

GREENWOOD CITY COUNCIL MEETING
Wednesday, August 1, 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 7:03 P.M.

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

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

Members Absent: None

Councilmember Fletcher asked that item 1.A William Rose's Rescinding Resignation Letter be added to the agenda.

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

1.A WILLIAM ROSE'S RESCINDING RESIGNATION LETTER

Fletcher moved, Quam seconded, accepting William Rose's rescinding resignation letter. Motion passed 4/0/1 with Rose abstaining.

2. CONSENT AGENDA

Mayor Kind reviewed the items on the Consent Agenda.

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

- A. June 6, 2012, City Council Meeting Minutes**
- B. July 5, 2012, City Council Meeting**
- C. June 2012 Cash Summary Report**
- D. July 2012 Verifieds, Check Register, Electronic Fund Transfers**
- E. August 2012 Payroll Register**
- F. Approving ORDINANCE NO. 211, "An Ordinance of the City of Greenwood, Minnesota, Amending Ordinance Code Sections 520.15 and 525.15, Regarding Deadlines for Delinquent Sewer and Stormwater Payments."**

Motion passed 5/0.

3. MATTERS FROM THE FLOOR

There were no matters from the floor presented this evening.

4. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

A. Chief Bryan Litsey – South Lake Minnetonka Police Department 2103 Budget and Proposed Capital Replacement Fund

Mayor Kind noted South Lake Minnetonka Police Department (SLMPD) Chief Litsey is present this evening to give a brief presentation about the SLMPD 2013 Operating Budget and the proposed capital replacement fund.

Chief Litsey noted SLMPD Lieutenant Pierson is also present. He then noted that on August 7, 2012, there are two Night to Unite neighborhood gatherings scheduled in the City of Greenwood. One is to be held on West Street and the other at the City's park. So far a total of eleven gatherings have been scheduled in the four SLMPD member cities. Police and fire presence has been requested at the gatherings. He went on to note that the South Lake Safety Camp hosted by the City of Shorewood, the SLMPD and the Excelsior Fire District is scheduled for August 8, 2012, and it is open to all third, fourth and fifth graders in the South Lake area.

Mayor Kind asked if the dates for the 2012 SLMPD Citizens Police Academy have been selected yet. Chief Litsey stated they have not.

Chief Litsey noted that this is the second year that all of the documents and presentations the SLMPD Coordinating Committee has been provided for the budget process are available on the SLMPD's website www.southlakepd.com. This allows individuals to track the budget process. He also noted this has been his fourteenth year of preparing and presenting a budget as the chief executive officer for the SLMPD. He gave a short presentation about the proposed 2013 SLMPD budget. The highlights of his presentation are as follows.

The current 2013 Budget proposal is a culmination of what transpired during the budget process to date. Preliminary 2013 budget considerations were discussed during the Coordinating Committee's May 9 meeting. The considerations were incorporated into an initial budget proposal developed by Staff. The initial proposal was presented to the Committee during its June 20 budget work session. There were no substantive changes requested to the preliminary budget.

The Coordinating Committee recognized that the majority of increases related to expenses that are either market driven (e.g., utilities and motor fuels) or the result of previously approved actions by the Committee (e.g. labor agreements and technology). SLMPD Chief Litsey and Excelsior City Manger Luger sat at the bargaining table the last few negotiations and Committee Member Kind served as the liaison between the management negotiation team and the Coordinating Committee. Declining state aid, most notably peace officer aid, continues to be factor that shifts to the member cities to make up the loss in revenue. The aid is funded through a surcharge on auto insurance premiums. It is an annual payment from the Minnesota Department of Revenue. The SLMPD has been reducing its reliance on this aid as a revenue source to support operations.

Mayor Kind noted that the Coordinating Committee has been well aware that for the last few years the SLMPD has budgeted for higher state aid revenue then the SLMPD was going to likely receive. That was done to phase in that loss of revenue.

Litsey also noted that during the Coordinating Committee's June 20 work session there was general agreement that the proposed budget was lean yet workable. The 2013 Operating Budget proposal before

Council this evening was accepted by and endorsed by the Committee during its July 18 meeting, and the Committee directed SLMPD Staff to forward the proposal to the SLMPD member City Councils with a recommendation for approval. The 2013 Budget reflects a 2.6 percent (or \$53,500) increase when compared to the adopted 2012 Operating Budget. He noted Greenwood's share of the increase over its 2012 share is \$4,534.

Mayor Kind noted that Greenwood's total contribution amount for 2013 of \$177,053 was discussed earlier in the evening during Council's work session.

Fletcher moved, Kind seconded, approving the South Lake Minnetonka Police Department's 2013 Operating Budget as presented subject to increasing line item 52200 Repairs and Maintenance from \$43,700 to \$53,700, resulting in a corresponding increase in the total projected expenses from \$2,284,400 to \$2,294,400 and a corresponding increase in the cost to the SLMPD member cities from \$2,089,200 to \$2,099,200.

Councilmember Fletcher explained there is a proposal on the table to provide additional funding for capital maintenance needs in the amount of \$10,000. He stated from his perspective he thought budgeting for capital repairs and maintenance of the facility should be funded out of the Operating Budget; not out of a special capital maintenance fund.

Chief Litsey explained what is being proposed will not run through the SLMPD's Operating Budget. The funds in the capital maintenance fund would remain under the control of the SLMPD member cities and the recommended funding formula would be ad valorem (the same as the formula used for the construction of the facility). He noted the SLMPD already has an assigned fund to help with maintenance and repairs that at this point in time could exceed \$80,000. The Operating Budget also includes funds for ongoing maintenance. The capital maintenance fund would be for things such as the replacement of the roof, siding, fascia, boilers and so forth.

Mayor Kind stated by placing the funding in the Operating Budget it would be based on the reallocation formula where Greenwood's share is 8.4747 percent. If the funding would be as proposed it would be on an ad valorem basis (the same as used for the construction of the facility).

Chief Litsey expressed his desire to have Council act on the 2013 Operating Budget this evening because 2013 Operating Budget has to be approved by the September 1 deadline and suggested that the Council can take additional time to discuss the capital replacement fund if it wants to.

Councilmember Fletcher asked when the capital maintenance fund would be funded. Chief Litsey stated the intent has been to put \$10,000 into that fund in 2013, noting that has not been cast in stone. Litsey stated funding the capital maintenance fund is not as time sensitive as the Operating Budget.

Mayor Kind stated the 2013 Operating Budget could be approved as a separate motion.

Without objection from the seconder, the maker of the motion withdrew the motion.

Fletcher moved, Quam seconded, approving the South Lake Minnetonka Police Department's 2013 Operating Budget as presented. Motion passed 4/1 with Rose dissenting.

Councilmember Rose stated he preferred the idea of having the Hennepin County Sheriff's Department providing policing services to the City. From his vantage point the City would save a lot of money by doing that.

Chief Litsey explained that the SLMPD is spearheading an effort to establish a capital replacement fund for the public safety facility. Currently, there is no reliable and consistent funding source for replacing major building components. There is ongoing maintenance built into the Operating Budget. There is also an assigned fund for some of the more major repairs such as the current project to replace the ballasts in the building. The estimates to do that project range from \$24,000 to \$42,000. He noted that Shorewood Public Works Director has been an excellent partner with the SLMPD in identifying ways to reduce the cost of that project and other identified projects. He explained the assigned fund does have funding for a number of those types of projects. The capital replacement fund would be used to fund the eventual replacement of items that have reached the end of their projected life. Those items will cost hundreds of thousands of dollars. He noted that if repair, maintenance, and improvement projects are not done at the appropriate time the projects will end up costing a lot more.

Litsey stated the nomenclature that has been used in the past has been called a capital maintenance fund. That name has been changed to capital replacement fund to more appropriately reflect that the true intent is for the long term things or things that are not anticipated. The SLMPD and Coordinating Committee believe it is prudent to put money aside in advance of the need to replace major items in order to smooth out funding for their replacement.

Litsey explained the SLMPD Coordinating Committee discussed the topic of establishing and funding a capital replacement fund during its July 18, 2012, meeting. He provided the Committee with a proposal and a spread sheet for three different contribution levels (\$10,000; \$15,000; and \$20,000) for 2013 based on the 2012 debt service percentages. He noted the SLMPD and member cities have been aware of this issue since the facility was first occupied in 2004. The Committee agreed that the proposal for a capital replacement (maintenance) fund for the public safety facility located in the City of Shorewood outlined in a memorandum authored by SLMPD Chief Litsey dated July 15, 2012, be brought back to the SLMPD member City Councils with a recommendation for approval. The Committee also recommended that \$10,000 be budgeted for that fund in 2013. The SLMPD intends to provide more refined data on the life expectancies of various components of/in the facility.

Litsey noted there was a preference on the part of some Coordinating Committee members to use the same funding formula approach (based on ad valorem) that was used for the construction of the facility for funding the capital maintenance fund. He then noted that Mayor Kind did not commit to that approach.

Litsey then explained that Greenwood's 2012 debt service percentage was 10.98 percent. Based on a contribution of \$10,000 Greenwood's contribution would be \$1,098 based on its 2012 debt service percentage. If it were based on Greenwood's current operating budget percentage it would be \$848. He stated the reason the ad valorem formula is being recommended is because that is how building is being paid for, and that the capital replacement fund is also for capital expenditures.

Litsey expressed his appreciation for the member cities addressing this issue, and his confidence that it can be resolved with an acceptable solution.

Page moved, Quam seconded, continuing discussion of the capital replacement fund to Council's September 5, 2012, meeting to allow time for thoughtful analysis and further discussion.

Councilmember Fletcher stated the bonded debt for the construction of the facility will be paid off in 2023. He asked when the building was built. Chief Litsey explained the building was occupied by the SLMPD in January 2004 and by the Excelsior Fire District (EFD) in December 2003. Fletcher asked if

the major replacement items are expected to occur pre or post when the building is paid off. Litsey stated he thought the roof is scheduled for replacement after about 22 years. There are items planned for 2015, and in 2022-2024.

Chief Litsey noted that there has been discussion about waiting until the bonded debt is paid for before funding a capital replacement fund. But, there is a risk that there will be a need to fund major replacement items before that. He stated there was agreement that it would be prudent to make the member cities aware of this need and to establish a placeholder for funds. The funding level would be refined each year based on the current replacement schedule.

Councilmember Fletcher stated that from operating buildings in his business there have been buildings purchased 25 years ago that have flat roofs that have been appropriately maintained and still do not need to be replaced. The roofs were not brand new when the buildings were purchased. He clarified he is not implying that is the case for the roof on the facility. He stated that there are times when doing the appropriate maintenance will prolong the useful life of a component. He then stated that he did not think taxpayers would object to having to pay more for building maintenance once the debt for the building is paid off.

Chief Litsey extended an offer to those member City Councilmembers who have expertise in long-term building repair, maintenance, and replacement planning to become involved in the planning and scheduling process.

Mayor Kind stated the Coordinating Committee wants the member cities to reach agreement on how capital replacement needs will be funded and what share each member city will pay should there be a cash call. She then stated the first priority is to have an agreement in place. She then stated that it is her understanding that some of the EFD member cities prefer to have the cities keep the funds for replacement items under their control until there is a need for them.

Chief Litsey explained that if a capital replacement fund is established for the SLMPD it would be maintained as a separate fund and it would earn interest that would be kept in the account. Similar to its fund for debt service where it is not co-mingled with operating funds. If the funds were administered on the SLMPD side it would be administratively easier to manage.

Litsey explained the proposal the Coordinating Committee discussed for handling the funds is similar to the way change orders were handled during the construction of the facility. The disbursement of the funds would be under the direction and control of the SLMPD Coordinating Committee and the EFD Governing Board. The Chiefs would be given the authority to make decisions independent of the Committee and Board based on predetermined criteria established by the Committee and Board. Circumstances and dollar amounts would determine when just the Chiefs could make a decision (e.g., an amount up to \$10,000), when the Chiefs and the Committee and Board Chairs could make a decision (e.g., an amount up to \$20,000), and when the entire Committee and Board need to make a decision (e.g., any amount over \$20,000). This process would be more streamlined than trying to get 20 to 25 member City Councilmembers to agree on how to fund something that has to be done.

Motion passed 5/0.

5. PUBLIC HEARING

A. None

6. UNFINISHED BUSINESS

A. Variance Findings of Fact, Matt and Angela Lindberg, 5160 Greenwood Circle Channel Drive (grade alteration)

Mayor Kind explained that during Council's July 5, 2012, meeting the motion to approve the variance request for grade alteration for Matt and Angela Lindberg, 5160 Greenwood Circle, failed on a 2-2 vote with Mayor Kind and Councilmember Quam voting in favor of it and Councilmember Page and Rose opposing it. Councilmember Fletcher was not in attendance. The deadline to take action was July 14, 2012. Written findings were not prepared in advance, so the Council approved a motion to extend the deadline for action by sixty days to give the City Attorney time to draft findings for denial. A copy of the Findings of Fact for denial is included in the meeting packet.

Kind stated because all of the Councilmembers were not present at the July 5 meeting the applicants requested a vote of the full Council during this meeting. A copy of the applicants' request is included in the meeting packet. Also included is a memorandum from the City Attorney regarding parliamentary procedure, voting quorum, and motions.

Fletcher moved, approving a variance request by Matt and Angela Lindberg, to alter the existing grade on their property by thirteen feet as part of a landscaping project to enlarge their rear yard and to improve drainage on their property subject to the following conditions. 1) The project must be completed according to the specifications and design requirements in the plan prepared for the applicants by Michael R. Johnson P.E. of Civil Engineering Professionals dated June 8, 2012. 2) The project must also adhere to the additional requirements in the letters to Gus Karpas dated June 12 and June 26, 2012, from Robert E. Bean, Jr. P.E. of Bolton & Menk, Inc. which is the City Engineer for Greenwood. 3) The applicants agree to maintain the proposed landscaping including the required fencing and to repair the walls as needed to prevent either a) increased drainage onto neighboring properties or b) settling and or deterioration of the walls that would potentially impact neighboring properties and also c) minimize potential safety issues. 4) The applicants agree to maintain a list of all trucks at the project site that are either delivering landscaping or removing landscaping materials from the project site. The list will include truck license number, model, tear weight, gross weight, and date and time of delivery or removal. A copy of the list will be provided to the City of Greenwood at the completion of the project. The applicants will be responsible for paying the required load limit permit fees for the trucks to the extent they are not paid by the truck owners. 5) This approval and the conditions thereof shall be filed by applicants with the Hennepin County Register of Titles with proof thereof being provided to the City of Greenwood before the start of the proposed project.

Councilmember Page expressed his objection to the motion because it is improperly before Council. It is not on the agenda. The only thing on the agenda is approving the denial. The memorandum from the City Attorney requires a motion to reconsider the denial before an approval could be reconsidered.

Councilmember Fletcher stated the motion was never formally denied. It was a split vote. The motion he made is just a different motion with conditions to approve the variance request.

Attorney Kelly noted the City Council has not adopted any parliamentary procedure such as Robert's Rules of Order. He explained the memorandum he prepared for Council attempted to cover resolutions in general, motions in general, motions to reconsider and motions to rescind. Under Robert's Rules only a person who voted on the prevailing side may move to reconsider. The League of Minnesota Cities (LMC)

points out that in the absence of Robert's Rules being adopted, any member may make a motion to reconsider.

Councilmember Fletcher asked if a motion was ever approved during the July 5 Council meeting that has to be reconsidered or rescinded. Attorney Kelly stated there was a motion to approve the variance request and it failed on a split vote. Fletcher stated he made a different motion with a set of conditions; therefore, there is no need to reconsider the motion that failed.

Mayor Kind asked Attorney Kelly if the July 5, 2012, motion needs to be rescinded before a different motion can be made. Kelly stated Council needs to decide if a motion to rescind a matter is in order at this time. Based on that analysis Council will have to find its way forward.

Councilmember Fletcher asked what there is to rescind if it was never approved.

Attorney Kelly explained when the July 5 motion failed it was effectively a denial of the variance application. He stated the conundrum was there was not a set of findings of fact supporting the denial that could be formally adopted by Council.

Councilmember Fletcher asked if a Councilmember could have made a different motion with a set of conditions that had not been part of the original motion during the July 5 meeting. Attorney Kelly noted that he does not want to be put in the position of being the decider of this. He stated Fletcher is asking a hypothetical question and it is difficult to give Fletcher the answer he deserves because there is not a set of rules upon which Council has relied.

Councilmember Fletcher stated his position is if the motion had failed it would have been natural for a Councilmember to make different motion. He noted that he watched the video recording of the July 5 meeting and read the minutes for that meeting that were approved earlier in this meeting.

Councilmember Page explained that during the July 5 meeting there was one motion made and it was to approve the variance request. It failed on a split vote and that constitutes a denial of the variance request. The request was continued to allow the City Attorney to prepare findings of fact for denial. Council needs to take action on that.

Zoning Administrator/Clerk Karpas asked Attorney Kelly if Council acts on the findings of fact for denial and that motion fails, can a Councilmember make a different motion directing Kelly to prepare findings for approval. Kelly explained if there is a motion to approve the Findings of fact for denial as presented then presumably Council will vote on the merits of the Findings as to whether they are reflective of the actual circumstances as known. He noted that Councilmember Page has had the opportunity to review the Findings and it is his understanding the Findings meet his editorial approval. If Council refuses to adopt the Findings it should be assumed that Council will react with collective reasoning.

Mayor Kind asked Attorney Kelly if Council could also proceed with Councilmember Fletcher's motion on the table.

Attorney Kelly stated from a procedural perspective he would first like Council decide if it believes it has the authority to reconsider the July 5 matter during this meeting. If Council decides to grant itself that authority then it will also own everything that has brought Council to this point.

Mayor Kind stated that in his memorandum Attorney Kelly explains there is a distinction between a motion to reconsider and a motion to rescind. She asked if that is semantics or if Council needs to

carefully select which approach, if either, it wants to take. She stated it is her understanding that reconsidering needs to be done at the same meeting during which the original motion was made and acted upon. And a motion to rescind can be made at any subsequent meeting.

Attorney Kelly agreed and stated under Robert's Rules a motion to reconsider has to be made at the meeting during which a motion is made. A motion to rescind is made at a future meeting.

Councilmember Rose asked how long it would be before the applicants can reapply if the variance request is denied. Attorney Kelly responded one year.

There was no second to Councilman Fletcher's motion. Mayor Kind stated if there is a desire to revisit this she would entertain a motion to rescind the July 5 motion. If there is no desire to do that, she will entertain a motion to approve the Findings of Fact as presented.

Page moved, Rose seconded, Adopting RESOLUTION NO. 18-12, "A Resolution Setting Out the Findings of Fact and Conclusions of Law Regarding the Matt and Angela Lindberg Grade Alternation Variance Request" as presented.

Councilmember Page explained he took the opportunity to look at the historical file at the City on this matter subsequent to the meeting. The plan for drainage had the property sloped back from the house. Yet the explanation Council heard from the contractor for the property owner was that the property was slanted toward the house. He thought that is part of the problem and that it should be sloped as originally designed. Councilmember Quam asked how the property could be sloped into a hill. Page stated the original plan was to have the land higher near the house's foundation and slope it back across the yard to where the land went up. That would create drainage off to the sides. It was not the way it was explained it was going to be done during the July 5 meeting. He stated the previous owner's plan was an engineered plan and he suggested the original plan be used. He commented he did not think there were gutters on the back of the roof and that could be part of the problem.

Councilmember Fletcher stated that he is going to vote against the Findings of Fact for denial, noting he was not at the July 5 Council meeting. He also noted he was the Council liaison for the Planning Commission meeting when the variance request was discussed. The Commission recommended approval of the request on a 5/0 vote after giving the request serious consideration.

Mayor Kind noted that at the dais this evening was a letter from Bolton & Menk stating that the culvert would be able to handle the additional runoff.

Councilmember Fletcher discussed how he thought the application met the practical difficulty standard.

The standard states "*That the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.*" He noted that he would not have built a house the size of the one that original developer did on the property. He stated he thought it was a reasonable request to want to have a small backyard when you have a four bedroom house. In addition, the applicants are proposing to improve the flow of stormwater on their property. The drainage is intended to flow away from the house. And, there is the possibility that the drainage improvements will reduce runoff into the street. The standard states "*The plight of the homeowner is due to circumstances unique to the property and not created by the landowner.*" The rear yard of the property has a deep, large slope that dominates the back yard and limits its use. The standard states "*The variance, if granted, will not alter the essential character of the locality.*" He did not think it will alter the character of the neighborhood. He indicated he thought

what is being proposed may actually help the neighborhood with regard to drainage. The proposal does not result in an increase in hard cover.

Fletcher explained when considering a variance request Council must adopt findings addressing the following questions.

“Is the variance in harmony with the purpose and intent of the ordinance?” He explained the reason the one foot grading standard was implemented when the massing ordinance went into effect was mainly to keep a developer from raising the grade for a new house. He noted Planning Commission Chair Lucking concurred with that perspective. *“Is the variance consistent with the comprehensive plan?”* He stated he thought it is. *“Does the proposal put property to use in a reasonable manner?”* He reiterated a small back yard for a four bedroom house seems reasonable along with improved drainage. *“Are there unique circumstances to the property not created by the landowner?”* He reiterated he would not have built a house the size the developer did. But, the resident has come to the City with an issue not created by them that he believes should be given serious consideration. *“Will the variance, if granted, alter the essential character of the locality?”* He addressed that in the practical difficulty standard discussion.

Fletcher stated changing the grading will not affect the supply of light and air to adjacent properties. It will not affect traffic congestion in the public street after the project is completed. It will not impact fire or public safety. The Planning Commission requested a fence be put at the top of the hill and that will be an improvement over the current situation. That is included in his motion. It will have no adverse impact on the neighboring property values.

Fletcher noted there are two engineers and one architect on the Planning Commission. He related Planning Commission Chair Lucking questioned if a variance was needed for the project. He noted that he believes it is. He related that Commissioner Cook, a Professional Engineer, had stated that when plans are not properly done there can be issues. A professional engineer prepared the detailed plans submitted by the applicants. The City Engineer reviewed the plans and provided his recommendations.

Fletcher stated for the reasons he just reviewed he disagrees with the Findings of Fact for denial.

Councilmember Quam stated nothing has happened between the July 5 vote and now to change his vote. His vote was to approve the variance request. He stated if Council is ready to approve the variance he asked what steps must be followed to do that.

Mayor Kind stated the first step is to take action on the Findings of Fact for denial before Council this evening. She noted that she voted to approve the variance and therefore will not be voting in favor of the findings for denial. She stated Councilmember Fletcher covered her points quite well and therefore she will not repeat similar things. She did have one addition. She then stated one of the findings needs to answer the question *“Is the variance consistent with the comprehensive plan?”* She explained page 21 of the City’s Comprehensive (Comp) Plan states *“The City relies on its requirements of bluff setback and toe of bluff setback as well as excavation and clear-cutting limitations within the Shoreland District Management zone to control adverse impacts on slopes.”* The current slope on the applicants’ property does not meet the standards in the City Code in order to be considered a bluff. Therefore, the proposed project is consistent with the Comp Plan.

Motion failed 2/3, with Fletcher, Kind and Quam dissenting.

Mayor Kind asked Attorney Kelly what the next step is. Kelly stated Council voted to deny the variance request during the July 5 meeting. Kind clarified Council did not deny the request; Council failed to

approve the request. Kelly stated by not approving the Findings of Fact for denial Council is effectively reopening the request for consideration. The matter has to be moved forward one way or another. Kelly reiterated Council has not adopted parliamentary rules that define how Council should proceed. Therefore, Council is responsible for deciding how it wants to move forward with this matter. Kind asked Kelly if the July 5 motion that did not get approved should be rescinded or should she entertain a new motion. Kelly responded Council now needs to go forward.

Councilmember Page stated from his perspective once Council vote to approve the Findings of Fact for denial failed, the issue is became reopened. Therefore, it is appropriate to entertain a new motion. He noted that the new findings have to be adopted within the 60-day extension period. Mayor Kind noted that period ends on September 12, which is after the next regular Council meeting scheduled for September 5. Kind stated the project can proceed before findings for approval are adopted, while noting that Page does not share her perspective. Page noted that he does not agree that the project can proceed before the findings are adopted because they may not be adopted as is the case this evening.

Councilmember Quam stated his biggest concern is the damage to the roads from the construction trucks. A concern he expressed during the July 5 meeting. He asked the contractor for the applicants how materials will be hauled away. Damon Roth, Tier One Landscape, 15280 South Robert Trail, Rosemont, Minnesota, stated materials will be removed from and brought on to the site using 7-ton, tandem-axle trucks in order to minimize the weight on the roads. Approximately 20 trucks loads of material will be transported. He noted a normal dump truck is 9-tons per axle. Mayor Kind noted the spring weight restriction on City roads is 5 tons and 7 tons is the normal weight restriction. Quam asked that a condition of approval be added restricting truck loads to be 7 tons or less.

Fletcher moved, Quam seconded, approving a variance request by Matt and Angela Lindberg, to alter the existing grade on their property by thirteen feet as part of a landscaping project to enlarge their rear yard and to improve drainage on their property subject to the following conditions. 1) The project must be completed according to the specifications and design requirements in the plan prepared for the applicants by Michael R. Johnson P.E. of Civil Engineering Professionals dated June 8, 2012. 2) The project must also adhere to the additional requirements in the letters to Gus Karpas dated June 12 and June 26, 2012, from Robert E. Bean, Jr. P.E. of Bolton & Menk, Inc. which is the City Engineer for Greenwood. 3) The applicants agree to maintain the proposed landscaping including the required fencing and to repair the walls as needed to prevent either a) increased drainage onto neighboring properties or b) settling and or deterioration of the walls that would potentially impact neighboring properties and also c) minimize potential safety issues. 4) All truck loads shall be seven tons or less per axle. 5) This approval and the conditions thereof shall be filed by applicants with the Hennepin County Register of Titles with proof thereof being provided to the City of Greenwood before the start of the proposed project. And, directing the City Attorney to draft findings of fact for approval based on Council's discussion this evening for Council's consideration during its September 5, 2012 meeting.

Councilmember Page asked that the comments he made during the July 5, 2012, meeting (as detailed in the minutes of that meeting) be part of the record. He stated he sees no reason for the idea that eviscerating the side of the hill won't alter the essential character of this locality. It also absolutely creates a safety hazard with a 13-foot drop off the back. He then stated there are many things the property owners could try to do if they are really trying to address drainage issues. From his vantage point, they are trying to remake a property they brought in a neighborhood that is built on a hillside. He noted the City recently resolved the drainage problems in that area when it did street and stormwater project. He stated he thought doing it would be a disaster.

Mayor Kind stated Councilmember Page's comments from the July 5 meeting are already part of the public record because they are captured in the minutes for that meeting.

Motion passed 3/2 with page and Rose dissenting.

Councilmember Rose stated no one really knows if there will be an adverse impact on drainage as a result of this project.

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 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.

Kind then explained a draft Ordinance was placed on Council's July 5, 2012, meeting agenda for consideration. During that meeting Council approved a temporary process for assigning canoe racks during 2012 only in order to give Council additional time to consider the ordinance. The temporary process allowed for the City to begin taking applications for canoe rack spaces beginning July 9, 2012, at 8:00 A.M. Two spaces had been assigned at the time of the Council meeting packet deadline.

Kind stated this evening is the first reading of Ordinance 212, amending Ordinance Code Section 425 to establish procedures for canoe racks. She noted that 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. She noted the City Attorney has reviewed the ordinance amendment.

Kind explained some of the proposed revisions are minor and they are intended to help clarify the process for watercraft spaces in general. Council may want to consider making others at this time as well. For instance, several property owners have mentioned that their driver's licenses do not list Greenwood as their address since they don't reside here year round (some people have their primary residence set up in Florida to save on taxes and use their Greenwood home only during the summer months). In Deephaven, the dock requirement is that people need to reside in the City during the boating season. If Council wants to make a change in this regard, now would be a good time to do so.

Kind explained if Council approves the first reading of this Ordinance this evening it will be placed on Council's September 5, 2012, meeting agenda for a second reading. Once the Ordinance is approved it needs to be published in the City's designated newspaper before it goes into effect. She stated the goal is to have the ordinance in place as soon as possible in order for the City to start building the waiting list for canoe rack spaces for when applications are sent out by February 1, 2013, for the 2013 boating season.

Councilmember Page stated in Section 425.15(e) Process the statement "... *by mailing an application for first time slip assignment*" is proposed to be deleted. He questioned the need for doing that.

Page then stated it is proposed to change "*New permittees must complete the application requirements in section 425.25 by the deadline on the application (10 days from the date of mailing).*" to "*New permittees*

must complete the application requirements in section 425.25 within 10 days of the date on the written notification.” He noted the date of the written notification might not be the date of mailing. Mayor Kind stated the reason for the second proposed change is to have the language be consistent with the actual process. Kind explained when a person’s name rises to the top of the waiting list a letter is sent to the person informing them that their name is at the top of the list. An application is sent along with the letter. The City Clerk fills in the date on the application. The date will be the date it is mailed. Page stated it may not be. Kind commented that the language about the date does not have to be changed. Page noted that he prefers people be notified in writing, and that he would like the date to be the date of the mailing.

Councilmember Quam stated if there is an issue about the date why can’t it be changed to, for example, within 12 or even 15 days. Councilmember Page stated 10 days is a pseudo “legal standard.”

Councilmember Page asked if the proposed Ordinance stipulates that if a person rents a canoe rack space that they are prohibited from renting a motorcraft or sailboat space from the City. Mayor Kind responded it does; a person can only be assigned one watercraft space. Kind noted that is how the current Ordinance works. Kind explained a person can be on the waiting list for a dock slip and sailboat space but they can only have one at a time. She stated Council may want to change that restriction because there are currently sailboat spaces available.

Councilmember Quam stated he does not think a resident should be able to have a motorcraft space and a sailboat space. But, he does not think a person should be prohibited from being assigned a watercraft space and a canoe rack space. Councilmember Fletcher commented the City can always install a second canoe rack if there is a demand for it.

There was Council consensus to change the Ordinance for the second reading to allow a person to be assigned a motorcraft or sailboat space as well as a canoe rack space.

Councilmember Fletcher reiterated some property owners in the City have their primary residence set up in Florida to save on taxes and use their Greenwood home only during the summer months, and that Deephaven’s dock requirement is that people need to reside in the city during the summer months. He noted that the current Ordinance does say residents. He also noted that he is open to handling those situations the way Deephaven does.

Mayor Kind stated she supports leaving the Ordinance, regarding residency, the way it is.

Attorney Kelly asked if the people are asking if residents of Florida are entitled to this benefit. Mayor Kind stated that is correct.

There was Council consensus not to alter the residency requirements in the Ordinance for this first reading of the Ordinance.

Fletcher moved, Quam seconded, adopting the first reading of Ordinance 212, amending Code Section 425 regulating Municipal Watercraft Spaces subject to the changing “*New permittees must complete the application requirements in section 425.25 within 10 days of the date on the written notification*” to “*New permittees must complete the application requirements in section 425.25 within 10 days of the date of mailing*” and allowing a person to be assigned either a motorcraft or sailboat space as well as a canoe rack space. Motion passed 5/0.

C. Discuss Potential Clean Up of St. Alban’s Bay Shoreline Along Minnetonka Bay

Mayor Kind noted this item was continued from the May 2012 Council meeting to the June Council meeting and then again to this Council meeting.

Kind explained Greenwood resident Bob Quinn requested the topic of clean-up of St. Alban's Bay shoreline along Minnetonka Boulevard be placed on a meeting agenda for Council discussion. In his email to the City Mr. Quinn stated that St. Alban's Bay is the only bay in Lake Minnetonka that cannot be seen by drivers passing by on Minnetonka Boulevard. He also stated the beautiful view is blocked by "really crappy foliage" (buckthorn, etc). He asked that the area be cleared out so people can enjoy the view and "hang out on the shore to relax and catch a few bigguns."

Kind then explained that the 2012 budget includes \$13,000 for trees, weeds and mowing. Last year the City spent \$12,000 for these items. If Council decides to move forward with a clean-up project and the scope of the project exceeds the budget, contingency funds (\$25,446) are available or a transfer could be made from another fund. She noted Council could pursue using City Park funds (the current balance \$27,000), but the project must comply with State Statute 462.358 subd. 2b (a copy of which is included in the meeting packet). She stated if Council wants to move forward with this it may want to consult with the Minnehaha Creek Watershed District.

Councilmember Fletcher explained that the budget discussed in the work session prior to this meeting indicates the City spent \$21,575 in 2011 for trees, weeds and mowing. The proposed 2013 budget for this item is \$20,000. He expressed concern about increasing the expense for this line item. He stated if the City does clean the area up it will then have to maintain it.

Mayor Kind and Councilmembers Fletcher, Quam and Rose indicated they supported doing nothing.

Councilmember Page recommended cutting down the buckthorn and some of the other unsightly foliage to a height that allows St. Alban's Bay to be seen when driving by it. He stated the Bay is an amenity in the City that is attractive and he thought being able to see it would have an impact on property values. He noted that he does not support Mr. Quinn's idea that the area be cleared out so people can "*hang out on the shore to relax and catch a few bigguns*" because there is no room to do that in that area. He clarified he is not saying that any plantings should be eradicated, but rather that it look somewhat like a hedge. He stated the buckthorn, for example, could grow to the height of the guard rail along the roadway. It would not be cut every year.

Councilmember Fletcher stated he would be more comfortable if it was not cut each year.

Mayor Kind stated the trimming could be done in the winter. She then stated Council could continue this item until it has a better understanding of how much of 2012 tree trimming budget has been used.

Fletcher moved, Page seconded, continuing this item to the November 2012 Council meeting agenda. Motion passed 5/0.

7. NEW BUSINESS

A. Implementation of "Sump Pump Program"

Mayor Kind explained implementation of what is being referred to as a "sump pump program" will help ensure clean water is not being discharged into the sanitary sewer system. During Council's July 5, 2012, meeting Council approved the second reading of an ordinance that allows the City to conduct such programs. She noted the meeting packet contains copies of a draft letter and certification form that would

be mailed to all property owners in the City. The letter and form have been reviewed by the City Attorney.

Kind noted that if Council wants to implement this program Council has to authorize Zoning Administrator/Clerk Karpas to secure the services of a certified inspector. The inspector could be based on recommendations of the City Engineer or recommendations from city administrators for other cities.

Councilmember Fletcher stated he is aware of a resident in the City who is not a “plumber” but could probably do the work at a reasonable cost. Mayor Kind suggested Fletcher pass the name on to Zoning Administrator/Clerk Karpas should Council decide to move forward with this program.

Quam moved, Fletcher seconded, authorizing the implementation of a “sewer pump program” and directing the City Clerk to mail the proposed letter and certification form to all property owners in the City.

Without objection from the maker or seconder, the motion was amended to include authorizing the City Clerk to secure the services of a certified inspector if needed based on the recommendation from the City Engineer or city administrators for other cities.

Councilmember Fletcher stated he thought the 14-day response period for property owners to return their completed certification form to the City is too short. He suggested they be given a grace period of a few days. Mayor Kind stated Council has that discretion and to formally change it would require a change to the Ordinance.

Councilmember Page asked if Zoning Administrator/Clerk Karpas is going to report back to Council on the recommendation for an inspector including the inspector’s fee for service. Karpas stated that is his understanding. Page stated that before the City has an inspector go out to any property he would like to see the list of property owners who have not returned their certification form. That would not occur until the September 2012 Council meeting and therefore it will effectively provide some amount of grace period depending on when the letter and certification form are mailed out.

Mayor Kind stated only those people who authorize a City inspector to conduct a physical inspection on the certification form will need an inspection.

Motion passed 5/0.

B. Authorization to Send Budget Comment Opportunity Information to Hennepin County

Mayor Kind stated authorizing the sending of budget comment opportunity information to Hennepin County is a routine item.

Fletcher moved, Rose seconded, authorizing the City Clerk to send the following information to Hennepin County – the time and date to hear public comment regarding the Greenwood 2013 Budget is December 5, 2012, at 7:00 P.M.; the place is at the Deephaven Council Chambers located at 20225 Cottagewood Road, Deephaven, Minnesota 55331; and, the phone number is 952.474.6633. Motion passed 5/0.

C. Minnehaha Creek Watershed District Taft-Legion Project

Mayor Kind stated the Minnehaha Creek Watershed District (MCWD) informed cities that it is taking public comment regarding the Taft-Legion Regional Volume and Load Reduction Project. The project will be completed in partnership with the City of Richfield. The total estimated cost is \$2.7 million paid via MCWD ad valorem tax levy over 20 years. She asked if Council wants to weigh in on this topic being the City already pays a lot of money to the MCWD via ad valorem taxes. She noted the meeting packet contains a list of what each city in the MCWD's jurisdiction paid in MCWD taxes in 2011.

Councilmember Quam stated the residents in the City already paid the MCWD approximately \$53,800 in 2011 and he thought that amount was adequate. Mayor Kind concurred.

Councilmember Fletcher stated this will be funded out of the MCWD's current levy. In the future projects implemented today may potentially increase a future levy.

Mayor Kind stated the motion suggested in the meeting packet is to authorize the Mayor to send a letter to the MCWD informing it that the City supports using current tax levy dollars for the project and that it opposes any new ad valorem tax levy. Councilmember Fletcher suggested changing it so say it opposes increasing the MCWD tax levy.

Fletcher moved, Quam seconded, authorizing the Mayor to send a letter to the Minnehaha Creek Watershed District (MCWD) stating that the City supports using the current tax levy dollars for the Taft-Legion Regional Volume and Load Reduction Project and opposes increasing the MCWD tax levy. Motion passed 5/0.

D. Potential Lake Minnetonka Conservation District Ordinance Regulating Bow Fishing

Mayor Kind stated the Lake Minnetonka Conservation District (LMCD) Public Safety Committee has recommended the LMCD Board consider adopting an ordinance relating to bow fishing for Lake Minnetonka. Such an ordinance, if adopted, could make it easier for the public to understand what is allowed on Lake Minnetonka for bow fishing. The Committee believes that some aspects of such an ordinance should be more restrictive than state law.

Kind noted the memorandum in the meeting packet lists the proposed restrictions. 1) The LMCD's regulations pertaining to bow fishing would be limited to open water only (not through the ice). Bow fishing through the ice would be regulated by state law. 2) Regulations of bow fishing from a boat on the open water would be addressed by the LMCD. Bow fishing from the land would be addressed by the municipalities. 3) The length of the tethered line would be restricted to 50 feet. 4) A 300-foot setback (the length of a football field) would be required from a swimming beach or swimmer.

Kind stated the LMCD has solicited feedback from the LMCD member cities regarding the possibility of the LMCD adopting this type of an ordinance. It wants to know what the member cities think about the Committee's recommendations. And, if there are there other specific restrictions that should be considered by the LMCD that are more restrictive than state law. The LMCD has indicated there are two other options for the LMCD to consider relating to bow fishing. [The LMCD could continue to function as it currently does by referring to state law and city ordinances. This would mean requests from the public will be referred to the local municipality to check on local firearms and archery ordinances. Or, the LMCD could adopt an ordinance prohibiting bow fishing entirely on Lake Minnetonka.]

Kind noted the meeting packet contains a copy of correspondence from the LMCD, a table including response information received in 2011, and a copy of the City's Ordinance related to firearms regulations and dangerous weapons.

Councilmember Page stated this topic was not specifically brought up before the LMCD Board. He suggested not doing anything regarding this. He then stated he did not think it is appropriate for the LMCD Safety Committee to poll the LMCD member cities without there being direction from the LMCD Board. He questioned the 300-foot setback from a swimming beach or swimmer when there is also a proposed restriction limiting the length of a tethered line to 50 feet.

Councilmember Quam suggested having Councilmember Page, the City's representative on the LMCD Board, gather more information about this.

Councilmember Page stated from his vantage point the LMCD should adopt an ordinance because there is a lot of variance between the municipalities and the various agencies regarding what can occur with regard to bow fishing. But, the content for such an ordinance needs to be discussed by the LMCD Board. He then stated he will inform the LMCD Board that the City thinks there should be an overall ordinance.

Mayor Kind stated she did not think the overall ordinance should be too much more restrictive than the State. She would like to encourage bow fishing in Lake Minnetonka to get rid of rough fish.

Councilmember Rose stated he had no problem with the 300-foot setback.

E. Potential Wind Turbine Ordinance

Mayor Kind explained that wind turbines were the topic of discussion on a recent mayors' discussion through the League of Minnesota Cities list-serve email system. The topic is timely given the recent case in the City of Orono and the potential for an increased interest on the part of residents wanting to install "green" products such as wind turbines. The City of Brooklyn Park recently adopted a wind turbine ordinance based on a study it commissioned. A copy of that ordinance is included in the meeting packet. The ordinance includes different standards specific to their various the zoning districts.

Kind asked Zoning Administrator/Clerk Karpas if he thought the City's current ordinances would protect the City. Karpas responded he thought it would be regulated under accessory structures. That is how most cities would regulate them. Heights, noise vibrations and so forth would be regulated through the existing ordinance. Karpas noted the current Ordinance would have to be reviewed to verify it is adequate.

Attorney Kelly asked Zoning Administrator/Clerk Karpas if he agreed that it currently is not a permitted use. Karpas stated turbines are not a permitted or conditional use under the current ordinance.

Councilmember Fletcher expressed concern that it would be difficult to determine what the conditions should be applied to a permitted use at this time. He then stated he has no big need to make wind turbines a permitted use. Mayor Kind agreed.

Attorney Kelly stated on a residential scale it would be difficult to know what the appropriate conditions should be.

Mayor Kind stated if Zoning Administrator/Clerk Karpas and Attorney Kelly are comfortable that the current ordinance addresses this then there is no need to address this further.

Attorney Kelly noted the City of Orono took a resident to task on a wind turbine. He then stated the basic premise is it is not listed it is not permitted.

There was Council consensus to do nothing with regard to wind turbines.

8. OTHER BUSINESS

A. None

9. COUNCIL REPORTS

A. Fletcher: Planning Commission, Lake Minnetonka Communications Commission, Xcel Energy Project

With regard to the Planning Commission, Councilmember Fletcher stated there had not been a meeting last month.

With regard to the Lake Minnetonka Communications Commission (LMCC) activities, Fletcher stated the LMCC is working on its 2013 budget.

With regard to the Xcel Energy Transmission Line Upgrade Project, Fletcher stated he had submitted some additional comments at the public hearing. He noted that Greenwood Council representatives at the public hearing made it clear that they would like the power line buried from St. Alban's Bay Bridge to Linwood Circle.

Mayor Kind noted that she sent a letter to the appropriate parties reiterating the City's request to bury the line.

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

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind stated the SLMPD 2013 Operating Budget was discussed during the Committee's July 18, 2012, meeting. The draft Uniform Animal Control Ordinance was also discussed. She noted that Attorney Kelly has reviewed it and provided his comments to Deephaven City Administrator Young who represents Greenwood in the administrative group capacity. A final proposed Ordinance will be provided to the Committee. There was a brief presentation on the eCharging/eComplaint system the SLMPD is using. The system will streamline and expedite that process.

With regard to mayor meetings, Kind stated there have not been any since the last Council meeting.

With regard to the website, Kind stated there continues to be strong use with 2,361 hits in the last month.

C. Page: Lake Minnetonka Conservation District

Councilmember Page reported on Lake Minnetonka Conservation District (LMCD) activities. He stated they have spent a lot of time on the ROV (remote operation vehicles) sonar device the last time. The cost has gone from \$125,000 to \$153,000. The LMCD has committed \$13,000 from the Save the Lake Fund. There was a push to take \$25,000 from the savings from the 2011 harvesting program and savings from this year's chemical treatment program and put that additional amount toward the sonar device also. He

noted he opposed taking the funds from the AIS savings and he was also opposed to the \$13,000 commitment.

Mayor Kind asked if the Save the Lake Fund has a policy regarding the use of funds. Councilmember Page responded the funds are intended to "Save the Lake."

Councilmember Page related he told the LMCD Board it would be a good idea to use the AIS savings for AIS programs in 2013. He stated he has not bought into there being a need for the sonar device because Ramsey County and Wright County each have a device. He then stated there was no consensus on the LMCD Board to commit more than the \$13,000. As of the last LMCD Board meeting when this discussed the Hennepin County Sheriff's Department, the Three Rivers Park District, the Minnehaha Creek Watershed District, different municipalities and commercial marina owners have not agreed to commit anything to the funding.

Page stated the LMCD Aquatic Invasive Species (AIS) Subcommittee which is working on the comprehensive vegetation management plan for Lake Minnetonka is meeting on August 10 in lieu of an AIS Task Force meeting. He noted the plan is not near being complete.

D. Quam: Roads & Sewer, Minnetonka Community Education

Councilmember Quam stated the roadway project is relatively completed. The final coating was put down yesterday and today. He noted some issues arose with regard to unexpected costs. On Curve Street it became apparent that the whole roadway needed to be dug up and class five rock needed to be put down as a base. A culvert had to be replaced at the end of Greenwood Circle. The extra leg off of Meadville Street down to the fire lane ended up being included in the project. He stated there was a problem with traffic control during project work. He will speak with the contractor about that.

Councilmember Page expressed concern about the culvert at the end of Greenwood Circle. It appeared it was caving in somewhat after the first coat was put on at the end closest to Excelsior. Councilmember Quam stated he will check into that.

With regard to Minnetonka Community Education, Quam noted Tour de Tonka bike ride is scheduled for August 4. He noted volunteers are still needed.

E. Rose: Excelsior Fire District

Councilmember Rose stated there is joint meeting of the Excelsior Fire District (EFD) member City Councils scheduled for August 8 to discuss the proposed 2013 EFD Operating Budget.

10. ADJOURNMENT

Page moved, Fletcher seconded, Adjourning the City Council Regular Meeting of August 1, 2012, at 9:02 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder