

GREENWOOD CITY COUNCIL MEETING
Tuesday, July 5, 2011, 7:00 P.M.
Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331

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

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

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

Others Present: City Attorney Kelly, Acting City Clerk Young, and City Engineer Martini (departed the meeting at 7:17 P.M.)

Members Absent: Councilmember Fletcher

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

2. CONSENT AGENDA

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

- A. June 7, 2011, City Council Meeting Minutes**
- B. May 2011 Cash Summary Report**
- C. June 2011 Verifieds, Check Register and Electronic Fund Transfer**
- D. July 2011 Payroll Register**

Motion passed 4/0.

3. MATTERS FROM THE FLOOR

There were no matters from the floor presented this evening.

4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS

A. City Engineer Dave Martini

1. 2011 Sewer Project Bids

Engineer Martini explained during its June 7, 2011 meeting, Council discussed the two bids the City had received for making repairs to City's sanitary sewer system in 2011. The bids were substantially higher than the engineer's estimate of approximately \$97,000. The significant cost difference between the bids and the estimate was for point repairs included in the bids, noting repair requires excavation. The bids for the trenchless repairs were in line with the engineer's estimate. During that meeting Council directed him to re-bid the project after removing the excavation, point repairs and site restoration for the point repair areas. The City received two bids for the downsized project; one from Infratech and one from Visu Sewer. The low bidder is Infratech for an amount of \$96,242.76. Visu Sewer's bid is \$105,273.00.

Infratech's mobilization cost in its bid for the larger project was \$25,000; the mobilization cost in its bid for the downsized project is \$3,000.

Martini stated Staff recommends accepting the bid from Infratech for the 2011 repairs of the City's sanitary sewer system.

In response to a comment from Councilmember Quam, Engineer Martini explained this project will complete all of the repairs to the sanitary sewer system with the exception of the point repairs. Martini noted that during Council's June 7th meeting it decided to hold off on making the point repairs with the hope that there could be grant monies available from Metropolitan Council Environment Services (MCES) through its Municipal Infiltration/Inflow (I/I) Grant Program to help fund those repairs in 2012. Martini stated after this year the City should make repairs to the system on a regular basis.

Quam moved, Rose seconded, accepting bid and awarding contract for the 2011 Sanitary Sewer Rehabilitation Project to Infratech for an amount not to exceed \$96,242.76 and directing that the costs be paid out of the Sewer Fund.

Councilmember Quam asked who is responsible for keeping the public informed about the project. Engineer Martini stated Bolton & Menk will keep people informed of planned disruptions.

Motion passed 4/0.

2. 2011 Road Project Bids

Engineer Martini stated during its May 3, 2011, meeting Council directed the City Engineer to secure bids for roadway improvements to Crestside Avenue, West Street, the entire west leg of Greenwood Circle and the middle portion of Meadville Street and some bituminous curbing on Fairview Street. Alternate bids were secured for the fire access lane on Greenwood Circle. The City received bids from seven firms.

Martini explained GMH Asphalt submitted the low base bid for an amount of \$112,944.70. Its alternate bid is \$14,164.20. The total bid amount from GMH Asphalt is \$127,108.90. He stated he thought the bids were competitive. He asked Council if it wants to include the fire access lane on Greenwood Circle in the 2011 roadway improvements projects.

Mayor Kind explained the City's 2011 budget programmed \$130,000 for these improvements with \$115,000 of that being for the construction work and \$15,000 being for the associated engineering work. She noted the bids do not include the costs for engineering work. Engineer Martini explained that to date the cost for engineering work is slightly less than \$9,000 and he thought the budget of \$15,000 for the engineering work should be sufficient.

Kind asked Council if it would like find an additional approximate \$12,000 (\$127,108.90 – \$115,000) in funding from some other source. She stated she thought the City may be eligible to receive about \$3,000 in County Aid to Municipalities (CAM) that could be used for the improvements. She asked if Council wants to take the remaining \$9,000 from the City's contingency fund so that improvements could be made to all of Greenwood Circle. She noted she is inclined to do that.

In response to a comment from Councilmember Page, Engineer Martini explained the fire access lane goes down to the City's docks, near an apartment building and garages. Page stated the roofing on the garages is being replaced this summer and there are large dumpsters and equipment near the access lane. Page suggested waiting to make the repairs to the access lane until 2012.

There was Council consensus to delay making improvements to the fire access lane on Greenwood Circle until 2012.

Page moved, Rose seconded, accepting bid and awarding contract for the 2011 Street Improvements Project to GMH Asphalt for an amount not to exceed \$112,944.70 and directing that the costs be paid out of the General Fund. Motion passed 4/0.

In response to a question from Councilmember Quam, Engineer Martini stated the contract completion date for the street improvements is the end of August 2011 and the contract completion date for the sanitary sewer repairs is the end of September 2011. Martini noted that Bolton & Menk will keep the public informed about the project.

3. County Aid to Municipalities (CAM) for 2011 Road Projects

Mayor Kind stated the City's County Aid to Municipalities (CAM) account has a balance of approximately \$3,000. She asked Engineer Martini if he recommends submitting a project approval form to get the balance now to help fund the 2011 roadway improvements. Engineer Martini stated he recommends doing that.

Kind then stated in order to receive Minnesota State aid for roadway improvements the roadways must be built to conform to State standards. She asked if Hennepin County had any similar special requirements. Engineer Martini stated the County doesn't have any special requirements, but in order to use the funds on a roadway the roadway must be classified a certain way by the County.

City Clerk Young explained the money in the CAM account can be carried forward for up to three years and an extension must be asked for to carry it forward longer. He then explained that a request for taking funds out of the account for roadway improvements must be submitted before the roadway improvement project is initiated.

Page moved, Quam seconded, directing the City Clerk to work with the City Engineer to complete the project approval to receive Count Aid to Municipalities funds for the 2011 Street Improvements Project. Motion passed 5/0.

B. Night to Unite, Tuesday, August 2, 2011

Mayor Kind stated the 2011 Night to Unite event is scheduled for August 2nd. She noted that people in the community should contact South Lake Minnetonka Police Department (SLMPD) Community Service Supervisor Dave Hohertz at (952) 960-1619 if they would like SLMPD personnel to come to their neighborhood Night to Unite events. Kind noted that August Council meeting will be held on Thursday, August 4th so it does not conflict with Night to Unite.

5. PUBLIC HEARING

None.

6. UNFINISHED BUSINESS

A. Ordinance 195 Regarding Criminal History Background Checks for city Employment and City License Applications

Mayor Kind stated this is the second 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. Council adopted the first reading of the Ordinance during its June 7, 2011, meeting subject to a few amendments. A copy of the revised Ordinance is included in the meeting packet.

Quam moved, Rose seconded, Approving Ordinance 195, “An Ordinance Amending the Greenwood Ordinance Code to Add Sections 130 and 470 Regarding Criminal History Background Investigations for Applicants for City Employment and City Licenses.” Motion passed 4/0.

7. NEW BUSINESS

A. Resolution 15-11 Summary of Ordinance 195 for Publication

Page moved, Quam seconded, Adopting RESOLUTION 15-11, “A Resolution Approving Publication of Ordinance Number 195 by Title and Summary.” Motion passed 4/0.

B. Yard Definitions

Mayor Kind explained the City has recently received a couple of complaints regarding storage of vehicles in “front yards.” City Code Section 900.65 (3)(b) under Unlawful Parking and Storage states “*Vehicles that are parked or stored outside in the front yard areas must be on a paved parking surface or driveway area.*” The enforcement of that section of the Code has highlighted the need for Council to review the definition of “front yards” and “yards” in general. The meeting packet contains an illustration depicting the interpretation of the current yard definitions and another that depicts the proposed yard definitions. The current definitions are located in Chapter 11 of the City Code. She asked Council if the definitions should also be located in Chapter 12 General, Definitions and Penalties in addition to Chapter 11. She also asked Council to comment on the proposed changes to the definitions of yards.

Councilmember Quam stated there are quite a few properties in the City that have yards which are hard to define.

Councilmember Page stated he thought the proposed definition for a front yard is an expansion of a restricted area. Mayor Kind and Councilmember Quam agreed with that.

Mayor Kind asked Councilmember Page if he would like a boat parked in front of a principal structure. Councilman Page stated that he does not object to boats in front yards.

Attorney Kelly stated the way he interprets the current Code is illustrated by the drawing for the proposed Code (the one where the front yard goes the full width from one side property line to the other).

Mayor Kind stated the proposed definition of front yard states “... *the front of the lot between the side yard lines...*” Attorney Kelly explained side yard line is different than side yard and the definition of building in the Zoning Code is referring to the principal structure and not an accessory or subordinate structure. Kelly then explained the zoning code serves one purpose and the penal code serves another. Kelly recommended putting the illustration for the proposed definitions in the definitions section as an illustration of what the yard definitions mean and the penal code could reference the definition. Kind asked if it would apply because it would be in the Zoning Code Chapter of the City Code. Kelly explained the zoning code needs its own set of defined ordinances in order to avoid this exact debate. If Council wants the City to make use of those definitions going forward on the penal code, the penal code can

specifically reference the definitions in the zoning code. Kind asked if the definitions should be repeated in Chapter 12 General, Definitions and Penalties to which Kelly responded it could be done either way. Kelly cautioned against creating a situation where a nonconforming accessory structure defines where the front yard begins and ends.

Councilmember Quam asked if the definition of principal structure needs to be clarified in the yard definitions.

Attorney Kelly stated the simple question Council needs to answer this evening is if it wants to adopt one of the two illustrations and then come back with any tweaking it wants to make to the current definitions. He stated he didn't think the current definitions impair the City from moving forward if there is an enforcement issue.

Mayor Kind noted the Planning Commission needs to review changes to the Zoning Code Chapter of the City Code. She asked Council if it wants to send this to the Commission for discussion and recommendation on how to amend the current definitions so they are in sync with the illustration for the proposed definitions.

Councilmember Quam stated he supports have the Planning Commission discuss this and make a recommendation on it.

Councilmember Rose stated he wants to leave the definitions as they are because, from his perspective, property owners use their yards the way yards are illustrated for the current code (where the front yard goes from inside edge of one side yard to the inside edge of the other).

Mayor Kind stated she likes Attorney Kelly's idea to include the illustration in the Code. She also stated she shares Kelly's concern about having a nonconforming accessory structure being the definer for what a front yard is.

Councilmember Page stated he prefers to leave the definitions as they are. He then stated he doesn't care if someone parks their boat close to the side lot line even if it's close to the street side of their property. Mayor Kind noted it would be any vehicle, not just boats.

Councilmember Quam stated it's the neighbors that also have to look at the vehicles. He asked what harm there is in having the Planning Commission make a recommendation on this.

Councilmember Rose asked if part of the complaint was about vehicles being parked in the public right-of-way. Mayor Kind clarified it was about the unpaved part of the right-of-way and that area is still part of someone's front yard. Councilmember Quam stated people can't park on a public right-of-way to which Kind responded they can provided it's not posted "no parking" and the vehicle would have to be moved after three days. Kind stated there are rules in the code about how the unpaved part of a public right-of-way can be used.

Councilmember Page stated if the recommended illustration is adopted (where the front yard goes between the side lot lines) no one can store their boat in their yard. Mayor Kind stated they could still park it in the back or side yard or on a paved surface. Page stated people currently park their boats on an unpaved surface next to their driveways during the winter months.

Councilmembers Page and Rose stated they did not want to change the Code. Mayor Kind and Councilmember Quam stated they wanted the Planning Commission to consider the proposed changes to

the Code. Councilman Page suggested continuing the discussion to the August meeting so Councilman Fletcher can weigh in.

Quam moved, Rose seconded, continuing this item to the August 4, 2011, City Council meeting. Motion passed 3/1 with Rose dissenting.

Councilmember Page stated there is no problem enforcing the Code as is. Mayor Kind stated the complaint issue has been resolved.

8. OTHER BUSINESS

A. None

9. COUNCIL REPORTS

A. Kind: Police, Administration

Mayor Kind explained the 2006 Supplemental Binding Arbitration Order stipulates that the funding formula for South Lake Minnetonka Police Department (SLMPD) Operating Fund be adjusted every five years based on a number of factors. The SLMPD member cities' City Administrators/Manager had been assigned the task of revising the formula for 2012-2016 in accordance with the Order. A copy of the reallocation formula, the arbitration allocation and other pertinent data is included in the meeting packet.

Kind then explained 2004 population, 2005 tax capacity, and 2005 initial complaint reports (ICRs) for each member city are compared to the subsequent 5-year averages for each of the categories. The difference between the two are added to the arbitration order formula to determine the new formula for 2012-2016. The difference results are: Excelsior 1.05%; Greenwood 0.47%; Shorewood -1.51%; and, Tonka Bay -0.02%. The differences were added to the arbitration order amounts for each city: 27% for Excelsior, 8% for Greenwood, 50% for Shorewood, and, 15% for Tonka Bay. Thus the 2012-2016 allocation amounts for each city are 28.05% for Excelsior, 8.47% for Greenwood, 48.49% for Shorewood, and 13.94% for Tonka Bay.

Kind stated that Excelsior Mayor Ruehl expressed concern about the increased percent for Excelsior.

Councilmember Rose asked when the actual funding formula will be changed again. Mayor Kind explained that all four member cities would have to agree to a change in the formula and if an agreement can't be reached the cities would have to go arbitration. Kind stated all four cities could agree to keep the formula set by the original arbitration order. She then stated if Excelsior does not want to move forward with the new formula she could suggest freezing the percentages at the 2006 arbitration amount.

Mayor Kind explained if the new allocation amounts are used it would mean an increase of approximately \$10,000 for Greenwood if the 2012 SLMPD Operating Budget stays flat. She noted that she attended a SLMPD budget work session on June 20 and that the first draft of the 2012 budget reflects an increase of 2.8% and that increase combined with the formula change would mean an approximate \$15,000 increase for Greenwood.

Kind also reported on a Minnetonka Blvd. accident. She stated that a car ran into the short telephone-like poles along side of Minnetonka Boulevard, noting the poles did not serve as a barrier because the car went through the poles and flipped over onto the other side of the path. The cost to repair the poles was

\$284.41. She asked if the poles were providing a false sense of safety for people using the path. Councilmember Quam stated the poles serve as protection for walkers and bikers. He noted when the car hit the poles it flipped over onto the street and did not cross through the barrier, so the barrier worked. Councilmember Page stated he wants to keep the barrier. Kind stated that based on Quam's information, she was okay with keeping the barrier poles.

Mayor Kind then gave a report regarding the previous City Clerk's unemployment claim. Kind stated that the former clerk got a job after she resigned from her position with the City but was laid off from that job and applied for unemployment benefits. Kind explained the Minnesota Unemployment Insurance Office policy is that the City is responsible for approximately 75% of the benefits (around \$10,500) and that her most recent employer is responsible for approximately 25% of the benefits. Councilmember Page asked why the City has to pay for the benefits when the previous clerk resigned from the City. Council asked Attorney Kelly to research if the City has any way around paying the unemployment benefits.

B. Page: Lake Minnetonka Conservation District

Councilmember Page reported on Lake Minnetonka Conservation District (LMCD) activities. The Minnesota Department of Natural Resources (MnDNR) has suspended conducting inspections at the Gray's Bay and Spring Park Bay boat launches due to the State Government shutdown. The LMCD has hired supplemental inspections to conduct inspections at other public launches on Lake Minnetonka. The LMCD is discussing whether it should allocate some inspectors to those two launches. The DNR had not approved the LMCD permit for milfoil harvesting before it shut down. The LMCD did apply for a grant from the DNR at the last minute to help fund the inspections it conducts. Zebra mussels have spread to other areas in Lake Minnetonka. They are multiplying at a much faster rate than anticipated. The LMCD Ordinance Committee has recommended changes to the multiple dock license amenity criteria, noting he does not support the changes.

C. Quam: Roads & Sewer, Minnetonka Community Education

Councilmember Quam stated Council has already discussed repairs to the sewer system and road improvements.

Quam then stated the Minnetonka Community Education (MCE) Tour de Tonka race is scheduled for August 6th and the MCE is looking for volunteers to help with that event. Volunteers can get more information from the Tour de Tonka website.

D. Rose: Excelsior Fire District

Councilmember Rose stated there had not been an Excelsior Fire District (EFD) Board meeting since the last Council meeting. The next EFD Board meeting is scheduled for July 27, 2011.

10. ADJOURNMENT

Quam moved, Page seconded, Adjourning the City Council Regular Meeting of July 5, 2011, at 7:57 P.M. Motion passed 4/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder