

**GREENWOOD CITY COUNCIL MEETING**  
**Tuesday, February 1, 2011, 7:00 P.M.**  
**Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331**

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

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

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

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

Members Absent: None

Mayor Kind requested Item 4.B Public Safety Facilities Distribution of Unspent Construction Funds be added to the agenda.

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

**2. CONSENT AGENDA**

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

**A. January 4, 2011, City Council Meeting Minutes**

**B. December 2010 Cash Summary Report**

**C. January 2011 Payables**

**Motion passed 5/0.**

**3. MATTERS FROM THE FLOOR**

There were no matters from the floor presented this evening.

**4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS**

**A. Meet Planning Commission Applicant Douglas Reeder**

Mayor Kind stated Douglas Reeder submitted the only new application the City received for the Planning Commission. She also noted the City received Planning Commissioner Todd Palmberg's resignation earlier in the day. The resignation is effective today. Therefore, there will be another seat open on the Planning Commission.

Mayor Kind introduced Mr. Reeder and asked him to tell Council about himself.

Mr. Reeder stated he has lived in Greenwood for about three years. He's a retired city manager and he has 36 years of local government experience. He then stated he would be happy to serve on the Planning Commission.

Mayor Kind stated she thought Mr. Reeder appears to be very qualified and that she personally could not think of any reason why he would not be appointed to a Planning Commission seat. She thanked him for coming and stated that the council will make Planning Commission appointments at the March Council meeting.

**B. Public Safety Facilities – Distribution of Unspent Construction Funds**

Mayor Kind explained Deephaven City Administrator Young is Greenwood's administrative representative to the South Lake Minnetonka Police Department (SLMPD) Coordinating Committee meetings and to Excelsior Fire District (EFD) Board meetings. She then explained the Shorewood Economic Development Authority (EDA) has unspent bond proceeds remaining in the construction fund for the public safety facilities. She stated the City needs to decide how it prefers the surplus funds be allocated. She asked Young to comment on this.

Administrator Young explained when bonds were issued for the construction of the public safety facilities in 2002 the Shorewood EDA set up a construction fund to account for the expenditure of the bond proceeds. The construction projects for the two facilities were closed out a few years ago. Shorewood Finance Director DeJong recently identified unspent proceeds in the approximate amount of \$70,000 in the fund and he would like to allocate the funds so he can close out the construction fund. When a construction fund is closed out it's typical to take any surplus funds and put them in a bonded debt fund that's supporting that particular project. The facilities are under a lease/purchase arrangement and the Cities of Deephaven, Excelsior, Greenwood, Shorewood and Tonka Bay make bonded debt payments on an annual basis.

Young then explained the surplus funds were used to offset the first 2011 bonded debt payment for the SLMPD and EFD which were due February 1<sup>st</sup>. The SLMPD's bonded debt payment was offset by approximately \$30,000 and the EFD's bonded debt payment was offset by approximately \$40,000. Because the SLMPD and EFD bond funds are fully funded for 2011 there will be a surplus at the end of 2011 by the previous amounts. The SLMPD Coordinating Committee discussed using the surplus to augment its building fund for the care and maintenance of its facility. The Coordinating Committee Members, which are the mayors of its four member cities, were to go back to their respective Council and discuss the options for allocating the surplus. During the January 26, 2011, EFD Board meeting the surplus was noted but there was no discussion about it.

Mayor Kind reviewed the options the SLMPD Coordinating Committee discussed for allocating the SLMPD surplus. The surplus can be returned to the cities in a lump sum amount. That would reduce the City's payments to the SLMPD in 2012. The surplus could be used to proportionally reduce the annual debt service payments owed by the member cities over the remaining life of the bonds. The surplus could be transferred to its building fund. She stated she and Administrator Young discussed a fourth option which is to leave the surplus in the bonded debt fund and refinance the bonds when that becomes possible to shorten the life of the bonds. She asked Council what it would like to do.

Kind stated she could support augmenting the SLMPD building fund provided the EFD puts its surplus in its building fund.

Councilmember Quam asked what the rate is on the bonds. Administrator Young stated the bonds were refinanced in 2007 and the interest rate is 4 – 4.25 percent. Young noted the bonds can't be refinanced until 2017.

Councilmember Quam stated he supports Mayor Kind's recommendation.

Councilmember Page stated he wants the entire \$70,000 surplus to be returned to the cities proportionally.

Councilmember Quam asked what SLMPD Chief Litsey and EFD Chief Gerber want to do. Mayor Kind responded Litsey wants to use the SLMPD's surplus to augment the SLMPD's building fund, and she is not aware of what Gerber wants to do. Councilmember Rose stated the SLMPD and the EFD have each put \$25,000 into their building funds. Kind commented that the bonded debt will be paid off in 2023 and she did not think there would have to be repairs made before then. Quam questioned the assumption that repairs wouldn't have to be made until the bonded debt is paid off. Kind stated the \$50,000 should cover any repairs that have to be made. Councilmember Fletcher noted the \$50,000 has to fund repairs for two facilities.

Mayor Kind stated she could support refunding the surplus to the cities.

Councilmember Fletcher stated he estimates the City would get approximately \$7,000 back out of the \$70,000. He then stated he has a slight preference toward using the surplus to augment the building funds but he could also support the surplus being refunded to the cities.

Administrator Young stated there are building maintenance issues that come up, but there is enough money put aside to take care of ongoing maintenance costs. The building funds can be used to pay for the cost of dealing with things such as ice jams. He noted if funds in the building funds are used the amount used will be replenished during the following budget year. He stated he is not aware of any outstanding repairs being needed.

Councilmember Fletcher stated things such as replacing carpeting and repainting should be paid for as a maintenance expense out of the operating budgets. Mayor Kind stated she thought costs to addressing ice jam issues should be funded out of the operating budgets as well.

Mayor Kind noted it's her understanding that the majority of the vote of the Coordinating Committee will rule and that she was seeking Council direction as to how she should vote.

There was Council consensus to ask the surplus to be refunded to the member cities in a lump sum payment as soon as possible.

**5. PUBLIC HEARING**

**A. None**

**6. UNFINISHED BUSINESS**

**A. First Reading: Ordinance 190 Amending Code Chapter 11 to Limit the Number of Required Front Yard Setbacks**

Mayor Kind stated the first reading of Ordinance 190 amending the Ordinance Code Chapter 11 to limit the number of required front yard setbacks was continued from the January 4, 2011, Council meeting to allow Council the opportunity to review the parcels that would be impacted by this amendment. The amendment would limit the number of required front yard setbacks to two for lots that front three roads. She explained that under the current Ordinance lots that front three roads would have front yard setbacks

on three sides of the property. She noted the Planning Commission unanimously recommended Council approve Ordinance 190.

**Page moved, Quam seconded, waiving the second reading of Ordinance No. 190 and Approving Ordinance No. 190, “An Ordinance Amending the Greenwood Ordinance Code Chapter 11 to Limit the Number of Required Front Yard Setbacks”.**

Attorney Kelly stated the City’s Ordinance requires there be two readings of an ordinance.

**Without objection from the seconder, the maker amended the motion to adopting the first reading of Ordinance 190 amending the Greenwood Ordinance Code Chapter 11 limiting the number of required front yard setbacks. Motion passed 5/0.**

Mayor Kind asked Attorney Kelly if the City’s Code would have to be amended to allow Council the option of waiving the second reading of an ordinance. Kelly responded that would have to be done.

There was Council consensus to keep the requirement for a second reading of an ordinance.

#### **B. Sign Projects for 2011**

Mayor Kind stated this item was continued from the January 4, 2011, City Council meeting. During that meeting Council asked Staff to get an estimate for making and installing two Signfoam signs, one at the Villas and one at the Deephaven border on Minnetonka Boulevard, and to confirm there should be no design and file layout involved. The total cost for two signs is \$2,787. The City paid \$1,540 for one sign in 2010. The savings for doing two at the same time is approximately \$300. She noted there is enough money in the budget to buy and install both signs.

**Fletcher moved, Kind seconded, authorizing the purchase of two Signfoam signs, one to be located at the Villas and that other at Minnetonka Boulevard, for an amount not to exceed \$2,787. Motion passed 4/1 with Page dissenting.**

Mayor Kind asked Councilmember Page if he wanted to comment on why he dissented. Page responded he doesn’t think there is a need for new signs. Kind responded if Page looked at the signs more closely he would likely agree they needed to be replaced.

Mayor Kind stated Councilmember Page can have one of the old signs. Page stated he will pick it up when it’s available.

### **7. NEW BUSINESS**

#### **A. Resolution 06-11 Restricting the Transfer of Property within the City**

Zoning Administrator/Clerk Karpas explained Hennepin County contacted the City to inform the City that there had been a property transfer submitted to the County for property located between 21380 Excelsior Boulevard (Sunny Kim property) and 21420 Excelsior Boulevard (Jeff Sagal property). The property that was transferred is a six-foot wide strip taken from the 21380 Excelsior Boulevard property near the home structures. The transfer would make the Kim property nonconforming with the required west side yard setback creating a six-foot encroachment.

Karpas then explained the County informed him the County is required to accept the transfer under a State Statute § 272.162 passed in 1982. The County has accepted the transfer and the City did receive the signoff sheet from the County. Based on the Statute, the City can restrict transfers of property only if a resolution is filed with the County restricting the transfer of subdivided parcels to those only approved by the City. The City has not adopted such a resolution. Therefore, if the City does not sign off on the transfer the legal descriptions will not be changed for either property. It would result in Sagal owning the six-foot wide strip of land and Kim paying taxes of that strip of land.

Mr. Kim stated he bought his property in 2002. At that time he was provided with a survey of the property which showed the edge of the property was a straight line. The house on the property was not very habitable so he decided to remodel it. He commented that at one time he tried to get a variance from the City but he was turned down, and noted he did conform to City regulations when he made improvements to the house. After he purchased his property he learned that Mr. Sagal's fence between the properties was located on his property.

Mayor Kind asked how the transfer went to the County without his agreement.

Mr. Kim explained Mr. Sagal told him that he thought he had a right to the strip of land under adverse possession and Mr. Sagal contacted an attorney who agreed with him. Mr. Sagal's attorney drafted a letter to him indicating there was a good chance the courts would grant the property to Mr. Sagal. He relented and signed a document. He noted the issue of adverse possession was totally foreign to him. He also noted that the previous property owner had paid the taxes on that strip of land for 30 years and he has continued to pay the taxes on the strip of land Mr. Sagal claims is his. He wondered if Mr. Sagal had asked the previous property owner for permission to construct the fence on the strip of land.

Councilmember Quam asked who put the fence up. Mr. Kim responded he thought Mr. Sagal's father erected the fence but it would be more appropriate for Mr. Sagal to answer the question.

Councilmember Page asked Mr. Kim if he gave Mr. Sagal a quitclaim deed to the strip of land. Mr. Kim responded he signed something because he was told the strip belonged to Mr. Sagal, noting he was not aware of the subdivision ordinance at that time. Page explained the quitclaim deed is what the County received to record. Page then explained the dispute about who owns the strip of land has been resolved. Page stated the issue at hand is whether or not the City is going to or can sign the signoff sheet.

Mr. Kim stated he does not think he is being treated fairly. He has to pay the taxes on the strip of land that Mr. Sagal now owns. He expressed he feels like a victim. He stated he shouldn't have to pay property taxes on a piece of land he doesn't own.

Mr. Sagal stated Council has been provided with a brief summary of discussions that Zoning Administrator/Clerk Karpas has had about this issue. He then stated it's his understanding the County has accepted the land transfer that occurred between Mr. Kim and he and that the land transfer has been recorded.

Councilmember Rose noted the City has not signed off on that transfer.

Mayor Kind stated Council is trying to decide if it matters if the City does or does not signoff on the transfer.

Mr. Sagal stated it seems to him that there has been tacit approval of the transfer because there was no City process in place. State Statute requires the County to accept the transfer unless the City has an

approval process in place, which the City doesn't. He stated because the City does not have an approval process in place he wondered if the whole process has actually been completed.

Zoning Administrator/Clerk Karpas explained the County has to accept the land transfer and the City has to sign off on the transfer in order to get the legal descriptions of the properties changed.

Mayor Kind stated it's her understanding that Council has to decide whether or not to approve the division of the property. She asked what happens if City does or does not sign off. Zoning Administrator/Clerk Karpas responded if the City signs off on the transfer Mr. Kim's property is no longer in compliance with City Code. If the City does not sign off Mr. Sagal owns the six-foot wide strip of land while Mr. Kim pays the taxes on it.

Councilmember Page stated Mr. Kim and Mr. Sagal did not adhere to the City's subdivision ordinance when they agreed to quitclaim deed the strip of land to Mr. Sagal. Mr. Kim stated he was not aware of the subdivision ordinance when that was done. Page stated both parties should have known about the subdivision ordinance and they should have applied for a subdivision.

Councilmember Page asked if Council is supposed to just sign off on the transfer or should Council require the two parties to go through the subdivision process. Zoning Administrator/Clerk Karpas responded if the transfer is signed the City essentially grants the subdivision.

Mayor Kind stated it's likely the subdivision would not be approved if it came through the subdivision process. The City's subdivision ordinance stipulates a subdivision cannot result in the creation of a nonconformity.

Mr. Sagal stated when Mr. Kim had his property surveyed the surveyors indicated the property line was located where it's been accepted all these years. Mr. Kim stated that was not true. Mr. Sagal responded those surveyors originally placed the property line along the fence line. The surveyors came back 2 – 3 weeks later and surveyed again and this time the survey line moved about six feet closer to his house; they said they had made a mistake. Mr. Sagal stated he then hired a surveyor and his surveyor agreed the property line is where Mr. Kim's surveyors placed it the second time they came out.

Mr. Sagal explained there was a geodetic survey stake near Excelsior Boulevard and another near the lake. There was nothing in between. The survey done long ago was done with older instruments, noting the house was originally built in 1896, and it's likely the survey stakes were not placed accurately. A stake was found underneath the fence and Mr. Kim's surveyor originally tagged it as a survey stake, but when he came back he explained that was not an official survey stake (it did not have a disk on it). He noted the fence has been in place since at least 1950. Also, his uncle built stone walls on the strip of land he asked Mr. Kim to deed it to him.

Councilmember Rose stated when Mr. Sagal came before Council several years ago to try and get his property taxes lowered he showed Council a survey of his property. He did not remember seeing a curved property line on the survey. Mr. Sagal explained the survey information he has now is new; the curved property line was not on the survey Rose referred to.

Mayor Kind noted Council cannot take a position on adverse possession. Councilmember Page noted the two parties have already resolved that through a quitclaim deed.

Mayor Kind stated Council needs to decide if it wants the City to sign the transfer signoff sheet.

Councilmember Page explained the Statute § 272.162 states the county auditor shall not transfer or divide the land if: the land conveyed is less than a whole parcel of land as charged in the tax lists (this is true); the part conveyed appears within the area of application of municipal subdivision regulations adopted and filed under section 462.36, subd. 1 (the City's subdivision ordinance is adopted and filed); and the part conveyed is part of or constitutes a subdivision as defined in section 462.352, subd. 12. The County can't do it if these things are present.

Page stated he thought the problem is this is not a subdivision. He explained State Statute states subdivision means the separation of an area, parcel, or tract of land under single ownership into two or more parcels ... except for those separations: (1) where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses; (2) creating cemetery lots; or (3) resulting from court orders, or the adjustment of a lot line by the relocation of a common boundary. Numbers 1 and 2 do not apply. Number 3 does apply, therefore this is not a subdivision and therefore, the County can accept the transfer.

Page highlighted the conditions of transfer stipulated in subd. 2 in the Statute. Notwithstanding the provisions of subd. 1, the county auditor may transfer or divide the land and its net tax capacity and may certify the instrument if the instrument contains a certification by the clerk of the municipality: (a) that the municipality's subdivision regulations do not apply; (b) that the subdivision has been approved by the governing body of the municipality; or (c) that the restrictions on the division of taxes and filing and recording have been waived by resolution of the governing body of the municipality in the particular case because compliance would create an unnecessary hardship ... He stated he thought the City's subdivision ordinance does apply.

Mayor Kind asked if the City waived its authority by not filing a resolution with the County.

Councilmember Page explained the Statute also states if any of the conditions for certification by the municipality exist and the municipality does not certify that they exist within 24 hours after the instrument of conveyance has been presented to the clerk of the municipality, the provisions of subd. 1 do not apply. He stated he interprets that to mean if the City does not sign off on the transfer within 24 hours that Hennepin County will go through with the transfer. Zoning Administrator/Clerk Karpas noted if the City does not sign off on the transfer, the County will not change the legal descriptions of the properties, but the transfer will take place.

Councilmember Quam stated he has had some experience with this kind of situation. Out in the country this type of thing comes about with the fences between properties (this was before global positioning system technology). If a fence was the assumed line and no one had disputed it for a period of 15 years the location of the fence became the property line. He explained he had a fence near a barn on a property and a survey showed his barn was three feet over the property line. The fence was the assumed line and the other property owner had to legally sign a quitclaim deed for that part of their property to him. He then explained if there had been a fence and the fence posts remain in place to mark the property line the posts mark the assumed legal line.

Councilmember Quam reiterated that if Council signs off on the transfer Mr. Sagal has to pay the property tax on the strip of land. If it doesn't Mr. Kim has to pay taxes on land he doesn't own. He stated he thought Council should approve it otherwise it's unfair to Mr. Kim. He noted the strip of land now legally belongs to Mr. Sagal; Council can't change that.

Attorney Kelly stated the challenge for Council is whether it has the authority to waive the subdivision ordinance process and approve it. He expressed his skepticism about Council being able to simply waive

the ordinance. Councilmember Quam questioned if Council has the authority to disapprove the transfer. Kelly stated there is a legal process that Council doesn't have the authority to forego. Kelly then stated whether the outcome may be dictated by the facts as you know them right now may in fact be true. Kelly also stated he doesn't think Council has the ability to simply disregard an ordinance in the City.

Mr. Sagal stated he understood Councilmember Page to say that according to State Statute this is not a subdivision by definition. Therefore, he asked why the subdivision ordinance is even being talked about.

Councilmember Page again cited parts of State Statute § 272.162 (which were previously talked about and documented) and what bearing they may have on what Council decides to do. He stated from his vantage point the City doesn't have to do anything. The quitclaim deed is legal. Unfortunately for Mr. Kim he can't expand the nonconformity he has. Councilmember Quam stated Mr. Kim did not create the nonconformity. Page responded Mr. Kim subdivided his own property.

Mr. Sagal commented the variance request Mr. Kim referred to earlier wasn't approved because of the bluff setback.

Mayor Kind asked if it would be to Mr. Kim's advantage for the City to sign off on the transfer because Mr. Kim would not have to pay taxes on that strip of land any more.

Mayor Kind stated based on the discussion if Council takes no action Mr. Kim and Mr. Sagal need to go back to Hennepin County and work things out with them.

Zoning Administrator/Clerk Karpas stated he would like to ask Hennepin County if the City has more than 24 hours to take action. He would like to get some direction from the County. Twenty four hours is not a reasonable amount of time.

Attorney Kelly stated Carver County requires that a deed transfer be stamped with approval from the municipality. He then stated based on what Zoning Administrator/Clerk Karpas has related the County will leave things "half baked" unless it hears from the City. The County had to accept the transfer for recording based on the County's interpretation of the Statute, but it doesn't have to change the legal descriptions. If this is a discretionary matter for the County it can put it off for a while. If it's administrative the County has to deal with it.

Councilmember Page suggested Council not take any action on this and that it be continued to the next meeting. He encouraged Mr. Kim and Mr. Sagal to talk to Hennepin County about this.

**Page moved, Kind seconded, continuing the item of restricting the transfer of property within the City to the March 1, 2011, City Council meeting agenda. Motion passed 4/0/1 with Fletcher abstaining.**

Councilmember Page suggested Council delay consideration of Resolution No. 06-11 restricting the transfer of property within the City until further discussion has been held about this issue just discussed. If Council adopted the resolution it would then have to either approve or not approve the transfer. Zoning Administrator/Clerk Karpas stated he did not think there would be a problem because the resolution would have been adopted after the fact and it would not apply to this transfer.

There was Council consensus that the above motion includes continuing consideration of Resolution No. 06-11 to the March 1, 2011, meeting agenda.

Mayor Kind explained Council needs to get more information from Zoning Administrator/Clerk Karpas and the City will get back to Mr., Kim and Mr. Sagal as to what the next steps are.

**B. First Reading: Ordinance 191 Amending Code Chapter 900.15 Prohibiting Depositing Snow or Ice on City Streets**

Mayor Kind stated this is the first reading of Ordinance 191 amending the Ordinance Code Chapter 900.15 prohibiting depositing snow or ice on City streets or other public safety property. During its January 4, 2011, meeting Council asked Staff to draft such an ordinance. A copy of the draft ordinance is included in the meeting packet. She explained there is no need for the Planning Commission to consider this Ordinance. She noted State Statute § 160.2715 states it's unlawful to "obstruct any highway or deposit snow or ice thereon." Council wanted to make it clear in the City Ordinance that this also applies to City streets.

**Fletcher moved, Rose seconded, adopting the first reading of Ordinance 191 amending the Greenwood Ordinance Code Chapter 900.15 adding a provision prohibiting the depositing of snow or ice, plowed or removed from private property, onto a city street or other public property regardless of the place of origin. Motion passed 5/0.**

**C. First Reading: Ordinance 192 Establishing Ordinance Code Section 715.12 Prohibiting Street Parking After a Snowfall**

Mayor Kind stated this is the first reading of Ordinance 192 establishing Ordinance Code Chapter 715.12 to prohibit parking after a snowfall. During its January 4, 2011, meeting Council asked Staff to draft such an ordinance. A copy of the draft ordinance is included in the meeting packet.

Councilmember Quam stated he had spoken with the Deephaven Public Works Director and snowplow driver to find out if they think there is a problem and their response to him was they don't think there is a problem. There is one car that impedes plowing snow and they just don't plow that part. Mayor Kind stated that Zoning Administrator/Clerk Karpas and she received the opposite feedback. Quam stated he does not think this is a big problem, noting however that residents do want the streets plowed.

Mayor Kind noted the City's the enforcement of ordinances are complaint driven. This ordinance would give the City a tool should there be a problem.

**Rose moved, Kind seconded, adopting the first reading of Ordinance 192 establishing Greenwood Ordinance Code Chapter 715.12 prohibiting parking on a city street after two inches or more of snow has fallen until the traveled portion of the roadway or street is plowed its full width.**

Councilmember Page stated he did not think this is necessary for a two-inch snowfall. It may be appropriate for a four or six inch snowfall. Mayor Kind stated the City's streets are plowed after a two-inch snowfall. Councilmember Quam stated he agrees that two inches isn't much but if that's when the plows go out the ordinance should be consistent with that.

**Motion passed 4/1 with Page dissenting.**

**D. Weed Treatment at City Docks**

Zoning Administrator/Clerk Karpas stated in the past the City has contracted with Lake Management, Inc. for a treatment program for Eurasian Watermilfoil and native weeds and algae. Because the City is

contributing \$5,000 toward a bay-wide treatment program in the spring of 2011 it may not be necessary to contract with Lake Management for two treatments this year. He asked Lake Management to provide quotes for a single treatment as well as two treatments. Should the results of the bay-wide treatment not be as good as one would hope the City could have Lake Management do a single application later this year.

Councilmember Fletcher stated he did not think it was necessary to take action on this now.

**Page moved, Quam seconded, tabling the contracting with Lake Management, Inc. for annual Eurasian Watermilfoil control services for now. Motion passed 4/1 with Rose dissenting.**

**E. Ordinance 193 Amending Code Chapter 1140.45 Parking Requirements**

Mayor Kind introduced Ordinance 193 amending the Ordinance Code Chapter 1140.45 removing unnecessary parking regulations and amending the regulations for common parking area. A copy of the draft ordinance is included in the meeting packet along with a document from Zoning Administrator/Clerk Karpas explaining what the parking regulations issues are. She explained this item came up when she and Karpas were discussing plans for a new building project at the St. Albans Bay Boathouse site. She noted those plans will be before the Planning Commission at a later time. She reminded Council that during the process of doing a major review/update the City's Ordinance Code Councilmember Fletcher had expressed a concern that the common parking regulations made no sense. When the Council approved the new Ordinance Code, it was decided that the Council could revisit the common parking regulations at a later time.

Mayor Kind asked Council if it would like to send the draft Ordinance to the Planning Commission for review and recommendation.

**Page moved, Quam seconded, sending Ordinance 193 amending Ordinance Code Chapter 1140.45 removing unnecessary parking regulations and amending the regulations for common parking area to the Planning Commission for review and recommendation. Motion passed 5/0.**

**F. Prompt Payment of Local Government Bills, Minnesota Statute 471.425**

Mayor Kind stated the meeting packet contains a copy of Minnesota Statute § 471.425 regarding the prompt payment of local government bills. She noted Councilmember Fletcher found out about this Statute which stipulates that the City must its bills within 35 days of receipt. She explained based on current practice there will be times when that 35 day time period will be exceeded. She suggested Council revisit the idea of having the Mayor or two Councilmembers review/approve claims and release the payment of the claims mid month and then have Council approve the verified claims during its next meeting.

Attorney Kelly stated in the past there had been a distinction between payables received for ongoing contractual services and payables for one time services or goods. If the vendor's invoice provides the City with a sworn statement that this bill is offered under penalty of perjury that would protect the City.

Mayor Kind noted during its January 4, 2011 meeting the Council gave the Mayor the authority to allow the release of payment checks for routine claims mid month without Council approval. If she had a question on a claim or if there was enough time to hold the claim until the next Council meeting and still meet the 35-day processing time period those claims could be held for Council approval.

Councilmember Fletcher stated the Statute allows a municipality to take longer than 35 days to pay the claim if there is a good faith dispute about the obligation.

Councilmember Page asked if the City timestamps its claims upon receipt.

Councilmember Fletcher noted that at a pre-audit meeting Mayor Kind and he had with the auditors recently they observed the auditors randomly checking claims to see if they were paid within the 35-day window with the start date being the date of the invoice. Councilmember Page stated using the invoice date is wrong.

Councilmember Quam stated he thought the City should timestamp claims when they are received. Councilmember Page stated he did not agree with this.

Councilmember Fletcher stated Council is scheduled to meet on May 3, 2011, and again on June 7, 2011. The meeting packet for the May meeting will go out the last week of April and it will contain a list of payables for Council to authorize payment of during the May meeting. The time period between when the payables were received and included in the May meeting packet and the June 7<sup>th</sup> meeting is about 45 days.

Councilmember Page stated during Council's last meeting Council authorized the Mayor to release payment of routine claims and to have Council release payment of anything unusual. Councilmember Fletcher asked if Page was recommending the City ignore the Statute. Attorney Kelly stated the City should make a good faith effort to comply with the Statute.

Mayor Kind noted that most claims are routine claims.

Councilmember Page commented Council has been made aware of the Statute and the City will make every effort to comply with it.

### **G. Management Analysis for Audit Report**

Mayor Kind stated the financial audit of the City's 2010 financial statements has begun. She explained that Councilmember Fletcher and she have met with the auditors and presented to them a preliminary draft of a management analysis, a copy of which is included in the meeting packet. Fletcher authored the document. The Governmental Accounting Standards Board has determined that a management analysis document should be included in the final audit report, noting it's not required. She and Fletcher discussed the analysis with the auditors earlier in the day. The draft document will have to be updated once all of the year-end financials are available. She and Fletcher wanted Council to have the opportunity to comment on the document in advance.

Councilmember Page stated the document refers to the Sewer Enterprise Fund, the Marina Enterprise Fund, and the Stormwater Enterprise Fund. He questioned why enterprise is included in the names. Councilmember Fletcher stated the Sewer and Marina Funds are enterprise funds; they have standalone revenues and capital assets. The Stormwater Fund is not an enterprise fund because it's not contemplated there be any investment in capital assets at this time, noting that could change. Mayor Kind noted that auditors recommended that the fund be renamed to the Stormwater Special Revenue Fund. Councilmember Page stated "enterprise" suggests a profit making business and he doesn't agree with that. Fletcher explained he took the fund names from past audit reports.

Mayor Kind stated the auditors may recommend changes to the draft language.

Mayor Kind stated the audit report will be on the March 1, 2011, Council meeting agenda.

**H. Alternative Legal Publication Legislation**

Mayor Kind stated the League of Minnesota Cities (LMC) was alerted that that a new bill will be introduced to the legislature to allow local governments to use their websites for legal notices. The LMC asked municipalities to provide it with their annual costs for publishing notices in their designated newspapers (the City spends about \$2,000 a year). She then stated it may be beneficial for the City to contact its State representatives with feedback about this.

Councilmember Quam clarified the bill would allow municipalities to use their websites for legal notices, but it wouldn't restrict them to just that.

Councilmember Fletcher noted that public notices still would be sent by mail to those who request it. He also suggested that, if the legislation is approved, the City could use the City's bulk email list to send links to the public notices posted on City website. Councilmember Fletcher pointed out that publishing in the newspaper is not a superior method of notification, because there was a five-year time period where the City did not publish ordinances and no one noticed.

**Fletcher moved, Quam seconded, authorizing the Mayor to send a letter to State Senator Gen Olson and State Representative Connie Doepke in support of allowing local governments to use their websites for legal notices. Motion passed 5/0.**

**8. OTHER BUSINESS**

**A. None**

**9. COUNCIL REPORTS**

**A. Fletcher: Planning Commission, Eurasian Watermilfoil Lake Minnetonka Communication Commission,**

Councilmember Fletcher stated the Planning Commission did not meet last month. He then stated St. Alban's Bay Captain Rob Roy has drafted a letter to be sent out to the City's residents asking for donations toward the cost of treating Eurasian Watermilfoil in St. Albans Bay. There is nothing new to report with regard the Lake Minnetonka Communications.

**B. Kind: Police, Administration, School District Meeting**

Mayor Kind stated the South Lake Minnetonka Police Department (SLMPD) Coordinating Committee met on January 20, 2011, at 5:00 P.M. During the meeting the Committee approved the tentative agreement for health insurance benefits in 2011. She explained she served as an advisor to SLMPD Chief Litsey and Excelsior City Manager Luger during the negotiations for the contract reopener. She then explained that health benefit data from departments of similar size to the SLMPD was compiled, noting she selected the cities. She noted the SLMPD's health benefits are in the middle when compared to the selected departments. She also noted the benefits agreed to are about \$5,000 lower than what was budgeted.

Councilmember Fletcher stated the City of Edina went to arbitration on police and fire and Edina did not fare well. He then stated he thought the SLMPD and its labor union reached an agreement that is a win-win for both parties.

With regard to administration, Mayor Kind stated Carol Sayer and Kiersa Carlson have volunteered to take over the garden near the Greenwood sign on Manor Road.

Mayor Kind stated she attended a quarterly meeting of the mayors of the cities in the Minnetonka School District hosted by the District's Superintendent in January. Representatives from each city gives a report on what is new in their cities and this quarter also reported on how they collaborate with other cities. She highlighted a few things she learned. The City of Minnetonka does not sealcoat its roadways. Instead it does a thin overlay of asphalt because it believes that lasts longer than sealcoating and the residents like it because it looks like a new surface. She noted she mentioned this to the City Engineer and that he will check into the concept and the Council can discuss more when road work is decided in the spring. She stated the City of Tonka Bay raised its dock fee to \$1,600 per slip. She stated the City of Chanhassen buys one-half of its gas at a discounted rate from the State and stores it in a tank it owns. She wondered if the South Lake cities could consider having a gas tank in a central location and do the same type of thing.

Councilmember Quam asked if there isn't an agreement with some gas station for discounted gas. Mayor Kind responded no, while noting the SLMPD gets free car washes at the station where they buy gas. Kind stated she will bring up the topic of discounted gas to the SLMPD.

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

Councilmember Page reported on Lake Minnetonka Conservation District (LMCD) activities. He noted he will serve as LMCD Board Treasurer this year. He will also serve on the Ordinance Review Committee and the Aquatic Invasive Species (AIS) Task Force. He stated there are new people serving as chair and vice-chair. He explained there have been numerous, long Board meetings about the proposed development near Halstead Bay. The Board voted to have the attorney for the LMCD draw up findings of fact approving the application. This will be voted on during LMCD Board meeting in March 2011. He noted the Board approved 117 dock slips; the developer wanted 129 slips. The developer wanted to designate 40 of the slips for non-riparian owners to use. The LMCD Board was concerned there would end up being some type of boat club at the site.

Page stated the LMCD Ordinance Review Committee proposed repealing the LMCD's power to regulate events on Lake Minnetonka. The proposal did not go very far. He noted the members of the Ordinance Review Committee do not have to be members of the LMCD Board.

Page then stated LMCD Boardmembers were reluctant to volunteer to be on the LMCD AIS Task Force. Besides himself, LMCD Boardmember Herb Suerth from Woodland was the only other Boardmember to volunteer.

**Mayor Kind recessed the meeting at 8:29 P.M.**

**Mayor Kind reconvened the meeting at 8:47 P.M.**

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

Councilmember Quam stated roads are mainly about keeping them plowed and keeping the height of snow piles at intersections low enough to maintain visibility. He then stated the condition of the roadways will be surveyed in two months to determine what repairs need to be made.

Quam then stated the City applied for a grant from Metropolitan Council Environment Services through its Municipal Infiltration/Inflow Grant Program. The grant would help pay for repairs to the City's sewer system and manhole covers. The City was divided into four areas and the repairs have been made to two of the areas. He expressed he was pleased to announce the City was awarded a grant in the amount of \$48,384. The amount is one-half of the total eligible project amount of \$96,768; one-half is the maximum awarded. He thanked the Councilmembers for pursuing this.

**Quam moved, Fletcher seconded, approving the grant in the amount of \$48,384 from Metropolitan Council Environment Services for the City's Infiltration/Inflow project with the City committing matching funds. Motion passed 5/0.**

Quam went on to state there had not been a Minnetonka Community Education (MCE) meeting. The most recently scheduled meeting was postponed one week.

**E. Rose: Excelsior Fire District**

Councilmember Rose stated the Excelsior Fire District (EFD) Board met on January 26, 2011, at 6:00 P.M. He noted there are two new Boardmembers. He explained the Board was made aware of the unspent funds in the construction fund for the public safety facilities, but there was no discussion about it or action taken. He stated he will let the EFD Board know that the City prefers the money be refunded to the member cities in a lump sum.

**10. ADJOURNMENT**

**Page moved, Quam seconded, Adjourning the City Council Regular Meeting of February 1, 2011, at 8:52 P.M. Motion passed 5/0.**

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