

GREENWOOD CITY COUNCIL MEETING
Tuesday, September 6, 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 7:40 P.M.)

Members Absent: None

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

2. CONSENT AGENDA

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

- A. August 4, 2011 City Council Meeting Minutes**
- B. July 2011 Cash Summary Report**
- C. August 2011 Verifieds and Check Register**
- D. September 2011 Payroll Register**

Motion passed 5/0.

3. MATTERS FROM THE FLOOR

There were no matters from the floor presented this evening.

4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS

- A. Meet Kristi Conrad, Planning Commission Applicant for Alternate Seat 2**

Mayor Kind stated the City has received an application from Kristi Conrad for the open Alternate Seat 2 on the Planning Commission. She introduced Ms. Conrad. She noted she coordinated the City's Fourth of July parade this year.

Kristi Conrad, 21780 Fairview Street, introduced herself and explained that she became familiar with the City's Ordinance Code Book when she and her husband had their home in Greenwood constructed in 2009.

Fletcher moved, Quam seconded, making the appointment of Kristi Conrad to the City of Greenwood Planning Commission Alternate Seat 2 effective September 6, 2011.” Motion passed 5/0.

Attorney Kelly administered the Oath of Office to newly appointed Planning Commission Alternate Kristi Conrad.

B. Meadville Street Survey Results and Next Steps

Engineer Martini explained that during its June 7, 2011 meeting Council authorized Staff to move forward with doing a survey of the drainage problem area near Meadville Street in the low spot across from the Old Log Theater and to evaluate the options for mitigating the drainage problem. That area is wet after rainstorms and each spring when the snow is melting and the ground is still frozen. The roadway was patched not all that long ago and it is starting to break down. The main issue with the roadway is the poor drainage in that area. The grades in that area are minimal at best.

Martini then explained the low elevation of the roadway is 930.77 feet. The ordinary high water (OHW) elevation of Lake Minnetonka (the Lake) is 929.40 feet. The low point receives runoff from an estimated 3.1 acres, which includes the west area of the Old Log Theater parking lot. The runoff from the east side of the street flows across the roadway. A significant area east of the roadway is below an elevation of 932.00 feet with flat surface slopes. That results in poor drainage and there being standing water in depressions. There is no way to change the grade of the road to provide a positive stormwater flow to Lake Minnetonka (the Lake). Typically with blacktop surfaces the objective is to maintain a slope of two percent. Blacktop is a flexible surface; it moves around.

Martini also explained the only way to help mitigate the drainage issue at the low point in Meadville Street is to install a small seasonal pump and install drain tile. It would be similar to a basement sump pump. Surface water and ground water would be pumped out of the low spot, which is below the elevation of the existing ditch next to the roadway, into the ditch where it will flow down to the Lake as it does now. The pump would have to be removed over the winter months and reinstalled when conditions permit in the spring.

Martini went on to explain drain tiles will be placed along the roadway surface. The roadway will be built on two feet of granular soil subbase. There will be class 5 rock on top of that. Bituminous surface will be placed on top of that. Concrete curb and gutter is proposed along the west side of the roadway for a short stretch to provide a positive gutter slope to the ditch. Concrete can be effective with a one-half percent slope. There is a gap of 60 feet between the portion of the roadway recommended for reconstruction and the area of Meadville Street that was repaved in 2011. Repaving of that 60-foot gap is included in the drainage improvement project. Staff proposes working with the property owner on the east side of the road where the Old Log Theater parking lot is to see if they would want to install drain tile on their property and if so if they would share in the cost of installing drain tiles in some of the low areas to improve drainage. He noted there are no improvements proposed for the ditch on the west side of the roadway, which is on private property. The ditch seems to be in good condition.

Councilmember Page asked if the City has an easement over the drainage ditch on the west side of the roadway. Engineer Martini responded he does not think so, and the ditch is on private property. Mayor Kind added that Zoning Administrator/Clerk Karpas was not able to find the recording of any easement. Engineer Martini stated the City does have an easement over the right-of-way area next to the roadway.

Engineer Martini stated the estimated cost of the proposed drainage improvements and street paving is \$120,663, including contingency and soft costs.

Councilmember Quam stated that area of Meadville Street was milled and overlaid 4 – 5 years ago. He asked if anything could have been done differently back then to help mitigate the drainage problem. Engineer Martini responded no and he explained some of the roadway was dug up, some base work was done and a new surface put down. Martini stated the base under the roadway is unstable and it gets very wet in the spring. Quam then stated it appears to him that the problem has been greater the last few years.

Councilmember Fletcher stated the pump will be fed water from a fairly large area. He asked if the pump will be able to handle that much water. Engineer Martini explained the goal is to keep the water out of the two-foot sand base. The proposed pump is supposed to handle 300 – 400 gallons per minute. Martini then explained that during a heavy rain event the pump won't be able to keep up. Outside of rain events it will pump out water as fast as it can drain through the subsurface.

Fletcher asked if the pump could be installed in early spring when there will be a desire to pump the snow melt out of the area. Engineer Martini explained that either the pump can't be installed until such time that it won't freeze up or Council can decide it wants to install and remove the pump on a daily basis. Fletcher then asked if there is any other type of roadway surface that could be installed that would eliminate the need for a pump. For example, concrete. Martini responded that concrete would hold a flatter grade in that area and that would help some with the surface drainage. But, there will still be low spots that hold water in that area. Martini explained that after having reconstructed the area with a sand base, then rock and then asphalt the roadway will have more stability and strength. The proposed pump will help extend the life of that section of Meadville Street and it will help mitigate some of the nuisance drainage issues

Mayor Kind stated Engineer Martini's cover memorandum in the meeting packet states "... it's not possible to improve drainage by modifying surface elevations and grades." She noted that approach was used near another residential property in the past. She asked why that couldn't be done in the situation and she asked if a culvert could be installed under the roadway to carry water under the road to the ditch. Martini stated he thought the roadway would have to be raised so much that it would be difficult to do. Martini clarified there are probably some things that could improve the drainage problem but not eliminate it. Kind stated from her perspective the drainage issue is more of a nuisance situation and she thought \$120,000 was too much money to spend trying to correct a nuisance situation.

Bob Newman, 5230 Meadville Street, stated there has been more water in the problem area in 2011 than there has ever been since he purchased his home in 1998. Both snow melt and a significant rainfall cause problems. He commented that he was taken aback by the \$120,000 plus estimate. He stated to him establishing a different contour is a more preferable way to resolve the problem. He asked Engineer Martini how to represent a 2 percent grade in feet or inches. Martini explained a 2 percent grade means an elevation change of 2 feet over a 100-foot span. Newman asked what the benefit would be if there is only a 1 percent grade. Martini explained that a 1 percent grade won't drain as effectively.

Mr. Newman explained that the distance from the roadway to the Lake is about 190 feet. The Lake at OHW elevation is 929.40 feet. If the roadway surface is reconstructed so that it is two feet above the OHW elevation (a 1 percent grade) and if some curbing or minimal barriers are installed to prevent water damage to his and his neighbor's property that could be an effective solution. It may require raising the elevation of his and his neighbor's driveways. A straight line of PVC pipe could be installed in the ditch to cleanly carry water down to the Lake. There are times when he and his neighbor have to clean the snow

and debris out of the ditch to help water flow down to the Lake. The first 50 feet of the 190 feet is the problem area in the ditch.

Engineer Martini again noted the proposed improvements do not include doing anything to the ditch. He explained the goal of the improvements is to get the water to the ditch only. The underlying problem is the base under the road is saturated and there is an inadequate structure under the roadway.

Mr. Newman stated if the water could flow out of the area there wouldn't be the problem of standing water causing the roadway to deteriorate. Burying a straight line PVC pipe, with cleanout valves along the way, in the ditch and covering it with rock would be a cheaper solution than having a pump which will require the installation of electrical power. That solution would be more natural and less cumbersome. He reiterated after the water flows through the first 50 feet of the ditch it flows just fine.

Councilmember Quam asked if raising the elevation of the road will increase the drainage problem for the Old Log Theater parking lot. Mr. Newman stated he didn't think so. Engineer Martini stated if the elevation of the roadway is raised the water problem areas on the east side of the roadway will be exacerbated. Martini suggested working with the impacted property owners.

Mr. Newman stated from his perspective engineering a solution that does not include making improvements to the drainage ditch is incomplete. A straight-line PVC pipe from the roadway to the Lake would be beneficial.

Engineer Martini stated ultimately the decision will have to be made as to whether all or just some of the issues should be addressed. All issues can't be addressed with a \$120,000 budget.

Mr. Newman acknowledged there is a drainage issue at the Old Log Theater parking lot. He proposed the City reengineer the contour of the roadway, install curb and gutter, and reengineer the drainage ditch. He stated that would be a more complete solution.

Engineer Martini stated any standing water on the east side of Meadville Street ultimately drains into the ground and flows under the roadway and on into the Lake, and if the water table is high it doesn't drain.

Jim Hurd, 5220 Meadville Street, stated the drainage ditch is located on his property. He commented that \$120,000 is too much money to spend on making drainage improvements. He explained that last year he and his wife put many truck loads of gravel into the ditch. After that, they created a path for the water to drain. He noted the ditch floods during winter and summer months. He acknowledged water does pool up on the parking lot at the Old Log Theater and it overflows onto the roadway. He stated he thought the best way to solve the problem is to dig out the 190 foot long ditch and then install a tapered, flat concrete culvert a couple of feet wide in that location that would effectively drain water to the Lake. From his vantage point, that would solve most of the problems but not the problem at the Old Log Theater. He noted the City does not have an easement over the ditch, but that he would welcome the City coming onto his property to improve the drainage ditch. He also noted that this past spring water level came even with his garage.

Mayor Kind thanked Mr. Hurd for his willingness to have the City come on to his property to help solve the problem.

Engineer Martini expressed his willingness to go out to the site and discuss other ideas. He stated some of the ideas discussed this evening could mitigate some of the surface drainage issues. They don't address the problem with the structure of the road.

In response to a question from Councilmember Fletcher, Engineer Martini stated if the asphalt surface were to be replaced with concrete an acceptable subbase would still have to be installed. In response to another question from Fletcher, Martini explained concrete would hold up better than asphalt. Martini clarified the pump would effectively address the surface water problem on the roadway.

Mayor Kind clarified that Councilmember Fletcher was suggesting changing to a concrete roadway surface that still would have standing water on it.

Councilmember Quam suggested Council direct Staff to research additional solutions to the drainage problem.

Mayor Kind asked if the Council wants to spend money to research additional solutions. Councilmember Page responded yes.

Councilmember Rose stated Mr. Newman has done a great job redoing the side of his property that abuts Meadville Street. He thought installing a concrete trough in the ditch would be "nasty." He did like the idea of installing PVC pipe or drain tiles in the ditch and putting a concrete surface on the roadway.

Councilmember Fletcher stated if Council has no intention of spending money on making the improvements in the near future he did not want to spend a great deal of money researching alternatives.

Mayor Kind asked what has been spent to date on the survey and identification of solutions. Councilmember Fletcher suggested Engineer Martini come back with that information and what he estimates the costs for further research of alternatives to be.

Engineer Martini recommended that he at least meet with the property owners before the next meeting.

There was Council consensus to ask Staff to meet with the Mr. Hurd, Mr. Newman and the Old Log Theater property owners before the next meeting.

C. Dick Osgood, Milfoil Update and the Future of Milfoil Management

Mayor Kind stated Dick Osgood, Lake Minnetonka Association (LMA) Executive Director, is present to give a report on the 2011 herbicide treatment of Eurasian Watermilfoil (milfoil) and Curly Leaf Pondweed (pondweed) in St. Alban's Bay in Lake Minnetonka. Mr. Osgood also will provide a report on the future of milfoil management.

Mr. Osgood stated in 2011 the milfoil control project was expanded to five bays from three bays. St. Alban's Bay and Gideon Bay were added to the project. He classified the treatment for milfoil as a wonderful success. He noted he has not been able to find any milfoil in St. Alban's Bay in the recent weeks nor have the representatives from the Army Corps of Engineers. He explained that one of the objectives of the project was to minimize lakeshore cleanup and based on feedback from property owners that objective has been met. He hoped the project will continue for the original three bays in 2012 which is the last year of the three-bay project. The program for St. Alban's Bay is a five-year program that started in 2011.

Mr. Osgood then stated there is no game plan for managing milfoil lake wide after 2012. The LMA recommends a comprehensive invasive plant management plan be prepared by 2013 for all of Lake Minnetonka (the Lake). He noted that lakefront property owners on the five bays that have been treated

have overwhelming indicated they prefer the herbicide treatment to milfoil harvesting. Ninety three percent of those who responded to a survey supported that position. That information can be found on the website www.lakeminnetonkaforum.com. He noted the lakefront property owners on St. Alban's Bay contributed to the 2011 treatment with some of the contributions being as much as \$2000.

Mr. Osgood went on to state the LMA suggests transitioning away from harvesting milfoil to a more comprehensive program. He explained that to date neither the Lake Minnetonka Conservation District (LMCD) nor the Minnehaha Creek Watershed District (MCWD) has shown the initiative to develop a comprehensive plan. The MCWD has the technical expertise and the funding capacity for creating and implementing the plan. He stated the lakefront property owners on the five bays that have been treated with herbicides have had long-standing frustration with the harvesting program. He noted milfoil has been in the Lake since 1987.

Mr. Osgood asked the Council to take some initiative on behalf of the City to express support for moving forward with developing a comprehensive invasive plant management plan. Councilmember Quam asked what the LMA wants Council to do. Mr. Osgood reiterated the LMA wants the Council to express its support for the development of an all inclusive management plan for all invasive plants in the Lake. In addition to milfoil, pondweed and flowering rush are also in the Lake. There is no plan at all for managing those two invasive plant species. The LMA is concerned that the agencies with that authority aren't doing the job.

Councilmember Quam asked what the plan is for 2012 for managing milfoil in St. Alban's Bay. Mr. Osgood responded a plant inventory was conducted of St. Alban's Bay about two weeks ago and initial findings indicate it may not be necessary to treat the Bay in 2012. If some treatment is necessary it should be minimal.

Councilmember Fletcher asked if it's assumed the Bay will have to be aggressively treated in 2013. Mr. Osgood responded it's very likely there will have to be some level of treatment. Fletcher stated the LMA has been talking about the need to develop a comprehensive management plan for at least five years. He asked what agency is in the best position to develop that plan. Mr. Osgood responded both the LMCD and the MCWD have the authority to develop and implement such a plan. The LMA recommends the MCWD assume responsibility for doing that because it has the scientific expertise and the funding capacity to do that. The LMCD has a funding cap. The LMCD could do that, but he would recommend it retrain its staff so they have the expertise to do that and look for additional funding sources. He noted the Minnesota Department of Natural Resources (DNR) doesn't initiate the development of such a plan.

Councilmember Page stated Mr. Osgood has heard the Army Corps of Engineers report on their findings during which they stated herbicide treatment is effective on outlying bays but not in large bodies of water especially if they are deep. Mr. Osgood clarified he is not recommending a comprehensive plan for the lake-wide herbicide treatment of milfoil. Page stated milfoil is being managed on a lake-wide basis on a rotating schedule through the LMCD's harvesting program. Mr. Osgood stated the LMCD harvests a maximum of 300 acres of the Lake on a rotating schedule.

Councilmember Page asked Mr. Osgood what the cost to date has been for the herbicide treatment of the five bays. Mr. Osgood explained it cost about \$450 per acre and over 900 acres have been treated. The herbicide treatment is of the entire bay where harvesting is only done in parts of the bays to make it possible to navigate the waters. The effectiveness of the herbicide treatment spans a couple of years in most instances. The cost of herbicide treatment versus harvesting needs to be averaged over two years to have a more realistic cost comparison. Sometimes areas have to be harvested a second time during the course of a season. It cost about \$350 per acre to harvest one acre and that doesn't include equipment

depreciation costs. Harvesting cuts all plants in the machine's path. Herbicide treatment selectively treats milfoil; it leaves the native plants alone. Harvesting is designed to promote navigation. The herbicide treatment promotes navigation, and it protects and enhances the native plants.

Rob Roy, 21270 Excelsior Boulevard, (the St. Alban's Bay Captain) stated he recently attended a meeting of the MCWD Board of Managers. He explained the MCWD is considering a pilot aquatic invasive species (AIS) prevention project for Christmas Lake, Lotus Lake and Lake Minnewashta. The MCWD is starting a pilot project to advance attack on flowering rush. He noted flowering rush is an extremely invasive species. He stated harvesting is not a long-term solution for managing milfoil or any other invasive plant. He then stated the DNR supports the MCWD developing a comprehensive plan for the entire MCWD jurisdiction. He noted that the Shorewood Council adopted a resolution endorsing and supporting the MCWD taking on a leadership role in coordinating and implementing a comprehensive AIS program through the MCWD. He asked this Council and the other Lake cities to do the same. He stated no one is looking at the big picture at this time. He noted that he cannot continue to go and raise money for the management of milfoil and other AIS every year. He stated the Lake is a very valuable resource for the cities around the Lake and they shouldn't be sitting on their hands. He recommended the cities ask the LMCD and the MCWD to move forward with a plan.

Kristi Ostrander, 21520 Fairview Street, expressed concern about the use of herbicides to treat milfoil on a long-term basis. She asked if there have been any long-term studies done on their effect. Mr. Osgood explained the U.S. Environment Protection Agency (EPA) requires that each chemical herbicide that is applied to a lake environment go through a registration process through the EPA. The herbicide used to treat St. Alban's Bay was studied for approximately 20 years and about 250 papers were written on it. The EPA through its registration process requires comments be submitted on the long-term effects on fish, plants, the toxic effects and a whole suite of biological impacts. On that basis the EPA deemed that herbicide safe and allowed it for use within certain parameters. The studies have shown it doesn't accumulate, but it does not mean it's 100 percent safe. The safety factor has to be less than one in a million that there would be a measurable effect on any living thing.

Fletcher moved, Quam seconded, expressing Greenwood City Council support for joint efforts by the Lake Minnetonka Conservation District and the Minnehaha Creek Watershed District in the control of aquatic invasive species and development of a lake and watershed wide aquatic species management plan.

Councilmember Page asked Council how much more it thinks the residents of Greenwood are willing to pay to support an increase in the level of AIS management.

Councilmember Fletcher stated originally he was only going to put the MCWD in the motion. The DNR has encouraged the MCWD to get involved. The MCWD has a broad taxing authority and therefore has a larger funding source. He then stated the MCWD Board of Managers has indicated it only wants the MCWD to get involved in the developing and implementing a comprehensive invasive plant management plan for the Lake if the cities surrounding the Lake express their support for that. The LMCD would still be involved with the management of AIS because it has a Lake focus.

Mr. Roy stated \$76,000 was raised through private sources for the 2011 herbicide treatment of St. Alban's Bay.

Councilmember Rose asked why the people who have property that fronts the Lake are the ones having to pay for the herbicide treatments. Councilmember Fletcher stated that is a main reason for having the

MCWD involved. Fletcher stated if someone wants to remove the LMCD from the motion that would be okay with him.

Councilmember Rose stated people outside of the MCWD also use the Lake and they won't have to pay. He then stated sometimes there needs to be a limit on what will be done. He also stated that from his perspective the MCWD has too much power already.

Mayor Kind stated from her vantage point the MCWD has become a regulatory agency. The MCWD has taxing authority but the members of the Board of Managers are not elected and therefore not accountable to anyone. She then stated if she votes for the motion it would be with the caveat that the MCWD take on invasive species related activities under its current budget. She suggested the MCWD redirect some of its current funding to this effort and not tax the residents in its jurisdiction more. She stated she doesn't want to give the MCWD a reason to tax its residents more.

Councilmember Quam stated the Council needs to consider that the Lake is a valuable resource and it needs to be protected.

Councilmember Page stated there is nothing that prohibited the MCWD from developing a comprehensive plan. It hasn't done that to date. Once zebra mussels were discovered in the Lake the MCWD indicated it wants to take the lead. The MCWD has the authority to develop a comprehensive plan for the District. He then stated the LMCD Board is comprised of one representative from each of the LMCD member cities. That was done to ensure there would be representation from each city and each would have equal participation. The members of the MCWD Board of Managers aren't elected. He went on to state the MCWD wants to do a pilot project that involves gated access to a lake. The DNR does not stand for restricting public access to public waters except for this small pilot project.

Councilmember Fletcher asked Councilmember Page what the LMCD's plan is for managing milfoil. Page responded the LMCD is participating in the herbicide treatment program of the five bays in the Lake. At the end of that program in 2012 the LMCD will assess if the program met its goals and then it will decide if the herbicide treatment should be continued in some capacity.

Page stated the original model proposed for the herbicide treatment was to have a massive initial treatment followed by lesser treatments with the level of the treatments decreasing each subsequent year.

Mr. Osgood explained that the original lake vegetation treatment planned called for one or two years of treatments with treatments in years 3 – 5 tapering off. The 2008 treatment concentration wasn't strong enough. Beginning in 2009 the concentration was increased and the treatment was very effective. There has been a push and pull between various agencies about the timing of and concentration of the treatments. Through this pilot program there has been a great deal of learning going on. There is a much better understanding of what concentration the treatments should be and when they should occur.

Councilmember Page related that a representative of the Army Corps of Engineers from Florida has stated long-term there will be a need for chemical treatment in closed areas (e.g., St. Alban's Bay and Gray's Bay) as well as a need for harvesting. He stated different methods will be used to manage the various invasive species. He then stated that they all say there is no way to keep the invasive species out. He noted inspections are only being done at the public access areas and there are many private launches around the Lake.

Councilmember Fletcher asked if the LMCD has the resources to help slow down the spread of invasive species. Councilmember Page stated it could use more resources. Page then stated the LMCD member cities have not wanted to increase their contributions to the LMCD in the past.

Motion passed 4/0/1 with Rose abstaining.

Councilmember Rose explained he abstained because he believes the MCWD has too much control.

The Council thanked Mr. Osgood and Mr. Roy for all of their efforts.

D. League of Women Voters Mayors' Forum

Mayor Kind stated on September 8, 2011, the League of Women Voters South Tonka is sponsoring a mayors' forum, which will be held at 7:00 P.M. at the Southshore Community Center.

5. PUBLIC HEARING

None.

6. UNFINISHED BUSINESS

None.

7. NEW BUSINESS

A. Variance Request, Gregg and Kristin Ostrander, 21520 Fairview Street

Zoning Administrator/Clerk Karpas explained Gregg and Kristin Ostrander, 21520 Fairview Street, have proposed reconstructing and reconfiguring a lakeside deck. The proposed deck would encroach into the minimum required lake yard setback and because of its size the maximum permitted impervious surface area allowed would be exceeded. Therefore, they are requesting two variances. The City Ordinance states "In evaluating all variances ... the zoning authority shall require the property owner to address, when appropriate ... reducing impervious surfaces, increasing setbacks ...".

Karpas then explained that for the Shoreland Management District the Ordinance states "Impervious surface coverage in all residential districts as expressed as a percentage of the lot area, shall not exceed 30%." The applicants propose an impervious surface area of 35.3%; their current impervious surface area is 34.98%. If the common driveway which serves more than just their lot is not included in the impervious surface calculation, the proposed coverage would be 28%. He noted that in the past common driveways have been considered during a review of a variance of this nature.

Karpas went on to explain the Ordinance stipulates that the lake yard setback requirement in the Single Family Residential District is 50 feet as measured from the ordinary high water level. The applicants propose a lake yard setback of 43 feet; an encroachment of 7 feet. The current encroachment is 8.5 feet. The proposed project improves the setback by 1.5 feet.

Karpas noted that in considering the variance the revised State Statute regarding granting of variances should be used. Even though that State Statute has not been incorporated into the City Ordinance as of yet the City is still bound by it. State Statute has moved away from the hardship criterion to more of a practical difficulty criterion for reasonable use of the property.

Karpas stated the meeting packet includes a copy of the Staff report, a copy of written comments from the applicants, and copies of signed documents from the applicants' neighbors stating they understand the variance request and are in support of granting the variance. He noted the Planning Commission recommended Council approval of the variances requests on a 5/0 vote.

In response to a comment from Councilmember Page, Zoning Administrator/Clerk Karpas stated the deck was not built when the house was originally built. It was added when an addition was approved for the house but he has been unable to find a copy of the minutes from when the addition was approved. A permit was applied for and approved for the addition. Therefore, he has deduced that the then city council would have discussed the placement of the deck or a building permit would not have been issued.

Councilmember Rose asked if the applicants have to apply for a permit from the Minnehaha Creek Watershed District (MCWD). Zoning Administrator/Clerk Karpas responded that as part of the building permit process the applicant must provide proof that either such as permit has been issued or proof that it is not required.

Councilmember Page asked if the Planning Commission went through any of the criteria necessary to grant a variance. Zoning Administrator/Clerk Karpas stated the Commission approached it from the perspective that similar variances had been approved when the original deck and addition were approved and the fact that the setback encroachment for the new deck would be less than the encroachment of the original deck. Councilmember Page stated the Commission surmised a variance had been granted back then. Karpas stated that it was Planning Chair Lucking's recollection that a variance had been granted when the deck was first built.

In response to a comment by Councilmember Fletcher, Zoning Administrator/Clerk Karpas stated he will have the applicants sign the variance application.

Councilmember Rose questioned if the applicants should be held to the 50 foot lake yard setback because they have already removed the original deck. Zoning Administrator/Clerk Karpas responded the new State Statute allows for a property owner to remove a nonconforming structure and then replace it as long as the property owner applies for a new variance within one year. The new structure would have to be substantially the same footprint and height as the structure removed.

Mayor Kind explained Ordinance Code Chapter 11 Section 1176.07 subd. 4 requires notification be sent to the Department of Natural Resources (DNR) ten days prior to a public hearing being held on variance request for property within the Shoreland Management District. She asked if that was done. Zoning Administrator/Clerk Karpas stated no it wasn't, and explained that Section 1155.05 (7) (c) states "Where appropriate notice also shall be given to the commissioner of the Minnesota Department of Natural Resources ...". He stated it is Staff's opinion that because there would not be a new encroachment and the original encroachment was being reduced that it was not necessary. He views this as a modified variance. Kind asked Attorney Kelly if he agrees with Karpas. Kelly stated just before this meeting he became aware of this question and he has not had the opportunity to review State Statute. Kelly then stated it's his recollection that State Statute requires the DNR be sent notice of a public hearing for variance considerations ten days before the hearing. He went on to state the caveat the Karpas referred to "when appropriate" is in reference to the Shoreland Management District element of the State Statute.

Mayor Kind stated the City's Comprehensive Plan includes a policy to specifically protect the shoreland impact zone (the area within 25 feet of the shore). It's her understanding that the project will not affect that area. Kind explained the Comp Plan includes a housing goal to encourage safe, quality housing. She

asked if replacing a rotting deck would be encouraging safe, quality housing. Karpas responded from his perspective it would improve safety.

Kind then stated the two adjacent property owners have submitted written support of the variance requests. She noted she wants future owners of those two properties to be protected. She asked if the variance request complies with the Zoning Code regarding sightlines even though it doesn't apply to properties already developed. Zoning Administrator/Clerk Karpas stated the new deck would line up with the houses on the adjacent properties.

Kind commented the old hot tub, which has been removed, was a nonconforming use. Removing it removed a nonconforming condition.

Kind asked if common driveways have been excluded from impervious surface area calculations for other variance requests in the City. Zoning Administrator/Clerk Karpas responded it's been a consideration, but it's not a written policy. Karpas explained that some cities specifically exclude hardcover area within an easement from the calculations. A driveway that serves multiple properties has at times been excluded because the property owner can't do anything about the driveway. He stated there are few shared driveways in the City and therefore he doesn't think the City needs a specific policy about that.

Steve Kleineman, with SKD Architects, 11140 Highway 55, Plymouth, Minnesota, explained the survey shows a concrete walk, which is where the seawall is located. When the seawall was built in 1929 the natural contour of the shoreline was moved back to the seawall and that created the setback issue. Had the line between the two adjacent properties carried through the 50 foot setback would more than be satisfied. He then explained when the proposed deck was configured on the property there was a great care deal of sensitivity not to encroach into the lake yard setback any more than the original deck did. He noted the proposed deck will be less than 30 inches off the ground; therefore, there is no need for a rail. There will be very little visual impact from the lake or adjacent property owners. A concerted effort was made to keep the overall area of the encroachment within six square feet of the original deck.

Mayor Kind noted the variance application states the hot tub will not be replaced. That was confirmed. Kind stated it appears that nothing will be done with the seawall. That was also confirmed. She then stated she thought the applicants did a nice job of improving the look of the seawall.

Fletcher moved, Quam seconded, approving the variance requests by Gregg and Kristin Ostrander, 21520 Fairview Street, to reconstruct a lakeside deck that encroaches seven feet into the required lake yard setback and exceeds the maximum permitted impervious surface area by 5.3 percent as presented based on the following findings. 1) The 7-foot proposed encroachment into the required lake yard setback is less than the 8 foot 6 inch encroachment of the prior deck and accordingly reduces the lakeshore impact. It is therefore in harmony with the purpose and intent of the lake yard setback ordinance and is consistent with the comprehensive plan. 2) Having a lakeside deck attached to a house is a reasonable use on a lakeshore property. 3) The 7-foot proposed encroachment does not alter the essential character of the locality since the front of the low-lying deck will be in line with the neighboring houses on either side of the property along the lake and not impact their sightlines to the lake. 4) The section of Fairview Street that serves the applicants property and other houses past the property is essentially a private road, which relieves the City of the cost of maintaining and plowing it. The drive is of minimal width when it crosses the applicant's property and there are no gates, which limit public access. This is a unique circumstance for the property and not created by the landowner. The council feels that it is therefore appropriate to remove the 2,740 feet of hardcover for this road from the hardcover calculations for the property. Doing so results in an impervious surface area of 28.2%, which is less than the 30% maximum

allowed in Code Section 1176.04(3). Thus, the hardcover request is consistent with the intent of the ordinance and comprehensive plan and will not alter the essential character of the locality.

Councilmember Quam stated the Planning Commission has carefully considered the variance requests and unanimously recommended Council approve them. He then stated from his perspective the applicants are making the property better.

Councilmember Rose stated he did not think the deck should move any closer to the shoreline. Mayor Kind clarified the encroachment of the proposed deck into the lake yard setback will be 1.5 less than the encroachment of the old deck. Kind stated from her vantage point the slight increase in impervious surface area is off set by the removal of the nonconforming hot tub.

Mr. Kleineman explained for the original deck there was 368 square feet of deck within the setback and with the proposed deck there will be 374 square feet. But, overall the impact into the overall setback has been reduced.

Councilmember Fletcher stated if the common driveway is excluded from the impervious surface area calculation the impervious surface calculation will be less than the maximum allowed.

Councilmember Page stated he thought the variance requests meet the criteria for practical difficulty under the State Statute. He supported granting the variances now. He recommended the motion be amended to state the variance granted is required to be placed against the title to the property.

Without objection from the maker or the seconder, the motion was amended to include the variance granted is required to be placed against the title to the property.

Councilmember Page reviewed how the criteria for granting the variance were met. The applicants propose to put the property to use in a reasonable manner not permitted by the Zoning Ordinance. The plight is unique to the property and not created by the landowner. It does not alter the essential character of the locality. Based on what has been read, it's consistent with the Comprehensive Plan.

Motion passed 4/1 with Rose dissenting.

Councilmember Page stated he thought there needs to be written findings and they need to be part of the variance. The findings need to be recordable.

Councilmember Rose asked when the City will receive copies of the permits from the MCWD and the DNR. Zoning Administrator/Clerk Karpas explained the MCWD waits until the City Council acts before it acts. Zoning Administrator/Clerk Karpas stated the findings can be put into a recordable format and that can be approved during the October 4, 2011 Council meeting.

B. Excelsior Fire District 2012 Capital Improvement Program and Operating Budget

Mayor Kind stated the meeting packet contains a copy of the Excelsior Fire District (EFD) 2012 Capital Improvement Program (CIP) and the 2012 Operating Budget. They were recommended for approval by the EFD Governing Board. She noted minimal changes have been made to the Budget presented by EFD Chief Scott Gerber to the Council during its August 4 meeting. The overall budget amount is the same as the budget amount presented during that meeting. She explained the total 2012 member city contribution reflects a 0.30 percent increase over the 2011 contribution. The City's share of that contribution will

decrease by 1.05 percent. She then explained that three of the five member cities must approve the Operating Budget and four of the five cities must approve the CIP.

Councilmember Page asked if the proposed 2012 municipal contribution is reduced through by the use of part of the anticipated \$40,000 surplus in the Fire Facilities Fund at the end of 2011. [The surplus is the result of using unspent proceeds remaining in the construction fund for the public safety facilities to offset part of the first 2011 bonded debt payment for the EFD.] Mayor Kind stated the Operating Budget reflects that.

Rose moved, Fletcher seconded, approving the 2012 Excelsior Fire District Operating Budget as recommended by the EFD Governing Board on August 10, 2011. Motion passed 4/1 with Page dissenting.

Councilmember Page explained he wanted the City's portion of the surplus to be returned to the City.

Rose moved, Quam seconded, approving Excelsior Fire District 2012 – 2032 Capital Improvement Program as recommended by the EFD Board on August 10, 2011. Motion passed 5/0.

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

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

C. 2012 Preliminary Tax Levy

Mayor Kind stated during its work session preceding this meeting Council had its final wrap-up discussion about the preliminary 2012 General Fund Operating Budget. The budget requires a property tax levy of \$644,719 which is 0.11 percent less than the 2011 levy. Changes were made to the version of the budget discussed during that work session but they did not impact the total tax levy amount.

Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 17-11, "A Resolution Approving the Proposed Tax Levy Collectible in 2012 of \$644,719."

Mayor Kind noted the amount of the 2012 levy cannot be increased when the final levy is adopted at the December 6, 2011 Council meeting. However, the levy can be lowered before the final budget adoption. Councilmember Fletcher commented he would be surprised if it would be lowered.

Motion passed 4/1 with Page dissenting.

Councilmember Page stated he thought the amount budgeted for attorney fees and engineering fees is too low and he doesn't like what's happening with the dock scenario.

D. First Reading: Ordinance 196 an Ordinance Amending Code Section 1155, Regarding Variances

Mayor Kind stated this is the first reading of Ordinance 196 amending the Ordinance Code Section 1155 regarding variances.

Mayor Kind explained on May 6, 2011, a new state law regarding variance authority went into effect. The State Statute went from hardship criteria to less restrictive criteria. The League of Minnesota Cities (LMC) recommends cities revisit their ordinance provisions and consider adopting the language that

mirrors the new State Statute. The copy of the draft Ordinance included in the meeting packet incorporates language from the State Statute and the LMC recommendation for the questions to be addressed in the findings for evaluating variances. The draft amendment includes the Practical Difficulties Standard, the Variance Standard, and the Conditions. The Planning Commission held a public hearing during the August 17, 2011, Planning Commission meeting. The Commission on a 5/0 vote recommended Council adopt the Ordinance.

Mayor Kind explained that two readings are required for all ordinances. If the first reading is approved the second reading will be during the October 4, 2011, Council meeting. Before the Ordinance will go into effect it has to be published.

Councilmember Fletcher stated current Section 1155.10 subd. 4 titled Additional Requirements for Variance and Undue Hardship Grants of Variance Requests states "...if granted, will not: 1. Impair an adequate supply of light and air to adjacent property. 2. Unreasonably increase the congestion in the public street. 3. Increase the danger of fire or endanger the public safety. 4. Unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this ordinance. 5. Violate the intent and purpose of the comprehensive plan." He then stated based on a conversation he had with Attorney Kelly the City can include other considerations in its ordinance.

Attorney Kelly clarified that for a long time cities have had the ability to add additional requirements to the variance standard provided the requirements didn't preempt the State Statute standard. The items listed by Councilmember Fletcher are not considerations they are standards and they have to be met. Council has to either include them or not going forward.

Councilmember Page stated he thought they should all be included because there was a reason the current Ordinance includes them.

There was consensus to keep current Section 1155.10 subd. 4 titled Additional Requirements for Variance and Undue Hardship Grants of Variance Requests subject to deleting "Violate the intent and purpose of the comprehensive plan" and to renumber the proposed Section 1155.10 accordingly.

Page moved, Fletcher seconded, motion adopting the first reading of Ordinance 196 amending the Greenwood Ordinance Code Section 1155 Regarding Variances, subject to the changes just discussed. Motion passed 5/0.

E. Consideration of Amending Code Section 900.65, Subd. (3)(b) to Allow Parking of Vehicles (cars, boats, trailers, etc.) on Unpaved Areas of Front Yards

Mayor Kind explained the city has received complaints regarding violations of Ordinance Code Section 900.65 Unlawful Parking and Storage (3)(b). That Section states "*Vehicles that are parked or stored outside in the front yard areas must be on a paved parking surface or driveway area.*" Enforcement of this code has brought up the issue of the definitions of "front yard." During its August 4, 2011, meeting Council directed the Planning Commission to review and make a recommendation on the definition. During that meeting Council expressed a desire to consider amending the Code to allow parking of vehicles on unpaved areas of front yards. There was consensus to put this topic on this meeting agenda.

Councilmember Quam stated he did not think it would be a problem to allow parking of vehicles on an unpaved area of a front yard. He thought the focus should be on the number of vehicles parked in a front yard.

Mayor Kind noted Section 900.65 Unlawful Parking and Storage (3)(a) states “*No more than 4 vehicles may be parked or stored anywhere outside on residential property, except as otherwise permitted or required by the city because of nonresidential characteristics of the property. The maximum number does not include vehicles of occasional guests who do not reside on the property.*” She also noted that vehicles stored in a yard have to be operable and licensed.

Councilmember Quam recommended eliminating the paragraph that prohibits parking on an unpaved area of a front yard (section 900.65 Unlawful Parking and Storage (3)(b)).

Councilmember Fletcher stated he doesn’t think there is a need to change the Code.

Councilmember Page stated he supports eliminating Section 900.65 (3)(b).

Quam moved, Page seconded, directing Staff to draft an ordinance amending Ordinance Code to delete Section 900.65 Unlawful Parking and Storage (3)(b) and to place the ordinance on the October 4, 2011, Council agenda for a first reading. Motion passed 3/2 with Fletcher and Rose dissenting.

Councilmember Rose expressed his preference to leave the Code as is.

F. Lake Minnetonka Communications Commission 2012 Budget

Fletcher moved, Rose seconded, approving the Lake Minnetonka Communications Commission 2012 Budget as presented.

Councilmember Fletcher noted he is the City’s representative to the LMCC. He explained during the last LMCC full commission meeting the Commission approved the 2012 LMCC budget. The Commission chose to suspend the fiber-to-the-premise (*tonkaconnect*) initiative and therefore the 2012 budget doesn’t allocate any funding for that initiative. The budget does include funding for agenda parsing on the internet, on demand video recordings of meetings, new studio lighting, and paying off the building.

Councilmember Quam asked Councilmember Fletcher to explain how people can find recordings of meetings online. Fletcher explained there is a link on the City’s website www.greenwoodmn.com or people can go directly to the LMCC website www.lmccvt.org.

Motion passed 5/0.

G. Three Rivers Park District Permit for Winter Trail Activities

Mayor Kind explained that annually the Three Rivers Park District requests that cities that use its regional trail system during the winter submit a winter use permit application asking for the authorization to do so. By renewing the permit the City is agreeing to maintain the portion of the trail that is located in the City from November 15, 2011 to March 31, 2012. In the past the responsibility for plowing the trail has been assigned to the Public Works department. The permit application states the City will hold harmless the Park District from any liability related to winter use of the trail. The application also requires the City to submit a certificate of insurance valid through March 31, 2012. She noted the past winter season the City plowed the entire trail and did not leave a section unplowed for cross-country skiers. She stated that even if the city does not groom the trail for cross-country skiers, that it makes sense to submit the application so people can use the trail for cross-country skiing before the trail is plowed.

Councilmember Quam asked if what the City did last season was successful. Councilmember Page stated he thought it was.

Councilmember Fletcher stated he assumed that the Public Works will comply with the Three Rivers Park District's new requirements.

Fletcher moved, Rose seconded, directing Staff to complete the Three Rivers Park District Regional Trail System 2011 – 2012 Winter Use Permit application expressing the City's desire to use the trail for cross-country skiing and walking; mailing the completed application and a proof of insurance through March 31, 2012; and, informing the Public Works Department of its responsibilities to maintain that portion of the Regional Trail System located within the City. Motion passed 5/0.

H. League of Minnesota Cities Insurance Trust Liability Waiver

Mayor Kind explained the cities obtaining liability coverage from the League of Minnesota Cities Insurance Trust (LMCIT) must decide whether or not to waive the statutory tort liability limits. Historically the City has chosen not to waive the monetary limits on municipal tort liability established by Minnesota Statutes 466.04.

Page moved, Quam seconded, directing Staff to complete the League of Minnesota Cities Insurance Trust (LMCIT) Waiver Form and indicate that the City does not waive the monetary limits on municipal tort liability established by Minnesota Statutes 466.04, and to mail the completed form to the LMCIT. Motion passed 5/0.

I. Prosecution Process

Councilmember Fletcher stated public safety is one of the key services the City provides.

Councilmember Quam stated from his perspective it is the key function.

Councilmember Fletcher stated he has no idea if the prosecutor is strongly enforcing the City's laws when a complaint is taken to court. He doesn't know what the outcome is of cases that are prosecuted. He asked what criteria Council can use to assess the services the prosecutor provides.

Attorney Kelly noted during his years 25 years as a prosecuting attorney he did not inform city councils of prosecutions. He stated most prosecutions received by the City's prosecuting attorney are in the nature of traffic offenses and those are not typically reported back to the Council because they are not political in nature. If there is a case that Council is interested in its entitled to know what is going on with regard to the case. He commented that he would welcome Councilmember's inquiries and he encouraged them to contract the City's prosecutor directly. With regard to the alleged underage drinking violation this past New Year's Eve, he stated he doesn't know the outcome of that violation was. He then stated matters of that nature are of great interest to residents in that neighborhood. As a practical matter prosecuting such a case can be difficult because the witnesses disappear. He explained that he does not think it appropriate for the City's prosecuting attorney to make a monthly report because from his perspective it would politicize matters that are routine matters. He recommended keeping this type of thing as apolitical as possible.

Councilmember Page stated he is not aware of what cases are being prosecuted or what the results are. If he wants to know about a particular case he will inquire about it. He explained juvenile consumption cases are prosecuted by Hennepin County Attorney's Office and those records are sealed.

Councilmembers can call the City's prosecuting attorney. He stated he doesn't know what the outcome is of the recent truck rollover in the City.

Attorney Kelly clarified that traffic violations by people under 16 years of age would be handled by the City's prosecuting attorney. He explained the City's prosecuting attorney has been a prosecutor for many years. With regard to the truck rollover, he stated he was unaware of that incident until a somewhat related matter was discussed by Council during one of its meetings. He then stated if the South Lake Minnetonka Police Department (SLMPD) can possibly get a felony charge or similar charge the SLMPD will likely send the charge to the Hennepin County Attorney's Office. If the County Attorney's Office states it's not interested in the charge it comes back to the City's prosecuting attorney, but that takes time to make that cycle.

Councilmember Fletcher stated he just wants to have some assurance that cases are being handled well. He noted he doesn't want to get into individual cases.

Attorney Kelly stated last year the City's prosecuting attorney provided Council with a prosecution update and it's appropriate for him to do that again.

Councilmember Page commented that the Lake Minnetonka Conservation District's (LMCD) prosecuting attorney makes a presentation to the LMCD Board annually. The attorney's presentation includes information on the number of cases by category. It also covers what the attorney's general philosophy is with regard to solving cases. That attorney's bill is reviewed before it is paid and that bill reflects to some degree what activities were being worked on. He noted that the bill from the City's prosecuting attorney contains information on what the attorney has been working on.

Council directed Attorney Kelly to invite the City's prosecuting attorney to the October 4, 2011, Council meeting to make a short presentation and it asked that it be done each October.

8. OTHER BUSINESS

A. None

9. COUNCIL REPORTS

A. Fletcher: Eurasian Watermilfoil, Excelsior Boulevard Street and Water project, Xcel LRT Project

With regard to Eurasian Watermilfoil, Councilmember Fletcher stated that was discussed as part of Item 4.B on the agenda.

With regard to the Excelsior Boulevard Street and Water project, Fletcher stated he met with members of Excelsior's staff on August 25 to talk about extending Excelsior municipal water system along Excelsior Boulevard to about twelve properties in Greenwood at no cost to the City of Greenwood. The property owners would pay the cost. The engineer for Excelsior is going to prepare an estimate for what it will cost to do the engineering work. He noted residents would have to pay for the engineering work. He stated when Excelsior Boulevard is torn up it would be an appropriate time to make changes to the configuration of the street and adjacent sidewalk. He indicated he thought the Metropolitan (Met) Council would be willing to work with the City on that. He stated it's appropriate to start that discussion with the appropriate parties now.

Councilmember Quam stated he will speak with Bill Cook on the Planning Commission about this because Mr. Cook runs that department at the Met Council.

With regard to the Xcel Energy LRT Project, Fletcher stated representatives from the Cities of Deephaven, Excelsior, Greenwood, and Minnetonka, the Three Rivers Park District and the Hennepin County Regional Rail Authority (HCRRA) met this afternoon to discuss power line alternatives and options. He noted approval must be obtained from the HCRRA before Xcel Energy can make changes in the easement it has from HCRRA. The group will invite Xcel Energy to their next meeting.

B. Kind: Police, Administration

Mayor Kind stated there has not been a South Lake Minnetonka Coordinating Committee meeting since the last Council meeting.

With regard to administration, Kind stated the City has a new assessor, Melissa Potter. She noted she has met with her and the other Councilmembers will meet her at the fall sales ratio study work session tentatively scheduled for October 27. She explained the City has received an overdue notice from the Unemployment Insurance Office. She noted that to date that Office has not responded to her letter requesting documentation supporting the determination of renewed eligibility for unemployment for the former city administrator. There was Council consensus to withhold payment for another month with the hope that the City will receive the information requested.

C. Page: Lake Minnetonka Conservation District

Councilmember Page reported on Lake Minnetonka Conservation District (LMCD) activities. He stated the LMCD AIS Task Force which includes representatives from the Lake Minnetonka Association, the Department of Natural Resources, the Minnehaha Creek Watershed District, the bay captains as well as the LMCD provided the LMCD Board with an update on the Eurasian Watermilfoil herbicide treatment project. He reiterated points made by various people during the discussion of Item 4.B.

D. Quam: Roads & Sewer, Minnetonka Community Education

Councilmember Quam stated the 2011 roadway improvement project is complete with the exception of some cleanup. He then stated sewer repair work is in progress.

With regard to Minnetonka Community Education, Quam stated there is nothing new to report.

With regard to the St. Alban's Bay Bridge, Quam stated the bridge has been inspected and it's likely it will be rated less than 50. That means there will have to be work done on the bridge. He noted that doesn't mean the Bridge is dangerous. He stated the engineering work has to be completed before the City and the City of Excelsior can apply for state financing.

E. Rose: Excelsior Fire District

Councilmember Rose stated this was discussed as part of Item 7.B on the agenda.

10. ADJOURNMENT

Page moved, Fletcher seconded, Adjourning the City Council Regular Meeting of September 6, 2011, at 10:01 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder