

GREENWOOD CITY COUNCIL MEETING
Wednesday, February 6, 2013, 7:00 P.M.
Council Chambers, 20225 Cottagewood Road, Deephaven, MN 55331

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

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

Members Present: Mayor Kind; Councilmembers Cook, Fletcher, Quam and Roy

Others Present: City Attorney Kelly (departed the meeting at 9:49 P.M.), City Zoning Administrator/City Clerk Karpas, City Engineer Martini (departed the meeting at 8:15 P.M.)

Members Absent: None

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

2. CONSENT AGENDA

Mayor Kind reviewed the items on the consent agenda.

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

- A. January 2, 2013 City Council Meeting Minutes**
- B. December 2012 Cash Summary Report**
- C. January 2013 Verifieds, Check Register, Electronic Fund Transfers**
- D. February 2013 Payroll Register**

Motion passed 5/0.

3. MATTERS FROM THE FLOOR

There were no matters from the floor presented this evening.

4. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

- A. South Lake Minnetonka Police Department Quarterly Update**

Mayor Kind noted South Lake Minnetonka Police Department (SLMPD) Deputy Chief Dave Pierson is present this evening to provide Council with a SLMPD quarterly update.

Deputy Chief Pierson noted that Lieutenant Neururer, who is in charge of the investigative unit, is also in attendance this evening to talk about investigations in 2012. He highlighted some incident statistics and citation statistics in Greenwood for 2012. (A copy of that information was included in the meeting packet). He stated he was pleased that 19 people in Greenwood called the SLMPD about suspicious activities in 2012 and noted that resident vigilance deters crime.

Lieutenant Neururer mentioned the burglaries that occurred in Greenwood in January 2012 as well as the one that occurred in the City of Tonka Bay. The individual responsible for the burglaries was also responsible for numerous burglaries in multiple jurisdictions. That individual was arrested on February 6, 2012. That individual is currently spending time in the Minnesota Correctional Facility located in Lino Lakes and he will be there until 2017. There were also other burglaries in the SLMPD community in 2012 but they were in other SLMPD member cities. One of those also involved multiple jurisdictions. He highlighted that case. There were also two individuals involved in seven burglaries in May 2012 in the SLMPD area. Those three cases took up a lot of time. He noted the SLMPD is in the process of closing out its 2012 cases. All jurisdictions have to do that. He stated he anticipates the SLMPD's clearance rate will again be very high for 2012. He explained there are some cases that won't be solved because there are no leads and stolen property for them has not shown up in pawn shops. He stated that 2012 was a relatively busy year for investigations in the SLMPD community.

Mayor Kind asked Lieutenant Neururer what the SLMPD's clearance rate for the year was. Neururer stated he thought it was 75 to 78 percent but wasn't sure, and he noted it was the highest in the Lake Minnetonka area. Kind stated the SLMPD's clearance rate is very impressive and that she thought it was one of the highest in the State of Minnesota.

Lieutenant Neururer stated that Patrol Officer Michael O'Keefe served a one-year stint in the rotating detective position from July 1, 2011 to June 30, 2012. Patrol Officer Christina Olson rotated into that position effective July 1, 2012.

In response to a comment from Mayor Kind, Lieutenant Neururer explained that one of the burglars he talked about earlier sold some of the gold he stole to places that buy jewelry that people no longer want. The investigators went to a number of jewelers asking if they purchased any gold from the burglar. Kind asked if purchaser is out the money when law enforcement confiscates things that had been purchased from a burglar. Neururer stated that varies based on the ordinance, but most likely the purchaser (e.g., a pawn shop) would be out the money. Neururer noted he would like the SLMPD member cities to have an ordinance that requires businesses to hold on to merchandise they purchased for some defined period of time. Kind stated there is currently is not a business in Greenwood that buys gold. Councilmember Fletcher stated he would support having such an ordinance in place. Kind asked Neururer to email the model ordinance to Zoning Administrator/Clerk Karpas.

Councilmember Quam asked Lieutenant Neururer to tell Council how the investigators were able to catch the burglar in February 2012. Neururer stated a notice was sent out to other jurisdictions that were investigating similar crimes. The Edina investigative unit called because of similar crimes. A number of jurisdictions established surveillance on the most likely suspect. The suspect was allowed to commit another crime so there was a reason to arrest him and charge him. After he was charged, law enforcement searched his house and found other stolen items.

Quam then asked if people were cited for the barking dog offenses listed on the report in the council packet. Lieutenant Neururer stated that he was not sure, but that it was unlikely that citations were issued for barking dogs.

Councilmember Fletcher asked if there is anything else the SLMPD wants Greenwood to consider. Deputy Chief Pierson stated it would be an immense help to the SLMPD if Greenwood would approve a social host ordinance. Pierson explained parties seem to move from community to community. The ordinance would help in educating people and in holding them accountable. Fletcher stated he is not a fan of having feel-good ordinances. Fletcher asked if the SLMPD could provide Council with examples of

where it was helpful to have a social host ordinance in terms of prosecution or deterrence. Pierson stated the SLMPD would do that. Pierson stated the City of Chaska has such an ordinance and it has proven to be helpful. Mayor Kind asked if Fletcher was asking for examples in the SLMPD's jurisdictional area or from other cities such as Chaska. Fletcher stated he would be interested in examples from Chaska, and if there are examples for Greenwood or the other SLMPD member cities that would be even better. Councilmember Quam stated he would be interested in knowing how many people were charged and convicted in Chaska because it has a social host ordinance. Pierson noted that the City of Minnetonka also has a social host ordinance. Quam stated he would be interested in information about Minnetonka as well.

Deputy Chief Pierson stated the social host ordinance is not so much about punishment as it is deterrence. It would also give the SLMPD something to use when under age people repeatedly drink alcohol at the same residence.

Deputy Chief Pierson stated a final draft of the common animal control ordinance should be ready for review in the near future.

B. 2013 Inflow / Infiltration Grant Application

Mayor Kind stated Council is being asked to consider if it wants to continue the application process for the Metropolitan (Met) Council grant program to complete the City's Inflow / Infiltration (I/I) project in 2013.

Engineer Martini stated the City has an opportunity to apply for another I/I grant from the Met Council to help fund storm sewer improvements. He explained that the City has been informed it is eligible for up to \$19,728 but no more than 50 percent of the eligible costs. The eligible amount is a little less than 50 percent of the projected costs. If Council decides it would like to move forward with the I/I project in 2013 and accept the grant funds, the City has to submit a signed grant agreement to Met Council by March 2, 2013. He noted the meeting packet contains a copy of a draft resolution authorizing that.

Quam moved, Fletcher seconded, Adopting RESOLUTION NO. 04-13, "A Resolution Authorizing Application to the Metropolitan Council for a Grant from the Municipal Infiltration / Inflow Grant Program for the City of Greenwood's 2013 Sewer Improvements Project." Motion passed 5/0.

5. PUBLIC HEARING

A. None

6. UNFINISHED BUSINESS

A. Excelsior Boulevard Watermain Project

I. Greenwood / Excelsior Agreement for Watermain Option 1

Mayor Kind explained on June 6, 2012, the City received a petition from several Excelsior Boulevard residents requesting to hook up to the City of Excelsior's municipal water system as part of the upcoming Metropolitan Council Environmental Services (MCES) sanitary sewer forcemain project. As a result of the petition the Council ordered a feasibility report prepared by the City Engineer for a watermain project to the petition zone (Option 1). The report was reviewed by the Planning Commission and found to be in compliance with the City's Comprehensive Plan. During its January 1, 2013, meeting Council held a public hearing for Option 1. Everyone who spoke during the public hearing was in favor of the project.

Kind noted the meeting packet contains a copy of an updated timeline showing the next steps in the process. She explained to keep on track with the timeline, during this meeting Council needs to consider approval of two Excelsior / Greenwood Agreements (a copy of the agreements were included in the meeting packet). One is a Municipal Water Service Agreement for municipal water service provided by Excelsior to Greenwood. The other is a Water Service Expansion Agreement which is more specific to this water system expansion. Council must also consider approval of a resolution to order the Option 1 improvement and preparation of plans (a copy was included in the packet).

Kind explained the Option 2 project which would have extended watermain along Excelsior Boulevard to interconnect the Excelsior and the City of Shorewood municipal water systems has been taken off the table. Shorewood Staff determined there are other lower-cost options to create that interconnection. Therefore, the Shorewood Council decided not to pursue Option 2. Because of that, Council needs to determine two things.

1. What the size of the watermain that serves the Option 1 residential properties should be. The current feasibility study calls for an 8-inch diameter watermain. The cost to increase the watermain from 8-inch diameter to a 12-inch diameter is estimated to be approximately \$21,190. According to the City Engineer, 12-inch watermain will be needed if the system were to be expanded in the future. Therefore, the City's policy could be that any new watermain shall be 12-inch with costs to be paid by the benefitting property owners as the line is extended. If Council decides to have that policy the draft Resolution 05-13 will need to be amended accordingly. (A copy of the draft resolution was included in the meeting packet.)
2. Dan Fick with MCES has related that full-width road reconstruction may not be needed without the watermain extension going all the way to the Shorewood border. Mr. Fick wants to know if the City wants to pay to extend the concrete curb and gutter to the east of Maple Heights Road. The cost to add curb and gutter is estimated to be \$15,000. In the past the City's policy has been to add concrete curb and gutter only if it is requested and paid for by the abutting property owners. In this situation, a case could be made that the continuing curb and gutter would provide continuity of the curb and gutter MCES will be installing. If the Council decides to extend the concrete curb and gutter to the east of Maple Heights Road, the decision can be made by a motion.

Engineer Martini stated for the potential Option 2 interconnect project it was determined the watermain would have to be 12 inches in diameter. If the watermain for Option 1 were to be extended in the future it is possible there would be fire flow issues if the watermain is only 8-inch. He noted that an 8-inch watermain is sufficient to serve the petition zone. What is not known is when that watermain would be extended, if ever. Depending on the length of the extension it may require that the 8-inch watermain be upsized to 12-inch. He stated it is up to Council to decide if it wants to take a longer term view of watermain extension.

Councilmember Quam stated the first thing Council needs to determine states "... 12-inch watermain will be needed if the system were to be expanded in the future. Therefore, the City's policy could be that any new watermain shall be 12-inch with costs to be paid by the benefitting property owners as the line is extended." He asked what that means. Mayor Kind explained it means that if Council decides the watermain needs to be 12-inch for the petition zone, the benefitting properties in the petition zone would pay for the 12-inch watermain. If there is future extension of that watermain, those benefitting properties would pay for 12-inch watermain. The City's policy would be if watermain is going to be extended it would be extended with a 12-inch watermain. Quam noted that the petitioners have been quoted the cost

for 8-inch watermain. Kind stated they were given a quote for 12-inch in the beginning. Engineer Martini clarified the feasibility study is for 8-inch watermain. Quam asked what size watermain was discussed during the public hearing for Option 1. Kind stated it was 8-inch because that is what is included in the feasibility study.

Mayor Kind noted that the public hearing was not for assessments. That still needs to occur.

Councilmember Fletcher stated that as part of the Option 1 project that portion of Excelsior Boulevard will be reconstructed in 2013/2014. He then stated as part of any watermain extension project the part of the roadway disturbed needs to be reconstructed. He asked what the projected life of the 2013/2014 reconstructed Excelsior Boulevard is. Engineer Martini responded at the end of the project that segment of Excelsior Boulevard would have a minimum life of 20 years with proper maintenance. Fletcher stated from that the next likely time Excelsior Boulevard would be torn up in that vicinity would be about 30 years from now. Therefore, it does not make sense to him to install a 12-inch watermain as part of this project for a future watermain expansion 30 years into the future.

Mayor Kind asked who should pay for the upsizing to 12-inch watermain for the petition zone if the all of the properties in Greenwood were to eventually to have access to municipal water.

Councilmember Fletcher noted that the owners of the properties past the petition zone did not have any interest in extending watermain.

Engineer Martini stated that if the 8-inch watermain that is needed to serve the petition zone is installed as part of this project and then if it needs to be upsized to a 12-inch watermain to extend it in the future that cost to upsize it would be assessed as part of that watermain extension to those future benefitting properties. That added cost for the upsizing will dictate in part what size of an extension project there would have to be to make it feasible.

Mayor Kind stated if Council is forward thinking she thought it should make sure the watermain is the size it wants it to be now so that it will not be cost prohibitive to extend the watermain in the future.

Engineer Martini explained that typically a developer is required by a city to extend watermain all the way through the to-be-developed property so it is available for the next developer to extend from. There would be a requirement to have the appropriate size watermain installed. That cost is reimbursed through connection charges going forward. Each subsequent developer would have a similar burden to provide for future development.

Councilmember Fletcher noted that land past the petition area is already developed.

Engineer Martini stated if the watermain is going to be extended in the future, from his perspective 12 inches would be the appropriate size.

Councilmember Cook stated he is not a big fan of burying something into the ground just because it may be needed 20 to 30 years from now. The 8-inch diameter watermain serves the needs of the petitioners. He then stated if watermain were to be extended one more block in the future, the 8-inch watermain would probably be sufficient. If it were to again be extended a larger distance it should be upsized at that time.

Councilmember Fletcher stated that the upsize cost would be about \$1,500 to \$1,800 for residential properties in the petition zone. He is not sure what the additional cost would be for the commercial properties.

Mayor Kind stated the 12-inch watermain cost is what the petitioners signed on for with their original petition.

Councilmember Cook stated if the petitioners will not be surprised, he recommends installing a 12-inch watermain. If the additional cost would jeopardize the petition zone project he recommends installing an 8-inch watermain.

In response to a question from Councilmember Quam, Engineer Martini stated the petitioners initially stated they would be willing to be assessed for up to a 12-inch watermain.

Councilmember Fletcher explained the City Attorney advised that the petition need to be resubmitted to indicate that the petitioners were supportive of installing up to 12-inch watermain. The first petition did not include that. He stated it is his understanding that the petitioners would prefer installing 8-inch watermain because that is all that is needed to serve the petition area.

Councilmember Quam asked if there is any justification for the City paying some of that upsizing cost being the City would like to have 12-inch watermain installed for future development. Mayor Kind stated she did not think there is. Kind then stated she thought residents would come before Council and question why they should be paying for watermain extension when they are not getting any water. Quam stated maybe they would.

Quam asked if the watermain could go down Maple Heights Road so it could serve all of the properties along Maple Heights Road.

Councilmember Fletcher stated earlier on when this was being considered he did do a survey of property owners along Maple Heights Road. At that time there was no interest in having municipal water made available to them.

There was agreement that the watermain would have to be 12 inches if it went down Maple Heights Road.

Councilmember Quam stated from his vantage point extending watermain down Maple Heights Road would be more likely than extending it east of Maple Heights along Excelsior Boulevard.

Attorney Kelly explained the feasibility study provides a price for the extension of 8-inch watermain. The petition indicates the property owners are willing to entertain up to 12-inch watermain. He noted the public hearing was held on the cost of 8-inch watermain. He stated either the City has to start over [modify the feasibility report for 12-inch watermain and then hold another public hearing on it] or go with the 8-inch watermain. Kelly stated property owners are entitled to know what the estimated cost within reason will be. He then stated it is one thing to have change orders that don't materially affect the cost. Upsizing to 12-inch watermain would be a material change.

Mayor Kind stated she does not think there is time to start over and maintain the timeline.

Councilmember Cook stated from his perspective he did not think 8-inch versus 12-inch watermain is all that serious for this small segment of extension. If a decision is made to extend watermain further in the future, what is serious is that how big that should be and how long the extension is. Having an 8-inch

segment of watermain in the middle will not affect what size watermain a future extension should be. He explained if the hydraulics work the future watermain extension could be a larger size than the proposed to be installed 8-inch watermain.

Engineer Martini stated at such time there is consideration to extend watermain further there would have to be an evaluation of what size would be needed.

Mayor Kind stated from her perspective the question about watermain size has been answered. It needs to be 8 inches in order to stay on track with the MCES timeline.

Kind then stated the next decision Council needs to make is if the City should extend curb and gutter to the east of Maple Heights Road for continuity of the curb and gutter MCES will be installing.

Engineer Martini explained when the watermain extension along Excelsior Boulevard all the way to the Shorewood boarder was being considered all of that segment of Excelsior Boulevard would have been reconstructed. Now that the watermain will not be extended that far, MCES may not have to tear up the full-width of the roadway to install forcemain. MCES will completely reconstruct the south side of the roadway including curb and gutter. He stated from his perspective having curb and gutter on both sides of the roadway would make sense. He anticipates the cost to install only curb and gutter would be closer to \$10,000. He explained that would be a City cost.

Councilmember Fletcher asked if there is an engineering benefit to having curb and gutter or would constructing it in that gap area be for cosmetic purposes. Engineer Martini stated curb and gutter helps to control stormwater runoff. It would also provide an aesthetic value and a uniform look. Councilmember Quam asked if there is a strip in that area where there are no homes and stormwater runs off the roadway and flows into Lake Minnetonka. Martini stated there would be an opportunity to control how the stormwater flows rather than it letting it just free flow. Martini explained Staff is working with the Minnesota Department of Transportation (MnDOT) to shape the roadway so it redirects stormwater flow towards the State Highway 7 ditch and reduces some of the erosion issues.

Fletcher then asked if there are currently stormwater issues along the segment of roadway from Maple Heights Road to the City limits that curb and gutter could help mitigate. Engineer Martini responded the majority of issues being focused on are west of Maple Heights Road where there are residential properties. There have been no stormwater issues east of Maple Heights Road that have been brought to Staff's attention.

Councilmember Cook expressed concern that this is being somewhat piecemealed with MCES. He suggested working with MCES on a cooperative agreement. He asked if the City has received a draft of an agreement. Engineer Martini stated he has seen a draft cooperative agreement and that he passed it on to Mayor Kind. Martini explained the Option 1 versus Option 2 decision had to be made before the cooperative agreement could be finalized. MCES is working on the costs and the breakout for the local units of government. Those costs will be included in the agreement. Martini noted the cooperative agreement is scheduled to be finalized by the end of February. Mayor Kind noted that the timeline to finalize the agreement is February 22 so a special Council meeting will be necessary to consider it.

Mayor Kind expressed her support for extending curb and gutter so there is a look of continuity on both sides of Excelsior Boulevard. Councilmember Cook agreed with that and stated curb and gutter define the edge of the roadway and it holds the edge of the roadway where it is. Councilmembers Quam and Roy expressed their support for curb and gutter. Councilmember Fletcher stated that he is ambivalent about it.

Councilmember Fletcher stated if curb and gutter is constructed in that gap area he thought it should be funded out of the roadway fund. Mayor Kind agreed.

Mayor Kind suggested Attorney Kelly walk Council through the two Agreements he drafted between Greenwood and Excelsior.

Attorney Kelly explained some properties in the City already receive municipal water service from Excelsior but no one can find any type of written agreement about that. Therefore, he drafted a general agreement [the Municipal Water Service Agreement] addressing Excelsior providing water service to Greenwood residents/properties. The second agreement [the Water Service Expansion Agreement] addresses the watermain expansion Council has been discussing. That Agreement anticipates attaching the feasibility study as an exhibit to define the project. Once the project is paid for most of the Expansion Agreement evaporates in favor of the Service Agreement. He noted Excelsior has not signed the Agreements. He explained the Service Agreement allows for Greenwood to ask for watermain extensions in the future provided Excelsior's water system can sustain the expansion and provided Greenwood bears the cost. One reason that provision was included is Excelsior has a static system. Excelsior does not have big water projects planned.

Kind asked if Greenwood is going to be paying MCES or Excelsior for the watermain extension. Engineer Martini stated Excelsior will pay MCES for the extension because it is Excelsior's water system and the City will pay Excelsior for its share of the costs. Martini stated it's his understanding Excelsior has other watermain costs associated with the MCES project. There was consensus to leave the language about Greenwood paying Excelsior in the Expansion Agreement at this time.

Kind stated page 2 paragraph 12 stipulates triggers that will require properties abutting the service expansion area (SEA) to hookup to the watermain. She noted she favors having no triggers. Councilmember Fletcher stated there is a similar clause in the Municipal Water Service Agreement Item 10.

Attorney Kelly stated he thought these needed to be considered. He explained the Municipal Water Service Agreement anticipates that to the extent that the EMWP is expanded [per Greenwood's request] there is an expectation that the abutting property owners must connect. That has been a basic premise of sewer and water expansion. That helps fund the cost for extending water service.

Mayor Kind stated if Greenwood pays for the watermain expansion upfront there is no need for Excelsior to recoup any costs.

Councilmember Cook stated he would anticipate Excelsior to object to not having a hookup timeframe in the Agreement because it would be losing monthly revenue. That revenue helps pay the cost of managing and maintaining Excelsior's system. He recommended that requirement be consistent in the two Agreements.

Mayor Kind stated from her perspective if that language stays in the Agreement then Council needs to agree to what the hookup trigger points are. She noted that she does not agree with drawing a building permit being a trigger point. The private well trigger point makes sense to her. Councilmember Fletcher suggested changing the end hookup date to May 1, 2033, from May 1, 2023.

Councilmember Quam stated Excelsior is going to want to collect water revenues.

Attorney Kelly suggested inserting the last sentence in the Municipal Water Service Agreement which states *“In conjunction with any expansion of water service, Greenwood shall by ordinance establish deadlines for abutting properties to connect to the water main and become a paying customer of the EMPW system.”* in the Expansion Agreement. There was Council consensus to replace the triggers statement with this statement.

Councilmember Fletcher stated it is very possible the final Agreements will be different than what Council has this evening. He assumes Council is being asked to conceptually approve the Agreements this evening. He noted there are blanks that need to be filled in in the Expansion Agreement. Mayor Kind stated some of the blanks need to be filled in by the City Engineer before the Expansion Agreement is forwarded to Excelsior for review and comment.

Councilmember Quam noted that the final Agreement could be considered by Council during the upcoming special meeting.

Fletcher moved, Cook seconded, approving conceptually the Excelsior-Greenwood Water Service Expansion Agreement Option 1 for Excelsior Boulevard, Greenwood, subject to changing 12-inch watermain to 8-inch watermain, replacing *“Greenwood shall by ordinance require all properties abutting the SEA to Connect to the EMPW upon either (1) drawing of a building permit related to the abutting property, for any reason, (2) private well failure necessitating drilling of a new ground water well, or (3) May 1, 2023, which every comes first, whereupon abutting properties shall connect to the EMPW watermain and become customers of the EMPW system”* with *“In conjunction with any expansion of water service, Greenwood shall by ordinance establish deadlines for abutting properties to connect to the water main and become a paying customer of the EMPW system.”* and the City Engineer filling in the blanks. Motion passed 5/0.

II. Greenwood / Excelsior Agreement for Water Services

This was discussed as part of the previous item Excelsior-Greenwood Water Service Expansion Agreement Option 1 for Excelsior Boulevard, Greenwood.

Fletcher moved, Quam seconded, approving conceptually the Excelsior-Greenwood Municipal Water Service Agreement as presented. Motion passed 5/0.

III. Ordering Excelsior Boulevard Watermain Project Option 1 Improvement and Preparation of Plans

This was also discussed as part of Item 7.A.I Excelsior-Greenwood Water Service Expansion Agreement Option 1 for Excelsior Boulevard, Greenwood.

Fletcher moved, Cook seconded, Adopting RESOLUTION NO. 05-13, “A Resolution Ordering Improvement and Preparation of Plans for Excelsior Boulevard Watermain Project Option 1.” Motion passed 5/0.

Cook moved, Quam seconded, authorizing the City Engineer to include the extension of concrete curb and gutter to the east of Maple Heights Road to the City border in the Metropolitan Council Environmental Services’ (MCES) plans as part of the road restoration after the completion of the sanitary sewer forcemain project, with the City paying the extra cost out of the 2013 roadway improvements budget. Motion passed 5/0.

It was noted that February 22, 2013, is a Friday and there is need for a special Council meeting that day to finalize the cooperative agreement with MCES and the two Agreements with Excelsior. There was ensuing discussion about when to hold the special meeting. The special meeting will be scheduled for February 20 or 27 and Zoning Administrator/Clerk Karpas will let the Council know which date is chosen after consulting with Mayor Kind.

Engineer Martini departed the meeting at 8:15.

7. NEW BUSINESS

A. **First Reading: Ordinance 214, Amending Code Section 1155 Variances and Section 1176 Shoreland Management District Regarding Impervious Surface Requirements**

Mayor Kind stated Ordinance 214 and Ordinance 215 (the next item on the agenda) will be discussed together.

Kind explained the meeting packet contains a copy of the original draft of Ordinance 214 presented to the Planning Commission, a copy of the revised Ordinance showing the original and modified text, and lastly a clean copy of the revised Ordinance regarding impervious surface requirements. The packet also contains similar copies of Ordinance 215. The packet also contains a copy of a memorandum from Attorney Kelly regarding impervious surface. She explained that during the recent GTS Seminar the City hosted it was learned that cities cannot demand that applicants abandon a legal nonconforming use as a condition to obtaining a variance. However, cities can require applicants to remove *illegal* nonconforming uses. Kelly's memo addresses the differences between those two things. The packet contains language proposed by Kelly as well as language proposed by Mayor Kind. She noted her proposed language would apply to illegal nonconforming hardcover with any variance application; not just to a hardcover variance application.

Councilmember Quam suggested the statement in Mayor Kind's proposed language "... *or by showing the excess was approved by the City*" be included in whatever language is adopted.

Attorney Kelly stated during the discussion at the GTS Seminar attention was drawn to the fact that if a person has a grandfathered use the City cannot force them to give it up as a condition to something that the person might otherwise be entitled to. If a person has a use that is not grandfathered, it is an illegal use which is what much of the plastic hardcover probably is, the City can require the person to give that up as a condition to obtaining a variance. It makes sense to impose a standard where the applicant needs to show clear evidence that the illegal use was in place before the shoreland management ordinance was established (which established impervious surface regulations in the city), or show that the City approved the excess hardcover.

Councilmember Roy stated when he and his wife applied for a permit to remodel their home they submitted their landscaping plans with their permit application. That included putting down plastic ground cover. He questioned if he just heard that plastic landscaping ground cover is illegal. Mayor Kind stated it is only illegal if it results in exceeding the maximum amount of hardcover allowed. Zoning Administrator/Clerk Karpas clarified that woven plastic is considered pervious.

Councilmember Quam asked how someone could prove the impervious surface coverage was in place before 1992. 1992 is a benchmark in time when impervious surface regulation went into effect. If the coverage was in place before then, it is grandfathered in. Attorney Kelly explained that if applicant is asking for a variance, and they exceed the maximum hardcover allowed (30 percent), then it is up to the

applicant to prove the plastic ground cover was in place prior to 1992 (grandfathered in) or the City had approved the exception. If neither can be proved, the applicant will have to come into compliance with the hardcover restriction by removing the plastic ground cover. It can be replaced with woven plastic.

Mayor Kind stated the proposed amendment is being considered to address situations where property owners want to expand their structure hardcover to an amount equal to their current structure hardcover plus their plastic ground cover.

Councilmember Cook stated Attorney Kelly's proposed language appears to have a different definition of structural hardcover than the proposed Ordinance amendment. Kelly has driveways as structural hardcover. Kelly noted the City requires driveways to be a hard surface, noting Class 5 rock is considered hard surface. Kelly explained that he put driveways in parenthesis and in italics to encourage Council to think about that. Cook explained the amended Ordinance the Planning Commission is recommending has driveways as non-structural. Zoning Administrator/Clerk Karpas explained the Commission was trying to separate building permit and non-building permit items. Cook explained the Planning Commission was attempting to address the desire not to build buildings where solid plastic ground cover, sidewalks and driveways are located. Cook stated there needs to be a way to characterize different types of hardcover.

Zoning Administrator/Clerk Karpas stated the Planning Commission did not want at-grade hardcover to be exchanged for structural (above-grade) hardcover with regard to variances. Councilmember Quam asked why not. Councilmember Quam noted the hardcover Ordinance is about stormwater runoff not about what the building looks like. Karpas stated that at-grade impervious surface is different than above-grade impervious surface and that people are wanting to, for example, remove a portion of their driveway and expand their home by the amount of the driveway surface removed. He explained that it could have a visual impact based on where the new hardcover will be located.

Mayor Kind noted this issue is about nonconforming hardcover, and clarified that if a property owner complies with the hardcover regulation, this ordinance would not apply.

Councilmember Fletcher stated a person can have as much plastic ground cover as they want provided they do not exceed 30 percent impervious surface.

Councilmember Quam questioned if this ordinance would mean that no landscaping hardcover could be exchanged for house hardcover.

Zoning Administrator/Clerk Karpas clarified the ordinance is only for properties that are over the 30 percent maximum hardcover.

Zoning Administrator/Clerk Karpas stated in the not too distant past the City granted conditional use permits (C.U.P.) to have hardcover up to 40 percent. He asked if that property would be grandfathered in if they requested another variance. Mayor Kind stated that would be a *legal* nonconforming impervious surface because it was approved by the City.

Attorney Kelly stated in the redlined copy of the Ordinance the words "Nonstructural hardcover" are stricken yet they are found in two other places. Mayor Kind suggested changing "nonstructural hardcover" to "impervious landscaping" in all cases.

There was Council consensus to change "nonstructural hardcover" to "impervious landscaping."

Mayor Kind suggested changing in Subd. 4.1 which reads “*Variance applicants with existing nonconforming impervious surface coverage (hardcover) shall be required to reduce the amount of hardcover by 1.5% for each 1% of hardcover added.*” and replacing it with either her or Attorney Kelly’s proposed language or variation thereof. Councilmember Fletcher stated he would prefer to use the language proposed by Kind.

There was Council consensus to replace Subd. 4.1 with the language proposed by Mayor Kind for the second reading of the Ordinance. [Variance applicants with impervious surface coverage (hardcover) in excess of 30% shall have the burden of proof to establish that the excess is a *legal* nonconforming use by showing evidence that the hardcover has been in existence since before the shoreland management ordinance was adopted (December 1992) or by showing the excess was approved by the city. If no such evidence exists, then the hardcover in excess of 30% shall be deemed an *illegal* nonconforming use, and the city council may require the property owner to reduce hardcover as a condition of variance approval.]

Mayor Kind explained that the Planning Commission deleted “*reduction of plastic landscaping.*” She asked what the rationale for doing that was.

Councilmember Cook said the Planning Commission questioned why there is a need to identify the conditions in the Ordinance that might be imposed when a variance is granted. Attorney Kelly noted that Council has broad authority. Cook stated based on that broad authority Subd. 4.3 could be deleted entirely.

There was Council consensus to delete Subd. 4.3.

Fletcher moved, Cook seconded, adopting the first reading of Ordinance 214 amending Code Section 1155 Variances and Section 1176 Shoreland Management District regarding impervious surface requirements which was presented during a public hearing and recommended by the Planning Commission subject to replacing Subd. 4.1 with “Variance applicants with impervious surface coverage (hardcover) in excess of 30% shall have the burden of proof to establish that the excess is a *legal* nonconforming use by showing evidence that the hardcover has been in existence since before the shoreland management ordinance was adopted (December 1992) or by showing the excess was approved by the city. If no such evidence exists, then the hardcover in excess of 30% shall be deemed an *illegal* nonconforming use, and the city council may require the property owner to reduce hardcover as a condition of variance approval.”; in Subd. 4.2 replacing “nonstructural hardcover” with “impervious landscaping”; and deleting Subd. 4.3. Motion passed 5/0.

B. First Reading: Ordinance 215, Amending Code Chapter 11 Regarding Rules for Small Lots

Mayor Kind explained the meeting packet contains a copy of the original draft of Ordinance 215 presented to the Planning Commission, a copy of the revised Ordinance showing the original and modified text, and a clean copy of the revised Ordinance.

Zoning Administrator/Clerk Karpas stated the Planning Commission did not like the idea of alleviating the pressures on smaller residential lots by having a sliding scale for setbacks and impervious surface based on lot area. The Commission did like the increase in the amount of volume. The Commission believes the variance process works. The Commission felt the Fisher requests demonstrated that it works. There was reasonable negotiation during that variance process.

Councilmember Cook stated the Planning Commission was concerned about unintended consequences.

Councilmember Fletcher stated he thought it would be better to set reasonable expectations up front for property owners of small lots.

Zoning Administrator/Clerk Karpas stated State Statute sets the expectation. The footprint is protected. A person can rebuild what is already there. He then stated the City can't adjust its ordinances to deal with every situation. He noted that he would not be able to give property owners accurate information about what they could do because the City does not have lot area sizes for all residential properties in the City. He stated he would prefer to have something specific to tell people. He then stated he thought the City is very generous with its 30 percent impervious surface regulation.

Mayor Kind stated in 1992 the City restricted impervious surface to 40 percent. It then changed it to 30 percent with an additional 10 percent by conditional use permit (CUP). About eight years ago it limited it to 30 percent with overages by variance. She wondered if the Council should consider going back to allowing 40% with a CUP.

Zoning Administrator/Clerk Karpas stated that the change to 30 percent was because people were putting swimming pools in. Councilmember Quam asked what was wrong with that.

Attorney Kelly explained that a CUP by definition means a person is entitled to it. The City could not say no.

Mayor Kind stated maybe it could be backed down to 35 percent with a CUP.

Councilmember Quam stated if the Ordinance had been the way it was proposed to the Planning Commission initially he asked how many property owners could have avoided applying for a variance.

Zoning Administrator/Clerk Karpas stated the City receives a small number of variance applications for expansion or physical alteration of houses when compared to all the building permits it receives. He then stated some lots are so small there are practical difficulties that have to be addressed.

Councilmember Quam stated he thought the sliding scale approach was to reduce the need for variances for smaller lots. Mayor Kind concurred.

Zoning Administrator/Clerk Karpas stated he and the Planning Commission believe property owners should be able to know what they can build on their lot. The City can't provide that. Councilmember Quam stated it could be provided if the sliding scale approach was used. Karpas stated the owners of the smaller properties still won't be able to pull a building permit because they won't be able to meet the setback requirements. They will still need a variance.

Councilmember Quam asked Zoning Administrator/Clerk Karpas if there are not any lots where the relaxed regulations would eliminate the need for a property owner to obtain a variance. It was noted there are some. Attorney Kelly stated a good 50 percent will still need a variance. Quam stated that would eliminate the other 50 percent. Mayor Kind stated from her perspective relaxing the regulations would be worthwhile because of that.

Councilmember Fletcher stated if a person has a survey it would not be difficult to figure if the property owner can comply with the hardcover regulations based on what they would like to build. He stated for 10,000 square-foot lots in the City he asked how many of them have more than 30 percent hardcover for

structures (not including things like plastic sheeting). Zoning Administrator/Clerk Karpas stated he believed all of them exceed hardcover.

Fletcher talked about a scenario where a person wants to buy a 10,000 square-foot lot in the City. The property owner would have to come before the Planning Commission and Council for a variance, for example, 35 percent hardcover which is what everyone else already has. He questioned if it may be prudent to continue this item to the next Council meeting to allow more time to think about this.

Attorney Kelly noted the R1-A zoning district contains a variety of different lot sizes. Meadville has several small “shotgun” lots. Also along Meadville is the Old Log Theater and other larger lots. He stated when the City’s Zoning Code was first created and as it evolved it was never changed to accommodate the properties that front Lake Minnetonka because of their size, predominant styles and shape. He then stated if properties were to be rezoned and regulated based on the lots as they are, especially those that front the Lake, the regulations don’t have to compete with lots on the other side of the street. Creating a district for those lots that front the Lake could make things more predictable.

Mayor Kind stated the draft Ordinance presented to the Planning Commission contains an idea of Councilmember Fletcher’s which increases the setback requirements and the impervious surface requirements as the lot size increases for each 500 square feet over 10,000 square feet and 15,000 square feet respectively.

Councilmember Roy noted there are odd ball sized lots all over the City. He stated based on the discussion he understands the Planning Commission to be comfortable with the current Ordinance and the ability to resolve issues. He asked if the intent of the revised draft sent to the Planning Commission was to help prospective property owners to know what they can build on a lot. He questioned how that could be done because there could be all kinds of issues. He stated it is called buyer beware. If a person wants to buy property and then tear down and rebuild on that lot they need to have their questions answered before they close on property. He recommended leaving the Ordinance the way it is.

Councilmember Fletcher stated he agrees it is buyer beware. He then stated the downside is when a current property owner in the City puts their property on the market. Current and future property owners know or can find out that the allowable hardcover is 30 percent. It’s apparent that the 10,000 square-foot lots have at least 35 percent hardcover. The prospective property owners will have to request a variance to exceed 30 percent. The prospective property owner will devalue the property somewhat because of the uncertainty. Mayor Kind stated that affects the value of current property owners that don’t have their property on the market as well.

Councilmember Cook clarified that earlier in the discussion he was talking about the Planning Commission’s perspective. He stated he now wants to convey his personal perspective. The Planning Commission has a lot of tools to use. From his vantage point this discussion is about micro managing things. He noted that one tool is a property owner has their current footprint grandfathered in. He explained that if the lot currently has 33 percent hardcover, that is grandfathered in. If the property owner wants to try and have more they will have to apply for a variance. He commented that the property owner will have to come before the Commission for just about any fix-up project. He noted he thought Council is trying to attack the wrong things. He stated if a prospective buyer, a seller and the Planning Commission know that the footprint is grandfathered in that is the starting point. He then stated a total redo of the zoning map is a different topic.

Mayor Kind stated she is not in favor of a total redo of the zoning map. She is in favor of the sliding scale. From her personal experience, every foot would make a difference.

Councilmember Fletcher expressed reticence to include the sliding scale recommendation in the revised Ordinance if it gets approved by Council on a 3/2 vote.

Councilmember Quam stated he still does not have enough data to make a decision on this. He reiterated his question which was about how many people would have avoided the variance process for setbacks or hardcover if the setback and hard cover regulations were tweaked to have a sliding scale.

Attorney Kelly clarified that earlier he was trying to say that over one-half of the City's lots end up in a variance process. He stated what this is really about is can a property owner with a reasonable request know that they will get a reasonable outcome when it comes to the variance process. Councilmember Quam stated it's more about the prospective purchaser knowing that. Kelly stated it's about a reasonable predictable outcome. Kelly then stated from his perspective he thought the Council was pretty good reaching a reasonable outcome.

Councilmember Quam stated new members of the Council may not be so reasonable.

Attorney Kelly stated one of the reasons this works pretty well is the Planning Commission does a very good job assessing variance requests and getting the applicants involved. He then stated for the Fisher variance the Commission took the time to understand the problem created by the volume regulation for the Fishers. He went on to state from his perspective the process is working. He noted that he understands why people can be frustrated because they don't know what they will get.

Councilmember Quam stated he is also reticent to have Council approve an Ordinance on a 3/2 vote. He noted that Council will have another opportunity to review the Ordinance at the second reading.

Councilmember Fletcher stated the amended Ordinance recommended by the Planning Commission needs some cleanup work. He explained the way the amended Ordinance is written a 7500 square-foot lot would be able to have more volume than an 8000 square-foot lot.

Kind recessed the meeting at 9:00 P.M.

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

Fletcher moved, Cook seconded, adopting the first reading of Ordinance 215 amending Code Chapter 11 regarding rules for small lots which was presented at the Public Hearing on the Ordinance subject to amending Section 1140.18 Subd. 3(2) to read "*Lots between 7500 square feet and 15,000 square feet in area may be host to buildings, structures, and accessory structures whose above grade building volume is not greater than a volume equal to 42,000 cubic feet ...*" and Section 1140.18 Subd. 3(3) to read "*Lots greater than 15,000 square feet in area may be host to buildings, structures, and accessory structures whose above grade building volume is not greater than a volume equal to 75,000 cubic feet ...*". Motion passed 5/0.

C. Potential City Contribution to Eurasian Watermilfoil and Curly Leaf Pondweed Treatment of St. Alban's Bay

Councilmember Roy stated in 2011 all of St. Alban's Bay was chemically treated for Eurasian Watermilfoil (milfoil) and Curly Leaf Pondweed (CLP). At the beginning of 2012 the survey showed a minimal amount of milfoil in the bay. The final survey in 2012 showed a lot of milfoil. Based on that it appears milfoil would have to be chemically treated every other year and CLP on an as needed basis. The

cost for treatment in 2013 would be approximately \$60,000. He is asking the City to contribute \$5,000 toward the 2013 treatment. That is the same amount the City contributed toward the full-bay 2011 treatment.

Mayor Kind noted that amount has been included in the 2013 budget.

Roy moved, Quam seconded, approving the payment of \$5,000 from the Marina Fund towards the 2013 milfoil treatment of St. Alban's Bay and directing the City Treasurer to send the funds to the Lake Minnetonka Association, managers of the treatment program, by March 1, 2013. Motion passed 5/0.

Councilmember Cook asked if personal donations needed to be in by March 1 as well. Councilmember Roy responded they do not, but they should be in by April 15. Mayor Kind stated that information for donating to the project will be on the city website and included in the next city newsletter.

D. Hennepin County Recycling Grant Application, Reports and Activities

Mayor Kind noted the City has done what it was supposed to have done with regard to residential recycling. She stated the meeting packet contains a copy of two reports from Vintage Waste, the City's recycling services provider, which Vintage is required to provide per the City's agreement with Vintage. The packet also contains a copy of a Residential Recycling Grant Agreement with Hennepin County that needs to be renewed and updated annually. Council needs to authorize the City Clerk to do that.

Fletcher moved, Cook seconded, directing the City Clerk to submit an updated Hennepin County Recycling Program grant application by February 15, 2013, consisting of the Re-TRAC web-based report and the planning document that describes the programs and activities the City has implemented to increase recycling and make progress toward the County's goals. The updated grant application also shall include copies of two reports from Vintage Waste – an October household participation report and a 2012 year-end report including types of recycling and tonnage.

Councilmember Fletcher asked if the City is going to carry out the education activities.

Mayor Kind stated in 2012 Hennepin County did not have a menu of items for the City to do so the County waived it in 2012. The City kept asking for it but never received it. The City will ask for it again in 2013 and do it if the County sends it.

Motion passed 5/0.

E. Potential Comments Regarding Reorganization of Watershed Districts

Mayor Kind stated when Hennepin County Commissioner Jan Callison attended the January 2, 2013, Council meeting she requested Council provide her with its perspective regarding County Commissioner Jeff Johnson's idea to reorganize the watershed management organizations (WMOs) within the County. She noted the meeting packet contains a copy of a summary of the reorganization concept as well as a draft of a possible response for Council's discussion.

Councilmember Cook suggested Council convey it would support a consolidation, but not necessarily from eleven to three as stated in the draft proposed response and as proposed by Commissioner Johnson.

Councilmember Quam asked if the consolidation would mean the result of fewer commissioners. Mayor Kind responded Item 3 in the response indicates support for capping the number of managers on a WMO at 5 to 7. She explained those numbers are based on the experience that having too many is cumbersome as proven with the Lake Minnetonka Communications Commission and the Lake Minnetonka Watershed District.

Councilmember Fletcher stated he has heard that for some existing WMOs the head of the public works department may serve as a WMO manager. Mayor Kind stated the proposed response indicates elected officials or city staff would serve as managers on a WMO. Councilmember Cook agreed with the concept of having a mixture of people who are accountable to the public and people who know what they are talking about.

There Council consensus to change the first sentence in the opening paragraph in the response to read *“The Greenwood City Council reviewed and discussed the concept to reorganize and optimize watershed management.”*

Cook moved, Roy seconded, directing the City Clerk to revise the Council’s comments regarding the reorganization and optimization of the watershed organizations as discussed and to email the comments to the Hennepin County Board Administrator for distribution to the Hennepin County Commissioners. Motion passed 5/0.

Councilmember Roy stated he hoped that this is just the beginning of reorganization of all government agencies not just the WMOs.

F. Updating Appointments and Assignments (alternate to the Lake Minnetonka Communications Commission)

Mayor Kind stated this evening Council is being asked to appoint an alternate to the Lake Minnetonka Communications Commission (LMCC). LMCC member cities are allowed to appoint an alternate. She then stated during Council’s January 2, 2013 meeting the Council appointed an alternated to the Lake Minnetonka Conservation District (LMCD) Board. But the LMCD by-laws do not allow that. Therefore the draft resolution included in the meeting packet removes Councilmember Fletcher as the alternate to the LMCD Board.

Councilmember Roy offered to serve as the alternate to the LMCC. Council accepted that offer.

Fletcher moved, Cook seconded, Adopting RESOLUTION NO. 06-13, “A Resolution Updating the Appointment and Assignments for 2013 to Designate Councilmember Roy as the Alternate to the Lake Minnetonka Communications Commission and to Un-designate Councilmember Fletcher as the Alternate to the Lake Minnetonka Conservation District Board. Motion passed 5/0.

G. Lake Minnetonka Communications Commission Membership / Franchise Renewal

Mayor Kind stated Councilmember Fletcher, the City’s designee to the Lake Minnetonka Communications Commission (LMCC), asked that the topic of the LMCC membership and franchise renewal be placed on the agenda.

Councilmember Fletcher stated the draft resolution in the meeting packet in support of exclusive representation by the LMCC in cable television negotiations and in support of franchise fee disbursements to LMCC member cities came about because of a discussion between Mayor Kind,

Woodland Mayor Doak and himself. He explained that draft resolution was based on that discussion.

Fletcher explained the LMCC is in negotiations with Mediacom which is the current cable television provider in the LMCC area. Mediacom has been in contact with the Cities of Medina, Orono and Victoria all of which are somewhat underserved. Mediacom has been telling representatives from those cities that if they are not part of the LMCC, that Mediacom would give them some of the franchise revenues collected from cable television subscribers in their respective cities. Mediacom has told those Cities that they could turn around and give the franchise fees back to Mediacom to help pay for the build-out of the cable infrastructure. The concept of the resolution is to be proactive and put out an option that all LMCC would get some of the franchise fees back in hope of keeping LMCC cities together. The proposed resolution also conveys that the LMCC member cities want the LMCC to drive the negotiations for the LMCC.

Fletcher noted that the City of Minnetrista passed the resolution.

Mayor Kind distributed a spreadsheet of the LMCC votes and estimated per-city revenue from franchise fees and PEG fees. She stated she received a letter from the Executive Director of the LMCC stating the LMCC Franchise Renewal Committee asked for clarification as to what LMCC member cities the Committee is representing in negotiations. Therefore the LMCC is asking the LMCC member cities to pass a resolution similar to what was included in the meeting packet, but shorter. She distributed a copy of that resolution.

In response to a question from Mayor Kind, Councilmember Fletcher stated he voted against the shorter version of the resolution.

Councilmember Fletcher noted the resolution the LMCC distributed does not include anything about giving LMCC member cities some portion of the franchise fees paid by cable subscribers. He commented the LMCC has seventeen member cities and a thirty-four person Board because State Statute requires each member city have two representatives.

Fletcher went on record supporting that LMCC exclusively represent the city in franchise negotiations with Mediacom. He noted that he is going to abstain from the vote because he is the Chair of the Franchise Renewal Committee and he is the Treasure of the LMCC.

Councilmember Quam stated he thought it prudent to rely on Councilmember Fletcher's expertise with this matter.

Councilmember Fletcher stated from his vantage point the franchise renewal negotiations are somewhat political and that he thought some of the LMCC member cities might stay as part of the group if they were to get some of the franchise fees back.

Mayor Kind stated she finds it appealing to get some of the franchise fees back. And, that if that is what it takes to keep members in the LMCC she thinks it is prudent to do that.

Councilmember Fletcher stated he is fine with the longer resolution which supports giving some of the franchise revenues back to the LMCC member cities. He noted the short version does not prohibit that. He reiterated he thought it prudent to give the LMCC exclusive representation in the negotiations. Mayor Kind concurred.

Roy moved, Cook seconded, Adopting RESOLUTION NO. 07-13, "A Resolution in Support of Exclusive Representation by the Lake Minnetonka Communications Commission in Cable TV Franchise Negotiations and Support of Franchise Fee Disbursements to Cities." Motion passed 5/0.

H. Potential Comments Regarding Bow-Fishing Regulations on Lake Minnetonka

Mayor Kind noted the meeting packet contains a copy of a letter from Lake Minnetonka Conservation District (LMCD) Executive Director Greg Nybeck regarding bow-fishing regulations on Lake Minnetonka (the Lake). Mr. Nybeck is requesting feedback from the LMCD member cities regarding this matter. The meeting packet also includes a copy of a draft memorandum outlining possible comments for the Council's consideration and discussion this evening.

Councilmember Roy stated this was discussed during the February 4, 2013, LMCD Public Safety Committee meeting, noting he serves on the Committee. It was also discussed at the last LMCD Board meeting. He explained there are three options to consider. Option 1 – Continue current operations per state law and city ordinances. Option 2 – Prohibit bow-fishing entirely on Lake Minnetonka. Option 3 – Consider an ordinance with restrictions that make is more restrictive than state law. He noted from his personal perspective he thought the state law and City ordinance work well. He stated Zoning Administrator/Clerk Karpas would be the City's contact for questions regarding bow-fishing regulations.

Councilmember Quam noted that Mr. Nybeck wants each LMCD member city to provide the LMCD with its ranking for the three options Councilmember Roy just highlighted as well documentation on each city's respective ordinance.

Councilmember Roy stated his ranking would be Option 1, Option 3 and Option 2.

Councilmember Quam questioned why the member cities are being asked to rank the Options. He stated from his perspective it sounds like a way to "cook the books."

Mayor Kind stated she supports anything that encourages removing rough fish from the Lake.

Councilmember Fletcher stated Council discussed this topic during its August 1, 2012, meeting and at that time the LMCD was talking about a restriction of a 300-foot setback (the length of a football field) from a swimming beach or swimmer and a 50-foot tethered line restriction (which is more restrictive than State Statute). At that time former Councilmember Rose, a bow-fisher, thought those restrictions were reasonable.

Councilmember Roy noted the City of Mound prohibits bow-fishing entirely. The Greenwood Ordinance does not contain anything about bow-fishing.

Attorney Kelly stated member cities and the LMCD are competing jurisdictions. There is a question about how they dovetail. He noted there was a time when the LMCD was trying to tell the City what it could zone on shore.

Councilmember Quam stated he thought the Hennepin County Sherriff's Water Patrol is the law enforcement on Lake Minnetonka. Mayor Kind added so is the Minnesota Department of Natural Resources (MN DNR). Kind noted that both agencies have indicated that it would be each member city's responsibility to enforce its own ordinance(s) for bow-fishing on Lake Minnetonka.

Zoning Administrator/Clerk Karpas stated cities riparian rights are up to 150 feet from the shoreline.

Mayor Kind stated there is no way for the City to enforce a bow-fishing ordinance should the City approve one.

Attorney Kelly stated the City has basically seeded regulatory authority of the surface of Lake Minnetonka to the LMCD.

Mayor Kind noted she drafted the proposed response letter that is included in the meeting packet. The comments included the letter are basically as follows.

1. Greenwood does not have a specific bow-fishing ordinance. The City does have an ordinance (Section 900.25, Subd. 1(1) that prohibits the reckless handling of a dangerous weapon that endangers the safety of another. But, the City has no way to enforce the ordinance on the waters of Lake Minnetonka.
2. The Greenwood Council's collective rankings of the three options in the letter are – 1) consider an ordinance that more restrictive than state law, but less than a total prohibition; 2) continue to operate as we currently do per state law and local city ordinances; and 3) prohibit bow-fishing entirely on Lake Minnetonka.
3. The Greenwood Council supports a lake-wide ordinance to offer clarity to lake users who are unfamiliar with which of the fourteen member cities they are in as they fish around Lake Minnetonka.
4. The Greenwood Council supports a lake-wide ordinance that is enforceable by the MN DNR and Hennepin County Water Patrol – the only enforcement agencies with jurisdiction on the waters of Lake Minnetonka.
5. The Greenwood Council supports the removal of rough fish from Lake Minnetonka, so it would like to see very few (if any) restrictions added to State Statute.

Councilmember Fletcher recommended notifying the LMCD that Council does not support prohibiting bow-fishing on Lake Minnetonka. He also recommended changing number 5 above to convey that Council supports a restriction of a 300-foot setback (the length of a football field) from a swimming beach or swimmer and a 50-foot tethered line restriction.

Councilmember Roy noted that he does not like municipal restrictions that are stricter than State Statute.

Councilmember Cook stated he thought it prudent to encourage bow-fishing and the removal of rough fish. He then stated he thought that an ordinance that is more restrictive than state law but less than a total prohibition and continue to operate as we currently do per state law and local city ordinances should both be ranked as 1. He expressed his agreement that bow-fishing should not be prohibited on Lake Minnetonka.

Mayor Kind stated from her perspective the main question is whether or not Council supports a lake-wide ordinance (comments 3 and 4 above).

Councilmember Cook stated he would support a lake-wide ordinance because of the enforcement and bow-fisher people not knowing what rules are in place for each place they may fish on Lake Minnetonka.

Councilmember Fletcher suggested conveying to the LMCD that the City's number one preference is for a lake-wide ordinance that is not too restrictive.

There was Council consensus to rank the options as follows. Option 1 – approve a lake-wide ordinance. Option 2 – continue to operate as we currently do per state law and local city ordinances. And, to inform the LMCD that Greenwood does not support prohibiting bow-fishing entirely on Lake Minnetonka.

Fletcher moved, Cook seconded, directing the City Clerk to revise the Council’s comments letter regarding bow-fishing on Lake Minnetonka as discussed and to email the letter to Lake Minnetonka Conservation District Executive Director Greg Nybeck for distribution to the LMCD Board. Motion passed 5/0.

8. OTHER BUSINESS

A. None

9. COUNCIL REPORTS

A. Cook: Planning Commission

Councilmember Cook noted the Planning Commission’s February 2013 meeting has been cancelled.

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

With regard to the Lake Minnetonka Communications Commission (LMCC) activities, Councilmember Fletcher stated there is nothing additional to report on.

With regard to the Excelsior Fire District (EFD), Fletcher stated he attended the EFD Board meeting on January 23, 2013. He noted that the EFD Board appoints a representative to the Excelsior Firefighters Relief Association (EFRA) Board. That person is usually the Chair of the EFD Board and that is Excelsior Councilmember Miller. Because Miller travels a lot he will sit in as his replacement at meetings because he is the Vice-Chair for the EFD Board. One of the topics for the EFRA Board is the EFRA’s investments and firefighter pensions.

Fletcher explained that firefighters receive a per-year-of-service pension benefit. They must work a minimum of ten years before they are entitled to collect their pension. The EFD Board has to approve any increase in the per-year-of-service benefit and the EFRA has agreed not to ask for an increase unless the fund for pensions is at least 110 percent funded. He stated when the fund for pensions is less than 100 percent funded the EFD member cities must make a required contribution. He stated he does not have an issue with that. As paid-on-call firefighters they receive a nominal amount of money for responding to calls.

With regard to the Xcel Energy (Xcel) Transmission Line Upgrade Project, Fletcher stated representatives from Xcel had a meeting with cities about the Project yesterday. Representative from the Cities of Chanhassen, Deephaven, Eden Prairie, Excelsior, Greenwood, and Minnetonka were in attendance. The Department of Commerce has recommended to the Public Utilities Commission (PUC) that Xcel consider the Highway 5 alternative (upgrading the transmission line) which would keep the current transmission line that serves Greenwood at its current level.

On January 9, 2013, Xcel wrote a letter to the PUC stating that it found the Highway 5 alternative a reasonable option. There is a substation near the Chanhassen High School. If the Highway 5 alternative is chosen another substation will have to be constructed across the border in Chaska. It would be located in

a commercial/industrial area. The current transmission line goes through some Chanhassen residents back yards. If the additional substation is not built, the size of the Chanhassen transmission line will need to increase. Chanhassen officials stated they do not want a new substation near the commercial/industrial area. Which basically means they would prefer the transmission line to be upgraded in their resident's backyards. Excelsior had some concern that the substation in Excelsior will not be screened if the transmission line that runs through Excelsior is not upgraded. He encouraged Council to send a letter to Xcel stating that Greenwood strongly supports the Highway 5 alternative.

Quam moved, Cook seconded, authorizing Mayor Kind to write a letter to Xcel Energy informing Xcel that Greenwood strongly supports the Highway 5 alternative. Motion passed 5/0.

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

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind noted the next meeting of the SLMPD Coordinating Committee is scheduled for 5:00 P.M. on February 7.

With regard to administration, Kind stated Greenwood Night at the Old Log Theater was held on January 11. The turnout was good. Minnetonka Cub Foods donated cookies for the event. Greenwood hosted a Planning and Zoning workshop on January 12 at the Southshore Community Center. The workshop was well attended. There was a lot of positive feedback received.

Councilmember Fletcher thanked Mayor Kind for organizing the workshop.

Mayor Kind stated Zoning Administrator/Clerk Karpas will be drafting a home occupation ordinance based on what was learned at the workshop. Karpas will also research how group homes are referenced in the conditional use permit section of the City Code Book.

Zoning Administrator/Clerk Karpas stated permitted uses will also be reviewed as required by State Statute.

Councilmember Fletcher stated during the workshop people learned that a municipality could have a permitted use that could have a sunset clause. He thought that could be useful to have. Zoning Administrator/Clerk Karpas stated consideration would have to be given to what a sunset clause would be used on. Mayor Kind stated the City can't sunset a use that is already there.

Mayor Kind stated the sump pump program is going well. Inspections have begun. Letters were sent to property owners who requested an inspection. A representative from Bolton & Menk is performing the inspections. In one home he found an illegal connection and hopefully that will be removed. If the connection is not removed that property owner will be charged a penalty and a fee for discharging from their sump pump into the City's sanitary sewer system. The goal is to perform all of the requested inspections by February 18.

Kind noted the Save-the-Lake banquet is scheduled for February 21. She stated if a quorum of the Council is going to be there that Zoning Administrator/Clerk Karpas will need to post a notice.

Kind then noted she attended a Lake Minnetonka Communications Commission (LMCC) meeting for mayors of the LMCC member cities on January 10. She attended the Minnetonka School District lunch for mayors in the District earlier in the day. She learned that there is a new Advantage program where business leaders and mentors will be brought to the Minnetonka High School for advanced placement economics courses. That program will be expanded to other fields in the future. A cafeteria / multi-

purpose room is being added to the Excelsior Elementary School. Upgrades or additions are being made to other schools as well. She noted 23 percent of the enrollment in the District is open enrollment.

Kind stated the City of Minnetonka is doing major improvements to Highway 101 between Highway 62 and Highway 7 this year. Minnetonka's City Attorney and Fire Chief are retiring. The City of Victoria hopes to start construction on a new city hall and public works facility this year. It installed rumble strips on Highway 5 in the centerline. It has created quite a stir with its residents because they can hear it from their homes. The City of Chanhassen has some road projects coming up. The City of Excelsior is looking at allowing pedi-cabs this year. The Excelsior Council will make a decision about the hotel request on February 19.

Kind stated the City is reaching about one-third of the households in the City with its email blasts.

D. Quam: Roads & Sewer, Minnetonka Community Education

With regard to Minnetonka Community Education (MCE), Councilmember Quam noted MCE will host a youth triathlon on May 4.

With regard to roads and sewers, Quam stated Council will discuss possible road and sewer projects during its April meeting.

E. Roy: Lake Minnetonka Conservation District

Councilmember Roy stated he attended the Lake Minnetonka Conservation District (LMCD) Public Safety Committee that was held on February 4. The bow-fishing topic was discussed during the meeting. Hennepin County Sheriff Stanek reported there have been fifteen instances of motorized vehicles going through the ice on Lake Minnetonka. The vehicle operators have been ignoring the small, reflective warning flags near channels. The Sheriff's Office has installed warning flags for thin ice on St. Alban's Bay. Even though the ice is about 24 inches thick on the rest of the lake, vehicle operators should not cross ridges or channels where the ice never is safe. He noted that he will attend the LMCD Aquatic Invasive Species Task Force meeting on February 8.

10. ADJOURNMENT

Roy moved, Cook seconded, Adjourning the City Council Regular Meeting of February 6, 2013, at 10:10 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder