

**GREENWOOD CITY COUNCIL MEETING**  
**Wednesday, July 3, 2013, 7:00 P.M.**  
**Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331**

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

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

Members Present: Mayor Kind; Councilmembers Cook, and Quam

Others Present: Attorney Kelly, City Zoning Administrator/City Clerk Karpas, and Engineer Martini (departed the meeting at 7:35 P.M.)

Members Absent: Councilmembers Fletcher and Roy

Mayor Kind asked that a discussion about the Flood Insurance Rate Map (FIRM) be added to the agenda under Item 2.A.

**Kind moved, Cook seconded, approving the agenda as amended. Motion passed 3/0.**

**2. CONSENT AGENDA**

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

- A. June 5, 2013, City Council Meeting Minutes**
- B. May 2103 Cash Summary Report**
- C. June Verifieds, Check Register, Electronic Fund Transfers**
- D. July 2013 Payroll Register**

**Motion passed 3/0.**

**3. MATTERS FROM THE FLOOR**

None.

**4. PRESENTATIONS, GUESTS & ANNOUNCEMENTS**

- A. City Engineer Dave Martini**
  - 2013 Road Project Bids**

Engineer Martini explained that during its May 1, 2013, meeting Council directed staff to secure bids for the recommended 2013 roadway improvement projects. The projects include resurfacing the south leg of Byron Circle and bituminous patching on Lodge Lane, Lyman Court, and Woods Court. Council also asked for an alternate bid for milling and overlaying the St. Alban's Bay Bridge deck. The low bid was received from Barber Construction in the amount of \$108,875. The amount included the base bid (\$93,375) and the alternate bid (\$15,500). A bid for sealcoating Lyman Court neighborhood was also

secured. The low bid for that was received from Allied Blacktop in the amount of \$18,434. He noted that because those two amounts combined exceed what the City has budgeted for roadway improvement in 2013 he did not make a recommendation for what to do.

Mayor Kind noted the 2013 budget for road projects is \$110,000 for construction costs and \$20,000 for engineering costs.

Engineer Martini noted Council has discussed that the expenses incurred by the City for the improvements it will make in conjunction with the Metropolitan Council Environmental Services (MCES) Excelsior Boulevard forcemain project needs to be funded out of the roadway improvement budget. Mayor Kind stated it's her recollection those costs were about \$25,000.

Engineer Martini stated he and Councilmember Quam had spoken about postponing the sealcoating project. He noted that from his perspective that could be done in 2014 as part of a larger sealcoating project. Sealcoating some of the roadways the City made improvements to in the recent years would extend the life of those roadways.

Councilmember Quam stated he thought doing one large sealcoat project in 2014 makes a great deal of sense.

Mayor Kind stated even if the sealcoating project is not done in 2013 the cost for the other recommended roadway improvement projects plus the amount for Excelsior Boulevard project exceed the 2013 roadway construction budget amount. She then stated the bridge work could be postponed and an attempt could be made to get the City of Excelsior to pay for half of the bridge work being it owns half of the bridge. She noted the amount of contingency in the 2013 budget is \$11,547 and as of June 1 \$193 of it has been spent.

Councilmember Quam stated the base bid amount of \$93,375 plus the \$25,000 for the Excelsior Boulevard project exceeds the 2013 roadway construction improvement budget. The use of \$8,375 of the contingency budget would be needed to fund the improvements. He suggested Mayor Kind talk to Excelsior about sharing the cost of the bridge improvements in 2014. He noted he has concern about paying the full amount for the bridge work. Kind noted she has not discussed that with Excelsior.

Councilmember Cook asked what the downside is of going over budget. Mayor Kind responded that the reserves could be used if the project exceeds the amount in the contingency fund. Kind stated there is the \$11,547 in contingency for 2013 and the 2012 year-end level of reserves in the General Fund was 49 percent. The auditor recommends a level of 35 – 50 percent.

Cook suggested the bridge work be done in 2013 because he thought everyone living in Greenwood travels over the bridge multiple times a day. He expressed support for going over budget and doing the bridge work this year and delaying the sealcoating until 2014.

Councilmember Quam stated he agreed with Councilmember Cook's recommendation.

Councilmember Cook suggested Mayor Kind attempt to get a donation from Excelsior to help pay for the bridge work.

Mayor Kind related a public works employee suggested a low cost way of taking care of the Bridge. It would cost about \$500 for a truck to put down asphalt and use a skidder to smooth it out. She clarified that would be a band aid approach. She noted that Engineer Martini had told her he did not think she would like the results of that process. Martini explained he did not think people would be happy with the

ride over that surface and that there won't be much of a life from that. Martini noted that he prefers to do it right.

Mayor Kind stated she was in favor the Bridge being repaired correctly only if the expected life of the Bridge is ten years or more. She stated she does not want to spend \$15,500 on bridge work only to have to tear the Bridge down next year.

Councilmember Cook stated from his perspective the Bridge will not have to be rebuilt anytime in the near future. He explained that first it has to be rated lower than it is currently rated. Then it will have to be designed and built.

**Quam moved, Cook seconded, accepting the bid from Barber Construction for an amount of \$108,875 to: resurface the south leg of Byron Circle; do bituminous patching on Lodge Lane, Lyman Court, and Woods Court; and, mill and overlay the St. Alban's Bay Bridge deck. Motion passed 3/0.**

Councilmember Quam noted the City has worked with Barber Construction before and it has done very good work.

- **Hennepin County Aid to Municipalities Application**

Engineer Martini noted that this year's County Aid to Municipalities (CAM) apportionment is \$1,800.

**Quam moved, Cook seconded, directing the City Clerk and the City Engineer to complete the application for reimbursement from the Hennepin County Aid to Municipalities. Motion passed 3/0.**

- **Excelsior Boulevard Street and Watermain Improvements**

Mayor Kind noted the meeting packet contains a copy of the updated project timeline for the Excelsior Boulevard Street and Watermain Improvements that will be done as part of the Metropolitan Council Environmental Services (MCES) Excelsior Boulevard forcemain project. That project has begun and the Lilac Trees and Ash Trees in the project area have been removed. They will be replaced most likely next spring.

Kind explained the plan is for the project to be substantially complete before the assessment amount for the watermain extension portion is determined. The assessment amount should be known so an assessment roll can be ordered by September 4. A resolution authorizing a public hearing to be held on the proposed assessment will be considered during Council's October 2 meeting. The public hearing will be held during Council's November 6 meeting. Council then may adopt the assessment at the November 6 meeting, so it can be certified to the Hennepin County Auditor by November 22. She stated she thought the timeline is tight but doable.

Engineer Martini noted he attended a project meeting earlier in the day. He provided an update on the project. The pavement reclaiming will begin on July 8 and the watermain work will begin the week of July 8. During the project meeting there was a great deal of discussion about restoration related items and location of services. One of the issues on the north side of the roadway is there are a lot of private improvements located in the Minnesota Department of Transportation's (MnDOT) right-of-way (ROW). That makes locating services a challenge. People are working with property owners to get their feedback on where to locate the services. The service has to front the property it is going to serve. The contractor

will make a concerted effort to preserve private landscaping in the MnDOT ROW. Once there is a clear understanding of what has been disturbed, property owners will be involved in determining a restoration plan. The intent is to treat people fairly even though the landscaping in the public ROW is at risk. But, there will be a limit as to what MCES is going to be willing to spend on landscaping restoration. Removing the landscaping along the Highway 7 side is related to the MCES forcemain project. The existing forcemain is located very close to the edge of the roadway and in some instances under the landscaping.

Mayor Kind related that the City's arborist had told her that the ash trees would likely have been lost to emerald ash borer anyway. She noted there is a copy of the tree removal and restoration plan on the City's website [www.greenwoodmn.com](http://www.greenwoodmn.com).

Engineer Martini stated adding another forcemain line and watermain to the corridor is difficult.

Mayor Kind stated she did receive a call from a resident who has Class 5 gravel down in the ROW that is slated to be restored to grass. She explained that any time hardcover (such as Class 5) can be replaced with grass Council favors doing that. The property owner believes the property should be restored to the way it was before the project was started. She told the property owner that the City does not have money in its budget to ask for change orders to upgrade the restoration plan.

Engineer Martini stated it was his understanding that the pull-off parking areas on the north side of the roadway would be restored to the way they are. The gravel areas would be restored.

- **Flood Insurance Rate Map (FIRM)**

Mayor Kind stated that over the weekend she received several emails from a resident who is concerned about the flood insurance rate map (FIRM) and what they perceived as the City not doing anything. Any concerns about the maps have to be conveyed by July 4. Council was provided with an electronic copy and hardcopy of a draft letter authored by her conveying the City's concern about the FIRM. The letter requests more information regarding the process for correcting the FIRM for Greenwood.

In response to a question from Councilmember Quam, Engineer Martini stated the FIRM comes from the Federal Emergency Management Agency (FEMA). Mayor Kind stated the proposed letter would be sent to a project manager at a company called Atkins. Martini stated he assumes that company is a consultant for FEMA.

Councilmember Quam recommended finding out why things are changing. Engineer Martini clarified nothing is changing in Greenwood.

Engineer Martini stated a couple of property owners went to refinance their property and were told they needed flood insurance. It's clear one of the structures is not at risk for a flood. He explained unless a structure is many feet above the flood plain and that is obvious from an aerial view the City does not have enough information to show a structure is not in a flood plain.

Zoning Administrator/Clerk Karpas stated mortgage companies are using FEMA maps that are not to scale. They do not show structures. It results in property owners having to take on an added expense of proving that their structure is not located in a flood plain.

Mayor Kind stated when Council last discussed this it came to the conclusion that if the City has information that could help the property owner it will provide it. To do this the City created a new form

modeled after the City of Minnetonka's form.

Kind noted the City of Edina is spending \$35,000 on behalf of their homeowners to fix the FEMA maps.

Councilmember Cook stated he does not want to open up a can of worms, and that he believes the new form to help property owners on a case-by-case basis is a good solution.

Mayor Kind suggested publishing the availability of the City service to provide the new form for residents who request it for flood insurance purposes.

There was Council consensus not to send a letter Atkins.

Engineer Martini departed the meeting at 7:35 P.M.

**B. Night to Unite, Tuesday August 6, 2013**

Mayor Kind stated the 2013 Night to Unite event is scheduled for Tuesday, August 6. There are several gatherings going on in Greenwood. She noted that people in the community should contact South Lake Minnetonka Police Department (SLMPD) Support Services Manager Dave Hohertz if they would like SLMPD personnel to come to their neighborhood Night to Unite events. Hohertz's information can be found on the City's website and in the most recent newsletter.

**C. Council Budget Work Session, 6:00 P.M. Wednesday August 7, 2013**

Mayor Kind stated there is a budget work session scheduled for 6:00 P.M. on August 7, 2013, immediately preceding Council's regular meeting.

Kind then stated that on July 28, 2013, at 4:30 P.M. there is a free concert and ice cream social at the Old Log Theater. The John Phillips Sousa Memorial Band conducted by Scott Crosbie will be playing. It was a very big success last year.

**5. PUBLIC HEARING**

**A. None**

**6. UNFINISHED BUSINESS**

**A. Draft Uniform Animal Ordinance**

Mayor Kind stated during its June 5, 2013, meeting Council discussed a draft uniform animal ordinance for the South Lake Minnetonka Police Department (SLMPD) member cities. Council authorized her to write a letter to the SLMPD Chief Litsey explaining the Greenwood Council supports the concept of a uniform animal ordinance and is open to considering changes the other three cities may want to make. She has not heard that the other cities have proposed changes, and as far as she knows the cities of Excelsior, Shorewood, and Tonka Bay have not taken action on it. She said that Council could direct that the ordinance be formatted for a first reading during its August 7, 2013, meeting. Or, this item could be continued another month.

Quam suggested waiting on this to allow the other member cities time to propose changes. He explained he did not want to format the ordinance for a first reading and then have to make a lot of changes to it.

Cook stated that he preferred that the item not be on the Council's agenda until other cities have taken action on it.

**Quam moved, Cook seconded, continuing this item to a future date. Motion passed 3/0.**

**7. NEW BUSINESS**

**A. Tobacco License Application, Greenwood Market, 21380 Christmas Lake Road**

Mayor Kind explained the City received a tobacco license application from Akshay Patel, owner of the new Greenwood Market business located at 21380 Christmas Lake Road (formerly known as Lakeshore Market). A copy of the application is included in the meeting packet. Per City Code Section 470.00 a criminal background check must be completed. Also, per City Code Section 415.03 Subd. 2 Council must approve the license. She noted the criminal report has not come back as of this meeting. She explained Council can take action on this application this evening pending the receipt of a clean report from the South Lake Minnetonka Police Department.

Councilmember Cook asked the applicant to provide a status report on what is happening with the property.

Sadik Punjani the owner of the building, stated he redid the parking lot last year. The roof has been replaced. The entire interior is being redone. Everything inside will be brand new. He wants to run a clean store. Patel is going to manage the Market on a daily basis and Punjani will come by a couple of days a week to help out.

**Cook moved, Quam seconded, approving a 2013 tobacco license for Akshay Patel, owner of the Greenwood Market, 21380 Christmas Lake Road, pending a clean report from the South lake Minnetonka Police Department and authorizing the City Clerk to sign the tobacco license once the report is received.**

Attorney Kelly asked Mr. Patel if the business will be run under his name or a corporate name. Mr. Patel responded that the business will be operated under a company name. Kelly stated the license would be to the company and the background check is done on the principal owner and general manager. Mayor Kind stated that according to the submitted the application, Mr. Patel is the owner / partner of the company that is going to operate the store. Kelly stated that is what the City has been told but it does not have that in writing.

Mr. Punjani stated he owns the building and is investing in improvements. Patel is to pay him off for the improvements within a number of months.

Zoning Administrator/Clerk Karpas stated Mr. Punjani has always owned the building.

Councilmember Cook stated he is okay with authorizing the license but it needs to be clear who the license is being given to and what their relationship is to the business. He is unclear because he has heard owners and partners used interchangeably. He wants the application form to be filled out correctly.

In response to a question from Councilmember Quam, Mr. Patel stated he is hoping to open the Market by the end of the month.

**Without objection from the seconder, the maker amended the motion to also include pending clarification of ownership for the tobacco license application. Motion passed 3/0.**

**B. Findings of Fact for Variance Request (Impervious Surface), Conditional Use Permit Request (Grade Alteration) Chip and Katie Fisher, 5185 Greenwood Circle**

Zoning Administrator/Clerk Karpas explained that Chip and Katie Fisher, 5185 Greenwood Circle, are requesting a variance to exceed the maximum permitted impervious surface by 8.92 percent and a conditional use permit (C.U.P.) to exceed the maximum permitted grade alteration by 3 feet to construct a new driveway to access the garage at their new single-family home. The applicant also is seeking a City permit to construct retaining walls within the City right-of-way (ROW).

Karpas noted the applicant had been issued variances to construct the home late in 2012. The property drops from Greenwood Circle. He explained that at the time the variances were granted the applicants did not realize there was an issue with the grade of the driveway. During the construction it became apparent there was a grade issue. Yet, construction continued without resolving it. The applicant is seeking a certificate of occupancy but has no safe access to the garage. The applicant has worked with the City Engineer on how to resolve the issues.

Karpas stated the Planning Commission discussed this request and recommended approval of it.

In response to a question from Councilmember Quam, Zoning Administrator/Clerk Karpas explained the retaining wall is going to be a couple of feet high and there will be boulders on top of it as a pseudo guard rail. Karpas noted the drop is not that substantial.

Mayor Kind stated that according to the submitted plan, at one end the drop from the retaining wall is about 1 foot, and the highest drop is about 3 feet. She noted she likes the boulders on top of the retaining wall better than an industrial type guard rail.

Councilmember Quam asked how large the boulders will be.

Chip (Orville) Fisher, 5185 Greenwood Circle, stated the boulders would be about 3 feet in diameter and there will be landscaping next to the boulders.

Councilmember Quam stated the only concern he has is that a child may fall down from the retaining wall or boulders.

Councilmember Cook provided more insight as to what the Planning Commission discussed. He noted this was a difficult request to consider because of the multiple variances. He explained the Fishers received a lot of good will from the Commission because when they applied for variances in 2012 they ended up moving the location of the house farther back from the lake and reducing the size of the house to reduce hardcover. That is what caused the grade problem. The applicant's architect did not thoroughly review the impact of the changes. He noted he thinks the Commission made the right recommendation.

Brian Malo, 5070 Greenwood Circle, asked how close the boulder on top of the retaining wall near the roadway is to the pavement. Mayor Kind stated about three feet. Brian stated a 3 foot boulder is not a very good boulder. He does not think that is a sufficient size to stop cars which is what he thought the purpose of the boulders is on top of the retaining wall is.

Councilmember Cook stated he does not think things should be built on residential properties to stop cars. He then stated the 3-foot rock will weigh a couple hundred pounds.

Councilmember Quam asked Mr. Malo if he is concerned about a runaway car coming down the driveway. He stated there is a similar driveway situation on the property next door.

Mr. Malo stated from his viewpoint the Fisher's proposed driveway is different because it is parallel to the roadway. He then stated a driveway perpendicular to the roadway does not have the same risk. He cited the example of coming home late at night and missing the corner.

Mayor Kind stated she understands that what is being proposed is not ideal but it seems that after lots of discussion this is the best solution there is.

Attorney Kelly stated the grade from the original proposal was 17.5 percent and re-routing the driveway would bring it down to approximately 8.2 percent. He noted that he calculated the grade for the re-routed driveway. He expressed he is surprised the City Engineer thinks the grade of the re-routed driveway would only be 3 percent less. He stated 15 percent is still very steep and noted that most cities will not allow anything over 12 percent.

Councilmember Cook stated after a cursory look it appears the grade for the re-routed driveway would be 10 percent or less.

Mayor Kind stated reducing the grade is a safety improvement that should be taken into consideration.

Mayor Kind noted that there will only be one curb cut for the entrance to the driveway and that there will continue to be parking on the street.

**Cook moved, Quam seconded, Adopting RESOLUTION NO. 17-13, "A Resolution Approving the Variance for Impervious Surface and the Conditional Use Permit Application for Grade Alteration for Chip and Katie Fisher, 5185 Greenwood Circle, as presented; and, directing the City Clerk to mail a copy of the Findings to the applicant and the Minnesota Department of Natural Resources and to place an Affidavit of Mailing for each of the mailings in the property file." Motion passed 3/0.**

Mayor Kind stated Council needs to establish a fee, per the City Code, for the cost of the Public Right-of-Way Use Permit to cover attorney fees and in consideration of the intensity of use. It also needs to authorize the City Attorney to draft and execute a Cooperation and Use Agreement with Chip and Katie Fisher and authorize the Mayor and City Clerk to sign the agreement. She asked Attorney Kelly if he has thought about what to charge. Kelly stated he has advised Mr. Fisher that he would charge \$1,250 for the documentation that he believes is necessary. Kelly then stated the City could charge a nominal amount and then have the Fishers pay for the City's consultant fees.

Councilmember Cook stated he has completed three projects on property located in the City in the last 10 years. In one instance he put riprap on part of the City's shoreline because the City was not interested in doing that and he was. He noted he understands the concept of wanting to have an agreement. He stated there are improvements in the City ROW for an awful lot of properties. He asked if the City had executed a Cooperation and Use Agreement before. Attorney Kelly stated he thought on occasion the City has.

Attorney Kelly stated in this instance a private improvement will be created on public land. The intent of the Agreement is to give the City the authority to re-enter its public ROW and remove the improvement if

there is a need to. Mayor Kind noted the City technically has that authority to do that with or without an Agreement. Kelly stated the City is granting a private property owner the right to put something in the ROW, but the question is who has the liability if it has to be removed and who restores it.

Councilmember Cook suggested there be a global solution for this type of thing; not an individual solution. He stated he does not know if it should be in the form of an ordinance or a standard agreement form property owners would have to sign. It would be for whenever someone wants to do something in the City's ROW, and it would stipulate that the City has access to the ROW and any removal or repairs would be the responsibility of the property owner. The rules need to apply to everyone.

Mayor Kind noted there are a lot of property owners who have retaining walls in the City ROW that do not have a Cooperation and Use Agreement with the City.

Mayor Kind stated this evening Council could direct the City Attorney to draft a short-form agreement like Councilman Cook is suggesting and that the applicant would not have to pay for it. Councilmember Quam stated that would be fine with him.

Zoning Administrator/Clerk Karpas questioned if there is a difference between existing encroachments into the public ROW versus creating new encroachments. He stated in this instance Mr. Fisher is not only asking to build retaining walls in the ROW. He is asking to create a heated driveway in the ROW. He asked if a liability waiver should be written into the form for Mr. Fisher because of the 3-foot drop along the retaining wall near the roadway.

Mayor Kind stated City Code Section 630.05 Public Rights-of-Way / Permit states *"The right to use publicly owned right-of-ways within the city for any private use or purpose other than the primary purpose of public travel, whether such use constitutes substantial or incidental use, may be acquired only through permit granted pursuant to this ordinance. Any private property located within or encroaching upon publicly owned right-of-ways, which has not been authorized in accordance with this ordinance, shall be unlawful and subject to removal. The permit fee shall be determined by the city council and set forth in chapter 5 of this code book."* Section 510.00 Fees – Licenses, Permits and Services Established states the fee for a Right-of-Way Encroachment Permit is a minimum of \$50, Council approval is required, and the actual fee will be determined by Council based on the proposed intensity of use.

Councilmember Cook stated from his vantage point what he has suggested fits with the City Code.

Councilmember Cook noted that he has to replace the retaining wall on City property adjacent to his property because it has failed. He asked if he is grandfathered in. He reiterated he thought encroachment into the City ROW should be addressed globally. The Code stipulates a minimum \$50 fee. He stated if applicant needs special consideration then it could be added to the short form and it appears the City Code can deal with that. He then stated he thought it would be beneficial to have the framework for a Cooperation and Use Agreement on file. It would help to have it the same for everyone.

Mayor Kind stated she favors having Attorney Kelly draft a short-form agreement. She then stated Council should set the fee for the Fishers at whatever it is going to set it at for the short-form agreement and it should be enough to cover staff time. She questioned if the \$50 minimum fee is too low.

**Cook moved, Quam seconded, authorizing the City Attorney to prepare standard short-form public right-of-way cooperation and use agreement that will be used for the Fisher request as a test case; informing the Fishers that they are not paying for the cost to draft a short form but they will have to pay any additional cost associated with their application for a Right-of-Way Encroachment**

**Permit for an amount not to exceed \$1,250; and authorizing the Mayor and City Clerk to sign the agreement. Motion passed 3/0.**

**C. Findings of Fact for Conditional Use Permit Request (impervious surface) Dr. Marc Hope, 21450 State Highway 7, and Bridgewater Bank, 21500 State Highway 7**

Zoning Administrator/Clerk Karpas stated the properties located at 21450 State Highway 7 and 21500 State Highway 7 are connected by a common driveway. They have an agreement to share parking. The applicants Dr. Marc Hope and Bridgewater Bank are proposing to reconfigure the existing parking area by removing the connecting driveway. Doing that would increase the overall number of parking stalls on the properties by four. This reconfiguration will bring the of stalls for both properties into compliance with the City's parking requirements. There would continue to be an agreement to share stalls. The applicants have applied for a conditional use permit (C.U.P.) to exceed impervious surface maximum of 30 percent. The combined impervious surface on the property would be reduced by 156 square feet. It would continue to be under the 75 percent threshold. The drainage plan has been reviewed by the City Engineer and by the Minnehaha Creek Watershed District (MCWD). The Planning Commission has reviewed the application and recommends approval.

Mayor Kind stated she thought this would be a nice improvement.

**Cook moved, Quam seconded, Adopting RESOLUTION NO. 18-13, "A Resolution Approving the Conditional Use Permit Application for Impervious Surface for Dr. Marc Hope, 21450 State Highway 7, and Bridgewater Bank, 21500 State Highway 7, as presented; and, directing the city clerk to mail a copy of the findings to the applicant and the Minnesota Department of Natural Resources and to place an Affidavit of Mailing for each of the mailings in the property file." Motion passed 3/0.**

**D. Deephaven/Greenwood 2014 – 2016 Service Contract Agreement**

Mayor Kind explained that when the Greenwood city clerk resigned in May 2010, Greenwood contracted for administrative services from the City of Deephaven. The arrangement proved to be beneficial for both Cities. The Cities entered into a 3-year contract for 2011-2013 that is set to expire on December 31, 2013. In order to ensure that an agreement is in place for 2014 budget planning, the administrative committee (Kind and Councilmember Fletcher) met in May with Deephaven City Administrator Dana Young to discuss a new 2014-2016 contract. Kind and Deephaven Mayor Paul Skrede had two follow-up meetings in June to discuss the contract. She noted that the meeting packet contains a copy of a letter from Young that summarizes the agreement being recommended to the Deephaven and Greenwood City Councils as well as a copy of the agreement and some supporting documents.

Kind highlighted the notable changes from the current agreement.

- Instead of building in flat annual increases for public works and zoning administrator salaries, the agreement states that the cost increases will be based on actual salaries.
- The monthly rental city hall meeting fees have been combined for an amount of \$425 instead of \$475 per month.
- Greenwood no longer has its own copier. Therefore, a per-copy rate of \$0.10 has been added to the agreement.

Councilmember Quam asked what the City charges the public for copies of documents. Mayor Kind responded \$0.25 and noted that state law states a municipality cannot charge more than that. Zoning Administrator/Clerk Karpas stated he rarely charges for copies.

**Quam moved, Cook seconded, approving the Deephaven-Greenwood 2014-2016 Service Contract Agreement as presented and authorizing the Mayor and City Clerk to sign the agreement. Motion passed 3/0.**

**E. Resolution Supporting the Long-Term Viability of the Lake Minnetonka Communications Commission**

Mayor Kind explained this resolution is a compromise idea for trying to address the problem of Lake Minnetonka Communications Commission (LMCC) member cities wanting to withdraw from the LMCC joint powers organization. The goal is to try to keep as many member cities as possible. The City of Medina has given notice that it is withdrawing. The Cities of Minnetrista, Orono and Victoria are also considering leaving. Victoria sent a letter to the LMCC listing its priorities for the LMCC to address. In response to that letter, representatives from Greenwood (she and Councilmember Fletcher), Minnetrista and Victoria met to discuss if there is a middle ground that will keep a core group of member cities in the LMCC to fund basic services. Based on the discussion, a resolution was drafted for the LMCC member cities to consider. A copy of the draft resolution is included in the meeting packet.

Kind noted the LMCC Board does not view the resolution as being supportive of the LMCC. It has concern that it would dismantle the LMCC. It's her and Councilmember Fletcher's concern that if cities withdraw it will force drastic changes at the LMCC. She stated she viewed the resolution as a last ditch effort to try and get as many cities as possible to stay.

Kind stated the Victoria City Council adopted the resolution during its June 24 meeting. The Minnetrista City Council adopted the resolution during its July 1 meeting. The Deephaven City Council adopted just the second half of the resolution. The second half was related to changing rules about who a city can appoint, changing voting rules, clarifying rules for leaving the joint powers organization, disbanding the LMCC Executive Committee and keeping the LMCC Board meetings at four times a year, changing the requirement for how many member cities have to approve a change to the joint powers agreement (JPA) to four-fifths (currently it takes 100 percent of them).

Kind noted the meeting packet contains a copy of the model ordinance with Greenwood's information filled in. She stated that she and Councilmember Fletcher recommend approval.

Councilmember Quam asked Mayor Kind why Greenwood needs the LMCC. Mayor Kind explained the LMCC has experience with negotiating franchise agreements. Quam asked if the City could do that. Kind indicated it could. Kind stated the LMCC has expertise in television production of council meetings, noting it could hire someone to do that. The LMCC enforces the terms of the negotiated contract with Mediacom. Once a group is established the franchise agreement is for ten years and for cities the agreement tends to get put on the back burner. A few years ago the City of Chanhassen hired the auditor the LMCC uses and the auditor determined that Chanhassen was due about \$500,000 from Mediacom. The LMCC also deals with resident complaints about Mediacom, the cable television franchise provider.

Quam then asked how many households in Greenwood have Mediacom. Mayor Kind stated that currently Greenwood has 149 cable subscribers out of 346 dwelling units (43 percent). Quam questioned how many of them watch LMCC community meetings on television. Kind noted that based on a survey done by the

LMCC city council meetings were highly watched. Kind stated she thought a lot of people also watch the meetings online at the LMCC website.

Mayor Kind displayed a graph of how much each LMCC member city's Mediacom cable television subscribers contribute through a surcharge on their Mediacom bill. She explained subscribers pay \$4.42 per month for a LMCC franchise fee. That fee is the same for all of the subscribers. The subscribers in Greenwood pay \$7,897 per month total in franchise fees. The subscribers also pay \$1.20 per month for a PEG (public, education and government) fee that must be spent on public programming. Greenwood's total franchise and PEG fees is \$10,043. The subscribers in Media pay \$8,410 in PEG fees. Subscribers in Victoria pay a total of \$78,588 in franchise and PEG fees. Victoria does not think it is getting a good value for what its subscribers are paying.

Councilmember Quam asked if Greenwood is getting a good value. Mayor Kind stated she thought it is. However, Kind then stated she thought Greenwood could hire someone to record its Council meetings for less than what the subscribers are paying to the LMCC. The recordings could be placed on the City's website for viewing, or maybe Mediacom would give Greenwood a station for people to view them on. Kind noted that she thought the smaller LMCC member cities are probably getting a good value. It's the bigger cities that think they are not. She noted that there would be attorney fees involved in negotiating a franchise agreement between Mediacom and Greenwood.

Councilmember Quam asked what the impact of the larger cities leaving the LMCC is on Greenwood. Mayor Kind stated, for example, Victoria leaving takes \$78,588 in funding for the LMCC away. If the City of Orono leaves that is a loss of approximately \$88,900 in funding. Medina leaving means a loss of approximately \$40,000 in funding. Minnetrista means a loss of approximately \$50,550 in funding. Those cities are also underserved by Mediacom. They would possibly like to use the franchise fees paid by the subscribers to build out the Mediacom infrastructure. Mayor Kind stated it would be a very pared down LMCC if Victoria, Minnetrista, and Orono leave. She related that Councilmember Fletcher who sits on the LMCC Executive Committee and was the LMCC treasurer for awhile believes basic programming could be provided with the pared down LMCC if a quarter of the LMCC member cities stay in.

Councilmember Cook asked who gets the franchise fees now. Mayor Kind explained the LMCC gets 100 percent of them from Mediacom except for the City of Mound which keeps 85 percent of the fees paid by subscribers in Mound. That is a long standing agreement Mound had and it will likely go away with the new franchise agreement. Kind stated some of the other LMCC member cities want the same deal that Mound has.

Mayor Kind noted that the proposed resolution talks about a 25 percent / 75 percent split with each member city getting 75 percent of the franchise fees. The hope is that would encourage cities to stay as a member city.

Councilmember Cook stated he interprets that to mean that the member cities would be taking 75 percent of the LMCC revenues away. Mayor Kind clarified not quite because the LMCC would keep 100 percent of the PEG fees. Cook explained that roughly the LMCC would get approximately \$2 out of the per-subscriber franchise plus PEG fees and the cities would get \$3. Cook stated that would be about a 60 percent loss in revenue for the LMCC from the member cities that stay in.

Councilmember Cook stated it sounds as if things are to a point where if one or two additional bigger cities leave all bets are off.

Mayor Kind reiterated that Minnetrista and Victoria adopted the resolution.

Quam noted that during his first four years on Council no member of the Greenwood Council attended LMCC Board meetings. Council just approved the budget because it did not cost the City anything. He stated now there are discussions about the LMCC frequently. He asked what has changed.

Mayor Kind stated the impetus is that franchise negotiations are underway. She then stated the cities that are not fully built out and whose subscribers pay a lot of franchise fees has caused them to consider leaving the LMCC to directly franchise with Mediacom and using the franchise fees for buildout.

Councilmember Quam asked what it would take to make this happen. Mayor Kind explained the top part of the resolution will take a simple majority vote of the LMCC Board during its August 20 meeting. The bottom section would require 100 percent approval.

Councilmember Cook stated that he thinks this is a dying technology. He then stated the resolution is not really one of support; it's one of support for a much pared down organization. He went on to state the reason Council is spending time on this is because the LMCC is in trouble.

Brian Malo, 5070 Greenwood Circle, asked if he as a subscriber would see his franchise fee and peg fee increased because of cities leaving the LMCC. Mayor Kind stated she did not think the franchise fees would go up but the PEG fee may go up.

Councilmember Cook stated when organizations run out of money they have to raise rates or taxes or something. He then stated he thought it should evolve to a volunteer organization if a small number of cities remain in rather than a Commission. He does not know how the LMCC revenues could be cut by approximately 60 percent and survive.

**Quam moved, Cook seconded, Adopting RESOLUTION 19-13, "A Resolution in Support of Long-Term Viability of the Lake Minnetonka Communications Commission." Motion passed 3/0.**

**F. Potential Comments Regarding the Minnehaha Creek watershed District 10-Year Capital Improvement Program**

Mayor Kind explained the Minnehaha Creek Watershed District (MCWD) is seeking comments from cities within the MCWD's jurisdiction about its 10-Year Capital Improvement Program (CIP). A copy of the email requesting input is included in the meeting packet. If Council wishes to weigh in on this topic, the memo format included in the meeting packet needs to be fleshed out. She noted that she has no desire to comment on the CIP.

Councilmember Quam stated he is not qualified to comment on any of the projects included in the CIP.

Councilmember Cook stated he does not have an inclination to comment on the CIP.

There was Council consensus not to comment on the MCWD's 10-Year CIP.

**8. OTHER BUSINESS**

**A. None**

**9. COUNCIL REPORTS**

**A. Cook: Planning Commission**

Councilmember Cook stated during its last meeting the Planning Commission reviewed and recommended the Fisher variance as well as conditional use permit for Dr. Hope and Bridgewater Bank. The Commission also discussed a variance request from Bridgewater Bank to install awnings above windows along the east and west side of the building which would encroach into the minimum required side yard setbacks. The Commission did not take action on the variance request. The applicant withdrew the request for a variance on the west side yard setback. The Commission continued the public hearing on the variance request to encroach into the east side yard setback to its next meeting to allow the applicant the opportunity to refine its plan for the east side of the building. The Commission continued its discussion of potentially creating an R-1C District that would encompass the current Old Log Theater property. He anticipated the Commission would make some recommendation to Council during its next meeting.

Zoning Administrator/Clerk Karpas noted there are two vacancies on the Planning Commission. Mayor Kind stated that is a great way to get involved and learn about what goes on at City government. She then stated there is an application form on the City's website [www.greenwoodmn.com](http://www.greenwoodmn.com).

**B. Fletcher: Lake Minnetonka Communications Commission, Excelsior Fire District, Xcel Energy Project, Lake Improvement District**

Councilmember Fletcher was not present to give a report.

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

Mayor Kind noted she attended the emergency preparedness seminar on June 12.

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind explained she attended the SLMPD Coordinating Committee 2014 budget worksession held on June 26. There is a regular Coordinating Committee meeting scheduled for July 10.

With regard to administration, Kind stated the City's copier is going to be sent back to Marco in the very near future. The copier cost was \$3,117 in 2012. Paying Deephaven \$0.10 per page is going to be less costly and faster. She noted that Council can convert to electronic meeting packets if it would like.

With regard to a mayors' meeting, Kind stated she attended a meeting on June 6. The topic of discussion during that meeting was the Lake Minnetonka Communications Commission (LMCC).

Kind stated she attended two other meetings regarding the LMCC.

Kind then stated she received a letter from Shorewood Mayor Zerby regarding forming a Southshore Center Advisory Committee. The Committee will be comprised of one representative from each of the five cities that co-own the Southshore Community Center (SSCC), a representative from the SouthShore Senior Partners (the group that has been coordinating programs for seniors), and a representative from the former SSCC advisory group. The charge of the Committee will be to "*determine the best way to fulfill the purpose of the Center as a community gathering space for social, educational, civic, and recreational activities.*" She noted that she is willing to be the representative unless some other member of the Council wants to be the representative.

**Quam moved, Cook seconded, appointing Mayor Kind as the City's representative to the Southshore Center Advisory Committee. Motion passed 3/0.**

Kind noted that Mayor Zerby promised that the work would be done by mid-September.

Kind then noted there is a new page on the City's website [www.greenwoodmn.com](http://www.greenwoodmn.com) about the Met Council Project.

Kind stated the League of Minnesota Cities sent out a summary of 2013 laws passed by the State Legislature. She explained citizen contact information is classified as private data. Cities and counties will become exempt from the state sales tax. The formula for local government aid is different for large and small cities. But, Greenwood does not get any.

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

With regard to roads, Councilmember Quam stated Council discussed roadways earlier this evening. There is nothing to report on sewers. And Minnetonka Community Education did not meet.

**E. Roy: Lake Minnetonka Conservation District**

Mayor Kind stated Councilmember Roy asked her to report that the Lake Minnetonka Conservation District Board approved its 2014 budget option 1 which reflects a 3 percent increase when compared to the 2013 budget.

**10. ADJOURNMENT**

**Kind moved, Cook seconded, adjourning the City Council Regular Meeting of July 3, 2013, at 8:56 P.M. Motion passed 3/0.**

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