

GREENWOOD CITY COUNCIL MEETING
Tuesday, May 3, 2011, 7:00 P.M.
Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331

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

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

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

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

Members Absent: None

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

2. CONSENT AGENDA

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

- A. April 5, 2011, City Council Work Session Minutes** (This was moved to Item 8.A under Other Business.)
- B. April 5, 2011, City Council Meeting Minutes** (This was moved to Item 8.A under Other Business.)
- C. April 14, 2011, Local Board of Appeal & Equalization Minutes**
- D. March 2011 Cash Summary Report**
- E. April 2011 Verifieds and Check Register**
- F. May 2011 Payroll Register**
- G. Public Access Procedures**

Motion passed 5/0.

3. MATTERS FROM THE FLOOR

There were no matters from the floor presented this evening.

4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS

- A. City Engineer Dave Martini**
 - 1. 2011 Road Project Recommendations and Rough Estimates**

Engineer Martini stated each year the conditions of the City's roadways are evaluated based on a visual inspection, and rough cost estimates are prepared for recommended potential road improvement projects. 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 2011.

- 1) Lodge Lane, Woods Court and Lyman Court – the area is in relatively good condition. There are several deficiencies (cracking around manholes, cracking, and areas of settlement). In order to prolong the life of these roads Staff recommends doing full-depth patching around most of the sanitary sewer and storm sewer manholes, repairing cracked and settled curb and gutter, sealing the cracks (some of which are fairly significant), milling and overlaying the cul-de-sac on Lyman Court and other areas as required, and sealcoating the roads. The estimated cost for these recommended improvements is \$75,880.
- 2) Crestside Avenue (from Maple Heights Road to the dead end) – the recommended improvements include removing the existing bituminous pavement, regrading and preparing the existing base, putting down 3.5 inches of new bituminous surface, and doing restoration as needed. The estimated cost for these recommended improvements is \$13,322.
- 3) West Street (from Minnetonka Boulevard to the dead end) – the condition of the road is poor and there are drainage issues at the south end of the roadway. The recommended improvements include removing the existing bituminous pavement, regrading and preparing the existing base, putting down 3.5 inches of new bituminous surface, and doing turf and driveway restoration as needed. The driveway and grass lawn area at the south end of the roadway will be reshaped to facilitate drainage off of the roadway to Lake Minnetonka. The road grade at the high point will be raised to keep stormwater runoff from leaving the Minnetonka Boulevard right-of-way. The estimated cost for these recommended improvements is \$23,605.
- 4) West leg of Greenwood Circle (from Minnetonka Boulevard to the improvements made in 2009) – the recommended improvements include removing the existing bituminous pavement, regrading and preparing the existing base, putting down 3.5 inches of new bituminous surface, and doing turf and driveway restoration as needed. The estimated cost for these recommended improvements is \$59,274. If the entire west leg of the roadway can't be done because of budget constraints, then the smaller area near the intersection of Minnetonka Boulevard could be improved for an estimated cost of \$19,661.
- 5) Meadville Street (from the north part of the Old Log Theater property to the areas that have been patched on the north end of the road) – the recommended improvements include removing the existing bituminous pavement, regrading and preparing the existing base, putting down 3.5 inches of new bituminous surface, and doing turf and driveway restoration as needed. The estimated cost for these recommended improvements is \$86,570.

It was noted that the section of Meadville Street located near of the entrance to the Old Log Theater is in very poor condition. The very poor drainage in that area is directly affecting the condition of the roadway. Pavement improvements should not be made to the area until the drainage in that area can be improved. In 2006 the area was milled and overlaid.

Martini asked Council if, from a policy perspective, it had any desire to make some investment into preventative maintenance to prolong the life of some roads or did it want to continue with its past practice of making improvements to roadways in the poorest condition. He recommended improvements be made to Crestside Avenue, noting they should have been made in 2010.

Mayor Kind stated the 2011 budget allocates \$130,000 for roadway improvements. She noted the City's portion of the cost of joint sealcoating projects with the City of Shorewood is \$2,650; that will be funded out of the \$130,000. She also noted there is an additional \$5,000 budgeted in 2011 for repairing pot holes.

Engineer Martini noted there will have to be some patching done to the area located in front of the entrance into the Old Log Theater and to some other roadways.

Councilmember Quam stated at some point the drainage issue on Meadville Street has to be addressed. He asked what the first steps in fixing the problem should be. Engineer Martini responded a survey needs to be done first in order to gain an understanding of what's causing the issue. Mayor Kind noted the City does not have a drainage easement through that area. Martini stated his hope is that the City will be able to work cooperatively with the property owners in the area. Martini noted the City has the responsibility to maintain the traditional drainage pattern and it has rights to make improvements to the drainage way and to discharge stormwater runoff at that location. The City doesn't have the right to make changes to that drainage way without proper permission.

Mayor Kind asked what happens if property owners in that area have done something to stop or block the natural flow of stormwater. Engineer Martini stated it's his opinion that every property owner has the responsibility to take the stormwater that naturally flows on to their property. Martini then stated often times when a local drainage issue is solved it creates a new issue at a different location. He went on to state the location of this drainage problem area is located near where the water ultimately needs to flow into and that is Lake Minnetonka.

Engineer Martini stated it's his understanding that at least one of the property owners near the area has concerns about how the stormwater currently flows. He then stated who will have to pay the cost to resolve the issue has yet to be determined. He noted there will be some private components as part of the overall solution. He stated the City has an interest in coming up with a solution to address the drainage issue because of the impact it has on the City's roadway.

Attorney Kelly stated the City needs a topographical survey to help determine what the natural drainage pathways are, and it would be helpful if there were any old surveys they could use to determine what they used to be.

Mayor Kind asked if Staff is looking for authorization from Council to move forward with having a survey done. Engineer Martini responded that is Council's decision. Councilmember Quam indicated he would like to get the ball rolling.

Councilmember Fletcher asked how much it will cost to do a survey, do the analysis and identify a recommended solution. Engineer Martini responded to do the survey and some initial analysis would cost \$1,500 – \$2,000. Fletcher then asked how long it would take from the time the survey is authorized until the initial work is done. Martini responded about one to two weeks.

Councilmember Fletcher stated he is interested in doing the survey work but he prefers to wait until a little later into this year to see how 2011 operating expenses are tracking against budget since any work on the area will not be done until 2012.

Engineer Martini stated Council may want to consider having Staff at least meet with the property owners who may have an interest in this issue and try and gain an understanding of whether or not they will be willing partners with the City.

Councilmember Rose stated that a few years ago the area used to drain better than it does now. Then there was an attempt to improve the drainage area (he noticed newer rock in the area) and it doesn't drain as well as it used to.

Engineer Martini stated the City could reshape the road to make sure the stormwater flows off of the roadway in that area but because it's so flat in that area the stormwater will end up being trapped on the other side of the roadway.

Councilmember Page stated Council doesn't need to decide on the survey this evening, but he does agree with Councilmember Quam's suggestion to do so in the very near future. He then stated there has been a drainage issue in that area for a long time. He went on to state it would be great if the property owners would cooperate with the City, but if they won't the City will have to use the power of eminent domain to make a drainage pathway to the Lake. He noted that it would take time to complete eminent domain process.

Councilmember Quam requested Staff provide Council with an estimate to do the survey for the next Council meeting.

Engineer Martini stated if Council and Staff decide the City wants to ultimately have some control over the drainage pathway the City may want to commit to taking over ownership and maintenance of the drainage easement if property owners will grant the easement.

Council returned to discussing which of the five recommended potential projects the City should do in 2011 based on having a budget of \$130,000 minus the \$2,650 for sealcoating.

Mayor Kind stated she preferred to spend the funds on making improvements to the roadways in the poorest condition. Councilmember Page stated he didn't think the City should do anything but that.

Councilmember Page explained that last year he suggested delaying improvements to the west leg of Greenwood Circle for one year and having done that has caused some deterioration. He recommended improvements be made this year.

Mayor Kind explained the cost to make improvements to Crestside Avenue, West Street, and the entire west leg of Greenwood Circle plus the cost for the joint sealcoating effort would be \$98,851. The cost to make improvements to Crestside Avenue, West Street, and Meadville Street and the joint sealcoating effort would be \$126,147. It would mean delaying improvements to Greenwood Circle until 2012.

Councilmember Rose asked if the turn area on Meadville Street could be fixed.

Councilmember Fletcher noted that he believes in spending money to ultimately save money. He stated he understood Engineer Martini to say that by investing in preventative maintenance to prolong the life of Lodge Lane, Woods Court and Lyman Court the City will ultimately save money down the road. He recommended doing the preventive maintenance and making improvements to the west leg of Greenwood Circle in 2011. The cost for those improvements would be \$135,154. When the cost for the joint seal coating effort is added in the total costs would be \$137,804. He stated because the two projects would be

larger, the City may be able to get a lower bid. He noted that he thought there were sufficient funds in reserves to fund the amount over budget (\$7,804). He commented that Crestside Avenue is not as heavily used as Greenwood Circle.

Mayor Kind expressed her concern that certain budget line items (e.g. snow plowing) are already over budget.

Engineer Martini explained that in the past the City has bid out such projects and included an amount for patching larger areas. He noted that in the past the goal has been to maximize the budget; therefore, things were included in the bid to allow some flexibility. He expressed hope that the bids will come in lower than estimate and allow for more work to get done.

Councilmember Fletcher stated there are contingency funds.

Mayor Kind noted that funding for milfoil treatment will have to come out of the contingency. She stated she prefers to hold off on doing preventative maintenance work on Lodge Lane, Woods Court and Lyman Court until 2012.

Councilmember Fletcher asked Engineer Martini what the impact would be of delaying preventative maintenance work on Lodge Lane, Woods Court and Lyman Court until 2012. Martini responded he did not think delaying it one year should expedite the rate of deterioration.

Page moved, Fletcher seconded, directing the City Engineer to secure bids for the roadway improvement projects Crestside Avenue, West Street, and the entire west leg of Greenwood Circle and to use some of the remaining roadway improvement budget to repair some of the bad areas on Meadville Street.

Councilmember Fletcher recommended using the approximate \$30,000 in uncommitted funds to make repairs to Meadville Street that will last longer than one year.

Motion passed 5/0.

2. Greenwood Sign Management Program to Comply with Federal Retroreflectivity Regulations

Mayor Kind explained the City has a couple options to select from to become compliant with federally mandated minimum sign retroreflectivity standards. The meeting packet contains a proposal from Bolton & Menk dated September 23, 2010, for executing one of the options. That option includes developing an inventory of the City's existing signs and evaluating the retroreflectivity of each sign. The inventory and condition information will be entered into a management software program called Cartegraph. The cost for the inventory and sign evaluation and entry into Cartegraph is \$5,000 – \$6,000. There is also a \$1,000 annual fee for maintaining the database. Since Bolton & Menk submitted its proposal a second option was identified. The second option is to approve a blanket sign replacement program with the replacement being spread out over a six-year period. The meeting packet contains a copy of the schedule for the six-year program.

Engineer Martini stated with the blanket program option the City could track when signs were replaced and what the manufacturer's warranty period is for the retroreflectivity of the signs. At the end of the warranty period the signs could be evaluated for need of replacement.

Mayor Kind then explained that by January 22, 2012 the City needs to have a sign assessment and management plan in place to satisfy the federal mandate. Under the blanket replacement method in 2011 all signs will be removed that are determined to be inconsistent with the Minnesota Manual on Uniform Traffic Control Devices (MN MUTCD) practices, and/or do not provide a public benefit as determined by the City Engineer or Council.

In response to a question from Councilmember Page, Engineer Martini explained that by January 22, 2012, the City has to have an inventory of all of its signs and a replacement plan developed. Martini then explained that by January 22, 2015, all regulatory, warning and guide signs must be compliant. By January 22, 2018, street name and miscellaneous other signs must be in compliance.

Councilmember Page asked what the estimated cost is to replace the signs. Mayor Kind stated she guessed the worst-case amount would be about \$120,000; the City has about 400 signs and the estimated cost for installing a new sign is \$300. Engineer Martini noted that some signs will be removed and others do not have to meet the retroreflectivity standards (e.g., no parking signs).

Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 12-11, “A Resolution Relating to a Greenwood Sign Management Program” subject to changing “the street name and miscellaneous other signs in the city” to “the street name and other federally mandated signs” in three places and changing “the city will proceed with repeating the above blanket replacement schedule beginning the following year” to “the city will either repeat the above blanket replacement schedule beginning the following year or use a sign inventory method.” Motion passed 5/0.

Councilmember Fletcher stated that Item 7.A on the agenda is about a proposed redevelopment project to replace what was formerly the St. Alban’s Bay Boathouse Restaurant with a new office building. The new structure would be approximately 10 percent larger from a square footage perspective. He explained that questions have been asked what impact the traffic to and from a larger office facility will have on the City’s roadways. He asked Engineer Martini to comment on that. Martini stated the traffic will depend on the actual use of the property. Martini explained traffic volume can vary by type of restaurant and by what types of tenants there are in an office building and what the hours of operation are.

B. Joint City Council & Planning Commission Work Session

Mayor Kind noted that the joint meeting between Council and the Planning Commission has been rescheduled to start at 7:00 P.M. on May 18, 2011, and it will be held at Jack O’Connor’s Public House in the City of Excelsior. The meeting is open to the public but there will be no public participation.

5. PUBLIC HEARING

None.

6. UNFINISHED BUSINESS

A. Greenwood Park Estimates

Zoning Administrator/Clerk Karpas explained Staff received estimates from Viking Tree Services (\$3,754.63) and Emery Tree (\$8,000) for tree trimming and brush removal in the City’s park. The bids also include chipping the wood and using it to fill the trails. Staff received an estimate in the amount of \$790 from Tennis West to pressure wash the tennis court and basketball court and to stripe the basketball court. Staff priced the cost to purchase two brooms, two squeegees, and a rack to hold them at \$133 and

the estimated cost for the Public Works Department to install the rack is \$170. Staff received an estimate from Vintage Waste for the placement and servicing of a garbage can in the park. The cost for a 65-gallon can and servicing would be \$22.36 a month and the cost for a 96-gallon can and servicing would be \$24.99 a month. The can would be serviced every two weeks. Vintage Waste indicated it would not service a park-style garbage can and suggested the Public Works Department provide such a service. The cost for that service would be about \$170 per month. The cost for a park-style garbage can for trash only is about \$500 and the cost for a trash and recycling can is \$900.

In response to a comment from Councilmember Quam, Zoning Administrator/Clerk Karpas stated a second garbage can could be placed in the park for recycling for an additional cost. He questioned if people using the park would actually keep trash and recyclable material separate.

Fletcher moved, Page seconded, approving the Greenwood Park Beautification estimate to trim trees; spread wood chips on the trail; clean up brush from the grounds; pressure wash the tennis court; pressure wash and stripe the basketball court; and install brooms, squeegees and rack for an amount of approximately \$5,000.

Councilmember Fletcher noted that his motion did not include servicing of a garbage can because he thought a garbage can in the park would look ugly. He noted he was not totally opposed to having a can in the park.

Without objection from the maker, the seconder amended the motion to include the cost to service a 65-gallon garbage can.

Kristi Conrad, 21780 Fairview Street, stated she supported the plan and wanted there to be a garbage can in the park.

Motion passed 5/0.

7. NEW BUSINESS

A. Conditional Use Permit and Site Plan Review for 21900 Minnetonka Boulevard (former St. Alban's Bay Boathouse Restaurant)

Mayor Kind explained Kent Carlson, owner of the property located at 21900 Minnetonka Boulevard (former the St. Alban's Bay Boathouse Restaurant) is requesting a site plan review and an amendment to the existing conditional use permit (CUP) in force on the property to demolish the existing building and construct a new office building. City notification was mailed to neighbors on April 5, 2011, and it was published in the Sun-Sailor on April 7, 2011. The Planning Commission held a public hearing on this request during its April 20, 2011 meeting and a copy of the draft minutes for that meeting are included in the meeting packet. Therefore, Council is aware of the comments made by the public during that meeting. The Planning Commission recommended approval of the amendment to the CUP and the proposed site plan on a 5/0 vote.

Kind stated this evening Council will hear from Staff, the Council Liaison at the April 20th Planning Commission meeting (Councilmember Fletcher) and from the applicant Mr. Carlson. She noted Council will provide the public an opportunity to comment even though the public hearing has already been held. She stated Council would appreciate it if there would be a spokesperson for a group of people who have similar concerns.

Zoning Administrator/Clerk Karpas explained City Code requires a site plan review for any new building in the C-2 District. The CUP portion of the request is the proposed commercial office space. The current CUP allows for a mixed use structure.

Karpas highlighted the staff report about this request. The applicant is proposing to demolish the existing mixed-use building which has an overall height of 24 feet and contains a footprint area of 5,218 square feet. The proposed two-story structure would have an overall height of 28 feet and contain a footprint area of 5,772 square feet. He noted that the applicant complies with the maximum permitted height. The applicant complies with the front yard, east side yard, west side yard, and lake yard setbacks. The applicant complies with the permitted impervious surface area. The applicant proposes increasing the overall impervious surface area by 0.5 percent or approximately 525 square feet which is still under the allowable percentage. The applicant has a lot area that exceeds the minimum required by the City's Ordinance. The applicant is proposing adding additional landscaping around the new structure as well as an additional 175 square feet of rain garden. He stated the applicant will work with the Minnehaha Creek Watershed District (MCWD) about the expansion of the existing rain garden.

Karpas stated the meeting packet contains a copy of the site plan, elevations, signage information and lighting information. The lighting and signage are in compliance.

Mayor Kind asked Zoning Administrator/Clerk Karpas to comment on the topic of view protection.

Karpas explained that in Woodland there are properties that have easements across them protecting a neighbor's view. The private easement would be filed by two property owners and it would prohibit one of the property owners from doing anything that would take away a view of something. There is no such easement on the 21900 Minnetonka Boulevard property. There is no state law that protects views. The State gives the City the right to regulate dimensional requirements in its zoning ordinance. He noted that condos could be built on the site and condos have an allowable height of 35 feet.

Attorney Kelly stated the City has the right to regulate what is call "bulk regulations"; volume of structures, location of structures, side lot setbacks and so forth. That does not extend to granting site and view easements to the benefiting property owners. He then stated he is not aware of any site view easement across the subject property.

Mayor Kind stated that Section 1150.20(1) of the zoning ordinates states "*The planning commission shall make findings and recommendations to the city council. The council may then authorize a conditional use by resolution provided the evidence presented is such as to establish: (k) The use will not depreciate surrounding property values.*" She then stated Council needs to decide if office use will depreciate the surrounding property values; not whether the height of the proposed structure depreciates the surrounding property values.

Zoning Administrator/Clerk Karpas stated he agreed with Kind's interpretation, noting the CUP is based on the use of the property. The physical structure is not the use.

Mayor Kind stated the property is zoned for restaurant and marina use. The applicant is asking to change the use to office building. The applicant does not need approval for restaurant use. Attorney Kelly clarified office is a conditional use permitted in that zone. The use is permitted on reasonable conditions. It doesn't mean Council has the elective authority to say no to the use. The zoning code is not being amended to add office; it's already there. Council can impose reasonable conditions.

Councilmember Page asked if the suggested conditions of approval listed in a letter from Bolton & Menk dated April 6, 2011, will be added to the draft resolution. Attorney Kelly stated those conditions should be referenced in the concluding paragraphs of the resolution by adding an item 2.e under terms and conditions. Kelly stated the draft resolution was intended to reflect the discussion of the Planning Commission.

Councilmember Fletcher highlighted the discussion about this request during the April 20, 2011, Planning Commission meeting (as detailed in the minutes of that meeting.)

Mayor Kind noted that in the draft resolution under terms and conditions Item 2.d states "*The previous restaurant use is deemed abandoned, however in the event the applicant desires to make future application for a restaurant use on the subject property, nothing shall prevent such an application made in due course meeting the requirements of the City Code then in effect.*"

Kent Carlson, 20505 Lakeview Avenue, Deephaven and the applicant, explained the subject property was redeveloped about ten years ago. Over the last ten years there has been great success with the office space; it's been fully leased and there have been great tenants. He noted his partner Bob Vogt runs Bayside Marine Services and he thanked him for the outstanding job he does. He stated there have been problems over the last ten years with the restaurant on the property. He then stated the goal is to build a class A facility. He noted the tenants in the current structure are not intensive uses and they tend to be longer-term tenants. He stated over the years he has learned that office is a better use for the property.

Mr. Carlson noted that when the property was redeveloped the site was re-orientated. He described some of the things that were done at that time, including the installation of rain gardens. He noted there will be rain gardens on the proposed redeveloped property as well.

Mr. Carlson stated he met with residents around the subject property in February 2011. He met with Mr. Slattery, the president of the St. Alban's Bay Villas Association, to share ideas and he sent him all of the documents. He also met with T. White in February and March to share ideas and solicit input. He noted that at that time Mr. White was very supportive because there was not going to be a restaurant on the property because there had been issues with the previous restaurant, and he didn't think Mr. White had an issue with the height of the proposed building at that time.

Mr. Carlson explained the top of the proposed building is 26 feet high and then there is a 2 foot high parapet wall on top of that for a total building height of 28 feet. The first and second floors will have standard nine-foot ceilings. Space above each floor is needed for sprinkler systems, mechanical systems, and so forth. Instead of using a traditional roof a concrete planking system will be used which allows the height to be reduced to 28 feet instead of the typical 30-foot-high commercial structure.

Mr. Carlson stated there has been concern expressed about parking. He explained that at this time of the year there is a lot action at the marina as boats are being prepared to be launched for the boating season. By the time Memorial Day comes about the boats and been launched and the boat trailers have been taken to a storage facility or they are inside the service repair building along with the equipment. He noted that on the traditionally busy days of the summer and early in the boating season there are a number of dock boys on site who help monitor the parking area on the property. He noted the property is located next to the Hennepin County trail and people try and park on the subject property when they come to use the trail. He noted that trail parking is not allowed on the property. The slip customers are only allowed to park a certain number of cars on the property. He stated it's difficult to control parking around the area on the Fourth of July holiday.

Mr. Carlson explained the original signage was permitted for 148.5 square feet in area and the proposed new signage will be 132 square feet in area. The lighting will be located in the soffit and the lighting is downcast along the side of the building.

Councilmember Fletcher stated that Planning Commissioner Dave Paeper is a professional architect. He had asked Paeper about the architecture of the proposed structure and Paeper thought it was a significant improvement over the current structure. He also asked Paeper if he thought there were any measures that could be taken to lower the height of the proposed building and Paeper had indicated he thought Mr. Carlson had made a reasonable effort to minimize the height of the structure.

Councilmember Quam noted the Planning Commission meeting minutes state that Mr. Carlson has no plans to start construction until 50 percent of the space is leased. Quam asked if that is still the plan. Mr. Carlson said that is still the plan.

Councilmember Rose asked about the two-foot-high parapet wall. Mr. Carlson stated it will provide screening of the mechanical system from Minnetonka Boulevard and the property line to the south. Rose asked if that could be put in a rain garden instead and the parapet wall eliminated. Mr. Carlson stated if rain gardens work effectively there is standing water in them for an extended period of time. A goal of the rain garden is to purify the stormwater runoff from parking lots. Therefore, electrical equipment shouldn't be put in a rain garden. Rose stated that condo property across the street from the subject property has mechanical equipment and air conditioning equipment located in the rain garden and then it is screened with plantings. Mr. Carlson explained the soffit detail provides the location for the recessed lights and if the parapet wall wasn't there that wouldn't happen.

Mayor Kind stated it would be really helpful if there could be a spokesperson for those in the audience wishing to comment on the request.

T. White, 5290 Meadville Street, expressed his disappointment with the Planning Commission. A group of neighbors found major flaws in a number of the issues in the proposal prepared by RLK Incorporated for the applicant. The group did a lot of research. It had evidence and photos which were presented to the Commission and that information was not given to Council. Mayor Kind clarified that the information was delivered with the meeting packet.

Mr. White stated parking is a major issue. The group thought the comments about parking in the RLK proposal are not true. He stated boats are parked on blocks in an area of about 27 parking spaces for about two months in the spring and again in the fall. The group submitted photographs of that. The boats are repaired, sanded, and painted in the parking area near the boat repair facility all of the time. The rest of the time there are boats being brought to and from the hanger for repair. He noted that he called former Greenwood Mayor Bob Newman about the parking issue, noting Mr. Newman had concerns about parking. Mayor Kind noted she spoke with Mr. Newman earlier in the day. He stated the employees park on the restaurant side because boats are being moved around on the property.

Mr. White then stated it's silly to think a new, taller structure won't affect people's property values. He noted that doesn't affect him, but it does affect his neighbors. He found it ironic that Mr. Carlson developed the St. Alban's Bay Villas and now he wants to build a structure that will impact the value of those units. He thought that is unfair. He stated he thought the meeting packet contained numerous emails and correspondence from residents expressing various points of view about the proposed project.

Mr. White went on to state he thought the Planning Commission put consideration of this request on a fast track. The Commission wanted this resolved by May 14, 2011. He thought more time was needed to

completely evaluate this request. He noted the group told the Commission that there are a number of neighbors who are still away for the winter and they would like to submit their concerns. He encouraged Council to take enough time to consider this request and to read all the correspondence from residents. He asked Council to consider how they would feel if they lived near the subject property. He stated the large air conditioners make a lot of noise. He then stated the hauling of boats on Minnetonka Boulevard creates stress on that roadway.

Councilmember Quam asked Mr. White if he would prefer to have a full blown restaurant on the property, to which Mr. White responded no. Quam asked if the parking situation would be better if it were a full blown restaurant, to which Mr. White responded it would be worse.

Mr. White stated residents are mainly upset about the four foot increase in the height of the proposed building.

Councilmember Fletcher stated he understands Mr. White to be saying it would be better to have an office use on that site than a restaurant use, and that the concern is about the height of the proposed building.

Mitch Stover, 21957 Minnetonka Boulevard, Unit 18, stated he resides in the most southern unit and has the top two floors. He expressed confidence that if a new building gets built it will be a great building. He stated he understood the challenges for the property. He then stated from his perspective there are legal requirements and then there is what is right for the community. He explained that from one area in his unit, an area he entertains in, he can see all the way to Lafayette Bay. The proposed building would be four feet higher than the existing structure and that would limit his view to Excelsior Bay. He noted that he accepted there being a restaurant on the property when he purchased his unit. He stated being able to enjoy his property is important to him. He then stated he thought all of the residents in the Villas would like to have something that will work, have less traffic, and be economically viable. The four foot increase in height will have a major league impact. He indicated he thought Council has some amount of discretion when considering whether or not to approve the request. He stated he wanted there to be a solution that works for everyone. He commented office is a more desirable use for him than restaurant.

Mr. Stover stated parking is and always will be an issue with the major problem being on the Fourth of July. He asked what will happen if a nice office building is constructed and then the leasing of office space in that building is not significant enough to keep the office building viable. He commented he frequents a restaurant in the City of St. Paul that has parking problems. That restaurant has an offsite parking lot and patrons are shuttled to and from the restaurant. He stated he does want the property owner to have a successful business on the subject property.

Councilmember Rose asked Mr. Stover if the proposed building were constructed to be two feet lower in height and if the applicant had the volume (square footage) he wanted would it help. Mr. Stover responded he may be able to see a little more of the water if it were two feet lower.

In response to a comment from Councilmember Fletcher, Mr. Stover stated that he can see the City of Excelsior, Excelsior Bay, Big Island and Lafayette Bay from his unit. The increase in building height will negatively impact his view.

Mr. Stover stated there are legal issues and balance issues that should be taken into consideration.

Susan Covnick, 4715 Gulf Terrace, Edina, stated Debra Antone (who owns Unit 19 in the Villas) can not be present this evening because she is out of town. She commented she has a degree in urban and regional planning from George Washington University, and she has also been a commercial and residential

licensed realtor for 34 years. She stated any real estate booklet or ads for this community and the surrounding Lake Minnetonka communities indicate the value of a property is based on view. When going through a booklet on properties 64 percent of the time view was mentioned. She then stated she thought the proposed building would be an unnecessary mass on a property that is already over crowded. A taller building will affect the property values of all units in the Villas even though only the views for the top three units will be impacted. From her vantage point there are ways the property could be developed that would not impact views.

Councilmember Page asked what loss in value there will be for the top three units that will lose some of their view. Ms. Covnick stated she did not know that answer but she does know having a great view is a big draw. A lake view brings people to the community. Page asked if the top three units had a view of St. Alban's Bay. Members of the audience responded they all do. Mayor Kind stated their primary view is of St. Alban's Bay.

Councilmember Fletcher stated he saw the brochures about properties in the Villas that are for sale that Ms. Antone passed out to the Planning Commission and every picture showed a view of St. Alban's Bay, not of Excelsior Bay.

In response to a question from Mayor Kind, Ms. Covnick stated for unit resale purposes having office use on the property would be better than having restaurant use.

Mary McNutt, 21957 Minnetonka Boulevard Unit 14, stated she has the garden unit in the south building directly under Mr. Stover. She noted she does not have a dual lake view like Mr. Stover and Ms. Antone, her view is out onto St. Albans Bay. She explained that when she walks out her front door and takes in the panoramic view of the Lake she has a gorgeous view. She stated she prefers an office use for the subject property over a restaurant use. She is not in support of a four-foot taller building that will obstruct the views. She commented that the view from the parking lot the previous evening was breathtaking. She stated she enjoys watching the sunset from the parking lot. She noted she would be affected by the taller building. She explained that City Code Section 1150.20(1)(j) states "*The use will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.*" She stated the taller building would damage a scenic, panoramic view. She explained Section 1150.20(1)(k) states "*The use will not depreciate surrounding property values.*" She stated her garden unit has already lost \$50,000 in value. She then stated the properties on the second and third floors have dual panoramic views. The owners of those units are objecting to losing one of their views. She commented that some of the views of St. Alban's Bay are not extremely great because the views include looking another marina. She asked Council to respect the fact that Ms. Antone does not want to lose her scenic view.

Mayor Kind stated in her opinion in City Code Section 1150.20(1)(j) and 1150.20(1)(k) the word "use" refers to "office use," not "height." The destruction of the former St. Alban's Boathouse restaurant building is not destroying a scenic or historic feature of major importance. Attorney Kelly stated he doesn't believe the Code defines a major, natural historic feature.

Councilmember Fletcher stated Council is supposed to be considering the totality of the project. Attorney Kelly stated that is true and that there must be a balance.

Elizabeth Bennett, 21957 Minnetonka Boulevard, Unit 20, stated her one bedroom unit is located next to Mr. Stover's. She commented that previously she lived in a three bedroom unit in Building A, but it did not have a view of Excelsior Bay. She noted that she and her husband have had a view of the main part of the Lake since 1951; having such a view is extremely important to them. She explained in the past there has been a \$100,000 cost difference between units on different floors in each building and the additional

cost was for the view. The unit she currently owns in Building B was at one time valued by realtors at \$1.2 million; Hennepin County property assessors valued the property at \$1,104,000. The property is currently valued at \$865,000 and the decline is because of the economy.

Councilmember Fletcher stated the assessor for the City had told him that the value of a unit on the third floor is \$60,000 more than the value for a similar unit on the second floor.

Mayor Kind recessed the meeting at 9:01 P.M.

Mayor Kind reconvened the meeting at 9:10 P.M.

John Reimann, 21057 Minnetonka Boulevard, Unit 12, stated he and his wife moved into the building in November 2010. He commented that he has never been inside of the current building on the subject property. He asked if the building had two floors. Mayor Kind explained the second floor is not fully utilized because part of the floor has a 2-story ceiling.

Councilmember Fletcher explained the existing mixed-use building has an overall height of 24 feet and contains a footprint area of 5,218 square feet and the proposed two-story structure would have an overall height of 28 feet and contain a footprint area of 5,772 square feet. The footprint area will increase 10.6 percent. Because of these changes the mass volume will increase around 29 percent. Mayor Kind clarified the size of the building is not double. Zoning Administrator/Clerk Karpas stated the proposal is for 10,300 gross square feet but it would accommodate 7,200 square feet of leasable space. Karpas stated he does not know what the gross and leasable space is for the existing building. Mr. Carlson stated the second floor of the existing structure has approximately one half the footprint of the first floor.

Mr. Reimann stated it's his understanding there is a parking ratio based on building size. He asked if the parking area is sufficient to accommodate the size of the proposed building.

Councilmember Fletcher stated later on he is going to offer an amendment to the draft CUP. He explained the applicant calculated the parking requirements based on leasable space and the City Code requires it be calculated based on gross floor area (1 space for every 330 square feet of gross floor area). The applicant calculated a need of 50 spaces for the office building. Based on Code calculations 59 spaces are needed. The current CUP states 12 spaces are required for marina-retail and boat service parking. For the boat slips the applicant only included the 83 permanent boat slips, but there are an additional 10 transient boat slips. The City Code requires 6 parking spaces for every ten slips; therefore the number of surface parking spaces for the boat slips will need to be increased to 56 from the 50 in the application. The Code has common use provisions which allow for some reduction in the number of spaces required when the parking spaces will be used during different times and days. The office is primarily used Monday through Friday and the boat slips / marina is heavily used on Saturday and Sunday. Fletcher's proposed change to the resolution also would require the applicant have a parking lot attendant during peak marina paring periods. The City Code contains a common parking area ordinance which gives the City some power to correct parking issues.

In response to a comment from Mr. Reimann, Zoning Administrator/Clerk Karpas explained there still would have had to have been a site plan review if a new structure was going to be built for the existing mixed uses. The same issues would have come up then.

Councilmember Page stated the applicant meets all of the requirements of the City Code. The height of the proposed building would be less than what is allowed. He explained he looked into case law regarding an applicant coming in under a CUP. The case law under the CUP analysis states that it's arbitrary

capricious as a matter of law where an applicant comes in and meets all of the criteria not to grant the CUP unless there is in the record concrete facts which justify the use of subjective factors. Case law states non specific trepidation by the neighbors is not a legal criterion on which to deny the CUP. He stated that based on comments he heard it sounds as if each of the units in the Villas has some view of Lake Minnetonka. He then stated he is not aware of any case law that grants anyone the right to a view absent there being an easement for view.

Page then stated the plan looks good to him. He commented that for a very long time boats have come and gone from the property; it's the nature of the marina that has been there for 40 years or so. He stated the Villas were built in an area where there has been long-term commercial use..

Councilmember Quam stated that although he feels bad for the property owners at the Villas the applicant has met all of the requirements. The issue with parking is not going to be any worse than it has been in the past. It appears that no one wants there to be a restaurant on the property. He then stated he hasn't heard anything that tells him he has the legal right to deny the application because of loss of view.

Councilmember Rose expressed concern that there may be insufficient parking. He stated he understands the applicant meets all of the requirements. He commented that property owners complained when the Villas were built that they were going to lose their view. He stated he would like to delay taking action on this request until he has had time to do more research. He would like to come up with a solution that will make every one happy.

Mayor Kind noted State Statute 15.99 requires the City Council to make a decision on an application within 60 days from the time it was submitted; that would be by May 14, 2011. The time period for making a decision can be extended for specific reasons provided the applicant is notified in writing during the initial 60 day time period.

Councilmember Fletcher asked Mr. Carlson if he would have concern if residents from the Villas came onto his property to enjoy the views. Mr. Carlson responded he would not.

Fletcher moved, Page seconded, Adopting RESOLUTION NO. 13-11, "A Resolution Amending the Conditional Use Permit Issued Pursuant to Resolution 11-00 April 11, 2000 Relating to Multiple Uses at 21900 Minnetonka Boulevard, Greenwood, Minnesota" subject to the resolution be amended as follows: under Findings of Facts (2) Parking – change "7,192 sq. ft. for proposed office building" to "10,300 sq. ft. for proposed office building", change the number of required office parking spaces to "59," change the number of required marina parking spaces to "56," and change the maximum total number of parking spaces required for the entire site to "127 without considering exigent circumstances unique to the planned uses."; replace Findings of Fact (3) Parking Experience with "The applicant's 10-plus years of experience demonstrates that the primary use of office parking is from 8:00 AM to 5:00 PM Monday through Friday. The 12 spaces for retail-marina and boat service are used on a seven day per week basis. The heaviest demand for marina dock parking is on Saturday and Sunday during the summer with no demand off-season. The offsetting nature of the office and marina dock parking demand provides exigent circumstances for the applicant to meet the requirements of the Greenwood ordinance code section 1140.45(11)(j) Common parking area with the existing 122 on site parking spaces."; under BE IT RESOLVED replace 2.b with "122 spaces of parking shall be provided on site. Applicant shall provide a parking lot attendant as needed during peak marina parking periods to ensure that parking does not overflow onto neighborhood streets or cause congestion on Minnetonka Boulevard. The reservation of rights in favor of the City, the memorialization and recording requirements, and the reimbursement of city expenses and filing fees as currently provided in

Ordinance 1140.45(11)(j) shall apply in full to this Conditional Use Permit.”; and, add 2.e “The applicant will meet the requirements set forth in the letter dated April 6, 2011, from City Engineer David Martini to the City of Greenwood.”

Councilmember Fletcher stated he appreciates the concerns about the loss of view. He stated that in his opinion the Council could probably find reasons to deny the application, but that from his vantage point the City will be better off if there is an office building rather than a restaurant on the property. The four foot increase in building height is an issue for people, but property owners will still have some view of Excelsior Bay.

Councilmember Rose stated his perspective is the opposite of Councilmember Fletcher’s. The loss of views could have been prevented. He expressed he still has concerns about insufficient parking. If there ends up being insufficient parking the taller building will already be there and it will be difficult to resolve the problem. He has concerns about there being a future request for a restaurant.

Councilmember Fletcher stated the Common Parking Ordinance gives the City a lot more control over enforcing parking issues with multiple use properties.

Mayor Kind stated she understands the concern about loss of view. But, she doesn’t understand how Council could justify denying the request for an office building, which is an allowable use, when the applicant complies with the City’s requirements.

Motion passed 4/1 with Rose dissenting.

B. Ordinance 194 Setting the March 1 to May 1 Load Limit at 5 Tons Per Axle on City Streets

Mayor Kind stated that Ordinance 194 will amend Ordinance Code Section 730.00 regarding March 1 to May 1 load limits on City-owned streets. It will make the seasonal load limit consistent throughout the City and it would be 5 tons per axle. The rest of the year it would be 7 tons per axle. In the past the City has put up over twenty signs depicting seasonal weight restrictions. Making the weight restrictions consistent would reduce the number of signs needed to six. She noted a copy of the draft Ordinance is included in the meeting packet.

Quam moved, Fletcher seconded, Approving Ordinance 194, “An Ordinance Amending the Greenwood Ordinance Code Section 730.00 to Set the March 1 to May 1 Load Limit to 5 Tons Per Axle. Motion passed 5/0.

C. Resolution 11-11 Establishing Limited Clean Up and Property Damage Protection for Sewer Back-Ups and Water Main Breaks for Water and Sewer Connections

Zoning Administrator/Clerk Karpas stated the League of Minnesota Cities Insurance Trust (LMCIT) is offering additional protection coverage for damage caused by a water main break. In order to be covered for that the City has to adopt the draft resolution, modeled on a resolution prepared by the LMCIT, included in the meeting packet.

Councilmember Fletcher explained the LMCIT will pay the resident for the damage if it’s not the City’s fault. The current amount the LMCIT would pay per occurrence is \$10,000.

Councilmember Page commented that he thought this is to address what has occurred in the City of Chanhassen.

Councilmember Fletcher stated he has spoken with the insurance agent. The City pays \$264 for up to \$10,000 worth of protection. The cost for \$25,000 of protection is slightly more the \$300. The cost for \$40,000 is about \$380. For an additional cost of \$120 per year the City could get \$40,000 in protection per occurrence.

Councilmember Quam stated he thought the City should purchase the additional protection.

Councilmember Page stated if the City is found to not have properly maintained the sewer and water lines the city could be found liable whether or not it has insurance.

Mayor Kind clarified this insurance is for when it's not the City's fault.

Page moved, Quam seconded, Adopting RESOLUTION NO. 14-11, "A Resolution Establishing Limited Clean Up and Property Damage Protection for Sewer Back-Ups and Water Main Breaks for Water and Sewer Connections with the maximum coverage that the city can obtain with a premium that does not exceed \$400." Motion passed 5/0.

D. Park & Dock Patrol Proposal for the City of Excelsior

Kind stated this is a routine request from the City of Excelsior for South lake Minnetonka Police Department to provide park and dock patrol services. Excelsior pays for all the services.

Quam moved, Page seconded, approving the South lake Minnetonka Police Department providing Park and Dock Patrol Services for the City of Excelsior in 2011 as mutually agreed upon by both parties. Motion passed 5/0.

8. OTHER BUSINESS

A. April 5, 2011, City Council Work Session Minutes and April 5, 2011, City Council Meeting Minutes

These items were removed from the consent agenda at Mayor Kind's request.

Mayor Kind explained the reason she had these items removed from the consent agenda is she did not attend those meetings.

Quam moved, Fletcher seconded, Approving the City Council Work Session Minutes and the City Council Regular Meeting Minutes of April 5, 2011, as presented. Motion passed 4/0/1 with Kind abstaining due to her absence at the meetings.

9. COUNCIL REPORTS

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

Councilmember Fletcher stated Council already discussed the primary item the Planning Commission discussed during its last meeting.

With regard to Eurasian Watermilfoil, Fletcher stated St. Alban's Bay Captain Rob Roy and his team have raised the private donation funds needed for treating Eurasian Watermilfoil in St. Alban's Bay this coming summer. The treatment will occur when the water reaches the desired temperature.

With regard to the Lake Minnetonka Communications Commission, Fletcher had nothing to report this evening.

B. Kind: Police, Aquatic Invasive Species Mayors' Meeting, Administration, Lake Minnetonka Mayors' Meeting

Mayor Kind stated the South Lake Minnetonka Police Department (SLMPD) Coordinating Committee has not met since the last Council meeting. The next meeting is scheduled for May 11, 2011.

With regard to administration, Kind reminded the Councilmembers to provide her with their banking information needed for depositing their checks directly into their accounts. She proposed the City print City Code updates only once a year, noting there are 22 books to update. She suggested keeping the copy of the City Code book at City Hall and the one on the City's website current. There was consensus to do that. She then stated the City is protesting the former city administrator's unemployment claim. She noted that the Greenwood sign located at Christmas Lake Road was replaced by mistake. The sign located on Minnetonka Boulevard near the City of Deephaven is the sign that was supposed to have been replaced. The old sign from the Christmas Lake Road location will replace the one at the Minnetonka Boulevard location.

Kind stated she attended an aquatic invasive species (AIS) meeting this past March which was hosted by the Minnehaha Creek Watershed District (MCWD). The meeting was for the mayors of the cities located in the MCWD. She stated it appeared the purpose of the meeting was to gain support for the MCWD taking a larger role in AIS mitigation. She noted that she told the group that the Greenwood Council was not in support of that.

Kind then stated she attended the annual Lake Minnetonka Mayors' Meeting on March 4. The meeting is hosted by Hennepin County Commissioner Jan Callison. Minnesota Senator Gen Olson, Minnesota House of Representatives Connie Doepke, Hennepin County Attorney Mike Freeman and Hennepin County Sheriff Rich Stanek were also in attendance. She related that Sheriff Stanek stated there has been a 32 percent decrease in crime in the County. She learned that the City of Mound is buying sand and salt through the County. She stated Excelsior Mayor Ruehl made a presentation with the intent of possibly generating some interest in holding a multi-week long Lake Minnetonka festival sometime in the future.

C. Page: Lake Minnetonka Conservation District

Councilmember Page reported on Lake Minnetonka Conservation District (LMCD) activities. The LMCD has forwarded its proposed 2012 budget to its member cities. The budget reflects a 2.6 percent decrease when compared to previous year's budget, noting the decrease was achieved by using \$20,000 in reserve funds. The budget includes a 1.5 percent salary increase placeholder. The LMCD Board passed a resolution and sent a letter signed by the LMCD Board Vice-Chair in support of the new AIS legislation. The LMCD Board discussed a request from the Upper Minnetonka Yacht Club about reconfiguring its docks. The LMCD Board had some discussion about removing the public amenities criterion for multiple dock licenses from the LMCD's code and have them addressed by resolution as well as to change some of them; no action was taken on that. He noted that he is on the LMCD's Ordinance Review Committee.

Councilmember Fletcher stated the LMCD budget allocates \$93,633 for Eurasian Watermilfoil (milfoil) harvesting and about \$30,000 for AIS prevention in 2012. In 2011 about \$300,000 will be spent to treat three bays in Lake Minnetonka for milfoil.

Councilmember Page stated the LMCD Board believes the State should make a larger contribution to mitigating AIS issues in Lake Minnetonka. He noted the MCWD and the Minnesota Department of Natural Resources (MnDNR) have committed an additional combined approximate \$13,000 to AIS prevention efforts in Lake Minnetonka. He stated the LMCD's \$30,000 will be used to pay for boat launch inspectors which are trained by the MnDNR. The MnDNR's plan is to have inspectors at three launch sites with the focus being primarily on keeping people from transporting AIS out of the Lake.

D. Quam: Roads & Sewer, St. Alban's Bay Bridge, Minnetonka Community Education

Councilmember Quam stated the City's roadways have already been discussed. The bids for 2011 improvements should be available for the next Council meeting. The work will probably be done in July. The bids for repairs to the City's sewer system and manhole covers have started to come in. Council may have to have a special meeting to award the contract rather than wait to do that during its June meeting. There is nothing new to report on St. Alban's Bay Bridge.

Quam went on to state there was nothing new to report on Minnetonka Community Education (MCE) activities. He noted there is a youth triathlon planned for May 7.

E. Rose: Excelsior Fire District

Councilmember Rose stated the Excelsior Fire District (EFD) Board held work sessions on April 6 and April 20 to discuss the proposed 2012 EFD Operating Budget and 2012 – 2032 EFD Capital Improvement Program. The biggest issue with the budget is the anticipated \$80,000 mandatory contribution that will have to be made to the Excelsior Firefighters Relief Association (EFRA) fund for pensions. The mandatory contribution is required because that fund is currently under funded because of the market declines a few years back. During the April 20 meeting the Boardmembers were asked to ask their respective Council about considering using the approximate \$40,000 surplus in the Fire Facilities Fund there's anticipated to be at the end of 2011 to help fund the mandatory contribution. [The surplus is the result of using about \$40,000 in unspent construction funds for part of the EFD's bonded debt payment for the facilities due February 1, 2011.]

Mayor Kind and Councilmember Fletcher stated they thought it made sense to use the surplus funds for that purpose. Fletcher then stated he thought the City would come out better than it would if it asked for the surplus funds to be returned to the member cities and then have to fund \$40,000 for the EFRA.

Councilmember Page stated he prefers the surplus funds be returned to the member cities.

Councilmember Rose stated he thought it would be cleaner from an accounting perspective to have the surplus returned to the member cities and then have the cities fund the mandatory contribution. He noted there is still the remaining \$40,000 of mandatory contribution that has to be funded some how.

Fletcher moved, Quam seconded, approving the use of the \$40,000 surplus in the Excelsior Fire District's Fire Facilities Fund there is anticipated to be at the end of 2011 to help fund the anticipated \$80,000 2012 mandatory contribution to the Excelsior Firefighters Relief Association's fund for pensions. Motion passed 3/2 with Page and Rose dissenting.

10. ADJOURNMENT

Fletcher moved, Page seconded, Adjourning the City Council Regular Meeting of May 3, 2011, at 10:20 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder