



AGENDA OF THE REGULAR MEETING OF
THE CITY COUNCIL
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
October 12, 2021
7:00 P.M.

NOTE: Due to Open Meeting Law restrictions, the City Council may be discussing agenda items for the first time. Your patience and understanding is appreciated during this process.

CALL TO ORDER

In light of the status of the ongoing Covid-19 health pandemic the City of Birchwood Village is conducting its October meeting using interactive web-based technology. Pursuant to Minnesota Statutes, Chapter 13D. 021 Subdivision 1(1) the City of Birchwood is declaring that, “an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic...”

The meeting will be conducted using the Zoom meeting platform and the details of that are directly below for participating. If you plan to attend it is suggested that you familiarize yourself with the technology in advance. If you plan to participate than you must either 1) send your name, topic you plan to speak on, and the phone number you will be calling from to City Hall by noon the day before the meeting; or 2) join the meeting no later than 6:50pm to coordinate with the Moderator.

The Moderator of the meeting shall be City Administrator Andy Gonyou and all participants, except Council Members, shall have their microphones muted unless recognized by the Mayor. Public Forum shall be honored using this technology and the meeting will be broadcast via the Cable Commission like other meetings.

City of Birchwood Village is inviting you to a scheduled Zoom meeting.

Topic: Birchwood Village October 12 City Council Meeting

Time: **Oct 12, 2021 07:00 PM** Central Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/83395824235?pwd=Qm1LMkpWN0xHNnp3d2FrbTV3Z3paQT09>

Meeting ID: 833 9582 4235

Passcode: 916971

PLEDGE OF ALLEGIANCE

APPROVE AGENDA

OPEN PUBLIC FORUM

ANNOUNCEMENTS

- A. We are social, follow us on Facebook/Twitter and/or register for the email listserv

ADMINISTRATIVE PRESENTATION

- A. Sheriff Report
- B. Planning Commission August Meeting Minutes* (pp. 3-4)

CITY BUSINESS – CONSENT AGENDA

- A. Approve September 14, 2021 Regular Meeting Minutes
- B. Approve Treasurer’s Report
- C. Approve Amended Contract with MBRB (1st hunt dates altered)* (pp. 5-7)
- D. Approve Resolution 2021-23, Suspending City Code Sec. 609.020 for 2021 Deer Hunt* (p. 8)
- E. Approve Summary Publication of Ord. 2021-07-02, Sec. 301.055* (p. 9)

CITY BUSINESS – REGULAR AGENDA

- A. Second Reading Ord. 2021-09-01, Sec. 301.050* (pp. 11-14)
 - a. Council Deliberation
 - b. Approve Summary Publication
Time Budget: 10 Minutes
- B. First Reading Ord. 2021-10-01, Sec. 308.
 - a. Public Hearing
 - b. Council Deliberation
Time Budget: 10 Minutes
- C. Birchwood Dock Association (BDA) Dock Permit Application Review
 - a. Review and approve BDA’s annual dock permit application – authorize BDA to apply for dock permits
 - b. Review and approve 2021 Dock Management Contract
- D. Review Variance Application Case No. 21-04-VB (117 Wildwood Avenue)
 - a. Review & Discuss
- E. Review Variance Application Case No. 21-05-VB (339 Wildwood Avenue)
 - a. Review & Discuss
- F. Review Variance Application Case No. 21-06-VB (469 Lake Avenue)
 - a. Review & Discuss

ADJOURN

*Denotes item with supporting material attached.

REGULAR MEETING MINUTES (Draft)

Birchwood Planning Commission Meeting

Zoom Virtual Meeting – 7:00 PM Meeting 8/26/2021

Submitted by Michael Kraemer – acting secretary

COMMISSIONERS PRESENT: – Andy Sorenson – Chairman, Ryan Hankins – , Michelle Maiers-Atakpu, Joe Evans , Michael Kraemer.

COMMISSIONERS ABSENT:

OTHERS PRESENT:

1. CALL TO ORDER Meeting called to order by acting Chairman Andy Sorenson at 7:01.
2. APPROVE AGENDA
 - a. Motion made by Michael Kraemer to add an Agenda Item D – Election of a Vice-Chairman, move it to top of order of business and approve the Agenda as modified.” 2nd by Ryan Hankins. Vote Yes - 5, No - 0.
3. AGENDA ITEM D – Election of a Vice-Chairman
 - a. Michael Kraemer made motion to nominate Ryan Hankins to position of Vice-Chairman. 2nd by Andy Sorenson. Vote: Yes-4, No-0, Ryan Hankins abstained.
4. AGENDA ITEM A – Non-Conforming Uses Code Review (City Code 301.050)
 - a. Ryan Hankins identified that the information supplied in the Planning Commission packet became outdated. An initiative by City Council member Justin McCarthy was in process of being considered by the Council and superseded the information provided in the packets.
 - b. PLANNING COMMISSION ACTION:
 - i. Planning Commission tabled the consideration of NON-CONFORMING USES CODE as presented in the packets, and requested the chance to review and comment on the language of the proposed Council’s NON-CONFORMING USES CODE language. Motion by Rya Hankins, 2nd by Michelle Maiers-Atakpu. Advisory Vote: Yes – 5, No – 0.
 - ii. Planning Commission would like the Council to consider the following topics in their consideration of the NON-CONFORMING USES CODE:
 1. Consider language that addresses the need to allow non-conforming housing structures to be improved to protect health, welfare and safety considerations to some baseline standard despite the non-conforming nature of the lot/house configuration.

2. Consider language that enforces the concept that once a variance is granted, the variance conditions are now grandfathered in as the “new” acceptable baseline for that lot.
 3. Retain similar language that addresses the concept of Non-conforming Pre-Existing Structure or Use that becomes damaged by fire or other peril to the extent of greater than 50 percent of its estimated market value.
 4. Consider the concept of sliding scale Side-yard Set Back and Impervious Surface requirements for Pre-existing lots as it may pertain to Non-conforming lots. (I.e., smaller the lot footprint the smaller the side-yard setback requirements and larger the impervious surface guideline percentage.) ***The Planning Commission plans to review suggested guidelines at their September meeting.***
5. AGENDA ITEM B – Undersized Lots Code Review
- a. PLANNING COMMISSION ACTION:
 - i. It is the understanding of the Planning Commission that the documents as presented in their packets are irrelevant in that the Council is considering the elimination of Section 301.050.B.1 Pre-Existing Structures or Uses as it relates to undersized lots. The Planning Commission voted (Motion by Ryan Hankins, 2nd by Andy Sorenson, Vote Yes – 5, No – 0) as follows:
 1. TAKE no action on the documents included in their packet,
 2. PLAN to review suggested guidelines at their September meeting in anticipation of offering suggestions to the Council.
 3. REQUESTS that the Council consider the following in their deliberation of Undersized Lots.
 - a. Consider the concept of sliding scale Side-yard Set Back and Impervious Surface requirements for Pre-existing lots as it may pertain to Non-conforming lots. (I.e., smaller the lot footprint the smaller the side-yard setback requirements and larger the impervious surface guideline percentage.)
6. AGENDA ITEM C - Review/Approval July 22, 2021 Meeting Minutes
- a. Motion by Ryan Hankins, 2nd by Joe Evans to approve minutes. Yes – 5, No – 0, Abstain – 0
7. Adjournment
- a. At 8:27 PM motion was made by Michelle Maiers-Atakpu and 2nd by Ryan Hankins to adjourn the meeting. Vote: Yes – 5, No – 0.

CONTRACT FOR GOODS/SERVICES

City of Birchwood Village (City), a political subdivision of the State of Minnesota is in need of services and/or goods (hereinafter “services) and Metro Bowhunters Resource Base, Inc., (MBRB), 7455 France Avenue South Box #409, Edina, MN 55435 (Contractor) desires to provide such services.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein the parties enter in to this Contract and agree as follows:

1. TERM. The term of this Contract is from the date of execution by all parties through December 31, 2025, or until all work under this Contract is completed and payments made, which ever occurs first, unless earlier terminated by law or according to the provisions of this Contract.
2. SCOPE OF SERVICES. The City requests and the Contractor agrees to provide the services that are attached and incorporated as Exhibit A. If there is a conflict between this Contract and Exhibit A, this Contract shall govern. Services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Contractor’s occupation performing services under similar conditions.
3. PAYMENT. The City agrees to pay for the services, including expenses in an amount not to exceed \$0.00 (Contract Maximum), and in accordance with payment rates or schedule set forth in the Exhibit(s). The City will reimburse MBRB for the cost to list the City as an additional insured party on its insurance policy for these services.
4. CUSTOMER LIAISON. Contractor shall work closely with the City’s liaison, Andy Gonyou, City Administrator, contact number 651-426-3403.
5. GENERAL CONDITIONS. The General Conditions of this Contract also known as 2021 - 2025 Birchwood Village Special Archery Deer Hunt Rules are attached and incorporated as Exhibit B. Item 2 of 2021 – 2025 Birchwood Village Special Archery Deer Hunt Rules will be amended annually and will require annual adoption by both parties.
6. INDEMNIFICATION. Contractor agrees to indemnify and hold harmless City of Birchwood Village from any and all losses, fines, suits, damages, expenses, claims, demands, and actions of any kind resulting from Contractor’s negligence or alleged negligence. Contractor shall provide proof that the City of Birchwood has been added to their DEC page as an additional insured prior to providing any services pursuant to this Contract and annual verification of the same for the duration of this Agreement.
7. TERMINATION. Either party may suspend or terminate this Agreement for a material breach of any term of the Agreement with 30-days notice. Either party may suspend or terminate this Agreement for any reason upon 90-days notice. In the event of suspension, the Parties agree to meet and confer to determine if the reason for the suspension can be cured and upon subsequent agreement the suspending-party may withdraw the suspension and proceed with the Agreement either as written or amended, depending on the outcome of the discussions.
8. ENTIRE AGREEMENT. This Contract is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the 30th day of September, 2021.

METRO BOWHUNTERS RESOURCE BASE

CITY OF BIRCHWOOD VILLAGE

By: _____

By: _____

Mary Wingfield, Mayor

Print Name: _____

Title: _____

Telephone: _____

By: _____

Andy Gonyou, City Administrator

EXHIBIT A

**Scope of Services
2021 - 2025 Deer Management Program**

Dated: September 30, 2021

Metro Bowhunters Resource Base (MBRB) is to provide hunt management services as delineated below or as would be necessary to help the City achieve its goal of a reduction in deer population while recognizing the need to maintain a high degree of professionalism and sensitivity to public concerns associated with deer hunting.

MBRB Activities:

- Provide a group of MBRB qualified archers
- Provide certificate of liability insurance with the City named as an “additional insured” covering a period from October 1, 2021 through December 31, 2021, renewed annually
- Assist City staff at Hunt Orientation Check-in and Meeting on date to be determined.
- Conduct deer hunting on the following (tentative) dates in calendar year 2021: October 14 -16, November 05-07, and December 10 - 12. New dates for each calendar year between years 2022 – 2025 will be decided and mutually agreed upon by both parties by July 31st of each calendar year.
- Gather hunt data from each participant each day consisting of the number of deer taken by sex and location and the number of unrecovered deer.
- Provide City a verbal report on hunt progress and issues as needed no later than 24 hours following the conclusion of each hunt period.
- Administer hunt in accordance with hunt rules and other procedures necessary for a safe and orderly hunt.
- Assist in tracking and recovery of deer that are reported hit by archers.
- Remove all entrails.
- Provide liaison with the City and the Washington County Sheriff’s Department so that there is one point of contact for all hunting activities.
- Report rule infractions and other pertinent incidents (such as unauthorized hunt area visitors) to City and Washington County Sheriff’s Department.
- Comply with the Hunt Rules as attached to this document.
- Send final summary report of hunt data to City staff by December 31 of the calendar year in which the hunts take place.

EXHIBIT B

2021 BIRCHWOOD VILLAGE SPECIAL ARCHERY DEER HUNT RULES

- 1) Deer hunt locations are limited to the areas as identified. Hours are limited to between ½ hour before dawn and ½ hour after dusk.
- 2) Hunts are conducted using sharpshooter status MBRB archers and are held during the following dates in calendar year 2021: **Oct. 14-16, Nov. 05-07, and December 10-12.** Tree stands can be erected one day preceding the hunt.
- 3) All hunters are selected through the Metro Bowhunters Resource Base (MBRB).
- 4) Hunters must follow all Minnesota DNR laws and all MBRB special rules.
- 5) All hunt periods are for all deer except fawns. Fawns **may not** be taken.
- 6) Hunters must carry a hunt authorization letter from the City at all times during hunt.
- 7) Hunt areas are not closed to the public during the hunt. All incidents of trespass on private property should be reported to the MBRB hunt coordinator who will contact the Washington County Sheriff.
- 8) All archers must hunt from elevated stands. Only TMA approved stands/ steps are acceptable. Use of any homemade stands/steps is prohibited for safety reasons.
- 9) Hunters must have a flashlight and a warning whistle within easy reach during entry, egress, and while on stand. A cell phone is also recommended.
- 10) A five-point fall restraint harness is required to be used by hunters at all times while on stand.
- 11) Only buckthorn can be cut for shooting lanes.
- 12) Stands can only be up during the designated hunt periods and must be removed from the area at the completion of each hunt by one (1) hour after legal shooting time on the final evenings of each hunt period.
- 13) Archers are to obey hunt boundaries shown on the map.
- 14) Archers must park in designated areas only.
- 15) Cars must have a City supplied parking permit properly displayed.
- 16) Only deer may be taken during special hunts (fawns **may not** be taken).
- 17) All entrails must be removed.
- 18) Hunters must log in and out of the hunt areas each time they leave. The MBRB Hunt Coordinator will provide a log in sheet at an appropriate location.
- 19) Archers cannot track deer outside of hunt boundaries. Hunters must contact the MBRB hunt coordinator if deer retrieval is required outside of hunt boundaries.
- 20) The maximum amount of deer that may be taken during the 2021 hunt season is **THIRTY (30).**

RESOLUTION 2021-23

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION SUSPENDING CITY ORDINANCE
SECTION 609.020 FOR SPECIAL BOW HUNT**

WHEREAS, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

WHEREAS, the deer herd in Birchwood Village is estimated to be three (3) times the recommended size by the Minnesota Department of Natural Resources (DNR) for the City; and

WHEREAS, the City Council has approved a contract with Metro Bowhunters Resource Base (MBRB) to thin the deer herd in Birchwood Village; and

WHEREAS, City Ordinance Section 609.020 prohibits hunting within the City by any means.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Birchwood Village, Minnesota, as follows:

1. Section 609.020 of the Birchwood Village City Code be suspended for the duration of the 2021 special archery deer hunt as authorized by the City Council for bow hunters from MBRB authorized by the City.
2. Hunting be confined to designated hunt zone only.

Voting in Favor:

Voting Against:

Resolution duly seconded and passed this 12th day of October, 2021.

Attest:

Mary Wingfield, Mayor

Andy Gonyou, City Administrator-Clerk

RESOLUTION: SUMMARY OF ORDINANCE 301.055

Please be advised that the City of Birchwood has duly-passed the following ORDINANCE:

AN ORDINANCE AMENDING THE CITY'S ZONING CODE TO REPLACE THE CONDITION THAT ONLY APPLICANTS WHO ARE HOMEOWNERS ARE REQUIRED TO POST AN ESCROW FOR PERMITS.

The following is a SUMMARY of the Ordinance:

On _____ the City amended Code 301.055:

2. **Cash escrow.** ~~If the applicant is the homeowner, they~~ **The applicant** must furnish the city a cash escrow as set forth in Section 701 of the City Code.

PLEASE BE ADVISED, this is not the full text of the Ordinance passed and the published material is only a summary. The full text is available for public inspection at the City of Birchwood, 207 Birchwood Ave, Birchwood, MN or delivered upon request electronically or by U.S. Mail.

Summary complies with Minn. Stat. §§ 331A.05 subd. 8. & 412.191 subd 4.

ORDINANCE 2021-09-01

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING NON-CONFORMING USES
IN THE CITY ZONING CODE**

The City Council of the City of Birchwood Village hereby ordains that Chapter 301 (Zoning Code: General Provisions) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

SECTION 301. ZONING CODE: GENERAL PROVISIONS

301.050 Non-Conforming Pre-Existing Structures or Uses

A. Definitions

- 1. Non-Conforming Pre-Existing Structure: A structure existing at the time of the adoption of a zoning control that was lawful prior to the time of the adoption of the zoning control but does not comply with that control.**
- 2. Non-Conforming Pre-Existing Use: A use or occupation of land existing at the time of the adoption of a zoning control that was lawful prior to the time of the adoption of the zoning control but does not comply with that control.**

B. A non-conforming pre-existing structure or use existing at the time of the adoption of an additional zoning control may be continued, including through repair, replacement, restoration, maintenance, or improvement, unless:

- 1. the non-conforming pre-existing structure or non-conforming pre-existing use is discontinued for a period of more than one year; or**
- 2. the non-conforming structure is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged.**

C. A non-conforming pre-existing structure or non-conforming pre-existing use may not be moved or expanded except:

- 1. If the expansion or move brings the non-conforming pre-existing structure or use into conformance with the zoning code; or**
- 2. The conforming portion of a non-conforming structure may be expanded provided that such modification or expansion does not increase the portion of the structure that is non-conforming, and provided that the modification otherwise conforms to the provisions of the zoning code; or**
- 3. The non-conforming portion of a non-conforming structure may be modified so long as the modification does not increase the horizontal or vertical size of the non-conforming portion;**

D. Notwithstanding paragraphs B and C, the repair, replacement, maintenance, improvement, or expansion of non-conforming structures or uses in floodplain areas must be done such that the structure or use maintains eligibility for the National Flood

Insurance Program and such repair, replacement, maintenance, improvement, or expansion may not increase flood damage potential or increase the degree of obstruction to flood flows in a floodway.

- E. Impervious Surfaces. Non-Conforming Pre-Existing Structures on lots that do not comply with the impervious surfaces requirement set forth in 302.050 prior to any expansion may be expanded provided that 301.050© is met with respect to the other requirements of sections 200 and 300 and provided that the expansion does not increase the impervious surface coverage of the lot.
- F. Variances are not to be granted for the provisions of 301.050 but instead may be granted for other sections of chapters 200 or 300 that cause the existing or proposed structure or use to be non-conforming

~~301.050. NON CONFORMING USES.~~

~~**A. Definition:** Non-Conforming Use. See definition in Section 300.020.34~~

~~**B. Pre-Existing Structures or Uses:** A non-conforming use may be continued so long as it remains otherwise lawful, subject to the provisions of paragraphs (1) through (7) below, in order to ensure that the non-conforming use will not be intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code.~~

- ~~1. A Non-Conforming Pre-Existing Structure shall not be enlarged, modified, changed, extended (either horizontally or vertically) or structurally altered, unless such changes bring the Non-Conforming Pre-Existing Structure into conformity with the Zoning Code. (Exception: A non-conforming use, lawfully located within 60% of all required setbacks, may be structurally altered if the alterations do not change the horizontal or vertical dimensions of the structure and otherwise conform to the Zoning Code.)~~
- ~~2. A non-conforming use shall not be moved to any other part of the parcel of land upon which the same was constructed unless the move would bring the structure and its use into conformity with the Zoning Code.~~
- ~~3. If any Non-Conforming Pre-Existing Structure or Use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged, any replacement or reconstruction must conform to the provisions of the Zoning Code. Exception: If the non-conforming use that is to be reconstructed came into being as the result of a previously granted variance, the Council, after review, may continue the variance if the owner demonstrates that the conditions under which that variance was granted continue to exist.~~
- ~~4. Normal maintenance of a Non-Conforming Pre-Existing Structure is permitted, including necessary non-structural repairs and incidental alterations which do not physically extend or intensify the non-conforming use.~~

5. ~~Notwithstanding paragraph (1) above, a Non-Conforming Pre-Existing Structure may be expanded, provided:~~
 - a. ~~That such expansion does not increase the non-conformity in any dimension (vertical or horizontal), does not create a new non-conforming use, and in itself conforms with the Zoning Code; and~~
 - b. ~~The sum of the setbacks on either side of the structure is not LESS than 20 feet.~~
6. ~~When any Non-Conforming Pre-Existing use of land or of a building or structure is discontinued for a period in excess of one year, such land, building, or structure shall thereafter be used only as allowed by this Code.~~
7. ~~No provision of this section shall be interpreted as negating the provisions of 302.015 (Undersized Lots).~~

~~**Illegal Structures, Uses, or Lots:** Any replacement or reconstruction of any kind of a Non-Conforming Illegal Structure, Use, or Lot must conform to the provisions of the Zoning Code.~~

RESOLUTION: SUMMARY OF ORDINANCE 301.050

Please be advised that the City of Birchwood has duly-passed the following ORDINANCE:

AN ORDINANCE AMENDING THE CITY'S ZONING CODE TO BRING THE CITY'S NON-CONFORMING STRUCTURE/USE POLICY INTO MORE ALIGNMENT WITH STATE LAW.

The following is a SUMMARY of the Ordinance:

On _____ the City amended Code 301.050:

Replacing the existing text in its entirety, clarifying when a non-conforming structure may be preserved and defining how and to what extent they can be modified and the policy regarding variances as they relate to such structures and uses.

PLEASE BE ADVISED, this is not the full text of the Ordinance passed and the published material is only a summary. The full text is available for public inspection at the City of Birchwood, 207 Birchwood Ave, Birchwood, MN or delivered upon request electronically or by U.S. Mail.

Summary complies with Minn. Stat. §§ 331A.05 subd. 8. & 412.191 subd 4.