

GREENWOOD CITY COUNCIL MEETING
Wednesday, September 4, 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: Attorney Kelly (arrived at 7:45 P.M.), City Zoning Administrator/City Clerk Karpas, Engineer Martini (departed the meeting at 9:04 P.M.), and Deephaven Administrator Young (departed the meeting at 7:44 P.M.)

Members Absent: None

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

2. CONSENT AGENDA

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

- A. August 7, 2013, City Council Work Session Minutes**
- B. August 7, 2013, City Council Meeting Minutes** (This was moved to Item 8.A under Other Business.)
- C. July 2103 Cash Summary Report**
- D. August Verifieds, Check Register, Electronic Fund Transfers**
- E. September 2013 Payroll Register**

Motion passed 5/0.

3. MATTERS FROM THE FLOOR

None.

4. PRESENTATIONS, GUESTS & ANNOUNCEMENTS

- A. 2014 Excelsior Fire District Budget**

Mayor Kind stated Excelsior Fire District (EFD) Chief Gerber is present to talk about the 2014 EFD Operating Budget and 2014 Capital Improvement Program (CIP). She noted that the budget information included in the meeting packet is not the budget that was recommended for approval by the EFD Board. Gerber provided the correct information this evening.

Chief Gerber highlighted the 2014 Operating Budget (the Budget) summary document dated August 19, 2013, which is what the EFD Board recommended for approval. The Budget's operating expenditures are

\$865,082; an increase of \$12,445 (or 1.46 percent) when compared to the 2013 approved operating expenditures. If the budgeted mandatory contribution to the Excelsior Firefighters Relief Association's (EFRA) fund was taken out of the 2013 approved operating expenditures the 2014 increase would be \$45,372 (or 5.54 percent). The recommended 2014 Budget does not include a mandatory contribution. The Budget reflects the use of \$6,934 in General Fund undesignated fund balance (reserves). Wage increases are factored in for the Fire Chief, Fire Inspector and Administrative Specialist according to a salary survey that was conducted. Benefit increases for health insurance and Public Employees Retirement Association (PERA) are also factored in. An increase is included for worker's compensation increases imposed by the League of Minnesota Cities in 2013.

The 2014 CIP reflects a transfer in of \$175,000; a \$5,000 increase (or 2.94 percent) when compared to 2013. The capital expenditures budgeted for in 2014 include one year's lease payment for the new Engine 22 put in service this year; the purchase of a new all-terrain vehicle (ATV) and trailer to replace the snowmobile at Station 2; and, the third year lease payment for self-contained breathing apparatus.

The payment to the Fire Facilities Fund reflects a 1.05 percent decrease when compared to 2013. The final payments will be made on the fire facilities in 2023.

The total 2014 Budget in the amount of \$1,588,542 reflects an increase of \$11,620 (or 0.74 percent) when compared to 2013. That does not mean that each EFD member city will have a 0.74 percent increase in their contribution because the funding formula is ad valorem (tax capacity) based. For Greenwood it is an approximate 6 percent increase over 2013. The total municipal increase for the member cities is 2.32 percent when compared to the adopted 2013 contribution. One member city will have a decrease in their contribution for 2014; that city had the brunt of the increase in 2013.

Chief Gerber stated he had also provided Council with the detailed Budget. He offered to entertain any questions Council may have.

Mayor Kind noted that the draft 2014 Greenwood budget discussed during the work session immediately preceding this meeting did not include the correct EFD Budget numbers. She explained the Greenwood budget for Fire Protection should be increased to \$70,517 and the budget for Fire Side Lease should be decreased to \$60,371. Greenwood will have a 6.46 percent increase in its share of the municipal contribution when compared to 2013. The preliminary budget that will be approved later on the agenda will have to be adjusted slightly.

Councilmember Quam asked Chief Gerber to comment on the status of the EFRA's fund for pension.

Chief Gerber explained an EFD firefighter becomes 60 percent vested in the EFRA per-year-of-service (PYOS) pension benefit after 10 years of service; it goes up 4 percent each year after that until they become fully vested after 20 years. Based on the current PYOS benefit a firefighter would receive approximately \$120,000 after 20 years of service. If that is broken down over 20 years and based on the number of hours they put in that is a small amount of money. A firefighter can only collect their earned pension after they have retired and they have to be at least 50 years old. If someone quits before putting in 10 years of service they will not receive any pension.

Gerber then explained the EFRA fund for pensions is funded primarily with investment income on EFRA assets which are invested with the State Board of Investments, some state aid which is based on 2 percent surcharge on homeowners' insurance, and when needed by mandatory contributions. Today the fund is approximately 112 percent funded. The fund took a big hit with the severe market downturn in 2008. A required contribution is amortized over 10 years. But, that obligation was settled much faster due to the

recovery of the fund. He stated there has been a lot of discussion about the PYOS pension benefit and how to fund the fund both short term and long term.

Fletcher moved, Quam seconded, approving the recommended final 2014 Excelsior Fire District 2014 Operating Budget and 2014 – 2034 Capital Improvement Program as presented. Motion passed 5/0.

Councilmember Fletcher noted that Chief Gerber is one of three finalists for the fire chief position at the City of St. Louis Park's Fire Department. He acknowledged that should he be offered the position people would be sad to see him go. He stated he does not think St. Louis Park could find anyone more qualified than Gerber.

Chief Gerber noted the next step in the interview process is September 16. He thanked Councilmember Fletcher for his kind comments.

Chief Gerber, on behalf of the EFD organization, thanked Council for its continued support. He stated it is the paid-on-call firefighters who live in the EFD community that make the organization work.

B. John Utley, Kennedy & Graven– Conduit Bond Financing for Chaska Senior Housing Project

Mayor Kind noted that John Utley with Kennedy & Graven is present this evening to talk to Council about proposed conduit bond financing for The Legends at Hazeltine Senior Living Community project in the City of Chaska.

Mr. Utley explained the City is being asked to participate in conduit bond revenue financing for the benefit of a senior housing facility to be constructed in Chaska. Under Minnesota law codified under Chapter 462C cities are authorized to issue revenue bonds to participate in financing these types of facilities; in this case a nonprofit sponsored facility. A lot of cities loan its ability to borrow on a tax-exempt basis to a private entity to utilize the lower borrowing costs the city is entitled to help finance a facility the State of Minnesota thinks ought to be able to take advantage of that type of arrangement. He noted his practice is principally in this area.

Each city is authorized by the federal government to issue up to \$10 million in bank-qualified bonds each year. These types of bonds are designated as a type that can be purchased by banks. There is a rule codified under Section 265 of the United States Revenue Code which prohibits double dipping. It states if you borrow money to buy tax-exempt bonds then you can't have the deduction on the interest of your borrowing at the same time you are taking the tax-exempt interest. Because of that provision, a bank is typically prohibited from buying tax-exempt bonds. Because small communities look to banks as a primary source of borrowing, the federal government has made an exception. Cities that do not issue more than \$10 million in bonds in a year can specifically designate up to \$10 million in bonds to be eligible to be purchased by banks without Section 265 applying. When the federal government agreed to the exception it included general obligation bonds as well as the type of revenue bond being talked about this evening.

Chaska had already issued or planned to issue \$5 - \$10 million in bonds. Had it also issued these bonds the combined amount would have exceeded \$10 million and therefore none of its bonds could have been designated as bank qualified. Chaska wanted its bonds to be bank qualified so this opportunity would not have worked for them.

The proposal was to take this to the City of Independence which did not intend to issue any bonds this year and have it issue the entire \$25 million in bonds. The process was fairly far along. When the bonds were ready to be sold, the market for this type of revenue bond had collapsed. As a result Independence was not successful in doing this. Chaska had spoken with five banks all of which were very interested in buying the bonds at very attractive rates. That meant there had to be bond issuers that did not exceed \$10 million in bonds for their portion of the financing because they bonds had to be bank-qualified. In order to issue bank-qualified bonds for this type of facility the issuing entity has to be either the actual city in which the facility would be located or the entity has to be within the market area of the facility financed. A market study had been done and the cities of Chanhassen, Greenwood and Shorewood were all within the area. His firm found out that Chanhassen and Greenwood had no bonding plans for the year so each had \$10 million in conduit revenue bond capacity available. Shorewood had issued some bonds this year, yet still had about \$7 million available and is willing to consider using some of its capacity; \$2 - \$5 million.

The proposal before Council is to have Greenwood issue conduit revenue bonds in the amount of \$10 million. The proceeds of that issuance would be loaned to The Legends at Hazeltine, LLC. The members of that company are Ridgeview Medical Center (RMC) and Intergenerational Living & Health Care, Inc., (ILHC). Both are nonprofit corporations. The facility would be an approximate 126-unit progressive senior living community. Approximately 36 units would be for independent living, approximately 67 would be for assisted living, and approximately 23 would be memory-care units. The facility would be located on Hazeltine Boulevard next to the manager's (Goodman Group) headquarters.

The bonds are purchased by the bank and the proceeds will be distributed to The Legends at Hazeltine. That entity would build the structure and agree to repay the bank in an amount sufficient to pay off the note. Under Minnesota Statute the only source of payment are repayment obligations of The Legends at Hazeltine. The entity also would provide some other security to the bank. If the entity failed to pay the principal and interest in a timely manner the only recourse for the bank would be is to foreclose on the mortgage or pursue The Legends at Hazeltine's other security. The bank cannot go after Greenwood. The State Statute has been in place for many years and there is no instance of any city paying anything because of a conduit transaction. There is no downside for Greenwood. It would only lose its ability to borrow bank-qualified debt this year.

The \$10 million in conduit bond financing from Greenwood when combined with \$10 million from Chanhassen and \$2 - \$5 million from Shorewood and the \$9 million in equity would cover the cost of the project.

One reason Greenwood may want to consider doing this is it is located in the market area where The Legends at Hazeltine would be located. It will be a nice facility. Another is the borrower is willing to pay Greenwood for its ability to provide conduit bond financing. Chanhassen has a policy of charging 0.75 percent of the principal amount that it would issue. The proposal is the other issuers would get the same. For Greenwood it would be \$75,000. That one-time fee would be paid at the closing which is currently scheduled for the end of October 2013.

If Greenwood is interested in doing this, the City would authorize Kennedy & Graven to publish a notice of public hearing. A public hearing has to be held for each of the transactions before it can be approved. Greenwood's public hearing would be scheduled for the October 2 Council meeting. After the public hearing the City will be asked to adopt a resolution approving the issuance of the note and the documentation covering the transaction. The Chanhassen City Council will hold its public hearing on September 9 and it will consider a resolution approving its note at that time. The Shorewood City Council will hold a public hearing also on September 9 and it will consider a preliminary resolution. The

Shorewood Council will consider a final resolution on September 23. The Chaska City Council will hold a public hearing on September 16 and consider a resolution approving the participation of the other parties.

Mayor Kind noted that in February 2012 Mr. Utley came before Council with what was to be a similar opportunity for the Wayzata Bay Senior Housing, Inc. At that time Attorney Kelly recommended the City consult Attorney Tim Keane with Malkerson Gunn Martin who specializes in municipal financing.

Mr. Utley stated the borrower will pay all of the expenses associated with the financing. Those are in addition to the \$75,000 fee.

Mayor Kind noted she invited Deephaven City Administrator Dana Young to come and share the City of Deephaven's experience with conduit financing.

Administrator Young stated that Deephaven has been involved in conduit financing since 2007. Since then it has issued five separate revenue notes – one in 2007, 2008, and 2011 and 2 in 2013. He explained once Deephaven understood the process it felt very comfortable doing so. Some of the projects were more directly related to Deephaven in terms of the market area, and some were not. Deephaven assisted Excelsior Covenant Church, the Minnetonka Youth Hockey Association, Benilde-St. Margaret's, St. Therese with its senior housing project, and Eagle Ridge Academy charter school in Eden Prairie. Providing assistance has been very been a very nice source of revenue for Deephaven. Deephaven agrees with hiring a qualified and competent attorney to help with the process. The documents for the financing are massive.

Mr. Utley stated this evening he would like Council to authorize the notification of a public hearing and schedule it for Council's October 2 meeting. Kennedy & Graven will prepare the notice because it has to be in a certain legal form. The public meeting has to be noticed 15 days in advance.

Mayor Kind recommended that the Council also authorize the hiring of Attorney Keane, if the Council decides to move forward.

Councilmember Fletcher asked if the \$10 million conduit financing gets noted in the City's annual financial report. Mr. Utley stated his experience is that these types of things are not noted the majority of the time and if they are they are buried in the report. Administrator Young stated that each year Deephaven gets an update on what remains to be paid on the issuance and that is included in its annual report.

In response to a question from Councilmember Fletcher, Mr. Utley stated if the transaction does not come to fruition the borrower will pay associated expenses incurred to date but it will not pay the fee.

In response to a question from Councilmember Cook, Mr. Utley explained each year a city gets another \$10 million in bank-qualified bond capacity. A city can issue non-bank-qualified bonds if the \$10 million has been used. The rate on non-bank-qualified bonds tends to be higher; how much higher varies. In response to another question from Cook, Mr. Utley explained conduit financing has been allowed for 60 years and during that time there have been some defaults. He is not aware of a city ever being responsible for the debt service. It is against the law for a city to pay the debt service. Cook asked what is the City's protection from getting drawn into a non-payment situation between the defaulting party and the bank? Mr. Utley explained the documentation will be replete with provisions saying Greenwood does not have liability and cannot be held responsible for any of the debt service or any losses that might be experienced by the borrower.

Councilmember Roy stated he has had many years of experience with this type conduit financing on the other side.

Fletcher moved, Roy seconded, authorizing Kennedy & Graven, Chartered to publish notification of public hearing on October 2, 2013, regarding conduit bank-qualified bond financing for The Legends at Hazeltine Senior Community Project to be done in the City of Chaska and authorizing the City Clerk to engage the services of Attorney Tim Keane with Malkerson Gunn Martin to advise Council with the cost to be paid out of the General Fund and not to exceed \$3500 with the understanding that the cost will be reimbursed to the City.

Mr. Utley stated Kennedy & Graven will ask Council to authorize the issuance of the note during the October 2, 2013, Council meeting. Greenwood would not be bound to move forward with this until Attorney Keane approved the execution of the documents by the appropriate City officials.

Councilmember Cook suggested amending the motion to include subject to Attorney Keane's review and recommendation of acceptance of the documents and Council's acceptance of Keane's recommendation.

Councilmember Fletcher asked Mr. Utley if \$3,500 is a reasonable cost for the City to incur to have counsel review the documents. Or, should Council authorize more money? Mr. Utley stated that amount is on the high end for a city attorney review.

Without objection from the maker or seconded, the motion was amended to include subject to Attorney Keane's review and recommendation of acceptance of the documents and Council's acceptance of Keane's recommendation. Motion passed 5/0.

C. City Engineer Dave Martini

1. Potential Removal of Curve Street Curb

Mayor Kind explained a new curb was installed adjacent to 5110 Curve Street (owned by Mike and Micheele Brost) as part of road reconstruction in 2012 to reduce the amount of sediment carried to downstream properties. Previously there had been a less tall curb located in front of the driveway only. The new curb is taller and it was extended on both sides of the driveway. A new "hump" also was added at the mouth of the driveway that serves both 5130 Curve Street (owned by Rich and Connie Ambrose) and 5120 Curve Street (owned by Heljo Alari).

Since the installation of the new curb and hump, the Ambroses report they are having increased problems with water in their basement. The Ambroses believe the curb section around the corner and the hump are helping so they would like that area to remain as is. But, they would like the curb north of the corner to be removed. The Brosts want to keep the curb in front of their driveway because they believe they will get water in their garage and lower level if it is removed. The Brosts also believe water coming across their driveway will freeze and become a safety issue.

Mayor Kind, Councilmember Quam and Engineer Martini met on site with the owners of both properties at different times. A level was placed at several locations on the Brosts' driveway to show that the flow would not go into their garage or home, so it was decided that the curb in front of the driveway could be removed, and a letter was sent to the Brosts (a copy of which is included in the meeting packet). When Barber Construction attempted to remove the curb on August 28, 2013, Mr. Brost stopped them from

removing the curb. Therefore, Councilman Quam requested this item be placed on this evening's meeting agenda to determine what the next steps are.

Mayor Kind noted a survey of the area was included in the meeting packet. She explained it shows a brick planter on a corner at the property line. There is a concrete curb on the north side of the asphalt that extends slightly into the City right-of-way (ROW). There is a bituminous curb that starts north of the concrete curb and comes down the east side of the Brosts' property and goes past the south property line inward a bit and there is where the hump is located. When there is a heavy rain the stormwater from the properties to the northeast flows on to Curve Street and down and then on to the Ambroses' property. The intent was to remove the curb from roughly the planter location north.

Councilmember Cook noted he went to look at the site. He stated he is troubled by a number of things. One is the City dumping water from a City street onto the residential properties. Another is the hump seems to be directing stormwater to the Ambroses' property to the south. He expressed concern that the City is merely moving the problem around to different properties. He noted he thought the City should be solving the problem or at least controlling the problem until it gets to a place where someone else can solve it. He stated from his perspective the problem warrants more analysis. He then he thought the curb protects the Brosts' property. If the curb is removed he anticipates there will be a lot of untended consequences.

Mayor Kind stated there had not been any curb along the east side of the Brosts' property before the 2012 roadway improvement work. Removing the curb would basically just restore things to the way they were.

Engineer Martini clarified to restore it to pre-2012 conditions there would have to be a couple-inch-high curb put back.

Councilmember Cook stated he is not trying to restore things to pre-2012 work. He noted that he believes there are some low cost solutions to this problem. But, he does not have any technical information to confirm that. He stated if the flow is split in a controlled way the individual property owners will have to accept less stormwater. The hump has basically routed the stormwater onto the Ambroses' property.

Councilmember Quam stated restoring things back to pre-12 conditions would not be the answer.

Engineer Martini clarified things are working exactly the way they were intended to work. One of the problems that was intended to be solved was to reduce the amount of sediment on the downstream driveways.

Connie Ambrose, 5130 Curve Street, noted the stormwater is flowing on to her property. She clarified that she and her husband have dug the trenches themselves. The hump is not doing what it was designed because the trenches were not there. She stated the hump is not big enough to do anything. All it basically does is collect sediment. They try and dig out the sediment a little so the hump serves as a little bit of a stop gap. She then stated the stormwater is flowing so fast down Curve Street and around the curve she is not sure how to stop it other than with a pond. She noted that after the July heavy rain they had stormwater leak into the west side of their basement. Now there is nothing to stop the flow. She explained that when they first purchased their property in 2008 they had a water problem on the east side. They did some landscaping to help with that.

Councilmember Cook noted that further down to the west there is a storm sewer intake that someone has built. He suggested taking the time to get some understanding of the consequences of making any more changes before doing anything.

Councilmember Fletcher stated when Greenwood Circle was redone a few years ago there was discussion about installing a swirl filter. The sediment would have been cleaned out of the filter when needed. He asked if that concept could be implemented here.

Engineer Martini stated that a swirl filter solution would be very expensive. He agreed that this situation needs some careful analysis. He noted that there is a lot of stormwater that quickly flows in that area. The water from Central Avenue flows onto Curve Street.

Councilmember Quam reiterated he is not in favor of removing the curb at this time. He stated more analysis needs to be done.

Councilmember Cook suggested Council as a whole or a subcommittee of the Council meet with the City Engineer on the side to identify a set of concepts for Council. He clarified he is not recommending designs or studies. But, the amount of water and options for controlling stormwater could be presented and discussed with Council. He stated there are probably other areas in the City that have similar stormwater issues.

Mayor Kind suggested Councilmember Quam and Councilmember Cook meet with Engineer Martini. She noted that she, Quam and Martini have met on site numerous times. When they did that the property owners tried to influence the discussion. She wanted the subcommittee to be cognizant of that. Cook suggested telling the property owners that they should not do their politicking while the technical assessment is being done. The assessment team can talk with property owners one on one at a later time.

Councilmember Fletcher stated the Minnehaha Creek Watershed District (MCWD) has helped to fund projects that reduce sediment from flowing into water bodies. He encouraged someone to contact the MCWD about that possibility.

Mrs. Brost's daughter stated even with the curb stormwater comes on to the driveway. She asked Council to take Mr. Brost's disability into consideration. Mrs. Brost noted that Metro Mobility comes to the property a couple of times a day. Mrs. Brost's son stated he could not see any erosion on the west side of the Ambroses' property. But, on the east side off of the roadway there does look like an erosion channel.

There was consensus to have a recommendation available for Council for its October meeting.

2. Excelsior Boulevard Sewer Forcemain and Watermain Project

• Potential Changes to Excelsior Boulevard Landscaping Plan

Councilmember Cook explained most of the members of Council attended a neighborhood meeting the Metropolitan Council Environment Services (MCES) held regarding its Excelsior Boulevard forcemain project held on August 14, 2013, at the corner of Excelsior Boulevard and Maple Heights Road. During that meeting a number of residents in attendance expressed concern about the landscaping restoration plan. At the meeting he asked the residents to contact him regarding their concerns.

One concern was about the species of the proposed landscaping. The residents want lilacs and instead of a mixture of shrubs. There was a suggestion to build a berm behind the sidewalk as high as possible before sloping down to Highway 7 instead of the plan to have the ground next to the sidewalk basically flush with it until it slopes down toward Highway 7 in order to mitigate the flow of water and debris onto the sidewalk. Also, there are a few houses along Maple Heights Road that are very close to Excelsior

Boulevard with windows exposed to Hwy 7. Past Maple Heights Road there is a long undeveloped piece of property. Cook suggested that some of the bushes proposed for there could be planted in the area where homes are close to Hwy 7.

Cook noted that he drafted a letter to MCES that he would like to have Council approve to start a discussion about the modifications he just discussed.

Councilmember Fletcher asked about the ease of maintaining the berm which will have bushes on top of it, and if the lilacs would have sufficient rain water being they will be located higher than everything else.

Councilmember Cook clarified he has not provided an alternative design. He thought it would be appropriate for Zoning Administrator / Clerk Karpas to work with MCES on that. He stated he thought lilacs are robust and do not need a great deal of water. He noted the MCES engineer had explained it is a narrow right-of-way. He agrees with that. He suggested using as much of it for the City's benefit as possible.

Engineer Martini noted that in some areas it may be tough to build a berm because of the narrow distance between the trail and the highway. Councilmember Cook stated that he has told residents that there may be places where there will not be much of a berm.

Miles Manning, 21100 Excelsior Boulevard, thanked Councilmember Cook for asking for feedback and for carrying it forward. He stated from his perspective sight, sound, and safety should be taken into consideration. He, as well as other residents who live next to Excelsior Boulevard, has some concern about the roadway being widened. It's his understanding from engineers that the wider the road the faster the speed. He noted that over the last three to four years a couple of cars have flipped over on the roadway. He questioned the need to widen the sidewalk to six feet. He stated that because there is only boulevard on one side of the roadway all of the foot traffic is on that side. He then stated the noise from on Highway 7 has never been as great as it has been lately.

Engineer Martini stated he did not think Excelsior Boulevard is being widened and the trail width was going toward the highway.

Cook moved, Quam seconded, authorizing Mayor Kind to send the draft letter to Metropolitan Council Environmental Services regarding proposed changes to the landscape plan for its Excelsior Boulevard project. Motion passed 5/0.

- **Revised Timeline to Meet County Certification Deadline**

Mayor Kind explained the Excelsior Boulevard watermain project timeline has been adjusted to meet the Hennepin County certification deadline. The City utility clerk's deadline for processing assessments is November 20, 2013. State Statute stipulates that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of the assessment. Therefore, the assessment adoption needs to happen on or before October 21. Unless Council wants to have a special meeting, Council must adopt a resolution adopting the assessment during its October 2 meeting. The copy of the revised timeline included in the meeting packet meets the required dates.

- **First Reading: Ordinance 220, Establishing Municipal Water Service Regulations**

Mayor Kind explained this is the first reading of Ordinance 220 establishing municipal water service regulations. She noted that when she and Engineer Martini attended a logistics meeting with representatives from the City of Excelsior it became clear that Greenwood needed to approve an ordinance before any water connections can be made. Therefore, the first reading must be done this evening and the second reading will be on the October 2 Council meeting agenda. When it is published in the newspaper it will go into effect. The meeting packet contains a copy of a draft Ordinance 220 which has been reviewed by Attorney Kelly and approved by Excelsior.

Roy moved, Fletcher seconded, approving the first reading of Ordinance 220 establishing municipal water service regulations. Motion passed 5/0.

- **Resolution 21-13, Declaring Cost to be Assessed and Order Preparation of Assessment**

Mayor Kind explained that the next step in the revised Excelsior Boulevard watermain project timeline is to adopt Resolution 21-13 declaring the cost to be assessed for the watermain project and ordering the preparation of assessment. (A copy of the draft Resolution is included in the meeting packet.) The City has not yet received the final cost for the project, but the model resolution from the League of Minnesota Cities allows estimated numbers to be used. Engineer Martini estimated the total cost of the watermain improvements to be \$195,325; that is what is included in the Resolution. Council needs to determine the interest rate and the assessment period.

Councilmember Fletcher stated the example Mayor Kind provided of 3.25 percent over 10 years seems reasonable. Mayor Kind stated Deephaven City Administrator Young had indicated that a rate of 1 percent above prime (which is 3.25 percent) would be reasonable. Fletcher noted that the City of Edina used a rate of 3.1 percent for a similar assessment with a 10-year assessment period.

Councilmember Quam asked what the money is costing the City. Mayor Kind stated the money currently is sitting in the Sewer Fund and the City is not earning much on the current CD investments.

Miles Canning, 21100 Excelsior Boulevard, noted he is one of the property owners that will be affected by this assessment. He stated he would prefer a longer assessment period and a lower interest rate. He commented property owners already pay high property taxes.

Mayor Kind noted that if the interest rate were 3.25 percent and the assessment period were 10 years the annual assessment payment would be \$1,220.59 for a residential property.

Mr. Canning stated he has owned his property for 23 years. During that time there have been around 30 properties that have changed hands in that immediate area. He explained when the ownership of a property changes hands the balance of the assessment is paid and the City receives all of its money.

Councilmember Fletcher clarified there can be exceptions to paying the assessment off when the property changes hands. Attorney Kelly noted that is very rare.

Mayor Kind stated the reason for selecting 10 years is that the affected property owners will have to connect to municipal water within 10 years per the agreement with the City of Excelsior who owns the municipal water system. Councilmember Quam added if a property owner's well goes dry before that 10 years is up the property owner would then have to connect to the system; they cannot drill a new well.

Councilmember Quam noted that he is sympathetic to what Mr. Canning is saying. Councilmember Roy concurred. Councilmember Cook stated he would be comfortable with a 15 year assessment period. Quam said he would be fine with 15 years. Councilmember Fletcher stated the City is basically at risk the longer the assessment period is. Quam asked what the City is risking. Mayor Kind stated if the CD rates go up the City could be making more money. Quam clarified it would be a lost opportunity not a risk.

Mayor Kind noted if the assessment period were lengthened to 15 years the annual assessment payment would be \$876.79 for a residential property. If the interest rate were increased to 4.25 percent over 15 years the payment would be \$940.85.

Councilmember Fletcher asked Mr. Canning what he thought about a 15-year assessment period and an interest rate of 4.25 percent. Mr. Canning stated he did not think the City should be in the business of making money off of this financing. Mr. Canning reiterated he would like a lower rate and longer term. Mr. Canning stated when property owners hook up to municipal water the value of the property will likely increase and the City will collect more tax dollars on it.

Councilmember Quam noted he agrees the City should not be in the business of making money on financing assessments.

Fletcher suggested a compromise of 3.75 percent.

Brian Malo, 5070 Greenwood Circle, suggested the motion note that 3.75 percent is the current prime rate plus 0.5 percent.

Cook moved, Quam seconded, Adopting RESOLUTION NO. 21-13, “ A Resolution Declaring Cost to be Assessed and Order Preparation of Assessment for the Excelsior Boulevard Watermain Project subject to setting the interest rate at 3.75 percent (prime plus 0.5 percent) and the assessment period to be 15 years.”

Mayor Kind stated based on the motion the annual assessment payment for a commercial property would be \$1,362.79 and for a residential property it would be \$908.53.

Motion passed 5/0.

Mayor Kind recessed the meeting at 8:45 P.M.

Mayor Kind reconvened the meeting at 9:00 P.M.

Councilmember Roy noted that he will be paying his total assessment up front. Therefore, he had no conflict of interest during the discussion about the interest rate.

Councilmember Fletcher stated the same thing applies to him.

- **Resolution 22-13, Ordering Hearing on Proposed Assessment**

Mayor Kind highlighted the Excelsior Boulevard Watermain Assessment Roll. The interest rate is 3.75 percent and the total assessment is \$195,325 based on cost estimates. The total assessment is divided among 16 residential properties and 2 commercial properties. The individual property assessment for a residential property is \$10,280.26 and for a commercial property it is \$15,420.39 with 3.75 percent interest and a 15-year assessment period the annual assessment payment would be \$908.53 for a

residential property and \$1,362.79 for a commercial property. The total amount that would be paid for a residential property would be \$13,627.92 with \$3,347.66 of that being interest. For a commercial property the total amount that would be paid would be \$20,441.87 with \$5,021.48 of that being interest. She noted a property owner can make a partial payment before the assessment is certified to Hennepin County and if that is done their payments would have to be recalculated.

Quam moved, Cook seconded, Adopting RESOLUTION NO. 22-13, “A Resolution for Hearing on Proposed Assessment for the Excelsior Boulevard Watermain Project.” Motion passed 5/0.

Engineer Martini departed the meeting at 9:05 P.M.

D. Citizens Police Academy, Thursdays, September 12 – November 21, 2013, 7:00 P.M. – 9:30 P.M.

Mayor Kind stated the third Citizens Police Academy will be held on Thursdays from September 12 to November 21, 2013, from 7:00 P.M. to 9:30 P.M. Anyone interested in attending the Academy should go to the South Lake Minnetonka Police Department’s website www.southlakepd.com and fill out the application. There is a link to that website on the City’s website. She noted that she and Councilmembers Fletcher and Roy have attended the Academy and found it to be very worthwhile.

5. PUBLIC HEARING

A. None

6. UNFINISHED BUSINESS

A. None

7. NEW BUSINESS

A. Consider Request to Bury Power Lines and Upgrade Lights on Greenwood Circle

Mayor Kind explained that the City received a request from the neighbors along Greenwood Circle to bury the overhead electrical wires and install new bronze-colored Shoebox or Rectilinear lights to replace the 3 existing Cobra lights. The neighbors propose to pay all of the upfront costs for the project (\$30,000 to remove the poles and bury the lines, and \$8,000 to \$8,569 for 3 new lights). The plan is for the neighbors to submit checks to the City and have the City contract the project through Xcel Energy (Xcel). The City would continue to pay for the ongoing electricity cost for the lights. The City currently pays Xcel \$9.52 per light per month for the overhead Cobra fixtures. The monthly cost would be \$6.23 per light for the new fixtures. The new fiberglass light poles would be 30 feet tall (the same height as current poles). She noted the meeting packet contains copies of photos of the lighting options from Xcel. The packet also contains copies of the petition which is actually a series of approval emails from fifteen of the fifteen neighbors who benefit from the project. She displayed pictures of the two light options.

Kind noted that two residents from the Greenwood Circle neighborhood are present this evening. She then noted that Councilmember Cook lives on that street. She asked him if he has anything to add.

Councilmember Cook explained that each of the property owners have obligated themselves to paying a certain portion of the overall cost based on what they thought the value of doing this is to them. Therefore, the checks to the City will have different amounts. Chip Fisher has those pledged amounts.

Mayor Kind noted that the project will not proceed until the City has collected sufficient money to cover the cost of the project.

Brian Malo, 5070 Greenwood Circle, asked if this affects the neighborhood around the bottom half of Greenwood Circle. Councilmember Cook stated it did not go far enough to affect Mr. Malo.

Mayor Kind noted the residents have initiated this effort and determined the scope. She stated that if Mr. Malo was interested in continuing the project further up Greenwood Circle, he was welcome to lead the effort.

Cook moved, Fletcher seconded, approving the project to bury the overhead electrical wires and install new Shoebox or Rectilinear lights to replace the three existing Cobra lights on Greenwood Circle subject to the property owners submitting payments to the City to cover the entire upfront cost of the project, the City contracting with Xcel Energy to do the project once the necessary funds have been received, and the City continuing to pay the monthly electrical cost for the lights.

Councilmember Quam asked if the project has to be done by a certain time. Councilmember Cook responded it either has to be done before the frost goes into the ground or next spring after it leaves the ground.

Motion passed 5/0.

B. Resolution 23-13, Approving the 2014 Preliminary Tax Levy and Budget

Cook moved, Roy seconded, Adopting RESOLUTION NO. 23-13, "A Resolution Approving the Proposed Tax Levy Collectible in 2014 in the amount of \$643,875. Motion passed 5/0.

C. First Reading: Ordinance 221, Establishing Requirements for City Approvals, Reasonable Accommodation Regulation, and Payment of Assessment Regulation

Mayor Kind explained earlier in the meeting Zoning Administrator / Clerk Karpas was authorized to publish and mail to property owners the Notice of Hearing on Proposed Assessment for the Excelsior Boulevard watermain project. The Notice includes a statement which says "*The right to partially prepay the assessment according to ordinance number _____ is / is not available.*" The City does not have such an ordinance. The Notice also refers to an ordinance regarding deferments which the City does not have. Therefore, Attorney Kelly drafted an ordinance to address these two issues as well as a few other items. She noted a copy of that draft ordinance is included in the meeting packet. She explained the Notice includes a statement which states "*A person who receives a deferment under paragraph 1 above may not have an annual income that exceeds \$ _____ per year, as of January 1, 2013.*" That amount needs to be filled in by Council.

Attorney Kelly stated he has seen where the amount is around \$17,000 which is the federal poverty line. Kelly recommended an amount of \$22,000 to \$25,000.

There was Council consensus to use the amount of \$25,000.

Roy moved, Cook seconded, approving the first reading of Ordinance 221 establishing requirements for City approvals, reasonable accommodation regulations and payment of

assessment regulation subject to setting the maximum income amount for deferments at \$25,000 in Section 150.05.5. Motion passed 5/0.

D. 2013 Community Survey

Mayor Kind explained that during its August 2013 work session Council discussed the possibility of the City conducting a resident survey. The last survey was conducted in 2010. She noted the meeting packet contains a copy of a concept survey she prepared as well as copies and results of the 2009 general survey (41 percent response rate), 2009 Southshore Center Survey (44 percent response rate) and the 2010 Tonkaconnect survey (25 percent response rate). She asked Council if it wants to conduct a new survey, and if so she asked what types of questions the survey should ask.

Council went through each item on the 2013 concept survey and agreed upon the following.

- The questions/comments about speed bumps and car speeds will be removed.
- The question about property taxes will be clarified to ask about the value for city tax dollars and contextual information similar to that provided in the 2009 survey will be added.
- A general comments area will be added.
- A question about the amount of police presence will be added.
- The questions about property values will be removed.
- The question about the fee for dock slip rental at the City-owned docks will be removed.
- The questions about tennis court in Greenwood Park will be changed to ask if respondents prefer to keep the court, to replace it with an open field or natural green space, or no opinion.
- The statement related to a swimming area will be shortened to ask if the respondents support installing stairs to a swimming access.
- A statement will be added asking respondents about their perception about the quality of services provided by City staff.
- A statement will be added asking respondents about their perception about the quality of services provided by City officials (City Council and Planning Commission).

There was Council consensus to have Mayor Kind make the agreed upon changes to the survey and to have the revised survey included with the next mailing of the City newsletter which will occur the end of September.

8. OTHER BUSINESS

A. August 7, 2013, City Council Meeting Minutes

This Item was removed from the consent agenda at Councilmember Fletcher's request. He stated that EFRA is not audited by OSA, so he would like the minutes changed accordingly.

Cook moved, Quam seconded, approving the minutes of August 7, 2013, as amended in Item 9.B, page 14, Paragraph 9, Sentence 2 change "Councilmember Fletcher responded the EFRA does, noting the OSA does audit the fund." to "Councilmember Fletcher responded the EFRA does, noting the fund is audited."

Mayor Kind asked what Council thinks of having 17-page minutes of meetings. She stated in the time it takes her to proofread the minutes she could type minutes that meet the statutory requirements which is

motions made and votes cast. People could be directed to go to the Lake Minnetonka Community Commission's website to watch the video recording of the meeting.

Councilmember Quam noted at one point the minutes were cut way back.

Councilmember Cook asked if the video recordings were archived.

Mayor Kind asked Attorney Kelly how long they have to be archived. Kelly stated he was not sure but he thought around seven years if they are part of the official record.

Brian Malo, 5070 Greenwood Circle, asked if that meant he could come and get a copy of the video recording so he could view the meeting at home.

Attorney Kelly clarified the video recording the LMCC is not considered the official recording of the meeting.

Zoning Administrator/Clerk Karpas stated he has all of the disks in his office.

Mayor Kind reiterated that all that is required by state law is the motions. No other record is needed.

There was consensus to discuss this further at another council meeting.

9. COUNCIL REPORTS

A. Cook: Planning Commission

Councilmember Cook noted the August 2013 Planning Commission meeting was cancelled for lack of agenda items.

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

With regard to the Lake Minnetonka Communications Commission (LMCC) activities, Fletcher explained that during the last LMCC full Commission meeting the City of Orono, which is leaving the LMCC, proposed to lead a group to explore an option that would essentially allow Orono to stay in the LMCC based on its vision for the LMCC. Orono's vision is each city would have its own franchise agreement with the LMCC and each city would send money to the LMCC on an a la carte basis. He thought there were some LMCC member cities that are not wild about that idea but the Commission approved having the group explore the concept. The five member cities in the Southwest Suburban Cable Commission (Eden Prairie, Edina, Hopkins, Minnetonka and Richfield) each have a direct franchise. He noted that each of the five member cities are as big as the entire LMCC. He stated if there were to be a direct franchise for the LMCC member cities it could be a boiler plate that each city adopts and then the LMCC would manage it. He explained there is a special LMCC meeting on September 17 followed by a meeting on September 24. The group being led by Orono will make a recommendation at the September 17 meeting.

Mayor Kind stated that no matter what happens the LMCC's budget will be reduced drastically. The Cities of Medina and Orono are out for sure and Victoria and Minnetrista will possibly follow suit. The LMCC budget will be on Council's October agenda.

With regard to the Excelsior Fire District (EFD), Councilmember Fletcher noted that earlier in the meeting Council heard from EFD Chief Gerber about the EFD's 2014 Operating Budget.

With regard to the Xcel Energy Transmission Line Upgrade Project, Fletcher stated people are waiting to hear from the State hearing person about the recommendation.

With regard to the Lake Improvement District, Fletcher deferred to Councilmember Roy to provide an update on this topic.

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

With regard to the South Lake Minnetonka Police Department (SLMPD), Mayor Kind stated there has not been a Coordinating Committee meeting since the last Council meeting.

With regard to administration, Kind stated she has nothing of significance to report.

With regard to a mayors' meeting, Kind stated there has not been any mayors' meetings.

With regard to the Southshore Center Advisory Committee, Kind stated the Committee has met a couple of times. Each member of the Committee has tasks to do. The next meeting is scheduled for September 17 at 4:00 P.M. She is a meeting with Tim Litfin, Executive Director of Minnetonka Community Education Services (MCES), to find out if MCES would be interested in doing the programming at the Southshore Community Center.

D. Quam: Roads & Sewer, Minnetonka Community Education

With regard to roads and sewer, Councilmember Quam stated he has nothing to report.

With regard to Minnetonka Community Education, Quam noted MCES did not meet.

E. Roy: Lake Minnetonka Conservation District

With regard to the Lake Minnetonka Conservation District (LMCD), Councilmember Roy stated Aaron Bean with Bean's Greenwood Marina has applied for reconfiguration of docks at the Marina. There are some issues associated with that. The LMCD Board continued this item to its next meeting to allow Mr. Bean the time to prepare another proposal.

Councilmember Fletcher stated when Mr. Bean came before Council in September 2012 to ask the Council to support his reconfiguration proposal Mr. Bean talked about addressing concerns about the current lighting. Mr. Bean had indicated he would consider replacing the lighting with downcast lighting.

Councilmember Roy stated there was no discussion about lighting. The discussion was primarily about the position of the docks. He noted he will raise the question about lighting during the next LMCD meeting.

With regard to the Lake Improvement District, Roy stated the last piece of the puzzle is the City of Excelsior. He and Councilmember Fletcher will meet with the Excelsior City Council in a work session on September 9 to talk about forming such a district. They will verify the addresses for properties located within a potential District and then begin working on a PowerPoint presentation including dates. The presentation will be used to inform residents about what is going on with regard to this item.

Mayor Kind stated Zoning Administrator / Clerk Karpas had indicated that Councilmember Roy was interested in the linear footage around St. Alban's Bay. She noted the City does not have that information. Kind suggested that the LMCD might have that information. Roy noted that he also wants to know the linear footage that is public land.

Mayor Kind noted there are properties in the City that do not front Lake Minnetonka but that are considered lakeshore properties by the assessor because they have deeded lake access. She suggested that those properties should be included in the District. Councilmember Roy agreed.

10. ADJOURNMENT

Fletcher moved, Cook seconded, adjourning the City Council Regular Meeting of September 4, 2013, at 9:57 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,
Christine Freeman, Recorder