. CONSENT AGENDA

Quam moved, Fletcher seconded, approving the items contained on the Consent Agenda.

- A. September 7, 2010, City Council Meeting Minutes** (This item was moved to Item 8.C under Other Business.)
- B. August 2010 Cash Summary Report**
- C. September 2010 Payables**

Motion passed 5/0.

3. MATTERS FROM THE FLOOR

Brian Burdick, 4950 Sleepy Hollow Road, asked where on the agenda the item about dead/diseased trees and brush piles on a neighboring property will be discussed. Mayor Kind thought it would likely be discussed as part of Item 6.A. Councilmember Page stated that item is not on the agenda. Kind stated as part of Item 6.A there will be a discussion about whether or not a provision about dead/diseased trees and brush piles should be included in the City's new Code of Ordinances. Mr. Burdick clarified he is more interested in the item specific to him; he doesn't necessarily want to know when the general topic is going to be discussed. Kind indicated she thought Mr. Burdick's items could be discussed as part of Item 6.A.

Mayor Kind noted Susan Morris, a resident, had sent a letter to the Council and Zoning Administrator/Clerk Karpas dated October 1, 2010. The letter expresses concerns that a group of Greenwood neighbors have about remodeling/additions that have occurred on the property located at 21600 Fairview Street in Greenwood without permits having been issued for the improvements. Kind acknowledged the letter was received on October 5, 2010. (A copy of the letter is on file.)

4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS

Kind stated the CUB Food Dash with the mayor's of the South Lake cities is scheduled for October 12, 2010, at 10:00 A.M. at the CUB Foods store located in the City of Shorewood. The equivalent cost of the food collected is donated to the ICA food shelf.

A. Buckthorn Task Force Report

Mayor Kind stated that at its September 7, 2010 meeting the council authorized the mayor to appoint a Buckthorn Task Force. Kind stated that Councilmember Quam and Planning Commissioner John Beal agreed to serve on the Task Force. The goal was to determine whether or not to include buckthorn in the list of "prohibited" noxious weeds in the City Code. The Task Force's recommendations are: to follow the state guidelines and consider buckthorn a "restricted" noxious weed; to continue education efforts through the City's newsletter; and to continue to loan out the City's weed wrench and buy another one if the wait line gets very long.

Councilmember Quam explained he surveyed the Cities of Excelsior, Minnetonka, Minnetrista and Wayzata. Commissioner Beal surveyed the Cities of Eden Prairie, Orono and Tonka Bay. The intent was to find how out those cities addressed buckthorn. None of the seven cities force its residents to remove buckthorn, and all of them call buckthorn a restricted weed rather than a prohibited weed. Minnetrista requires buckthorn be eradicated as part of a new development. None of the cities allow the planting of buckthorn, they all educate their residents, and they support their residents as much as possible in controlling it.

Mayor Kind stated the new Code has a provision that prohibits state "prohibited" weeds in the City. She explained the Code is based on a model ordinance developed by the League of Minnesota Cities (LMC) and state "restricted" weeds are not prohibited. There was Council consensus to leave the new Code language that does not prohibit buckthorn in the city.

5. PUBLIC HEARING

A. Delinquent Sewer, Stormwater, and Recycling Charges

Mayor Kind stated the notice for this public hearing on delinquent sewer, stormwater and recycling charges was published in the Sun Sailor Newspaper on September 15, 2010, and September 22, 2010. A list of the delinquent accounts is included in the meeting packet.

Page moved, Fletcher seconded, opening the Public Hearing at 7:10 P.M. Motion passed 5/0.

Page moved, Rose seconded, closing the Public Hearing at 7:10 P.M.

6. UNFINISHED BUSINESS

A. Second Reading: Ordinance 186 Enacting a Code of Ordinances for the City of Greenwood

Mayor Kind stated Council had been provided with an updated Code of Ordinance which contains the revisions made since the first reading of the Code during the September 7, 2010, Council meeting. The updated document contains all of the minor clean-up changes recommended by Councilmember Fletcher plus three more substantial changes of his.

The first more substantial change proposed is to Chapter 9, Nuisances & Penal Regulations, Page 8, Section 910.60, Subd. 1(E). The text was expanded to be more specific. The suggested new text is: “Accumulation of manure, refuse, abandoned, discarded or unused objects or equipment such as non-operating vehicles of all kinds, furniture, stoves, refrigerators, freezers, lumber, trash, debris, junk, containers, machinery, implements, equipment which is no longer safely useable for the purpose for which they were manufactured, garbage (except in authorized container), ashes, or any other foul or unhealthy material.”

Councilmember Quam asked what the statement “which is no longer safely useable” applies to. Councilmember Fletcher responded “equipment”. Quam stated he had an issue including lumber in the list. He commented he has some scrap lumber on his property that he uses and burns. He stated he did not think lumber should be included in the new Code.

There was Council consensus to remove lumber from the text.

Councilmember Quam suggested replacing “stoves, refrigerators, freezers” with “appliances”. Over time the types of appliances will change and if the Code has a specific list that does not include new types of appliances that could become problematic.

There was Council consensus to replace “stoves, refrigerators, freezers” with “appliances”.

Councilmember Page commented he thought the appliances were referenced specifically because they have doors on them and they can be a safety hazard.

Councilmember Rose commented that one person’s debris and junk is another person’s treasures. He asked how to define those two items.

The second substantial change proposed is to Chapter 11, Zoning, Page 61, Section 1155.00 Subd. 2(4). The current Code states variances will be considered during regular Council meetings. The suggestion is to include special meetings as well as there may be a need to call a special meeting to consider a variance in order to satisfy the 60-day processing rule. Attorney Kelly had previously proposed the following language. “Meetings and proceedings of the board of appeals and adjustments shall be held as agenda items of the city council and upon such notice to the public and interested parties as the law requires and otherwise in conformance with Minnesota statute section 15.99, as amended”.

There was Council consensus to accept the language proposed by Attorney Kelly.

The third substantial change proposed is to Chapter 11, Zoning, Page 63, Section 1155.00 Subd. 2. In light of the recent Minnesota Supreme Court decision the suggestion is to delete the sentence “However, practical difficulties, and functional and aesthetic considerations may be taken into account”, or at a minimum to delete the word “aesthetic” from this sentence. Councilmember Page suggested just deleting “and aesthetic” from the sentence.

There was Council consensus to delete the words “and aesthetic”.

Councilmember Fletcher identified three other minor changes that were be made. They are as follows.

- In Chapter 4, Permits and Licenses, Page 17, the spelling of violations was corrected.
- In Chapter 11, Zoning, Page 38 Subd. 3, the word “grading” was added before the words “conditional use permit shall” at the top of the page. In Chapter 12, General, Definitions

& Penalties, Page 7, in officer definition the reference to section 1015 was changed to section 920.

Mayor Kind stated the new Code of Ordinances is an evolving document and it will be modified in the future.

Mayor Kind stated there is at least one more item that should be considered. It's whether the prohibition of dead trees and brush piles should be put into the new Code of Ordinances. The nuisance language is based on the LMC's model nuisance ordinance. She noted dead trees and brush piles are a violation of the current Code. She stated the City has received nuisance complaints about diseased/dead trees and brush piles on private property. During its September 7, 2010, meeting Council agreed that the enforcement of current complaints on dead trees and brush piles be based on the current Code. Since that meeting the City received a complaint about diseased/dead trees and brush piles on City-owned property. She explained that if the City is going to enforce the violations on private property it must also enforce the violation on its own property.

Councilmember Page asked who filed the complaint against the City. Attorney Kelly stated that information is confidential under the data privacy act.

Mayor Kind stated Council must decide if it wants to include the prohibition of dead trees and brush piles in the new Code.

Mayor Kind opened the public comment portion of this discussion at 7:38 P.M.

Brian Burdick, 4950 Sloppy Hollow Road, stated he has had a long-standing complaint about the property located at 21540 Pineview Court regarding dead/diseased trees, brush piles and noxious weeds. The Zoning Administrator/Clerk Karpas properly noticed John Doty, the owner of that property, of the violations in a notice dated September 13, 2010. He asked Council to have the City properly enforce its current Code. He stated there is a civil penalty in the current Code that he thought should be enforced due to the length of time there has been a violation. He distributed a copy of the notice to Mr. Doty as well as a copy of a follow-up email, which re read, from Karpas to Mr. Doty later in September about non-compliance.

Councilmember Page asked that the contents of the email read not be included in the meeting minutes because this was about the second reading of the new Code of Ordinances. He did not think it was appropriate to be discussing the differences of opinions between the two property owners at this time.

Mayor Kind asked Mr. Burdick if he thought the prohibition of dead trees and brush piles should be included in the new Code. Mr. Burdick responded he thought it should be, noting it's in the current code. For one, it would keep property owners from placing brush piles next to property lines.

John Doty, 21540 Pineview Court, stated he is present to advocate for dead trees and brush piles. He then stated he has maintained his property in Greenwood for the last 20 years similar to how the City has maintained its property. He and his wife would like to continue to maintain their property in the manner they have. They are a member of the National Wildlife Federation and their property is a certified wildlife habitat. The Federation has certain guidelines that should be followed when certified, including keeping dead trees and building brush piles. There are nuisance violations on City-owned property. He did not think the current Nuisance Ordinance is intended to require all dead trees, dead limbs, fallen limbs and compost piles to be removed. He did not think it should be included in the new Ordinance.

Mr. Burdick stated he loves wildlife. He said his yard attracts more wildlife than the buckthorn on Mr. Doty's property. He commented that anyone can join the Federation for a nominal fee. He thought that further out in the country it may be appropriate to try and attract wildlife, but that isn't appropriate in the City.

Mayor Kind closed the public comment portion of the discussion at 7:37 P.M.

Councilmember Page stated according to Section 920.54 of the current code fallen dead trees, fallen tree limbs, dead trees and dead tree limbs are prohibited. Mayor Kind stated that is reiterated in Section 1020.20. Kind noted there is no prohibition of dead trees, dead tree limbs or brush piles in the new Code. Kind explained that all nuisances are addressed in Chapter 9, Nuisances and Penal Regulations, in the new Code. Section 900.15 deals with public nuisances affecting peace and safety, and Section 910.60 deals with activities affecting health and/or property.

Councilmember Page stated he was not aware at the time of the discussion that such a substantive change was going to be made. Mayor Kind stated it was discussed, but not extensively during a work session about the Code earlier this summer. Councilmember Fletcher stated it may be prudent to include something about dead trees or tree limbs on City property that are a safety hazard in the new Code.

Mayor Kind explained that Deephaven has no prohibition against dead trees but it does against brush piles. Excelsior has no prohibition against brush piles. It prohibits dead trees or tree limbs if they constitute a health, safety or fire hazard. It also has a phrase "dead tree or dead tree limbs that, in the option of the city's building official, fire marshal, weed inspector, or public works official, constitute a health, safety or fire hazard". Minnetonka only prohibits dead elm trees and dead oak trees. Shorewood doesn't prohibit brush piles, but it does prohibit dead elm trees and oak trees. It also prohibits dead trees and tree limbs if they affect public sidewalks and streets.

Councilmember Quam stated as part of his Buckthorn Task Force survey he also asked the cities about this item. Minnetonka, Minnetrista and Wayzata have no ordinance against dead trees or brush piles. If it constitutes a public safety or health hazard, the cities all prohibit dead trees or dead tree limbs. Otherwise Dead trees or dead tree limbs on public or private property are not of their concern.

Councilmember Page stated he like the language in Excelsior's ordinance; "dead tree or dead tree limbs that, in the option of the city's building official, fire marshal, weed inspector, or public works official, constitute a health, safety or fire hazard". He took that to mean if there is a dead tree on a property line that could fall over and negatively affect something on the neighbor's property then it should come down. If it would affect nothing other than the property owner or nothing at all then it's a non issue. He thought it prudent to have something in the new Code but not a blanket prohibition. He commented that it was his recollection that a number of years ago the City cleared a public area. He suggested the new Code include the language from Excelsior's ordinance.

After ensuing discussion there was consensus to add language similar to the Excelsior language in the new Code.

There was Council consensus to add the following to the new Code in Chapter 9, Nuisances and Penal Regulations, Section 900.15 after (C) "Dead trees or dead tree limbs that, in the opinion of the City's forester or certified tree inspector, public works official, or fire marshal constitute a safety or fire hazard" and to re-alphabetize the items following the addition accordingly.

Attorney Kelly stated Excelsior has a provision to deal with items on private property that hang over public property that could be a safety hazard. Councilmember Page cautioned that if Council includes that provision in the new Code it will require immediate action on the part of the City to take care of things such as branches hanging over pathways. Mayor Kind recommended those branches be trimmed, noting there are funds in the budget for trimming trees. Councilmember Quam stated they cause safety issues.

There was ensuing discussion about whether or not there should be a setback requirement for brush piles, compost piles and other piles as well as where the piles could be located.

There was Council consensus to add the following to Chapter 9, Section 910.60, after (E) "Brush piles, compost piles, and other piles of yard wastes or clippings unless they are located in side or rear yards at least 5 feet from the property line. No brush piles, compost piles or other piles of yard wastes or clippings are allowed in front yards" and re-alphabetize the items following the addition accordingly.

There was Council consensus to add "and/or property" to the lead sentence for Section 910.60.

Kind moved, Rose seconded, adopting the second reading of Ordinance 186 Enacting a Code of Ordinances for the City of Greenwood including the revisions just discussed." Motion passed 5/0.

There was consensus to publish the Ordinance by Title and Summary.

Mayor Kind asked if Council wanted to discuss giving direction to Staff regarding dead trees and brush piles now.

It was suggested that be discussed under 9.B on the agenda.

7. NEW BUSINESS

A. Sonus Hearing Care Professionals Conditional Use Permit Request for Signage

Zoning Administrator/Clerk Karpas explained Sonus Hearing Caring Professionals, building address 21700 State Highway 7, has requested a conditional use permit (CUP) to remove the existing signage along the west side of the building and replace it with new internally illuminated cabinet signs along the west and south elevations of the building. A CUP is required for all new signs erected in the City. Section 1140.40(9)(a) of the City Code stipulates the maximum sign area can be no greater than fifteen percent of the building façade and no more than seventy-five square feet in area. The applicant proposes placing a 2'8" x 13'6" sign on both the west and the south elevations of the building. The total square footage of the two signs would be seventy-two feet.

Karpas stated the Planning Commission unanimously recommended approval of the CUP with a permitted sign area not to exceed seventy-five square feet in area subject to the following conditions: the owner of the building also signing the CUP application; the sign located on the west façade of the building not be illuminated after 10:00 P.M.; and, that all future issues relating to the permitted sign area be negotiated between the building owner and the building tenants. He noted that he has contacted the applicant informing him of this but he has not heard back from him.

Mayor Kind stated the meeting packet contains a copy of a draft resolution prepared by Attorney Kelly. The resolution includes the findings of fact and the three conditions of approval recommended by the Planning Commission.

Councilmember Page stated the way he interprets the third condition of approval is that in the future the building owner could reconfigure the signs however he wants as long as it stays within square feet in area approved. Zoning Administrator/Clerk Karpas stated if there is a desire to change what gets approved they would have to come back to apply for a new CUP. Attorney Kelly noted that the third condition of approval includes the following clause: "Subject to CUP amendment review and City Council approval, this CUP does not prohibit the building owner from later reapportioning available exterior sign space under city code amongst the building's tenants." The clause should force them back to through an approval process.

Councilmember Fletcher summarized the discussion the Planning Commission had about this request. A more detailed report of that discussion can be found in the Planning Commission meeting minutes for September 15, 2010.

Commissioner Page stated if the applicant applied for two signs totaling seventy-two square feet in area he asked if the draft resolution allows the configuration of the signage to be altered provided the signage area does not exceed maximum square-footage area approved. Kelly responded no and explained the resolution states "That a Conditional Use Permit for the placement of two internally illuminated cabinet signs, (2'8" x 13'6", each) not to exceed seventy-five square feet and to be placed on the south and west elevations of the building, as proposed in the application ...". Page stated he was comfortable with the explanation provided by Kelly.

Marshall Rosner, 4613 Cascade Lane, Edina, Minnesota stated Sonus has revised the drawings for the proposed signage since the application was submitted. He noted that when the application was submitted Sonus was the only tenant in the building.

Zoning Administrator/Clerk Karpas stated the City has not received copies of the new drawings.

Councilmember Page asked Mr. Rosner how much of a hurry Sonus is in to get the signs up. Mr. Rosner explained that the remodeling of the building has just been completed and he would like to get the signs up as soon as possible.

Mayor Kind asked where the application stands within the 60-day processing rule. Zoning Administrator/Clerk Karpas stated he can issue a letter extending the 60-days until the next Council meeting.

Mayor Kind asked Mr. Rosner how different the signs are from the original drawings. Mr. Rosner explained they are identical in terms of the look but he thought there is a difference in the dimensions.

Councilmember Page stated the resolution states as applied for but the City doesn't have a revised drawings.

Page moved, Rose seconded, continuing the Sonus Hearing Care Professionals conditional use permit request for signage to the November 2010 City Council meeting subject to the applicant providing accurate sign drawings and the building owner signing the application form. Motion passed 5/0.

B. Next Steps Regarding St. Alban's Boathouse Restaurant Sewer Bill

Mayor Kind explained that during its April 2010 meeting Council approved refunding a portion of past sanitary sewer changes for St. Albans Boathouse, 21950 Minnetonka Boulevard, because the property has

not been licensed by Hennepin County as a restaurant since January 1, 2009. The general commercial rate should have been applied to the property effective that date. The refund was to be split between T. Fritz Enterprises (\$715) and Greenwood Marina, LLC (\$3,224) based on the period that each party paid for. The City required that each party sign a copy of a letter dated May 17, 2010, from the City to Tom Fritz (dba/T. Fritz Enterprises, Inc.) and Kent Carlson (dba/Greenwood Marina, LLC) indicating their agreement with the refund amounts. The City has received a signed copy from the Greenwood Marina but not from T. Fritz Enterprises. Both parties were invited to attend this Council meeting. Mr. Fritz responded that he currently resides in Colorado and could not be in attendance, but he indicated he would try and get the former general manager of St. Albans Boathouse restaurant during the time in question to attend.

Kind went on to explain that Mr. Fritz sent an email requesting the refund go back to the first week in October 2008 because that is when the restaurant closed. The additional refund would go to him. She noted that Hennepin County shows the restaurant was licensed through the end of 2008. She stated that Mr. Fritz stated the water and sewer were shut off when the restaurant closed yet he continued to be billed for those services.

In response to a question from Councilmember Page, Mayor Kind stated Mr. Fritz has not expressed any concern about the proposed division of the refund for the period starting January 1, 2009.

Councilmember Page stated from his vantage point the City should respond to Mr. Fritz's email and ask him if he is okay with the proposed division of the refund.

Mayor Kind stated the City could just go ahead and issue refund checks in the amount proposed for the time period under consideration. Councilmember Page asked what would happen if Mr. Carlson cashes his check and Mr. Fritz doesn't. Attorney Kelly stated the reimbursement check should be labeled with accord and satisfaction language on the back of the check.

Page moved, Quam seconded, authorizing the issuance of the refund checks in accordance with the division reflected in the letter dated May 17, 2010, with the requisite language accord and satisfaction applied to the back of the check above the signatory negotiation clause as supplied by the City Attorney. Motion passed 5/0.

C. Extension of Variance for the Robert Schmitt Property (License Center)

Zoning Administrator/Clerk Karpas stated on December 2, 2008, Council adopted Resolution No. 23-08, a resolution conditionally approving a variance and conditional use request to develop a commercial parcel of property owned by Robert Schmitt, Jr. at 21550 State Highway 7. The applicant requested a one year extension of that approval on December 2, 2009; the request was granted. Mr. Schmitt has submitted a letter seeking another extension to expire on December 2, 2011.

Councilmember Fletcher asked Attorney Kelly how the Minnesota Supreme Court's variance decision affects the City's ability to grant the extension. Kelly explained the question at hand is whether or not to extend the sunset date. The reason for a sunset clause is no one wants to have items like this open ended. Council can grant another extension.

Fletcher moved, Page seconded, granting a twelve month extension to expire on December 2, 2011, of Resolution No. 23-08, a Conditional Use Permit and Variance for Robert C. Smith Jr. for the real property located at 21550 State Highway 7, Greenwood, Minnesota (PID No. 35-117-23-12-0016). Motion passed 5/0.

D. Resolution No. 18-10 Assessment Roll for Delinquent Sewer and Recycling Charges

Mayor Kind stated the meeting packet contained a list of properties with past due utility accounts with the City as well as a draft resolution.

Fletcher moved, Rose seconded, Adopting RESOLUTION NO. 18-10, “A Resolution Directing Delinquent Sewer Charges and Recycling Charges be Placed on the 2011 Property Tax Rolls.” Motion passed 5/0.

E. Resolution No. 19-10 Support of New State Legislation to Distribute Aquatic Invasive Species Fine Revenue to Local Law Enforcement Agencies

Mayor Kind stated the Lake Minnetonka Conservation District (LMCD) adopted a resolution asking state representatives to sponsor legislation that would change how fine revenue for aquatic invasive species (AIS) citations is distributed. The requested legislation would allow local law enforcement agencies to capture all of such fine revenue. The meeting packet contains a similar draft motion for Council’s consideration.

Councilmember Page stated this item came to the LMCD Board through the LMCD Executive Director. A number of agencies have discussed this idea. He explained under the requested State legislation, if South Lake Minnetonka Police Department (SLMPD) issued a citation to someone towing a boat on a public roadway that had, for example, Eurasian Watermilfoil on the boat or trailer the SLMPD would capture all of the fine revenue for citation. He thought that currently the fine revenue goes to the Minnesota Department of Natural Resources. There is no incentive for local law enforcement agencies to issue the citations. He commented he did not think this legislation would make a big difference, but he did think it is something the City can support. People may then be more cautious about cleaning their boats and trailers of AIS if they knew a local law enforcement agency may issue them a citation.

Councilmember Quam stated that basically the resolution is encouraging the City’s state legislators to sponsor the legislation.

A copy of the City’s resolution will be sent to the LMCD Executive Director, Senator Gen Olson and Representative Connie Doepke.

Page moved, Quam seconded, Adopting RESOLUTION NO. 19-10, “A Resolution in Support of New State Legislation Providing for Changes in Distribution of Fine Revenue for Aquatic Invasive Species (AIS) Citations.” Motion passed 4/1 with Rose dissenting because he wants more specifics.

F. Insurance Liability Waiver Form

Mayor Kind stated in 2009 Attorney Kelly recommended the City elect not to waive the statutory tort limits for liability insurance. She asked if Kelly recommended doing so again to which Kelly responded yes.

Quam moved, Fletcher seconded, electing to not waive the statutory tort limits for liability insurance. Motion passed 5/0.

G. Updates to Section 500 & 515 Fees

Mayor Kind explained that in 2009 Council did a major update to Sections 500 and 515 of the City Code to consolidate all fees in one area of the Code. She explained that the plan is to review the fees each fall to ensure the fees are current. Council was asked to come prepared to this meeting to discuss what fees they recommend be changed. By State Statute any fee changes must be made by ordinance. If changes are agreed to, an ordinance will be drafted for the first reading during the November Council meeting and for the second reading during the December meeting.

Councilmember Fletcher suggesting reducing the sewer fee to \$65 from \$75, noting it was increased to \$75 in 2009 and there is a significant balance in the Sewer Fund. Councilmember Quam cautioned against doing that because the City still has to replace 60 percent of its manhole covers at a rate of 20 percent a year for the next three years and that will be quite expensive. Quam recommended the covers be replaced. Fletcher asked if the fee could be reduced a lesser amount. Fletcher requested Council provided with additional information on manhole cover replacement costs for its next meeting for discussion. Fletcher stated his preference is to reduce the residential rate to \$65 but he is open to other ideas.

Mayor Kind stated the draft resolution will reflect a reduction in residential sewer rate to \$65 and also a decrease in the commercial sewer rate and the rates can be changed during the next meeting.

Councilmember Fletcher asked what the fee Sonus Hearing Caring Professionals had to pay for its conditional use permit application for signage. Mayor Kind stated it should have been \$400. Fletcher indicated he thought that was too much. Attorney Kelly stated if the request for signage was handled through an administrative process a reduction in the fee could possibly be justified. Zoning Administrator/Clerk Karpas stated Council changed the fee a few years ago. Fletcher noted there was a lot of staff and legal time involved in that application. Councilmember Page commented that there is still more time to be spent because of new sign drawings. Fletcher stated he withdrew any thoughts about reducing the fee amount.

Mayor Kind stated the fee for a two-year dog license is \$25. She related that a resident had asked if fee could be reduced if a person wanted to purchase a license for a newly acquired dog for year two of the two-year cycle. Councilmember Quam suggested reducing the fee to \$15 if purchased in year two.

There was Council consensus to reduce the cost of a dog license to \$15 if the license was purchased during the second year of the two-year license cycle.

Mayor Kind asked the other Councilmembers if they wanted to increase the \$850 municipal watercraft permit fee for 2011. Councilmember Quam asked what other rates in the area were. Kind explained when the fee was last discussed the average for Deephaven, Excelsior and Tonka Bay combined was \$1,400. Kind explained the community survey results reflect there is a desire to increase the fee to close to the \$1,400 amount.

Councilmember Page asked for the results of the survey for that question.

Mayor Kind had a copy of the survey results and noted that out of 117 respondents 58 strongly agreed that the fee should be raised to the average of the other three cities, 24 agreed the fee should be raised to the average, 12 were neutral, 6 disagreed the fee should be raised to the average, and 17 strongly disagreed it should be raised to the average. Councilmember Quam noted there are 26 boats at the docks.

Mayor Kind suggested the City phase increases in with the goal of reaching the average fee for the three cities. Councilmember Page asked why. Kind responded she thought the City should charge a fee similar to the average of the other three cities and the City's residents support it.

Councilmember Quam stated he thought the survey results were skewed because if a resident doesn't have a boat at the municipal docks they want the fee to be a lot higher and if they do they don't want the fee to increase.

Councilmember Rose stated when he called residents they indicated the fee should be more. He recommended against increasing it to \$1,400 all at once. He suggested that maybe \$1,200 would be the appropriate amount for 2011.

Councilmember Fletcher suggested it be raised to \$900 – \$950 for 2011. He's not in support of large increases.

Mayor Kind stated maybe the fee could be raised to \$950 for 2011.

Councilmember Quam stated he would be opposed to increasing more than \$950. Councilmember Fletcher stated that is the absolute highest for 2011.

Councilmember Page stated he did not think the fee had to be increased for 2011. He asked if this is about it being a profit center for the City or is it about providing a service to off-shore lake residents while having enough funds to replace the docks. He noted the original intent was the later. He stated he thought there is more than enough money to replace the docks. Mayor Kind disagreed with that while noting some of those permit revenues have been used for other purposes.

Councilmember Rose stated he did not think it was fair for the 26 permit holders to be able to continue to get a permit year after year while not having to pay a fee equal to those in the South Lake area. If the fee stays at \$850 then he thought it would only be fair for other off-shore lake property owners be given an opportunity to get a permit.

Mayor Kind stated the people on the waiting list for a permit like idea that once they get their first permit then they can continue to get a permit until they no longer want one. She then stated the balance at the end of 2009 in the Marina Fund was \$32,738. The cost to replace the docks with a "Tonka Dock" is about \$50,000 and to replace with a floating style of docks is about \$200,000.

A resident in the audience stated the cost for the current floating dock it was about \$60,000 – \$68,000 when purchased about 15 years ago.

Councilmember Page stated he could support increasing the fee to \$950 for 2011.

Mayor Kind stated there will be an opportunity for public input during the first and second readings of the ordinance.

Mayor Kind stated the rental property license fee is \$50 for the first unit and \$20 for each additional unit in a multi unit housing structure. She suggested increasing the fee to either \$25 or \$30 for additional units.

Councilmember Rose recused himself from commenting on rental property fees because he owns rental property in the City.

Councilmember Fletcher suggested the fee for additional units be increased to \$25 per unit.

There was Council consensus to increase the per-unit rental fee for units two and more to \$25 with Councilmember Rose recusing himself.

Mayor Kind suggested adding a zoning street vacation application fee to the various fees because of the amount of administration time it takes to process that type of application.

Councilmember Fletcher stated it's his recollection that the City Attorney in the past had stated that once a decision is made to go down the path of vacating streets that decision will be regretted.

Mayor Kind recessed the meeting at 8:55 P.M.

Mayor Kind reconvened the meeting at 9:05 P.M.

Attorney Kelly suggested that instead of adding a zoning street vacation application fee that a miscellaneous petition to the city council for legal approvals or releases fee be added.

Councilmember Quam suggested the fee for petition fee be \$200.

Zoning Administrator/Clerk Karpas suggested \$200 be the base fee and then additional costs to the City be added to that.

Attorney Kelly suggested there be a distinction between petitions such as those from the boy scouts and those requiring legal action or at least approval by Council.

Councilmember Fletcher asked if this is a solution looking for a problem.

Mayor Kind explained the City had two requests for street vacations during her two-year tenure on the Council and each of them took a lot of administrative time. Neither street was vacated.

Councilmember Fletcher asked if any of the Councilmembers like the idea of vacating streets.

There was Council consensus to add a fee titled something like miscellaneous petition to the city council for legal approvals or releases fee for an amount of \$200 plus actual costs incurred by the City.

H. Retroreflectivity Sign Project

Mayor Kind stated the City asked Bolten & Menk to submit a proposal for providing assessment and managements services to become compliant with the federally mandated minimum sign retroreflectivity standards. The City has about 400 signs that will have to come into compliance. The estimate is \$5,000 – \$6,000 to do the following. Bolten & Menk proposes to develop an inventory of Greenwood's existing signs and evaluate the retroreflectivity of each sign using a retroreflectometer. The inventory and condition information will be input into management software called Cartegraph. The software is able to predict the anticipated life of each sign based on its current condition. The City will then be able to determine what signs may need to be replaced on an annual basis and can budget accordingly. Bolton & Menk could then recheck the retroreflectivity of the signs to ensure that only signs that fail to meet the minimum standard are replaced.

Kind then stated that this evening Council does not need to take action on the Bolten & Menk proposal. The intent in asking for the estimate was to ensure there were funds in the budget for such an effort. The League of Minnesota Cities (LMC) is in the process of developing a recommendation on how to comply

with the mandate. The LMC report will be completed in early 2011. By January 1, 2012, the City must have developed and implemented a management method for maintaining a minimal level of sign retroreflectivity.

Kind recommended waiting until the LMC's recommendation is published.

8. OTHER BUSINESS

A. Minnesota Supreme Court Decision Regarding Variances and Nonconforming Structures

Mayor Kind stated the topic of the Minnesota Supreme Court's recent decision regarding variances and nonconforming structures has been in front of Council since July 2010. She recommended this item be referred to the Planning Commission to get its recommendation on how to proceed based on the new interpretation of the law. She stated there are a variety of approaches that could be taken to determine what impact the recent interpretation of the law will mean to the City's granting of variances and dealing with nonconforming structures. She noted the meeting packet contains a draft ordinance amending the City Code to define reasonable use for residential lots and clarifying the types of alternations allowed for nonconforming residential buildings.

Councilmember Quam stated he thought the State Legislature will likely act on this during the next legislative session and he cautioned against spending too much effort on this until that has occurred.

Councilmember Rose stated he thought Mayor Kind was talking about what will happen between now and then.

Councilmember Quam asked how many variances the City has processed recently.

Mayor Kind stated Attorney Kelly, Zoning Administrator/Clerk Karpas and she attended a "death of a variance" presentation and the subject of whether or not the topic will come up in State Legislation was discussed. An attorney from the City of Minnetonka suggested the State adopt the language of Rowell.

Attorney Kelly noted one thing that wasn't touched on during the presentation is that county variance standards are entirely different than city variance standards. He thought that will end up being discussed at the State Legislature.

Mayor Kind asked if the City should wait until the State Legislature discusses this or should discussions begin now.

Councilmember Fletcher stated it may be worthwhile for the Planning Commission to review the Zoning Code and assess if there are ways to minimize the need for variances.

Councilmember Quam clarified he thought it would be a good idea to send this back to the Planning Commission, but he wasn't sure how far the City should go with making changes before there is an idea about what the Legislature will do.

Mayor Kind stated the language the City of Minnetonka Attorney is proposing the State Legislature adopt is "the property owner would like to use the property in a reasonable manner that is prohibited by ordinance".

Councilmember Fletcher stated everything a property owner wants to do seems reasonable to them.

Councilmember Page stated Tonka Bay's philosophy is the ordinance is just a guideline. He then stated he didn't mind referring this proposed ordinance to Planning Commission for some discussion. He thought it somewhat ironic that there is this hubbub because the State Statute means what it says. He also questioned why everyone is acting as if variances will no longer be granted, noting he did not think that is the case. He stated that usually neighbors support someone's request for a variance. The reason this case came about is someone with a fair amount of money didn't like a neighbor's variance request. It takes someone to oppose a variance to call for strict enforcement.

Mayor Kind stated it should not matter whether the neighbors support or oppose a variance. She said a variance request either satisfies the criteria or it does not.

Councilmember Fletcher stated it's his recollection that when Councilmember Page was on the Planning Commission he did things in accordance with State Statute. It may be that some cities have not been as diligent in adhering to Statute.

Councilmember Page stated it appeared in the case that brought this about, the City of Minnetonka was possibly ignoring State Statute and that is what the Supreme Court found troubling to start with. He then stated he is not in any big hurry to worry about what to do about the new interpretation of the statutory standard. Statute means what it says. He went on to state that he has no problem with sending this to the Planning Commission. He expressed he did not think there was value in going over every possible scenario and redoing all of the ordinances in response to the Supreme Court case.

Quam moved, Rose seconded, requesting the Planning Commission review the draft ordinance amending the City Code to define reasonable use for residential lots and clarifying the types of alternations allowed for nonconforming residential buildings and to provide a recommendation on it.

Councilmember Fletcher stated he would also like the Planning Commission to make recommendations on other items that it thinks should potentially be changed.

Without objection from the maker or seconder of the motion, the motion was amended to include asking the Commission to provide its opinion on how the City should respond to the Supreme Court decision. Motion passed 5/0.

B. Administrative Committee Responsibilities

Mayor Kind stated Councilmember Page had requested this item be placed on the agenda.

Councilmember Page stated from his perspective the Administrative Committee, comprised of Mayor Kind and Councilmember Fletcher, was set up in response to the auditor's requirement to have a second party review the signed checks. He thought the Committee has gone beyond that. He requested Council establish parameters for the Committee. Because of the letter threatening legal action he stated he was unwilling to discuss any particular item at this time. He did not think that would be appropriate.

Mayor Kind asked if Council should recess to a closed session to discuss the threat of legal action.

Attorney Kelly responded he did not think the threat of legal action is adequate. He stated Councilmember Page's concern may be legitimate. He explained Council does not have the authority to

recess to executive session because there is no actual litigation. It's Council's discretion to take up any matter at any time. He stated Council could discuss immediate matters it may want to discuss. Council may want to discuss what the parameters and duties are for the Committee. He thought the two items are separate.

Mayor Kind asked when it would be appropriate for Council to discuss whether it should be enforcing the current City Code or the new Code which had its second reading this evening. She stated that she wanted that direction to be decided by Council not the Committee.

Attorney Kelly responded Council could do that now. He stated the new Code Council just adopted includes fine tuning about dead trees in particular. He noted he has no personal knowledge of whether or not there are dead trees in the City that are now illegal under the prospective Code that will come into play in a month's time. He stated we may benefit from a report from Zoning Administrator/Clerk Karpas or the arborist as to whether or not the City is now facing a violation that fits within that parameter. If it is, then the circumstances from thirty days ago match the circumstances as we know them going forward and there is a unity of facts and then Council's decision making will be much easier.

Mayor Kind stated the violation occurred with the current Code.

Attorney Kelly explained a violation occurs, it can be noticed and it can be prosecuted. He stated if Council wishes to proceed, it was previously recommended the civil citation process be followed. That citation could be issued before the effective date of the new Code.

Mayor Kind asked if it would be beneficial to refer this matter to the City's prosecuting attorney to determine if there is a case in light of the new Code that was just adopted. Attorney Kelly stated the prosecuting attorney could be the arbiter of the entire circumstance. It would then become the prosecuting attorney's decision not his. Kelly noted he has not consulted with the prosecuting attorney on the details of this matter and he will not. If the prosecuting attorney becomes involved he wants Zoning Administrator/Clerk Karpas to package all of the related materials, present it to that attorney for review, and have that attorney exercise his judgment as a prosecuting attorney under the rules of professional conduct to decide whether or not he has a case to move forward with.

Mayor Kind asked Attorney Kelly if in his opinion that would be money well spent for the City. Kelly responded it's best for this body not to make a political decision regarding a prosecutorial matter. Such matters should be handled by a detached and disinterested individual.

Councilmember Page stated the Burdicks want the current Code enforced and their neighbors, the Dotys, do not.

Mayor Kind noted there is also a complaint filed against the City about dead trees on City-owned property that need to be removed under the current ordinance.

Councilmember Page stated if the City were to proceed administratively the City can't just go onto someone's property. The City would have to get a court order, but that will not happen immediately. When the City does get to court, the arguments will be made that the violation is in regards to the old Code not the new Code, with a counter that it doesn't matter because the citation is still valid. It's likely the presiding judge will not want to waste time on an ordinance that has changed since the citation was issued; it's unlikely he will grant the City access to remove the trees. The judge will likely consider this matter a feud.

Page then stated the matter can be referred to the prosecuting attorney and he can decide if this is a criminal charge; a misdemeanor. He thought the prosecuting attorney will decide if this is a violation of the Code and if so does he wants to prosecute it. The prosecutor will be cognizant of the fact that the Code is changing and he will have to decide if it would be a valuable use of prosecutorial time. If the decision is made to move forward a complaint can be issued. Page commented these types of matters are usually solved by continuance for dismissal with some sort of payment of court costs, noting it's not a fine.

Mayor Kind asked Councilmembers if they would like to refer this matter to the prosecuting attorney for his opinion.

Councilmember Page responded he thought it should be referred to the prosecutor and to treat it as a criminal violation. The City has received a demand that the trees be removed because there is a violation against the current Ordinance. The property owner has been noticed of the violation but has not complied. It's up to the prosecutor to decide what the next steps should be. The matter will then be in neutral hands.

Councilmember Quam stated he thought the Council took action on going a specific direction during its September 7, 2010, meeting. Councilmember Page responded that is one of the reasons he asked for this item to be on the agenda and it's the only reason he wants to discuss this evening. He explained during that meeting Council directed Staff to base the enforcement of current complaints on the current Code.

Mayor Kind stated that when a complaint was filed against the City to remove the City's dead trees things got more complicated. She stated in retrospect the complaint against the residential property owner should have been referred to the prosecuting attorney.

Councilmember Fletcher stated he thought it appropriate that all the Councilmembers have some input into the direction that should be taken.

Councilmember Rose stated if the matter about the residential property is forwarded to the prosecuting attorney then the complaint filed against the City needs to be treated similarly.

There was comment the matter against the City is a separate issue.

Councilmember Fletcher stated he understands Councilmember Page to be asking for the residential matter to be forwarded to the prosecuting attorney for review and to make a decision.

Councilmember Page stated no one is going to prosecute the City for having dead trees on public property because the City would have to refer itself to the prosecutor. He was confident that no one is going to remove all the dead trees on City-owned property at this time.

In response to a comment from Mr. Burdick, Councilmember Page explained a finding of guilt in a criminal case is can be appealed to the Court of Appeals.

Councilmember Rose stated Council passed a motion providing Staff with direction during its last meeting. There may not have been enough thought given to what the ramifications were prior to some Councilmembers providing direction. Councilmember Page stated Council can reconsider the motion that was passed. Councilmember Fletcher stated he made the motion for discussion purposes.

Councilmember Rose stated he did not think Council had enough information at that time.

Councilmember Page stated the City has no grounds not to enforce the current Ordinance just because it may change.

Mayor Kind stated she did not know how to handle the dead tree complaint filed against the City.

Page moved, Fletcher seconding, referring the matter of enforcement of the City ordinance regarding the removal of dead trees from a particular residential property to the prosecuting attorney for his consideration. Motion passed 4/1 with Rose dissenting.

Councilmember Fletcher clarified he was not saying this matter should be prosecuted.

Mayor Kind asked if Council would have preferred to have had a special meeting called when the complaint against the City was received. Councilmember Page responded no because nothing would have happened between then and now. Page suggested more caution be exercised on items such as this in the future.

Mayor Kind opened the discussion for brief public comment.

John Doty, 21540 Pineview Court, asked that it put on record what Council is going to do about all of the dead trees, dead limbs, dead branches and so forth on City-owned property. He noted a complaint has been filed against the City for the violation against the current Code regarding dead trees and other dead items on City-owned property. He asked if the City is going to refer that complaint to the City's prosecuting attorney.

Councilmember Page stated he thought it appropriate for that situation to be investigated. The complaint has not been validated as of yet.

Mayor Kind stated she would like to get information back from the City's prosecuting attorney about the dead trees on private property before doing anything about City property. Councilmember Page stated the City prosecuting attorney doesn't have authority to prosecute the City.

Attorney Kelly stated the comment from Mr. Doty is in response to a criminal citation and this is not the venue. If Mr. Doty wishes to put that forward as a defense that's Mr. Doty's option should a prosecution ensue.

Councilmember Fletcher stated if no prosecution ensues it may become a moot point.

Councilmember Fletcher stated if further action is needed before the next meeting he asked if it would be prudent to ask Mayor Kind and Councilmember Page to deal with it.

There was consensus that Mayor Kind and Councilmember Page would not make any decisions for the rest of the Council on this matter.

In response to a comment made, Councilmember Rose stated if someone asked Mr. Doty kindly he would probably give them a copy of his inventory of dead trees on City-owned property.

A Tree Inventory Review Task Force comprised of Mayor Kind and Councilmember Page was created to review dead trees on City-owned property.

C. Approve September 7, 2010, City Council Meeting Minutes

This item was removed from the consent agenda at Councilmember Fletcher's request.

Page moved, Quam seconded, Approving the City Council Work Session Minutes of September 7, 2010, amended in Item 7.B, Page 12, Paragraph 3, change "Councilmember Fletcher noted there had been further reductions from the document previously in front of the Council." to "Councilmember Fletcher noted there had been reductions in administrative areas with roughly offsetting increases in the roads budget from the document previously in front of the Council." Motion passed 5/0.

9. COUNCIL REPORTS

A. Rose: Excelsior Fire District

Councilmember Rose stated he attended the Excelsior Fire District (EFD) Board meeting held on September 22nd. EFD Chief Gerber asked member cities to remind residents to keep fire hydrants exposed. They should be visible in the winter as well as in the summer when foliage can block them from view. He then stated two EFD firefighters retired in September; one had been with the Department 22 years and the other 30 years. The Board discussed the replacement of the self contained breathing apparatus (SCBA), how to finance that and the possibility of expediting the replacement.

B. Quam: Roads & Sewer, Minnetonka Community Education

Councilmember Quam stated he will gather replacement cost information for the remaining 60 percent of the manhole covers that have to be replaced. HE then stated there is nothing to report on Minnetonka Community Education that affects the City.

C. Page: Lake Minnetonka Conservation District

Councilmember Page stated two Lake Minnetonka Conservation District (LMCD) Board meetings ago the Hennepin County Sheriff's Water Patrol made a presentation to the Board. During the presentation the comment was made that there were one-half the number of boating while intoxicated (BWI) citations compared to a few years ago. It asserted that it was because of prior enforcement efforts. Later in the presentation it was noted that the number of licensed deputies patrolling the Lake was reduced by half. It's his understanding there was only one licensed deputy doing that. All other Water Patrol people are volunteers and they can't issue a citation. The Sheriff's Water Patrol made a request for new legislation by the LMCD. The Sheriff's Water Patrol had been operating under a Minnesota Department of Natural Resources rule and was prosecuting people for pulling sleds behind vehicles on the Lake in the winter. In order to cite people under that rule the Lake had to be classified as a highway. The new legislation for the LMCD would prohibit people from towing anything behind a vehicle on the Lake during the winter without a tow bar on the vehicle. Towing without a tow bar would be a misdemeanor. No one at the LMCD made a motion on this item, but there was a great deal of discussion about it.

Page went on to state that the speed limit for snowmobiles was changed when going through Black Lake and Seton Channel. The speed limit was raised to 50 miles-per-hour from 40 miles-per-hour on Lake Minnetonka at night for snowmobiles. The speed limit remains 25 miles-per-hour within the shoreland districts and when they are closer than 150 feet to any structure, vehicle, or person. He then stated there is a great deal of talk about zebra mussels having infested Lake Minnetonka. His personal view is they mussels are here, you can't get rid of them, and it will be a few years before they spread extensively. The focus now is to not transport them to other lakes.

In response to a question from Councilmember Fletcher, Councilmember Page stated there was opposition expressed to increase the speed limit to 50 miles-per-hour. Some of the concerns were about people walking on the ice at night or cross country skiing at night. Those concerns were not very persuasive.

Councilmember Fletcher asked if the LMCD is going to have a discussion with the Hennepin County Sheriff's Water Patrol about the number of licensed deputies it will have patrol the Lake in 2011. Councilmember Page stated when there is only one person patrolling the Lake who is authorized to arrest people it has to have some impact on enforcement and arrests, noting he was not saying he was for arrests. Page noted volunteers can make a citizen's arrest. He also noted that licensed deputies and volunteers wear the same uniform so it difficult for people to know who is licensed and who is not.

D. Kind: Police, Minnetonka School District Mayors' Lunch

Mayor Kind stated the South Lake Minnetonka Police Department (SLMPD) Coordinating Committee has not met since the last Council meeting. Its next meeting is scheduled for October 19, 2010. She then stated she attended a luncheon hosted by Minnetonka School District Superintendent Peterson for the mayors in the District last month; the lunch is hosted four times a year. During the luncheon she learned that the amount of money the District receives from open enrolment is equivalent to 157 teachers or three schools. Without the funds received from open enrollment two elementary schools and one middle school would have to be closed.

E. Fletcher: Planning Commission, Lake Minnetonka Communication Commission, Eurasian Watermilfoil

Councilmember Fletcher stated there has been a dispute with the City of Mound over fees and membership in the Lake Minnetonka Communications Commission (LMCC) and there was an election dispute during the last LMCC Board meeting. He encouraged residents to return the LMCC survey found in resident's utility bills. He noted State Senator Gen Olson has set up a meeting with Minnesota Department of Natural Resources (DNR) for October 13th at 9:00 A.M. at the Deephaven City Hall to discuss the treatment of Eurasian Watermilfoil. State Representative Connie Doepke will also attend as will as the various bay captains. In 2010 the DNR changed the treatment approach for the three-bay treatment program. The intent is to have a positive discussion with the DNR about the treatment of milfoil going forward.

10. ADJOURNMENT

Fletcher moved, Rose seconded, Adjourning the City Council Regular Meeting of October 5, 2010, at 10:05 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder