

**GREENWOOD CITY COUNCIL MEETING**  
**Wednesday, June 6, 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, Quam and Rose

Others Present: City Attorney Kelly (departed at 10:08 P.M.), City Zoning Administrator/City Clerk Karpas and City Engineer Martini (departed at 7:13 P.M.)

Members Absent: None

Councilmember Fletcher asked that Milfoil be added to Item 9.A on the agenda.

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

**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 26, 2012, Local Board Reconvene Minutes**
- B. May 2, 2012, City Council Meeting Minutes** (This was moved to Item 8.A on the agenda.)
- C. May 16, 2012, City Council and Planning Commission Joint Work Session Minutes**
- D. April 2012 Cash Summary Report**
- E. May 2012 Verifieds, Check Register, Electronic Fund Transfers**
- F. June 2012 Payroll Register**

**Motion passed 5/0.**

**3. MATTERS FROM THE FLOOR**

There were no matters from the floor presented this evening.

**4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS**

- A. Meet Planning Commissioner**

Mayor Kind stated Lisa Christian is present this evening to introduce herself to Council. Ms. Christian has applied for Alternate Seat 2 on the Planning Commission. The appointment will be effective June 6, 2012, through March 2013. She asked Ms. Christian to tell Council why she would like to be a member of the Commission.

Ms. Christian stated she has been a resident of the City since 2005 and she lives on property that fronts Lake Minnetonka. She noted she was encouraged by a John Beal to apply. She stated she does not have a lot to bring to the table and expressed confidence that over time she will learn. She then stated she hopes to be an asset to the Commission and to the City.

**Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 13-12, “A Resolution Updating the City’s Alternate Planning Appointments and Directing the City Attorney to Administer the Oath of Office to the new Alternate Planning Commissioner Lisa Christian.” Motion passed 5/0.**

Councilmember Fletcher commented that having John Beal encourage Ms. Christian to apply was in and of itself good.

Attorney Kelly stated he will administer the oath during the next Planning Commission meeting.

**B. City Engineer Dave Martini – 2012 Road Project Bids and County Aid to Municipalities Application**

Engineer Martini explained that on May 31, 2012, the bids for the 2012 road project were opened. The project includes the east leg of Greenwood Circle, Curve Street and Central Avenue. The City asked for an alternate bid for the fire access lane off the west leg off Greenwood Circle. The City received four bids. The low bid was received from Omann Brothers Paving in the amount of \$100,762.20. That amount includes the alternate bid for the fire access lane. If Council decides to move forward with the project Staff recommends moving forward with the bid from Omann Brothers.

Councilmember Fletcher asked if Omann Brothers has done work for the City before. Engineer Martini responded yes and that the firm did good work for the City.

Mayor Kind noted the 2012 budget for road projects is \$115,000 for construction costs and \$15,000 for engineering costs. She asked if there is a project Council would like to add to use the full budgeted amount. Councilmember Quam stated one option would be to do the leg off of Meadville Street by the Cochrane residence. Quam then stated another option would be to use the funds in excess of what is needed this year in 2013. Councilmember Page asked how bad that leg off of Meadville Street is. Quam responded it is pretty bad. Page asked what the process would be to add that. Engineer Martini suggested authorizing up to a certain amount for the repair of that leg and then he and Quam would work with Omann Brothers to see what could be accomplished with that additional funding. Martini stated he would propose the unit prices in the bid be extended for that additional work. Kind asked if that leg seems doable for about \$14,000. Martini stated the bid for the alternate fire line was about \$14,600 and the leg off of Meadville Street is a little shorter.

**Page moved, Rose seconded, accepting the bid from Omann Brothers Paving for an amount of \$100,762.20, and authorizing Council member Quam and Engineer Martini to enter into negotiations with Omann Brothers to determine if the leg off of Meadville Street to the north can be repaired for the remaining amount of the \$115,000 budgeted for construction costs for road repairs in 2012 and if so authorizing those additional repairs. Motion passed 5/0.**

Councilmember Fletcher commented that the letter from Bolton & Menk dated May 24, 2012, about total daily maximum load was very good. He noted that Engineer Martini is the President of the Minnesota Society of Professional Engineers this year. Martini stated he will serve in that capacity for another few weeks. A new president takes that role on July 1.

Mayor Kind stated Council needs to authorize the City Clerk to work with the City Engineer to complete the application for reimbursement from the Hennepin County Aid to Municipalities. The amount the City is entitled to receive for road projects is \$1,377.

**Page moved, Quam seconded, directing the City Clerk and the City Engineer to complete the application for reimbursement from the Hennepin County Aid to Municipalities. Motion passed 5/0.**

Engineer Martini stated engineering is assessing a couple of drainage issues along Excelsior Boulevard and they will prepare a report on recommendations for Council to consider. The improvements would be done in conjunction with the Metropolitan Council's project.

Engineer Martini departed the meeting at 7:13 P.M.

**C. July 4<sup>th</sup> Parade, 10:00 A.M. at Greenwood Park**

Mayor Kind encouraged everyone to take part in the 4th of July parade which will begin at 10:00 A.M. and will start at Greenwood Park.

**5. PUBLIC HEARING**

**A. None**

**6. UNFINISHED BUSINESS**

**A. Xcel Energy's Potential 69 kV to 115 kV Transmission Line Upgrade**

Mayor Kind stated the meeting packet contains copies of three resolutions regarding Xcel Energy's (Xcel) potential 69 kV to 115 kV upgrade to the Southwest Twin Cities Bluff Creek to Westgate 69 kV transmission line. She noted that Councilmember Fletcher has taken the lead on this Project and reviewed the applications. She explained that during its May 2, 2012 meeting Council discussed this project. Council asked Xcel to provide Council with information regarding the existing electric and magnetic fields (EMFs). A copy of that information is included in the meeting packet. She noted that initially the EMFs are projected to be lower than they currently are, but they could go up over time. She asked Councilmember Fletcher to provide additional information.

Councilmember Fletcher noted that Xcel has filed applications with the Minnesota Public Utilities Commission (PUC). He explained the PUC then delegates preparing the environmental assessment to the Department of Commerce. Everyone's intent is to provide reliable electrical service at a reasonable cost. Xcel assesses its infrastructure and makes a recommendation on what changes it thinks need to be made. But, the PUC makes the final decisions. Public input is taken into consideration,

Fletcher stated the application submitted by Xcel has two parts. One is the Notice of Certificate of Need (the Certificate) proceedings for the Project. The PUC assesses that to determine if there is need for the

Project. Xcel also submitted a Route Application which helps determine the route the transmission line would take. Both applications have been filed and are in being considered.

Fletcher explained the way for the City and its residents to provide input is to file their input with the Department of Commerce. It will then be filed on the Docket. There are two separate Dockets. One is for the Certificate of Need and the other is for the Routing Permit.

Councilmember Page stated if Council adopts any of the resolutions being considered he asked if they will be submitted to the Dockets. Councilmember Fletcher stated it would be.

Councilmember Fletcher explained that based on information provided in the Certificate the Department of Commerce reviews the demand forecast to determine if there is a need for the upgrade. The first draft Resolution No. 12-12 related to the Certificate of Need stated the Certificate indicates there had been a reduction in load at the Excelsior substation from 17.03 megawatts (mW) in 2004 to 12.2 mW in 2010. The load reduction at the Deephaven substation went from 42.87 mW in 2004 to 41 mW in 2010. This Resolution questions if there is a need for increased demand in this area which is almost fully developed. The Certificate identifies two options for consideration. Option 1 is for the transmission line upgrade to 115 kV. Option 2 requires only transformer and conductor upgrades; it keeps the same 69 kV transmission line. There is a short-term savings with Option 2. On a long-term Net Present Value (NPV) Option 2 is a little lower. This Resolution asks the PUC to strongly consider Option 2. He noted that Option 1, which converts the line through Greenwood, has the capacity to add 200 mW of capability. Option 2 only adds 168 mW. He commented that he thought there may be a move to 115 kV as a standard for Xcel at its substations to improve reliability. He stated if that is the case, the Resolution states there may be an option that goes along Highway 5 to improve redundancy and the City asked the PUC to ask Xcel to consider that. He explained this Resolution states that per Xcel's information the existing 69 kV line can be upgraded by 16.5 percent by upgrading the substation equipment.

Mayor Kind noted that at the dais this evening was a copy of a letter she received from Deephaven Mayor Skrede stating the Deephaven Council supports moving the substation currently located in Deephaven to State Highway 7 and then running a transmission line along Highway 7.

Councilmember Fletcher stated from his vantage point need is the most critical part of the application.

Mayor Kind read the summary statement in Resolution 14-12 of what the City is asking for. It states **“NOW, THEREFORE, BE IT RESOLVED, that the City of Greenwood respectfully requests that the Public Utilities Commission NOT approve the Certificate of Need Application as proposed based on the fact that Xcel has provided a lower cost, less disruptive option that, according to Xcel, also will meet the electricity needs of the study area.”**

Councilmember Page stated he doesn't have any questions about the content of Resolution No. 12-12. He does have questions about the language.

Councilmember Fletcher stated that he had a conversation with Michelle Swanson from Xcel and who is present this evening, and Ms. Swanson has extended an offer to have a worksession where representatives of Greenwood discuss issues with representatives of Xcel.

Mayor Kind asked if the resolutions have to be acted upon this evening. Is there time to wait until the next Council meeting to act on them? Councilmember Fletcher stated he thought there is benefit in submitting Resolution 12-12 sooner versus later. Fletcher noted that he will not be in attendance for the July 5, 2012, meeting.

Mayor Kind asked Councilmember Page to review his concerns about the language in Resolution 12-12.

Councilmember Page explained the Resolution states “*This upgrade is expected to negatively impact the value of adjacent homes.*” He stated he does not know if that is factually accurate. He noted he will not vote for the Resolution if that statement is included because he does not think there is a basis in fact for it. It also states “... *there is little reason to forecast that there will be significant demand growth in these communities in the future that will require a major upgrade of the existing transmission line*” and “... *there is little reason to forecast that the local substation demand will increase as forecast by Xcel Energy through 2020.*” He stated that does not seem accurate to him. He thinks there will be an increased demand for power and that is why Xcel is seeking to increase the capacity. More capacity is better than less. He again stated he does not know if there is a basis in fact for that language either.

Councilmember Fletcher stated with regard to demand the data Xcel included in the Certificate showed demand declining at the substations in Excelsior and Deephaven. He noted that in 2011 the demand was 3.6 mW lower than Xcel forecasted. He stated those statements may trigger the Department of Commerce to ask Xcel to reevaluate the need at those two substations. He questioned if the increase in capacity is needed for this area or is it needed to support growth in other cities such as Chanhassen and Shakopee. He commented that he does not think residents want to live near a transmission line especially a larger one. He noted that he will not object to deleting the statement about negatively impacting property values. Mayor Kind agreed that statement could be deleted. Fletcher stated it could be changed to say “*Residents have expressed concern that the upgrade may negatively impact property values,*” noting he has heard that expressed. Fletcher stated “...*compared to 168 mW for Option 2*” should be changed to “...*compared to 168 mW for Option 1.*” Kind noted “... *Xcel’s rationale*” should be changed to “*Xcel’s rationale.*”

Mayor Kind noted that new appliances and electronics are designed to be more energy efficient, so that may be a factor and lower future demand for electricity.

Councilmember Fletcher suggested giving the three representatives from Xcel present this evening the opportunity to comment if they would like. Mayor Kind asked if the Xcel representatives wanted to speak and they declined.

Mayor Kind asked if Council wants to consider each of the three resolutions independently or review them all before taking action. Councilmember Fletcher suggested he review all three of them first.

Councilmember Fletcher Resolution No. 14-12 is related to the Route Application. The Application was filed after the PUC decided there was need for expansion and it drives the request for the upgrade the 69 kV transmission line to a 115 kV line near the LRT trail. This Resolution communicates the City’s strong preference to have the transmission line buried. It requests the PUC ask Xcel to provide the cost to do that.

Mayor Kind stated that maybe the portion visible from Lake Minnetonka could be buried for aesthetic reasons. She commented that she was out on Excelsior Bay and tried to visualize much taller transmission line poles replacing the current poles. They would have a negative visual impact. Councilmember Fletcher expressed his agreement with that.

Councilmember Fletcher stated Resolution No. 14-12 notes that during a meeting with representatives from the Cities of Deephaven, Excelsior, Greenwood and Minnetonka and representatives from the Three Rivers Park District (TRPD), the Minnehaha Creek Watershed District (MCWD) and the Hennepin County Regional Rail Authority (HCRRA) on November 4, 2011, Xcel was asked to consider the option

to bury the transmission line. The Route Application does not mention burying the line. The Resolution states that was a critical omission. If the PUC does not require the line to be buried, the Resolution requests the PUC ask Xcel for more information about things such as tree removal and trimming, vegetation impacts, what the new pole heights will be, transmission line aesthetics, and impacts on recreation. Information requested during the November 4<sup>th</sup> meeting.

Mayor Kind read the summary statement in Resolution 14-12 of what the City is asking for. It states **“NOW, THEREFORE, BE IT RESOLVED, that IF the Xcel Energy 115 kV transmission line upgrade along the existing 69 kV route is approved, the city of Greenwood’s strong preference would be to have the line buried due to aesthetic considerations along a statewide asset (Lake Minnetonka). IF burial is not an option, the city of Greenwood respectfully requests the above listed items be considered.”**

Councilmember Page stated he doesn’t have any questions about the content of Resolution No. 14-12. He does have questions about the language. He explained the Resolution states *“We also anticipate that it will reduce adjacent property values.”* He stated he does not know if that is factually accurate. Councilmember Fletcher stated it could be changed to say *“Residents have expressed concern that the upgrade may negatively impact property values,”* which would be consistent with the change in the first resolution. Page stated the summary statement in the Resolution only talks about aesthetic considerations. Page explained the transmission line is very exposed where it runs along Lake Minnetonka, and he thought it should be buried to improve the continuity of power. Now is an opportune time to bury that section of the line to help reduce power outages. He suggested changing it to include weather considerations as well.

Councilmember Fletcher noted the following statement in the Resolution talks about reliability. *“The city of Greenwood respectfully requests that the PUC require Xcel Energy to provide site specific cost and reliability information for a 115 kV buried transmission line along the LRT trail for its consideration with the application so that the PUC can properly evaluate the buried cable option.”* Councilmember Page stated that will dovetail with the minor change just agreed to.

There was Council consensus to change *“...buried due to aesthetic considerations along a statewide asset”* to *“... buried due to aesthetic and reliability considerations along a statewide asset.”*

Fletcher outlined Resolution No. 15-12 which basically states that Greenwood would only support an alternate that is approved by the affected neighboring cities.

Fletcher stated the City of Deephaven has proposed an alternate route for the 115 kV transmission line. It would partially run along State Highway 7 and it would include moving the substation currently located in Deephaven to an unspecified location. Deephaven believes it makes more sense to have a transmission line along a main corridor. He noted he does not know how practical that would be and stated that the Highway 7 route would affect Greenwood properties.

Mayor Kind read the summary statement in Resolution 15-12 of what the City is asking for. It states **“NOW, THEREFORE, BE IT RESOLVED, the city council of the city of Greenwood will only support alternate Xcel Energy routes for an upgraded or new 115 kV transmission line that are also approved by the affected neighboring city or cities.”**

Councilmember Fletcher noted the neighboring cities are Deephaven, Excelsior, Minnetonka and Shorewood and that they are referenced in the Resolution. He explained if the upgrade to the transmission

line along the LRT is approved those are the cities that would be impacted. He stated he thought it prudent for these Cities to work together.

There was ensuing discussion between Councilmember Fletcher and Councilmember Quam about whether or not the word “only” needs to be included in the summary statement.

Councilmember Fletcher suggested adding the word “potentially” after the word “only.” Councilmember Quam stated that would be okay with him.

Councilmember Page noted that the transmission line was down the railroad track (which is now the LRT trail) for many, many years and it is an established route for public utilities. He stated he did not agree with cities suggesting the route be changed because the railroad no longer runs there.

Councilmember Fletcher stated he did not think it likely that idea of the alternate Highway 7 route and moving the substation will advance.

Mayor Kind stated the letter from Deephaven states it does support taking the line and substation out of Deephaven entirely and running the 115 kV line along Highway 7.

Councilmember Rose stated from his perspective the only real alternative there is burying all, or part, of the transmission line.

Councilmember Fletcher stated he went through the Certificate of Need thoroughly and he does not believe it is an open and shut case. From his vantage point, the best shot at keeping the upgrade from happening is the Certificate.

Keith Stuessi, 5000 Meadville Street commented that he thought Councilmember Fletcher did a marvelous job sifting through the two applications and drafting resolutions. He stated that if the City doesn't want to pursue his question he will submit his own letter to the PUC though Tim Rogers with Xcel and any other person he needs to. He asked the representatives from Xcel why they cannot route the line from Pole 57 straight through Chanhassen on the massive 1,000 foot wide right-of-way (ROW) along Highway 5 on the existing infrastructure that already exists directly to the Westgate Substation.

Councilmember Fletcher stated that Mr. Stuessi's question is asked in Resolution No. 12-12. It states *“Xcel may also favor Option 1 because it provides additional 115 kV transmission line redundancy for its network. If this is the case, we respectfully request that the Public Utilities Commission require Xcel Energy to consider the option of adding conductors to existing 115 kV Line #5516, and provide the redundant 115 kV transmission capacity for the network using the more direct Scott County – Bluff Creek Substation – Pole Structure 57 – Line #5516 – Westgate Substation route. This would reduce the potential new Scott County to Westgate substation transmission line route by approximately 9 miles while utilizing existing 115 kV line infrastructure.”* He asked Mr. Stuessi if that is what he is talking about. Mr. Stuessi noted it was.

Paul Lehman, Xcel Representative, stated the question from Mr. Stuessi is about the design of the transmission system. He noted he is no longer a transmission designer although he did start his career as one. That would be a legitimate question to pose to the company's designer to assess how it could or could not meet Xcel's needs. He encouraged Council to express its opinions and be involved. He explained the process works when people let the regulators and others involved with making decisions aware of what people's views and opinions are.

Mr. Lehman stated there are two aspects to permitting. One is about the need for the facilities and whether or not Xcel can demonstrate the need for them. The timing for that is farther out. The hearing takes place 5-7 months after the application is submitted. The hearing is for the express purpose of determining if Xcel has demonstrated the need is there. If the City has questions / concerns about need it has more time to submit them. With regard to the solutions for satisfying the need, that has to be finalized sooner. There is a scoping process during which solutions that would solve the need have to be finalized. It is better to submit alternative proposals about how to fit the need sooner. He clarified he is not suggesting Council take action or not take action this evening.

Mr. Lehman stated that regardless of what Council decides to do this evening Xcel continues to extend the offer to work through the questions and concerns outlined in two of the resolutions. There is a team of people working on various aspects of the project and Xcel will make those people available to discuss them in a Council worksession or with the City's staff.

Councilmember Fletcher stated it is his understanding that the application for the Certificate was determined to be complete about a week ago. Mr. Lehman stated the hearing on the completeness was on May 31. Fletcher asked when the Department of Commerce starts to analyze the demand forecasts and the infrastructure. Mr. Lehman stated as soon as it decides the material provided is complete. That has happened, so the process of evaluating the material will begin. Fletcher asked if the Department of Commerce will take into consideration the material filed on the Docket at the same time. Mr. Lehman stated he thought it would take into consideration everything at its disposal when making its evaluation.

**Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 12-12, "A Resolution Responding to Xcel Energy's Certificate of Need Application Scott County to Westgate 115 kV Upgrades Docket 11-332 subject to replacing 'This upgrade is expected to negatively impact the value of adjacent homes' with 'Residents have expressed concern that the upgrade may negatively impact property values,' changing rational to rationale, and changing '...compared to 168 mW for Option 2' to '...compared to 168 mW for Option 1.'"**

Councilmember Fletcher encouraged Council to accept Xcel's offer to discuss Council's questions, concerns and suggestions. He offered to coordinate such a worksession.

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

Councilmember Page noted that he thinks there is a need to upgrade the transmission line and therefore he does not want to say there is not. He stated he thought it is prudent for Council to look to the future.

**Fletcher moved, Page seconded, Adopting RESOLUTION NO. 14-12, "A Resolution Requesting Consideration of Greenwood's Concerns Regarding the proposed Routing of the Xcel Energy Scott County to Westgate 115 kV Upgrades Docket 11-948, subject to the replacing 'We also anticipate that it will reduce adjacent property values,' to 'Residents have expressed concern that the upgrade may negatively impact property values,' and changing "...buried due to aesthetic considerations along a statewide asset..." to "... buried due to reliability and aesthetic considerations along a statewide asset..." Motion passed 5/0.**

No motion was made to adopt Resolution 15-12.

## **B. Petition for Excelsior Boulevard Watermain Project**

Mayor Kind noted that the meeting packet contains a copy of two draft resolutions. One of them declares the adequacy of the petition for watermain extension along Excelsior Boulevard. The other declares insufficiency of the petition. She explained Council discussed the concept of extending the City's watermain along Excelsior Boulevard during its May 2, 2012, meeting. During that meeting Council decided that the City should wait until a petition is submitted before making a decision regarding how to proceed. The City has since received a petition from the owners of properties abutting Excelsior Boulevard. A copy of the petition is included in the meeting packet. The City Attorney has reviewed the petition and he has provided a memorandum regarding outlining the City's options for how to proceed. A copy of the memorandum is included in the meeting packet. A map reflecting the properties that would be affected is also included in the packet.

Councilmember Fletcher noted that the map is slightly incorrect and that the map was not submitted with the petitions. He stated it is his understanding the map was provided by the engineer for the City of Excelsior. It was prepared when the project was originally being considered and it included more properties. The petition does not reference the properties number 11-15 on the map. The petition is done by property address.

Mayor Kind asked Attorney Kelly to review the City's options.

Attorney Kelly explained it is at the election of the City to decide whether to proceed with this process. Based on his calculations, the signers of the petition represent owners of 41.6 percent (5 of 12) of the abutting properties. Thirty-five percent is the requisite. Therefore, Council can determine the petition has sufficiency. He noted that petitions are generally submitted by petitioners who are seeking the debt minimum. He explained it is his understanding Excelsior wants to install a 12-inch watermain line rather than the typical 8-inch line typically installed in neighborhoods in order to maintain water pressure. If Council accepts the petition and proceeds on the strength of the petition it cannot then upgrade the facilities under that petition process. If Council finds the petition to be reasonable it may have to act by way of its own initiative in order to go with a 12-inch line.

Councilmember Fletcher clarified the petition does not specify line size and the costs attached to the petition developed by the engineer for Excelsior were for a 12-inch line.

Mayor Kind asked how many of the people signing the petition signed it for the costs provided by Excelsior. Councilmember Fletcher stated all had been provided with the estimated cost per property which is for a 12-inch line. He noted there is a strong preference to pay for just an 8-inch line. Kind stated the size can be downsized but not increased.

Attorney Kelly stated that assumption can be made but the petition does not say it is for a 12-inch line. There are two ways to address that. One is to resubmit the petition clarifying it is for a 12-inch line. The other is Council action. He noted Council has six months to act on the petition. Unfortunately, the project will be moving forward more rapidly than that.

Mayor Kind stated her preference would be to install a line that could be extended further in the future and it is her understanding that it has to be a 12-inch line at a minimum to do that. She then stated the petition does not clearly specify the watermain line would be a 12-inch line and therefore she is not sure the signers knew that the cost was for a 12-inch line.

Councilmember Fletcher stated the petition only states it is to install watermain.

Councilmember Fletcher stated the petition did not specify line size. It did not talk about structural improvement.

Mayor Kind stated if Council declares the petition to be sufficient can Council say it is going to be a 12-inch line.

Attorney Kelly explained when the Notice of Hearing is published it starts the clock. The City has to publish the resolution Council adopts ordering the plans to be approved, the hearing and so forth. That starts the appeal time. The City does not know if will face litigation. Therefore, it is prudent not to provide a person with an easy line of attack on a nuance that could be clarified by one of two pathways. Resubmitting a clarified petition specifying Excelsior demands a 12-inch line and prudence demands a 12-inch line. The signers would then be accepting the cost is more than a minimal 8-inch line. Alternatively, the City could decide to take action on Council's own initiative, which Council can do.

Councilmember Quam asked if the City would be liable for the cost differential between the 8-inch line and 12-inch line. Attorney Kelly explained if Council acts on its own and orders plans to be prepared for a hearing to discuss a 12-inch line installation, then that would involve a public hearing and a full explanation by the City Engineer about costs.

Attorney Kelly explained that any time one of these types of projects is done there is a special benefit to the abutting properties and there is a general benefit to the community. It is rare that the special benefit is 100 percent to the abutting properties without a part being apportioned to the community infrastructure. The appraisal process must be undertaken and that is required by State Statutes.

Councilmember Quam asked if the signers of the petition are saying they will pay the cost if the watermain is installed. Attorney Kelly stated they are not and he explained they have a legal right to pay for only that which specifically benefits their property with the expectation that there is some general component to be carried. If the appraisal process results indicate that 100 percent of the benefit is for the owners of the abutting properties that is defensible and it could be the City's final resolution. He commented that it would be fair to assume that the couple of commercial properties are going to challenge the project.

Councilmember Fletcher noted that if 100 percent of the property owners sign the petition then it would not be necessary to go through the appraisal process.

Attorney Kelly stated that as Mayor Kind noted Council is looking forward to a time when the water infrastructure could potentially be completed. Kind stated at least she would like that to be an option.

Councilmember Page stated if this is approved with there being ambiguity about what the property owners who are submitting the petition are willing to pay for they could argue they would only receive the benefit of an 8-inch line. Therefore, they could argue that the benefits of the larger line should be paid for by the City. Attorney Kelly stated that is correct.

Mayor Kind stated the City could have the petitioners submit a new petition that clearly stipulates they are asking for a 12-inch line.

Attorney Kelly explained if they submitted a new petition then the City could move forward with the 12-inch line without being hit with the argument that the City arbitrarily upgraded what the petitioners were asking for. He stated the apportioning of special benefit and the general benefit will still have to be addressed.

Councilmember Page stated he assumed the petitioners could still argue the City should pay for the cost differential between the 8-inch line and the 12-inch line even if they signed a petition that clearly specifies it will be a 12-inch line.

Attorney Kelly stated the intent of clarifying and resubmitting the petition is so that no one can stop the process by saying they signed up for the minimum size line not a larger line.

Councilmember Page stated resubmitting the petition would make it difficult for the owner of an abutting property to challenge the extension because they thought the City arbitrarily upgraded the line. He noted the city is aware that there is some potential opposition from the owners of the affected commercial properties. He stated it is prudent that the petition be clear that the residents want a 12-inch line.

Councilmember Fletcher stated based on his limited feedback the owners of the commercial properties are not in favor of the project.

Attorney Kelly stated Council could just thank the petitioners for submitting the petition and then tell them the City is going to act on Council's initiative.

Councilmember Page stated he does not want Council to act on its own initiative. This is an initiative coming from property owners. He wants them to clarify that they want a 12-inch line. Mayor Kind expressed her agreement with Councilmember Page's comments. Page stated pricing being based on 12-inch line is not sufficient to be able to prove that the property owners want a 12-inch line. He noted that he was not aware that could be a problem until this evening.

Councilmember Fletcher stated he did not think there would be a problem having property owners sign a more specific petition. He noted that he will not be in attendance during the July 5, 2012, Council meeting.

Councilmember Page stated Council is just determining the adequacy of the petition. The signers of the petition represent owners of the abutting properties and they exceeded the 35 percent requisite.

Attorney Kelly stated it is prudent for the City has to ensure the property owners understand that the watermain will likely be a 12-inch line and that the City is not sure how the costs will be portioned between the property owners and the City.

There was Council consensus to continue this item to Council's July 5, 2012, meeting pending resubmission of a petition specifying it is for the installation of a 12-inch watermain line.

Mayor Kind asked if anyone in the audience wanted to comment on this item.

Steve Janousek, 21210 Excelsior Boulevard, noted he was one of the property owners who signed the petition. He stated if it would help he would tell Council what he thought he was signing. He explained it was his understanding that estimated cost per property was for what Council is calling a 12-inch line and that the line could potentially end up being smaller. He stated he thought the others who signed the petition had the same understanding.

Councilmember Quam stated based on Mr. Janousek's comments there should not be a problem with getting the requisite number of signatures on a clarified petition.

Councilmember Page expressed concern about doing a project that will benefit a few properties in the City yet a portion of the cost will in effect be assessed to the entire City. He stated based on the discussion this evening he thinks the City will likely have to pay for the cost differential between an 8-inch line and the 12-inch line. He asked if that will be discussed when the finding of need is taken up.

Attorney Kelly stated Council needs to know that apportionment will occur. He explained Council does not have to decide to move forward on the project until the City Engineer presents information about the project and the cost of the project to Council. After that the City has to go through the special assessment process and find out how the costs will be apportioned.

Mayor Kind reiterated that she thought it would be prudent to install 12-inch line so the watermain could be extended in the future.

Councilmember Page stated that means people are agreeing that the City will pay for part of this project. Councilmember Quam stated Council does not have to make that decision now. Page noted that part of the reason he is bringing this up now is Councilmember Fletcher will not be at the July 5 meeting when this will be discussed again. Quam noted the only thing Council will do in July is accept the petition.

Attorney Kelly stated once the petition is accepted then the plans will have to be prepared at a cost to the City. The plans will be presented to Council during a public hearing and be fully reviewed. Then after taking comment at the public hearing can Council make its decision about whether or not to move forward with the project.

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

Mayor Kind stated this is the first reading of Ordinance 210, amending Ordinance Code Section 113.30 Subd. 5(d) and 5(f), Use of Sewers. It would give Council the authority to institute programs to ensure compliance with an ordinance that prohibits discharge of clean water into the sanitary sewer system.

Kind explained that during its February 1, 2012, meeting Council discussed the possibility of conducting a new "sump pump program" to reduce the amount of money the City is paying to treat clean water. The last sump pump program was conducted in 2006. At that time it is believed that each property owner was asked to complete a form to certify that their sump pump was not hooked up to the sewer system. There was no follow up with the properties that did not return the certification form. If Council wants to implement a new "sump pump program," Section 310.30 of the City Code would need to be revised.

Kind noted a copy of the draft Ordinance as well as a proposed Certification Letter and Certification Form are included in the meeting packet. Both have been reviewed and revised by the City Attorney. For the Council's reference, the applicable Subsections of the current City code also are included in the meeting packet.

Zoning Administrator/Clerk Karpas suggested deleting the following sentence from the Certification Letter. It states "*The City is hopeful that 100% real property owner voluntary compliance will be obtained.*" His rationale for deleting it is the City wants them to send the completed Form back to the City. Councilmember Page agreed with Karpas' suggestion. There was Council consensus to delete the sentence.

Councilmember Page questioned why Council wants to make it a crime (a misdemeanor). Councilmember Quam stated he has the same concern. Page stated from his perspective it would be sufficient to double the fine and to keep going through this process periodically.

Attorney Kelly explained any violation of the Code that is unspecified is a petty misdemeanor.

Mayor Kind noted the Code Section 310.30 Subd. 5(h) states *“Violation of this section is a misdemeanor and each day that the violation continues is a separately prosecutable offense.”* She did not think it needed to be reiterated in Subd. 5(d). She also noted that under Subd. 5(d) in the amendment it states *“Property owners must return the completed certification form within 14 days of the certification letter notification date. Failure to return a fully completed certification form within 14 days of the certification letter notification date shall be a misdemeanor and subject the property owner to prosecution as permitted in paragraph (h) below.”* She stated the second sentence could be deleted from the amendment.

Councilmember Fletcher said he did not want to make it a crime either.

Councilmember Quam asked if the City is forced to have it be a misdemeanor. Councilmember Page noted that every violation of the Code is a misdemeanor. But, as a practical matter the City is not going to take someone to court over this. Quam commented that this Council may not but who knows what a future council will do. Councilmember Page stated the District Court would not want to have this come before it.

**Fletcher moved, Quam seconded, adopting the first reading of Ordinance 210 amending Section 310.30 Subd. 5(d) and 5(f) Use of Sewers subject to deleting the following *“Failure to return a fully completed certification form within 14 days of the certification letter notification date shall be a misdemeanor and subject the property owner to prosecution as permitted in paragraph (h) below.”***

Councilmember Page stated Code Section 310.30 Subd. 5(h) states *“Violation of this section is a misdemeanor and each day that the violation continues is a separately prosecutable offense.”* He expressed concern about the word misdemeanor. Mayor Kind noted that is the way the current Code is written.

**Motion passed 5/0.**

**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 a meeting agenda for Council discussion. She noted the meeting packet contains a copy of an email from Mr. Quinn. She also noted that Mr. Quinn is not present this evening. She asked Council if, in the interest of time, it wants to continue this to the July 5, 2012, meeting agenda or not even consider it at all.

Councilmember Quam stated he had no problem continuing it to the July meeting.

Councilmember Page stated he did not mind it being continued to the July meeting, but he does want to consider it some time. He then stated he agrees with Mr. Quinn that the foliage has grown too tall and he thought it should be trimmed to be about 4 feet high. He clarified he did not want it totally removed which may encourage people to fish in that area.

Councilmember Fletcher asked if this could be continued to the August Council meeting when he will be in attendance.

There was Council consensus to move this item to the August 1, 2012, meeting agenda.

**E. Variance Findings of Fact, Keith and Stacy Carlson, 20965 Channel Drive**

Mayor Kind noted that during its May 2, 2102, meeting Council approved the variance requests for Keith and Stacy Carlson, 20965 Channel Drive, for a front entry and fireplace addition based on verbal findings. During that meeting Council also directed the City Attorney to draft findings of fact for Council's consideration during its June 6, 2012 meeting. The meeting packet contains a copy of the findings.

**Quam moved, Fletcher seconded, Adopting RESOLUTION NO. 11-12, "A Resolution Setting Out the Findings of Fact and Conclusions of Law Regarding the Keith and Stacy Carlson Front Entry and Fireplace Addition Variance Requests."**

Councilmember Rose stated he has a problem with allowing anything to be built closer to the lake front than allowed in the City Ordinance. He commented that Council allows this over and over again and he is not in favor of it. Mayor Kind stated based on minutes from the Planning Commission meeting when this was considered the Commission recommended approval of this because the fireplace would be cantilevered. Rose suggested putting it the other way; it is proposed to go closer to the lake front. Rose also expressed concern about the hardcover issue. Kind noted they are going to reduce their hardcover coverage.

Councilmember Fletcher stated the fireplace does not impact hardcover because it is cantilevered.

Councilmember Page stated he tends to agree with Councilmember Rose on a general basis. What makes this request different is the property has lake yard setbacks on two sides of the property. The applicants are honoring the setback on the main lake but asking for a variance on the channel side. Because they are boxed in to some degree he doesn't have a problem granting this setback variance.

Page then stated Finding of Fact 11 states "*The applicants state that a practical difficulty in meeting the setbacks is created by a required lake yard setback along two property lines and that the configuration of the lot as a flag lot hinders their ability to comply with the maximum permitted impervious surface area.*" He suggested changing it to read, "*A practical difficulty in meeting the setbacks is created by a required lake yard setback along two property lines.*"

**Without objection from the maker or the seconded, Finding of Fact 11 was changed to read "A practical difficulty in meeting the setbacks is created by a required lake yard setback along two property lines." Motion passed 4/1 with Rose dissenting.**

**7. NEW BUSINESS**

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

Mayor Kind 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 for a proposed deck expansion.

Zoning Administrator/Clerk Karpas explained the applicants are proposing to replace an existing lakeside deck that currently encroaches 9 feet, 10 inches into the required lake yard setback. Because the deck already exists and because they already exceed the maximum impervious surface the applicants have requested a variance. The applicants also propose to create a small addition to the deck which does comply with the lake yard setback and all of the setback requirements. Their impervious surface would go to 36.62 percent; or 6.62 percent over the maximum permitted surface area of 30 percent. It would be less than the current impervious surface amount of 39.4 percent.

Councilmember Page stated the applicants are asking for permission to expand a nonconformity. Mayor Kind stated the proposed impervious surface is less than what exists currently. Councilmember Fletcher stated from his perspective it would not be less because the Findings of Fact just approved for the applicants for different variance requests have reduced the current impervious surface to 35.7 percent.

Zoning Administrator/Clerk Karpas explained the deck was originally part of the application for the variance requests approved during Council's May 2, 2012, meeting. In that application the addition to the deck encroached further into the front yard setback. They removed the deck and deck addition from that application, redesigned the deck so the addition did not encroach into the setback, and submitted a standalone variance request application for the deck. When the deck was part of the first application the impervious surface amount was the same as what is being requested in this application.

Mayor Kind noted the Planning Commission recommended approval on a 5/0 vote and considered the practical difficulty standard in their review.

Councilmember Rose asked if the deck will be replaced in the same exact spot. Zoning Administrator/Clerk Karpas responded that is correct. He also noted that the applicants' plan includes a new small deck that meets the setback requirements.

Councilmember Fletcher noted the staircase was widened from 3 feet to 4 feet.

Councilmember Page stated the nonconformity increases with regard to the staircase. The impervious surface also increases because of the deck. Mayor Kind clarified the impervious surface increases from what was just approved, but it is less than the original impervious surface.

Page asked if the increase of the nonconformity is in the same area that fronts St. Alban's Bay. Mayor Kind stated it is. Zoning Administrator/Clerk Karpas stated the increase is the width of the stairs.

Josh Haug, the landscaper on the project, explained the existing staircase is 3 feet wide and it encroaches into the front yard setback. The proposed staircase will be 4 feet wide. The addition to the deck does not encroach into the setback. When the applicants met with the Planning Commission the last time the Commission asked the applicants to submit a survey which reflects the proposed landscape plantings. It shows the existing hardcover and the final hardcover. The final hardcover with the landscaping will be 36.5 percent a decrease from the original hardcover of 39.62 percent.

Councilmember Page asked the applicants why they want to increase their staircase width to 4 feet. Mr. Carlson stated for safety reasons and easier access. Ms. Carlson stated the staircase is a small piece that goes into the setback. Councilmember Quam stated a 4-foot-wide staircase is much safer than a 3-foot-wide staircase, noting he has a 3-foot-wide staircase. The landscaper noted the staircase is quite deep to keep it from encroaching more into the setback, and for most of the designs his company does staircases are wider than 4 feet. Mayor Kind stated it would allow to people to pass each other on the staircase. Page commented that makes sense.

Page then asked what the rationale is for the new smaller deck. The landscaper said the current deck is very narrow and the Carlsons wanted to have an area to have both a table and chairs and grill on the deck. That's not possible on the current deck.

Page stated the proposal does increase the hardcover on the side of the property that fronts the lake. The landscaper noted that the overall the hardcover will be less than what it was originally.

The landscaper noted a portion of an existing patio is being eliminated to eliminate some hardcover on the lake side and that it was in the setback area.

**Mayor Kind recessed the meeting at 8:58 P.M.**

**Mayor Kind reconvened the meeting at 9:06 P.M.**

Zoning Administrator/Clerk Karpas noted the City Ordinance allows a staircase up to 4 feet wide in the required shoreland setback in bluff areas or areas with a steep slope.

**Fletcher moved, Page seconded, approving the variance requests by Keith and Stacy Carlson, 20965 Channel Drive, as proposed and recommended for approval by the Planning Commission subject to the impervious surface being no greater than 35.7 percent.**

In response to a question from Councilmember Quam, Councilmember Fletcher explained the 35.7 percent is a reduction of 0.8 percent of what the applicant is proposing. Mayor Kind noted that 35.7 percent is what was just approved in the Findings of Fact for two variances for the Carlsons under Unfinished Business on the agenda.

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

Councilmember Rose stated there is nothing stating how the impervious surface will be reduced from 36.62 percent to 35.7 percent.

**Fletcher moved, Page seconded, directing the City Attorney to draft findings of fact based on Council's discussion this evening for Council's consideration during its July 5, 2012 meeting. Motion passed 5/0.**

**B. Conditional Use Permit, Keith and Stacy Carlson, 20965 Channel Drive**

Mayor Kind explained Keith and Stacy Carlson, 20965 Channel Drive, have applied for a conditional use permit (CUP) to exceed the annual permitted significant tree harvest of 2 trees.

Zoning Administrator/Clerk Karpas explained the applicants are looking at an overall landscaping plan for their property which includes the removal of a number of trees. The City Ordinance allows property owners to remove up to two significant trees in one year without a permit and up to five in a 2-year period with a permit. The Ordinance prohibits the removal of trees within the Shore Impact Zone without the issuance of a CUP. The applicants are proposing to remove 5 significant trees and a total of 8 trees overall within the 50-foot setback area. The 5 significant trees are located in the Shore Impact Zone. The Planning Commission did consider the request and recommended approval subject to one large hardwood tree being planted on the south side of the property along the lakeshore. He noted that some of the trees are in very bad condition.

Councilmember Quam asked if the City's arborist inspected the trees. Zoning Administrator/Clerk Karpas responded he did. Mayor Kind noted that a copy of the arborist's comments is included in the meeting packet. Quam asked if what the applicants are proposing fits with what the arborist is recommending. Karpas stated it is.

Councilmember Fletcher stated he forwarded the landscaping plan to Planning Commissioner Beal and he thought the survey reflected what the Commission asked for.

Councilmember Page asked if the arborist's recommendations are reflected in the revised plan. Zoning Administrator/Clerk Karpas responded yes.

**Fletcher moved, Page seconded, approving the conditional use permit (CUP) for Keith and Stacy Carlson, 20965 Channel Drive, as recommended by the Planning Commission subject to adding an additional condition to the CUP that if the silver maple located on the lake side of the house is removed for any reason that it will be replaced in the same general area on the lake side of the house with a deciduous hardwood tree not less than three inches in diameter.**

Councilmember Fletcher commented that silver maples are not known to be long living trees. The additional condition is to ensure it would be replaced with a tree.

Councilmember Quam asked that act of God be included in the motion.

**Without objection of the maker or seconded, the motion was amending to add "including an act of God, and directing the City Attorney to prepare findings of fact based on Council's discussion this evening for Council's consideration during its July 5, 2012 meeting."**

The landscaper for the applicants noted they are adding trees to the property as well as removing them. He noted there are a number of trees that are not in good condition. He also noted the silver maple is in the best shape.

Councilmember Fletcher noted that it was Planning Commissioner's Beal's suggestion to add the condition about the tree.

**Motion passed 5/0.**

### **C. Possibility of Installing a Canoe Rack at the Meadville Boat Launch**

Mayor Kind explained that during Council's joint work session with the Planning Commission on May 16, 2012, Commissioner Conrad suggested installing a canoe rack at the Meadville boat launch. There was general consensus that the idea was worth considering and it was suggested that Council discuss this during this meeting.

Kind then explained that since that joint worksession some research has been done relating to canoe racks. The canoe racks the City of Deephaven has at Carson's Bay measure 9 feet long by 7 feet deep by 4 feet tall. Each rack holds 4 canoes. The racks were constructed by the Deephaven Public Works Department. They are made of metal piping. Public Works also can construct taller racks that hold 6 canoes. Due to the weight of the canoes the racks are affixed to the ground. Each canoe rack costs \$800-\$1,000 to build. Deephaven charges \$100 for each canoe rack space and their use is determined by a

waiting list. Because the canoe racks are located on land, their use is not regulated by the Lake Minnetonka Conservation District.

Kind noted that Council approved a canoe / kayak permit fee of \$60 in 2010 in anticipation of the possibility of installing canoe racks. The fee is included in the fee schedule which is located in Section 510 of the Code Book. She explained if Council chooses to move forward with the installation of a canoe rack or racks, an ordinance needs to be drafted to establish procedures for the application and use of the rack spaces. The ordinance could be drafted while the rack is being constructed.

Councilmember Page asked how much taller the 6-space canoe rack is than the 4-space rack. Mayor Kind stated 6-space racks can be found at the St. Louis Bay access. She noted that she did not go and measure them. Page noted that in order to lift a canoe to the top of a 4-space rack he has to lift a canoe over his head.

Mayor Kind commented that a 6-space rack must work because Deephaven has some. She noted a proposed site plan showing a possible location of a canoe rack is included in the meeting packet.

Kristi Conrad, 21780 Fairview Street, stated she was approached by her neighbors about this. She is aware of two people who would rent a space and possibly a third person. She noted that a 4-space rack could easily be filled up. Councilmember Page asked Ms. Conrad if she thought the City could rent out two 4-space racks. Ms. Conrad stated she thought so provided the racks were placed next to each other like train cars are.

Mayor Kind suggested building one and waiting to find out what the demand is. Page expressed his agreement with that.

Ms. Conrad explained that the 6-space racks in Excelsior have the lowest two spaces close to the ground. The 6-space rack is spaced out differently than the 4-space rack.

Councilmember Fletcher asked Mayor Kind if she has reviewed the site plan with the Excelsior Fire Department. Kind responded she has not.

**Fletcher moved, Quam seconded, directing the City Clerk to ask the Deephaven Public Works Department to install one rack to hold four or six canoes, as deemed appropriate after researching each option, at the Meadville boat launch as indicated on the proposed site plan subject to review by the Excelsior Fire Department.**

Councilmember Fletcher stated if the 6-space option is workable he recommended going with that option due to the minimal price difference between the two rack sizes.

**Motion passed 5/0.**

**D. Appointing Election Judges and Absentee Ballot Board**

**Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 8-12, "A Resolution Appointing the 2012 State Primary and General Election Judges and Establishing Hennepin County as the Absentee Ballot Board." Motion passed 5/0.**

**E. Absentee Ballot Counting Location**

**Quam moved, Rose seconded, Adopting RESOLUTION NO. 9-12, “A Resolution Designating Hennepin County as the Central Count Location and for the Use of the Central Counter 650 for Absentee Ballots for the 2012 State and Primary General Elections.” Motion passed 5/0.**

**F. Hennepin County Recycling Agreement**

Mayor Kind noted that the City has been waiting for the Hennepin County Recycling Agreement (the Agreement) Resolution since February. She asked Emilee Metcalf, with Vintage Waste Systems, if she understands the Agreement. Ms. Metcalf stated she has reviewed.

In response to a question from Councilmember Fletcher, Ms. Metcalf stated Vintage Waste takes the recyclable material it collects to a processing center. Ms. Metcalf noted the processing center is up to code with all of the requirements.

**Fletcher moved, Rose seconded, Adopting RESOLUTION NO. 4-12, “A Resolution Establishing a Residential Recycling Agreement with Hennepin County.”**

Councilmember Fletcher asked Zoning Administrator/Clerk Karpas if he had any concerns with the Agreement. Zoning Administrator/Clerk Karpas responded it looks fine and he noted the City did receive a copy of its Certificate of Insurance from its insurance agent.

**Motion passed 5/0.**

**G. Agreement for City Recycling Services**

Mayor Kind stated the City put out requests for proposals (RFP) for Citywide recycling services. The City received one RFP and it was from Vintage Waste Systems.

Councilmember Quam asked Emilee Metcalf, with Vintage Waste Systems, if the company is proposing any changes with the size of the recycling containers. Ms. Metcalf responded there is not.

Ms. Metcalf noted there are over twenty homes that use the 96-gallon container. There have been quite a few requests for that larger container. The homes with a number of people in them are filling the large containers weekly as well as a few other containers. A lot of 35-gallon containers have been replaced with 64-gallon containers. Quam asked if Vintage Waste Systems' RFP includes any change in services. Ms. Metcalf stated it does not and she noted the service will continue to be weekly. She also noted there is no additional cost to get a larger container.

Mayor Kind stated the cost of \$5.25 per unit and the \$90 cost for the 17-unit apartment complex need to be included in the resolution.

Councilmember Fletcher stated it is for four 96-gallon containers at the complex. He noted one document says three containers and another says four. Ms. Metcalf stated because of the large amount of recycling collected at the complex the plan is to add another 96-gallon container at the complex once the agreement is finalized.

Mayor Kind explained the RFP states there will be a fuel surcharge if the cost of fuel goes above \$4.25 per gallon. She asked what the surcharge would be. Ms. Metcalf explained that it is a national percentage that major haulers charge and it is a fluctuating percentage (e.g. 12-20 percent). Councilmember Quam stated Council discussed this when it first implemented its recycling program with Vintage because the

cost of fuel was so high at the time. Kind asked if the surcharge is in the current contract entered into in 2009. Ms. Metcalf stated she thought it was.

Kind stated in Item 4 in the Resolution relating to cost she will revise it to say *“The cost per unit shall be \$5.25 and \$90 for one 17-unit apartment complement with four containers, and a fuel surcharge if fuel goes above \$4.25 per gallon.”* Councilmember Fletcher suggested changing *“and a fuel surcharge if fuel goes above \$4.25 per gallon”* to *“subject to adjustment my mutual agreement if fuel costs exceed \$4.25 per gallon.”*

Councilmember Fletcher noted that Vintage would prefer a three-year contract rather than a one-year contract with the option to renew for another year twice. The current contract was the renewable option. He stated two years ago when the market for recyclable materials was not very good Vintage asked the City renegotiate the contract. He does not want to do that again mid contract. Ms. Metcalf stated the rate would be locked in. Mayor Kind stated that was supposed to be the case for the current contract. Ms. Metcalf stated their business is more established than it was in 2009 and its financial situation is better.

Mayor Kind noted the resolution needs to have Vintage Waste Systems inserted in the blanks for the vendor name and the box for a three-year contract needs to be checked.

**Page moved, Quam seconded, Adopting RESOLUTION NO. 10-12, “A Resolution Establishing a Recycling Service Agreement Between the City of Greenwood and Vintage Waste Systems, Inc.,” subject to inserting Vintage Waste Systems, Inc., for the vendor name, specifying it is a three-year contract, and inserting “The cost per unit shall be \$5.25 and \$90 for one 17-unit apartment complex with four containers subject to adjustment my mutual agreement if fuel costs exceed \$4.25 per gallon.” Motion passed 5/0.**

#### **H. July Fourth Fireworks Contribution**

Mayor Kind stated that annually the South Lake-Excelsior Chamber of Commerce asks the City to make a contribution to help pay for the fireworks display on the Fourth of July. That community event draws people from the entire South Lake area. She noted the City contributed \$1345 in 2011. The 2012 General Fund Budget has earmarked \$1,400 for a contribution; a 7.69 increase over the 2011 contribution.

**Page moved, Quam seconded, directing the City Treasurer to disburse a check in the amount of \$1400 to the South Lake-Excelsior Chamber of Commerce for the 2012 Fourth of July fireworks fund. Motion passed 5/0.**

**Fletcher moved, Page seconded, changing the order of the items on the agenda so Item 7.J is discussed before Item 7.I. Motion passed 5/0.**

Discussion moved to Item 7.J on the agenda.

#### **I. Draft of Excelsior-Greenwood St. Albans Bay Bridge Agreement**

This was discussed after Item 7.J on the agenda.

Mayor Kind explained that on April 10, 2012, the Excelsior and Greenwood City Councils met in a joint worksession to discuss the status of St. Alban’s Bay Bridge (the Bridge) which is jointly owned by the two Cities. A 136-page report written by the Minnesota Department of Transportation dated June 2006 lists the Bridge as “eligible” to be classified as historic because of “aesthetics.” It has since been

determined that the Art Deco detailing on the Bridge is the “aesthetics” that make the Bridge eligible to be historic. The Cities can’t do anything to make the Bridge “not eligible.” All “eligible” bridges must go through the same review process as bridges “listed” as historic. She clarified this does not mean the Cities must rehabilitate the Bridge. It only means that the Cities must jump through a few hoops to prove that it would be better to replace the Bridge than rehabilitate it if that is what the Cities decide to do.

Kind noted that based on preliminary estimates it would cost approximately \$200,000 less to replace the Bridge than to rehabilitate it.

Kind stated during the work session the Councils discussed the concept of drafting and putting in place an agreement so the Cities could pursue funding opportunities when they deem it to be appropriate. The Councils agreed to the following next steps. 1) Have Greenwood City Attorney Kelly draft a mutual agreement that would lay out key steps in the process, establish a method for determining engineers for the project, explain a cost-sharing plan, identify what the appropriate time would be to implement the steps in the agreement and so forth. 2) Have both Cities review the mutual agreement and revise it where necessary. 3) Have both Cities approve the final mutual agreement. She noted the meeting packet contains a copy of the first draft of a Excelsior-Greenwood St. Alban’s Bay Bridge Construction Agreement (the Agreement) written by Kelly. She stated that after this Council reviews and modifies the draft Agreement it will be forwarded to the Excelsior Council for review and modification.

Kind asked Council if it wants more time to review the Agreement and then discuss it during its July 5, 2012, meeting. Councilmember Rose indicated that would be a good idea.

Councilmember Page stated thought the Agreement looked excellent. It is a very professional job and the Agreement seems to be thorough when considering discussions that have occurred to date. He noted that some areas still need to be completed. For example, Section 17 Rebuilding / Rehabilitation Process and Critical Approval Steps need to be written. There are a few other areas that need additional text as well. He stated that from his vantage point the Agreement requires more than one review in order to understand the significance of what is contained in the Agreement. He commented that he has only had the opportunity to read it about one and a half times. He stated he would like to have additional time to review the Agreement. He asked Attorney Kelly if he intends to finish those sections that need additional work.

Attorney Kelly explained that during the joint worksession he had anticipated that he would receive some input from the engineers for Excelsior. He noted that he had sent emails but had not received any response. He stated he had tried to get them to identify the critical decision points. From his vantage point, he has taken the Agreement as far as he can in that regard. He then stated it may be beneficial to send this first draft to the Excelsior Council and Staff and have them begin to review and assess the Agreement as it is. Doing so may be the impetus needed to have the engineers provide more detail.

Councilmember Page suggested the Agreement be sent to the Excelsior Council and Staff and ask them to review it and comment on it and also fill in those sections that need additional information and text.

**Page moved, Rose seconded, directing Staff to forward the first draft of the Excelsior-Greenwood St. Alban’s Bay Bridge Construction Agreement to the Excelsior City Council and the engineers for the Excelsior and ask them to review the Agreement and comment on it, and to fill in as many blanks as possible.**

Councilmember Fletcher asked if the way Section 5 LEC (Lead Engineering Consultant) Selection is written means that neither city engineer can be the LEC for this project. Attorney Kelly stated it does not

say that, however he stated that he doesn't think the City should agree to anything other than a neutral third party. He noted it would not be in the City's best interest to work with someone who has a fiduciary and professional obligation to Excelsior. Doing that would make the City the weak link in the process.

Fletcher suggested including making inquiries with the Army Corps of Engineers (the Corps) in addition to those already specified in the Agreement. Section 22 already specifies the Minnesota Department of Transportation Cultural Resources Unit (MnDOT CRU) and the State Historic Preservation Office (SHPO). Adding the Corps would just make it an option to make inquiries with the Corps.

Attorney Kelly stated it's his understanding that the Corps jurisdiction is dredging. He then stated if the Corps agrees that the channel should be dredged or widened that would answer the preservation question.

Councilmember Fletcher stated WSB & Associates had specifically stated that the Corps might be the way to get the bridge replaced instead of rehabilitating it. He suggested changing in Section 22 "... *the LEC shall make inquiries with the MnDOT CRU and the SHPO to determine whether or not those agencies will...* " to "... *the LEC shall make inquiries with the MnDOT CRU, the SHPO, and the Army Corps of Engineers as deemed appropriate to determine whether or not those agencies will...*".

**Without objection from the maker or seconded, the motion was amended to changing "... *the LEC shall make inquiries with the MnDOT CRU and the SHPO to determine whether or not those agencies will...* " to "... *the LEC shall make inquiries with the MnDOT CRU, the SHPO, and the Army Corps of Engineers as deemed appropriate to determine whether or not those agencies will...*" in the Agreement. Motion passed 5/0.**

Attorney Kelly asked to be respectfully excused from the meeting at 10:08 P.M.

Discussion returned to Item 7.K on the agenda.

#### **J. Parking Options by City Docks**

This was discussed after Item 7.H on the agenda.

Mayor Kind explained that this year there are three new people renting dock slips from the City. They wonder where they are supposed to park when they use their slips because the street near the docks is posted as "no parking." She noted that a section of Greenwood Circle does allow parking and that the meeting packet contains a copy of a map showing the area.

Bill Cook, 5195 Greenwood Circle, stated he has noticed that there are some "No Parking" signs on the side of Greenwood Circle where parking is supposed to be allowed. Some neighbors are basically reserving parking spots. Mayor Kind asked if those private signs were up all of the time. Mr. Cook responded they were. Councilmember Quam asked if they are the same as the "No Parking" signs the City posts. Mr. Cook stated he believes the signs are a style that is available at Home Depot. Mr. Cook explained that one is nailed to a tree and others are self-standing. He noted that he has told people they can park on that side of Greenwood Circle. Mr. Cook noted that some residents place the refuse containers on the street to reserve parking spots even when it is not the day for refuse to be picked up.

Mayor Kind stated those private signs need to be removed. Zoning Administrator/Clerk Karpas noted he will ensure that happens.

Councilmember Page asked Mr. Cook if he was talking about the side of the street where parking is allowed going east along the bottom of Greenwood Circle. Mr. Cook responded he was.

Councilmember Quam asked who was putting the signs up. Mr. Cook stated he is not sure the private signs are all still there because there has been a change in ownership of some of the properties. He then stated the people putting up the signs live on the lake side of the street.

Mayor Kind stated the City will notify the property owners in that area that they cannot reserve the City street for private parking. Zoning Administrator/Clerk Karpas stated he will send a letter out.

Kind asked Mr. Cook if he thought there was adequate parking when property owners are not reserving parking spaces. Mr. Cook responded he thought there was.

Mr. Cook explained that the leg that serves the City dock is a substandard road that is too narrow. There is a lot of traffic on that road. The practice has been that people drive down there to unload their vehicle and then move their vehicle. However, there are times when people leave their car down in that area when they go out on the boat and that causes problems. There also is a person who has a handicapped parking sticker and when they park their car in the no-parking area it causes congestion.

Mayor Kind asked if the City is required to allow parking for handicapped individuals in that no-parking area. Attorney Kelly stated he does not know.

Mr. Cook clarified he was only trying to convey how much congestion is caused by one vehicle parking in the no parking area. If people are in the area and if they will move their cars when asked, things seem to work out okay. But, if the cars aren't moved because the driver isn't in the area or won't move the vehicle, it becomes a problem. He stated unloading on that leg of the roadway is fine, but he cautioned against allowing parking there.

Mayor Kind questioned if the three new people were seeing the private "No Parking" signs and that created confusion for them.

Mr. Cook stated when people ask him where they are supposed to park he tells them to go up the hill and park. He then stated that the part of Greenwood Circle his property abuts used to be where his garage was located. In the past there had been nose-in (perpendicular) parking rather than parallel parking. If the City wanted to have nose-in parking it could probably create a couple of additional parking spaces. He noted it is City street right of way and not his property.

Councilmember Fletcher asked Councilmember Page what his thoughts are about nose-in parking. Page responded he is not in favor of doing that. Councilmember Quam stated he not in favor either and noted that doing that would only create one additional space.

Councilmember Page stated people who come to the City dock have to understand that there is very limited parking near the dock. There is not a parking space for every boat slip. There is parking for 6-8 cars at most as you go down Greenwood Circle west to east on to south side. Parking is on a first-come, first-served basis.

Councilmember Page stated there is insufficient parking by the dock. He then stated there was a time when residents put cones in the street to try and reserve a parking spot. He went on to state that people who rent slips from the City need to understand the parking situation. Councilmember Quam asked if the

limited parking situation is communicated to them, and if it isn't then it should be communicated in writing.

Page noted that he agrees with Mr. Cook that there should not be any parking allowed on the street that goes down to the dock other than to unload a vehicle. He stated the parking situation works itself out if everyone cooperates. He then stated he did not think the Council should take any action on this item. The parking situation is just the way it is.

There was Council consensus to do nothing.

Discussion moved to Item 7.I on the agenda.

#### **K. Power Washing of City Docks**

Due to the late hour, Mayor Kind stated she could support continuing this item to a future meeting if the council desired.

Councilmember Page stated he walked the dock earlier in the day and he agrees it is very dirty. He explained there are goose droppings on the dock and there appears to be mold on at least the main section of the dock. There also are some major oil-based marks on it. He recommended power washing the dock.

**Page moved, Quam seconded, directing Staff to order power washing of the City dock. Motion passed 4/1 with Rose dissenting.**

### **8. OTHER BUSINESS**

#### **A. City Council Meeting Minutes, May 2, 2012**

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

Councilmember Fletcher stated in the motion for Item 7.A regarding variance requests for the Carlsons it states the impervious surface percent is 35.67. It should be 35.7 percent.

**Fletcher moved, Page seconded, approving the City Council Meeting Minutes for May 2, 2012, as amending in Item 7.A, Page 13, Paragraph 3, Sentence 1 change "... and a proposed 35.67 percent impervious surface that exceeds the maximum...." to "... and a proposed 35.7 percent impervious surface that exceeds the maximum ...." Motion passed 5/0.**

### **9. COUNCIL REPORTS**

#### **A. Fletcher: Planning Commission, Lake Minnetonka Communications Commission**

With regard to the Planning Commission, Councilmember Fletcher stated he had nothing additional to report on.

With regard to the Lake Minnetonka Communications Commission (LMCC) activities, Fletcher stated the LMCC is working on its 2013 budget. It may consider an increase in its Public, Educational, and Government (PEG) fee. He noted it is his recollection that Council was open to there being a modest increase to compensate for a decline in Mediacom subscribers that have access to PEG programming. He stated the LMCC will have consultants test the service provided by Mediacom. He encouraged Mediacom

subscribers who are experiencing poor quality with their television service to provide him with their name and address.

With regard to Eurasian Watermilfoil (milfoil) in St. Alban's Bay, Fletcher explained an inspection was conducted to assess how much milfoil there is. There is not enough to warrant baywide treatment in 2012. There will be some spot treatment. There is some consideration being given to possibly treating for Curly Lead Pondweed later in the season. A lot of the plants growing in St. Alban's Bay are native plants. He commented from a swimming perspective he will take native plants over milfoil any day. He stated there have been some algae blooms in front of his property and in other areas in the Bay. It is his understanding that the algae is the result of conditions such as minimal snow cover last winter and that it should subside.

Councilmember Quam asked if there is some website people can go to and view the different types of plants. Mayor Kind stated there is a web site called [www.carmanbay.org](http://www.carmanbay.org). Quam suggested publishing that website name in the newsletter.

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

With regard to the South Lake Minnetonka Police Department (SLM)PD), Mayor Kind stated the SLMPD Coordinating Committee will meet in a work session on June 20, 2012, at 5:30 P.M. in the public safety facility located in the City of Shorewood to discuss the first draft of the SLMPD 2013 Operating Budget.

With regard to administration, Kind stated she did some research on Government Training Services and it appears that it would be feasible to host a training workshop for elected officials and planning people. People from the public could attend as well. The workshop would focus on what people's roles are. She indicated she thought the City could make it work if it could get 19 people from the City and the local communities to sign up for the workshop. As of now the best date would be October 27. There are dollars budgeted that could be used for Councilmembers and Planning Commissioners to attend.

Kind explained all elected officials are required to take incident command training. She noted Excelsior Fire District Chief Gerber is willing to hold that training session in the fall. Councilmember Page asked who requires elected officials to take that training. Kind stated she will ask Gerber who has mandated the training. She also noted that when assessor training is available, at least one Councilmember needs to attend it.

Kind stated a new Greenwood July 4<sup>th</sup> t-shirt will be available for sale at the July 4th parade in Greenwood.

With regard to mayors' meetings, Kind noted she met with Senator Al Franken during a tour of Lake Minnetonka to assess milfoil which was hosted by various government agencies. She attended a mayors' lunch where she learned that the City of Orono recently won a summary judgment regarding a wind turbine issue. She asked if Council would like to get ahead of wind turbine issues by adding an ordinance to the city code book. Kind asked Karpas if he thought the current City Ordinances would address wind turbines. Karpas stated he thought it would as an accessory structure. Kind stated there are height and noise restrictions that would need to be considered.

Councilmember Quam noted Council reviewed its ordinance related to accessory structures in depth a couple of years ago.

Councilmember Page suggested Council be provided with sample ordinances that deal with wind turbines. Kind stated that Brooklyn Park has a new ordinance that is based on the League of Minnesota Cities recommendations. The Council agreed to review the Brooklyn Park ordinance as a potential model ordinance at the August Council meeting.

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

Councilmember Page stated the first meeting of the Lake Minnetonka Conservation District (LMCD) subcommittee established to develop a Lake Minnetonka Vegetation Management Plan is scheduled for June 8. He stated the LMCD aquatic invasive species (AIS) Task Force went on the boat tour with public elected officials to view Eurasian Watermilfoil (milfoil) off of Big Island and in Carson's Bay. The purpose was to educate the officials about activities associated with trying to mitigate milfoil. The Minnesota Department of Natural Resources, the Minnehaha Creek Watershed District, the LMCD, and other agencies were represented.

In response to a question from Councilmember Fletcher, Councilmember Page stated the budget includes \$30,000 for AIS related activities. Page noted there is a LMCD budget review meeting for elected officials scheduled for June 7 at 11:00 A.M.

**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. With regard to Minnetonka Community Education, he noted Tour de Tonka is scheduled for August 4 and needs volunteers.

Quam commented that the Cottagewood General Store has burger night on Friday nights. It is a lot of fun. Volunteers cook the meal. The Scooter Club he belongs to is doing the burgers this coming Friday from 5:30-7:00 P.M.

**E. Rose: Excelsior Fire District**

Councilmember Rose stated there is an Excelsior Fire District (EFD) Board worksession scheduled for June 18 to discuss the EFD's 2013 budget. He noted that in the proposed budget the overall increase will be 1.9 percent when compared to the adopted 2012 budget. He indicated he thought that was pretty good. He also noted that the new pumper tanker truck will end up costing about \$475,000.

**10. ADJOURNMENT**

**Page moved, Rose seconded, Adjourning the City Council Regular Meeting of June 6, 2012, at 10:31 P.M. Motion passed 5/0.**

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