**CITY OF BIRCHWOOD VILLAGE**

**REGULAR CITY COUNCIL MEETING**

**April 10, 2012**

**MINUTES**

**MEMBERS PRESENT: Mayor Mitchell; Councilmembers Harper, Peterson, Sampair**

**MEMBER ABSENT: Carson**

**STAFF PRESENT: City Engineer Elfering, City Treasurer Reiter, and City Attorney Sandstrom**

**OTHERS PRESENT: Bryan McGinnis, Sara Nephew, Charles Kaufmann, John Lund, Brian Lauzon**

**Mitchell** called the regular meeting to order @ 7:00pm, and Pledge of Allegiance said.

**AGENDA APPROVAL: Mitchell/Harper approve agenda with additions of 4M Fund Memo from Treasurer to be placed at Item 12A and allow a portion of 12A (beaches) in the open forum.**

**Motion Passed 4 Ayes/1 Absent (Carson)**

**COMMUNITY EVENTS AND ANNOUNCEMENTS: Mitchell** noted the following.

* Finance Committee would meet April 18, 2012 at 5:30 for utility rate review.
* Dock Association will meet April 14, 2012 – all residents welcome to attend.
* April 12, 2012 Mahtomedi will hold a groundbreaking for Wildwood Elementary.
* April 19, 2012 Isaac Walton meeting for the Browns Creek Trail at the Wildwood Library.
* Birchwood’s Tennis Court is open and in use.
* May 5, 2012 Rice Creek Watershed District has rain barrels available.
* May 19, 2012 is the Birchwood Plant Exchange.
* June 2, 2012 Annual Birchwood Garage Sale.
* June 3, 2012 Music in the Park begins with Harmonic Relief, which is John Winters group.
* Washington County is in process of re-districting, Birchwood will be District 1 or 2. Final decision will be April 17, 2012.
* Thanks to the Artists Group for the display of paintings at city hall.
* Spring Newsletter is on the city website.

**OPEN PUBLIC FORUM:**  Charles Kaufmannaddressed the Council and noted his disgust with the current and former councils concerning the development of village public land and the disregard of comprehensive plan goals for natural environment in the village. Further stating the Tighe-Schmidt Park has now a sports and carnival atmosphere. He believes council should get release of the quitclaim deed from ¾ of homes in Block 5 surrounding the park to develop in the manner they (city) have, although the homes surrounding the park include 26 along the lake that back up to the park that would likely approve of development plans. He feels it is a moral crime to disregard the deed and change the natural park environment and allow destruction of Tighe-Schmidt Park. He noted that although it was stated at the last meeting the Statue of Limitations had run out (on the deed) he believes that reason was to reduce the burden of the court buried in old cases. He closed by saying this is a moral crime not a legal issue and asked that the development be reconsidered.

Sara Nephew, Birchwood resident introduced herself and noted interest in being on the Park & Open Space Committee. It was noted her appointment was on the consent agenda for this meeting.

Councilmember Harper took this opportunity to remind shoreland property owners of the letter sent out by the DNR noting dry land regulations for cutting and raking of emergent vegetation. The DNR has been receiving reports of cutting, raking, disturbing vegetation along the shoreland. Receding lake levels have exposed vegetation and it is a misdemeanor to remove emergent aquatic plants without a permit. It was also noted that actions such as grading, blading, raking, dragging, boulder construction, fill, retaining wall construction, etc. also might require a permit. She reiterated that control of upland and aquatic emergent vegetation is of importance as property owners should know the difference between upland vegetation and aquatic emergent vegetation. To minimize impact to lake bed, raking or dragging for upland vegetation should only be done to a width necessary to access a dock.

The City Clerk will place the permit application on the city website for those that need to apply to the DNR.

The mayor noted that he Ordinary Highwater Mark (OHM) is 924 feet and lake level is now about 920 feet.

**CONSENT CALENDAR: Sampair/*Harper unanimous (4 ayes, 1 absent) to approve the following consent calendar items:***

1. ***Approval of Minutes – March 13, 2012 Regular Council Meeting.***
2. ***Acceptance of the Financial Report and Disbursements Register as prepared by the City Treasurer and presented to the City Council on March 13, 2012 in the amount of $28,179, including Check #’s27018-27021, 27045-27075, and Electronic Funds Transfers FED032012, MN032012, PERA031512, PERA031512 AND LIFT042012.***
3. ***Appointment of Sara Nephew and Kelly paradise to the Parks and Natural Resource Committee for three year period ending April 2015.***
4. ***Approval of Revisions to the Personnel Committee By-laws.***

**CITY BUSINESS**

**Item 5. R**esolution 2012- 11 to Amend City Code Chapters 301 and 306 and establish new City Code Chapter 305, Establishing Interim uses in the City of Birchwood Village and Regulating Their Use

***PUBLIC HEARING Opened at 7:20 pm***

**C**omments; Bryan McGinnis, 194 Wildwood Ave., commended the city council for identifying the use of IUP (Interim Use Permit) and CUP (Conditional Use Permit) and offered thanks for consideration o f his suggestions at the last meeting.

He noted the duplication of 305.110 on page 7 and that of 305.130 for correction. He also stated the old CUP’s would continue on under current ordinance in effect. The City Attorney confirmed this to be the case and date of adoption of change would be noted in the ordinance book.

Councilmember Harper commented that staff should not discard any old language for this code.

***PUBLIC HEARING Closed at 7:22 pm***

**Harper/Peterson to approve Resolution 2012-11 for Ordinance 2012-12-04 to adopt changes to City Code 301 and 306 and adopt new Chapter 305 with corrections and to allow for summary publication of Chapter 305. MOTION PASSED 4 AYES/1 ABSENT**

**Item 6.** Resolution to Adopt Ordinance 2012-02 amending City Code 203 and 205 to adopt MN State Building Code for consistency with White Bear Lake’s reference.

***PUBLIC HEARING Opened at 7:23 pm***

No comments received

The mayor chose to take motions separately for 203 and 205 as follows.

**Sampair/Harper to approve Resolution 2012-09 to amend Ordinance 2012-02 for Chapter 203 MOTION PASSED 4 AYES/1 ABSENT**

**Item 6.** Resolution 2012-10 to Approve Ordinance 2012-03 amending City Code Chapter 205 eliminating Birchwood’s requirement of a separate contractors license.

**Harper/Peterson to approve Resolution 2012-10 to amend Ordinance 2012-03 for Chapter 205 with publication. MOTION PASSED 4 AYES/1 ABSENT**

**PUBLIC HEARING Closed**

**Item 7.** New City Code Chapter 618 regarding complaint process and Code 619 regarding penalties.

The Mayor presented that he is hesitant about the proposed changes and believes there should be further review of the process.

**PUBLIC HEARING Opened at 7:32 pm New City Code 618 regarding Complaint Process**

Public Comments: Charles Kaufmann asked for further information on what ordinances were being considered. It was stated that it is proposed changes to the process regarding complaints of code violation received and possible penalties.

**PUBLIC HEARING Closed at 7:34 pm**

Deliberation of councilmembers provided discussion of:

Mayor Mitchell presented that, administrative penalties need a separate code from complaints (Code 618). He expressed concern for administrative fines of $500 per day issued by the City Clerk which may drive need for extra hours and pay to do so.

Councilmember Sampair noted language in the ordinance is for the council to determine the fine to be issued.

Mayor Mitchell found the language proposed can be read otherwise and more work should be done before approval.

Councilmember Sampair reiterated the language reflects that allowance for complainant response and council activity before the clerk is directed to issue a fine. That the proposed ordinance provides that a 75 day period is given to resolve a violation with an opportunity for a hearing with the city council.

Mayor Mitchell expressed concern that Notice of Violation portion of proposed ordinance spells out penalties which goes out before the council is aware of the violation. This then occurs before the hearing to resolve or direction to the clerk to issue a penalty.

Councilmember Sampair explained that the purpose is to get a handle on complaints that go unresolved.

Councilmember Harper offered that purpose of the ordinance is to place the investigation of a complaint on staff. She proposed possible change to 618 regarding civil penalties. That it read, “….upon action of city council determination of violation may possibly incur administrative penalty.”

City Attorney Sandstrom noted he offered part of the proposed ordinance and it was an arbitrary figure for the amount of the penalty and used “up to” to provide some leeway in the amount of the penalty. That if abatement is the goal, there is a cost to do so and is an expense to the city to assess to the property owner. Thus a fine may be easier than the abatement process. He noted Chapter 619 allows for remedies for any violation of code but thought administrative process spelled out in this ordinance would provide for the remedies rather than put them in the general category. He also offered that the proposed language reads “up to $500” and that it could also read “may” in lieu of “shall” which may be to obligatory.

Councilmember Peterson stated that he feels this came up too close to this meeting to pass this code and feels rushed to do so at this meeting.

Attorney Sandstrom noted the language has significantly changed from the previous copy of the ordinance to that of the proposed ordinance (in the packet) and the council may chose to table at this time.

Councilmember Harper offered that she believes this to be of no urgency for this evening but should be considered as many complaints do go unresolved. She explained there is a wide spectrum of violations from unlicensed vehicles to a business operation that needs to be considered for penalty. Past practice has been for a notice to be sent to the violator for a problem to be corrected in a reasonable amount of time. She noted a breadth of situations that come in and language cannot be specific to each situation. She is fine with delaying action until next meeting.

Councilmember Sampair inquired of the city attorney if a statement could be placed on the notice of violation noting the administrative fine. Attorney Sandstrom spelled out the issue of a violator choosing to neither correct the violation nor request a hearing.

Councilmember Sampair presented the Mahtomedi ordinance for unlicensed vehicles and noted it has teeth to require the problem be resolved. He noted the intent of the proposed ordinance is to put teeth into the ordinance so that problem is resolved.

Mayor Mitchell noted he would like to see what residents feel about proposed fines and how they feel about the proposed ordinance and suggested the Planning Commission address this by holding a public hearing and to gather information from other communities.

Councilmember Harper stated her support for a process to be in place for staff to be able to handle complaints rather than delay for months for council to hear or act upon. She offered that the process be codified in ordinance and continue to deliberate on the penalty portion.

Mayor Mitchell noted that remedy would be to adopt 619 as verbiage resolves some of the issue of who notifies the violator.

Sampair again noted the concern over violations going unresolved and enforcement never occurs. Mitchell stated he does not hear of that many complaints and would like more information gathered before a $500 fine is established.

Further discussion expressed the following concerns; what if no hearing is called for and penalties trigger, whether the proposed ordinance should allow for council ability to address before penalties are triggered, that language could be crisper, that the Planning Commission have an opportunity to review the ordinance, that the $500 fine amount be removed from the language as this language only appeared in the most recent version of the ordinance and the council should have more time to review.

**Harper/Peterson motion to provide the Planning Commission the proposed 618 Ordinance for review and comment.**

Further discussion on how and where to and gather more information for review took place.

**MOTION PASSED 3 AYES/1 NAY (SAMPAIR) AND 1 ABSENT**

**Item 8**.PROPOSED NEW CITY CODE Chapter 619 PENALTIES

Mayor Mitchell noted this should be handled at same time as the proposed Code Chapter 618. Councilmember Sampair noted the same and Councilmember Harper added that Code Chapter 619 references code 618, which is not presently used.

**P*UBLIC HEARING opened at 8:05***

No comments received.

**PUBLIC HEARING CLOSED**

**Sampair/Peterson motion to send proposed Code Chapter 619 to Planning Commission in conjunction with proposed Code Chapter 618. Motion Passed All Ayes**

City Attorney Sandstrom inquired as to his presence at the Planning Commission meeting. There was discussion over whether the meeting would address policy or legal language items. It was decided, a meeting of the Planning Commission would be scheduled by staff (clerk and attorney) for the date required and for staff to determine if City Attorney should be present.

**Item 9.** REVISIONS TO CITY CODE CHAPTER 611 PUBLIC WORKS RESERVE, 611A CAPTITAL IMPROVEMENT FUND AND ESTABLISHMENT OF NEW CITY CODE CHAPTER REGARDING PARK SPECIAL REVENUE FUND AND CONSIDERATION OF PUBLIC HEARING.

Councilmember Harper explained that there is a need for change in Code Chapters 611 and 611A language for clarity and to re-codify them to a new Code Chapter 800 Series for the city’s financial policies. The purpose is to untangle the language and designate the Public Works Fund for Hall/Cedar construction, to provide for the Capital Projects Fund to be a more general use project fund. A new fund for Parks Special Revenue Fund in code 830 (staff to determine correct number) which is to govern the revenue from the dock and boatlift storage fees. Which are (to be) used for park Improvements, rather than park routine operations. She also noted her memo in the agenda packet material that referenced Code 612 regarding assessments and public improvement financing is to be re-codified to the Code 800 series without language change, as well as, codification of the Fund Balance Policy into the code 800 series as recently adopted.

Councilmember Sampair inquired about reference to purchase of equipment in the Park Special Use Fund, it was provided that it is not meant for small equipment, but agreed that “equipment” may be a vague term. Councilmember Harper referenced the $5,000 threshold in the language and noted it is intended to discourage the funds being used for operations.

Councilmember Peterson inquired about use of verbiage in 611A.040 in new 810.060 is same or new. Councilmember Harper noted it is the same language but having been re-organized and formatted for easier reading into the 800 Series code. (Codes 611A.40 and 611A.45 and restated in 810.060).

There was discussion on how the use of “fund” and “funds” is used and Councilmember Harper explained that there is need to use “s” in certain areas. She provided clarification of Hall/Cedar Reserve Fund is a fund within a fund.

It was noted that “These projects are medium and large…..” needs to be struck form language. Harper noted length of service or purchase amount be a determinant. The clerk may need to re-number the 800 Series as use of 810 and 820 are in error.

**Harper/Sampair motion for Public Hearing to be scheduled for May City Council meeting for proposed changes to Code 611 and 611A and to establish code for Park Special Revenue Fund, the re-codification of Code Chapter 612 (Public improvement Financing and Assessment Ordinance) and the Fund Balance Policy.**

**Amendment** of motion provided that the use of the word “equipment” should be struck from the Parks Special Revenue Fund language.

**Motion Passed All Ayes**

Ms. Reiter inquired about the public hearing to be scheduled as the clerk was out of office until April 23, 2012. Councilmember Harper felt that these types of ordinances did not require formal public hearing procedures as they were not land use codes.

City Attorney Sandstrom stated that city policy did require a public hearing for code changes.

Mayor Mitchell reading from city rules of procedure the determined that council noted the announcement for a PUBLIC HEARING this evening to be held at the next regular meeting as sufficient notice for the ordinances being heard this evening and to be continued at the next meeting. The ordinance language should also be noticed on the city’s posting board in summary with full draft on file at city hall. Clerk to be able to do this upon return. Attorney Sandstrom confirmed.

**Item 10.** Parks Maintenance Costs – John Lund

Parks Committee Chair, John Lund presented a quote for tree removal at the tennis courts as trees are up heaving the court surface and also a quote for trimming two willows at Tighe-Schmidt Park.

Councilmember Harper expressed displeasure at not receiving the quote prior to the meeting, which would allow councilmembers to actually view the issue. She asks that the tennis court tree item be reviewed next month and that the tree be tagged for identification.

It was noted that the willow branches near the swing set could be trimmed, as the cost was minimal and the parks budget does include tree trimming and is OK to do at this time.

Mr. Lund presented that Andrew Sorenson donated labor and materials for the garage to be trimmed out. It was noted a Resolution to accept this donation should be presented next month. Mr. Lund to get he value for clerk to draft resolution.

It was presented by Mr. Lund that the Grotto steps would be re-done this year and that the funds needed for this will come out of the Parks Special Revenue Fund and that he also obtained getting a quote from Brian Lauzon to edge, disk, remove debris and refresh the path at Tighe-Schmidt Park for $2,082. He stated that the Park’s Committee decided to leave it be but he is seeking council direction on what should be done for the path.

Council advised Mr. Lund that this was not included in the 2012 parks budget and he may present it for consideration in the 2013 budget when the Parks Committee drafts their budget for 2013. Resident Kaufman offered that this should not be done and it should be restored to its natural state.

Councilmember Peterson requested that a plan for this be presented to council at some point in the future for consideration as a possible 2013 park project and expense.

Mr. Lund stated he contacted KEJ concerning his contract with the city for easement cleanup including rain gardens, as Mr. Lund stated he wanted a hard cost for the work. KEJ provided that rain gardens would be an added service item to his contract. There was varied discussion on the items included in the KEJ contract and if add-on items were needed it could be re-bid. Councilmember Harper stated a Request for Proposal (RFP) was done for the services desired and if more services are needed they should be identified when the contract is up for bid. Mr. Lund expressed concern that the KEJ costs were more than the past Brian Lauzon costs. He further noted the Parks Committee is drafting a list of park maintenance items to be used. Councilmember Peterson commented that this would be very helpful to have when service contracts are bid for city work.

Council reminded Park Chair Lund that items (including supporting documentation) presented to council for discussion or consideration should first be provided to the city staff for review and possible inclusion in the council packet prior to the meeting.

Mr. Lund continued on to the DNR Permit application for milfoil removal and how to get a city check for the permit fee. Councilmember Harper noted it was the White Bear Lake Conservation District (WBLCD) that coordinates the lake shoreline milfoil removal and obtains the applicator to do so. Private landowners may tag along at that time at their own expense for the applicator. If the city chooses to remove shoreline milfoil it would be at its own expense and would work with the WBLCD to coordinate treatment with them. However WBLCD may or may not chose to retain and applicator to remove milfoil this year in the (Birchwood) area.

Mr. Lund noted the permit fee is $35, the cost to treat is unknown at this time, but city council needs to approve expense to treat at least Kay Beach at this time. Councilmember Peterson stated it would be hard to approve this request if the expense is unknown. Councilmember Harper asked that Mr. Lund work with the city clerk to coordinate with WBLCD on which beaches need to be treated.

Mayor Mitchell noted that there are two appointments up this year in Parks and Natural Resource Committee both John Lund and Debbie Harrod terms expire this year in June.

Mr. Lund stated he received a quote from KEJ to clean up all five easements for vegetation for $570 each if DNR permit is received (OMH to shore) for vegetation removal. It was stated that this should come to the council for the May meeting. Councilmember Harper noted that the city (Parks and Council) should determine how they want the easements to look, either full width cleaned or just a path to the dock (DNR recomendation).

Councilmember Harper requested Mr. Lund make sure the minutes of the park’s meeting are provided to council via email and to staff for inclusion on the city’s website. Mr. Lund thought this was being done and will follow up.

Mr. Lund said that 20 yards of sand was donated to Kay Beach but a bobcat is needed to spread. It was noted a resolution would be needed at the May meeting for acceptance of the donation. Mr. Lund to provide the value and resident that donated the sand.

*Councilmember Sampair left the meeting prior to the engineer’s report.*

**Item 11. ENGINEER REPORT**

A. 2012 Sanitary Sewer System Maintenance

City Engineer Kristi Elfering presented that the city identified 2012 budget projects for sanitary sewer lines to be televised, manhole rings repaired and lift station pump replacement and she would like to seek council input to move forward. She also noted the sewer maintenance plan requirements in the city’s insurance policy for sewer back up coverage require the city televise the remaining sanitary lines that have not been re-habilitated. In regard to the replacement of pumps at the Birchwood Lift Station as proposed in the city’s Capital Improvement Plan (CIP) based on years of service, she would like to have the City of White Bear Lake pull those pumps to ascertain if they need to be replaced this year.

Ms. Elfering proposed to do the televising first, that she will bring a quote for televising to the next meeting and that the City of White Bear Lake may charge a small fee to pull the pump itself. She offered that Met Council has noted there is observation of a small amount of gravel in the system, that there is a summer spike in Infiltration and Inflow (I&I) of groundwater.

Councilmember Harper stated that the expense would come from the Sewer Fund but it needs to be determined where the revenue comes from as the city may need to impose surcharge to maintain the required reserve of $115,000. If all projects are done the city will be below the minimum balance. It may be that council will need to direct the city engineer to draft a funding plan. At this time the fund is at approximately $170,000. The city engineer and city treasurer will work together to draft a funding report for need for the reserve to be maintained at all times or a point in time along with getting the bids and review requirements.

B. Pothole Patch

City Engineer Elfering presented KEJ bid for pothole repair is an hourly rate, last year council approved $400 for repairs and she inquired if direction could be provided to set the repairs in motion. She also stated the Cedar water main break area of pavement is sinking. She is asking for approval to get quotes to patch this. She offered for reference, that last year it was $3,300 for two areas to be patched.

**Harper/Peterson motion to approve authorization of City Engineer Elfering to get bids and allow for her direction of patch repairs up to cost of $2,000 and to also include direction for pothole filling of up to $600. Motion Passed – All Ayes (Sampair, Carson absent)**

**Item 11** COUNCIL REPORTS

Councilmember Harper requested the city council provide authorization for City Engineer Elfering to work on CIP items (updating list for water system, sewer, stormwater, roads, parks, city hall facilities) noting the 2014 plan for Hall/Cedar road re-construction. Overlays are scheduled for 2015 and she expressed concern that Wildwood Avenue is in poor shape and might not wait until that time. Councilmember Peterson was asked to review this, as his responsibility is streets. She encouraged the councilmembers to work with Ms. Elfering to provide updates and reviews of their area of responsibilities so that items can be worked into the CIP. Councilmember Peterson inquired of the engineering cost. Ms Elfering stated she would estimate approximately $200 to bring forward and consolidate into a reasonable schedule to present to council for review. A consensus noted it would be Ok to work with Ms. Elfering at that estimated cost.

Councilmember Harper presented that the WBLCD approved dock permit without issue. Although there was discussion of what happens when a permit is charged for but lake level determines it is unusable. She also commented that an article in the WB Press reported that a USGS grant is being sought for a 2nd lake study on leaks, development of pumping strategy, and to look for lake water in municipal wells. The low lake level in the northeast quadrant of the region it seems is most likely caused by human consumption of the aquifer. As of now, no noted financial contribution from cities was discussed, waiting to see if grant is received. Councilmember Peterson noted grant would not be decided for about a year from now and LCMR grant come through legislature with no match from the local (city).

It was noted that a link to the study should be placed on the city website and staff should follow up with WBLCD to see if contribution for the recent study is needed. City Treasurer confirmed the $4,000 has not been paid nor invoice received as of this time.

Councilmember Peterson noted a Boy Scout Troup 434 approached him for an Eagle Scout Project inquiring about any possible large project. Councilmember Peterson asked for suggestions to be directed to him if anyone has an idea.

4M Fund Roll (Harper) – agenda item added.

Mayor Mitchell asked that City Treasurer Reiter present information about the city’s current banking practices. She noted there is a potential for cost savings by use of the 4M Fund (Minnesota Municipal Money Market), which is a product of the League of MN Cities. Banking fees would still be incurred however them Fund provides free checks for use. There is flexibility in a user friendly online banking system and potential for more interest earned, albeit a small amount. It was noted that the US Bank is still the depository for the city and a local relationship will remain. Councilmember Harper commented on the city’s several bank accounts that used to be used for payment of the various fund payment for expenses, which is no longer needed with today’s computer programs.

**Harper/Peterson motion to approve Resolution 2012-12 to change to 4M Fund with Section II designation of officials for mayor, deputy mayor, city clerk and city treasurer as signatories.**

**Motion Passed All Ayes (3 and 2 absent)**

Mayor Mitchell presented items for the May City Council meeting; codes for complaints, penalties, enforcements, the 800 series for city funds, resolutions for donation of sand, for Sorenson donation of garage materials, and noted he will seek city approval of beer/wine for Music In the Park events, park committee items, engineer quotes to be presented. It was noted that the budgeted mayor wage will need to be moved to the Music In The Park budget via council action as it was last year.

He would like to have council revisit the policies in place for councilmember use of the city attorney and city engineer time. He feels councilmembers should be able to work with attorney and engineer as needed.

City Engineer Elfering noted that Insurance Service Office (ISO) would be coming out May 8th and 9th, 2012 for review and provide and insurance rate for the community. She noted she will be working with them on the water portion and will incur engineer expense to this city.

**Mitchell/Peterson motion to adjourn at 9:35pm. ALL AYES**

Attest:

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Cindie J Reiter, MCMC

City Treasurer (for City Clerk)