

GREENWOOD CITY COUNCIL MEETING
Wednesday, May 2, 2012, 7:00 P.M.
Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331

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

Mayor Kind called the meeting to order at 7:01 P.M.

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

Others Present: City Attorney Kelly, City Zoning Administrator/City Clerk Karpas and City Engineer Martini (departed at 7:50 P.M.)

Members Absent: Councilmember Rose

Councilmember Fletcher asked that Item 4.A.c Excelsior Boulevard Reconstruction Project be added to the agenda.

Councilmember Page asked that Item 4.I on the consent agenda be moved to Item 8.A under Other Business.

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

2. CONSENT AGENDA

Mayor Kind reviewed the items on the Consent Agenda.

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

- A. April 4, 2012, City Council Meeting Minutes**
- B. April 4, 2012, City Council Work Session Minutes**
- C. April 12, 2012, Greenwood/Excelsior City Councils Joint Work Session Minutes**
- D. April 12, 2012, Board of Appeal and Equalization Minutes**
- E. April 12, 2012, City Council Special Meeting Minutes**
- F. March 2012 Cash Summary Report**
- G. April 2012 Verifieds, Check Register, Electronic Fund Transfers**
- H. May 2012 Payroll Register**
- I. Second Reading. Ordinance No. 209, Amending Ordinance Code Section 1140.85 Subd. 2 Regarding Trees (This was moved to Item 8.A under Other Business.)**
- J. Public Access Procedures, Code Section 125**

K. Excelsior Park & Dock Police Services Proposal

Motion passed 4/0.

3. MATTERS FROM THE FLOOR

Rob Roy, 21270 Excelsior Boulevard, stated he had comments about the Xcel Energy Alternate Route (Item 7.B) and about aquatic invasive species and the Lake Minnetonka Conservation District (under Council Reports). He asked if he should make his comments now or when those items are discussed. Councilmember Quam stated it was up to Mr. Roy. Mr. Roy sat down until the appropriate item on the agenda came up for discussion.

4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS

A. City Engineer Dave Martini

a. Policy Regarding City Streets Located on Private Property

Engineer Martini explained that when roadway conditions were reviewed earlier this year to determine which are in the most immediate need of repair it was determined that Curve Street is in need of repair. The owner of the property (Duane Kelm) located on the east side of Curve Street at the intersection of Minnetonka Boulevard, has expressed concern that the paved street encroaches onto his property. Mr. Kelm asked that the City consider realigning Curve Street when it is repaired so it is not on his property.

Martini stated that after looking at the situation Staff recommends Curve Street remain in its current location. He reviewed why Staff came to that recommendation. Curve Street has been maintained in its current location for a long time. Because of that it is his opinion that the City has right to maintain the roadway in that location. To determine where the roadway should be relocated, a boundary search, potentially including some survey work, would be needed to confirm the actual limits of the right of way (ROW). If Curve Street were to be moved so it were located more in the middle of the right of way (ROW) it would curve to the west. Doing that would make the roadway askew at the intersection with Minnetonka Boulevard. It currently sits at an approximate 90 degree angle. If Curve Street is moved to the west it will require significant grading or construction of a retaining wall. Doing so could also create some sight issues.

Martini noted that due to the way the City was developed there are likely other streets in the City that do not lie within the limits of the ROW. Many of them are probably following the lines of how the roadway was used and how things evolved. He suggested Council carefully consider the issues that may be created by moving a roadway.

Councilmember Page stated it sounds to him that there is some speculation about whether or not Curve Street is located in the ROW. Engineer Martini stated if maps of the City are overlaid on an aerial photo the roadways and the boundaries on the City map do not line up. Martini noted that does not mean that the information is survey accurate. Martini explained that to accurately establish where the line is, legal descriptions of the properties involved would have to be taken into consideration. Also, some accurate point would have to be found and used as a starting point. That could be a time consuming process. It would be easier if property line corners could be established.

Duane Kelm, 21595 Minnetonka Boulevard, stated the roadway is monumented on his side. There is a monument marker set in about two feet from the edge of the road. He expressed concern that Xcel Energy (Xcel) believes its power line is on the City's ROW and it continually wants to trim his spruce trees. He expressed his preference is to have Curve Street moved over. He stated he would like there to be a document indicating where the ROW line is located so he doesn't have to go through the issue about Xcel wanting to trim his trees. He commented that with a torrens property you cannot have adverse possession. He stated he would like to know what the City's rights are with regard to where Curve Street is located. He clarified he is not as concerned about moving the road over as he is about protecting his trees. He noted the City has been using his property for about 24 years. He stated that maybe his property taxes could be reduced slightly or the City could pay a fee for the property that it has taken from him.

Engineer Martini noted the City has the right to maintain what is there; not to make improvements that would encroach farther on to the private property.

Mayor Kind asked Attorney Kelly to explain torrens and adverse possession vs. prescriptive rights. Kelly explained that when a property is taken through a district court proceeding which results in a torrens title it allows everyone who may have a claim to come forward. There after it is a matter of the court. You cannot make a claim of adverse possession through occupation. But, there is a caveat in property law that says a city gains a prescriptive right where the road is as built and traveled. For Mr. Kelm there is a confounding set of facts that would need to be sifted through. He does not know if Mr. Kelm's torrens title makes note in the Hennepin County surveyor's report, prepared long ago, of what encroachments were observed when presented to the Examiner of Titles at that time.

Mr. Kelm noted that his property was torrens before he purchased it.

Attorney Kelly commented that the actual location of a roadway tends to creep based on blacktop habits and so forth.

Mayor Kind stated she assumes that Xcel wants to maintain a distance from its power lines and therefore trims his trees to do that. She asked if the City can tell Xcel that it cannot do that. Attorney Kelly stated the City cannot police that public utility.

Mr. Kelm noted that he had been a survey crew chief for Xcel for many years. He stated that Xcel has a right to put utilities in road ROWs. He explained when he was doing that job, a utility could not put their power line right on the edge of the ROW.

Councilmember Quam stated he is not sure what the City can do to stop Xcel from trimming the overhang of Mr. Kelm's trees.

Mr. Kelm stated he would like the City to prepare a document that shows the alignment of the City's ROW with the easterly edge being where the current blacktop is. He thought that would give him a stronger legal basis if they came and tried to trim his trees. Councilmember Page asked Mr. Kelm if he wants the City to adopt a survey that shows the existing road. Mr. Kelm responded yes and with the edge of the ROW on the easterly side. Kelly asked Mr. Kelm how close his property is to that edge. Mr. Kelm explained there is blacktop on the northwest corner of his property. Closer to his driveway the blacktop is close to the edge of his property.

Mr. Kelm stated about every five years he goes through the tree trimming issue with Xcel. He then stated he doesn't want there to be any ROW beyond the current blacktop on the east side. He noted Xcel's

power pole is located on his property. He stated he does not want to come back before a different Council in five years to talk about this again.

Mayor Kind asked if it would be a City expense to create a survey. Engineer Martini stated he is not sure what the proper way is to document what Mr. Kelm wants.

Engineer Martini stated that Curve Street cannot be expanded to encroach on to Mr. Kelm's property any more than it already does.

Mayor Kind stated the City will pay close attention to ensure that the blacktop surface will not encroach further on to Mr. Kelm's property when improvements are made to Curve Street.

Mr. Kelm stated he would be more comfortable if the City would prepare a document showing where the existing blacktop is and where it encroaches on to his property.

Clerk Karpas stepped away to research the property file and found a copy of a survey that shows the alignment of the pavement of Curve Street as it relates to Mr. Kelm's property. A copy of the survey was given to Mr. Kelm.

Mayor Kind asked Council if it wants the City to have a policy regarding City roadways that encroach on to private property.

Councilmember Quam stated he did not think the City should make any changes to its policy. The City can always adjust a roadway's location if necessary.

Councilmember Fletcher stated he did not support making a change. He commented that when dealing with Xcel about the location of its poles he thought it best to go through the Public Utilities Commission.

There was Council consensus to take no action on this policy question at this time.

b. 2012 Road Project Recommendations and Rough Estimates

Engineer Martini stated each year the conditions of the City's roadways are evaluated by a committee based on a visual inspection, and rough cost estimates are prepared for recommended potential road improvement projects. The evaluation was done on April 9, 2012. The meeting packet includes copy of a document describing the potential road projects as well as soft cost estimates for each of the projects. Also included is a map of all of the City's roadways indicating when the last work was been done on each roadway and what the work was and a map depicting the current condition of each roadway.

Martini then reviewed the recommended potential road projects for 2012. All of them would essentially have the same scope of work. It entails removing the existing bituminous pavement, re-grading and preparing the existing aggregate base, 3.5 inches of new bituminous surface, and turf and driveway restoration as needed.

- 1) Curve Street (from Minnetonka Boulevard to the south end) – to the extent possible the Street will also be widened to the west approximately 2 feet to allow for additional room for vehicles to maneuver. The estimated cost for this portion of the project is \$31,226.
- 2) Central Avenue (from Curve Street to the east end) – The estimated cost for this portion of the project is \$17,292.

- 3) Greenwood Circle (the east leg from Minnetonka Boulevard to the improvements made in 2009 and 2011) – The estimated cost for this portion of the project is \$72,614.
- 4) Greenwood Circle (the fire lane from Greenwood Circle to the south end) – The estimated cost for this portion of the project is \$26,737.

Martini stated the goal is to try and maximize the budget for improvements; the same as was done in previous years. Therefore, the fire lane portion will be bid as an alternate so that it can be eliminated if it does not fit within the project budget. He noted the preliminary cost estimates include contingency and soft costs. He then noted the total estimated cost is \$147,869.

Mayor Kind noted the total road budget is \$130,000. She then noted the costs are not final bids. She stated she agrees with getting a separate bid for the fire lane. She then stated the estimated cost for Central Avenue is \$17,292 and that is almost the amount the proposed project is over budget. She explained that a problem with doing only a portion of a roadway is that is when the remainder is eventually repaired trucks will have to go over the recently repaired portion of the roadway. That would be the situation with the fire lane which goes down to the City-owned docks. From her perspective it makes sense to do an entire road at the same time. She stated Council could decide to transfer the difference between the budgeted amount and the cost from another fund.

Councilmember Quam stated the next step in this process is to secure two bids. Engineer Martini clarified one bid would be solicited and it would be made clear that the City may subtract some portion of the project as necessary. Quam asked if the bids would be back in time for Council's next meeting. Martini stated that would be the intent. Quam stated he assumed construction would begin sometime after July Fourth.

Mayor Kind noted that because the total project cost is more than \$100,000 the City has to go through a sealed-bid process. Engineer Martini noted that the project will also be publicly advertised in the official newspaper for the City and in the Construction Bulletin. Kind stated it also will be advertised on the City's website.

Councilmember Fletcher stated in 2011 there was discussion about doing preventative maintenance on Lodge Lane. A decision was made to delay that maintenance. He asked what the impact will be of delaying that again. Engineer Martini explained that when the tour was done this year the committee decided that the roads recommended for improvements in 2012 are in very poor condition. Eventually the roadways will be in a good enough condition that preventative maintenance will be a focus. Martini suggested careful attention be paid to Lodge Lane to make sure it doesn't deteriorate to the point that improvements will be more costly.

Fletcher asked if there would be any benefit to having Greenwood Circle, Curve Street and Central Avenue bid as one large project. For example, could the pricing be better because the contractor would not be worrying about the City cherry picking certain projects. Engineer Martini explained the fire lane segment would be done as an alternate and it would be explained the projects will be bid as one project with the costs for the various segments identified.

Fletcher moved, Quam seconded, directing the City Engineer to secure bids for the roadway improvement projects recommended by Mayor Kind, Councilmember Quam and Engineer Martini with the understanding that the Greenwood Circle fire lane will be bid as an alternate. Motion passed 4/0.

c. Excelsior Boulevard Reconstruction Project

Councilmember Fletcher stated it is his understanding that the Metropolitan (Met) Council is considering tearing up Excelsior Boulevard to extend a high-pressure sewer line in 2013. He thought this could be an opportunity for the City to have discussion about the possibility of having some improvements made that would be beneficial to the City. Engineer Martini stated he thought it would be worthwhile to ask a representative from the Met Council to provide Council with a brief update on the project and to ask some of the questions Fletcher was alluding to. Martini noted that he and Zoning Administrator/Clerk Karpas have had some brief discussions with representatives but nothing related to improvements specific to Greenwood.

Attorney Kelly stated in the last two days the attorney for the City of Excelsior has provided him and the attorney for the City of Shorewood with a copy of a draft agreement between the cities for this project with the Met Council. He noted that he is waiting for Council to direct him to review it. He stated that project scope is going to be finalized soon.

Mayor Kind stated Council needs to authorize Attorney Kelly and Engineer Martini to spend time on both the sewer and road portions of the project.

Attorney Kelly stated there have been drainage problems along Excelsior Boulevard for years.

Mayor Kind asked Council if it wants to authorize Attorney Kelly to review the draft agreement. Councilmembers Fletcher and Page expressed support for doing that.

Attorney Kelly noted that it was the shared opinion of the attorneys for Excelsior and Shorewood and him that they work collectively on the agreement. He explained that Shorewood's area of concern is less, noting it would start near the Excelsior Public Works location.

Quam moved, Fletcher seconded, directing Attorney Kelly and Engineer Martini to coordinate efforts regarding the Metropolitan Council's high-pressure sewer line project.

Sarah Ogilvie, 21170 Excelsior Boulevard, stated she is a mother of five children and she and her neighbors all use the sidewalk along Excelsior Boulevard to connect with the bike trail near McDonalds. There is concern that the sidewalk does not go all the way and that the sidewalk is very narrow. She asked if it would be possible to get an estimate for what it would cost to improve the sidewalk and to improve the aesthetics of it.

Councilmember Fletcher stated he thought the timing is now. He noted that he has been in discussions with Met Council about the water extension project and it is in the process of finalizing the project scope now.

Motion passed 4/0.

On an unrelated topic Mayor Kind stated there is an MS4 (municipal separate storm sewer system) report that has to be filed. Therefore, Council needs to authorize Engineer Martini to refine the report as needed and then file the report.

Engineer Martini stated the City must apply for an MS4 permit for its storm sewer conveyance system.

Councilmember Fletcher asked who prepared the report in the past. Engineer Martini responded Zoning Administrator/Clerk Karpas did. Karpas stated he is not sure it has been complete in the past, noting he is not an engineer. Fletcher asked what it cost to prepare the report. Martini said no more than \$1,000.

Mayor Kind asked Zoning Administrator/Clerk Karpas why he has some concern that the report may not be complete or that it may be unacceptable. Karpas responded there are a lot of things that he cannot answer for the report.

Councilmember Fletcher stated if Engineer Martini prepared the report this year he asked if Zoning Administrator/Clerk Karpas could update and submit the report going forward. Engineer Martini stated that would probably be true.

Fletcher moved, Quam seconded, authorizing Bolton & Menk to prepare and submit the municipal separate storm sewer system report for 2012.

Councilmember Quam asked Engineer Martini to comment on his professional credentials for the benefit of the Boy Scouts in the audience. Engineer Martini stated he graduated from college with an engineering degree. After graduating from college he practiced as an engineer for four years under a professional engineer. After that he took a test and became a fully licensed engineer by the State of Minnesota. He is employed as a civil engineer. He highlighted some of what he does in that capacity.

Engineer Martini departed the meeting at 7:50 P.M.

B. South Lake Minnetonka Police Department (SLMPD) Lieutenant David Pierson and Community Service Supervisor Dave Hohertz – SLMPD Quarterly Update

Mayor Kind noted that South Lake Minnetonka Police Department (SLMPD) Lieutenant David Pierson and Community Service Supervisor (CSS) Dave Hohertz were present to provide Council with a SLMPD quarterly update.

Lieutenant Pierson stated the CSS Hohertz will give an update on emergency management.

CSS Hohertz stated he provided Council with a copy of the 2011 year-end report on the SLMPD Community Service Officer (CSO) Program. The CSO Program started in 2008.

Hohertz (who has become certified in emergency management) explained there are four phases in emergency management. They are: mitigation (things than can be done in advance); preparedness (planning and training for potential disasters and emergencies); response (actions taken to lessen the impact of an actual emergency); and, recovery (actions taken to return communities to their pre-disaster state). South Lake emergency management planning is done for a variety of types of emergencies with the most likely being weather. South Lake emergency management activities involve FEMA (Federal Emergency Management Agency which provides guidance and issues mandates), HSEM (Homeland Security and Emergency Management) and Hennepin County Emergency Preparedness.

Hohertz noted there is an emergency management plan in place. It is in a continual state of refinement. He stated Cities will be provided with a copy of the plan once the most recent updates to it have been made. The Lake Minnetonka Regional Emergency Operations Plan (the Plan) was developed as part of a joint effort. Twenty cities participate in that group. The Three Rivers Park District, the Hennepin County Sheriff's Office and Hennepin County Emergency Preparedness are also involved. He displayed a list of

the annexes (similar to chapters) are included in the plan. In addition to the Plan there is a Lake Minnetonka Regional Resource Manual.

Hohertz explained that one of the biggest parts of emergency preparedness is being able to warn the public. Each community has to have their own outdoor sirens, and maintain and test them. Outdoor sirens are intended to warn people who are outside. They are not meant to be heard inside of buildings. Hennepin County is divided into siren zones. Most of the Lake Minnetonka area is located in zone 7. Greenwood does have its own warning siren. Sirens are tested on the first Wednesday of the month. Shorewood Public Works Director Larry Brown ensures there is someone at each of the sirens in the South Lake area when they are tested to verify the sirens work. He recommended residents get an all-hazard weather radio to make sure they can be alerted when they are asleep and in doors. The SLMPD applied for a grant a number of years ago to purchase those radios and there ended up being one for each South Lake city hall and the Southshore Community Center.

Hohertz noted disaster response begins and ends at the local level. He then noted that for the SLMPD he and Chief Litsey are the emergency management officials. He also noted that members of the local public service agencies are members of the Minnesota All-Hazard Incident Management Team. That team is highly trained and can be deployed anywhere in the United States. EFD Chief Gerber is a member of that team and has been for a number of years. He noted that he is also a member of the team as is Shorewood Public Works Director Brown.

The meeting was recessed at 8:05 P.M. and reconvened at 8:18 P.M.

C. City Council / Planning Commission Work Session May 16, 2012

Mayor Kind noted there is a joint work session of the Council and Planning Commission scheduled for immediately following the May 16, 2012, Planning Commission meeting.

5. PUBLIC HEARING

A. None

6. UNFINISHED BUSINESS

A. Potential Excelsior Boulevard Water Project

Councilmember Fletcher explained that Excelsior Boulevard will be torn up because of the Metropolitan (Met) Council's project to install a high-pressure sewer line along that roadway. It provides an opportunity to extend Excelsior's municipal watermain at a much lower cost to some of the properties in Greenwood located near Excelsior Boulevard. Many of the wells on those properties are not in the best of condition in part due to the high iron content of the well water. Some Greenwood property owners contributed to funding the cost of a feasibility study done by the Excelsior City Engineer. He determined the preliminary estimated cost per Greenwood property to extend municipal water to those residential properties is \$13,511 and \$14,511 per commercial property. That is the cost to install 12-inch pipe in the street only. It does not count the cost to connect to bring the water from the watermain to the house. If the size of the pipe were reduced to 8-inch it could reduce the watermain cost by \$1,000. The smaller size pipe would be sufficient to serve the residential properties and the couple of commercial properties.

Fletcher stated that after speaking with the residential property owners along that route eight out of ten are in support of this. Support diminishes after you get past 21170 Excelsior Boulevard. It doesn't appear that

commercial property owners are supportive of the project. The cost for the watermain extension would be paid for by property owners and may have to be done by using an assessment process. There could potentially be a bank that would finance the project and then the City would be a pass-through and assess the properties.

Mayor Kind asked the property owners who are in opposition would be assessed for watermain. Councilmember Fletcher explained they would because the watermain would be available for use at a later date. Kind then stated a 12-inch pipe would allow for the opportunity to extend watermain further at a later date. Fletcher stated if 12-inch pipe is not extended even further now when Excelsior Boulevard is torn up it will be another 20 to 30 years before that extension would be considered again. Fletcher stated there would be a benefit to Excelsior to have the pipe be extended even further and therefore maybe they would pay the additional cost for a 12-inch pipe. Kind commented that there would be a benefit to both the Cities of Excelsior and Greenwood to have the larger pipe.

Councilmember Fletcher stated from his vantage point if the per property cost can be kept lower the likelihood of it coming to fruition increases.

Councilmember Quam re-asked Councilmember Page's question if property owners can pay for this over a number of years. Councilmember Fletcher stated he hoped some type of financing arrangement could be worked out.

Councilmember Fletcher explained there are a number of hoops that have to be jumped through for the City to assess for something. He stated from his vantage point assessing would be a secure thing to do.

Councilmember Quam asked what the timing is for committing to this. Councilmember Fletcher stated there is a strong desire to work out the details of this project quickly. Quam asked what the next steps for the City are. Fletcher explained the City Attorney needs to spend some time on the legal side of this. An engineer needs to do some additional analysis to provide the supporting information for justifying an assessment. The properties would have to be assessed to ensure their increase in value is sufficient to justify an assessment. The costs for those things need to be tracked and paid for out of project funds.

Councilmember Page suggested the interested parties pay for those costs.

Mayor Kind stated a fund could be established and maintained at a certain level to cover those types of costs.

Councilmember Fletcher stated he has a neighbor who would pay those costs if the project ended up not being done.

Sarah Ogilvie, 21170 Excelsior Boulevard, stated she and her family are strongly in favor of extending the watermain. Their well water has a tremendous amount of iron in it and even a high quality water purification system doesn't address the problem satisfactorily. She then stated this is the time to do the extension.

Rob Roy, 21270 Excelsior Boulevard, stated he is totally in favor of the watermain extension. This is the opportune time to do it because Excelsior Boulevard is being torn up for other purposes.

Councilmember Fletcher read an email Zoning Administrator/Clerk Karpas received from Joel Bottenhoff about the property located at 21000 State Highway 7. It read as follows. *"Thanks for talking to me this afternoon regarding a potential waterline on Excelsior Blvd. For the record 5th Street Ventures, LLC*

owner of the above referenced property is opposed to paying any assessment or charge for city water services. In these challenging times, business cannot continue to pay for unnecessary services. The property's current tax obligation already makes it difficult to lease the property. From our perspective this undertaking is totally unnecessary and unaffordable. I am unable to attend this evening's council meeting. Please forward this email to the appropriate individual so that our opinion can be heard. Thank you for helping me out on this matter."

Mayor Kind asked Councilmember Fletcher what he is asking Council to do this evening. Fletcher stated he would like Council to authorize the City Attorney to review legal matters and to have the City Engineer review and provide his approval of the engineering portions of the project that affect the City.

Mayor Kind stated if the City were to establish a resident prefunded fund for paying for those services she asked how much money the fund should have to start with. Councilmember Fletcher stated he thought \$10,000 should cover those upfront costs.

Attorney Kelly asked if the money would be credited back to the property owners on assessment. Fletcher stated he thought it should be. Kelly asked on what basis the City would receive money from individual residents in trust to be used for a project the City didn't bless and then give the property owners credit back on an assessment the City hasn't publicly published or approved. Kelly stated from his vantage point the cart is before the horse. He noted there is a process (including a public hearing) that has to be followed and that needs to be discussed in front of Council. He explained if a 12-inch pipe is installed because it would facilitate beyond the immediate the difference in cost should be considered as a general assessment because it benefits the community. Even the 8-inch pipe will have a general component and a special component. That is typically determined by a city engineer in analysis together with a real estate appraiser. Based on the report it may not be possible to assess 100 percent per front foot of this project to the abutting properties. Some of the cost may need to be incorporated into the general budget or a general assessment across the City could be made if it cannot be incorporated into the budget. If all abutting property owners were to sign a petition supporting the project the City could forego certain things. The 429 process would need to be followed. Because there isn't 100 percent support from property owners at least 35 percent would have to petition the City to look into the project. The City could also decide to move forward with a project without a petition, noting that also requires a public hearing and notices.

Kelly stated the appropriate thing to do would be to provide Council with an overview and a couple of procedural options for consideration at a future meeting. Mayor Kind asked who would present the overview. Kelly stated there would be two elements; a legal analysis and a civil engineering analysis. Kind stated she assumed that would cost the City. Kelly explained, for example, Councilmember Fletcher and his neighbors could submit a petition to the City for watermain and then it would be incumbent on the City to consider the petition and procedurally act on it as mandated by State Statute. There are a number of triggers that could occur. The City has the authority to consider a public works project for the benefit of the community.

Councilmember Page stated an alternative would be for those who want municipal water to bring forward a presentation to Council including a legal analysis and an engineering analysis. The property owners would pay for that. He noted that Councilmember Fletcher stated his neighbor would guarantee paying for those costs if need be. He stated it will be easy to determine who is really for the project when they have to write out a check to cover those costs.

Attorney Kelly stated at any time a magnanimous citizen can make a gift to the City for those purposes.

Councilmember Fletcher stated it is easier to do that if the payment of those costs is credited to the assessments. Yet, Attorney Kelly indicated that would be problematic. Kelly reiterated it would be.

Fletcher then stated he maintains there would be a benefit to the City to have the watermain extended.

Mayor Kind stated the next step would be to wait for a petition to be submitted. Councilmember Fletcher stated the property owners need to work with the Attorney Kelly to gain a clear understanding of what the format of the petition needs to be. Kelly noted there is a standard petition format. Kelly stated it will be important to make sure the petition has been properly executed and then it will trigger a process. He reiterated it may be more beneficial to start with an overview of what the process will lead to as opposed to launching into a petition immediately. He noted that he cannot act as legal counsel to a group of residents wanting to submit a petition to the City. If the City Council, after having polled the matter by calling a public hearing to at least bring people forward, gains an understanding of what the political support is for the process, the City could potentially proceed without a petition.

Mayor Kind stated she is reluctant to have the City initiate the process.

Councilmember Quam expressed concern about the timing. He stated if Council was provided an overview during its June meeting and came to agreement on what the next steps should be he asked Councilmember Fletcher if there would be enough time for this element of the watermain extension to be incorporated into the project. Councilmember Fletcher noted that if the project looks like there won't be support for it, the property owners are not going to spend \$10,000 to provide Council with the requested overview information. He stated there are things the City does that are beneficial to certain areas in the City. He then stated the costs for doing this would be paid back to the City. He expressed his preference for having Attorney Kelly involved up front.

Councilmember Page stated the City Attorney cannot advise a group on a petition it wants to submit.

Councilmember Fletcher asked Attorney Kelly what he thought the cost for legal services would be to put an overview together about the legal element. Kelly indicated he was not sure. Kelly stated Council as elected officials should first decide if this is a matter of public interest and then move forward with that decision guiding them. He noted that he cannot measure that.

Mayor Kind expressed concern about the City taking on additional expense that benefits a few people when there it is a City of 688 people. She reiterated her suggestion that the property owners come forward with a petition and then the City will process it appropriately.

Councilmember Page stated if they present a petition in the appropriate legal form then the City has certain obligations to proceed. Attorney Kelly stated that could result in the need to proceed with an engineering analysis and a cost benefit analysis paid for by the City. They have the right to ask for public services to be considered for an improvement. He noted that if there were 100 percent support the City's hands would basically be tied.

Councilmember Page stated he doesn't know enough about the process and how it works.

Attorney Kelly stated a petition would first be evaluated to ensure it is legal and sufficient. The City would then determine what its requirements are at that time. Council could also decide that there is sufficient potential benefit to the City without the petition being the trigger to at least start an overview process. It is at Council's discretion which approach it wants to take.

Mayor Kind reiterated she prefers taking the petition path. Councilmember Page agreed.

There was Council consensus to wait for a petition to be submitted.

7. NEW BUSINESS

A. Consider Variance Requests, Keith and Stacy Carlson, 20965 Channel Drive

Zoning Administrator/Clerk Karpas explained Keith and Stacy Carlson, 20965 Channel Drive, are requesting a lake yard setback variance and a variance to exceed the maximum permitted impervious surface area. They propose constructing a cantilevered fireplace and front entryway. The proposed front yard setback for the fireplace would be 25 feet. Section 1120:15 of the Zoning Ordinance requires a lake yard setback of fifty feet as measured from the ordinary high water level. Therefore, it requires a variance of 25 feet of the required lake yard setback. The applicants propose a lake yard setback of 35 feet for the proposed front entryway. It will be over the existing pad. It requires a variance of 15 feet of the required lake yard setback. The proposal will result in the maximum impervious surface being exceeded by 6.5 percent. Section 1176.04(3)(3) permits a maximum permitted impervious surface area of 30 percent. The 6.5 percent included a deck extension that would encroach into the required lake setback. That was removed from the request and will go back to the Planning Commission for review during its May 16 meeting.

Mayor Kind asked what the proposed impervious surface will be after removing the deck. Zoning Administrator/Clerk Karpas explained the deck was going to be reconstructed at a slightly larger size than the old deck and he does not know offhand what the reduced impervious surface would be. Councilmember Quam noted that the 36.5 percent proposed impervious surface would be less than the current impervious surface of 39.4 percent.

Zoning Administrator/Clerk Karpas stated the motion could be made to ensure that the new reduced impervious surface would not exceed 36.5 percent minus the amount for the deck expansion.

Councilmember Fletcher stated his calculations indicate the proposed impervious surface after the deck is removed would be 35.67 percent.

Councilmember Quam asked the applicants if what Council has is the final request. Ms. Carlson responded yes in this regard. There will be a future application for the deck which they are redesigning. Councilmember Fletcher stated it is his understanding that there will be another application about trees. Mayor Kind stated the applicants are allowed to have separate requests. Fletcher clarified the deck request will be a continuation of this application. Councilmember Page asked if that meant the deck will be ruled on as part of this request after these items have been ruled on. Kind stated that is correct.

Ms. Carlson explained that the Planning Commission was going to recommend denying their proposed reconstructed deck. They withdrew their proposed deck from the application. They have since redesigned the deck and resubmitted that component of their application. Councilmember Quam asked the applicants if they would be okay if Council approved what is before them and then rejected the resubmitted deck component. Ms. Carlson stated they would. She then stated what they are proposing is basically within the footprint of the 1960s Cape Cod style house.

Mayor Kind stated currently what the applicants have is a legal nonconforming use. That means they are entitled to keep what they have.

Councilmember Fletcher reviewed how he thought the entryway satisfies the practical difficulty standard. The current house has a front overhang and it seems natural the applicant would want a front entry way. There is a lake front setback on two sides of the property which makes it more difficult. Therefore, the setback request seems reasonable. The variance will not alter the essential character of the locality because there will be a lot of screening and the architectural appearance from the channel will be more appealing. He stated because the proposed fireplace is on the channel side of the property he is not concerned about it fitting in with the character of the area. Based on what he saw when the house was for sale he thought it may make sense to have the fireplace cantilevered.

Mayor Kind stated that Code Section 1145.00 Nonconforming Uses: Nonconformities (i) states “*In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, stormwater runoff management, reducing impervious surfaces, increasing setbacks*” The applicants are proposing to reduce their impervious surface and the net effect of the overall setbacks will be better.

Fletcher moved, Quam seconded, approving the variance requests by Keith and Stacy Carlson to construct a cantilevered fireplace that encroaches twenty five feet into the required fifty-foot lake yard setback, to construct an open air entryway that encroaches fifteen feet into the required fifty-foot lake yard setback, and a proposed 35.7 percent impervious surface that exceeds the maximum permitted impervious surface area as presented. Also, directing the City Attorney to draft findings of fact based on Council’s discussion this evening for Council’s consideration at its June 6, 2012 meeting. Motion passed 4/0.

B. Potential Support of Xcel Energy Alternate Route

Mayor Kind explained that Xcel Energy had sent Notice of Certificate of Need proceedings to upgrade the Southwest Twin Cities Bluff Creak-Westgate 69kV transmission line to 115kV capacity to all affected property owners in the cities of Chanhassen, Deephaven, Eden Prairie, Excelsior, Greenwood, Minnetonka, and Shorewood. The notice included an explanation of the regulatory process that the Minnesota Public Utilities Commission will follow. A copy of the notice is included in the meeting packet. It includes a map that shows an alternate route that moves the route off of the Greenwood and Deephaven sections of the Light Rail Trail (LRT) and relocates it to Vine Hill Road and Highway 7. Another option that has been discussed is the concept of moving the Deephaven substation to along Highway 101 and running the route along Highway 101 and Highway 7. This route was supported by the Deephaven Parks Committee and will be discussed by the Deephaven Council as another alternate route. The proposed Highway 101/7 route would follow major roads versus a recreational / residential corridor. The proposed Highway 101/7 route also would affect Greenwood residents living along Highway 7.

Kind noted that Greenwood resident Brian Burdick requested Council support an alternate route that does not follow the LRT. A copy of Mr. Burdick’s email to neighbors and letter to Deborah Pile with the Minnesota Division of Energy Resources are included in the meeting packet. Several additional emails, both pro and con for the alternate route, have been provided to Council this evening.

Kind then noted Paul Lehman and Tim Rogers with Xcel Energy are present this evening.

Tim Rogers, with Xcel Energy, stated this project requires two approvals from the Public Utilities Commission. One is the Certificate of Need for the project and Paul Lehman is the lead for that. The second is approval from the Commission on the route and he is the lead on that. He noted that he and Mr. Raymond are present to answer any questions there may be. In response to a question from

Councilmember Quam, Mr. Rogers stated Xcel representatives recently heard about the option to move the substation located in Deephaven.

Mr. Rogers explained that before Xcel submitted its route application it held open house meetings to take public comment about the project and to tell people about what was being proposed. The proposal was to rebuild the line in its existing alignment. At one of the open houses a group asked if Xcel could analyze a route that would relocate the current Greenwood LRT Trail route to Highway 7 and Vine Hill Road that would connect to the substation in Deephaven. An analysis was done of that route and it was also included in the permit application as an alternative that was evaluated and rejected. After the permit application was submitted Xcel has gotten wind of some other proposals that are floating around with one of them involving relocating the Deephaven substation to along Highway 7. He had not heard about the proposal to relocate it along Highway 101. The Commission of the Department of Commerce has been charged with preparing the environmental assessment. It will use Xcel's permit application and have a scoping meeting with the communities to find out what the communities want to have studied as part of the environmental assessment as well as all the routes communities think are a possibility. Xcel will provide the Department of Commerce with information it has accumulated and prepared to help with the assessment. After the assessment is done there will be an administrative law judge that will hold a hearing and take public comment about the assessment.

Councilmember Quam asked Mr. Rogers what the timing will be for those activities. Mr. Rogers stated Xcel hopes regulatory process for the route and Certificate of Need will result in approval by the end of this year. Xcel thinks the route and Certificate of Need will be handled jointly but there is no guarantee that will happen. Quam asked if Xcel rejected the alternate route. Mr. Rogers stated that it did and put forth the route along the current alignment. Quam asked what it would take to change the route. Mr. Rogers stated it is the Commission's job to look at the all of the balance of facts and decide what the best route is. Quam asked if cost was factored into Xcel's decision making process. Mr. Rogers stated it was. Quam asked if moving a substation is a huge expense. Mr. Rogers stated it would be very expensive.

Councilmember Fletcher stated it is his understanding that the Commission is first going to have a hearing to determine if Xcel's application is complete. Mr. Rogers stated that is the current stage in the process.

Mayor Kind stated concern has been expressed about electric magnetic fields (EMF). Specifically, about a 115 kV transmission line emitting more EMF than a 69kV line. She asked if the net result will be the same because the poles will be higher and therefore the lines will be further from the ground. Mr. Rogers stated that in the application Xcel provided electric field and magnetic field values at certain distances from the centerline. That analysis will be in the environment assessment and it is in the permit application. The electric field is expected to increase and the magnetic field is expected to be less than what it is right now for at least the near future.

Kind then stated another concern has been the aesthetics of power poles along the LRT Trail near Lake Minnetonka. She asked how it will look from the Lake. Mr. Rogers stated Xcel's proposal is to put the new poles as close as possible to the location of the existing poles. Currently there are a variety of types of different structures. The application suggests two types of poles made of steel. Kind asked if burying the lines is an option with the high voltage line. Mr. Rogers stated he expects that option to be included in the scope of the environmental assessment. Based on his experience, underground lines are reserved for very high density areas.

Mr. Lehman stated he is a regulatory manager with Xcel. He explained burying transmission lines is reserved for circumstances where the ability to build an overhead line is virtually impossible for a variety

of reasons. Mayor Kind asked if EMF is an issue if the line is buried. Mr. Lehman stated it is a different issue but there are still EMF considerations that must be taken into account.

In response to a question from Councilmember Fletcher, Mr. Lehman stated the Department of Commerce and the Public Utilities Commission are the decision makers. They will make the decision about burying transmission lines. The Department of Commerce is to build the record for the Commission through an administrative law judge. Many factors will be considered. The Public Utilities Commission will be the ultimate decision maker. The decision about who pays for how things are constructed is a subsequent regulatory proceeding. It is not part of the Certificate of Need proceedings.

Mayor Kind asked who the contact person is about EMF. Mr. Rogers stated he is the contact person for questions related to environmental issues.

Mr. Lehman stated if the City chooses to send any information to the Department of Commerce or the Minnesota Public Utilities Commission it would be helpful if it gets to the right spot. Docket numbers are assigned to the proceedings. Therefore, it is helpful if the Docket number is included in the correspondence. Refer to Docket No. E002/CN-11-332 in the correspondence.

Mayor Kind explained that Mr. Lehman's letter suggested contacting Bret Eknes, Deborah Pile or Timothy Rogers yet other correspondence suggested contacting other individuals. She asked who to contact. Mr. Lehman explained that Mr. Eknes with the Public Utilities Commission will be the lead contact in the Certificate of Need process. He noted if the Docket number is included in the correspondence the information will flow to the correct spot.

Mayor Kind asked Council how it would like to proceed.

Councilmember Fletcher stated he prefers doing nothing right now.

Mayor Kind stated she would like to get information about EMF before Council makes a decision whether or not to support any particular route. Council can discuss that information during its next Council meeting before making any recommendation.

Councilmember Fletcher suggested that if Council is considering making a recommendation about an alternate route then it is imperative Council understands the implications of each of the routes.

Keith Stuessi, 5000 Meadville Street, stated he heard that the magnetic field will be less in the near future. He asked if that can be increased by Xcel in the future. Mr. Lehman explained that there is a current customer load that is served by the current power line at 69kV. When the transmission line is converted to 115kV the amount of current through the line would be reduced. As with any power line when the demand for power goes up, the current through the line goes up. There are two distribution substations that distribute power to the customers; one is located in Excelsior and the other in Deephaven. The distribution feeders from the substations serve the various communities as a whole. Councilmember Fletcher stated the distribution lines are passive lines and they are part of a whole system.

Mayor Kind stated the City will be following up with Mr. Rogers to get EMF information for Council's June meeting. Mr. Lehman stated that information will be provided as part of the environmental assessment. If it is desired before that Mr. Rogers will try his best to get that information for the City. Kind stated the City can wait for that. Kind asked if there is a need to weigh in on this sooner versus later. Mr. Lehman stated that by waiting the City would not leave itself out of any consideration. Kind asked when the environmental assessment report will be completed. Mr. Rogers stated the scoping meeting for

the assessment is a key meeting. That defines all of the things that need to be included in the assessment. That would be a good time to submit comments and ask questions. The scoping meeting will likely be in June or July. The assessment will be done after that.

Councilmember Fletcher stated this could be continued to June and to additional meetings depending on the information that is available. It could be a standing agenda item. The consensus of the Council was to continue the discussion to the June and future agendas as needed.

C. Potential Review of Hardcover and Setback Requirements for Lots Smaller than 15,000 Square Feet

Mayor Kind explained that resident Keith Stuessi, 5000 Meadville Street, asked that the topic of hardcover and setback requirements for lots smaller than 15,000 square feet be placed on this meeting agenda for Council discussion. The meeting packet contains copies of emails between Mr. Stuessi, Planning Commission Chairman Pat Lucking, and Councilmember Fletcher and others related to this topic. Council has also been provided with a copy of an email from Jill Nagle. Mr. Stuessi is going to make a brief presentation this evening.

Mr. Stuessi stated his purpose in being here this evening is to recommend to Council and the Planning Commission that they review the hardcover and setback requirements for lots smaller than 15,000 square feet. He believes there are two main reasons for these needed revisions.

Mr. Stuessi explained that first there are two dozen smaller lots on the main lake and St. Alban's Bay with teardowns that already have nonconforming structures on them. Almost all of them have severely nonconforming hardcover. They do not comply with the existing Ordinance. He thought the issues should be dealt as a courtesy to all of the neighbors before the property owners ask the City for some type of variance. He does not think they have any idea what they can do with their property.

Mr. Stuessi then explained that he does not think there has been any consistency in how variances have been granted. A 7,000 square foot house was constructed next to his property in 1995 on a lot smaller than the minimum size lot requirement for the R-1A zoning district. In a recent email he wrote to the City he referred to five small properties (less than 10,000 square feet in size). During 2005 and 2006 where three were given three to five variances each. These variances resulted in huge houses. During that same period of time two small property owners were denied any variances. Variances ought to be granted consistently.

Mr. Stuessi reviewed some numbers that he thought Council might find interesting. Fifteen new houses have been built on the main lake since 1995 when he thought the teardown phase began in the City. Fourteen of those houses are over 4,500 square feet in size and have three-car or four-car garages. Ten of the houses were built on lots that were at least the minimum lot size for the R-1A zoning district with virtually few issues. Four were granted huge variances on the smaller lots. From his vantage point the variances were very detrimental to neighbors, and they set a precedent. There were four instances where neighbors moved because they were frustrated with what was allowed.

Mr. Stuessi noted he has lived along Meadville Street for 34 years. He explained that during that time there has been less than one turnover per year out of the 56 main lake properties. That low turnover rate is highly unusual. The three top property tax assessors in St. Paul thought the typical turnover rate for those types of properties would be five to six per year. That low rate of turnover coupled with the construction of huge houses on small lots has distorted expectations of what people think they can or should be able to build on their properties.

Mr. Stuessi noted that today there are at least 28 families out of the 56 that live near the main lake that have lived in their old homes for over 30 years. He explained that at least 15 of the houses are what he considers teardowns on small lots. Due to the fact that many of the property owners are older he thought there will be a major turnover of the properties over the next five years. Therefore, he thought it prudent to revise the hardcover and setback requirements before that turnover stage begins. He recommended Council and the Planning Commission take the time to go and look at 18 to 20 of the lots. He also recommended they ask the current property owners who have lived there for over 30 years what they would expect a new owner of their property to be able to build on it. He noted that did not think the updated State law regarding the ability to replace a nonconforming home on the same footprint makes sense in many instances. He stated he thought the issues need to be addressed sooner versus later. Problems that could occur down the road can be mitigated by adjusting the hardcover and setback requirements now.

Councilmember Quam asked Mr. Stuessi what he wants from Council. Mr. Stuessi responded that he does not want to lay out a play during the meeting, and noted that he did not think there are a lot of easy answers. He commented that often it is easier to ask good questions than to provide good answers. That is the case now. He again recommended Council and the Planning Commission take the time to go and look at the properties and talk to the residents. After doing that the Commission and Council can discuss how the Ordinance should be adjusted with regard to hardcover and setback provisions. He asked if properties that already have 50 percent hardcover are going to be grandfathered in. He stated he does not think that would make sense. He thought it would be helpful to talk to people in advance of them coming to the City for a variance request.

Quam then asked Mr. Stuessi if he was suggesting people should be able to build the large houses on the small lots. Mr. Stuessi clarified he is not.

Mayor Kind stated she understands Mr. Stuessi to be recommending the rules be clarified and enforced consistently. A place to start would be with reviewing variance requests that have been granted.

Kind noted that Zoning Administrator/Clerk Karpas has suggested reviewing how many properties currently comply with the current lot width minimum requirement of 75 feet and the 15,000 square foot lot size minimum in the R-1A District. Karpas explained that was done in the City of Deephaven and found that many lots complied with Deephaven's ordinance but many did not. The Deephaven Council chose not to revise its ordinance.

Zoning Administrator/Clerk Karpas explained that hardcover to some extent is regulated by the Minnesota Department of Natural Resources. Many of the lots were developed before shoreland management regulations were implemented. The City is permitted to allow up to 30 percent, and then up to 45 percent with a conditional use permit and variance. Although State Statute allows property owners to replace an existing nonconforming structure with one of the same footprint, the variance process still must be followed. He stated he thought the City would have some flexibility with requiring a structure that will be replaced. For instance a building that is only three feet from the property line may be relocated to five feet from the property line. He then stated the Planning Commission did try to manage the size of the house through the massing provisions in the Ordinance. But, the State Statute says the footprint and height could be replicated.

Karpas stated he could review the county records for lot information and determine how many lots don't comply with the lot size and width requirements in the R-1A District.

Mayor Kind stated it would be helpful to current or future property owners to know what the setback requirements are and to consistently enforce them. She stated that the Ordinance requires a minimum house width of 25 feet and a side yard setback totaling 30 feet for a total lot width of 55 feet. Kind noted there are many lots in the R-1A district that are not 55 feet wide. She suggested having Zoning Administrator/Clerk Karpas determine how many R-1A lots comply with the Ordinance requirements and then have the Planning Commission review that information and decide if it wants to recommend adjustments.

Councilmember Page suggested that during the upcoming joint Council and Planning Commission meeting there be a discussion about whether or not there is any desire to revisit the Ordinance. He noted that a thorough review of the Ordinance was done within the last few years. He stated a lot of thought was put into that review. He noted there is nothing that can be done about State Statute.

Zoning Administrator/Clerk Karpas stated he will try to get the compliance information together before the work session.

Mr. Stuessi reiterated that he thought it would be beneficial for Council and the Planning Commission to go and look at the small properties and to talk to the residents in those areas. He asked if a house very close to a property line or one with eaves that hang over the property line burns down, can it be rebuilt in the same place?

Councilmember Page stated to Mr. Stuessi that it was unfortunate that he did not come forward during the time when 80 hours was spent on the massing Ordinance. Mr. Stuessi clarified that he did and he brought up the issue at that time. Mr. Stuessi noted that this is a slightly different issue than massing. He explained that he is suggesting that side yard setback and hardcover requirements be adjusted. A task similar to how massing was dealt with.

Mayor Kind thanked Mr. Stuessi for coming before Council to discuss this and she noted it will be discussed during the joint Council and Planning Commission meeting.

Councilmember Fletcher clarified that the State Statute provision regarding foundation size was in place before the City approved its massing Ordinance. Attorney Kelly noted that State Statute stipulates that people cannot be forced to abandon a footprint. Fletcher stated there has been reference this evening that the State Statute came into effect after the massing Ordinance was approved. It did not.

D. Potential Clean Up of St. Alban's Bay Shoreline Along Minnetonka Boulevard

Mayor Kind explained Greenwood resident Bob Quinn requested the topic of clean-up of St. Alban's Bay shoreline along Minnetonka Boulevard be placed on the meeting agenda for Council discussion. She noted the meeting packet contains a copy of an email from Mr. Quinn.

Mayor Kind stated in the interest of time [it was 10:03 P.M.] she asked if Council wants to continue this item to the June 6, 2012, Council meeting. This is not a pressing matter.

There was Council consensus to move this item to the June 6, 2012, meeting agenda.

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

There was Council consensus to continue this item to the June 6, 2012, meeting agenda.

Mayor Kind noted this is not a pressing matter.

8. OTHER BUSINESS

A. Second Reading. Ordinance No. 209, Amending Ordinance Code Section 1140.85 Subd. 2 Regarding Trees

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

Mayor Kind explained this is the second reading of Ordinance 209, amending Ordinance Code Section 1140.85 Subd. 2 regarding to Diseased Trees.

Councilmember Page stated from his vantage point Section 1140.85 Subd. 2(4) which read "*Any living or standing tree affected by any other pathogen determined to be harmful by the state of Minnesota*" is vague.

Mayor Kind explained that this is the language suggested by the City Forester.

Fletcher moved, Quam seconded, Approving ORDINANCE NO. 209, "An Ordinance of the City of Greenwood, Minnesota, Amending Ordinance Code Section 1140.85, Subdivision 2 Regarding Trees." Motion passed 3/1 with Page dissenting.

9. COUNCIL REPORTS

A. Fletcher: Planning Commission, Lake Minnetonka Communications Commission

With regard to the Planning Commission, Councilmember Fletcher stated the main item discussed at the last Planning Commission was Item 7.A. He then stated discussion about landscape hardcover versus structural hardcover may warrant discussion by the Planning Commission.

With regard to the Lake Minnetonka Communications Commission (LMCC) activities, Fletcher stated there is nothing significant to report.

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

With regard to the South Lake Minnetonka Police Department, Mayor Kind stated the SLMPD Coordinating Committee will meet on May 9, 2012, at 5:30 P.M. in the public safety facility located in the City of Shorewood.

With regard to administration, Kind stated that she and Councilmember Page had measured the Lake Minnetonka water level where the City docks are located. The City then submitted a temporary low water dock extension permit application for the City docks because of the low water. The application was approved and the docks have been extended out an additional 32 feet.

The City has received a request for a temporary liquor license which is not allowed by Ordinance. It was for a special event that is going to happen at a chiropractic clinic located next to Highway 7. It is too late for them because of the lack of an Ordinance. She asked if Council would like to add temporary liquor licenses to the Ordinance. Councilmember Fletcher stated if there is a business person who would like the City to have temporary liquor license provision in the Ordinance then they should approach Council with

such a request. Zoning Administrator/Clerk Karpas stated this is the first request there has been in 13 years.

The next total maximum daily load (TMDL) stakeholder meeting is scheduled for May 8, 2012, from 8:30 to 10:00 A.M. at the Freshwater Institute. Interested parties are asked to reply by May 4.

On July 29 at 4:30 P.M there will be a free ice cream social and band concert at the Old Log Theater.

With regard to mayor's meetings, Kind noted she attended a couple of meetings. She will update Council on them next month.

C. Page: Lake Minnetonka Conservation District

Rob Roy, 21270 Excelsior Boulevard, (the St. Alban's Bay captain) stated Councilmember Page is Chair of the lake Minnetonka Conservation District (LMCD) Aquatic Invasive Species (AIS) Task Force. He expressed his disappointment that during an LMCD meeting Page would not allow the results of the milfoil treatment of Gideon Bay and St. Alban's Bay to be entered in the AIS subcommittee report. There was no discussion at the committee level. He commented that as a business man he wants to know everything he can about a topic before he makes a decision. He then stated that Gabriel Jabbour, a member of the Task Force, suggested the value of the Army Corps of Engineers pro bono time be included in costs (\$3,000-\$5,000). He went on to state when he was preparing a report on the benefits of the milfoil treatment he came up with an average cost of \$411 per acre over two-year period to chemically treat milfoil. He explained he then used the cost from the LMCD's published income statement to calculate the cost to harvest milfoil. The operational cost to harvest St. Alban's Bay (not including equipment capital costs) is \$293 per acre. He noted that milfoil grows back 4-6 weeks after it is harvested. Therefore, it typically is harvested twice. The cost to harvest twice in a year would be \$586 per acre. Harvesting costs will increase once capital costs are included. He noted he has requested a balance sheet from the LMCD so he can figure out what the capital costs are.

Mr. Roy stated he attended an LMCD Board meeting and he was disappointed that during the meeting the chair would not allow members of the audience to comment. He then stated during the meeting the AIS Task Force presenter explained there is disconnect between the report and results experienced by lake users. For instance the reported results of the chemical treatment indicated that Grays Bay still had 90 percent milfoil. Yet lake users of Gray's Bay say that the amount of milfoil is greatly improved. It appears that the explanation for the disconnect is related to the "point intercept" method of measuring results, where a rake is dropped in the water in a specific area and whether one strand or 10 strands of milfoil are found on the rake, it is classified that there is milfoil in that location. This may explain why there is a difference between what lake users are seeing versus what the reports say.

Mayor Kind recessed the meeting at 10:17 P.M.

Mayor Kind reconvened the meeting at 10:24 P.M.

Councilmember Page clarified he does not have the power to decide whether or not to include or exclude treatment results information about Gideon Bay or St. Alban's Bay in the AIS Task Force's report. The committee consensus determined what was included in the report.

Page stated Council had been provided with a copy of a LMCD budget that reflects an increase of 2.6 – 2.7 percent. That has to do with the discontinuance of depleting reserves that has been going on since 2007. The level of reserves is about mid-level of what is recommended; it is about 40 percent. He

explained the budget reflects \$30,000 being allocated to some sort of AIS control aside from harvesting. The line item for inspections was deleted from the budget. The plan is to submit a grant application to the Minnehaha Creek Watershed District (MCWD) in 2013 with the hope the LMCD will receive funds to fund AIS inspections. Save-the-Lake funds could also potentially be contributed to AIS control. Mayor Kind noted a cover letter from LMCD Executive Director Nybeck states money may come from the MCWD, the Department of Natural resources (DNR) or the Three Rivers Park District.

Page noted a representative from the MCWD encouraged the LMCD not to count on receiving any funding from the MCWD for AIS treatment. He explained the watercraft inspection money referred to in Nybeck's memo is for inspections; not treatment. That inspection funding should be forthcoming. The MCWD representative explained the MCWD is going to determine what types of AIS treatment and control will work and provide advice on that. During the budget meeting it was stated that the MCWD's comprehensive AIS management plan is one to two years out.

Page stated he attended a joint meeting of Lake Minnetonka Association (LMA) and MCWD representatives yesterday. He commented that the LMA basically said the same thing it has said at a Council meeting and at a LMCD meeting; the treatment was wonderful and the LMA needs money. He stated the MCWD indicated it has no plans to contribute money for AIS control until it has a comprehensive MCWD wide plan. He explained a representative from the MCWD present at this meeting indicated that he was present to manage expectations. It was not likely the MCWD was going to contribute to chemical control of AIS. He noted that whatever the MCWD does it has to be District wide and that would be cost prohibitive. He stated the DNR has indicated that no one should count on funds from the DNR for chemical control once the five-year pilot program is complete. He noted the AIS subcommittee report recommends no more chemical control after the five-year pilot program is completed until there is a management plan developed for Lake Minnetonka.

Page then stated based on what he has heard, Council could decide the City should levy to chemically treat St. Alban's Bay, noting no one finds that palatable. The LMA wants people to encourage the LMCD to pay for the chemical treatment. To do that the LMCD would have to levy the 12 member cities a larger amount. The LMCD currently does not levy the maximum that it can; it could levy another \$147,000. Or, the treatment could be funded through private donations or partnerships.

Page stated the AIS Task Force had reached consensus to recommend that the LMCD Board transfer responsibility for developing a comprehensive AIS management plan for Lake Minnetonka back to the AIS Task Force. Mayor Kind stated the Task Force report doesn't say that. It says the Task Force does not recommend continuing the chemical treatment program past the end of 2012 until a comprehensive vegetation management plan is developed for Lake Minnetonka, but the report does not say anything about who is going to develop the plan. Page clarified that the LMCD Board is wanting to transfer the responsibility of the plan development to the AIS Task Force. Page stated he doesn't see the result being a comprehensive plan, but that the plan likely will be to see which bays are interested in chemical treatment and then make a plan based on the interest.

Page stated people need to be realistic about what the options are going forward, noting the MCWD is not one of the options. The DNR is not an option either. It is either going with what there is with the LMCD and private donations or upping the LMCD funding and reducing private donations.

Mayor Kind noted she supports the AIS Task Force developing an interim lake vegetation management report until the MCWD develops a comprehensive District wide plan. She stated she was pleased to read in LMCD Executive Director Nybeck's letter that the \$30,000 could be used toward alternative AIS treatment. Councilmember Page stated that came about because of suggestion from him. Kind explained

that Nybeck offered to come to a Council meeting to discuss the LMCD budget. She asked if Council would like to put him on the June meeting agenda. Page noted he has already explained what the budget increase is for 2013 and it only to stop the depleting reserve funds. He does not think much would be gained by Nybeck coming.

Kind stated she was present at an LMCD meeting when there was discussion about whether or not to include the treatment results for Gideon Bay and St. Alban's Bay in the report appendix. It was the LMCD Board's decision to include them in the appendix of the final five-year pilot project report. She commented she would have preferred it be included in the report for 2011. Since Gideon and St. Alban's Bay reports include rake counts (a different way of measuring compared to the point-intercept method in the pilot program), the rake count information could be helpful to the Board when making decisions about funding chemical treatment or supporting continuing chemical treatment in the future.

Mr. Roy stated there will be an analysis of St. Alban's Bay this spring. There also needs to be a final analysis at the end of the season. He pointed out that the Army Corps is not required to do the analysis, and that the St. Alban's Bay chemical project includes professional analysis. He explained that 70 percent (102 acres) of St. Alban's Bay was chemically treated in 2011. The average cost he cited earlier includes all the costs associated with the treatment. He assumes the cost to treat the Bay during 2013 is likely to go down even more than in 2012. He noted there may be need to do a full treatment of the Bay in a couple of years.

Councilmember Page stated he has no doubt that there will have to be some amount of chemical treatment of St. Alban's Bay even if it has to be paid for with private funding. He also has no doubt there will be a continued need for harvesting going forward. The protocol the DNR is allowing throughout the State is the protocol used for this project; a protocol finalized after a number of missteps. In some ways there was some good fortune in having come in part way through the pilot program because St. Alban's Bay contributors did not pay for a series of missteps.

Councilmember Fletcher stated some of the early missteps were a result of the DNR decision to deviate from following the manufacturer's recommendation.

Mayor Kind stated the DNR has deemed this program to be operational. She asked if the DNR is still driving the metrics requirements. Councilmember Page responded it is and noted it wants to track the effectiveness of the main chemical being used. Mr. Roy stated contractors that are licensed by the DNR are doing some of the tasks the Army Corps had been doing. He noted the tasks are still being done.

Councilmember Page stated there is some opposition to chemical treatment. They prefer harvesting because it removes the mass. He then stated it gives him pause to have chemicals dumped in the Lake year after year. Drenching the whole Lake which chemicals periodically gives him pause.

Councilmember Fletcher stated he has never seen the small amount of lake shore in front of his property so clean.

Mr. Roy stated he knows of a few residents on the Bay who oppose chemical treatment. He explained the dilution rate for the chemicals is at .5 parts per million. There is more chemical on food products. If people oppose chemicals in the Lake then we should discontinue salting roads. He noted that chemicals have been used for a long time. The Army Corps stated 88 percent of what they use is chemicals and a small percentage is harvesting.

Mayor Kind asked if the LMCD has measured the effectiveness of harvesting from year-to-year. Councilmember Page responded no. Kind indicated that she was surprised by that.

Mr. Roy stated he has a copy of a report produced by the University of Minnesota about the effectiveness of harvesting of milfoil in Lake Minnetonka. He stated he would make a copy for Council. He noted harvesting increases the density of milfoil.

Councilmember Fletcher stated the report from the AIS Task Force about the herbicide treatment states it doesn't not recommend herbicide treatment beyond 2012 or expanding it to other bays until a comprehensive lake vegetation management plan is developed for Lake Minnetonka. If the comprehensive plan is not available until 2014 then he interprets that to mean the LMCD is not involved with chemical treatment at all in 2013. Councilmember Page stated there a number of people on the LMCD Board who think the LMCD should not be involved with chemical at all. Page stated the Task Force believes it could develop a scaled down plan this year so there could be some chemical treatment in 2013. Fletcher asked Page if he is comfortable advocating for that. Page noted that Council already made a motion to that affect. Fletcher asked him if he is comfortable with that. Page asked if Fletcher is asking him if he is personally comfortable with that or if he will represent the will of the Council. He noted he will represent the will of the Council.

Fletcher then stated it is his understanding that the amount of harvesting done in 2011 was somewhat less because of the State shutdown and because of water levels. Therefore, the harvesting expense appears to be somewhat variable. He went on to state the bays that are chemically treated don't have to be harvested. Therefore, he asked if it would be unreasonable to have the LMCD contribute the funds that would have been spent to the herbicide treatment of the bays treated instead. He commented that it costs about \$2,500 a day to run a harvester (not including capital costs).

Councilmember Page stated that has a ring of deductive logic to him, but that if the LMCD doesn't have to harvest in some areas there are many other areas that could benefit from harvesting.

Councilmember Fletcher asked Councilmember Page if he could advocate having the LMCD give funding to the chemical treatment of the bays that don't have to be harvested because of the treatment. Fletcher noted that the bay captains and their captains put a lot into the process for getting the bays chemically treated. He stated he strongly believes that the LMCD and the City should be supportive of the work done by the residents. Councilman Page said he will advocate that LMCD funding support bays that do not need to be harvested because they are treated with chemicals.

D. Quam: Roads & Sewer, Minnetonka Community Education

Councilmember Quam stated earlier in the meeting Council discussed the City's roadway improvements and there is nothing to report on the sanitary sewer system. He noted there was no Minnetonka Community Education meeting.

E. Rose: Excelsior Fire District

Councilmember Rose was absent so no report was given.

10. ADJOURNMENT

Fletcher moved, Page seconded, Adjourning the City Council Regular Meeting of May 2, 2012, at 11:01 P.M. Motion passed 4/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder