

GREENWOOD CITY COUNCIL MEETING
Tuesday, December 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 and City Zoning Administrator/City Clerk Karpas

Members Absent: None

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

2. CONSENT AGENDA

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

- A. November 1, 2011, City Council Meeting Minutes**
- B. October 2011 Cash Summary Report**
- C. November 2011 Verifieds and Check Register**
- D. December 2011 Payroll Register (This was moved to Item 8.A under Other Business.)**

Motion passed 5/0.

3. MATTERS FROM THE FLOOR

There were no matters from the floor presented this evening.

Discussion moved to Item 4.B on the agenda.

4. ANNOUNCEMENTS, PRESENTATIONS & REPORTS

- A. Don Stolz and Jon Monson, Concept for the Old Log Theater Property**

This was discussed after Item 6.A on the agenda.

Mayor Kind explained that on November 14, 2011, Zoning Administrator/Clerk Karpas, Attorney Kelly and she met with the Don Stolz, the owner of the Old Log Theater property, and Jon Monson, the owner of Landschute. The purpose of the meeting was to discuss a concept Mr. Stolz and Mr. Monson are considering for that 11-acre property. The concept would require the property to be rezoned. Rezoning requires a public hearing and a recommendation from the Planning Commission. The attendees decided that Mr. Stolz and Mr. Monson should present their ideas to the Council to determine the next steps.

Mayor Kind explained that the Mr. Stolz and Mr. Monson would be presenting a concept at tonight's council meeting. It is not a formal application at this time. After hearing about the concept the Council could direct the Commission to place a general review and discussion of the concept on its next meeting agenda along with a discussion about the City potentially rezoning the property. The Commission would then report back to Council on the concept. After Council hears the Commission's report Council could decide whether or not to move forward with rezoning the property. If Council decides the property should be rezoned the next step would be for the Commission to work on the details of rezoning and prepare a draft ordinance. The Commission would then hold a public hearing on the ordinance to receive comment from the property owner and members of the public prior to forwarding its recommendation to Council.

Mayor Kind introduced Mr. Stolz.

Mr. Stolz explained that he had been asked the question, "If he had been offered as much money for his property as a developer did (in this case Mr. Monson) what would be his reaction." He stated he did not know what his reaction would be because he doesn't know what Mr. Monson would be able to build on the site. He noted that he is meeting with two other potential buyers this week. He stated that decision will be based on what is decided this evening. He noted some people, including himself, would like to have the Old Log Theater continue operations. Unfortunately, there are a few things that make that difficult. One of them is the absence of plays. A broker out of New York that he has been a customer of for over 50 years wants \$30,000 in advance for plays they are brokering. After discussion the advance was reduced to \$10,000. The reason for substantial advances is many theaters file bankruptcy and then brokers have to pay the royalties collected.

Mr. Stolz noted he doesn't know what he and others are going to do about the property. He also noted that he admires the things Mr. Monson has done around the City of Excelsior. He expressed that he is certain that anything Mr. Monson would do with the property would be a continuation of what is best for Greenwood. Mr. Stolz turned the presentation over to Mr. Monson.

Jon Monson, 20260 Lakeview Avenue, explained Mr. Stolz contacted him about one month ago. He knew that Mr. Stolz and his sons were trying to decide what the next chapter in their lives should be. He commented that he was honored to have received the call but also intimated because he did not know how to continue Mr. Stolz's legacy. He and Mr. Stolz met with the City shortly after he had been contacted. This evening he has some thoughts to present, noting things are in the early stage of conception. He stated he thought this property is the City's diamond in the rough.

Mr. Monson noted that 71 years ago Mr. Stolz started the Old Log Theater at what is now called the scene shop. He stated he thought the original Old Log Theater building could be saved. He commented that he is a history buff. He stated that a few years ago his company did something similar with the Pierce house across from the Post Office in Excelsior. That house was saved and construction was done around it.

Mr. Monson explained that he is approaching this site from the perspective of what it used to be, and how can he provide some thread of continuity. The place to start is with the original Old Log structure. The first sketch he displayed did not respect that at all. He said it is something that someone who doesn't want to do any creative problem solving might present. A developer's default mentality might be to level the site and build houses on it. He noted that is the last thing he would ever want to do with the property.

Mr. Monson displayed a second sketch. It included the original Old Log Theater building and the current Old Log Theater building which was constructed in 1960 and has been operating ever since. He stated the old building and the newer building create a nice compound feel. There is floating slab construction on a site where the soil is extremely questionable. He noted that he has spoken with representatives from the

Minnehaha Creek Watershed District (MCWD). Their reaction is there is wetland at the site, but it's likely that whatever would be done of the fringes of the property could be mitigated if there were to be any impact. Soils on the property are a concern. He has had a couple of preliminary soil borings done to get some indication of what the soils might be like. It's not great but it's also not disastrous. There would be premium site expense to correct the soils, but it's probably manageable.

Mr. Monson stated one question that has to be answered is what to do with the existing theater. One option is to repurpose it into a dozen condominium units that could either be sold or rented out. If the original building were to be saved and revitalized, he asked if it needs to be done for a private purpose or some public purpose. For example, if it is done privately and if it cost about \$1 million to do that it could mean there would be a \$50,000 premium on the cost of the units to save the old building. He commented that he would love to see Mr. Stolz back to where he started from [in the original building].

The revitalized old building could potentially be made into a community center. That begs the question of whether the area should be privately owned or become a park. He asked if the City is interested in having a park become its downtown, so to speak. He stated Council and the residents have to be an integral part of the process. People currently have the opportunity to go to the Old Log Theater and if the property becomes privatized it becomes the domain of the people who buy into the redeveloped property.

Mr. Monson displayed a site plan that was a little more developed than the first two sketches. It was drawn to scale somewhat. He stated that he and his wife, his design partner, have dreamed of constructing some quaint cottage neighborhood. This property would provide that perfect opportunity. The question is what people would be willing to pay for such a cottage. He believes there are a number of people who want a small cottage in that special area. The site plan depicts cottages where the parking lot is now (across the street from the Rose, Gray and Hurd properties). On the west side of the property there would be small cottages and an old house would be renovated. The cottages would be like the lake cottages that were historically typical of the area.

There is an open area that would front along the pond. Along the trail there is an existing storage building that would be turned into housing units and then more cottages would be built that would be accessed from the end of Covington Road. He's unsure if there is enough room in the current theater building to build twelve condominiums and still have the required parking for them. The area south of the existing theater and east of the old theater would have a gorgeous view through the buildings and on out to the wetland. That would be the first thing seen when coming on to the property. The site plan shows parking for 70 vehicles that would accommodate seating for 150 people in the revitalized old theater structure.

Mr. Monson noted that as a private developer it would be difficult to bump up the cost of the units on the site to pay for the revitalization of the original theater building. If the City wants that building to serve a public purpose then this might be a good reason for the City to create a tax increment financing (TIF) district. It may be in the City's best interest to do a TIF district because there are profound benefits to a community when that is done. But, there is a psychological barrier that has to be overcome first.

Mr. Monson reiterated that he is extremely honored that Mr. Stolz called him, while at the same time being extremely intimidated.

Mayor Kind stated when they met with Mr. Monson and Mr. Stolz on November 14 there were no sketches to look at. But she was intrigued by the overall concept of being able to save the historic buildings that carry a lot of meaning for residents in the City. She thought there would be merit to having Mr. Stolz and Mr. Monson come before Council to get Council's reaction to the concept and get a sense if this is something Council thinks the City should rezone the property for. The property is currently zoned

R-1A. The Old Log Theater is allowed today as a conditional use in that District. A clustered use would not be allowed. She asked for Councilmember's reactions.

In response to a question from Councilmember Quam, Mr. Monson explained everything would be detached single-family units with the exception of the old storage building and the reuse of the current theater building.

John Gray, 5170 Meadville Street, asked what size the square footage of the cottages would be. Mr. Monson responded 1400 – 2000 square feet with there being an ability to have a small loft space. They would appear as one-story structures with dormers in the roof. Councilmember Fletcher asked if they would be Cape Cod style, to which Mr. Monson responded they would be.

Ted Hanna, 4960 Meadville Street, asked what the land area is for the cottages. Mr. Monson stated he hasn't done the calculations. It would be a homeowners' association and a person would own the property under their unit and maybe 10 feet around it. The association would do the maintenance (e.g., residents wouldn't have to cut their grass). Mr. Monson explained if there are 18 single-family cottages and if there is 11 acres including the wetland, there could be less than 2 cottages per acre.

Mayor Kind stated she would like to know how many people are intrigued by being able to save the historic old buildings. About half of the attendees raised their hands indicating they would be.

John Beal, 5470 Maple Heights Road, asked if the property were to remain zoned as R-1A how many residential properties could be created? Mr. Monson responded he thought 10 – 12. Councilmember Fletcher explained a portion of the wetland could contribute to a lot's acreage. Mayor Kind stated as long as there would be a buildable pad on the lot wetland could be counted in the parcel size. Mr. Beal stated he thought people owed it to themselves to know what the other choice is.

Mr. Hanna stated there would be a change in traffic patterns and he didn't think the current residents would like having some of the units be accessed off of Covington Road. He then stated he thought Meadville Street could handle the traffic flow. He suggested maybe the entrance on to Minnetonka Boulevard could be improved. That entrance is a mess when people are leaving the Old Log Theater today. He expressed his preference to have a central entrance on to the property. Traffic is his biggest issue because residents in the area go for walks and they walk their dogs. Mayor Kind noted the proposed use would produce less intense traffic compared to current theater traffic.

Councilmember Quam stated the City has a water problem on Meadville Street today and the redevelopment would have an impact on that. He thought maybe drainage flow could be redirected into the drainage pond. Mr. Monson explained the pond is dammed up from the undersized culvert that is located under Meadville Street and water flows into the lake. Mr. Monson explained that he thought it is the MCWD's intention for the pond to be a detention pond that will hold water, but the water will eventually will flow into the Lake. As part of the proposed project the culvert should be properly sized. Mayor Kind stated Quam was talking about a drainage problem at a different location on Meadville Street near the Newman and Hurd properties, and this project could be a good time to address that. Quam noted that water wants to stay on the Old Log Theater property parking lot. Mr. Monson stated if the parking lot were redone the water could be redirected to the detention pond.

Julie Ekelund, 5135 Meadville Street, stated that two out of three years the water from the pond flows on to her property which is located on the southwest corner next to the Old Log Theater property. She asked how that would be addressed. Mr. Monson stated he thought that was in part caused by the problem at the outlet [the undersized culvert]. That would be addressed as part of the wetland mitigation effort.

Councilmember Quam stated part of the outlet problem is caused by the fact the pond is about the same level as the Lake. That would have to be addressed.

Ms. Ekelund stated it is way too early to react to any option. She asked what the process will be going forward. Mayor Kind stated prior to Ms. Ekelund arriving she explained the process. She reiterated the explanation she made at the start of this discussion.

Mayor Kind asked Council how it would like to proceed.

Councilmember Fletcher commented he preferred houses fronting Meadville Street rather than rear yards facing the Street. He stated if the wetland were to become a park he asked where the entrance to it would be. Mr. Monson stated it would be through the main entrance on to the redeveloped property. Fletcher stated if the old building were to be revitalized for a public purpose and if the wetland were to be a public park he asked what Mr. Monson wanted the City to contribute. Mr. Monson responded that is where TIF factors in. Mayor Kind explained the incremental amount the City would collect in taxes from the redeveloped property would help fund that redevelopment for a public purpose. Fletcher stated that additional tax revenue could not be spent for another City need. Kind clarified that is correct but only for a specified period of time. TIF districts have a life span.

Mr. Stolz noted he doesn't have to sell and the Old Log Theater is having the best month that it has had in several years. His intent is to continue to operate the Theater for some time regardless of what happens at this meeting. He stated he is 94 years old and at some point he and his sons will decide they have to sell the property. That is not what they need to do now.

Mayor Kind asked if there is an offer or agreement between Mr. Stolz and his family and Mr. Monson now that is contingent on the City approving this. The answer is "no." Mr. Stolz and Mr. Monson do not have a formal agreement. Mr. Monson stated he would prefer if the Old Log Theater could operate forever. Yet, he believes it's smart for the Stolzs to have an exit strategy. He thought it prudent to have a plan that could be executed at the time the Stolzs decide to sell. This is about planning.

Mayor Kind stated the question for Council is who is going to pay for that planning. It will cost the City money to rezone the property. At this time, there is no applicant paying for that cost. There would be attorney fees and staff time.

Mayor Kind again asked Councilmembers how they want to precede.

Councilmember Page stated he would like to continue this discussion to January. He then stated he doesn't have any particular thoughts because it's the first time he has heard much about this. He went on to state it would be premature to refer this to the Planning Commission at this time.

Mr. Stolz stated he doesn't live on Meadville Street any longer. He noted that the Old Log Theater is the oldest union theater in the United States. People out of the City of New York have been asking about the Theater's early years. The Theater is well known in London as well as New York.

Mayor Kind asked Mr. Stolz if he likes Mr. Monson's concept. Mr. Stolz responded absolutely. Kind stated that is important to her and members of the community.

Rose moved, Fletcher seconded, continuing this discussion to the January 2012 meeting.

Councilmember Fletcher stated it's his understanding there is no rush. From his vantage point the January meeting is an appropriate time to decide how Council wants to move forward.

Motion passed 5/0.

Discussion moved to Item 6.B on the agenda.

B. Planning Commission Term Expirations

This was discussed after Item 3 on the agenda.

Mayor Kind explained the Planning Commission holds public hearings and makes recommendations to the City Council regarding zoning issues including variances and conditional use permits. The Commission is comprised of five voting members and two alternate members. Each March three to four of the commissioners' terms expire. In 2012 the following terms expire: Brian Malo Seat A-1, John Beal Seat A-2, Dave Paeper Seat A-3, and Douglas Reeder Alternate 1. The City does not have term limits for commissioners so any of them can reapply. Anyone else who is interested in serving on the Commission also may apply. Those wishing to apply may stop by City Hall to pick up an application or they may download the form from the City's website www.greenwoodmn.com. The next City newsletter will include an article seeking applicants to serve on the Commission. Applicants will be invited to the March 2012 Council meeting where Council will have the opportunity to ask the applicants questions, review the applications and make the final appointments.

5. PUBLIC HEARING

A. None.

6. UNFINISHED BUSINESS

A. Second Reading: Ordinance 198 an Ordinance Amending Code Section 1135.05, C-2 Lake Recreation District

Mayor Kind stated this is the second reading of Ordinance 198 amending the Ordinance Code Section 1135.05 regarding permitted uses. She explained the proposed amendment would remove "restaurant" from a permitted use status in the C-2 District and place it as a conditional use. It also removes "general offices" from being a conditional use and places it as a permitted use. Restaurant use tends to have a greater impact than an office use. The first reading occurred during the November 1, 2011, Council meeting. No changes have been made to the Ordinance since the first reading.

Quam moved, Rose seconded, Approving Ordinance No. 198, "An Ordinance amending the Greenwood Ordinance Code Section 1135.05 to allow general office uses as a permitted use in the C-2 District and to allow restaurants as a conditional use in the C-2 District. Motion passed 5/0.

Item 4.A was discussed after Item 6.A on the agenda.

B. First Reading: Ordinance 199 an Ordinance Amending Code Section 1102, Definitions

This was discussed after Item 4.A on the agenda.

Mayor Kind stated this is the first reading of Ordinance 199 amending the Ordinance Code Section 1102 clarifying the definitions of yards and adding illustrations. She explained Council directed the Planning Commission to discuss these and to craft a draft Ordinance to address these items.

Kind explained Council discussed the definitions proposed by the Planning Commission during its November 1, 2011 meeting. During that discussion a couple of issues were identified. They include: the measurement of the front yard from the “edge of the public right of way open and actually used for travel” since the way the Ordinance is enforced is that the measurement is taken from the front property line; and, the inclusion of “ordinary high water level” in the definition of rear setback since the Ordinance would consider any property abutting Lake Minnetonka as having a lakeside yard rather than a rear yard. The City Attorney reviewed the issues and a copy of his memorandum on them is included in the meeting packet. The meeting packet also includes a copy of the Ordinance discussed during the November 1 meeting as well as a revised Ordinance incorporating the City Attorney’s recommendations to the language.

Fletcher moved, Quam seconded, adopting the first reading of Ordinance 199 amending the Ordinance Code Section 1102 regarding yard definitions and including the illustrations included in the December 6, 2011, City Council meeting packet. Motion passed 3/2 with Page and Rose dissenting.

Councilmember Rose stated he thought the definitions should be left as they are.

Councilmember Page stated the side yards in the illustrations are minuscule and he doesn’t understand why that is. For example, in the illustration for a lakeside yard that has close to a triangular shape he asked why the side yard would not go to the tip of the principal structure. The small side yard concern applies to all of the illustrations. Mayor Kind stated a case could be made for that. That drawing could be amended for the second reading of the Ordinance or be eliminated. Zoning Administrator/Clerk Karpas stated the illustration Page is referring to can be confusing, but the other illustrations are appropriate.

Councilmember Quam stated the drawings are not intended to be to scale.

Councilmember Page explained there are prohibited uses in front yards. When the front yards are gigantic and the side yards are small based on the illustrations the property owner’s ability to put up accessory structures is limited. That is disturbing to him. Mayor Kind stated from her vantage point nothing is being changed; they reflect the way the City has been enforcing these definitions for years. Councilmember Quam stated because the drawing of the front yard is bigger doesn’t mean the front yard will actually be bigger. Kind agreed. Quam commented it is just a drawing. Page clarified it may be just a drawing but if approved it will be in the Ordinance. Quam stated the relationship of the setback boundaries will not be transformed onto an actual property.

Councilmember Fletcher explained the purpose for including illustrations was to help clarify yard definitions. He suggested Councilmember Page work with Zoning Administrator/Clerk Karpas to modify the illustrations before the next Council meeting.

Mayor Kind stated the purpose of the triangle shaped illustration is to show how the yards would be defined if a house was not parallel to the front yard. She again suggested eliminating that illustration. Councilmember Fletcher stated it should be clarified and be included in the Ordinance. Zoning Administrator/Clerk Karpas stated that the triangle shaped illustration should be changed based on how he enforces the location of a side yard.

Mayor Kind and Zoning Administrator/Clerk Karpas will review all of the illustrations and the new drawings will be included in the Ordinance for the second reading.

7. NEW BUSINESS

A. Request for Right-of-way Encroachment Permit, 21580 Fairview Street

Mayor Kind explained the City received a complaint about a boat being stored in the public right-of-way (ROW) next to 21580 Fairview Street. She noted that the petitioner for the permit is not present, and wondered if Council should proceed with discussion of this agenda item or not.

Councilmember Page asked if the City has received a petition and if money has been paid.

Zoning Administrator/Clerk Karpas explained the fee is set by the Council. It's up to Council if it wants to issue the ROW Encroachment Permit.

Mayor Kind stated the meeting packet contains a request from Realtor Woody Love, on behalf of the Estate of Susan Morris, for permission to use the City ROW. Therefore, Council can take action on that written request. She noted she is fine with moving forward on this.

Councilmember Quam recommended waiting.

Councilmember Fletcher asked if the City has to take action this evening because it received a complaint and a request for a permit. Attorney Kelly stated it's within Council's purview to take additional time to act on the application. Kelly stated Council can take action this evening if it feels it has all of the information it needs. Fletcher stated this could also be tabled for a month.

Page moved, Quam seconded, continuing this item until the January 2012 Council meeting. Motion passed 3/2 with Kind and Rose dissenting.

Councilmember Fletcher asked if the public could speak regarding this issue since it was published on the agenda. Mayor Kind invited public comment.

Jeannie Bowers, 21600 Fairview Street, stated she was present this evening to talk about the impervious surface on the property located at 21580 Fairview Street. She then stated she thought this is a great opportunity for the Council to allow that land to go back to its original state. She explained in 1992 the Hennepin County Regional Rail Authority (HCRAA) and Hennepin County Parks made an arrangement to make this into a trail. It was quite contentious for the City at that time. That property had been pervious. At that time she agreed she would not contest the property owner being granted a variance for the setback for the garage. The then Council approved the variance request with some stipulations about the ROW. She distributed a copy of photograph of the pervious surface.

Ms. Bowers then stated she purchased her home in 1973. When the garage on the 21580 Fairview Street property was rebuilt it was moved further from the ROW. The property had been pervious so stormwater could flow down the street and saturate into the ROW. Where the boat is parked that section has been tarred from the edge of the garage to the Street; it was altered. Before it was altered the stormwater was absorbed by the soil and filtered. She has underground tubing so water can be filtered from the street to the lake. After the neighbor's ROW was made impervious the stormwater flow changed and it has caused her as a resident of the City a financial burden to keep the tubing clear of debris.

Ms. Bowers went on to state the City has spent a lot of money on Fairview Street. When she first purchased her home it was a gravel roadway. She distributed a copy of photograph showing the road maintenance and the culvert. Now that the area is impervious, there is an underground culvert the City has to maintain. Because of the hardcover impervious surface everything fills up the culvert. The stormwater ends up under Fairview Street and causes it to deteriorate. She distributed a copy of another photograph showing the same culvert and some of the deteriorated roadway surface, and a photograph showing the tarred surface. She explained how stormwater flowed down the Street.

Ms. Bowers explained the fourteen cities around Lake Minnetonka had to adopt the Shoreland Management State Statute into their city code of ordinances. Section 1176.08 Subd. 2.c.7. states *“Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby property.”* The tarred surface affects her property as well as City property. The City’s Comprehensive Plan states *“The protection of natural drainage ways and water courses from accelerated storm water run-off or constriction in conjunction with the development, redevelopment or expansion of housing and/or subdivision of land through use of restrictive easements, land use regulation and hard-surfacing regulations. Existing watercourses or drainage ways shall be maintained to handle storm water runoff.”* It goes back to the Minnesota Department of Natural Resources (DNR) and the Minnehaha Creek Watershed District (MCDW). It all relates to water issues and how agencies and government are trying to address erosion issues.

Ms. Bowers explained that when Zoning Administrator/Clerk Karpas did his research he was provided inaccurate information. That misinformation had to do with the contention that it was impervious. That it was left over construction from the garage. However, as is seen in the photographs, there had been a beautiful pervious surface with plantings and absorption that was.

Councilmember Fletcher asked when the photograph was taken that showed the pervious surface in the ROW. Ms. Bowers didn’t know.

Ms. Bowers then explained that on January 15, 1998, a legal notice was published in the Lakeshore Weekly Newspaper for what was then Section 425.35 Subd. 3 (now Section 425.40 Parking) which states *“It shall be unlawful to park any trailer or vehicle used in the transportation of boats upon any public parking space or adjacent to any public ground within the city, without obtaining written permission of the city council. Any vehicle used for the transportation of boats or any boat dock, trailer or fish house which shall be parked, placed, kept, or abandoned on, or which shall obstruct any public street, highway, or other public property, may be seized and impounded by any authorized officer or employee of the city.”*

Ms. Bowers stated Attorney Kelly was an advocate for addressing this issue of the law. She explained that in a memorandum from Kelly to Zoning Administrator/Clerk Karpas regarding the property located at 21580 Kelly cited that Section 710.15 General Parking Restrictions states *“No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled part of any street or highway in this municipality when it is practical to stop, park or so leave such vehicle off such part of the street or highway, but in every event a clear and unobstructed width of at least 20 feet of such part of the street or highway shall be left for the free passage of other vehicles, and a clear view of such stopped vehicle shall be available for a distance of 200 feet in each direction upon such street or highway. No vehicle shall be parked continuously at any place in any public street for a period of more than 72 consecutive hours.”* In the memorandum Kelly stated *“It would be my advice that the owner of any vehicle including boats that are being stored in this public right of way of this ordinance be asked to remove the vehicle.”*

Ms. Bowers stated she thought the wording in Attorney Kelly's memorandum was really good. She asked for Council to be an advocate for residents and improve the character of their neighborhood. When Kelly writes to this particular person asking them to remove the boat he writes "*The intent of the R-1A District is to provide a use zone for low-density single-family dwellings that will be exclusive of other types of use for the purpose of creating a quality semi-estate district.*" That is Section 1120.00 Purpose.

Ms. Bowers stated she thought it would be advantageous to everyone if Council will consider the safety issue. As elected officials one of your primary goals is the health, safety and welfare of the City's residents. Numerous times she has seen a school bus barely miss running into that boat. If you drive down Sleepy Hollow Road and you make that turn after the snowmelt has frozen and a driver is not aware of that, it's easy to end up in the driveway. She has done that. She asked Council to take safety into consideration and to be proactive about the character of the neighborhood.

Mayor Kind asked Ms. Bowers to put her thoughts in writing for the Council unless she is close to wrapping up.

Councilmember Quam asked Ms. Bowers to clarify what she is asking Council to do.

Ms. Bowers distributed a picture. She stated if Council does not look at this favorably for the City she asked someone to go to the HCRRA of the LRT. It carries the liability factor. If the City gives anyone permission to park on City ROW the City has to make sure people aren't harmed. The HCRRA has a statement that reads "*Permitter shall not be liable to permittee or those claiming by any injury, death or property damage occurring in or about the crisis based upon whatever nor the loss of damage by reason of present or future condition of repair.*" She thought that was very tight. If the City is giving residents' rights away Council has to make sure it is bound tight for the City. She noted the League of Minnesota does insure you (Council) and protect you. However, when people are killed, maimed or hurt they are going to go to anyone who has the money. The waiver between the HCRRA and Hennepin County Parks is tight.

Ms. Bowers asked Council not to approve the permit request for parking boat storage. She stated the altered topography of land on HCRRA property located at 21580 Fairview Street has diminished the integrity of HCRRA property. The encroachment into the ROW is in violation of public property. She requested the added hardcover be removed because it has adversely affected her property due to excess stormwater runoff. Prior to the added hardcover it was pervious. Stormwater was able to flow into an underground culvert where sediment was collected before it flowed underground. For safety reasons she asked that the boat and trailer be permanently removed.

Ms. Bowers thanked Council for allowing her the opportunity to come before it. She then thanked Attorney Kelly and Zoning Administrator/Clerk Karpas for being proactive.

In response to a question, Ms. Bowers explained her fence is on her property line and 30 feet back from the ROW as well as the HCRRA's ROW.

Mayor Kind noted the City has the right to deal with the HCRRA's ROW. There is no distinction between that and the City's ROW.

Councilmember Fletcher stated had Ms. Bowers' comments been heard before the vote was taken to continue this item to the first Council meeting in January 2012 he would not have voted to continue this item.

Fletcher moved, Rose seconded, reconsidering continuing this item until the January 2012 Council meeting. Motion passed 3/2 with Page and Quam dissenting.

Councilmember Fletcher asked if a permit was issued to black top part of the ROW.

Ms. Bowers stated the picture taken before part of the ROW was black topped was likely taken in 2000. The blacktop was put down in 2001. No permit was issued for that. She noted she called the City when that was done.

Councilmember Fletcher stated based on the information he knows now he doesn't support approving a permit to allow the boat to stay on the blacktopped portion of the ROW because a permit was not obtained for putting the blacktop down. Being the property is for sale, now is the time to deal with the impervious surface.

Mayor Kind echoed Councilmember Fletcher's comments and stated Council has the opportunity to make sure the ROW is used appropriately. She stated she could support a motion allowing the boat to remain where it is for a maximum of one year and that anyone who buys that property would have to get Council's authorization to be able to keep the paved surface and to store a boat in the ROW. She noted she did not know why she would grant permission to keep that impervious surface in the ROW.

Attorney Kelly explained the Ordinance states "*The City Council may grant the permit if it is determined the use applied for is incidental and not inconsistent with safe and efficient public use.*" In his memorandum he raised the question that perhaps the applicant needs to make a case that there is need not reasonably met within the confines of their own property. Council can take anything into consideration that it deems appropriate in its decision making. He stated the City is at a transition point. The owner of the 21580 Fairview Street property has passed away. If the City wants to redefine the world this is a very good time to do it.

Mayor Kind read an excerpt in Attorney Kelly's memorandum she thought was very good. It states "*Expectations are raised, a presumption of right to indefinite use can be created, and there is confusion of ownership and control rights.*" Those are her concerns with letting the ROW encroachment continue.

Fletcher moved, Rose seconded denying the right of way encroachment permit request for 21580 Fairview Street and directing the property owner to remove the boat and paved area that is currently used for the boat pad located in the public right of way.

Councilmember Page noted that up and down Sleepy Hollow Road residents are encroaching into the public ROW. He stated he thought it imprudent not to inform the property owner and it is a mistake not to provide the applicant an opportunity to have some input into this matter.

Councilmember Quam stated he agreed with Councilmember Page's comments and that he can't vote in favor of the motion without hearing from the property owner. He then stated Ms. Bowers has done a good job of explaining her point of view.

Mayor Kind stated the City hasn't received complaints about residents along Sleepy Hollow Road encroaching into the ROW. Code enforcement is complaint driven.

Councilmember Page stated the boat has been there for ten years. No one has complained until now. The boat has been stored on that spot for years.

Mayor Kind stated it's her understanding this has been an ongoing complaint. She then stated as Attorney Kelly points out this is the perfect time to address it because of the transition of ownership of the property located at 21580 Fairview Street.

Councilmember Fletcher stated now is the time to set the boundaries for what is and isn't allowed. He then stated he did not want to create a false impression for a potential buyer of that property.

Councilmember Rose stated if the blacktop and boat can remain in the ROW that could set precedent that anyone can blacktop part of the City ROW and park a boat on it.

Mayor Kind stated people may be parking / placing things in the ROW but it is without a permit. If Council approves this permit request it would be setting a precedent that she doesn't want to set for people to pave the ROW and then store their boats there.

Councilmember Page stated he interprets the request to be for a permit to keep the boat in the ROW. He asked how Council knows that in the public record there wasn't some authority given for the blacktop. He stated he didn't think a search was made of the public record in that regard.

Councilmember Quam asked what problem there would be in waiting until Council's January 2012 meeting to tack action on this. Mayor Kind responded there wouldn't be. Quam stated that would address Councilmember Page's concern and his concern about hearing from the other property owner. Maybe they can produce something counter to what has been heard this evening. Kind stated she assumes if there were such a document a permit application would not have been requested. Quam noted the City only told the applicant that he needed to apply for a permit to store the boat in the ROW. Nothing was said about the asphalt pad.

Councilmember Rose stated if this is continued then research can be done to see if a permit was issued for blacktopping a portion of the ROW then the permit request can be denied at the next meeting.

Motion failed, with Page, Quam and Rose dissenting.

Fletcher moved, denying the right of way encroachment permit request for 21580 Fairview Street and directing the property owner to remove the boat and paved area that is currently used for the boat pad located in the public right of way unless the property owner can provide reasonable proof to the City that it has a permit for the boat storage or to have paved the area within 20 days.

Councilmember Page stated Councilmember Fletcher's motion is the same as the one that failed with the exception that the 20-day response period for submitting proof of authorization is added.

Rose seconded the motion.

Councilmember Quam reiterated his concern that Council has not heard from the property owner.

Councilmember Page echoed Councilmember Quam's concern. He stated there is an estate situation for the 21580 Fairview Street property. He noted the pad has been there ten years. Therefore, it won't hurt anything to wait until Council's January meeting to take action on this.

Mayor Kind stated the 20-days allows for sufficient time to produce proof.

Councilmember Page stated the permit application request was made by Woody Love, a Sales Manager out of the Coldwell Banker Burnet Minnetonka real estate office, on behalf of the Estate of Susan Morris. He asked if Council knows who the heirs of the Estate are. He asked if the heirs received the notice of need for a permit to park the boat in the ROW. Mayor Kind stated someone received it because Realtor Love applied for the permit. Page again stated he asked if the heirs received it, not if someone took it out of a mailbox at the property. Page stated there is no rush to take action. He stated if the motion passes and the heirs of the Estate have not been determined or if it goes to the mailbox and the heirs do not get it the heirs don't have an opportunity to provide proof or present their case. He noted that Realtor Love has removed his sign from the property, and that could be why he is not here this evening because he is no longer the agent. He stated he thought it prudent to find out who the responsible person for the property is.

Motion passed 3/2, with Page and Quam dissenting.

B. Variance Request, Bill and Tish Cook, 5195 Greenwood Circle

Mayor Kind explained that Bill and Tish Cook, 5195 Greenwood Circle, have applied for a variance to build a lakeside deck which would encroach into the minimum east and west side yard setbacks and exceed the maximum permitted impervious surface area. She stated the meeting packet includes a cover document, a staff report, site plans and a copy of City Ordinance Section 1155 Variances. She noted the Cooks are present this evening.

Zoning Administrator/Clerk Karpas explained the applicants want to build the deck they had received approval to build in 1999 when they originally constructed their home. The deck was never constructed for a variety of reasons. The variance approval for the deck has expired. The deck they are now proposing to build is approximately three feet further back from Lake Minnetonka (the Lake). The impervious surface will also be slightly less than the plans approved in 1999. The Cooks are seeking reaffirmation from Council that they can build their deck.

Mayor Kind noted the Planning Commission recommended approval of the variance request on a 4/0/1 vote with Mr. Cook abstaining.

Councilmember Quam stated a slightly larger deck was approved by a previous Council. Therefore, he can support granting the variance request.

Mr. Cook stated the windows on the south side of their home have to be replaced because they were installed improperly. Now would be an opportune time to build the deck because siding will have to be taken off for the window replacement project.

Councilmember Fletcher stated it appears that the house was clearly designed to have a deck on the side that fronts the Lake. Mr. Cook stated that is correct.

Mayor Kind expressed her agreement with Councilmember Fletcher's and Councilmember Quam's comments. The key thing for her is the Cooks are improving the nonconformity. With an approved variance the Cooks still will have improved the situation from what it had been before they bought the property. The Cooks would have had the legal right to rebuild a house with the same footprint as the house that had been on the property when they bought it. The previous house had a larger footprint than the one they built. After the proposed deck is factored in, the impervious surface on their property will be less than what it was when they brought the property and the encroachments into the setbacks will be less. She supports granting the variance.

Mr. Cook noted the original house had 46 percent hardcover.

Councilmember Page stated there has been no discussion about how the criteria for granting a variance will be met.

Mayor Kind explained how the Cooks request satisfies those questions listed in Section 1155.10 Requests for Variances from the Literal Provisions of the Ordinance Subd. 5. Findings.

- a. *Is the variance in harmony with the purposes and intent of the ordinance?* – It reduces the amount of hardcover and setbacks from the Lake.
- b. *Is the variance consistent with the comprehensive plan?* – The City’s Comprehensive Plan does talk about improving nonconforming uses and this does do that.
- c. *Does the proposal put property to use in a reasonable manner?* – A deck is a reasonable use for a property that fronts the Lake.
- d. *Are there unique circumstances to the property not created by the landowner?* – The property is small and the previous structure limited the space the applicants had to work with. What they are doing improves what was there before.
- e. *Will the variance, if granted, alter the essential character of the locality?* – It will not affect anyone in the area and from her vantage point it improves the area.

Kind then explained the Cooks request meets the requirements listed in Section 1155.10 Subd. 6 Additional Requirements for Grants of Variance Requests which states “*The board, in considering all requests for a variance, shall determine that the proposed variance, if granted, will not:*”

- a. *Impair an adequate supply of light and air to adjacent property.* – The deck will not affect the adjacent property with regard to light and air.
- b. *Unreasonably increase the congestion in the public street.* – The deck does not affect the traffic on the street.
- c. *Increase the danger of fire or endanger the public safety.* – The deck does not increase the danger of fire or endanger public safety.
- d. *Unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this ordinance.* – Having a deck on the home would improve the home values of the area.

Councilmember Fletcher stated the house will look better and fit in better if there is a deck on it. It will be an improvement to the locality.

Quam moved, Fletcher seconded, approving the variance requests by Bill and Tish Cook, 5195 Greenwood Circle, to construct a lakeside deck that encroaches 21 feet 6 inches into the required exterior side yard setback, encroaches 2 feet 3 inches into the east side yard setback, and exceeds the maximum permitted impervious surface area by 2% as presented and based on the findings as previously presented by Mayor Kind.

Councilmember Fletcher asked Attorney Kelly if he prefers written findings be prepared for Council approval during its next meeting.

Mayor Kind stated there should be a second motion to direct Staff to prepare findings of fact for approval during the next Council meeting.

Without objection from the maker or seconded, the motion was amended to include and directing Staff to prepare findings of fact for approval during the next Council meeting. Motion passed 5/0.

C. Resolution 23-11, Approving Final Levy for Taxes Payable in 2012

Mayor Kind stated the copy of the final 2012 General Fund Budget included in the meeting packet reflects a 2011 tax levy payable in 2012 of \$644,719. That amount is the same as the preliminary levy certified with Hennepin County in September 2011. The 2012 General Fund Budget is \$727,549. She explained Resolution 24-11 will only adopt the 2012 General Fund Budget; not the other budgets. It has been Council's past practice to only approve the General Fund Budget.

Councilmember Fletcher stated Council has recently just started to have the other budgets.

Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 23-11, "A Resolution Approving the 2012 Tax Levy, Collectible in 2012 in the amount of \$644,719." Motion passed 5/0.

Fletcher moved, Rose seconded, Adopting RESOLUTION NO. 24-11, "A Resolution Approving the 2012 City Budget in the amount of \$727,549." Motion passed 5/0.

D. Resolution 24-11, Approving Final 2012 Budget

This was discussed as part of Item 7.C above.

Mayor Kind recessed the meeting at 8:59 P.M.

Mayor Kind reconvened the meeting at 9:08 P.M.

E. 2012 Licenses: Liquor, Trash Haulers, Tobacco, and Marina

Mayor Kind noted Staff is recommending approval of applications for a liquor license (Old Log Theater), trash hauler licenses (Allied Waste, Aspen Waste, Blackowiack Disposal, Randy's Sanitation, Vintage Waste, Waste Management, and Waste Technology), a tobacco license (Christmas Lake Gas), and commercial marina licenses (Bean's Greenwood Marina, Excelsior Bay Harbor, and Kreslin's Marina). Approval of them should be contingent upon the City receiving the applications and fee by December 31, 2011.

Quam moved, Page seconded, approving the 2012 license applications listed above contingent upon the City receiving applications and fees by December 31, 2011. Motion passed 5/0.

F. First Reading: Ordinance 203, Amending Code Section 910, Prohibit Activities Affecting Health and/or Property (changing language to allow for the civil citation process)

Mayor Kind stated this is the first reading of Ordinance 203, amending the Ordinance Code Section 910.60 Public and Private Properties / Prohibited Activities Affecting Health and/or Property. This amendment is to make the code consistent with the civil citation process.

Fletcher moved, Page seconded, adopting the first reading of Ordinance 203 amending Section 910.60 Subd. 2 to allow for the civil citation process outlined in Chapter 12 to be implemented for Code violations of prohibited activities affecting health and/or property. Motion passed 5/0.

G. First Reading: Ordinance 204, Licensing of Commercial Tree Contractors

Mayor Kind stated this is the first reading of Ordinance 204, amending Ordinance Code Chapter 4 to establish a requirement that commercial tree contractors be licensed and insured. They are required to obtain a permit to remove the trees. There have been instances when these uninsured tree contractors skip town after dropping a tree that damages a homeowner's or a neighbor's property. The cities of Woodland and Deephaven have adopted ordinances that require outside contractors to be licensed. A copy of a draft Ordinance is included in the meeting packet. In addition to amending Chapter 4, it establishes a fee in the amount of \$50 in Section 510, and it amends Section 1140.80 to include Subd. 16 to note a commercial tree contractor would have to be licensed. She noted there is nothing in the proposed Ordinance that prohibits a homeowner or their friends from trimming trees on their property.

Zoning Administrator/Clerk Karpas stated the \$50 fee is to cover administrative costs. He then stated he thought the insurance requirement is a good idea. He thought it would be a nice service to offer the residents to be able to tell them if a tree contractor is licensed.

Councilmember Quam asked if a resident could hire a contractor that isn't licensed. Zoning Administrator/Clerk Karpas responded they cannot hire a commercial contractor that is not licensed. Karpas stated it also requires the contractors to be in compliance with the State's workers compensation requirements. Quam asked if they are required to be licensed by the State. Karpas stated he thought licensing is done at the city level.

Councilmember Fletcher asked how many instances there have been in the City and in the Cities of Deephaven and Woodland of someone dropping a tree and then skipping town. Zoning Administrator/Clerk Karpas explained that the Deephaven Police Department which services Deephaven and Woodland will contact Deephaven City Hall if it appears to the officer that something doesn't seem right. If the tree cutter isn't licensed they will be issued a citation. That happens quite a bit during the beginning of the summer. Karpas stated he doesn't recollect any specific instance where there was damage.

Rose moved, Page seconded, adopting the first reading of Ordinance 204 amending the Greenwood Ordinance Code in Chapters 4, 5 and 11 to require the licensing of commercial tree contractors within the City.

Councilmember Fletcher stated he has spoken with a tree contractor and was told that one of the problems he has with similar ordinances in other cities is they require him to submit proof of insurance or workers compensation insurance when he renews them and that can be at different times. It ends up being a paperwork hassle when all he is doing is trying to earn a living trimming trees. He suggested changing the Ordinance to stipulate proof of insurance is required when the application is submitted.

Zoning Administrator/Clerk Karpas stated in Deephaven when insurance is renewed Deephaven often receives a copy of the renewal notice from the insurer.

Councilmember Fletcher asked what problem is trying to be solved. A contractor may do one or two jobs in the City and the City hasn't had a problem with damages.

Motion passed 4/1 with Fletcher dissenting.

H. First Reading: Ordinance 205, Licensing of Gas Fitters

Mayor Kind stated this is the first reading of Ordinance 205 amending Chapters 4 and 5 of the Ordinance Code regarding the licensing of gas fitters. It's also the first reading of Ordinance 206 amending Chapters 4 and 5 of the Ordinance Code regarding the licensing of plumbers.

Zoning Administrator/Clerk Karpas explained this is a way of protecting residents from contractors who are not insured. Many cities require separate licensing even though they are licensed by the State. They require the contractors to provide proof of insurance and workers compensation information as part of the licensing process. The fee for the license is minimal and it's to cover administrative costs. The Cities of Deephaven and Woodland have adopted ordinances that require gas fitters and plumbers to get a City license, to prove that they are licensed by the State and that they are insured. He stated he thought ordinances should be the same across the three Cities. He explained that in many cases when the contractor applies for the license they can apply for a license for each of the three Cities at the same time. It's not much more work to fill out three applications than two at the same time. He noted there is nothing in the proposed Ordinance that prohibits a homeowner or their friends from doing minor plumbing work at their own property. He also noted a homeowner can apply for a permit to do anything they want to their home without being licensed by the City. The license requirement is for commercial only.

Councilmember Page stated the proposed fee for the gas fitter license and the plumber license is \$40. Zoning Administrator/Clerk Karpas confirmed that.

Councilmember Quam stated if they are licensed by the State it seems redundant to require them to be licensed by the City. He asked if residents can call the State to find out if they are licensed and insured. Zoning Administrator/Clerk Karpas stated they could. Councilmember Fletcher stated you can go online to see if an electrical contractor was licensed. He assumes it's the same for gas fitters and plumbers. Quam stated he can understand licensing commercial tree contractors. But, from his perspective requiring redundant licensing is putting more government in people's lives.

Councilmember Fletcher asked what value would be added by requiring gas fitters and plumbers to be licensed by the City when they are already licensed by the State. There are only 300 lots in the City.

Mayor Kind stated the value is it's an easy phone call to the City to find out who is licensed in the City. It's a service to the City's residents.

Zoning Administrator/Clerk Karpas stated he receives calls from contractors at the beginning of each year asking if the City requires licensing. This is more of a protection for the residents to ensure the contractors are insured. The State may not pay as much attention to whether or not the contractors are insured. Councilmember Fletcher stated electricians have to fill out a lot of paper work with the State; the State pays attention.

John Gray, 5170 Meadville Street, stated the Ordinance Section 510.00 Fees: Licenses, Permits and Services Established shows the fee for a plumbing permit is \$410.25. Mayor Kind stated that is the section number in the Code. Kind explained that is to do plumbing work not for a plumber's license. Kind suggested the column headings be carried over to make it clear that it is a section number.

Zoning Administrator/Clerk Karpas explained the permit fee is \$8.50 per residential fixture and \$9.50 per commercial fixture.

There was consensus not to require gas fitters and plumbers to get a City license to provide services in the City.

I. First Reading: Ordinance 206, Licensing of Plumbers

This was discussed as part of Item 7.I on the agenda.

J. Resolution 26-11, Establishing Fund Balance Policy in Accordance with GASB 54

Mayor Kind explained the Governmental Accounting Standards Board (GASB) released Statement 54 "Fund Balance Reporting and Governmental Fund Type Definitions" on March 11, 2009. The City has to establish a Fund Balance Policy in accordance with GASB 54 by December 31, 2011. The GASB 54 statement applies to fund balances reported in the General Fund, Stormwater Special Revenue Fund, Park Special Revenue Fund, and the Bridge Capital Project Fund. It does not apply to the Sewer Enterprise Fund or the Marina Enterprise Fund. The City's Auditor recommends that the fund balances be reported in the following classifications – non-spendable fund balance, restricted fund balance, committed fund balance, assigned fund balance, and unassigned fund balance.

Kind then explained the meeting packet contains a copy of a draft resolution establishing fund balance policies as required by GASB 54. The memorandum and draft resolution have been approved by the City's auditor. The resolution classifies the four Funds listed above as follows: General Fund – unassigned; Park Special Revenue Fund – restricted; Stormwater Special Revenue Fund – committed; and, Bridge Capital Project Fund – committed.

Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 26-11, "A Resolution Establishing Fund Balance Policies as Required by GASB 54" subject to changing "General Fund: Maintain 35% to 50% of the total General Operating Fund expenditures." to "General Fund: On December 31 of each year, maintain 35% to 50% of the total General Operating Fund expenditures budgeted for the following year."

Councilmember Fletcher stated the amendment is intended to define what the benchmark is. During the course of a year the General Fund balance will drop below the 35-50% goal.

Motion passed 5/0.

K. Year-End Fund Transfers

Mayor Kind explained that each year Council approves year-end fund transfers. The following transfers were included in the budget.

- \$10,650 from the Sewer Fund (602-43200-720) to the General Fund (101-39202) to reimburse for administrative expenses
- \$1,650 from the Stormwater Fund (502-43200-720) to the General Fund (101-39203) to reimburse for administrative expenses
- \$20,000 from General Fund (101-49000-500) to the Bridge Fund (403-39200) to build up the Bridge Fund
- \$15,000 from the Marina Fund (605-49300-720) to the General Fund (101-39201) as an interfund operating transfer

Kind noted the meeting packet includes a copy of each of the budgets through October 31, 2011, for the City's Bridge Fund, General Fund, Marina Fund, Park Improvement Fund, Sewer Fund, and Stormwater

Fund. A copy of the October Cash Summary Report approved on the consent agenda is also included in the packet.

Kind explained that she and Councilmember Fletcher, as the members of the Administrative Committee, have reviewed the financials and believe there are funds to make the budgeted transfers. They recommend Council approve the transfers.

Fletcher moved, Rose seconded, approving the 2011 year-end budgeted fund transfers. Motion passed 4/1 with Page dissenting.

L. Resolution 25-11, Setting Dates for 2012

Mayor Kind explained that when she and Zoning Administrator/Clerk Karpas were preparing the meeting packet it became apparent that four of the regular Council meeting dates on Tuesday in 2012 and the first meeting in 2013 would have to be changed to a different day of the week. The changes would be needed because of party caucuses (February), Night to Unite (August), Election Day (November) and New Year's Day (January 2013). Since three of these conflicts occur every election year, it might be prudent for the Council to consider changing the regular council meeting day to first Thursdays of the month which has typically been an alternate day of the week. The meetings also could be changed to the first Wednesdays.

Zoning Administrator/Clerk Karpas noted that the Deephaven has a Committee meeting in the Council Chambers on the first Wednesday of the month. But the Committee could change its meeting schedule to accommodate the Greenwood Council if it wants to meet on the first Wednesday of the month.

Mayor Kind noted that in 2012 the first Wednesday of July is July Fourth so that would have to be changed if the council decides to go with first Wednesdays. If the regular meeting day is changed to Wednesday it would eliminate the need to change at least three meeting dates every other year to accommodate Night to Unite and election activities. She noted the meeting packet contains a copy of a meeting schedule with Council meetings on the first Tuesday of the month and another with them on the first Thursday of the month. She distributed a third option with them being on the first Wednesday of the month.

Councilmember Page stated the Lake Minnetonka Conservation District (LMCD) meets on Wednesday evenings twice a month. Councilmember Fletcher asked if it meets on the first Wednesday. Councilmember Rose stated the Excelsior Fire District (EFD) Board regular meetings are on Wednesdays.

Mayor Kind stated the LMCD meets on the second and fourth Wednesdays. She then stated after researching regular meeting dates for local government and other agencies in the larger community she determined there shouldn't be a problem meeting on the first Wednesday of the month.

Councilmember Quam stated he doesn't have any preference for one day over another. He then stated often when a change like this is made something unexpected comes up. So his instinct is to keep the first Tuesday of the month as the regular Council meeting day.

Councilmember Page stated his preference is to keep them on Tuesday.

Councilmember Fletcher stated he doesn't want to meet on Thursdays on a regular basis. He has no problem with meeting on Wednesdays and his fall back is Tuesdays.

Mayor Kind stated it bothers her that every other year at least three meeting dates have to be changed if they are held on Tuesdays.

Councilmember Fletcher stated the City's Planning Commission, EFD and LMCD all meet on Wednesdays. It might make it easier for Councilmembers to schedule other things if a lot of the meetings they attend fall on Wednesdays rather than various days of the week.

Councilmember Quam stated that although he would prefer leaving the meeting day on Tuesday, he will go along with whatever the other Councilmembers want to do.

Mayor Kind stated she favors the first Wednesday of the month.

Fletcher moved. Rose seconded, Adopting RESOLUTION NO. 25-11 (option 3), to change council meetings to first Wednesdays and set other key dates for 2012. Motion passed 5/0.

Mayor Kind noted the meeting schedule will be put on the City's website.

M. Excess Water Flow at 20480 Channel Drive

Mayor Kind explained that this past summer sewer workers noticed water rushing in the manhole near 20840 Channel Drive. While the City Engineer was in the area doing televising for the City of Deephaven this past month he televised the Channel Drive system. He determined that 20840 Channel Drive property has an internal plumbing issue. Clean water, which does not require treatment, is being discharged into the sanitary sewer system at a rate between 3 and 5 gallons per minute. A family currently renting the house allowed Zoning Administrator/Clerk Karpas to enter the home. Karpas was not able to see an obvious plumbing leak from a faucet or toilet. The City Engineer stands by the determination that the problem is coming from an internal plumbing issue at the home. A bank in Florida currently is paying the utility bills for the property. Staff has notified the bank of the situation, but given the recent history of bank responses to issues such as this, Staff believes it would be prudent for Council to take official action to bring the situation into compliance with City ordinances.

Kind noted the cover memorandum for this agenda item includes applicable Sections of the City Ordinance Code. They are Section 310.30 Use of Sewers Subd. 4(a) and 4(d), Section 310.70 Remedies Subd. 1 and Subd. 2, and Section 1205 Definitions: Slug. She explained the Code gives the City the authority to assess the property for the costs for televising the system and to treat the clean water. She stated there is additional information included in the meeting packet on this item.

Zoning Administrator/Clerk Karpas stated from an administrative standpoint he asked how those costs are to be assessed to the property. Mayor Kind explained they would be added to the property's utility bill that is being paid by a bank in Florida.

Councilmember Page asked who the renters are paying rent to. Karpas responded they aren't paying rent at this time because they don't know who to pay it to and no one has asked them to pay rent for months.

Councilmember Quam stated he thinks the costs should be charged to the property.

Councilmember Page stated it almost sounds like a sump pump is discharging the water. He noted the ground level is pretty low near Channel Drive.

Councilmember Quam stated the City Engineer could have determined if the sump pump is running. Mayor Kind explained it was her understanding that the City Engineer did not enter the house. Karpas noted he did not check to see if a sump pump was discharging when he was inside the house.

Quam moved, Rose seconded, approving charging the property located at 20840 Channel Drive for all costs associated with excess clean water flow into the sanitary sewer system, including but not limited to the \$250 cost to televise the system and the \$10.38 daily cost to treat the excess flow of clean water beginning on November 17, 2011. Motion passed 5/0.

8. OTHER BUSINESS

A. December 2011 Payroll Register

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

Councilmember Page stated for the second time in recent history it looks like Councilmember Fletcher is not getting his full payment. Page stated he thought Fletcher should get the same amount that he gets.

Mayor Kind stated that Fletcher has been receiving lower pay every month, not just in recent history. Kind asked Fletcher to explain why he never receives the same amount as Councilmembers Page, Quam and Rose. Fletcher stated he has \$100 of his pay withheld for federal taxes.

Quam moved, Page seconded, approving the December 2011 Payroll Register. Motion passed 5/0.

9. COUNCIL REPORTS

A. Fletcher: Planning Commission, Lake Minnetonka Communications Commission, Excelsior Boulevard Street and Water Project, Xcel Energy LRT Project

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

With regard to the Lake Minnetonka Communications Commission (LMCC), Fletcher explained the LMCC is in franchise negotiations with Mediacom. He noted that he is Chair of the Franchise Renewal Committee. The Committee has talked about hiring a consultant to help them strategize for the negotiations; something he doesn't necessarily agree with. He also noted Mediacom cable television subscribers pay a \$0.85 PEG (public, educational and government) fee each month. That money goes to the LMCC to help fund the LMCC operations. He asked Councilmembers if they think the LMCC is doing enough programming and so forth. He noted there is franchise fee equal to 5 percent of the cable television portion of the Mediacom bill that also goes to help fund the LMCC.

Mayor Kind stated she doesn't want the PEG fee raised. She likes the level of programming provided.

Councilmember Quam stated he doesn't subscribe to cable television from Mediacom. He then stated he hears a lot of complaints about Mediacom and people tell him that they hope the franchise agreement with Mediacom is not renewed. He went on to state that Councilmember Fletcher had stated a survey conducted basically indicated residents in the LMCC community thought the service provided by Mediacom is okay. He asked if Mediacom is required to document complaints received.

Councilmember Fletcher stated if someone has a complaint about or an issue with Mediacom they should first call Mediacom. If they don't get any satisfaction they can call the LMCC at 952-471-7125 and enter 101 and that will forward the call to the Executive Director of the LMCC. The Director will take the complaint and call Mediacom herself. He noted that the Director gets about three complaints per month from unsatisfied cable television subscribers from the entire LMCC community. He then stated it's very unlikely that franchise agreement with Mediacom won't be renewed.

Councilmember Page stated the LMCC would have to demonstrate malfeasance.

Fletcher noted that another cable provider could over build in the LMCC community. But, no provider will do that because of the density in the community. CenturyLink may want to get more aggressive in the video market.

Councilmember Quam stated the only other option to Mediacom cable television service in the LMCC area is satellite service.

Councilmember Page stated he thought there could be more local programming. He would be okay with a modest (\$0.10 - \$0.15) increase in the PEG fee to support that. Councilmember Fletcher stated he could support that. Mayor Kind stated she could support that also.

With regard to the Xcel Energy LRT Project, Fletcher stated there was a meeting on November 4, 2011, with representatives from the Cities of Deephaven, Excelsior, Greenwood, and Minnetonka, the Three Rivers Park District, the Hennepin County Regional Rail Authority (HCRRA), the Minnehaha Creek Watershed District, and Xcel Energy to talk about tree removal that will occur as part of Xcel Energy's power line project. He explained that during the meeting Xcel Energy representatives were asked if they could bury the power line in the ground. The representatives stated it would cost ten times as much to do that. However they did indicate the tree trimming could be the same distance as what is done with the current power lines, if trees are trimmed more frequently once the new higher-voltage line is installed.

B. Kind: Police, Administration, MS4 Update, Historic St. Alban's Bay Bridge, School District Lunch

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind said she attended the November 29, 2011, SLMPD Coordinating Committee meeting. During that meeting SLMPD Chief Litsey reported on the SLMPD's first Citizens Law Enforcement Academy held this fall. The SLMPD is considering hosting one academy each year. She learned that one of the SLMPD Reserve Officers is a resident of Greenwood. The Safety Camp for children the SLMPD offers during the summer is very popular. No decision has been made on the replacement system for the SLMPD's current record management system. Committee Member Lizée approached the Committee about developing a consistent animal control ordinance for the four SLMPD member cities. The cities all get animal control services through the SLMPD. She updated the Committee about the Greenwood Council's decision to continue to get Greenwood's policing services through the SLMPD. During the meeting she did bring up Council's desire to have a SLMPD representative provide an update to Council. The Coordinating Committee agreed that it would be okay for the SLMPD to provide this service to Greenwood on a quarterly basis starting in February 2012.

With regard to MS4 (Municipal Separate Storm Sewer System), Kind explained that on November 10, 2011, she and the Mayors of Deephaven and Woodland attended a meeting about MS4 requirements. Bolton & Menk has completed an inventory of all ditches and ponds that flow into public waters in each of the three Cities. They were provided with a map of each City's ditches and maps to review to ensure

they are correct. She and Engineer Martini reviewed the map for Greenwood and made a few minor corrections to the report. The report will be made available at Deephaven City Hall for people look at.

With regard to the St. Alban's Bay Bridge, Kind stated she decided to research if there was a way to get the Bridge off of the historic list. She contacted Excelsior City Manager Luger to ensure she wasn't checking something that has already been researched. Luger recommended she contact their engineering services provider WSB & Associates. She was informed it would be a waste of her effort and learned the Bridge has been determined to be "eligible." It's not on the historic list, but it does satisfy the requirements for eligibility. There is nothing that can be done to take away the things that classify it as eligible. If something is on the historic list or if it is eligible to be on the historic list it has to be protected. If federal funds are being used Section 106 Rule of federal law regarding historic preservation applies. That means the City would have to prove the Bridge cannot be rehabilitated. The engineer she spoke with at WSB stated that is very difficult but not impossible to prove. If the City uses State bridge bond funds the Army Corps of Engineers would be involved because the Bridge crosses over water. If the Corps is involved then Section 106 Rule applies as well. The WSB engineer is going to draft a memorandum to the City of Excelsior Council and copy the Greenwood Council. In it he will recommend there be a pre-design phase that will cost \$10,000 – \$20,000 (it will be split between the two Cities) to determine what makes the most sense to do. To prove the Bridge can't be rehabilitated or to work with in the confines of the Section 106 Rule. He also will recommend a joint powers agreement be set up for the cost sharing between the two Cities. He thought the safety concern, both the Bridge and the waterway underneath it, is one argument in favor of replacing the Bridge. The engineer found the figure of 1310 motor vehicles using the Bridge on a daily basis to be helpful. That figure is based on information collected when the SLMPD speed trailer was put out near the Bridge. Councilmember Page stated from his vantage point the Bridge has no redeeming historical value other than it crosses water and allows drivers to get from Greenwood to Excelsior.

Mayor Kind stated she attended a quarterly meeting of the mayors of the cities in the Minnetonka School District coordinated by the District's Superintendent on November 23. The Eden Prairie City Manager reported that the Eden Prairie Fire Department has cut its response time from 10 minutes to 5 minutes by having a duty officer stay at the fire stations. That Department is primarily a volunteer paid-on-call organization. She stated she thought the Excelsior Fire District (EFD) had a duty officer as well. Councilmember Fletcher clarified the EFD does have rotating duty officers but they do not stay at an EFD fire station. There is an EFD vehicle that the assigned duty officer drives and the duty officer is required to respond to all calls during their shift. Kind stated she assumed that meant the EFD has quicker response to medical calls because of the duty officer, but it doesn't impact response time to fire calls. Mayor Kind explained that Decision Resources provides survey services. Some of the cities represented at the Mayors' luncheon use it to conduct comprehensive surveys for their respective city every two years.

Kind noted that the Met Council will be doing work on Excelsior Boulevard between Christmas Lake Road and Manor Road between the Christmas and New Year's Day holidays.

C. Page: Lake Minnetonka Conservation District

Councilmember Page reported on Lake Minnetonka Conservation District (LMCD) activities. He stated the LMCD Board held a work session during which it adopted a resolution to agree to partner with the Minnehaha Creek Watershed District (MCWD) to develop an Aquatic Invasive Species (AIS) management plan. During that session the LMCD Board approved the process to purchase a new Eurasian Watermilfoil (milfoil) harvester. Some people volunteered to work with companies that manufacture harvesters to see if there is any beneficial customization that can be made, such as being able to spread chemicals from the back.

Page then state there is an LMCD AIS Task Force meeting scheduled for December 16. The hope is to receive the final three-bay milfoil herbicide treatment report for 2011 from the Army Corps of Engineers at that time.

Page went on to state there was a LMCD Public Safety Committee meeting on December 5. During that meeting there was discussion about the problems there are with bow fishing. Some of the municipalities surrounding the Lake have jurisdiction out into the water. The City of Orono considers the instrument used in bow fishing to be a dangerous weapon. There is a conflict between what is considered to be an acceptable form of fishing and Orono's Ordinance. The Committee discussed the idea of creating a common ordinance that would regulate the distance from a swimming area that bow fishing could occur.

D. Quam: Roads & Sewer, Minnetonka Community Education

Councilmember Quam stated he has nothing new to report.

E. Rose: Excelsior Fire District

Councilmember Rose stated he attended an Excelsior Fire District (EFD) Board work session on November 2 and a regular Board meeting on November 16. He explained during the November 16 meeting the Board discussed replacing Engine 22 with a new tanker/pumper truck. Engine 22 is scheduled for replacement in 2013. The replacement cost is estimated to be around \$500,000.

Mayor Kind asked what the cost difference is between buying new and rehabbing the current truck.

Councilmember Rose stated from his vantage point it would be cheaper to rehab Engine 22.

Mayor Kind asked if Council will have an opportunity to comment on this before any formal action takes place.

Councilmember Fletcher asked Councilmember Rose what the condition of Engine 22 is. Rose stated Engine 22 is 27 years old. It has over 50,000 miles on it. Fletcher asked if rehabilitation is being considered or replacement the only thing being considered. Rose stated the committee for this has ruled out rehabilitation.

Councilmember Quam stated the replacement of Engine 22 is part of the EFD's long-range plan. He asked if EFD Chief Gerber supports purchasing a new tanker/pumper truck as a replacement for Engine 22. Councilmember Rose stated he does. Quam questioned why members of this Council think they know what is needed better than Gerber. Quam stated the EFD hired a professional and it should expect him to do his job.

Councilmember Page stated the City of Dassel has the same scenario. It is also analyzing all options.

Councilmember Fletcher stated he is generally a supporter of spending money on public safety. He then stated he thought the public safety facility bonds will be paid of in 2023. From his vantage point a case could possibly be made to delay major equipment purchases until the bonds are paid off. He noted he is not opposed to considering rehabilitation versus purchase or at least delaying the purchase.

10. ADJOURNMENT

Page moved, Rose seconded, Adjourning the City Council Regular Meeting of December 6, 2011, at 10:21 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder