

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

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

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

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

Others Present: City Attorney Kelly and City Zoning Administrator/City Clerk Karpas

Members Absent: None

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

2. CONSENT AGENDA

Mayor Kind reviewed the items on the consent agenda.

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

- A. March 6, 2013, City Council Meeting Minutes**
- B. March 22, 2013, City Council Special Meeting Minutes**
- C. February 2103 Cash Summary Report**
- D. March Verifieds, Check Register, Electronic Fund Transfers**
- E. April 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. Presentation: CliftonLarsonAllen 2012 Greenwood Auditor's Report**

Mayor Kind introduced Jen Tingly, Chris Knopik and Daniel Persaud with CliftonLarsonAllen who were present this evening to provide a summary of the audit results for the year ending December 31, 2012.

Ms. Tingly noted that she is the audit engagement partner. Mr. Knopik is the audit manager on the City's account. Mr. Persaud is the audit senior. She explained the firm issued an unqualified (i.e.; clean) opinion on the financial statements. The audit provides reasonable, but not absolute assurance because every single transaction is not reviewed. The most significant estimate is for the depreciation of capital assets. Adjustments have been made to ensure the financial statements are in accordance with GAAP (generally

accepted accounting principles); they were to convert cash basis to accrual basis. There are also Governmental Accounting Standards Board (GASB) 34 conversion entries (similar to prior years). The firm received full cooperation from management during the audit process. There were no exceptions with Minnesota legal compliance.

With regard to the City's General Fund, Mr. Persaud explained during 2012 the balance increased approximately \$38,000, for an ending balance of approximately \$351,000. Last year there was a transfer of \$20,000 from the General Fund to the Bridge Fund. That was done this year also. The Office of the State Auditor (OSA) recommends a balance equal to 35 – 50 percent of the next year's operating budgeted expenditures. The 2012 balance was approximately 45 percent of the 2013 budgeted expenditures. The balance has improved from about 39 percent in 2010.

Mayor Kind stated she received a call from a resident expressing concern that the City was building its reserve balance to high. The resident thought the balance in the General Fund should be kept closer to 35 percent. She asked Mr. Persaud to comment on that. Mr. Persaud stated the balance recommendation is based on being able to cover three to five months of expenditures without creating a deficit situation. Kind asked if the City should lower its reserve level. Mr. Knopik explained the OSA wants municipalities to be able to cover expenditures up to the point when municipalities receive their June tax reimbursement from the State. Having sufficient reserves also allows a municipality to fund a project without issuing bonds. Mr. Knopik noted that he has worked with municipalities who did not have the funds to make payroll the beginning of June. Also there were municipalities who had one to two years' worth of reserves. Those municipalities had funds to help them make it through the recession. Kind asked Mr. Knopik if he thought the City had excess reserves. Mr. Knopik responded he did not.

Mr. Persaud noted that from 2010 – 2012 General Fund revenues exceeded expenditures.

Mr. Persaud explained the City has three categories in the General Fund balance – nonspendable (\$4,038), restricted for park dedication (\$27,055) and unassigned (\$320,538).

With regard to the Sewer Enterprise Fund, Mr. Persaud explained the balance increased approximately \$38,000 as a result of a deferring spending on the inflow and infiltration reduction project. A similar project was done in 2011. The City received a grant from the Metropolitan Council for the project in 2011 to help offset the project. Approximately \$350,000 of the Sewer Fund is invested in capital assets.

With regard to the Marina Fund, Mr. Persaud explained that approximately \$26,000 of it is for capital items.

Mr. Knopik stated as part of the audit internal controls are tested. He explained that any findings have to be broken down to material weaknesses and significant deficiencies. The firm found one material weakness regarding the oversight over the financial reporting process and material audit adjustments. Three of the findings identified during the 2011 audit process were resolved this year. They were segregation of duties and review and approval of receipts of disbursements. He recommended Council keep in mind the cost benefit analysis when assessing findings; does it make sense to incur significant costs to address the findings.

Councilmember Fletcher stated he interprets Mr. Knopik to be saying that the firm is okay with the City continuing to have the material weakness because the firm prepares the depreciation schedule and creates the cash-to-accrual journal entries rather than hiring someone else to do them.

Ms. Tingly commented the firm will review the controls for the segregation of duties and approval of receipts and disbursements each year.

Cook moved, Fletcher seconded, Accepting the Financial Statements and Supplementary Information for the Year Ended December 31, 2012, as presented by CliftonLarsonAllen. Motion passed 5/0.

Mayor Kind thanked Ms. Tingly, Mr. Knopik, and Mr. Persaud for their efforts.

B. Local Board of Appeal and Equalization, Thursdays, April 11 and April 25 6:00 P.M.

Mayor Kind noted Local Board of Appeal and Equalization meetings are scheduled for 6:00 P.M. April 11 and 6:00 P.M. April 25. She explained the City Council will act as the Board of Appeal. She encouraged people to call in advance and ask to be placed on the roster. If a property owner can't be at the meeting she asked them to send an appeal the City at the City's email administrator@greenwoodmn.com or to Zoning Administrator/Clerk Karpas at guskarpas@mchsi.com.

C. Spring Clean-up Day, Saturday, May 4, 2013

Mayor Kind noted the City's spring clean-up day will be held on May 4. Residents are asked to have their items out at curbside at 7:00 A.M.

5. PUBLIC HEARING

A. None

6. UNFINISHED BUSINESS

A. Excelsior Boulevard Watermain Project

Mayor Kind stated Council has three items to consider with regard to the Excelsior Boulevard Watermain Project. She explained the first item is a resolution declaring of adequacy of the petition for the properties along Excelsior Boulevard from 21150 to 21030 and ordering preparation of an engineering feasibility report; or, the adoption of a resolution declaring the insufficiency of the petition. The meeting packet contains a copy of a memorandum from Attorney Kelly stating his perspective on the petition (dated March 15, 2013). Kelly found that one of the signatures on the petition is not the property owner of the property they listed (21080). Zoning Administrator/Clerk Karpas stated he has tried to contact that person numerous times to no avail.

Councilmember Fletcher stated it is his understanding that the property in question is owned under a contract for deed. Mayor Kind and Zoning Administrator/Clerk Karpas stated that is their understanding also. Kind noted the City has no proof that it is owned under a contract for deed.

Attorney Kelly stated if Council is comfortable with the petition, he recommends Council accept the petition for what it is at this time and when doing so note there is uncertainty with one address (the 21080 Excelsior Boulevard property), which means there is not full 100 percent participation of the partition. Council could then direct the feasibility study be prepared. A public hearing could be held after that study is done. The petition does meet the 35 percent threshold.

Fletcher moved, Quam seconded, Adopting RESOLUTION NO. 12-13, “A Resolution Declaring Adequacy of Petition and Ordering Preparation of Engineering Report,” authorizing the City Clerk to publish a copy of Resolution in the Sun-Sailor to start the 30-day appeal process subject to amending the Resolution to stipulate the filing date was March 20, 2013, and subject to verifying who owns the 21080 Excelsior Boulevard property. Motion passed 5/0.

Mayor Kind stated the second and third items are the Excelsior-Greenwood Water Expansion Agreement and the Excelsior-Greenwood Municipal Water Service Agreement. Zoning Administrator/Clerk Karpas provided Councilmembers with a hardcopy of each agreement (a copy had been emailed to them earlier). Kind noted a quorum of the Greenwood Council attended the April 1, 2013, Excelsior Council meeting. She stated she thought the Agreements reflect the changes discussed during the April 1 Excelsior Council meeting.

Councilmember Fletcher stated the project costs for watermain extension at this time are estimates. He then stated if the watermain extension bid costs opened by Metropolitan Council Environmental Services (MCES) (as part of its forcemain project bid opening) extension come in significantly higher than the estimates he asked if the expansion agreement locks the City into going forward with the project. Attorney Kelly explained when the bid costs come in there is a 7-day window of approval. He stated he thought it would be difficult for Excelsior to make Greenwood move forward under that circumstance.

Cook moved, Quam seconded, approving the Excelsior-Greenwood Water Expansion Agreement subject to filling in the blanks to add “up to 21030 Excelsior Boulevard,” add “900 to 1480 feet,” and add “10 to 16” residential properties.

Mayor Kind offered up a friendly amendment to the motion to include authorizing the Mayor and City Clerk to sign the Agreement.

Without objection from the maker or the seconder, the motion was amended to include and authorizing the Mayor and City Clerk to sign the Agreement. Motion passed 5/0.

Mayor Kind asked Council if the revised Excelsior-Greenwood Municipal Water Service Agreement reflects what was discussed during the April 1 Excelsior Council meeting. Kind explained during the meeting Excelsior agreed to set the out-of-town surcharge at what the current surcharge is. The current surcharge is 21 percent higher for the fixed meter charge and 7 percent higher for the per-gallon charge. Also, any reference to mediation and arbitration has been taken out.

In response to a comment from Councilmember Quam, Councilmember Cook stated any future changes to the agreement would be worked out through negotiation with the last alternative being litigation.

Attorney Kelly clarified that any court case would force the two Cities into mediation.

Councilmember Fletcher stated Excelsior Councilmember Beattie wanted to have a clause in Section 4 in the last sentence “*Except as provided for in Paragraph 7, Excelsior City Code shall control if a conflict with this agreement exists or develops.*” He asked Attorney Kelly to comment on the clause. Kelly stated from his perspective it is gamesmanship and he does not like it because it suggests Excelsior can put whatever it wants in its City Code and Greenwood has effectively agreed to accept it. He noted that Beattie was the one that wanted any reference to arbitration and mediation taken out of the Service Agreement. He stated that he told Council early on that doing so was not in the City’s best interest. It was prudent to have a platform to handle what is in their best interests. He then stated from the positive side the Excelsior Council has accepted the cap on the surcharge and therefore it is less likely that a conflict

will arise. If Excelsior does decide to start acting in a way that the Greenwood takes exception to, there would be a city-to-city exchange about this Agreement. He noted if the City accepts the clause in this Agreement and if it becomes an issue the courts will likely point out that the City Council accepted the Agreement.

Councilmember Roy asked Attorney Kelly how much the Excelsior City Code could be changed for water. Kelly responded the Agreement already states what the non-resident surcharge can be and he finds that to be a safety belt for the City's residents. He commented that he would not put it past someone who thought they were really clever to write something Greenwood would find objectionable.

Councilmember Fletcher noted in the Service Agreement Item 11 Legal Costs states "*Each party shall bear their own legal expenses and costs associated with the drafting and implementing of this Agreement and as otherwise incurred during the term of this Agreement without right of contribution from the other City.*" He asked if, for example, Excelsior could put something in its City Code that would require Greenwood to pay both parties' legal expenses. Attorney Kelly stated the example may be a bit extreme, but it is an example of what is being discussed. He expressed concern that someone thinks they need the clause in the Agreement.

Mayor Kind suggested that if Excelsior makes a code change that is too crazy, the City could always take Excelsior to court.

Councilmember Fletcher stated he had a conversation with an Excelsior Councilmember at the April 1 Excelsior Council meeting and that person expressed that they did not want the tail (Greenwood) wagging the dog (Excelsior). He understands that. He then stated that person wanted to make sure Excelsior could change something with regard to water if it needed to. He noted that he does not like the clause but will rely on Attorney Kelly's advice.

Attorney Kelly stated the clause is located in the section that describes Excelsior's authority that states "*...subject to the provisions of Excelsior's City Code regarding water service including, but not limited to, provisions relating to connection fees, water service pipes, metering, and water billing and rates.*" If the clause is read narrowly in that regard the clause could perhaps be entirely reasonable. If it is read broadly to include any anything Excelsior may craft then it is unreasonable.

Mayor Kind stated she thinks the clause is in context to Paragraph 4. She noted Greenwood pushed to have the language "*...except as provided for in Paragraph 7 ...*" included and Paragraph 7 is about rates.

Attorney Kelly stated from his perspective if Council approves the Service Agreement with the understanding that the last sentence in Paragraph 4 relates to Paragraph 4 there is at least some legislative history about what Greenwood's understanding was when the Agreement was approved.

Fletcher moved, Roy seconded, approving the Excelsior-Greenwood Water Service Agreement as presented and authorizing the Mayor and City Clerk to sign the Agreement with the understanding that the conditions included by Excelsior's request regarding the Excelsior City Code shall control if a conflict or disagreement develops that there is agreement by Excelsior that this is very narrow treatment of very minor treatments to its City Code that would be done for the rest of Excelsior related to Paragraph 4 in the Agreement.

Mayor Kind asked if the resolution could be simplified by saying in conflict with Paragraph 4 of this Agreement. She proposed to amend the last sentence in Paragraph to read "*Except as provided for in Paragraph 7, Excelsior City Code shall control if a conflict with this paragraph exists or develops.*"

Without objection by the maker or seconder, the motion was amended to “approving the Excelsior-Greenwood Water Service Agreement as presented and authorizing the Mayor and City Clerk to sign the Agreement subject to in Paragraph 4 changing “*Except as provided for in Paragraph 7, Excelsior City Code shall control if a conflict with this Agreement exists or develops*” to “*Except as provided for in Paragraph 7, Excelsior City Code shall control if a conflict with this Paragraph 4 exists or develops.*”

Motion passed 5/0.

7. NEW BUSINESS

A. Draft of Residential Uses Ordinances Amending Zoning Code Chapter 11

Mayor Kind noted the discussion of the draft ordinance amendment of the City Code Chapter 11 regarding uses in residential districts and the draft amendment of the City Ordinance Code Chapters 4, 11 and 12 regarding home occupations will be discussed at the same time. Copies of the draft amendments are included in the meeting packet and each has been reviewed by Attorney Kelly. She explained these draft amendments came about in response to what was learned during a January 2012 planning and zoning workshop. Zoning Administrator/Clerk Karpas had been directed to draft the home occupations amendment. During that process Karpas realized that several of the items listed as principal, accessory and conditional uses need to be brought up to current standards in the “residential uses” section (Chapter 11) of the Zoning Code.

Kind explained that since the draft amendments were prepared, the City received a notification of a private residence along Fairview Street being marketed as a vacation rental property. To address this issue language regarding hotel/motel has been added to the draft of the home occupations ordinance. A definition was added as was a prohibition for those uses in a residential area.

Kind stated because both draft ordinances amend the Zoning Code Chapter 11 the Planning Commission must review and make a recommendation to Council. She reviewed the timeline should Council decide to move forward with the draft ordinances. The Planning Commission would review the ordinances and make a recommendation on April 17. Council would consider the first readings of the ordinances during its May 1 meeting and the second readings during its June 5 meeting. The ordinances would go into effect when they are published in the Sun-Sailor on June 13.

Kind then stated there had been some discussion about possibly streamlining the process. She explained in the home occupations ordinance Section 1 (amending the home occupation definition) and Section 2 (amending the hotel/motel definition) deal with Chapter 11, so those two sections could be removed from the draft ordinance and then it would not have to go the Planning Commission. The definitions would still be added to Section 1205. Council could then have its first reading of the ordinance during its April 11 special meeting and the second reading during an April 25 special meeting that would be held after the Local Board of Appeal & Equalization meeting. The ordinances could then be published in the Sun-Sailor on May 2.

Zoning Administrator/Clerk Karpas noted that the Planning Commission must hold a public hearing on proposed changes to the Zoning Code. He explained that typically when Council asks the Planning Commission to consider changes to the Zoning Code the Commission talks about it in one meeting and then holds the public hearing during its next meeting.

Mayor Kind stated based on that the timetable she presented for ordinance amendments to Chapter 11 will not work.

Mayor Kind stated if there are two different hotel/motel definitions in the Code Book (which is what would happen if the definitions in Section 1102 are not amended at the same time as the definitions are added to Section 1205) she asked which one would apply. Attorney Kelly stated the one that is more sympathetic to the person being regulated would apply.

Attorney Kelly stated he drafted a revised definition of hotel/motel. Mayor Kind distributed a copy of it. Kelly suggested that be inserted into the ordinance via friendly amendment. Kelly stated while the ordinance regulates what a person can do as a home occupation, what the City really wants to do is make sure that no one puts a residential property into a hotel/motel use. He noted consideration may be given to writing a provision which stipulates that if a property owner uses a property for a hotel/motel purpose they may be prosecuted. He stated if the City gets into a zoning debate with a property owner the ability to get their attention through a citation is not as great as there is through a penal prosecution. He suggested adding a penal provision to Chapter 9. He noted he would need to define what the provision is.

Attorney Kelly stated a draft penal ordinance could be ready for a first reading during Council's April 11 special meeting. Mayor Kind stated the second reading could be held during the April 25 meeting and penal ordinance could then be published in the Sun-Sailor on May 2.

Councilmember Quam asked if the current ordinance allows for a hotel/motel. Attorney Kelly explained it is not a permitted use in a residential district. The grey area is created by the fact that the property owner has the implied right to rent the property to another person who would use it for a residential purpose. He stated when it starts to get rented on, for example, a weekly basis then a business element is being introduced into a residential neighborhood. He noted the current code does not prohibit that. He then noted in the courts the benefit of the doubt goes to the citizen when the code is vague.

Councilmember Cook stated the way he interprets the ordinance amendment it would prohibit any homeowner from renting their home to someone on a month-to-month basis. Attorney Kelly stated the draft amendment stipulates the initial rental term has to be four months or greater. After four months a rental term could be month-to-month.

Councilmember Cook noted that when he first moved to Greenwood he rented a house on a month-to-month basis and he ended up living there 2.5 months while his house was being torn down and rebuilt. He expressed concern that it would be an undue restriction. He clarified his quibble is about changing it to one month from four months.

Attorney Kelly stated that is draft ordinance is in response to concerns conveyed to the City and that the amount of time set for the initial rental term is a policy discussion for the Council.

Councilmember Cook stated there are about six of the things on the prohibited list that occur in his neighborhood, so that this ordinance would be good to have in place.

David Walsh, 21630 Fairview Street, distributed some documents to Council. Mr. Walsh stated the vacation rental property being talked about along Fairview Street was sold last September. The new owners, Amy and Kevin, are from San Francisco. He and his wife Sue welcomed the new owners. Comments made by the new owners indicated they would not be at their property very much and that Amy's sister would be the person he and Sue would be seeing coming and going from the property.

Mr. Walsh explained that his wife was perusing the internet and came across information that Amy and Kevin's property was for rent. After further research his wife learned that they created a business called Lake Minnetonka Associates (LMA). There are four websites that in detail show how LMA is marketing the property. The information shows that during the high time starting June 1 the property rents for \$5,600 a week and during May it's \$4,200. There is information on the owner's profile which indicates they looked around the Lake Minnetonka area for two years and finally found the perfect property. On the owners Facebook page comments were written that the owners finally found their new venture.

Mr. Walsh stated the calendar on the LMA website indicates the property is booked up. Mayor Kind stated it is possible the owners booked out time for themselves. Mr. Walsh noted that two people left the property today and he believes that cleaning people came in after them.

Mr. Walsh explained that he reviewed the City's Comprehensive Plan (Comp Plan). The Comp Plan's mission is *"The City of Greenwood is primarily a single-family, resident-owned community supporting the orderly development and redevelopment of our property. ... We believe in a balance between private property owners' rights and the preferences of the neighboring properties."* He stated the LMA business is completely contrary to the mission statement. Under Land Use Element/Goals and Policies it states *"Maintain the character of residential neighborhoods"* and *"Manage commercial areas to be free of encroachments or undue impacts on adjacent residential areas."*

Mr. Walsh then explained he reviewed the City Code Book. The area he lives in is zoned R-1A, Single-Family Residential. He explained for the R-1A Single-Family Residential District Section 1120.00 Purpose states *"The intent of this 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."* Under Section 1120.05 Permitted Uses Subd. 1(a) it states *"Single-family detached dwellings, excluding the leasing or renting of rooms."* Under Section 1102 Definition it states *"Dwelling, Single Family means a detached residential dwelling unit designed for and occupied by 1 family only."*

Mr. Walsh noted he and his neighbors are supportive of the draft amendments being discussed. Speaking for himself and neighbors in the audience, he stated the City already has a Comp Plan and ordinances that prohibit the property from being a vacation rental property. They have concern that if the business starts it will be difficult to stop it. He stated the ordinances are laws and they need to be enforced. They are the rules of the road in Greenwood. They provide the framework for residents to live together peacefully and in an orderly manner. It allows residents to know what to expect from one another in the context of the community. He encouraged the City to use the ordinances already in place to rectify the vacation rental situation even before Council adopts the ordinance amendments, and to continue to move forward with the draft ordinances.

Anne Spaeth, 21700 Fairview Street, stated Council is having a lot of discussion about hotel/motel. She noted in the LMA's advertising it talks about the house possibly being an event center (e.g.; weddings and corporate gatherings). She stated Fairview Street is narrow. The neighbors use each other's driveways when they have events. She encouraged Council to consider traffic and noise issues if it were to be used as an event center. She expressed what troubles her most by this is that young children live in the neighborhood. She noted the residents need Council's proactive help.

Mayor Kind asked Ms. Spaeth what her thoughts are about Councilmember Cook's desire to allow month-to-month initial rental term of single-family housing. Ms. Spaeth responded she is supportive of that. She noted that she does not want to amend the ordinances by reacting out of fear. She stated she thought it is worth further discussion. She then stated a four-month initial term could be reasonable but so could month-to-month. Maybe three months would be appropriate because that would be the three

summer months. Ms. Spaeth stated she wants to be sensitive to property owners who may want to go away for a period of time and rent their home out.

Councilmember Fletcher stated he had heard about the property being marketed possibly as an event center. He could not find that on any of the LMA websites.

Ms. Spaeth stated she found it under the Contact Us tab and there is an option for availability for short- and long-term leasing and events.

Councilmember Quam noted the City Ordinance does have controls for events.

Mr. Walsh stated if a person Google's Lake Minnetonka Associates or Lake Minnetonka rentals they can find a great deal of information.

Joan Moser, 21670 Fairview Street, noted that Mr. Walsh lives on one side of the vacation rental property and she and her husband are on the other side. She stated her only concern with the short-term rental is if people can move in once a month the neighbors don't know who they are. She noted that a minimum fourth-month initial rental term is ideal. She stated renters may not take care of the property very well and there is no way to control the subletting.

Tom Warner, 21710 Fairview Street, commented some of the houses have been there a very long time and the side yard setbacks are quite small. He thought immediate action should be taken. He suggested the City Attorney be asked to promptly send a cease and desist order to stop the rentals immediately. That will allow the City enough time to adequately enhance the ordinances. He mentioned that there have been past situations such as the island property, where potential buyers were told they could not use the property as a hotel/motel.

Zoning Administrator/Clerk Karpas stated the contact he received about the island property was about multi-dwelling units. He explained Section 300 of the Code allows for the registration of rental properties. Within the single-family residential district a person can rent their property. There is a prohibition on that which reads "*The limitation on habitable dwelling units, with the exception of legal nonconforming uses, no property shall be licensed for more dwelling units than are otherwise permitted within the zone the premises is located.*" If the owners of the property license it for an annual \$50 license fee to be a rental property within the City and if they meet the requirements within the Code (which is basically the International Property Maintenance code) the owners can rent the property. There are no restrictions on who is renting it. He noted the owners of the property do not have a rental license. He stated he is not aware of anything in the Code that would prohibit them from getting a rental license.

Mayor Kind asked whether there is anything in the Code currently that would prevent people from renting their homes for a short period of time (e.g., a week). Zoning Administrator/Clerk Karpas stated he could not find anything.

Karpas then asked if the City has a responsibility to let the owners know that they have not applied for a rental license.

Councilmember Cook suggested contacting them immediately and to tell them they are in violation of the City Ordinance because they do not have a rental license and that they should get their website marketing in line with the City Ordinance. If the City Ordinance does not allow event centers in the residential zoning districts they should not market the possibility of an event center.

Councilmember Cook stated the fact that they have already violated the City Ordinance it should be used as the first step in stopping the process.

Mayor Kind stated they can send the City a \$50 check for a rental license. Zoning Administrator/Clerk Karpas clarified they have to submit a rental application also.

Attorney Kelly stated the rental permit ordinance was adopted to make sure buildings were maintained to a certain quality. He stated he has not tried to find out who the owner of record is of the vacation rental property. Mayor Kind clarified Lake Minnetonka Associates is the owner of record based on the tax roll.

Kelly explained the Zoning Code implements the land use plan. The Zoning Code indicates the property is located in the R-1A Single-family Residential Zoning District. How that single-family use is exercised is not defined in the Zoning Code. It does not specify the amount of time. It is being used for residential purposes, albeit short term. The question becomes what is the reasonable regulation of that. He did not think the City would be successful if it issued a complaint and filed it with the District Court at this time for hearing. The City does not have any temporal limitations on the turnover in the residential districts.

Kelly stated when this issue of the vacation rental property first came up the thought was to regulate them in the home occupation ordinance. He noted that he agreed with Mr. Warner's suggestion that the City take the time needed to make sure the ordinances will be enhanced appropriately. He suggested that in addition to the home occupations ordinance, the City should have a flat-out prohibition that would be included in the Zoning Code Section 1140 General Regulations. There also needs to be something in the penal code. Regarding the idea of sending a cease and desist letter, Kelly stated that these types of letters are usually sent in relation to established legal rights that a company might have, such as a violation of trade secrets. He noted that based on his experience he did not think a cease and desist order is appropriate in this situation.

Councilmember Fletcher stated he understands Attorney Kelly to be recommending that the City make the needed amendments to the City Code and then send a letter.

Attorney Kelly noted as soon as the ordinance amendments have been adopted and published in the City's newspaper of record they go into effect. The only thing that would be grandfathered in might be the current rental. A future rental could not take occupancy because it would be in violation of the City Code.

Councilmember Fletcher stated he assumes it would be prudent to have the full tool kit in place before taking any action against the property owner.

Attorney Kelly stated the City has the right to impose reasonable regulations on the use and operation of the property. At a minimum to the extent that the LMA has not booked the property for some particular week then it would be done because the LMA would be on notice. Once the LMA is on notice it cannot continue to rent the property out because it would be in violation.

Zoning Administrator/Clerk Karpas stated he would call the LMA and tell it that he is sending a letter with an application. The LMA would be told they have to submit the application and \$50 fee within a certain time. If the City does not receive the application and fee within the timeframe a civil citation would be issued.

Mayor Kind questioned why the City would want to send the LMA a letter informing the LMA that it needs a rental license.

Councilmember Fletcher stated he does not encourage that. He then stated he understands Attorney Kelly to be recommending the City have no communication with the LMA at this time.

Attorney Kelly stated an amendment to the Zoning Code Section 1140 General Regulations would include a prohibition on events and hotel/motel in a residential district.

Councilmember Roy questioned if this is a buyer-be-aware situation. He stated he thought the LMA should have researched what the property could be used before it purchased the property. It is not up to the City to accommodate the LMA.

Mayor Kind stated if the LMA did do its research the City Code does allow a property to be rented out with no stipulation on the length of time.

Attorney Kelly noted that he does not want the City to send the LMA a letter informing it that it needs to apply for a rental license.

Zoning Administrator/Clerk Karpas asked if Council still wants to consider amendments to City Code Chapters 4 and 12 on April 11 and April 25 and then work on amendments to the Zoning Code. Mayor Kind responded yes.

Attorney Kelly stated the Planning Commission could discuss amendments to the Zoning Code during a regular meeting and then call a special meeting to hold a public hearing on its amendment recommendations.

She asked if Council could have a first reading of the ordinance amendment during this meeting while noting it was not posted that way on the agenda. Attorney Kelly stated that could be done, but he suggested keeping on the April 11 and April 25 timeline.

Attorney Kelly noted the most important thing to do from his perspective is to tweak the Zoning Code. The Planning Commission can have an initial discussion about amendments to the Zoning Code and then call a special meeting to hold the public hearing on the amendments.

Mayor Kind asked if the amendments to the Home Occupations ordinance are sufficient to send a letter to the LMA informing it that it is in violation of the City Code. Attorney Kelly stated he prefers to have the Zoning Code amended first. Kelly stated he needs to refine the draft ordinance amendment to Zoning Code that is included in the meeting packet.

There was agreement that a special Planning Commission meeting be held on April 25 for the purpose of holding a public hearing on amendments to the Zoning Code and then Council can consider the Planning Commission's recommendation and have the first reading of the ordinance during its April 25 meeting. The Commission will have its initial discussions about the amendment during its April 17 meeting.

Councilmember Cook stated he is not convinced that the initial rental term needs to be more than 30 days.

Mayor Kind stated Attorney Kelly's newly revised definition of hotel/motel which addresses subletting will be included in the ordinance amendments the Planning Commission and Council will discuss during their upcoming meetings.

B. Draft of Home Occupations Ordinance Amending Zoning Code Chapters 4, 11, and 12

This was discussed as part of Item 7.A.

C. Report of Past Variances Granted for Possible Code Revisions

Mayor Kind explained that during its March 6, 2013, meeting Council discussed an ordinance amendment that would relax building volume requirements for smaller lots. At the end of the discussion Council directed Zoning Administrator/Clerk Karpas to research past variances that were granted. The intent was for Council to review the variances and use the information to determine if there is a pattern of granting variances for certain things that would warrant the Zoning Code being changed. She noted that earlier in the week she asked Karpas if the information he assembled is supposed to reflect the variances granted or the actual setbacks approved. She explained she had found some inconsistencies. She suggested he recheck his numbers.

There was Council consensus to have the information about variances verified.

Councilmember Quam asked Zoning Administrator/Clerk Karpas to provide a summary of patterns he found along with the verified information.

Councilmember Fletcher noted that during its March 6 Council meeting it continued the second reading of Ordinance 215 to its May 1 meeting. Therefore, it is probable that Council will not consider the Ordinance until its June meeting to give Council time to discuss any changes. Mayor Kind explained Council had the first reading of the Ordinance during its February 6 meeting and the second reading must be done within three months of the first reading. If the second reading is not done within the required time the first reading will have to be done again.

Councilmember Cook asked that the information be updated and made available to the Planning Commission for its next meeting which is later this month.

D. Lake Improvement District Concept

Mayor Kind stated that Councilmember Fletcher brought up the idea of a St. Alban's Bay Lakeshore Improvement District (LID) during Council's March 6, 2013, meeting for managing aquatic invasive species (AIS) in the Bay. During that meeting Council directed Fletcher to research the concept and report back to Council for discussion. She noted that the meeting packet contains a copy of Fletcher's report.

Councilmember Roy stated if Council likes the idea of moving forward with this LID concept he asked Councilmember Fletcher what the next steps in the process would be. He stated he thought it was important to inform the residents of concept. He suggested a timeline for the process be developed. He stated he assumes it will be presented to the Lake Minnetonka Conservation District (LMCD) and the Minnehaha Creek Watershed District (MCWD) as partners with the City. He commented that he thought there will be more of this concept around Lake Minnetonka. He noted St. Alban's Bay will be chemically treated for Eurasian Watermilfoil (milfoil) again in 2013. Therefore, it is likely the Bay will not be treated again in 2014 based on history. He would like to have this in place by 2015 if the lakefront property owners in the City support the idea.

Councilmember Fletcher stated that assuming Council and the owners of the properties that front St. Alban's Bay support the idea along with the Hennepin County Board of Commissioners he thought it is

realistic to get the structure in place this year. Based on the tax cycle, it could not be in place until 2015 to generate funding for treating the Bay.

Councilmember Cook asked what problem is trying to be solved with a LID. He stated from his vantage point the funding process for treating AIS that is in place works. He expressed concern about creating another governing body that would have taxing authority. He explained the City is located in other types of districts with taxing authority that have expanded their role significantly. He stated that St. Alban's Bay is 60 to 70 percent surrounded by Greenwood properties. Therefore, he thought Greenwood should be dealing with funding.

Mayor Kind noted that she shares Councilmember Cook's concern about "mission creep." She stated that the advantage of having a LID is its taxing authority would be focused solely on property owners who front St. Alban's Bay; not on the other property owners who live on the main lake or off-shore. She stated that for the city to budget \$70,000 for the treatment would result in a large tax increase.

Councilmember Quam stated the City could increase its contribution to the chemical treatment to, for example, \$25,000 instated of the \$5,000 it currently contributes.

Mayor Kind stated the main advantage of a LID is that it would provide for a funding source that could be counted on for the long-term.

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

Mayor Kind reconvened the meeting at 9:07 P.M.

Councilmember Quam suggested Councilmember Fletcher try to move this forward through the appropriate channels, noting he is supportive of taking a look at this.

Councilmember Roy stated he thought a LID would have a number of advantages. There are residents who benefit who from the treatment who currently don't contribute toward the treatment. He noted that his son owns property that fronts another lake where a LID was created four years ago. It has worked well there. The cost is spread out among property owners equitably. He stated those that contribute to the treatment funding would probably pay less if this were implemented.

Councilmember Quam stated residents who lease the City-owned docks benefit from the treatment as do people who live near the channel. Also, people belonging to homeowners associations may also benefit. He stated they would also have to approve creating a LID. Councilmember Fletcher stated he thought it would be prudent to require a strong/super majority approval of property owners.

Mayor Kind stated if Council chooses to move forward with this then whatever is presented to the public would need to explain how the taxing would be determined. Would it be by per-foot lakefront? Would off-shore residents be taxed? And, so forth. It needs to be clearly thought out and then explained.

Councilmember Quam asked what the next step is the City can take.

Mayor Kind stated there is a suggested motion that would create a LID subcommittee to meet with Hennepin County Board and Minnesota Department of Natural Resources (DNR) representatives to determine if there would be support for establishing a St. Alban's Bay LID.

Councilmember Roy suggested talking to residents first before talking to other agencies. Councilmember Quam stated if that approach is taken and residents get excited about a LID he expressed concern about what the impact of the County and DNR squelching the idea might be.

Councilmember Quam suggested finding out if the County Board and the DNR are open to the concept.

Councilmember Fletcher suggested talking with Hennepin County Commissioner Callison and the DNR upfront to get a sense for where they stand on the concept. He also thought it prudent to get a sense from some residents if they think it is reasonable. Also, contacting the LMCD and the MCWD could prove worthwhile.

Mayor Kind stated the motion could be to establish a subcommittee to determine what the next steps would be.

Mayor Kind reiterated that she does share Councilmember Cook's concern about creating another taxing authority and about mission creep. She stated if this were to get to a by-laws stage she would want them to be extremely clear about what the LID's mission would be.

Councilmember Roy stated it would be totally focused on the management of AIS.

Councilmember Fletcher stated he is involved in a business group that deals with certain services provided to businesses in that area. Based on that, he does think there is value with having some local control. He then stated he thought there will always be a battle with the LMCD about it providing some funding for the chemical treatment of St. Alban's Bay. He went on to state he did not think properties that don't front the Bay should be taxed at the same level by the LID as those that do. He commented that he would be surprised if the DNR was not supportive of this.

Mayor Kind expressed concern about forcing lakefront property owners who have chosen not to contribute toward the chemical treatment to contribute through taxation.

Councilmember Fletcher stated there are people who oppose putting chemicals into the Bay. They will be even more unhappy if they have to pay for it. Councilmember Roy stated there were two people who expressed concern about the chemicals and one of them has moved.

Mayor Kind stated she assumes that Councilmembers Fletcher and Roy would like to serve on the subcommittee. She asked if any other Councilmember wants to do so.

Quam moved, Cook seconded, appointing Councilmembers Fletcher and Roy to a Lake Improvement District subcommittee and directing them to meet with representatives from the Hennepin County Board of Commissioners and the Minnesota Department of Natural Resources and to report back to Council on their observations and recommendations.

Councilmember Fletcher asked if Council wants him and Councilmember Roy to talk to residents about this. Councilmember Quam stated that could be done casually but not formally.

Motion passed 5/0.

8. OTHER BUSINESS

None.

9. COUNCIL REPORTS

A. Cook: Planning Commission

Councilmember Cook stated there was not a Planning meeting in March due to a lack of an agenda.

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

With regard to the Lake Minnetonka Communications Commission (LMCC) activities, Councilmember Fletcher stated he had nothing to report. He was not able to attend the LMCC Executive Committee meeting in March and he will not be able to attend the meeting in April.

With regard to the Excelsior Fire District (EFD), Fletcher stated he attended the March 27, 2013, EFD Board meeting. He learned that Pat McCarthy, a Greenwood resident and volunteer firefighter, was promoted to the Battalion Chief of training and Kieran Hannigan, another Greenwood resident and volunteer firefighter, responded to all of the nineteen calls out of Station 2 in February. A short report was given on the EFD's 2012 financial statements. The EFD received a clean audit. The Board accepted the audit reports. There was also a brief discussion about the Excelsior Firefighters Relief Association (EFRA) 2012 audit. The EFRA's fund for pensions was over 100 percent funded at the end of 2012; it has dropped somewhat recently. There was a brief discussion about the informal agreement the EFRA has with the EFD Board that it will not ask the EFD Board to approve a raise in the per-year-of-service benefit until the fund is at least 110 percent funded. A new tanker/pumper truck (Engine 22) will be arriving at Station 2 in the next two months. The new truck will be able to carry 1000 gallons more water than the truck it is replacing.

Fletcher stated there is an EFD Board work session scheduled for April 17 to discuss the draft 2014 EFD Operating Budget and 2014 to 2034 Capital Improvement Program (CIP). He noted that he will not be able to attend the work session so Councilmember Quam, the alternate, will attend in his place. He explained that during the March meeting EFD Chief Gerber presented the highlights of the budget. Detail discussion will occur during the work session. The draft budget reflects a 2 percent increase in the member cities contribution when compared to the 2013 contribution. He explained that the EFD in-service times (turnout times) and response times are lower on weekends and nights than during the weekdays. The EFD has one rotating duty officer on call 24/7. One way to improve those times is to have a partial duty crew from 6:00 P.M. on Friday through 6:00 P.M. on Sunday. The cost to do that (approximately \$106,000) would raise the increase in the member cities contribution for 2014 to 8.91 percent.

Fletcher explained that in 2023 the bonded debt for the public safety facilities is paid off. The CIP reflects that in 2024 to 2026 \$555,000 (approximately the amount of the bonded debt annual payment) will be put into the Building Fund to put aside funds for major repairs to the two fire stations. He recommended extending out some of the capital purchases (e.g.; replacement trucks) and using some of that equipment funding to help fund a duty crew to reduce response times.

Fletcher stated the owners of a property along Maple Heights Road near the island house has expressed in municipal water to him and Mayor Kind. He then stated if he owned the island house property he would likely want to have access to municipal water and as long as there will be trucks going back and forth on that part of Maple Heights Road now may be a good time to extend water to the island house. Kind stated

she told the property owners to petition the City. Kind noted a stub will be installed at the intersection of Maple Heights Road. Kind also noted that road is not being torn up.

With regard to the Xcel Energy Transmission Line Upgrade Project, Fletcher stated there is nothing new to report.

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

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind stated the next SLMPD Coordinating Committee is scheduled for May 21 at 5:00 P.M.

With regard to administration, Kind stated representatives from ShopNBC met with Excelsior Fire District Chief, Gerber, SLMPD Chief Litsey and SLMPD Deputy Chief Pierson sometime in the last month. Another meeting has been scheduled with them, herself, Zoning Administrator/Clerk Karpas and another neighbor for April 23 to discuss logistics for ShopNBC's filming on Curve Street and to decide if it can be done or not.

With regard to the City's Sanitary Sewer Discharge Program (often referred to as the sump pump program), Kind stated all but one of the properties that needed to be inspected have been inspected. The owners of that property are away for the winter. That property will be inspected when the owners return to Minnesota. She thought that overall the Program was a big success. Five illegal connections were identified and corrected. Councilmember Cook stated he will have someone at the Metropolitan Council Environmental Services (MCES) estimate what the cost savings to the City will be because the illegal connections were eliminated.

Kind noted that Lisa Christian, Planning Commissioner for Alternate Seat-1, has submitted her resignation because she is moving back to Australia. There are now two openings on the Commission. She encouraged residents to apply for the openings. They can get applications at City Hall or through the City's website. She reviewed the role of the Planning Commission. Councilmember Roy noted that Ms. Christian was a great Lake Minnetonka Association Bay Captain. Kind extended her thanks to Ms. Christian

Kind stated she has received information from the City Engineer and the League of Minnesota Cities (LMC) regarding street improvement districts. The LMC has asked its members to help promote LMC supported legislation that would allow cities to create such districts. The LMC sent two model formats for cities to express support for establishing such legislation – a resolution format and a letter format. She distributed copies of the two formats. She stated the LMC needs information expressing support back as soon as possible.

Councilmember Quam asked why the City should support such legislation. Mayor Kind stated it's her understanding that it is an alternative to assessments. She noted the City does not assess for street improvements; it pays for them out of the General Fund. She explained often cities cannot satisfy the test that the street improvement will improve the value of the property by the amount assessed. Establishing a street improvement district would be another tool a city could use to pay for improvements.

Councilmember Fletcher stated he has no problem supporting legislation that would allow cities to establish street improvement districts. He noted that he does not envision the City ever doing that.

Councilmember Roy stated it would just be another level of taxation.

Mayor Kind stated this would be a level of taxation she could support because it is not based on ad valorem. She then stated the proposed legislation has bipartisan support.

There was Council consensus not to respond to the request for support.

Mayor Kind stated a draft copy of the Minnehaha Creek Watershed District's (MCWD) aquatic invasive species (AIS) plan is available for viewing. She explained she received a letter from the MCWD with a draft amendment to the Plan that the MCWD would like cities to comment on. She asked Zoning Administrator/Clerk Karpas to send a scanned copy of the document to Council and stated it will be on Council's May meeting agenda.

Kind noted that the City has received a copy of the agreement with Metropolitan Council Environmental Services for the cooperative project. She thought the agreement looked okay. She noted that she asked Councilmember Cook to let her know if he finds any issues with it.

Kind stated the City's website now has the entire 2012 to 2013 tax assessment change document on it. She noted that she has been informed that some of the information on the Tax Overview sheet are not correct.

Councilmember Quam asked if the rule about when to move cars when it snows is on the website. Mayor Kind responded it is in the Code Book. Kind stated she will make a note to include the rules in the winter newsletter in the future. For anyone watching the meeting on video, Kind explained cars should be kept off city streets until they are plowed curb to curb.

D. Quam: Roads & Sewer, Minnetonka Community Education

With regard to roads and sewers, Councilmember Quam stated an assessment of the condition of roadways has not been done yet because of the late spring. The plan is to go and look at the roadways next week and to have recommendations for Council for its May meeting.

With regard to Minnetonka Community Education (MCE), Councilmember Quam stated there is nothing new to report.

E. Roy: Lake Minnetonka Conservation District

Councilmember Roy stated the Lake Minnetonka Conservation District's (LMCD) Comprehensive Eurasian Watermilfoil and Curly-Leaf Pondweed Plan (the Plan) for Lake Minnetonka was approved. The funding for it was taken out of it on a 12/2 vote. It is a Plan that has no funding mechanism.

10. ADJOURNMENT

Roy moved, Quam seconded, adjourning the City Council Regular Meeting of April 3, 2013, at 8:40 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder