

**GREENWOOD CITY COUNCIL MEETING**  
**Tuesday, June 7, 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 7:01 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 7:39 P.M.)

Members Absent: None

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

**2. CONSENT AGENDA**

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

- A. May 3, 2011, City Council Meeting Minutes**
- B. May 18, 2011, Joint City Council & Planning Commission Work Session Minutes**
- C. April 2011 Cash Summary Report**
- D. May 2011 Verifieds and Check Register**
- E. June 2011 Payroll Register**

**Motion passed 5/0.**

**3. MATTERS FROM THE FLOOR**

Rob Roy, 21270 Excelsior Boulevard, (the St. Alban's Bay Captain) stated St. Alban's Bay has been chemically treated for milfoil. He acknowledged that Mayor Kind and Councilmember Fletcher have been great assets to the project. He thanked a number of Greenwood residents for their help in raising private funds to help fund the treatment.

Mr. Roy explained that approximately 95 percent of the property owners adjacent to St. Alban's Bay authorized the water in front of their property to be treated. Approximately 85 percent made donations toward the cost of the treatments. Those numbers convey to him that the property owners really wanted the Bay to be treated. He noted that you already can see positive results from the treatment. The bay will be spot treated on either June 10<sup>th</sup> or June 13<sup>th</sup> because a couple of permits were missed. He explained there is a difference between Eurasian Watermilfoil (a non-native milfoil) and native milfoil. He recommended people go to the website [www.carmanbay.org](http://www.carmanbay.org) to look at the Lake Minnetonka Weed Identification Gallery on the site.

Mr. Roy thanked everyone for adhering to the recommendation not to use lake water to water new turf, vegetables and ornamental plants. He asked property owners to wait until the applicator says it's okay to water with lake water.

In response to a question from Councilmember Page, Mr. Roy explained the 85 percent donation figure includes those residents the fundraising group solicited. It does not include people who rent slips from marinas located around the bay.

Mr. Roy stated during the last Lake Minnetonka Conservation District (LMCD) Board meeting the Boardmember from Shorewood asked a good question about harvesting. He was surprised by LMCD Executive Director Nybeck's comments that he gets more compliments about the LMCD's harvesting program than he does complaints. He noted that he is starting a petition to let Nybeck know what lake front property owners really think about the harvesting program.

In response to a question from Councilmember Quam, Mr. Roy stated he will send out a mass email to those people he has email addresses for when the treatment applicator has stated the lake water is safe to use for watering and he asked that it also be put on the city's website. Councilmember Quam thanked Mr. Roy for leading the effort. Mayor Kind stated that she will ensure that the watering update is posted on the website and also thanked Mr. Roy for his efforts.

#### **4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS**

##### **A. Terence Haines, Eagle Scout Project at the Southshore Community Center**

Mayor Kind stated Terence Haines, an Eagle Scout candidate, is present this evening. Mr. Haines has proposed a project to improve the property near the Southshore Community Center (SSCC). She stated the meeting packet contains information about the proposed project. She explained the project entails building a platform at the top of the hill, building twelve steps that go down the hill with a railing along each side, building a platform at the bottom, fixing the bridge at the bottom of the hill, fixing the walking path in the woods and building two benches to put by the path. The estimated cost is approximately \$3,150. Mr. Haines is here to ask the city to make a donation to help fund the project. She stated there are funds in the General Fund contingency if the council decides to make a contribution to the project.

Kind explained the City of Greenwood shares ownership in the SSCC with the Cities of Deephaven, Excelsior, Shorewood and Tonka Bay. Greenwood's population is approximately 5 percent of the population of the five cities combined; 5 percent of \$3,150 equals \$158. Greenwood's tax capacity is 8.45 percent of the five cities combined; 8.45 percent of \$3,150 equals \$266. The average of \$158 and \$266 is approximately \$200. She noted that the City of Shorewood is pledging to match all contributions.

Mr. Haines stated he is proposing a project to make improvements to the property near the SSCC. He reiterated Mayor Kind's explanation of what the project entails. He asked the Councilmembers if they had any questions.

Councilmember Page asked what is in the proposed project area now. Mr. Haines stated there is a bridge and walking path that has been ruined by the weather.

Councilmember Fletcher asked Mr. Haines how he decided on this project. Mr. Haines stated he was looking for an Eagle Scout project. Mr. Haines explained he had proposed doing a few different projects for a church but the church's council couldn't reach consensus on what it wanted to have done. He found

out there could be a project at the property near the SSCC that he could undertake for his Eagle Scout project; a project that people wanted to have done.

Councilmember Quam asked Mr. Haines who will make sure the improvements will be safe to which Mr. Haines stated the Shorewood's City Staff will. Quam commended Mr. Haines on his initiative.

**Page moved, Rose seconded, approving a donation of \$266 toward the cost of Terrence Haines' Eagle Scout project and directing that the funds come out of the General Fund.**

Mayor Kind asked if the council wanted to make the donation contingent upon the City of Shorewood approving the project. Mr. Haines stated the project has already been approved. Kind asked what happens if Mr. Haines is unable to raise the funds needed for the project. Councilmembers Quam and Page stated they aren't worried about that not happening.

**Motion passed 5/0.**

**B. City Engineer Dave Martini**

**1. 2011 Sewer Project Bids**

Engineer Martini explained the City has been awarded a grant from Metropolitan Council Environment Services (MCES) through its Municipal Infiltration/Inflow (I/I) Grant Program to help fund repairs to the City's sewer system. The grant is in the amount of \$48,384 and the maximum amount a municipality could receive is \$50,000. The City opened bids on June 1, 2011, for the potential project. The city received two bids; one from Infratech and one from Minger Construction. The low bidder is Infratech for an amount of \$166,184.88. The bid is substantially higher than the project estimate of \$97,000. Minger Construction's bid is \$180,162.60.

Martini then explained he has reviewed the bids to try and determine why the bids were so much higher than the project estimate. The significant difference revolves around point repairs being proposed. Some of the repairs would be trenchless; the repairs would be done through manholes and it would not be necessary to dig a hole. There are a few areas where the repairs are severe enough that they can't be done through the manholes so sewer pipe will have to be dug up, the repairs made and the area restored.

Martini stated he assessed what the cost would be if the point repairs were excluded from the bid abstract and put in a separate abstract. He explained that if the point repairs are taken out the low bidder becomes Minger Construction. The council can consider the bids as submitted with Infratech being the low bidder or consider re-bidding the project. He noted that the people who do the trenchless types of repairs generally don't do the excavation type of repairs and vice versa. If the project were to be re-bid the point repairs would be bid out separate from the trenchless repairs. By doing that there may be more firms that bid on the project. He noted there is no guarantee that by splitting the project bid in two that the total cost will come out cheaper. He stated one of the reasons the bid amounts may be higher is other municipalities also have been awarded grants for the same type of work so the contractors are in higher demand.

Mayor Kind asked if there is time to re-bid the project to which Engineer Martini stated there is. Kind then asked if there is a chance there will be additional grant funds available for 2012. Martini responded that it's his impression that this grant program is a one-time program.

Councilmember Fletcher stated he informally checked with a Met Council source and thinks there is a 50/50 chance that this program would be continued in 2012. He then stated he supports reducing the size of the project and taking the chance that additional grant funds will be available in 2012.

Engineer Martini explained if the point repairs and restoration of those areas were taken out of Infratech's bid the cost would be around \$104,000. Infratech's cost to do the three repairs and restoration is approximately \$62,000. If the same items were taken out of Minger Construction's bid the cost would be just under \$100,000. Minger Construction's cost to do the three repairs and restoration is approximately \$80,000. He commented that Minger Construction is an excavator.

Mayor Kind stated if the point repairs were bid out separately there wouldn't be any savings from mobilization. Councilmember Quam stated he thought mobilization charges would likely go up. Engineer Martini stated Infratech's mobilization charge is \$25,000.

Councilmember Quam stated he thought the city should spend at least \$100,000 this year on sewer repairs so it can receive the full \$48,384 in grant funds it has been awarded. He supports re-bidding the project after the point repairs have been taken out.

**Quam moved, Fletcher seconded, directing staff to re-bid the sewer repairs project as two separate projects; one project would be for the trenchless repairs and the other project would be for the excavation and point repairs and restoration of the point repair areas. Motion passed 5/0.**

In response to a question from Councilmember Quam, Engineer Martini stated it may be possible to have new bid quotes available for the July 5<sup>th</sup> council meeting.

## **2. Street Sweeping Test Results**

Mayor Kind stated the April 2011 street sweeping samples were sent to Pace Analytical Services Incorporated for analysis. A copy of the analysis results is included in the meeting packet.

Engineer Martini explained that 56.4 tons of material was swept up off of the city's streets. Three random samples of materials were taken out of the sweepings and sent to Pace for analysis. The calculations reflect that about 29 pounds of phosphorous are in the sweepings. The 2011 results were similar to the 2010 results. The city's phosphorous reduction goal is 5 pounds per year. The city is participating in a study with the Minnehaha Creek Watershed District (MCWD) involving street sweepings. The MCWD is working with the University of Minnesota to gather information about other chemicals in addition to phosphorus in sweepings, various types of sweepers and how efficient they are. The MCWD also wants to come to a decision on how to deal with communities that want to use street sweepings to count toward phosphorous reduction goals. He stated he is not sure if the MCWD will want the city to participate in a study in 2012.

Mayor Kind stated the city received a check in the amount of \$735 from the MCWD as reimbursement for the testing.

Councilmember Rose asked if the city has to remove another 5 pounds of phosphorous, in addition to the 29 pounds swept up this spring, in order to meet its 5-pound phosphorous reduction goal.

Engineer Martini noted one of the reasons the city started to sweep its streets is it was a benefit to the city's residents. He stated it's hard to determine how much phosphorous was going into Lake Minnetonka before it started sweeping its streets. He explained that communities with curb and gutter, storm sewer

and pipes that drain directly into the lake have a different potential for having phosphorous flow into the lake than those communities that drain off naturally by running through ditches and so forth. He stated when the time comes the city will work to get credit for the phosphorous it's already been removing through street sweepings.

Engineer Martini stated if the city were to do a partial sweeping again in the fall it could likely remove another 5 pounds of phosphorous. He noted there is potential benefit to doing another sweeping in parts of the city.

**3. Estimate for Survey and Analysis of Meadville Drainage Issue**

Engineer Martini explained that during its May 3, 2011, meeting the council directed Engineer Martini to prepare an estimate for what it would cost to do a survey and analysis of drainage issue near Meadville Street. He has since determined that the approximate cost would be \$2,000.

**Fletcher moved, Rose seconded, approving Staff move forward with doing a survey and analysis of the drainage issue near Meadville Street for an amount not to exceed \$2,000 and that it be funded out of the Stormwater Fund. Motion passed 5/0.**

Engineer Martini departed the meeting at 7:39 P.M.

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

Mayor Kind encouraged everyone to take part in the 4th of July parade. She noted that Don Stolz will be the grand marshal of the parade.

Councilmember Quam stated that Susan Morris served as the grand marshal in 2010, noting she has since passed away. He conveyed that Ms. Morris' had been grateful for that opportunity.

**5. PUBLIC HEARING**

None.

**6. UNFINISHED BUSINESS**

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

Mayor Kind stated this is the second reading of Ordinance 194 amending the Ordinance Code Section 730.00 regarding setting the March 1 to May 1 load limit at 5 tons per axle on City-owned streets. The council unanimously adopted the first reading of the Ordinance during its May 3, 2011, meeting and no changes have been made since then.

**Quam moved, Page seconded, Approving Ordinance 194, "An Ordinance Amending the Greenwood Ordinance Code Section 730.00 to Set the March 1 to May 1 Load Limit at 5 Tons Per Axle on All City Streets. Motion passed 5/0.**

**7. NEW BUSINESS**

**A. July 4<sup>th</sup> Fireworks Contribution**

Mayor Kind explained the South Lake-Excelsior Chamber of Commerce coordinates the Fourth of July fireworks display in the City of Excelsior. This event draws people from the entire South Lake Minnetonka area. The City's 2011 Operating Budget included \$1,200 for a contribution to help pay for the fireworks display. She noted that if the council wanted to make a larger contribution, funds from the General Fund contingency could be used for the additional amount. The total cost of the fireworks display is \$20,000. The South Lake Minnetonka area includes the Cities of Deephaven, Excelsior, Greenwood, Shorewood and Tonka Bay. Greenwood's population is approximately 5 percent of the population of the five cities combined; 5 percent of \$20,000 equals \$1,000. Greenwood's tax capacity is 8.45 percent of the five cities combined; 8.45 percent of \$20,000 equals \$1,690. The average of the two amounts is \$1,345.

Kind introduced Linda Murrell, Executive Director for the South Lake-Excelsior Chamber of Commerce, who was present to talk about the Fourth of July program.

Ms. Murrell clarified that \$20,000 cost was what it cost about four years ago. This year the fireworks display will cost \$23,000. She explained a lot of the funding for the display is through private contributions. To date about \$12,000 has been raised through a direct mail campaign. She noted the display is a very expensive event to put on. The insurance cost went up over \$2,100 this year; approximately double the 2010 cost. She noted without participation from the cities in the South Lake area there would not be a display. She explained funding for the fireworks display used to be raised through a boat show and through various fundraising mechanisms that have gone away because of the poor economy.

Ms. Murrell stated there will be a performance by the Minnesota Orchestra (for the twelfth year in a row). Don Shelby will be the guest master of ceremonies this year. There will be a special salute to veterans this year. If the weather cooperates, there is something else planned which she didn't reveal.

Ms. Murrell noted it wouldn't be as difficult to raise funds if those boaters who watch the fireworks from their boats would contribute even \$1 each.

Mayor Kind asked if the council wants to contribute the amount budgeted (\$1,200) or does the council want to increase the amount a bit.

**Quam moved, Fletcher seconded, authorizing \$1,345 of funding to the South Lake-Excelsior Chamber of Commerce's Lake Minnetonka Fourth of July celebration activities. Motion passed 4/1 with Rose dissenting.**

Councilmember Rose stated he wanted the contribution to remain at the budgeted amount.

Ms. Murrell asked the council to include summary information about the Fourth of July information in the city's upcoming newsletter. Mayor Kind indicated that she will make sure a brief summary is included in the newsletter.

**B. Possible Ordinance Amendment Regarding Section 425.15 (e) Municipal Dock Waiting List**

Mayor Kind explained that in 2011 one dock slip opened on at the municipal docks on St. Alban's Bay. The first two residents on the waiting list declined to rent the slip. Per the City Ordinance their names went to the bottom of the waiting list. Mike Brost was the third person on the list. Mrs. Brost declined to rent the slip on Mr. Brost's behalf because Mr. Brost is recovering from brain surgery. So Mr. Brost's

named dropped to the bottom of the list. Mrs. Brost has asked the city to consider amending its ordinance to allow them to keep their spot at the top of the waiting list. Kind noted that another resident has already rented the slip.

Kind reviewed three different amendment options she identified for the council's consideration. Option 1 would allow residents to decline renting a slip for medical reasons one time only. They would not lose their place on the waiting list. The person would have to submit a letter from a medical doctor. If they were to decline a second time their name would go to the bottom of the list. Option 2 would allow a resident to decline the rental offer for no particular reason one time only. Option 3 would allow residents to repeatedly decline the rental offer for no particular reason and their name would move to number 5 on the waiting list after all slips have been filled for the season. If more than one person declines, their names would go to position 6, 7 and so forth. With Option 2 and 3 the effective date of the amendment would be January 1, 2011, and the three people that were at the top of the waiting list at the beginning of the year would remain there. The council also could decide to leave the ordinance the way it is, or identify other options.

Councilmember Rose stated he thought people on the waiting list should have the opportunity to provide input. Mayor Kind noted that this item was on the published agenda for this meeting.

Councilmember Page noted the council can't amend the Ordinance to retroactively be effective January 1, 2011.

Micheele Brost, 5110 Curve Street, explained her husband Mike has been on the waiting list to rent a slip for 10 years. She noted her husband has had three brain surgeries and one outcome of them has been his loss of his short-term memory, noting it's coming back a little. She stated she wanted to be able to keep his place on the waiting list for him. She noted they financially couldn't afford to pay the rental cost for the slip (\$950) this year because of medical expenses.

Attorney Kelly concurred with Councilmember Page that creating a retroactive ordinance is not permitted under the Constitution of the United States.

In response to a question from Councilmember Fletcher, Attorney Kelly explained the council could approve an ordinance that states there is an administrative review process that for certain cause (with the burden of proof on the applicant) there might be consideration to allow for remedy and for that it may allow for people to review things at a certain point in time. Kelly explained that when the original ordinance was approved it allowed for the city clerk to assign slips and the decision would be final. The intent was to depoliticize the administration of the boat docks. Kelly noted there is no draft amendment available for consideration this evening.

Ms. Borst noted that her mother recently found out she has lung cancer, so she has a lot going on.

Mayor Kind stated she wished the council would have amended the ordinance last year when it was reviewing all of the city's ordinances to allow someone to decline the slip rental offer one time (Option 2).

Councilmember Page stated he is opposed to Option 2. There needs to be a break line. He then stated one can't help but empathize with the Borsts. Their issue has become a financial issue. That could happen to anyone for any reason not just medical. With Option 2 the door would be open to anything anyone wants to argue to be an exception. He then stated the council debated this ordinance at great length in 2010.

Councilmember Fletcher agreed with Councilmember Rose's comment that people on the waiting list should be allowed the opportunity to provide input if the council wants to consider amending the ordinance.

Attorney Kelly explained the Borsts are asking for an administrative adjustment through the law. But, the law is not flexible. It's an impossible situation. If the other people on the waiting list granted the Borsts a written waiver to restore their position on the waiting list to the top the city would not object, but the burden for making that happen is on the Borsts. The city can't contact the other people for this purpose.

Councilmember Page stated that would have to be a declination by each person on the list. If each person on the list declines the slip Mr. Borst's name could go back to the top of the list.

Mayor Kind asked the council if it would like to amend the ordinance going forward.

Councilmember Page asked Mayor Kind if she would be in favor of current slip holders skipping renting a slip one year and then coming back the next year for financial reasons. Mayor Kind responded she wanted the process changed only for those on the waiting list. Page stated it would become a political process and the ordinance was designed to depoliticize the process.

Councilmember Quam stated if the council decides to amend the ordinance to allow people to decline a slip once for no apparent reason there could potentially be unintended consequences. He noted that when this ordinance was discussed in 2010 he was in favor of having a medical exception in it.

Councilmember Fletcher suggested Councilmember Page research how Deephaven's system works to determine if there are ways to improve the city's process for assigning boat slips.

At this time there was consensus to leave the ordinance as written.

**Fletcher moved, Page seconded, switching the discussion of Items 7.C and 7.D on the agenda. Motion passed 5/0.**

### **C. Completion of Exterior at 5560 Maple Heights Road**

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

Mayor Kind explained that during its January 4, 2011 meeting the council approved ordinance 189 amending Greenwood ordinance code chapters 3 and 5 by adding provisions regulating the completion of the exterior of structures under construction. The ordinance was based on a new state statute that allows municipalities to require the completion of the exterior of structures. A copy of the amended Code is included in the meeting packet.

Kind then explained that two property owners in the city were sent letters notifying them they must complete the exterior of the structures on their properties within 180 days of the notification. The exterior of the structure on one of the properties has been completed. The exterior of the structure on the property located at 5560 Maple Heights Road is still unfinished. She noted that a building permit was issued to that property, on June 17, 2003, and that there has not been an inspection on the property since December 8, 2006. The city zoning administrator sent Jeffery Wirth, the owner of the property, a letter dated January 18, 2011, informing him that he needs to complete the exterior of the structure by July 17, 2011. A copy of that letter is included in the meeting packet. She noted that Mr. Wirth asked that this item be placed on the agenda for this meeting but he is not present.



Zoning Administrator/Clerk Karpas stated he had been contacted by a contractor working for Mr. Wirth indicating that Mr. Wirth is considering putting temporary vinyl siding on the structure. That is different than what was identified on the plans submitted to the city.

Mayor Kind explained the city's ordinance states "*In the event the holder of a building permit is in need of additional time to complete all planned exterior building work ...*" She noted the word "planned." She explained the siding originally was planned to be stucco and stone.

Councilmember Page cautioned the council about speculating about what Mr. Wirth does or doesn't intend to do.

Mayor Kind asked if Mr. Wirth is allowed to change the siding material.

Zoning Administrator/Clerk Karpas stated there is nothing in the city's building code that prohibits Mr. Wirth from changing to a different type of exterior material which in this case would be vinyl, provided it complies with the Building Code.

Rob Roy, 212790 Excelsior Boulevard, stated that the property in question hasn't changed since 2006. He then stated from his vantage point Mr. Wirth was granted benefits to build on the property. He thanked the council for amending the ordinance to require the completion of the exterior of structures so this type of thing doesn't happen again. He stated he would prefer that Mr. Wirth stick to his original plan for the exterior. He then stated he is also speaking for his neighbors on each side of him who didn't want their trees trimmed because they serve as a visual barrier.

Jack Jasper, 14 Maclynn Road, thanked the council for amending the city ordinance to require the completion of the exterior of structures. He stated Mr. Wirth's property is an eyesore. He stated he would be okay with Mr. Wirth leaving the rocks around the shoreline but all of the other miscellaneous stuff of the property should be removed or finished. He asked if the landscaping also has to be finished. Just putting siding on isn't going to fix the appearance all that much. Mayor Kind explained the State Statute only allows the city to require the exterior of the structure be finished. Mr. Jasper explained he supported Mr. Wirth's project in the beginning, and now expects it to be completed.

Councilmember Fletcher stated he didn't think the city building code required landscaping to be completed within a certain time.

Councilmember Quam stated it's difficult to require someone to plant landscaping that neighbors approve of.

Mayor Kind stated she will research the building code to see what enforcement policies there are about landscaping.

Jeff Sagal, 21420 Excelsior Boulevard, thanked the council for amending the building code to require the completion of the exterior of structures. He thought the amendment was necessary. He encouraged the city to enforce the ordinance as written going forward.

Mayor Kind stated there is no further action required by the council. The city can proceed with enforcing its ordinance.

In response to a comment from Mayor Kind, Attorney Kelly explained the city doesn't have the right to regulate aesthetics. If Mr. Wirth wants to amend his building plan to use different materials for the exterior that are allowable by the State Building Code he can do that.

**D. Resolution 14-11 Supporting Hennepin County Sheriff's New Regional 911 Emergency Communication Facility**

Mayor Kind stated Hennepin County Sheriff Stanek has asked the council to adopt a resolution expressing the city's support for a new Hennepin County Sheriff's 911 emergency communications facility. A copy of a letter from Stanek and a copy of a draft resolution are included in the meeting packet. Also included in the packet are copies of two emails from South Lake Minnetonka Police Department (SLMPD) Chief Litsey which express his concern that the resolution proposed by Stanek and the letter from Stanek do not mention if dispatch fees will be assessed to local users to help support the additional operating costs associated with a new facility. Litsey recommended the resolution be amended to clarify there would be no cost to the city and that it's the city's understanding that no fees will be assessed to the City to support ongoing operations of the new facility. The resolution in the meeting packet includes Litsey's recommendation.

Hennepin County Deputy Jeffery Schlumpberger stated he is assigned to the Hennepin County Sheriff's Communications Division. He asked for the council's support for the proposed new 911 communications facility. The Sheriff's Office provides emergency dispatch services to 19 fire departments, 23 police agencies and 36 communities located in Hennepin County. Hennepin County is the largest consolidated public safety answering points in the Upper Midwest. The dispatch center handles close to 600,000 annually. The existing communications facility is over 60 years old and it's located in Golden Valley. The facility needs to be replaced to ensure continued 911 services to accommodate future advancements with 911 communications technology. The new facility will be located in Plymouth. The schematic design of the facility is underway. Construction is planned to begin in 2012 with a move-in date in early 2014. Because of the regional and statewide significance of the project, the Sheriff's Office is working with the Hennepin County Board to secure state and federal funding to support the project. That funding would help decrease the amount of property taxes necessary to fund this project.

Mayor Kind stated she has spoken with Hennepin County Commissioner Callison, who represents the district Greenwood in located in, and Callison supports this initiative as well as Chief Litsey's recommendation.

**Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 14-11, "A Resolution Supporting Hennepin County Sheriff's New Regional 911 Emergency Communications Facility."**

Councilmember Fletcher asked if the cost to operate the new facility will be higher than the cost to operate the current facility. Deputy Schlumpberger stated it's his understanding that it will cost the same.

In response to a comment from Councilmember Rose, Deputy Schlumpberger responded the new facility will be larger and have newer technology. The protection from severe weather also will be better.

**Motion passed 5/0.**

**E. First Reading: Ordinance 195 Relating to Criminal History Background Checks for City Employment and City License Applications**

Mayor Kind stated this is the first reading of ordinance 195 amending the ordinance code chapter 12 to add a section regarding criminal history background checks for applicants for city employment and applicants for city licenses. She explained that South Lake Minnetonka Police Department (SLMPD) Chief Litsey is asking the city to adopt the League of Minnesota Cities' (LMC) model ordinance so the SLMPD can resume conducting background checks for the city. She noted the meeting packet includes a copy of the draft ordinance, a copy of a letter from Litsey explaining the need for the ordinance, and a copy of a bulletin from the LMC.

Councilmember Quam asked Councilmember Page what the term peddler in the ordinance refers to. Councilmember Page responded it refers to door-to-door sales people.

**Fletcher moved, Quam seconded, adopting the first reading of Ordinance 195 amending the Greenwood Ordinance Code Chapter 1 and Chapter 4 to add sections regarding criminal history background for applicants for city employment and city licenses, subject to the following: changing "Section 1220. Employment Background Checks" to "Section 130. Employment Background Checks"; changing "Section 1120.00 Applicants for City Employment" to "Section 130.00 Applicants for City Employment"; adding Section 2 Greenwood Ordinance Code Chapter 4 is amended to add the following; changing "1220.05. Applicants for City Licenses" to "470.00. Applicants for City Licenses."**

Councilmember Page asked if the background checks required for city employment apply to public office.

After ensuring discussion, there was agreement it does not and the draft ordinance can remain as is.

Councilmember Page explained the Bureau of Criminal Apprehension's (BCA's) records are different from public record. The BCA's records include access to expunged convictions. Councilmember Quam stated he didn't think you could access that information unless you were law enforcement; employment people can't access that information. Page explained the city asks the South Lake Minnetonka Police Department (SLMPD) to conduct the background checks. Mayor Kind stated the SLMPD gives the city a summary of the data. Page asked if that means the city trusts that the SLMPD will not tell the city about expunged convictions.

Attorney Kelly explained the SLMPD is under strict rules under the Minnesota Criminal Information System. There are two sides to that. You can get to the public access side of that system through the Minnesota Court's website. A prosecutor has to be cleared by the police department and go through training to be able to access the police side. The police department can reach the National Criminal Investigation System (NCIS) and they are extremely guarded about giving prosecutors that information. The police department's first loyalty is to security of that information and it's unlikely to share the information casually.

Kelly then explained the definition of employee is probably the way it's defined for workers compensation.

**Motion passed 5/0.**

#### **F. New Variance Legislation and Potential Change to City Code**

Mayor Kind explained that on May 6, 2011, a new state law went into effect regarding variance authority. The League of Minnesota Cities (LMC) has suggested an argument can be made that the language in the new state statute pre-empts inconsistent local ordinance provisions. That means municipalities can apply

the new law immediately without amending their ordinances first. The LMC recommends municipalities consider amending their ordinances to include language that mirrors the language in the new state statute. She noted that included in the meeting packet is a draft proposed amendment to the city code section 1155 regarding variances. It incorporates language from the statute as well as the LMC's recommendation for questions that should be addressed in the findings for evaluating variances. She noted that Attorney Kelly has reviewed the language.

She stated if the council decides to move forward with amending the variance ordinance the draft amendment will be forwarded to the planning commission for its review and recommendation, noting any changes to the zoning code require that be done. After that, it will come back before the council for a first and second reading.

**Page moved, Rose seconded, directing the planning commission to review the draft proposed amendment to the Greenwood ordinance code section 1155 regarding variances and make a recommendation on the amendment, including any proposed changes, for the council's consideration. Motion passed 5/0.**

#### **G. Tree Replacement Along the LRT Trail**

Councilmember Fletcher stated Mayor Kind, Zoning Administrator/Clerk Karpas, Xcel Energy representatives, and he walked the area of the trail near where Xcel Energy is planning to upgrade an electric transmission line. A representative told him that many of the trees in the area are being trimmed to death. He recommended having discussions with the cities of Deephaven, Excelsior, and Minnetonka about initiating a dialogue with Hennepin County and the Three Rivers Park District (the District) about replacement trees. He offered to approach those three cities to see if they have any interest in discussing this and then talking with the county and the park district about what to do to mitigate the tree loss.

Fletcher questioned if the funds in the Park Fund could be used to plant trees, while clarifying he is not advocating that. He explained he spoke with an auditor at the Office of the State Auditor (OSA) and asked if funds in the Park Fund could be used for planting trees along side of the trail. That auditor thought that may be an appropriate use of the funds and recommended he ask Attorney Kelly for an opinion. State statute states the money can be used for acquisition and development or improvement of parks, trails, and open spaces. Mayor Kind commented that she did not think that city park funds could be used for the areas along the trail that is county land.

Councilmember Page stated there is no harm in engaging in an informal dialogue with the cities of Deephaven, Excelsior, and Minnetonka to determine if they have interest in approaching the county and the park district to plant trees that will be damaged. He then stated council ought to consider designating the area along Minnetonka Boulevard that is open space and the area next to the trail as park land.

There was council consensus to have Councilmember Fletcher initiate an informal dialogue with the cities of Deephaven, Excelsior, and Minnetonka to determine if they have interest in approaching the county and the park district to plant trees to replace those that will be damaged by the power line upgrade.

**Mayor Kind recessed the meeting at 8:53 P.M.**

**Mayor Kind reconvened the meeting at 9:00 P.M.**

#### **H. Lake Minnetonka Communications Survey Results and Policy Questions**

Councilmember Fletcher stated the Lake Minnetonka Communications Commission (LMCC) is coming to a critical juncture on some things and he thought it would be helpful to solicit some guidance from the council. [The LMCC is considering building a fiber-to-the-premise (FTTP) system called *tonkaconnect*. The LMCC thinks the system would provide leading edge technology for telephone, internet and television service to all homes and business within the LMCC joint powers area and potentially the Cities of Mound and Wayzata. The system would be owned by the LMCC community and would compete with Mediacom and Quest for customers. As part of a feasibility study the LMCC conducted a market survey via phone to determine if there is interest in *tonkaconnect*.]

Mayor Kind clarified that the entity that would run *tonkaconnect* would be separate from the LMCC but it would still be community owned. Councilmember Fletcher explained the LMCC's joint powers agreement (JPA) with its 17 member cities does not authorize it to operate or construct such a network. There would have to be an amendment to the JPA if it were to be part of the LMCC structure. He assumed *tonkaconnect* would be outside of the LMCC's structure.

Councilmember Fletcher stated those surveyed were a subset of people who had listed land line phone numbers. The survey was done to provide 95 percent accuracy.

Fletcher explained that 69 percent of those surveyed thought it was fine for the government to pursue such as initiative. With regard to survey responders' dissatisfaction with the services they are currently receiving, the responders who were somewhat or extremely dissatisfied with their cable service were around 20 percent. 60 percent of the responders were either satisfied or neutral. There had been some belief that subscribers hated the incumbent cable service provider; the survey did not find that to be true. Mediacom had 40 percent phone penetration in the LMCC area; that is surprisingly high. If there was a FTTP high-speed network only 3 to 4 percent of the responders indicated they would work from home more. The survey results indicate that in order to get people to switch from their current provider they have to be offered a better price.

Councilmember Quam stated most people are willing to change to a new service provider if they are offered the same service at a lower price.

Councilmember Fletcher stated the firm that conducted the market survey stated the results of the LMCC's survey are similar to results from surveys in other markets.

Mayor Kind stated if the *tonkaconnect* initiative moves forward she is concerned about what guarantee will be asked for from participating cities. She then stated she attended a meeting with Deephaven Mayor Skrede, Deephaven Administrator Young, Woodland Mayor Doak, and the head of the *tonkaconnect* committee Dick Woodruff. During the meeting she asked Woodruff who is going to guarantee the loans? He said they are looking at nonrecourse revenue bonds. Mayor Doak, during that meeting, said nonrecourse revenue bonds "sounded like general obligations bonds in drag," and the cities could be asked to guarantee the nonrecourse bonds.

Councilmember Fletcher stated the bond market is very fluid. He did not think anyone would be able to get off the hook the way the city of Monticello did when it did a similar project. Oppenheimer has indicated that typically projects like this need one-third of the equity contributed and that there needs to be some cash reserves available. The LMCC doesn't have enough money to fund such an initiative and therefore its member cities may have to stand behind it.

Fletcher then stated the original project estimate from one consultant was \$80 million. Committee chair Woodruff is now saying it will cost around \$50 million.

Mayor Kind stated based on the survey results there is not a large outcry for a FTTP network. She noted she does not want the city to be on the hook for it.

Councilmember Fletcher stated he wanted to discuss the LMCC's finances. He noted that he now serves as the treasurer of the LMCC. With regard to the LMCC's financial background, he explained that entering into 2011 the LMCC had an approximate \$400,000 fund balance. Current 2012 budget discussions project the balance going down to about \$300,000 at the end of 2012 based on a potential 2012 budget. In 2011 the LMCC received a \$128,000 check from Mediacom; this was a one-time payment for underpayment from Mediacom. That check is included in the 2012 year-end balance projection. There is basically no reason to believe the LMCC will receive another check for a similar purpose. The LMCC is in the process of paying off its five-year contract for deed on the building it owns.

Fletcher explained the LMCC basically has one customer, Mediacom, and it receives checks from Mediacom four times a year. If something happens to Mediacom so it can't make its payments it would be a serious problem for the LMCC. The LMCC receives 5 percent franchise fees from Mediacom's cable television customers only; it does not receive franchise fees for internet television or phone. Mediacom collects the fees and passes them along to the LMCC. Should the trend for subscribing to cable television go down because people are getting access to television through the internet, then LMCC will see a loss in revenues.

Fletcher stated the LMCC has not invested a lot in technology and equipment. He then stated he, like other representatives on the LMCC, has requested to have agenda parsing for city council meetings. The next phase (a feasibility study for *tonkaconnect*) will cost \$45,000, and the phase after that will cost \$75,000. He expressed concern about starting with a \$400,000 fund balance, then receiving a one-time \$128,000 payment then ending up with a projected fund balance of \$300,000 two years later. He noted the LMCC will be renegotiating its franchise agreement with Mediacom so there will be legal fees and other expenses associated with that. He also noted he chairs the LMCC Franchise Committee.

Fletcher asked council members for input on what their priorities are for the LMCC. Is the priority in *tonkaconnect* or things such as agenda parsing, community programming, and so forth?

Councilmember Page noted he is not a computer or technology expert. He stated the idea of creating a \$50 million to \$80 million FTTP network is beyond comprehension to him. He noted there needs to be an organization created to run *tonkaconnect*. He stated the market survey results indicate the majority of people are satisfied with the service they currently receive from the private sector. He questioned why there is any desire to put the government in the mix. The idea that the government is going to produce something that costs less than what a private entity can provide doesn't seem realistic.

Mayor Kind stated that could happen because the government entity wouldn't have to pay taxes on their service. She then stated that the FTTP service should be provided by the private sector. She commented the city has an obligation to ensure access is available to the city's residents, but it doesn't have a responsibility to make sure it's the high end of services.

Councilmember Quam stated he concurs with Mayor Kind's and Councilmember Page's perspectives. He asked why the council is even talking about *tonkaconnect*. He stated having the government get involved with this goes contrary to getting the government less involved in people's lives. He was baffled by the fact that the council is discussing something at length that will never happen.

Councilmember Rose agreed with Mayor Kind's and Councilmembers Page's and Quam's perspective.

Councilmember Fletcher stated with regard to LMCC programming, there is council programming. Then there is community programming for things such as school events, school sporting events, and festivals. There is also individual programming where individuals create their own programs. He asked the council members if they had priorities for those different types of programming.

Mayor Kind stated she would like to have agenda parsing of meetings. Councilmember Fletcher stated other member cities would like that also. Councilmember Quam stated he thought school events should have a high priority, but he questioned if any programming should have a higher priority than the others.

Councilmember Fletcher stated based on this discussion he will convey to the LMCC that the council does not have a lot of enthusiasm for the *tonkaconnect* initiative. He also will convey that from a budgeting perspective the council wants the LMCC to ensure its fund balance is in a healthy state.

Mayor Kind noted that the city's non-elected official representative on the LMCC has resigned. She asked residents who are interested to contact city hall.

**8. OTHER BUSINESS**

**A. None**

**9. COUNCIL REPORTS**

**A. Fletcher: Planning Commission, Eurasian Watermilfoil**

Councilmember Fletcher stated he has nothing additional to report on.

**B. Kind: Police, Speed Trailer, Administration**

Mayor Kind stated the South Lake Minnetonka Police Department (SLMPD) Coordinating Committee met on May 11, 2011. She highlighted the discussion at the meeting. Former SLMPD Reserve Captain Don Rogers passed away on April 26<sup>th</sup>. There was discussion about potentially declaring a Don Rogers Day to celebrate his life after things settle down for his family. SLMPD Chief Litsey is going to research ways for the SLMPD to earn more on its investments. Employee health insurance benefit costs are expected to go down in 2012. The 2006 Supplemental Binding Arbitration Order stipulated that every five years the formula be adjusted based on a number of factors. Based on this it looks like Greenwood's share is going to go up .47%. The SLMPD's record management system is in dire need of replacement and it's no longer being supported.

With regard to the speed trailer, Kind stated it had been deployed on Meadville Street from May 10<sup>th</sup> to May 13<sup>th</sup> to capture speed information. The average speed traveled was at or below the 20 miles-per-hour (mph) posted speed. The speed data indicates it may worth it to have a speed study done by the state for Meadville Street, because the state looks at the 85<sup>th</sup> percentile for speed to determine what the legal speed limit should be. Councilmember Fletcher stated if the vast majority of the drivers travel a speed of 20 mph or less, but a few travel above the speed limit, it's the few that create the issue and it is difficult to stop the few speeders. Mayor Kind stated speed bumps would slow the few speeders down, but she does not support the installation of speed bumps on Meadville Street. The council concluded speeding does not appear to be a big problem on Meadville Street.

With regard to administration, Kind stated she will be working on the 2012 budget between now and the council work session scheduled for July 5<sup>th</sup>. Councilmembers Fletcher and Page stated they will not be able to attend that meeting. Councilmember Rose stated he is willing to work with Kind on the budget.

There was council consensus to reschedule the July 5<sup>th</sup> budget work session for August 4<sup>th</sup> at 6:00 P.M.

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

Councilmember Page reported on Lake Minnetonka Conservation District (LMCD) activities. The Minnesota Department of Natural Resources (MnDNR) issued a report on the 2010 bay-wide treatment of Eurasian Watermilfoil (milfoil) and curly-leaf pondweed (CLP) in Carman Bay, Gray's Bay, and Phelps Bay. The report includes monitoring results provided by the Army Corps of Engineers. The results indicate bay-wide treatment may have to be repeated every two to three years. He noted the model proposed by the Lake Minnetonka Association (LMA) for the five-year treatment program was to treat milfoil and CLP heavy the first year and in each of the remaining four years the intensity of the treatment would be reduced, maybe even to the level of spot treatment. Page stated that it appears that model is not realistic.

Councilmember Fletcher explained that Gray's Bay was treated heavily one year and the following year it was treated nominally.

Councilmember Page stated based on his interaction with representatives from the MnDNR he gleaned that lake-wide chemical treatment of Lake Minnetonka is not on the MnDNR's radar screen and it's not viable. That primarily has to do with the ability to monitor and the cost. The cost is astronomical.

Mayor Kind stated the treatment of St. Alban's Bay in 2011 was primarily paid for with private funds. Councilmember Fletcher noted the fundraising effort for that treatment benefited because St. Alban's Bay Captain Rob Roy is a dynamic fundraiser and he really took charge of the effort. It's unlikely that type of fundraising will happen lake-wide.

Councilmember Page stated he attended the LMCD's Public Safety Committee meeting on June 6<sup>th</sup> which was held at the Hennepin County Sheriff's Water Patrol office in Spring Park. The meeting was spurred by concerns expressed by some lakefront property owners. The discussion focused on the whether or not all of Lake Minnetonka should be made a no-wake zone after the LMCD issues a high water declaration for the lake. The outcome of that discussion was there is no need to do that. The lake is a public waterway. Lakefront property owners need to deal with the rise and fall of the water level. Lakefront property owners can help mitigate the impact of high water by planting their shoreline behind their rip rap so when the high water comes over the rip rap there is something to absorb the water. There was not an outcry to change the no-wake restriction beyond 600 feet from shore. He noted he did not support making the entire lake a no-wake zone during high water declaration.

Councilmember Rose stated it would be helpful if the current restrictions were enforced. Councilmember Page stated during that meeting Water Patrol officers expressed concern that it was difficult to tell where 600 feet from shore is. Page explained his reaction to that comment was not to try and do that. Rather, the officers should focus on stopping blatant offenders; those that are close to the shoreline. The officers indicated they don't want to give out tickets for those types of offenses. The officers were encouraged to give out tickets for more egregious violations. He noted the Public Safety Committee is not going to recommend a change to the ordinance to the full LMCD Board. He commented that LMCD Executive Director Nybeck had appeared to be in favor of making the entire lake no-wake because it was easier to



communicate. It's difficult to communicate that many bays are no-wake and within 600 feet of shoreline is no-wake. He also commented that he thought there is reasonable compliance with the no-wake restrictions.

Mayor Kind asked who people are supposed to call when they see someone not complying with the no-wake restrictions. Councilmember Page responded that they should call the Water Patrol office.

Councilmember Page stated that from his perspective the dialogue during the May 25, 2011, LMCD board meeting between the LMCD executive director and the LMCD board member from Shorewood about the LMCD's milfoil harvesting program was a very healthy exchange. He then stated he did not think the LMCD wants to protect its harvesting program at the expense of chemical treatment of milfoil. The focus of the harvesting program is to keep the Lake navigable; it's not to harvest all milfoil. He then stated from his perspective the board member from Shorewood seemed to be suggesting that the harvesting being done was insufficient. Insufficient funding is what limits the amount of harvesting being done.

Mayor Kind stated she heard Rob Roy say earlier in the meeting that there are lakefront property owners that don't like the harvesting program and they wish the LMCD did not put so much emphasis on its harvesting program. Councilmember Page stated he assumes that Mr. Roy is suggesting more chemical treatment of milfoil. Page then stated it's not possible to have chemical treatment be the sole remedy.

Councilmember Page stated he understood the comments by the board member from Shorewood to be about the volume of harvesting. He then stated that board member referenced an aerial photo someone had taken of Carman Bay that the board member was told showed the path of harvesting in that area of the lake was done somewhat erratically. The LMCD executive director had explained that when the LMCD had been told about that same photo it did some research and determined it had not done any harvesting of that area yet. It appeared that the cutting of milfoil in that area was the result of boat traffic.

Mayor Kind noted that she has heard from Greenwood residents that they don't like the harvesting program and that they are glad St. Alban's Bay won't be harvested this year because it's been treated chemically. Councilmember Page responded if the bay wasn't treated chemically, and if it wasn't harvested for a few years, it would not be navigable in some parts.

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

Councilmember Quam stated the council has already discussed repairs to the sewer system. He then stated the bids for the 2011 roadway improvement projects should be available by the July 5<sup>th</sup> council meeting. Staff has asked for an alternate bid which includes improvements to another section of the west leg of Greenwood Circle to see if the 2011 budget can cover the cost.

Quam stated there is nothing new to report on St. Alban's Bay Bridge.

Quam stated the Minnetonka Community Education (MCE) Tour de Tonka race is scheduled for August 6<sup>th</sup> and the MCE is looking for volunteers to help with that event.

#### **E. Rose: Excelsior Fire District**

Councilmember Rose stated he attended the Excelsior Fire District (EFD) Board regular meeting held on June 1, 2011. The Board is still in the process of working on the 2012 operating budget. He noted that the current projection for the EFD's 2012 mandatory contribution that will have to be made to the Excelsior

Firefighters Relief Association (EFRA) fund for pensions is \$3,000. The original projection was \$80,000. He also noted that amount is very likely to change.

**10. ADJOURNMENT**

**Quam moved, Rose seconded, Adjourning the City Council Regular Meeting of June 7, 2011, at 9:56 P.M. Motion passed 5/0.**

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