

**GREENWOOD CITY COUNCIL MEETING**  
**Thursday, July 5, 2012, 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 7:01 P.M.

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

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

Members Absent: Councilmember Fletcher

**Page moved, Quam, seconded, approving the agenda as presented. Motion passed 4/0.**

**2. CONSENT AGENDA**

Mayor Kind reviewed the items on the Consent Agenda.

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

- A. May 2012 Cash Summary Report**
- B. June 2012 Verifieds, Check Register, Electronic Fund Transfers**
- C. July 2012 Payroll Register**

**Motion passed 4/0.**

**3. MATTERS FROM THE FLOOR**

There were no matters from the floor presented this evening.

**4. PRESENTATIONS, GUESTS & ANNOUNCEMENTS**

- A. Budget Work Session, 6:00 P.M. August 1, 2012**

Mayor Kind stated there is a budget work session scheduled for 6:00 P.M. on August 1, 2012, immediately preceding Council's regular meeting.

- B. Night to Unite, August 7, 2012**

Mayor Kind stated the 2012 Night to Unite event is scheduled for August 7<sup>th</sup>. She noted that people in the community should contact South Lake Minnetonka Police Department (SLMPD) Support Services Manager Dave Hohertz if they would like SLMPD personnel and/or Excelsior Fire District personnel to come to their neighborhood Night to Unite events. Hohertz's information can be found on the City's website and in the most recent newsletter.

**C. Old Log Ice Cream Social and Sousa Band, 4:30 P.M. July 29, 2012**

Mayor Kind stated the Old Log Theater is holding a free community ice cream social and Sousa Band concert on July 29, 2012, at 4:30 P.M.

**5. PUBLIC HEARING**

**A. None**

**6. UNFINISHED BUSINESS**

**A. Resolutions Regarding Excelsior Boulevard Watermain Project**

Mayor Kind explained in May 2012 the City received petitions regarding the extension of the City of Excelsior's watermain along Excelsior Boulevard. Council discussed the petitions during its June 6, 2012, meeting and decided the petitions were unclear as to whether the petitioners were asking for an 8-inch watermain line or a 12-inch line. Since that meeting the City has received a petition dated June 13, 2012, which clearly states the petitioners are asking for watermain line up to 12-inches in size. The June 13 petition has been reviewed by the City Attorney. Attorney Kelly has provided Council with a memorandum outlining his review and the next steps in the process. She noted a copy of the memorandum is included in the meeting packet.

Kind then explained the meeting packet contains a copy of a draft resolution declaring insufficiency of the May 2012 petitions which Council needs to do. It also contains a copy of draft resolution declaring the adequacy of the June 13 petition and one declaring insufficiency.

Councilmember Quam asked at what point in the process would the City declare there is a general benefit to the City of extending watermain, noting doing that would result in the City paying for some portion of the extension.

Attorney Kelly stated all Council is being asked to do this evening is address the petitions. He explained if Council finds the June 13 petition adequate, the resolution in the meeting packet declaring so also directs City Engineer Martini to prepare a report about the potential watermain extension for Council. Martini would present his findings found in the report to Council during a public hearing and explain how he has valued the improvement. It is at that time when it would become more apparent if there is a general component in addition to a special component. During the hearing public comments would be taken. After the conclusion of the public hearing and after Council's consideration of the report and public comments Council can then decide whether or not to proceed.

Attorney Kelly then explained the petitions are authorized by State Statute. If the petition is adequate then it is the Council's obligation to consider it with full detail so that the report can be presented to the public during a public hearing.

Mayor Kind stated the resolution states the Planning Commission will also review the report for compliance with the City's Land Use Plan. Attorney Kelly explained that is to avoid a collateral attack on the process. Kelly stated it is prudent to get that review of the compliance of improvement done at the same time. He noted it is more of a procedural thing.

**Page moved, Quam seconded, Adopting RESOLUTION NO. 07-12, “A Resolution Declaring the Insufficiency of Petitions Presented to the City in May 2012 Regarding Installing Watermain.” Motion passed 4/0.**

Mayor Kind asked if anyone present in the audience wants to speak to this topic.

Steve Janousek, 21210 Excelsior Boulevard, expressed his support for this project. He noted that he is a physician. He explained he has health concerns about personal well water and noted that municipal water is healthier. He commented that his daughters have reminded him that all the bottles from bottled water people are drinking are polluting the environment.

Rob Roy, 21270 Excelsior Boulevard, expressed his support for the project. He stated the copy of the petition he has was not signed by Councilmember Fletcher and his wife. Mayor Kind clarified the June 13 petition submitted to the City has been signed by both of the Fletchers, and a copy of that petition is included in the meeting packet.

Councilmember Page stated he is a little confused about the petition stating the improvement is installing watermain up to 12 inches in size. He asked what the proposal is because it is not clear to him.

Mayor Kind explained she interprets it to mean that the petitioners are agreeing to pay for the extension of watermain up to 12 inches in size unless the engineer determines a smaller size is all that is needed and they would be happy with that.

Attorney Kelly stated the petition format used is from the League of Minnesota Cities (LMC). The language in the petition is flexible. He explained that he was uncomfortable with the lack of clarity in the May petitions. It was not clear that the petitioners understood the watermain line was 12 inches in size. He noted that during Council’s June 6, 2012, meeting Councilmember Fletcher stated the petitioners understood that. But, there was no written record of that. Council asked the petitioners to resubmit a petition that says the watermain will be up to 12 inches in size. He explained that he has been told by the attorney for the City of Excelsior that the engineer for Excelsior stated the 12-inch size is needed to maintain water pressure to the end of the system. He was also told in a private conversation with Kent Carlson that the watermain line that goes under the St. Alban’s Bay Bridge is a 10-inch line. He noted it is probably a 12-inch line because the line sizes go up in 4-inch increments.

Mayor Kind stated the petition makes it clear that the petitioners know that watermain line could be up to 12 inches in size.

Attorney Kelly stated what is trying to be accomplished by including the line size is to avoid a side attack on whether or not the public knew from the start that the petition improvement was of the 12-inch size.

Mayor Kind stated she is satisfied the petition is clear with regard to size. Councilmember Quam concurred.

**Quam moved, Kind seconded, Adopting RESOLUTION NO. 15-12, “A Resolution Declaring Adequacy of Petition and Ordering Preparation of Report and City Planning Commission Review for Compliance with the City Land Use Plan.” Motion passed 4/0.**

**B. Variance Findings of Fact, Keith and Stacy Carlson, 20965 Channel Drive (deck variance)**

Mayor Kind noted that during its June 6, 2012, meeting Council approved the variance requests for Keith and Stacy Carlson, 20965 Channel Drive, to encroach into the lakeside setback and exceed the permitted hardcover to construct a deck addition. During that meeting Council also directed the City Attorney to draft written findings of fact for Council's consideration during its July 5, 2012 meeting. The meeting packet contains a copy of the findings.

**Page moved, Quam seconded, Adopting RESOLUTION NO. 16-12, "A Resolution Setting Out the Findings of Fact and Conclusions of Law Regarding the Keith and Stacy Carlson Deck Addition Variance Requests." Motion passed 4/0.**

**C. Conditional Use Permit Findings of Fact, Keith and Stacy Carlson, 20965 Channel Drive (to exceed the annual permitted significant tree harvest)**

Mayor Kind noted that during its June 6, 2012, 2102, meeting Council approved the conditional use permit request (C.U.P.) for Keith and Stacy Carlson, 20965 Channel Drive to exceed the annual permitted significant tree harvest of two trees. During that meeting Council also directed the City Attorney to draft written findings of fact for Council's consideration during its July 5, 2012 meeting. The meeting packet contains a copy of the findings.

**Page moved, Rose seconded, Adopting RESOLUTION NO. 17-12, "A Resolution Setting Out the Findings of Fact and Conclusions of Law Regarding the Keith and Stacy Carlson Conditional Use Permit Request to Exceed the Annual Permitted Significant Tree Harvest of Two Trees." Motion passed 4/0.**

**D. Second Reading: Ordinance 210, Amending Code Section 310.30 Subd. 5(d) and 5(f), Use of Sewers**

Mayor Kind stated this is the second reading of Ordinance 210, amending Ordinance Code Section 113.30 Subd. 5(d) and 5(f), Use of Sewers. It would give Council the authority to institute programs to ensure compliance with ordinances that prohibit discharge of clean water into the sanitary sewer system. This has been an ongoing topic with Council since February 2012. During its June 6, 2012, meeting Council approved the first reading of the Ordinance and directed that paragraph (ii) be changed by deleting "*Failure to return a fully completed certification form within 14 days of the certification letter notification date shall be a misdemeanor and subject the property owner to prosecution as permitted in paragraph (h) below.*"

**Quam moved, Page seconded, Approving ORDINANCE NO. 210 "An Ordinance of the City of Greenwood, Minnesota, Amending Ordinance Code Section 310.30, Subd. 5(d) and 5(f), Use of Sewers." Motion passed 4/0.**

**7. NEW BUSINESS**

**A. Variance Application, Matt and Angela Lindberg, 5160 Greenwood Circle**

Mayor Kind noted Matt and Angela Lindberg, 5160 Greenwood Circle, have requested a variance for grade alteration in their rear yard.

Zoning Administrator/Clerk Karpas explained Matt and Angela Lindberg, 5160 Greenwood Circle, propose to alter the grade in their rear yard by more than one foot in order to level the grade. There is a retaining wall near the back of house which does not allow water to percolate. It ends up creating a wet

area. The applicants have a very small yard. They are proposing to grade to create a greater flat area and relocate the retaining wall. Doing so would allow a larger drainage area. The new retaining wall will be stepped. Some additional landscaping will be planted.

Karpas then explained the Planning Commission discussed this. It recommended approval of the request by a 5/0 vote. The Commission asked the City Engineer to review what was being proposed for the retaining walls a second time. A copy of the engineer's comments is included in the meeting packet. The Commission also recommended that a safety fence be placed at the top of the wall in the applicants' design. The Commission considered the practical difficulty standards in their recommendation.

Karpas noted the applicant was present this evening to answer any questions Council may have.

Councilmember Quam asked how far away the retaining wall will be from the abutting property at the top of the hill. Zoning Administrator/Clerk Karpas stated it is not very far away.

Mayor Kind asked how high the retaining wall will be.

Jason Robinson, the contractor, explained the top of rear wall will be 13 feet from the proposed ground level (a 13 foot drop) at the highest point of the property. The wall itself will not be 13 feet high; it will be 6 feet high. Then there will be room for 4 – 5 feet of plantings. Then the lower wall will be 6 feet high.

Councilmember Quam asked Mr. Robinson to describe the safety fence. Mr. Robinson explained plantings with thorns on them are proposed. The homeowner is not opposed to having a fence on top of the wall if necessary. The abutting property has a fence.

Councilmember Page stated he thought there is a culvert that comes down to the side of the property. The catch basin is about 10 feet from the northeast corner of the home. Mr. Robinson stated it is about 15-20 feet from the corner of the home. Page asked if it is public property that comes to the culvert. Mr. Robinson noted that was vacated by the City and the Lindbergs own it now.

Mayor Kind highlighted how the drainage system flows on the Site Plan. She asked if it will be disturbed. Mr. Robinson stated it will not be and explained that additional water will be directed to that. Some water will be directed to flow another direction also. Councilmember Quam asked if the redirecting of the stormwater will cause it to flow onto the property on the west. Mr. Robinson stated it will not because there is a natural swale that will be added to that will keep it on the applicants' property.

In response to a comment from Councilmember Quam, Mr. Robinson stated a mid-sized excavator will be used to set all of the boulder work.

Mayor Kind asked if the project will require a building permit. Zoning Administrator/Clerk Karpas stated he will research that, and noted that even if it does not the landscaping portion of the project requires a load limit permit.

Councilmember Page asked if there is any projection to how much more water will flow into the catch basin. He asked if it will be able to handle the increase. Mr. Robinson some additional stormwater will be diverted to the catch basin. Zoning Administrator/Clerk Karpas stated the City Engineer did not raise any alarm about it when he reviewed the plans.

Councilmember Page asked how far back the existing first retaining wall is from the house. Mr. Robinson responded approximately 15 feet. Page asked how far back from that the new one will be. Mr. Robinson

responded about 25-30 feet. Page stated that means the plan is to excavate about a 25-foot wide section of the hillside. Mr. Robinson stated the plan is to excavate approximately 125 cubic yards which is the equivalent of 10 truckloads depending on the size of the trucks.

Councilmember Quam stated he did not want the contractor to use large trucks because roadway surface that will be traveled is relatively new. He noted that 7-ton trucks are allowed on Minnetonka Boulevard and smaller ones are allowed on the smaller residential streets. Mayor Kind stated Council would appreciate the contractor using the smallest truck possible. She clarified 7-ton trucks are allowed on all streets except when there are weight restrictions in the spring.

Mayor Kind stated none of the Site Plans show existing trees. She asked if any large trees will be taken out as part of the project. Mr. Robinson responded no.

**Quam moved, seconded, approving the variance request for Matt and Angela Lindberg, 5160 Greenwood Circle, to alter the existing grade on their property by thirteen feet as part of a landscaping project to improve drainage on their property and enlarge their rear yard as presented subject to installing a safety fence at the top of the retaining wall to their design, and directing the City Attorney to draft findings of fact based on Council's discussion this evening for Council's consideration during its August 1, 2012 meeting.**

Mr. Robinson asked if a building permit is needed to build the fence. Zoning Administrator/Clerk Karpas stated he will have the building official determine that.

Mayor Kind reviewed the questions that must be answered in the findings.

- a) Is the variance in harmony with the purpose and intent of the ordinance?
- b) Is the variance consistent with the comprehensive plan?
- c) Does the proposal put property to use in a reasonable manner?
- d) Are there unique circumstances to the property not created by the landowner?
- e) Will the variance, if granted, alter the essential character of the locality?

Councilmember Quam stated he does not see a problem with any of them.

**Kind seconded.**

Councilmember Page stated he is opposed to the motion. He explained that this property was built into the side of a hill. The applicants knew exactly what they were purchasing when they purchased the property. It has been a drainage area since the City has been around. There is drainage there now on the east side of the property which may create a little moisture in the back yard. He noted he went to the site earlier in the day. He explained from the middle of the house to the west it was dry as a bone. From what he could see there is no problem with moisture. He stated from his perspective it is clear on the application that the applicant's real motivation is to create a bigger back yard. He noted that he did not see any washout in the back yard nor did he see any washout on the sides of the residence. He stated from his vantage point it is clearly an aesthetic matter.

Page then stated if Council allows this then what grounds would Council have to deny all the rest of the owners of properties abutting Greenwood Circle requests to excavate hundreds of yards of soil from their properties and create retaining walls. That would create a terrible problem with drainage. The City had a terrible problem with drainage in that area that it was barely able to solve over the years. The City had to have a more expensive catch basin installed at the bottom of Greenwood Circle partly because of those

properties. There had been standing water in the road because of them. The City redid the road to handle that capacity. It has been indicated that the capacity will be increased down onto the road. He noted that is not right.

Page went on to state that Council has not been provided with the results of a study to determine what the pressure would be behind the retaining wall of the water coming off of Highview Place. He suggested that anyone who has doubts about this should look at the area around Fox Path in the City of Chanhasen which is near the end of Lotus Lake. He explained the area was excavated and a block of houses was built into the side of the hill. Behind it was a very high retaining wall. The stormwater busted down the retaining wall and it was forced under the driveways. It created alongside of the houses very spongy narrow paths in between the houses. There was so much water forced into a small drainage area that it flooded the circle in the street in that area. It was so bad the school bus could not come into the area to pick the children up for school. The stormwater washed out the smaller retaining walls along the sides of the properties. The water pressure broke up the timbers supporting hot tubs.

Page also stated it is a relatively new house on the property and there is relatively new landscaping. There are retaining walls there already. He thought a lot of the problem is the underlayment (black sheathing) on the side of hill. He saw it on the east side and going up the property.

Page noted he is not in support of this at all. It will alter the water course that was set up as part of the development which is basically the newest part of the City. He stated the applicants want a bigger back yard without having had a hydrostatic study done. He questioned how realistic it is to think that redirecting water to the west will not affect the neighboring property to the west. He stated he does not think that is credible. The property to the west has a retaining wall which butts up to this property. He expressed his confidence that if water is routed to the west of the property it will cause problems for the neighboring house. He noted he does not see the need.

Page stated this proposal is not in harmony with the purpose and intent of the City Ordinance. The Ordinance states a person can't change the grade of a property just because they have a mind to do so. Council recently passed an Ordinance in that regard. He noted that he has not checked to find out if this would be in harmony with the City's Comprehensive Plan (Comp Plan). He stated he did not think this would put the property to a reasonable use. It already has a reasonable use. Putting up a retaining wall with a 13-foot drop is not a reasonable use. There is a safety factor with a 13-foot drop.

Page then stated there are unique circumstances created by the landowner. The property owners knew what they were purchasing when they purchased the property. They bought property set into a hill. There is going to be drainage flowing across their property. They knew Highview Place existed when they purchased their property. It was very clear there was a culvert at the top of the property going down. He explained the swale that comes off of the culvert that comes down to the catch basin has black sheathing under it with rocks on top. That could be part of the reason the stormwater is not soaking into the ground.

Mayor Kind asked Zoning Administrator/Clerk Karpas who installed the culvert system. Karpas stated he thought the previous property owner did. Kind asked if it was approved by the City Engineer. Karpas stated he is not sure how much it was inspected because it was done by the homeowner.

Councilmember Page stated he thought granting the variance would alter the essential character of the neighborhood. It would create big drainage problems similar to what the City recently solved along the roadway.

Page noted there is no reason to grant the variance because the applicants' back yard is damp. He stated when he visited the site it was damp on the east side of the property. The ground on the west side did not feel spongy to him; it was bone dry.

Mayor Kind stated the reason she supports the motion is she is going off of the engineering analysis. He states there would be adequate drainage behind the wall, it was designed by a licensed civil engineer adhering to safety standards, and it has adequate structural design. He agreed with requiring a safety fence and that is included in the motion. She noted all of that made sense to her.

Councilmember Page stated the engineer was commenting on the design not meeting the criteria for granting a variance.

Mayor Kind stated the Ordinance does allow a variance for grading. She then stated she is not aware of anything in the Ordinance that talks about the intent or grading or not grading. She stated she is unsure if there is anything in the Comp Plan that deals with grading.

Zoning Administrator/Clerk Karpas stated he did not think the Comp Plan would specifically discuss grading. It deals with land use.

Councilmember Page stated an applicant has to meet the criteria for granting a variance and he does not think this variance request does that in any regard.

Councilmember Quam questioned how much the City Engineer analyzed what Councilmember Page talked about.

Councilmember Page noted the second memorandum from the Water Resources Engineer stated "*If the City has additional concerns about the proposed wall regarding hydrostatic pressure, the applicant should be required to provide additional analysis for review.*" Page stated the applicant is talking about redirecting all of the water.

Councilmember Quam stated the Planning Commission has discussed this variance request and recommended approval. Yet, Councilmember Page went to the site and based on what he saw has a different perspective. Quam questioned if the Commission questioned any of the same things that Page did.

Mayor Kind noted that the Staff report notes that the Planning Commission recommended a review of the hydrostatic pressure behind the wall and recommended that it be a condition of approval.

Kind asked Planning Commissioner Conrad, who was in the audience, to comment on the Planning Commission's discussion.

Councilmember Page noted the minutes of the June 20, 2012, Planning Commission meeting when this item was discussed are included in the meeting packet.

Planning Commissioner Kristi Conrad, 21780 Fairview Street, noted that two of the Planning Commissioners are engineers and they raised the same questions. The Commission asked that the City Engineer analyze the concerns further. Mayor Kind noted Council has been provided with the findings from the engineer's analysis. Conrad noted the hydrostatic issue raised by the Commission has not been addressed.

Mayor Kind noted that the City Engineer would require a licensed civil engineer to submit hydrostatic plans for the City's review. It would be a requirement of the applicant to provide that if Council wants that information.

Commissioner Conrad stated the Commission raised the question about over taxing the catch basin. A concern was also raised about the longevity of the wall. She explained the Commission considered this from the perspective that the applicant did not want to raise the property height (build up the property) and the intent of the Ordinance was to address building up. Councilmember Page stated that was Councilmember Fletcher's perspective on the Ordinance. Zoning Administrator/Clerk Karpas noted that Planning Commission Chair Lucking also had that perspective.

Zoning Administrator/Clerk Karpas stated when he told the City Engineer that the Planning Commission wanted more information about hydrostatic pressure the engineer explained there is clay behind the wall and the engineer thought the pressure behind the wall was nonexistent. He related the City Engineer was not sure what the Commission actually wanted. He explained the City Engineer directed Mr. Bean, the Water Resources Engineer, to provide further information based on the drawings submitted by the applicants' engineer.

Karpas then stated that with regard to the drainage at the top of the wall it is his understanding that there will be drain tile installed. He explained the applicants had commented that the drain tile could be run all the way down to the catch basin and Commissioner Paeper cautioned against doing that because it would over tax the basin. He stated he thought the City Engineer would agree with that.

Councilmember Page asked where the drain tile will be run to. Will it go into the storm sewer system? Zoning Administrator/Clerk Karpas stated he thought it will be run to the swale into the west. Page noted there is a storm grate is at the bottom of that area. Mayor Kind reiterated the City Engineer did not raise concerns about that. Zoning Administrator/Clerk Karpas stated he thought there is a grate that runs across the street and on into the lake. Councilmember Quam stated Page's point is the stormwater is being directed away from the property as opposed to being filtered into the ground.

Page then asked if there is currently drain tile installed at the bottom of the wall. Mr. Robinson stated he does not know the answer to that. Page asked why drain tile could not be put at the bottom of the wall in the back yard and run that along the sides of the house. Mr. Robinson asked what the difference is. Page responded the difference is a 13-foot drop and the elimination of 125 cubic yards of soil. Mr. Robinson stated it would be the same amount of water.

Mr. Robinson stated that theoretically drain tile could be installed at the bottom of the wall. He explained the problem is the bottom of the retaining wall is higher than grade. The slope is back toward the house. Putting drain tile at the bottom of the wall is like putting a bathtub drain on the wall of the bathtub. The proposal is to slope the grade down from the house to the retaining wall. The goal is to have some of the water flow back to the wall and be absorbed.

Mayor Kind stated it would improve the drainage.

Mr. Robinson noted that with the number of days there has been in 2012 of very high temperatures (some into the 100s) there aren't many moisture issues visible in the City. Drainage issues are much more apparent in the spring.

Mayor Kind stated a case could be made that more of the stormwater will stay on the property.

Mr. Robinson stated that rather than having the stormwater flow toward the street the proposal is to have it flow back toward the retaining wall.

**Motion failed 2/2 with Page and Rose dissenting.**

Mayor Kind asked Attorney Kelly how to proceed with this.

Attorney Kelly stated Council has an obligation to provide written findings to support the motion to deny. He noted that Councilmember Page has articulated comments that would form the basis of that.

Mayor Kind stated the denial could be continued for written findings of fact. She asked if the City needs an extension to exceed the 60-day rule. Zoning Administrator/Clerk Karpas stated action is required by July 14, 2012. Kind stated the City has to either extend this or come up with written findings this evening or convene a special meeting before July 14<sup>th</sup> to act on the written findings.

Attorney Kelly stated Council has to adopt findings at the time the motion is denied. They can be articulated and reduced to writing but the factual basis needs to be adopted.

Mayor Kind stated this could be tabled pending Attorney Kelly preparing written findings and then take official action on it later during this meeting. She recommended Council consider a motion asking the applicant to allow an extension to the 60-day rule to allow Kelly to draft findings of fact. Kelly clarified the City has the authority to elect additional time to consider the matter. Kelly explained the City either gets permission from the applicant or the City articulates its basis for the additional time. Kind noted the City does need to give the applicant written notification that it is extending the time.

Councilmember Page stated there is plenty of time to give the applicants written notice by July 14, 2012. He recommended doing that to allow time to write the findings of fact for the denial.

Attorney Kelly stated Council could adopt a resolution to exercise its authority to extend the time of consideration beyond 60 days and to instruct the City Clerk to issue a notice accordingly.

**Page moved, Rose seconded, directing the City Clerk to send the applicants notice by July 14, 2012, that the City is exercising its authority to extend the time of consideration for an additional 60 days to allow the City time to prepare and approve findings consistent with Council's action during its July 5, 2012, meeting. Motion passed 4/0.**

**B. First Reading: Ordinance 212, Amending Code Section 425, Municipal Watercraft Spaces (establishing procedures for canoe racks)**

Mayor Kind stated this is the first reading of Ordinance 212, amending Ordinance Code Section 425, Municipal Watercraft Spaces. It would establish a process for assigning spaces and rules for canoe racks.

Kind explained that during the joint work session of Council and Planning Commission on May 16, 2012, Commissioner Conrad suggested installing a canoe rack at the Meadville boat launch. There was group consensus that it would be a nice thing to have. Council discussed the idea during its June 6 meeting. During the meeting Council directed Staff to ask the Deephaven Public Works Department to construct and install a canoe rack. That has been done. The meeting packet contains a copy of Section 425 showing the original and amended text as well as a clean copy with the amendments incorporated. Kind noted the City Attorney has reviewed the ordinance amendment.

Kind stated Council has to decide when it wants the City to begin taking applications for the canoe rack spaces and that needs to be entered into the Ordinance. She asked Attorney Kelly if the City has to wait until the Ordinance is approved to being renting spaces, or can Council simply pass a motion to implement an informal process for the first year and then approve an ordinance at a later date.

Attorney Kelly stated he thought it could be done through a motion. And suggested that there should not be any privileges gained by anyone under the more limited application process. He noted the date for beginning to take applications cannot be filed in until the Ordinance has been officially published.

Mayor Kind stated if an informal process is used for the remainder of 2012 than the sentence "*Waiting list applications for the Meadville canoe rack spaces will be accepted .....*" could be eliminated and the spaces for 2012 could be assigned on a first-come, first-serve basis beginning July 9, 2012, at 8:00 A.M. The process for 2013 would go into effect the same as for any other watercraft spaces. She then stated as soon as the Ordinance goes into effect people could get on the waiting list.

Attorney Kelly noted there is a notice issue. He stated most residents do not check the city's website or read the official publication in the City's designated newspaper. Councilmember Quam stated the official publication of Ordinances is in the newspaper.

Councilmember Page asked why sentence two in Section 415.15 (e) is being changed to "*New permittees must complete the application requirements in Section 425.25 within 10 days of the date on the notification letter.*" The current language states "*New permittees must complete the application requirements in Section 425.25 by the deadline on the application (10 days from the date of mailing.)*" Mayor Kind stated the revision is being suggested to reflect current practice. Councilmember Quam noted this is regarding updating the waiting list as opposed to creating a waiting list.

Page expressed his agreement with establishing an informal process for the remaining 2012 canoeing season. He stated he has read the Ordinance amendment a few times and noted that he has not digested the ramifications of some of the text amendments. There may not be any. He then stated there have been problems in the past with dock slip rentals in the past and he wants to make sure this is done right.

Attorney Kelly asked when the video recording of this meeting will first be aired on Mediacom Cable Television. No one knew.

Mayor Kind stated there are over 100 people on the City's email broadcast list. An email broadcast could be sent out about this.

Attorney Kelly stated that once this meeting is broadcast on the local cable TV network canoe space rental will become known to the public. The email broadcast should not be done until the meeting has first been broadcast to ensure no one has an advantage in knowing about this sooner.

Zoning Administrator/Clerk Karpas stated he will find out when this meeting will be aired the first time. The email broadcast can be sent out after a yet to-be-determined amount of time after the initial broadcast.

Councilmember Page stated his preference is to have the informal process for the rest of 2012 be a first-come, first-serve basis. He then stated he thought it prudent to make it clear that securing a space for 2012 creates no advantage for 2013.

**Page moved, Quam seconded, implementing an informal canoe space rental process for the remainder of 2012 based on a first-come, first-serve basis effective after the initial broadcast of the**

**July 5, 2012, City Council meeting on cable television and clarifying that securing a space for 2012 create no advantage for 2013. Motion passed 4/0.**

Mayor Kind noted this Ordinance amendment will be placed on the agenda for the August 1, 2012, Council meeting.

Attorney Kelly asked if there is a fee for renting a space. Mayor Kind noted the fee has already been established. The fee can be found in Chapter 5 of the Code and the fee amount is \$60. Councilmember Page asked if the full \$60 will be charged for the rest of 2012. Page suggested it be \$30.

**Quam moved, Page seconded, setting the fee for rental of a canoe space to \$30 for 2012 only. Motion passed 4/0.**

Planning Commissioner Kristi Conrad, 21780 Fairview Street, stated Section 425.26 (a) states “*Canoe rack permit holders may place one canoe, or one kayak, or up to tow paddleboards within their designated space provided that doing so does not impeded the usage of adjacent spaces.*” She noted two kayaks take up the same amount of space as one canoe. She suggested two kayaks be allowed. She stated two kayaks fit in the spaces on the canoe racks in the City of Deephaven.

**C. First Reading: Ordinance 211, Amending Code Sections 520.15 and 525.15, Regarding Deadlines for Delinquent Sewer and Stormwater Payments**

Mayor Kind explained this is the first reading of Ordinance 211, amending Ordinance Code Sections 520.15 and 515.15, regarding deadlines for delinquent sewer and stormwater payments. It would change the deadline for the payments to September 15 from September 30. It would make the date the same as for other delinquent utility bills.

**Quam moved, Page seconded, adopting the first reading of Ordinance 211, amending Code Sections 520.15 and 525.15, to change the deadline for delinquent sewer and stormwater payments from September 30 to September 15. Motion passed 4/0.**

**D. Possibility of Adding Code Section 825, Intoxicating Liquor Prohibitions**

Mayor Kind stated the potential new Code Section 825, Intoxicating Liquor Prohibitions would prohibit commercial business from serving or allowing attendees to bring liquor to business events. It came about because a Greenwood business was told the City does not issue special event liquor licenses or temporary licenses. The business representative asked if liquor could be provided by attendees at the business’ customer appreciation party. The City Attorney advised that City Code Section 10 Public Nuisances Affecting Morals and Decency Subd. (H) prohibits such activity. The Attorney suggested Council may want to consider adding to Code Chapter 8 Liquor & Beverages a Section 825, Intoxicating Liquor Prohibitions. It would state “*No premise, other than a private residence or licensed liquor establishment, may offer, give, provide or allow any person to possess or consume alcohol in or about any premise or commercial business nor allow liquor to be consumed by established customers or potential customers thereof, nor allow consumption of alcohol in conjunction with any commercial business, commercial transaction, or customer appreciation event, including inviting customers to bring their own alcoholic beverages to the site.*”

Attorney Kelly thought it would be best to address this in Chapter 8 Section 825. He noted that if the City wants to adopt its liquor ordinance Council must hold a public hearing.

Zoning Administrator/Clerk Karpas stated there would be time to draft an Ordinance creating Code Section 825 and publish a notice of public hearing in time to have the public hearing on the August 1, 2012, Council meeting agenda.

Councilmember Page suggested doing nothing. He asked how often this arises.

Attorney Kelly stated there is a trend for some business to offer liquor when customers come in for certain types of services. He asked Council if it wants to allow alcohol to be served in an informal, unlicensed, uninsured setting.

Councilmember Rose used the example of a salon or some other type of business having a grand opening and they wanted to serve refreshments including, for example, wine and beer. He stated if Council approves the proposed ordinance the business could not do that.

Councilmember Page asked what Section 900.10 (H) states. Attorney Kelly stated it reads *“Drinking or display of any beer, wine or intoxicating liquor is prohibited in or about all premises except the following: premises properly licensed for sale, and private residences unless the Council grants permission to do such for certain events; such as during community celebrations.”* Page stated he interprets that to mean the City can grant permission. Kelly explained it does not prevent it but there is no structure to process a request. Kelly stated the question for Council is if it wants to create the structure. Kelly noted that 900.10 (H) is a penal ordinance. Mayor Kind stated if Council wants to allow special event liquor licenses that should be added to Section 800.

Councilmember Quam stated he thought Council has discussed allowing this before.

Mayor Kind noted the City only has an on-sale liquor license and a non-intoxicating beer license.

Councilmember Page stated he moved to do nothing.

There was Council consensus to do nothing.

**E. Possibility of Revising Code Section 1215 (to allow Council to waive the second reading of ordinances)**

Mayor Kind explained the possibility of revising City Code Section 1215 to allow Council to waive the second reading of an ordinance came up recently with regard to canoe racks. The current Code requires two readings of ordinances. Ordinances must be published in the City’s designated paper before they can go into effect. Because Council meets just once a month this process can take quite some time.

Kind reviewed how three neighboring cities deal with ordinances. The Deephaven City Code stipulates that the second reading of an ordinance may be waived by a majority vote of the council. The Minnetonka City Code stipulates that except for an emergency ordinance, an ordinance cannot be adopted at the meeting when it is introduced and at least seven days must elapse between introduction and adoption. It also stipulates that an emergency ordinance is not subject to initiative and referendum and it is effective immediately upon passage or at a later date stated in them. The Shorewood City Code stipulates that all ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof.

Mayor Kind stated an option slightly different than Deephaven's would be to allow the second reading to be waived by a unanimous vote of all Councilmembers present. She then stated Council may want to include a provision for handling an emergency ordinance.

Councilmember Quam stated he likes the idea of requiring a unanimous vote. But, he has been on boards where there is one person who is "a thorn" and that person can totally control things. He noted he needs to be convinced that requiring a unanimous vote is the best thing to do from a practical perspective.

Councilmember Page stated he does not think there is need to change anything. He noted he likes the idea of a second reading.

Councilmember Quam stated the only reason to waive a second reading is to speed the process up.

Mayor Kind stated there was a workaround for the canoe rack situation. But, there may be times when there is a desire to move an ordinance along more quickly.

There was Council consensus to leave the requirements for a second reading of an ordinance as is.

## **8. OTHER BUSINESS**

### **A. None**

## **9. COUNCIL REPORTS**

### **A. Fletcher: Planning Commission, Lake Minnetonka Communications Commission, Eurasian Watermilfoil, Xcel Energy Project**

Councilmember Fletcher was not present this evening.

Mayor Kind gave a quick report about the work session she and Councilmember Fletcher attended on June 27, 2012, with representatives from Xcel Energy's (Xcel) regarding its potential 69 kV to 115 kV upgrade to the Southwest Twin Cities Bluff Creek to Westgate 69 kV transmission line transmission line. Those present included: six Xcel representatives, she and Fletcher, Dave Wisdorf from the City of Excelsior's Public Works Department, Deephaven City Administrator Young, Zoning Administrator/Clerk Karpas (representing Deephaven, Greenwood and the City of Woodland), and Excelsior City Manager Luger.

Kind reviewed the some of the items discussed. The topic of burying the line was discussed at length. The cost to bury the line would be five to ten times the cost of conventional installation. Xcel stated they will look into the possibility of burying the line. The new transmission line poles will be located in roughly the same locations as where the current ones are located, and the new poles will on average be 10-15 feet taller than the existing poles. The 115 kV line is the long-term solution for improving reliability. The Option 2 discussed during the last meeting is a stop-gap solution.

Kind noted that during the work session she stated reliable service should be the top priority. She stated it was a good meeting. She then stated she thought Xcel wants to do the best that it can do for the cities that are affected.

### **B. Kind: Police, Administration, Mayor Meetings, Website**

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind stated the SLMPD Coordinating Committee met in a work session on June 20, 2012, to discuss the first draft of the SLMPD 2013 Operating Budget. The proposed budget increase is 2.6 percent at this point in the process and she did not anticipate the increase changing much. The budget is pretty bare bones at this point.

Kind explained there are two Community Service Officers (CSOs) that each work one day in the front office. The Community Service Supervisor job title will be changed to Support Services Manager and the Office Administrator job title will be changed to Office Manager to better reflect the responsibilities of those positions. SLMPD Chief Litsey is considering restructuring the organization slightly. Currently the two top positions are salary positions. Litsey is considering making what had been the Detective Sergeant position the third in command. The third in command would become a salaried position also. The current proposal is for the Lieutenant position to become the Deputy Chief and the Deputy Sergeant to become the Lieutenant. The proposal is to be budget neutral.

Kind noted the proposed budget and other budget related documents can be found on the SLMPD's website.

Kind stated the topic of long term care and maintenance of the public safety facility has come to the forefront again. She stated there is a push from the other Coordinating Committee members to establish a capital fund for maintaining the public safety facility. She noted that she was relatively quiet during that discussion because she wanted to know how the other Councilmembers view that. The majority of the Committee is supportive of it. Chief Litsey was asked to draft a funding proposal and to draft a policy statement directing how the funds can be authorized for use. She noted that the SLMPD and Excelsior Fire District (EFD) each have put aside \$25,000 for building maintenance.

Councilmember Page asked how the SLMPD and EFD each put \$25,000 aside. Councilmember Rose stated the funds were from the unspent construction funds from the original construction of the facilities.

Councilmember Rose stated it is his understanding that establishing a fund was for emergency repairs. He interprets Mayor Kind's comments to mean the SLMPD wants to contribute to the fund on an annual basis. Rose expressed his preference to wait until there are no funds in the maintenance fund and then ask the member cities for funding if there is a need.

Mayor Kind stated a funding formula for funding the building maintenance fund needs to be determined. She stated when the building was constructed it was based on tax capacity (ad valorem). Operations funding is based on a different formula based roughly on population, use, and tax capacity. She expressed her support for having a formula based evenly on those three parameters. She noted that she did not want to state that position until she spoke with Council about it.

Councilmember Page asked when this will be reconsidered. Mayor Kind responded the next Coordinating Committee is scheduled for July 18.

Councilmember Page asked what amount of yearly contribution is being asked for. Mayor Kind stated the desire is to build the fund up to \$100,000-\$200,000 but it has not been decided yet. The yearly contribution has not been decided.

Councilmember Page recommended waiting until there is a proposal before this is discussed further.

Mayor Kind stated a proposal will be presented during the Coordinating Committee's July 18 meeting and she will need to react to it. Councilmember Page stated Kind's reaction could be that she wants to discuss it with her Council.

Councilmember Page stated he thought all of Council should have something to say about the member cities contributing up to \$200,000 for a slush fund for maintenance of the facility.

Mayor Kind stated it is her understanding that per the joint powers agreement (JPA) all member cities must approve this. She then stated there is no provision for this in the JPA.

Councilmember Page asked how many large repair or maintenance needs there have been. Mayor Kind stated there haven't been any yet.

Mayor Kind noted the bonded debt for the facility will be paid off in 2023. She stated some people believe there is a need to build up the balance in the building maintenance fund.

Councilmember Quam stated by the time the bonded debt is paid off there will be maintenance issues.

Mayor Kind stated the City currently pays \$45,000 annually for the bonded debt for the SLMPD portion of the facility. For the EFD facilities it pays \$60,000.

Councilmember Page asked Mayor Kind if there is a building maintenance line item in the SLMPD operating budget. Kind stated there is for routine maintenance. It is not for major repairs like a new furnace. Page stated a new furnace is a maintenance item. He stated he does not understand that rationale.

Mayor Kind stated the City of Excelsior does not think large maintenance items should be funded using the same formula that is used for funding operations.

Kind noted she will bring the plan before Council before she reacts to it in a Coordinating Committee meeting.

Kind stated the SLMPD drafted a Uniform Animal Control Ordinance per the direction of the Coordinating Committee. She noted that Attorney Kelly has been provided a copy of it. Kelly stated he will provide his comments on it in writing.

Councilmember Page stated it makes sense to have a uniform ordinance for the SLMPD member cities.

With regard to administration, Kind stated there had been some issue with electrical power at the City dock. Zoning Administrator/Clerk Karpas explained that when the dock was extended due to the low water level the power line did not reach to the end of the dock. That has been fixed. He noted that the lights at the dock need to be replaced. He stated he will verify that there is power tomorrow because there have been different stories conveyed. Kind stated if Karpas finds out there is no power there now would be an opportune time to bring a new power line down to the docks because the street is going to be torn up. She asked if Council would like to do that.

There was Council consensus to run a new power line down to the dock when the street is torn up if there is not power available now.

With regard to mayors meetings, Kind noted she attended a mayors' meeting on June 20. She explained the topic of discussion was mandatory inspections at city boat launches. The City of Shorewood is

encouraging other cities to adopt a resolution similar to the one it adopted for the boat launch at Christmas Lake. The City of Victoria expressed concern because they have many lakes in the City and it cannot afford to have 24/7 inspections at all of them, and it does not want to gate the lakes. She questioned who would pay to monitor the launch in the City because it is seldom used. She noted she does not envision the City adopting a similar resolution.

Councilmember Quam clarified it is just an informal request from Shorewood.

Kristi Conrad, 21780 Fairview Street, asked if the Excel Marina, which she thought is located in the City, is required to do inspections. Mayor Kind stated Excel Marina is not located in the City of Greenwood and that it is not required to inspect boats prior to launching.

Councilmember Quam stated it has been a big issue for a long time.

Ms. Conrad asked if the marinas are required to conduct inspections. Mayor Kind stated they are not required to do that.

Mayor Kind explained that it is illegal to launch any watercraft in any lake in the State if it has aquatic invasive species (AIS) on it or the trailer. There is no law that states a person has to have it inspected.

Councilmember Quam stated people are finding it is impossible to stop the spread of AIS.

Mayor Kind asked anyone who has history about the City or old photos of it to please send a copy of it to her. Her contact information can be found on the City's website.

### **C. Page: Lake Minnetonka Conservation District**

Councilmember Page reported on significant Lake Minnetonka Conservation District (LMCD) activities. The aquatic invasive species (AIS) Task Force Subcommittee, the group responsible for preparing the lake vegetation management plan, has met one time. It is his understanding the Subcommittee had close to a four-hour long meeting. The individuals who wanted to put a snack stand out into the Big Island row were thoroughly opposed by every municipal and state organization. Yet the LMCD Board voted to refer the matter to the Save the Lake Committee. It never made it to the Committee. Instead it came back to the LMCD Board on the impetus of the Board Chair and one other member of the Board. He expressed he had concern about that. The Board unanimously passed a resolution to send it to the Save the Lake Committee and it never got sent there. The Chair explained that letters had come in from other municipalities that the Board had not been aware of when it voted.

Page explained the Save the Lake Committee and the Board Chair made a motion at the LMCD Board meeting that increased the LMCD's contribution toward a solar machine from \$13,000 to \$35,000-\$40,000. When asked what the reason for the increase was one of the reasons given was the Hennepin County Sheriff had read the brochure about the sonar machine decided he wanted other things to go along with it that in essence doubled the price from \$60,000 to \$130,000. The proposal was to take savings from the 2011 harvesting program and savings from this year's chemical treatment program and put it toward the sonar machine. He made a resolution that the proposal be denied and it was supported. It is his understanding that the Sheriff's Office will get funds from Homeland Security for three fourths of the cost of the sonar machine. He did not know why. He expressed concern that when the Homeland Security funding became available the cost of the machine doubled. The Sheriff is not committed to funding any of the purchase from his budget because Sheriff's Department personnel are going to be trained to use the machine. Although the machine will be stationed at the Hennepin County Sheriff's Water patrol station

locate in Spring Park it can be used anywhere in Hennepin County. From his perspective things didn't add up.

Mayor Kind asked if this would be the only sonar machine for the Sheriff's Office. Councilmember Page noted the Sheriff's Office does not have a sonar machine now. It borrows one from either Ramsey County or Wright County if it needs one. Kind asked what is wrong with continuing to do that. Page indicated he did not know. Page stated that question was brushed off with the explanation that Ramsey County did not like the Sheriff's Office to borrow the equipment unless its personnel had the appropriate training. Yet, the Sheriff's Office was able to borrow it the last time. Ramsey County brought it out. He questioned why there could not be a reciprocal agreement between the Sheriff's Office and Ramsey County to have Ramsey bring the machine out and have the Sheriff's Office pay for the use of it.

Councilmember Quam asked if the sonar machine was needed to find the body of a drowning victim. Councilmember Page responded yes.

Mayor Kind commented that is not a machine that is used every day. It's not something everyone needs.

Councilmember Page stated the LMCD anticipated a reduction in its contribution to the chemical treatment program this year. He conveyed that from his vantage point the savings realized from a smaller contribution to the treatment should not be spent on the machine. That savings should be kept in the LMCD's AIS budget. It should instead be used to help spare the homeowners some portion of the cost of treatment. That savings should not be given away to purchase a sonar machine and then tell the homeowners the LMCD can't put any more funds toward the chemical treatment. The trend should be toward putting more and more funding into the control of AIS.

**D. Quam: Roads & Sewer, Minnetonka Community Education**

Councilmember Quam stated the roadway contractor was taken down to Meadville Street to assess what it would cost to repair the leg off of Meadville Street. The feedback was the cost should be less than the \$15,000 available in the budget for it. He then stated milling is expected to begin on July 9. Quam stated bituminous curbs will be installed. Mayor Kind noted that the reason some residents have concrete curbs rather than bituminous curbs is they pay extra to have concrete curbs. He stated he ensured that flyers informing residents in the area of the roadway work were distributed.

With regard to Minnetonka Community Education, Quam noted Tour de Tonka is scheduled for August 4. He noted hundreds of volunteers are needed and he asked people to please volunteer.

**E. Rose: Excelsior Fire District**

Councilmember Rose stated there had not been an Excelsior Fire District (EFD) Board meeting since the last Council meeting. The next EFD Board meeting is scheduled for July 25, 2012.

**10. ADJOURNMENT**

**Rose moved, Quam seconded, Adjourning the City Council Regular Meeting of July 5, 2012, at 8:56 P.M. Motion passed 4/0.**

**RESPECTFULLY SUBMITTED,**  
**Christine Freeman, Recorder**