

**CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
BIRCHWOOD, MINNESOTA**

**MINUTES OF THE CITY COUNCIL MEETING
VIA TELECONFERENCE
NOVEMBER 9, 2021, 7:00 P.M.**

MEMBERS:

Mary Wingfield	Mayor
Jon Fleck	Councilmember
Mark Foster	Councilmember
Justin McCarthy	Councilmember
Kevin Woolstencroft	Councilmember

STAFF:

Andy Gonyou	City Administrator
H. Alan Kantrud	City Attorney
Doug Danks	City Planner

GUESTS:

Ryan Hankins Vice Chairman, Planning Commission

Minutes prepared by Anh Nguyen of Minutes Solutions Inc. from an audio recording.

1. CALL TO ORDER

In light of the status of the ongoing COVID-19 health pandemic, the City of Birchwood Village is conducting its November 2021, meeting using interactive web-based technology. Pursuant to *Minnesota Statutes, Chapter 13D.021 Subdivision 1(1)*, the City of Birchwood Village 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...".

Mayor Wingfield called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

Mayor Wingfield requested the addition of the following items to the agenda:

- Leaf Pickup
- Village Hall Update
- Fence Update
- Tree Update
- Water Meter Tower Update
- Grotto Drainage

Councilmember McCarthy requested the addition of the following item to the agenda:

- A motion to approve administrative access for the Metro INET conversion

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the agenda, as amended. All in favor; motion carried.

4. OPEN PUBLIC FORUM

There were no comments for the open public forum.

5. ANNOUNCEMENTS

- A. Social Media:** Follow Birchwood Village on Facebook/Twitter and/or register for the e-mail list.
- B. Leaf Pickup:** Leaf pickup is still ongoing for the week of November 8, 2021. Residents are encouraged to contact City Hall or the Mayor's office to schedule leaf pickup.
- C. Kayaks:** The kayaks were to be removed from the kayak rack by October 31, 2021. There are still kayaks remaining. Residents are reminded to remove the kayaks.

6. ADMINISTRATIVE PRESENTATION

- A. Sheriff Report:** A report of law enforcement incidents and citations for October 2021, was provided for the Council's review.
- B. Planning Commission Meeting Minutes:** The minutes of the September 23, 2021, and the October 7, 2021, Planning Commission meetings were provided for the Council's review.

7. CITY BUSINESS – CONSENT AGENDA

- A. Approval of the Treasurer's Report**
- B. Approval of Resolution 2021-26, Adopting CPU and Sewer Plan**
- C. Transfer \$20,000 from Special Revenue Projects to cover all special projects in parks for the year (including signage, buckthorn removal, rentals, weed killer, tree removal, etc.)**
- D. Zero Out/Transfer \$40 from the warming house fund to the general fund.**
- E. Zero Out/Transfer \$2,119.89 from the sewer rehab debt to the sewer fund. Both funds have been inactive for several years.**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to approve the consent agenda as presented. All in favor; motion carried.

8. CITY BUSINESS – REGULAR AGENDA

A. Planning Commission Discussion

- a. **Review City Planner Doug Danks' Contract:** Mayor Wingfield reported that several Planning Commission members contacted her to withdraw their endorsement of Doug Danks as the City Planner due to a number of issues.

These issues include:

Issuing a building permit for a garage one foot away from the neighbor's property line as a continuation of a non-conforming use. The same application from the property in question was received in 2005, in which the Council unanimously denied a variance going six feet away from the property line. This was provided to Doug Danks and demonstrated precedent that it was not supported.

More recently, Doug Danks authorized the City Administrator to issue a building permit that was ultimately not issued after seeking a more thorough analysis from the City Engineer, Steve Thatcher. This has cost the city of Birchwood Village a considerable amount of time and puts the city at risk of a lawsuit, given that the city's codes have not supported issuing a permit in contrast to Doug Danks suggestion that a permit be issued. The Council has never allowed a permit to move forward such as Doug Danks has for the property in question. Based on the Council's decision to deny the variance in 2005, there is no basis for the issuance of the more recent building permit.

In addition, Doug Danks suggested to the Planning Commission that a new building on Lake Avenue does not need to comply with code and can start with a six feet distance from the property lines on a complete rebuild.

Mayor Wingfield reiterated that at no point in her term as mayor or Councilmember Fleck's term as mayor, dating back to 2006, was it suggested that this would be allowed and is not in line with facts or precedent with the Council's actions.

The Council opened the floor to Doug Danks for any remarks.

Doug Danks reported that he received an invitation for the Council meeting held on November 9, 2021, with no indication of the agenda. He has not had any conversations with Planning Commission members that would indicate concerns regarding his role as City Planner.

Doug Danks noted that public records are very clear regarding his actions, his findings, the basis of the findings, and his points as expressed in Council meetings and private workshop meetings. He stated that Mayor Wingfield's claims do not align with public records.

Doug Danks noted that he has never received the variance application from 2005 and does not have access to city files for this information. The application was first brought to his attention when it was published in the City Engineer's report the previous week. He reiterated that he did not have the benefit of access to this information and that it would have contributed to making an informed decision.

In regard to the recent application for 117 Wildwood Avenue, Doug Danks explained that he applied his history of how the particular language for *ordinance 301.050* was applied to decisions in past Planning Commissions.

Doug Danks reported at least two garage projects, one free-standing detached garage and another garage attached to the principal structure, where the Planning Commission found that although they were pre-existing non-conforming structures, they were allowed to expand the structures based on the language of the ordinance. Not only did the Planning Commission approve the projects, but building permits were issued and the projects were built to completion under the watch of Mayor Wingfield.

In terms of pre-existing impervious surfaces being applied to the expansion of structures on-site and not increasing impervious surface areas, that too has precedent in Doug Danks' history on the Planning Commission. On this basis, Doug Danks gave the approval for a permit for 117 Wildwood Avenue to expand their pre-existing non-conforming detached garage in a surface area that was equivalent to the amount of pre-existing impervious surface.

In light of the meeting between the resident, Mayor Wingfield, and City Attorney Alan Kantrud, Doug Danks was informed that the resident would be expanding upon the previous structure of the garage, however, it was determined that there was a smaller footprint for the existing shed structure in that location.

The applicant indicated that the survey company had confirmed the footprint of the area of the existing impervious surfaces and was substantiated in a new submittal from the survey company and was the basis for Doug Danks decision to allow a garage expansion of 24 feet by 20 feet, which was the equivalent surface area of the impervious surface that was documented in the application.

In regard to the 469 Lake Avenue project, Doug Danks met with the applicant, their architect, and the homeowner on July 12, 2021, to review a conceptual site plan provided by the architect and discuss general parameters for the project based on the conceptual site plan. It was not an application, floor plans or what was received by the Council and the Planning Commission in September 2021, to be reviewed.

Doug Danks stated that he was clear with the applicant that the required setbacks were 50 feet from the ordinary high water line, 40 feet from Lake Avenue, and 10 feet from each side yard. The applicants mentioned that they reviewed the zoning ordinances, which noted a provision to allow reduced setbacks for undersized lots.

Doug Danks informed the applicant that the City Council or Planning Commission may have taken that into account at one time, but the ordinance language was changed, and he did not know how the new Planning Commission would interpret

the revised language. He suggested that the applicant proceed if they feel they are justified and have the Planning Commission provide some guidance.

Doug Danks reiterated that variances are being passed through the Planning Commission and City Council without any guidance or feedback, and that the process is not serving the residents of Birchwood Village.

Mayor Wingfield noted that the city code states that under pre-existing structures or uses, there is an obligation that when pre-existing structures of a non-conforming structure is destroyed by fire or other peril to the extent that greater than 50% of the estimated market value at the time of the damage, and no building permit has been applied for within 180 days when the property is damaged, then your reconstruction must conform to the provisions of the zoning code.

While there is an exception, it does not apply to the application in question because there is no previous granted variance to that property. The provisions were ignored as the previous building was down for almost one and a half years.

Mayor Wingfield recommended severing the relationship with Doug Danks as City Planner due to his various interpretations of city code, even after they were amended in 2019 for clarity, and the threat of legal peril due to his interpretations.

On a motion made by Councilmember Fleck, seconded by Mayor Wingfield, it was resolved to sever the relationship with Doug Danks as City Planner for the city of Birchwood Village. Councilmember Foster and Councilmember McCarthy voted no; motion carried.

- b. **Permanent Addition of Planning Commission Questions and Concerns to Agenda:** This will provide an opportunity for a representative of the Planning Commission to address any concerns or obtain guidance from the Council.

Ryan Hankins, Vice Chairman of the Planning Commission, reported that the Planning Commission had discussed making the Birchwood Village ordinances more aligned with what the Council allows in terms of variances. A representative from the Rice Creek Watershed District provided the Planning Commission with some feedback regarding impervious surface restrictions.

The Planning Commission is requesting guidance from the Council regarding how to organize proposals; specifically whether proposals should be packaged together for review by the Council, or as singular applications. The Planning Commission also requested feedback regarding the types of applications that the Planning Commission should or should not be allocating time towards.

Ryan Hankins noted that the city of Birchwood Village should consider separating impervious surfaces from open spaces in regard to density issues.

Mayor Wingfield agreed that implementing parameters on the maximum number of impervious surfaces would be beneficial to mitigate any issues.

Councilmember Fleck expressed concern regarding a building permit that was issued for a red-tagged structure 419B under Doug Danks approval. Ryan Hankins was not able to provide any insight on the structure in question.

Councilmember Woolstencroft reported that the city of Mahtomedi is reconsidering pervious surfaces because of failure issues with manufacturers.

Councilmember McCarthy advised the Planning Commission to amend the ordinance as they see fit, to the best of their ability, and to provide these to the Council for review. Councilmember McCarthy suggested that any materials the Planning Commission is considering should be submitted to the City Administrator to be included in the Council meeting agenda.

The Council agreed to include a permanent 15-minute discussion with the Planning Commission on the agenda for future Council meetings.

Further discussion was deferred to the next workshop.

- c. **Use of City Council Liaison:** Councilmember Foster will act as City Council Liaison for the Planning Commission.

B. Lake Links / Hall Avenue Update

- a. **Engage City Engineer for Design Approval and Obtain Bid from Schifsky:** The finances are being transferred from the funds that the city of Mahtomedi did not use in full and, through the legislative process, created an opportunity for the city of Birchwood Village in the amount of \$52,000. This includes maintaining the shoulders on Hall Avenue to prevent vegetation growing into the street.

Mayor Wingfield suggested engaging the City Engineer, Steve Thatcher, to provide some direction to Schifsky Companies regarding the repairs to the shoulders. Schifsky Companies reported that the repairs of the shoulders on Hall Avenue will cost \$30,000. The remaining balance would be allocated towards paint.

Authorization to transfer the unused funds from the city of Mahtomedi to the city of Birchwood Village is pending.

On a motion made by Councilmember Fleck, seconded by Councilmember McCarthy, it was resolved to engage the City Engineer, Steve Thatcher, at a cost not to exceed \$1,000 to provide Schifsky Companies with a report detailing the scope of work for the correction of the shoulders on Hall Avenue. All in favor; motion carried.

C. Wildwood Lift Station

- a. **Authorize City Engineer to Draft Replacement Plans:** Mayor Wingfield reported no success in obtaining grants. Funding for the city of Birchwood Village is still being explored; however, the legislature would provide funding via a low interest loan instead of a grant.

A meeting between Mayor Wingfield and the federal government is scheduled for the week of November 15, 2021.

Steve Thatcher is projecting an engineering fee of 10% for the Wildwood lift station project. The entire project will cost approximately \$50,000 with regard to engineering costs. Mayor Wingfield noted that several other engineering firms charge a 35% engineering fee plus costs.

On a motion made by Councilmember Fleck, seconded by Councilmember McCarthy, it was resolved to engage the City Engineer, Steve Thatcher, at a cost not to exceed \$5,000 to draft replacement plans for the Wildwood lift station. All in favor; motion carried.

- b. **OSHA Compliance:** Repairs to the Wildwood lift station would ensure compliance with OSHA and prevent corrosion from the obsolete electronics below ground.
- c. **Emergency Storage:** Mayor Wingfield reported that there is no emergency storage in the event that the sewage pump in the lift station fails. This requires immediate repair.

D. Mayor Wingfield and Councilmember McCarthy Updates

- a. **Meeting with Rice Creek Watershed District (RCWD) at Feistner Beach:** Mayor Wingfield and Councilmember McCarthy met with a project manager from the Rice Creek Watershed District.

It was reported that the landowner had undertaken some land grading that no longer made the project feasible. The project manager indicated an opportunity to do a smaller project on Birchwood Village's portion of Feistner Beach.

Councilmember Fleck expressed concern regarding the landowner's decision to grade and manipulate the land in such a way that the project is no longer feasible without consultation with the Rice Creek Watershed District. The joint project between Washington County, Birchwood Village and the landowner at 15 Birchwood Lane will not continue.

- b. **RCWD Board Meeting on October 27, 2021:** Councilmember McCarthy reported that the RCWD Board continues to alter their plans.

Bud Jensen and Ruth Jensen attended a workshop held by the RCWD Board on November 8, 2021, and reported that the RCWD is planning a future drawdown; the Council has explicitly expressed to the RCWD that a resolution was passed not to permit a drawdown.

Braun Intertec Study: The RCWD Board provided an engineer's report from HEI stating that there is no sediment in Hall's Marsh; it is clean water as Priebe Lake is the reservoir for Hall's Marsh.

The Council noted that the HEI report does not address what is in the Hall's Marsh water beyond silt and sediment, and the quality of the water. Mayor Wingfield has contacted Braun Intertec to conduct a water sampling of Hall's Marsh on several

occasions but has not received a response. If a response is not received by the middle of January 2022, the Council will consider alternative environmental consulting firms.

The Council agreed to engage Steve Thatcher to review the preliminary report from the Braun Intertec study once completed.

Mayor Wingfield suggested using the dock fees to commission the water sampling study. Further discussion was deferred for consideration at a later time.

ACTION – Mayor Wingfield will provide City Administrator, Andy Gonyou, with any updates regarding the Braun Intertec study for distribution to the Council for review.

- c. **Appointment of City Liaisons for Hall's Marsh:** Councilmember McCarthy recommended appointing Bud Jensen and Ruth Jensen to the Hall's Marsh Task Force. Sandy Berkley and Gabe Berkley have also expressed interest in joining the Task Force.

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to appoint Bud Jensen, Ruth Jensen, Sandy Berkley and Gabe Berkley to the Hall's Marsh Task Force. All in favor; motion carried.

ACTION – The City Administrator, Andy Gonyou, will inform residents of Birchwood Village about the Hall's Marsh Task Force in the next newsletter and via a mass e-mailing. A request will be made for any interested residents to join the Task Force.

E. Councilmember Reports

a. Mayor Wingfield

- i) **Feistner Beach and Dock Association:** Mayor Wingfield confirmed that Feistner Beach has a boat slip available to accommodate a single boat. This provides an alternative to the Dock Association.

Mayor Wingfield reiterated that the Dock Association should be informed of the potential cost savings for insurance if they pursue committee status and operate in conjunction with the city of Birchwood Village. The city has insurance coverage city wide, including the boat slip at Feistner Beach, at no additional cost to its policy.

The City Attorney, Alan Kantrud, confirmed that the city would not be able to provide insurance coverage to an LLC if the Dock Association maintained its independence as a private entity.

Alan Kantrud confirmed that a boat slip with less than four boats is not regulated as long as the boats are not commercial. He added that as long as there is no dock, it will not be regulated by the Washington Conservation District. He advised that the sheriff's office regulates the buoys and bells, not the Washington Conservation District.

Councilmember Fleck suggested exploring a project to create a holding space for the county water runoff in lieu of a single boat slip at Feistner Beach. He recommended a meeting with homeowners to discuss the project.

On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to approve the Dock Association to operate the boat slip at Feistner Beach on the condition that the boat slip is filled, in addition to filling all other boat slips, and the Dock Association provides the landing to access the boat slip, and is managed in the same manner as the other boats at the easement. All in favor; motion carried.

- ii) **Extent of City Permit at 15 Birchwood Lane:** Mayor Wingfield expressed concern regarding two six-inch PVC pipes that were draining directly into the easement from the property. The property owner claims to have removed the pipes.

Mayor Wingfield reported work on the property that requires oversight, including dirt piles in close proximity to the lake with no silt fencing and grading in close proximity to the lake.

Mayor Wingfield noted that the Rice Creek Watershed District expressed concern regarding the grading as well. She suggested that Steve Thatcher review the projects to ensure they are in compliance with city code and in conformance with the applications.

The letter from Rice Creek Watershed District states that the district technician and inspector was on-site at 15 Birchwood Lane on November 5, 2021 and confirmed more than 10,000 square feet of land being disturbed.

Since it is within 300 feet of the lake, an after-effect permit is required for erosion and sediment control planning and will be subject to additional fees per the city code. Rice Creek Watershed District requested the completed permit application be submitted by November 18, 2021.

On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to engage City Engineer, Steve Thatcher, to review the property at 15 Birchwood Lane and ensure it is in compliance with the written agreement drafted by City Attorney, Alan Kantrud, and is in compliance with the permits issued in conjunction with any requirements from the Rice Creek Watershed District. Councilmember McCarthy abstained and Councilmember Foster voted no; motion carried.

- iii) **Ice Rink Board Replacement:** Councilmember Woolstencroft noted that the boards are likely treated and cannot be painted for at least one year. The Council agreed to monitor the boards for one year.

- iv) **Leak Pickup:** Mayor Wingfield suggested that an RSVP be required for leaf pickup in the spring but not be required for leaf pickup in the fall. All leaf piles left outside during the fall season will be picked up as if RSVP'd.

ACTION – Mayor Wingfield will inform Mow Joe to pick up all leaf piles left outside and include them in the current RSVP list.

ACTION – The City Administrator, Andy Gonyou, will publish a notice to residents stating that no RSVP is required for leaf pickup in the fall; but an RSVP will be required for additional leaf pickup in the spring.

- v) **Village Hall Update:** The supplies to repair the electrical work in the village hall are on back order for two or three months.
- vi) **Fence Update:** The fence at the water meter tower will not be erected until the spring of 2022.
- vii) **Tree Update:** The spruce trees for the park will not be planted until the spring of 2022.
- viii) **Water Meter Tower Update:** Mayor Wingfield reported 15 properties that are non-compliant and have not made an appointment. She suggested providing Shelly Rueckert from St Anthony Village with the authorization to determine the appropriate fee for non-compliance as an effort to recover costs by the city of Birchwood Village.

Mayor Wingfield noted that some residents have different sized water meters. She suggested that the cost for overages, and anything over and above the cost of installation by the city, be borne by the resident.

Alan Kantrud noted that he received an objection to the water meter tower from a resident due to concerns regarding microwaves and health and safety.

On a motion made by Councilmember McCarthy, seconded by Mayor Wingfield, it was resolved to approve the cost for overages, and anything over and above the cost of installation by the city, be borne by the resident. All in favor; motion carried.

- ix) **Grotto Drainage:** The grotto drainage for the section between Wildwood Avenue and Hall Avenue has been brought to Council in the past but there was no consensus on the issue. Mayor Wingfield suggested engaging Steve Thatcher to provide next steps based on previous plans that did not take effect.

ACTION – Mayor Wingfield will obtain guidance from Steve Thatcher on next steps regarding the grotto drainage based on previous discussions.

b. Councilmember McCarthy

- i) **Metro INET Conversion Update:** Councilmember McCarthy noted that the old e-mails have been successfully transferred to the new accounts under Microsoft 365. The accounts are functioning well. The setup of OneDrive for shared drive access is pending a registry key from Metro INET. A backup solution is still required.

On a motion made by Councilmember McCarthy, seconded by Mayor Wingfield, it was resolved to approve Councilmember McCarthy and Ryan Hankins to obtain administrative access for the Metro INET conversion. All in favor; motion carried.

- ii) **Councilmember E-mails:** Councilmember McCarthy noted that the cost for a single e-mail account for city staff was reduced to \$5 per month with the Metro INET conversion to Microsoft 365. The option of a @cityofbirchwood.com e-mail account is available for Councilmembers as well. He noted that e-mail forwarding is possible.

The e-mail accounts will serve as public record, which the city will have ownership of and can easily gain access to when needed. Web application versions of Microsoft Office programs are also available. Full access desktop versions of Microsoft Office programs are available for a monthly e-mail account fee of \$12 per month.

The Council agreed that all Council members will receive an official @cityofbirchwood.com e-mail address.

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve resolution 2021-25 authorizing the City Administrator to obtain Microsoft 365 accounts for all City Council members. All in favor; motion carried.

- iii) **Maintenance Code:** Mayor Wingfield advised Council members review the revised maintenance code provided by Councilmember McCarthy and send any concerns to Andy Gonyou to be discussed at the next Council meeting in December 2021.

ACTION – Council members will review the revised maintenance code as amended by Councilmember McCarthy and provide feedback to City Administrator, Andy Gonyou, for inclusion in the December 2021, City Council meeting.

F. City Administrator Report

a. Digitization of Sanitary Sewer Records:

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to approve White Bear Township to digitize the city of Birchwood Village's sanitary sewer maps at a cost not to exceed \$575. All in favor; motion carried.

b. November Workshop Scheduling:

- i) Review Park Improvements/Paths**
- ii) Define Impervious Surface**
- iii) Goals for 2022**
- iv) RCWD, DNR and City Commissioner Meeting Re: Hall's Marsh**

ACTION – The City Administrator, Andy Gonyou, will arrange a Google meeting in December 2021, between the Council, RCWD, DNR, and the City Commissioner.

9. NEXT MEETING

The next Council meeting will be held at a date and time to be determined.

10. ADJOURNMENT

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 9:40 p.m. by Mayor Wingfield.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting of the members of the Birchwood Village City Council. This document shall not be considered to be a verbatim copy of every word spoken at the meeting.

Mayor Mary Wingfield

City Administrator Andy Gonyou

Date

Date