

**GREENWOOD CITY COUNCIL MEETING**  
**Wednesday, January 2, 2013, 7:00 P.M.**  
**Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331**

**Attorney Kelly administered the Oath of Office to newly elected Mayor Debra Kind and Councilmember William Cook and Councilmember Rob Roy.**

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

Mayor Kind called the meeting to order at 7:02 P.M.

Members Present: Mayor Kind; Councilmembers Cook, Fletcher, Quam and Roy

Others Present: City Attorney Kelly, City Zoning Administrator/City Clerk Karpas, City Engineer Martini (departed the meeting at 8:02 P.M.)

Members Absent: None

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

**2. CONSENT AGENDA**

Mayor Kind reviewed the items on the consent agenda.

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

- A. December 5, 2012, City Council Meeting Minutes**
- B. December 12, 2012, City Council Special Meeting Minutes**
- C. November 2012 Cash Summary Report**
- D. December 2012 Verifieds, Check Register, Electronic Fund Transfers**
- E. January 2013 Payroll Register**

**Motion passed 5/0.**

**3. MATTERS FROM THE FLOOR**

There were no matters from the floor presented this evening.

**4. PRESENTATIONS, GUESTS & ANNOUNCEMENTS**

- A. Greenwood Night at the Old Log Theater, 8:00 P.M. Friday, January 11, 2013**

Mayor Kind stated Greenwood Night at the Old Log Theater is scheduled for January 11, 2013, at 8:00 P.M. She asked Zoning Administrator/Clerk Karpas to post that a quorum of the Council may be present that evening.

**B. Planning & Zoning Workshop, January 12, 2013, 9:00 A.M.**

Mayor Kind noted Greenwood is hosting a Planning and Zoning Workshop on January 12, 2013, at the Southshore Community Center from 9:00 A.M. – 4:00 P.M. There are 41 people signed up for the Workshop. She asked Zoning Administrator/Clerk Karpas to post that a quorum of the Council will be in attendance.

**C. Hennepin County Update from Commissioner Jan Callison**

Mayor Kind introduced Hennepin County Commissioner Jan Callison who was present to give an update on what is happening in Hennepin County.

Commissioner Callison explained Hennepin County has approved a property tax increase of 0.93 Percent for its 2013 operating budget. When the Hennepin County Regional Rail Authority and the Hennepin County Housing and Redevelopment Authority are included it is a 1.5 percent tax increase for 2013. That goes largely to a cost of living adjustment for employees who have not had increase in four years and for hiring some additional staff.

Commissioner Callison reviewed the sources of revenue for the County for 2010 – 2012. Property tax has been either steady or slightly declining. Federal revenues to the County have been flat. State revenues to the County have been declining. Fees and services have been increasing. Other sources have been decreasing. She noted sources of revenues to local governments have not increased and are not likely to for the next seven years.

Commissioner Callison explained that at the same time revenues have remained flat or stagnant there has been an increase in the number of people seeking services from the County. The average number (January – June) of families seeking shelter at the County was approximately 250 per night in 2000 and approximately 150 in 2001. For a number of years after that the County was successful in keeping families out of shelters or moving them through shelters quickly. That has begun to change and the County's capacity to shelter families is close to the upper end now. Each day she gets a count of the number of children in shelters each night in Hennepin County. Historically the peak period for shelter use during a year is in the month of October. This year that was reached in September. Even though the County converted administrative space to shelter space it still ran out of space to house people.

The largest growth is in medical and food support programs. The monthly average of individuals on medical programs (January – May) increased 26 percent over four years. The monthly average of individuals on food support (i.e., food stamps) and MFIP food portion cases (January – May) increased 69 percent over four years. The monthly average number of calls to child protection (January – May) increased 28 percent over four years. The monthly average number of calls to adult protection (January – May) increased 13 percent over four years. The total long-term care consultations (January – May) which are required by Medicare for decisions families might make increased 26 percent over four years. The County is about 600 people behind in doing the assessments. State law, and maybe federal law, is changing so the assessments will have to be done annually rather than past once-a-year requirement. The social worker staffing level declined 14 percent over four years. Part of the budget increase is to hire 22 employees in the social work area. There is also a proposal to hire some people to do long-term care consultations that will be paid for with funds from the State of Minnesota.

Commissioner Callison stated construction of a new library in the City of Excelsior was approved late last year. Construction is expected to begin in 2013 and it's anticipated it will open late summer of 2014. The

new library will be close to double the size of the current library. It will be located on Water Street next to the Hennepin County Regional Trail. The budget is \$5.6 million.

Commissioner Callison provided her contact information. Her email is [Jan.callison@co.hennepin.mn.us](mailto:Jan.callison@co.hennepin.mn.us) and her phone number is (612) 348-7886.

Commissioner Callison stated former County Administrator Richard Johnson retired at the end of December after about seven years in that position. The County is in the process of looking for a new Administrator. In the meantime the County's Deputy County Administrator is acting in that capacity. Johnson had been the master mind behind the budgets that had stayed flat over the years even though the demands on the County increased. Johnson's departure is a loss to the County and it will be difficult to fill his shoes.

Commissioner Callison distributed a handout related to a watershed management proposal. She noted the proposal was prepared by Hennepin County Commissioner Jeff Johnson. Johnson has had legislation drafted. She stated the handout is a summary of the essential parts of it.

Commissioner Callison highlighted what the proposal would do. There are currently eleven watershed organizations in the County. The proposal recommends reducing it down to three watershed districts.

The new watershed management organizations would have taxing authority. That is not true of all of the current watershed management organizations in the County. There would be levy limits placed upon them. The new watershed management organization managers must be elected officials. There are provisions about how the new organizations would be created.

She solicited feedback from Council either now or after they have had time to review it.

Mayor Kind asked Commissioner Callison if she is a supporter of the proposal.

Commissioner Callison stated if changes are made to the watershed management organizations she wants them to work better. She questioned if what is proposed will work better. She then stated she thought eleven watershed management organizations is a lot, and therefore consolidation of same nature would make sense. She went on to state that she has heard a concern that council members are already busy, and being a member of a new organization would be a big commitment. Another concern expressed is there is a loss from lack of citizen involvement. She noted that she is not a fan of levy limits for local governments, and therefore she is not in favor of imposing levy limits on the new organizations. She also expressed concern about going to the legislature because once a proposal is sent to the legislature it is hard to know what will come back. She stated she wants assurance that what is being proposed will improve water management in Hennepin County.

Mayor Kind stated she likes the idea of having elected officials as managers because they are voted to represent the people, as opposed to someone who would applicant to be on the watershed management organization who might be more of an activist. Elected officials tend to have a more impartial perspective.

Commissioner Callison asked Mayor Kind if she thought the managers should be elected because the new organization would have taxing authority. Kind responded she did.

In response to a question from Councilmember Quam, Commissioner Callison explained the northern part of Hennepin County is managed by elected officials. Their taxing authority comes through the County. They ask the County for approval to increase taxes. They typically spend less money. In the southern part

of the County there are primarily watershed districts and the board members are appointed by the Hennepin County Board of Commissioners. They have taxing authority.

Commissioner Callison noted not all of the current eleven organizations are totally within Hennepin County. The proposal would affect the water in the County only. Another organization in another county would have to be brought into the management and that could complicate things. The way the legislation is drafted it is up to the cities in other counties to join. There is also the question of how to figure out the voting.

Councilmember Cook asked if there is a web address/link to the proposal and legislative language. Commissioner Callison stated she is not sure. She noted she will send the legislative language to Zoning Administrator/Clerk Karpas for distribution to the Council.

Councilmember Fletcher stated he cannot imagine having a representative from each of the cities and townships in the new watershed management organization on its board of managers and be effective.

Commissioner Callison stated this would be a complicated undertaking.

Mayor Kind suggested Council mull this over a little and then send Commissioner Callison their collective comments.

Councilmember Fletcher stated the statistics for services provided by Hennepin County all show a lot of growth. He asked Commissioner Callison if all of that growth is attributable to the economy or are there other things that factor into that growth as well. Commissioner Callison responded that it is her understanding that the economy and mortgage issues and limited rental housing have been the cause for the shelter growth. The growth in foreclosures and shelters can be tracked to the economy. The growth in consultations for the elderly is a result of an aging population.

Councilmember Fletcher asked if any consideration is being given to the cost to operate the transit systems being discussed. Commissioner Callison responded there is. When a case is being made for them operating costs have to be identified. She noted that light rail transit has a better return than buses because it is more efficient. Fletcher stated from his perspective it is better to run a few systems well than a lot of systems poorly.

Mayor Kind thanked Commissioner Callison for coming to the meeting.

Commissioner Callison thanked Council for its time, and she congratulated those who were newly elected.

**D. Report on Lake Minnetonka Conservation District Activities, Kelsey Page Representative**

Mayor Kind noted Kelsey Page, the City's representative to the Lake Minnetonka Conservation District (LMCD), is present to give a report on LMCD activities.

Mr. Page stated his intent this evening is to bring Council up to date on the draft Eurasian Watermilfoil (Milfoil) and Curly Leaf Pondweed Comprehensive Management Plan (the Plan). He explained the Plan was subject to a public hearing held on December 12, 2012. His impression as well as the impression of the LMCD Aquatic Invasive Species (AIS) Task Force is that there is good support for the Plan overall. Good input was received during the hearing. The input was in both written and oral form. The LMCD

Staff is in the process of preparing a memorandum related to the public input that will be circulated to the LMCD Board. He anticipates the LMCD Board will vote on the Plan this month. Something has to be decided about the funding for the upcoming season.

Mr. Page then stated that on December 14, 2012, the LMCD AIS Task Force met. Many of the members of the Task Force attended the public hearing. He noted that a representative from the fishing lobby spoke during the hearing. The AIS Task Force thought that during the hearing there was a fixation on the word “primary” in the Plan. The consensus of the Task Force was changing that word would be superfluous because it would not change the content of the report. The Task Force believes that harvesting would be the most used tool to control Milfoil in Lake Minnetonka (the Lake) because it would be most effective in most of the Lake. The bays that would be chemically treated would be in the minority. After unsuccessfully trying to come up with a replacement for the word “primary,” the Task Force made a decision to leave it in the report.

With regard to a preliminary report from the Army Corps of Engineers on what it calls a point intercept survey to measure what Milfoil and other weeds are present in the Lake, Mr. Page stated he interprets the report to say Milfoil is back quite strong in St. Alban’s Bay with the heaviest concentration being along the south shore along the island in the Bay. It was present all the way back to where the municipal docks are located. That confirms a two-year cycle for growth and treatment. He noted the regrowth in St. Alban’s Bay was not as strong as it was in Gideon Bay.

With regard to the Flowering Rush issue, Mr. Page explained the Minnehaha Creek Watershed District (MCWD) is handling that. He noted the MCWD has stated it will not be involved with management of AIS, but it will be focusing on prevention of AIS. He stated the MCWD has decided the Flowering Rush is in a concentrated enough area that they will treat it as a prevention effort. For the second year in a row the MCWD hired a contractor to pull the Flowering Rush out by hand. The extensive report provided by the contractor to the MCWD states hand pulling seems to be working. Year to year the amount of Flowering Rush is down significantly. The report indicates there is 85 percent control from when the effort was started.

Mr. Page noted that in 2012 he served as the treasurer for the LMCD; on the LMCD Executive Committee, Personnel Committee, and AIS Task Force; and, he was the Chairman of the AIS Task Force subcommittee.

**E. Presentation on Excelsior Boulevard Watermain Project Option 1, Engineer Martini**

Engineer Martini stated the impetus for a feasibility study for the Excelsior Boulevard Watermain Project Option 1 was a petition from property owners to the City dated June 13, 2012, requesting the extension of watermain along Excelsior Boulevard. The watermain currently extends from the City of Excelsior to about 300 feet west of Christmas Lake Road. The project would be to extend it from there to the petitioning properties.

Martini provided background on the project. Metropolitan Council Environmental Services (MCES) is proposing improvements to its sewer system. The plan is to construct a second 24-inch force main under Excelsior Boulevard to allow for inspection and repair of its 40<sup>+</sup> year old existing force main. The additional force main would also provide redundancy and improved reliability to the current system. As part of that project Excelsior Boulevard will need to be torn up and reconstructed. Therefore, from a cost perspective this would be a good time to extend the watermain because MCES would pay for the roadway

reconstruction. The current schedule for the MCES project is to start construction in 2013 and complete it in 2014. The construction schedule for the segment in Greenwood is 2013.

Martini explained the proposed watermain extension is from 21170 to 21380 Excelsior Boulevard as requested in the petition plus the watermain west of 21380 to the existing watermain. The size of the watermain proposed to meet Greenwood's needs is 12-inch diameter to Christmas Lake Road and 8-inch diameter east of that point. The sizes are to provide adequate fire flow to both the residential and commercial properties located in the project area. The watermain construction would include the installation of three fire hydrants along the route.

The watermain project includes the installation of service stubs from the watermain to right of way. Residential service stubs are proposed to vary between 1 inch and 1.5 inches depending on the length of the service to the individual property. It is proposed that commercial properties will receive a 6-inch stub to allow for future fire protection sprinkler systems.

There are some water services that are proposed to be reconstructed as part of the project between the west end of the project to Christmas Lake Road. There are currently five properties that are served off of the existing watermain from Excelsior. Those services are long, unconventional services. They will be replaced with conventional water services. Because those services will be disturbed by the MCES project MCES will pay for the reconstruction.

The proposed reconstructed roadway will be approximately 26 feet wide with concrete curb and gutter on both sides. It would be essentially the width of the current roadway; the area around Christmas Lake Road is slightly wider. The existing bituminous walkway on the south side will be reconstructed to 6 – 8 foot wide. Typically, about 10 feet of the driveways will be reconstructed to provide transition between the newly constructed and existing driveway. Disturbed boulevards will be restored.

The total estimated project cost to the City for the watermain extension is \$135,695. The estimate includes construction costs plus a 30 percent allowance for contingencies and soft costs. Construction costs consist of the watermain extensions, the service stubs, and fire hydrants. Soft costs include things such as project engineering, administrative, legal, fiscal and miscellaneous costs.

City costs are proposed to be funded by special assessments to the benefitting properties. The assessment area consists of 10 single-family residential parcels and two commercial parcels. The proposed assessment is by unit; it assesses like parcels the same amount. The two commercial properties are proposed to be assessed at 1.5 times the residential rate to account for greater fire flow needs in the future. The existing service reconstruction, street reconstruction, driveway restoration, and most of the boulevard restoration costs will be funded by MCES.

Based on the proposed assessment method and the estimated total project cost the estimate assessment rate is \$10,515 for residential parcels and \$15,772.50 for commercial parcels. Each parcel within the assessment area will be assessed this cost regardless if it connects to the watermain. The owners of six properties in the assessment area signed the petition.

Each property receiving water service from the watermain extension will incur other expenses at the time of connection. They include, but are not limited to, the City of Excelsior's \$2,000 connection charge and a 1-inch water meter cost of \$328.46 plus tax. Those costs are subject to change in the future and they are typically adjusted annually. In addition the property owner will have to hire a contractor to extend the service from the service stub to the house and to make the connection inside the house. The property owner will also pay usage rates after connection.

Martini noted there is also an Option 2 that has been discussed. It would involve the Cities of Excelsior and Shorewood. Option 2 would expand the project area. He then noted if Option 2 were to move forward it would require its own feasibility study and public hearing. Mayor Kind stated it is looking less and less likely that Option 2 will advance.

In response to a question from Mayor Kind, Engineer Martini explained the 12-inch diameter watermain is needed for fire flow to the commercial properties in that area should they install sprinkler systems. Councilmember Fletcher noted the 12-inch watermain will only go from Christmas Lake Road to 21170 Excelsior Boulevard. Martini reiterated the commercial properties are being assessed a rate that is 1.5 times that of the residential properties.

In response to a question from Mayor Kind, Martini stated the proposal to connect the Excelsior and Shorewood municipal water systems calls for a 12-inch diameter watermain. Kind asked if the 8-inch watermain would be sufficient if watermain is eventually extended further down Excelsior Boulevard beyond the petition zone. Martini responded that it would have to be upgraded to a 12-inch watermain if is extended very far.

Mayor Kind asked what the current width of the sidewalk is. Engineer Martini stated there are areas that are less than 6 feet wide. Martini explained the proposal is for the reconstructed sidewalk to be a minimum of 6 feet wide and the area near the intersection will be up to 8 feet wide. Going up to the east it becomes confined. Councilmember Fletcher stated it is his understanding that there will be concrete curb to separate the sidewalk from the roadway. Martini reiterated there will be concrete curb and gutter on both sides of the reconstructed roadway.

Engineer Martini noted the City will incur some costs as part of this project. For example, if the walkway is made wider than what it currently is the cost for the additional width would be the City's responsibility. Improvements made to resolve some of the drainage issues in the area may be the City's responsibility.

## **5. PUBLIC HEARING**

### **A. Excelsior Boulevard Watermain Project Option 1**

Mayor Kind noted the procedures used in a public hearing. She explained this is an opportunity for the public to comment on the possible Excelsior Boulevard Watermain Project Option 1.

**Quam moved, Fletcher seconded, opening the public hearing at 7:48 P.M. Motion passed 5/0.**

Mayor Kind asked people to keep their comments brief, and if they agree with what someone else has already said she asked them to just note they agreed.

Steve Janousek, 21210 Excelsior Boulevard, stated he owns one of the properties that would be affected by this. He then stated that this project is really important to his family.

Chris Ogilve, 21170 Excelsior Boulevard, echoed Mr. Janousek's comments about the project being important. He and his wife have five children and water quality is very important to them. He then stated they use the sidewalk frequently. He noted that he and his family are extremely interested in getting this taken care of. He stated it is a great opportunity to do this in conjunction with Metropolitan Council Environmental Services' (MCES) proposed sewer system improvements. He then stated this will have a

great positive impact on him and his family, and it will have a positive impact on his property going forward.

William Brands, 21290 Excelsior Boulevard, stated based on what he has heard he understands the proposal is to construct concrete curb on both sides of the reconstructed Excelsior Boulevard and to reconstruct the walkway on the south side. He asked if it is mandatory where the connections come in. He explained he has a well that comes in at the bottom of the driveway. Engineer Martini stated the service stubs shown on the drawing are where they conceptually will be located. Martini explained that if this project is done when it gets closer to construction the engineers will solicit input from the property owners on where they would like the service stubs located. He noted that he is not one of the property owners petitioning this, but he is totally in favor of it.

Councilmember Fletcher noted that Mr. Brands had signed the first petition. When the petition had to be quickly resubmitted with a little more clarity Mr. Brands was not available to resign it.

Gene Dahlin, 21350 Excelsior Boulevard, stated he is 100 percent behind this project. He noted he is excited to have it happen. He asked if the storm sewers are part of this project. Engineer Martini responded they are not. Martini explained there are some existing storm sewer facilities west of Christmas Lake Road that will be reconstructed as part of this project and hopefully improved. The engineers spent time going up and down Excelsior Boulevard to get a better understanding of how the stormwater flows with the intent to shape the roadway so water will flow more efficiently. A goal is to try and direct some of the stormwater to the Highway 7 ditch and facilities.

Mayor Kind asked for a motion to close the Public Hearing. Engineer Martini stated the agenda indicates the Public Hearing would start at 8:00 P.M. Zoning Administrator/Clerk Karpas explained the times on the agenda are just estimates for how long the discussion of each item will take. Attorney Kelly stated there is no problem leaving the Public Hearing open while Council discusses this further.

Attorney Kelly noted Council may not take any action this evening. He explained that holding a Public Hearing is a key element in the process for this project based on Engineer Martini's report. This can be revisited at a later date. He noted that Engineer Martini has suggested this be assessed 100 percent to the property owners. That will require a special assessment which requires another public hearing and presentation. He stated that a public improvement like this may have a special component which benefits the adjacent properties, a general component which is of benefit to the City or a little of both. Hence, the need for what is called a 429 which is a reference to a Minnesota Chapter in state law.

Mayor Kind stated the City is still waiting to find out if Option 2 could be feasible, noting that is looking unlikely. She then stated it is likely Council will take action on this during its February 6, 2013, regular meeting. Council could call a special meeting if necessary. Engineer Martini explained if Council decides to move forward with the project that action needs to be taken before MCES can advertise for bids. Kind stated she understands that February 6 is early enough for that.

Councilmember Fletcher asked if the City has to come to some type of agreement with the City of Excelsior on this project. Attorney Kelly stated it is his impression that Excelsior is willing to let the City do this project. Kelly recommended the City get that in writing. Mayor Kind stated the City has to decide if it is going with Option 1 or Option 2 before that can happen. Fletcher stated if it becomes clear that Option 2 will not move forward he asked if work could begin on drafting an agreement for Option 1. Kelly stated Excelsior may suggest the City draft an agreement and present it to Excelsior for review and comment. Kind noted that Excelsior has indicated it would like Greenwood to draft an agreement. Kind

explained the project timeline indicates the draft cooperative agreement needs to be written by February 11, 2013.

Engineer Martini explained the discussions to date with Excelsior about this project have been to develop a master agreement only for providing water service to Greenwood. He noted there are some Greenwood residents that already get their water from Excelsior's municipal water system. The master agreement would be for all of the properties who get their water from Excelsior's municipal water system.

Councilmember Fletcher asked when MCES plans to open bids on their project. Engineer Martini responded he thought that may occur in March 2013 and that MCES intends to advertise for bids in February. Martini explained MCES would like to have things in place to start construction when road restrictions come off in the spring of 2013. Fletcher then asked if MCES wants to know what Greenwood is going to do before it advertises for bids. Martini explained from a process perspective that has to happen.

Mayor Kind noted that even if the City orders the improvements there is still an opportunity further in the process to opt out of doing the project. Engineer Martini stated that once bids are open it will come back to Council for final approval for that portion of the project.

Attorney Kelly asked if the approval of Option 1 is going to include a contingency that there will be a satisfactory agreement between Excelsior and Greenwood.

Councilmember Fletcher stated the City cannot commit to spend money on this project without a workable agreement with Excelsior.

**Fletcher moved, Cook seconded, closing the Public Hearing at 8:02 P.M.**

Engineer Martini departed the meeting.

## **6. UNFINISHED BUSINESS**

### **A. Variance Findings of Fact, David and Kim Barry, 21550 Excelsior Boulevard**

Mayor Kind noted that the meeting packet contains a copy of the Findings of Fact for David and Kim Barry, 21550 Excelsior Boulevard prepared by Attorney Kelly.

**Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 03-13, "A Resolution of the City Council of the City of Greenwood, Minnesota Acting as the Board of Appeals and Adjustments, for real property located at 21550 Excelsior Boulevard setting out the findings of fact and conclusions of law regarding the David and Kim Barry variances to lake yard setbacks, and impervious surface to permit the installation of frost footings beneath an existing garage allowing for attachment to the house." Motion passed 5/0.**

## **7. NEW BUSINESS**

### **A. Setting Dates for 2013**

Mayor Kind stated the meeting packet contains a copy of a resolution setting meeting dates for the City for January 1, 2013 through December 31, 2013. She noted this is a routine resolution that Council adopts

annually in January. She also noted that no changes have been made to the resolution adopted in 2012 other than to adjust the dates.

Councilmember Fletcher asked if Council ever changes the Council meeting date. He noted the July meeting falls on July 3<sup>rd</sup>. Mayor Kind the date only changes if it is on a holiday. Fletcher then asked if the Fall Sales Ratio Meeting with Assessors is set in stone for October 31<sup>st</sup>. Kind responded it is usually held on the last Thursday in October. Kind stated if Fletcher has another date to recommend, the Clerk can check with the assessors to see if they are available. Fletcher stated he would prefer it be moved to October 24 if possible. Kind asked Zoning Administrator/Clerk Karpas to find out if it could be moved.

**Cook moved. Fletcher seconded, Adopting RESOLUTION NO. 01-13, “A Resolution setting the 2013 dates as identified in the resolution subject to the Falls Sales Ratio Meeting with Assessors date changing from the last Thursday in October to the fourth Thursday (October 24, 2013) if acceptable with the assessors. Motion passed 5/0.**

### **B. Appointments and Assignments for 2013**

Mayor Kind stated the meeting packet contains a draft resolution making appointments and assignments for 2013, noting this is a routine resolution. Three changes have been made to the 2012 appointments. She explained that being an “elected official” is not a requirement for appointment to the Lake Minnetonka Conservation District (LMCD) Board, yet the practice for the last four years has been that a Councilmember is appointed to this position. Newly-elected Councilman Rob Roy has expressed interest in serving on the LMCD Board, so his name has been added to the list as the LMCD Representative for 2013. If Council desires to approve the resolution appointing Rob Roy as the new LMCD Board Representative, Council first will need to “recall” Kelsey Page as the City’s LMCD Board Representative. A new Marina Clerk category and a new Utility Billing Clerk category have been added to officially designate Deborah Hicks as the City’s Marina Clerk and Utility Billing Clerk. Ms. Hicks has been fulfilling these functions since Deephaven staff took on clerk duties for Greenwood in 2010.

Kind noted that Councilmember Cook currently serves as the liaison to the Planning Commission, and that he is willing to continue in that role in 2013. She also noted the Planning Commission seats that expire in March 2013 will be updated when new appointments are made. The meeting packet contains a copy of a letter from Bolton & Menk, Inc., expressing its desire to continue to provide engineering services to the City with Dave Martini serving as the primary service provider. There is also a copy of a letter from the Sun-Sailor expressing its interest in continuing to be the City’s official newspaper. And, Manual Jordán has expressed his interest in continuing to provide forester and tree inspector services.

**Fletcher moved, Cook seconded, recalling the Kelsey Page as the Lake Minnetonka Conservation District Board representative effective immediately.**

Councilmember Quam expressed his opposition to recalling Mr. Page from that position. He stated that from his perspective Mr. Page has done a good job for the City. He then stated he views this as a slap in the face for a dedicated public servant to be pulled off when that person does not want to be. He clarified that he expresses that with all due respect to Councilmember Roy, noting Roy is competent to assume that role.

Mayor Kind stated she favors having an elected official serving that function. If there is a member of the Council that wants to do that she would give them first right of refusal. If no one on Council wants to do serve as the LMCD representative then she would look to the public. Since Councilmember Roy has expressed interest in doing that she defaults to him.

Councilmember Roy noted that he had spoken with Mayor Kind about his travel schedule for the next three months. He explained that he will not be able to attend some of the LMCD Board meetings during that time. He noted that his travel schedule was set up before he decided to run for Council. He asked if any of the Councilmembers would serve as the alternate. Councilmember Quam stated that is all the more reason to keep Mr. Page in that function for 2013. Quam then stated Mr. Page is in a position of authority in several positions with the LMCD. And, Mr. Page will be able to attend all of the meetings. Councilmember Fletcher suggested that the City appoint an alternate Board member. Councilmember Fletcher stated if Councilmember Roy is going to be the primary representative to the LMCD he would be willing to serve as the alternate. He noted that if someone else wants to serve as the alternate that would be fine with him.

Councilmember Cook stated he would accept Councilmember Fletcher's offer. Mayor Kind concurred.

**Motion passed 4/1, with Quam dissenting.**

**Fletcher moved, Cook seconded, adopting RESOLUTION NO. 02-13, "A Resolution Making Appointments and Assignments for January 1, 2013 through December 31, 2013" as identified in the resolution subject to appointing Councilmember Fletcher as the alternate to the Lake Minnetonka Conservation District. Motion passed 5/0.**

**8. OTHER BUSINESS**

**A. None**

**9. COUNCIL REPORTS**

**A. Roy: Welcome**

Mayor Kind again welcomed Councilmember Roy.

**B. Cook: Planning Commission**

Councilmember Cook stated the Planning Commission has discussed possible changes to the City's zoning ordinances.

Zoning Administrator/Clerk Karpas explained the Planning Commission has discussed certain zoning ordinances the Council requested they review. It will hold public hearings on the regulations for small lots and for structural versus landscaping impervious surface. He drafted two separate ordinances; one for small lots and the other for impervious surface. He has provided the Commission with copies of the original ordinances, the ordinances with their corrections shown, and then the clean copies of them. The clean copies are what will be presented during the public hearing. After the public hearings Council will be provided with the same documents for discussion. He noted this was the only item the Commission had on its agenda for its December 19, 2012 meeting.

Councilmember Cook noted a copy of the December 19, 2012, Planning Commission minutes from that meeting is included in the meeting packet. He stated if Council has any feedback it would like to send to the Commission he asked that they send him an email and he will relay that information. He noted that he has gotten some feedback from Councilmember Fletcher. He explained if he receives comments from residents it forwards it to the Commission as such.

Mayor Kind stated from the open meeting law perspective she asked if individual Councilmembers can provide feedback directly to Councilmember Cook. Attorney Kelly explained Councilmembers have a right to comment through channels back to the Planning Commission. But, they do not have a right to lobby people. If there are comments that should be passed on to the Planning Commission as a group they should be sent to Zoning Administrator/Clerk Karpas and then he can forward them on.

Councilmember Fletcher stated the job of the Planning Commission is to come up with its perspective and then provide that to Council.

Councilmember Cook stated it is important to keep the Planning Commission engaged. If Council keeps changing what the Commission recommends they will start to become less engaged. He then stated if something comes up then he thinks it is in its purview as the Council liaison to inform the Commission. He went on to state it is disempowering to always have things changed at the council level. Councilmember Quam stated he thought Council is pretty good about not doing that.

**C. Fletcher: Lake Minnetonka Communications Commission, Excelsior Fire District, Milfoil Project, Xcel Energy Project**

With regard to the Lake Minnetonka Communications Commission (LMCC) activities, Councilmember Fletcher stated Mediacom has gone directly to the City of Medina with a proposal to have a franchise agreement directly with Medina. About one-third of Medina does not have service at this time. Mediacom told Medina if it enters into a franchise agreement with Mediacom, Medina would get the franchise fees (fees paid by cable television subscribers) and they could then be used to help build out Mediacom in Medina. The City of Shorewood has also received a letter from Mediacom.

Mayor Kind stated she has not been approached by Mediacom. She did receive an invite from the LMCC to attend a meeting on January 10, 2012, for the mayors of the cities who are part of the LMCC. She stated if the idea of giving the LMCC member cities some of the franchise fees received by Mediacom back to the cities came up, she asked if that is something Council would support. Doing that may be what it takes to keep some cities in the LMCC. Councilmember Quam stated if it was “free money” he would be in favor of that, but he can’t envision why anyone would want to do that.

Councilmember Fletcher stated “there is no free lunch.” He explained the LMCC provides services such as the recording of this meeting. It provides election coverage services. It also provides studios for public programming. Most of the money in the LMCC is spent on something related to public programming. If the LMCC member cities decide they want to get some of the revenues from franchise fees, then the LMCC would likely have to reduce programming. He clarified he is not saying that would be a good or bad decision. It would just be a tradeoff.

Mayor Kind stated she thought it would be okay to cut back on community programming if the member cities were to receive some of the franchise fees and that is what it takes to keep cities in the coalition.

Councilmember Fletcher noted that when he polled the Councilmembers a few months ago the most important priority it had for the LMCC was video recording of Council meetings. Council at that time appeared to be okay with cutting back on things such as school activities.

Councilmember Quam stated he cannot imagine there being a cutback on school board meetings.

Councilmember Fletcher stated from his perspective if the member cities did want to get a portion of the franchise fees he did think the LMCC would continue to record and televise school board meetings and some school activities.

Councilmember Cook asked if the LMCC thinks it has to give the member cities back money to compete with Mediacom. Mayor Kind responded not necessarily. It is just an idea that has been talked about as a way to keep the member cities as part of the coalition. Councilmember Fletcher stated it is not formally being considered. But, it is something that could be on the table.

Councilmember Cook stated he thought it was in Greenwood's best interest to keep the LMCC member cities together. The cost to do that is what has to be discussed.

With regard to the Excelsior Fire District (EFD), Fletcher stated there was not an EFD Board meeting in December.

With regard to the Xcel Energy Transmission Line Upgrade Project, Fletcher stated there is nothing new to report.

**D. Kind: Police, Administration, Mayors Meetings, Website**

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind stated last month in her report about the SLMPD she forgot to report that during its last meeting the SLMPD Coordinating Committee again discussed a social host ordinance. She noted the City of Shorewood approved a social host ordinance last summer. There is a renewed effort by the SLMPD and Shorewood for the four SLMPD member cities to have a unified ordinance.

Kind explained what a social host ordinance is. It would allow adults at the scene to be charged even if they cannot be proven that they provided alcohol. The police think this is an important loophole that has to be addressed. She has been told that in other cities there have been cases where there are underage kids drinking for instance in a hotel room with an adult present. The police arrive at the scene and the adult says the kids brought their own alcohol so the police are not able to charge the adult with a crime. The kids can be charged.

Kind then explained the first city to approve a social host ordinance was Chaska and that occurred in 2009. That was a result of an incident that occurred in 2007 where a 19-year-old individual froze to death after a night of drinking at a party. When the City first approved the ordinance Chaska reported that it had enforced the ordinance 10 times and that it had no repeat offenders. Chaska finds it to be a very effective ordinance.

Kind went on to explain that in 2009 Tonka Cares, a community coalition working to reduce illegal substance use among youth in the Minnetonka School District, endorsed a social host ordinance and is trying to get it approved by all of the cities in the District. The Greenwood City Council was the first SLMPD member city to consider it at that time. It rejected it on a 4/1 vote. Greenwood has the distinction of being the only City in the State to reject the ordinance. A couple of counties have rejected it as well. In 2009 the then Greenwood Council's concerns were about holding parents criminally responsible if they unknowingly host parties where there is underage drinking. At that time there was concern about how "knowing" or "knowledge" is defined.

The model ordinance from the City of Minnetonka is clear that a person can be held responsible if they are out of town but should have known a party was going to be held at their home. The Minnetonka ordinance includes language that states property owners can “issue a standing order” that alcohol is not to be consumed by underage people on their property. Critics say that just weakens the ordinance to the point where it is a feel-good ordinance. Other critics also say drinking is about personal responsibility not the host.

Mayor Kind recommended waiting until the Cities of Excelsior and Tonka Bay take action on a social host ordinance before Council takes any action.

Councilmember Quam stated based on what he knows about it he is still opposed to it. He does not like the idea that a parent can get in trouble inadvertently and be charged with a crime because underage kids got into their home and drank. And, the parents should have known because they have liquor in their home.

Councilmember Cook stated he was at the Council meeting when the SLMPD Chief of Police made his pitch. He noted that he was impressed by the action took at that time. He stated based on what he heard it was an attempt to make everyone a criminal for activities that were probably not criminal. He clarified he does not condone underage drinking or people supplying alcohol to underage people. But, this would be one of those things where they throw out a big net and everyone who lands in the net is criminally liable, he has a problem with that. He stated it troubles him that there could circumstances beyond an adult’s control that could result in them being charged as a criminal. He noted he wanted to exercise caution about this. He also noted he did not care if Council addresses this first, last or in the middle. The conversation about this should be the same whether or not other cities have approved it or rejected it.

Councilmember Quam stated he was surprised no other city rejected such an ordinance.

Councilmember Fletcher stated when it was discussed in 2009 no other SLMPD member city had considered it.

Mayor Kind reiterated Shorewood has approved a social host ordinance, and it is pushing for the other SLMPD member cities to approve one also.

Mayor Kind asked Council if/when it would like to have the social host topic placed on a meeting agenda.

Councilmember Fletcher stated if Council decided to address this he is still going to ask the City Prosecutor or the SLMPD to provide an example of a case in the City where it would have made a difference. He has asked them that before and they did not have an example.

Councilmember Quam stated there are laws in place that say you cannot give kids liquor.

Attorney Kelly stated from his perspective a simpler rule would be as an adult you could not be in the presence of underage people that are drinking. If an adult is in the presence there is complicity. The burden of proof would be on the prosecutor to prove the adult was in the presence of an underage person consuming alcohol. He agreed with Councilmember Cook’s assessment that the model ordinance is a wide net. He stated it shifts the burden away from prosecutor to the defendant, noting he has issues with that. He then stated from his perspective it is a feel-good ordinance.

Mayor Kind stated Council is being asked to consider the Minnetonka ordinance which is the model. She asked Council if it would like this to be on the agenda sooner or later, or not at all.

Councilmembers Fletcher and Quam stated they did not have a need to have it on an agenda for consideration.

Mayor Kind asked if the SLMPD Chief of Police asks for it to be put on an agenda would the Council be okay with that. Councilmember Fletcher stated that if the SLMPD Chief of Police wants to talk to Council about something Council should always be happy and willing to talk to the Chief. The Chief should be given that courtesy.

With regard to administration, Kind stated Code Book updates were placed at the dais this evening. Councilmember Quam suggested having the date printed on the pages so Councilmembers could tell which pages are the most recent. Kind noted that Zoning Administrator/Clerk Karpas always has a current hard copy of the Code Book and the version on the City's website is kept current.

Kind noted there had not been a mayors meeting since Council's last regular meeting.

Kind stated the City's website now has an update on the Xcel Transmission Line Upgrade Project. The City's quarterly newsletter is also posted.

Councilmember Quam asked if the rule about when to move cars when it snows is on the website. Mayor Kind responded it is in the Code Book. Kind stated she will make a note to include the rules in the winter newsletter in the future. For anyone watching the meeting on video, Kind explained cars should be kept off city streets until they are plowed curb to curb.

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

With regard to Minnetonka Community Education (MCE), Councilmember Quam stated there is nothing new to report.

With regard to roads and sewers, Quam stated roads and sewers have already been discussed.

**10. ADJOURNMENT**

**Quam moved, Cook seconded, adjourning the City Council Regular Meeting of January 2, 2013, at 8:40 P.M. Motion passed 5/0.**

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