

CITY OF BIRCHWOOD VILLAGE  
207 BIRCHWOOD AVENUE  
BIRCHWOOD, MINNESOTA

MINUTES OF THE CITY COUNCIL MEETING  
DECEMBER 13, 2022, 7:00 P.M.

**MEMBERS:**

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

**STAFF:**

Becky Kellen	City Administrator
H. Alan Kantrud	City Attorney

**GUESTS:**

Stan Karwoski	Washington County Commissioner
Randy Lafoy	Birchwood Commissioner

Minutes prepared by Anh Nguyen of Minutes Solutions Inc. from a video recording.

1. **CALL TO ORDER**

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

2. **PLEDGE OF ALLEGIANCE**

3. **APPROVAL OF AGENDA**

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

Councilmember McCarthy requested the following change to the agenda:

- Move Item C from the Regular Agenda to Item B

Mayor Wingfield requested the following changes to the agenda:

- Move Item R from the Regular Agenda to Administrative Update
- Add Ash Easement Survey Update

4. **OPEN PUBLIC FORUM**

**Ryan Hankins, 183 Wildwood Avenue**, clarified his concerns regarding Council pay and expressed gratitude to the Council for their service to the city of Birchwood Village.

**Barton Winter, 1 Five Oaks Lane**, expressed concern regarding the flooding of the ice rink and the failure to replace every rink board.

**James Nelson, 256 Wildwood Avenue**, reiterated his opinion regarding the Council's political views and bias.

**5. AWARD CEREMONY**

- A. Outgoing Mayor and Councilmember Comments:** The floor was opened to comments from Councilmember Fleck, Councilmember Woolstencroft, and Mayor Wingfield respectively.
- B. Presentation of Awards**

**6. ANNOUNCEMENTS**

- A. Ice Rink:** The opening date of the ice rink will be weather dependent.
- B. Citizen Advisory Committee Members for the Rice Creek Watershed District (RCWD):** Additional details can be found on the Birchwood Village website.
- C. Birchwood Christmas Party:** The Christmas party is scheduled for December 14, 2022, from 5:30 p.m. to 7:00 p.m.
- D. Diseased Tree Removal in Public Spaces:** This item is in progress.
- E. Planning Commission Open Position:** Interested applicants can send a letter of interest to [info@cityofbirchwood.com](mailto:info@cityofbirchwood.com) by January 3, 2023.
- F. Deer Hunt:** The final deer hunt is scheduled for December 19, 2022, and December 20, 2022.

**7. CITY BUSINESS – CONSENT AGENDA**

**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.**

- A. Approval of the Treasurer's Report:** The Treasurer's report for the period ending December 6, 2022, was provided for the Council's review and approval.  
  
Mayor Wingfield highlighted the city's assets of approximately \$1,000,000.
- B. Approval of the November Council Meeting Minutes:** The minutes of the Council meeting held on November 15, 2022, was provided for the Council's review and approval.
- C. Approval of Canvassing Board Meeting Minutes:** The minutes of the Canvassing Board meeting held on November 18, 2022, was provided for the Council's review and approval.
- D. Approval of Resolution 2022-17 – Accepting Donations:** The resolution authorizes donations to the city of Birchwood Village.

**E. Approval of Resolution 2022-21 – Designating Polling Place:** The resolution designates Birchwood Village Hall at 207 Birchwood Avenue as a polling place for elections held in 2023.

**F. Approval of 2023 Northeast Youth and Family Services (NYFS) Contract:** The contract with NYFS is effective through to December 31, 2023.

**G. Approval of the Emerald Ash Borer (EAB) Management Plan:** The management plan will mitigate the spread of EAB and manage the cost of tree loss and replacement.

**8. CITY BUSINESS – REGULAR AGENDA**

**A. Truth in Taxation/Adoption of Final Levy and Budget**

**a. Public Hearing:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. All in favor; motion carried.

**b. Review of Proposed 2023 Levy and Budget:**

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to transfer \$1,000 from legal services to planner services. All in favor; motion carried.

The Council queried whether engineering services should be classified as a non-levy item. City Treasurer Mary Cahill noted that engineering service fees are generally recuperated through the permit process; however, some engineering expenses, such as work required for Hall's Marsh, were incurred that could not be collected through the permitting process.

**c. Approve Resolution 2022-19, Final Budget Adoption:**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to approve Resolution 2022-19, Final Budget Adoption. All in favor; motion carried.

**d. Approve Resolution 2022-20, Final Levy Adoption:**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember McCarthy, it was resolved to approve Resolution 2022-20, Final Levy Adoption. All in favor; motion carried.

**B. 8 Oak Hill Court Rooftop Solar Project – Conditional Use Permit Review**

**a. Planning Commission Recommendation:** As per the meeting minutes of the Planning Commission meeting held on December 1, 2022, the conditional use

permit for the solar project at 8 Oak Hill Court was recommended for approval, as presented.

**b. Public Hearing:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. All in favor; motion carried.**

**c. Council Deliberation and Approval:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the conditional use permit for the solar project at 8 Oak Hill Court based on the fulfillment of all requirements for the city's ordinances. All in favor; motion carried.**

*ACTION – Becky Kellen will include a discussion regarding the retroactive removal of the conditional use permit for the solar project at 8 Oak Hill Court on the agenda for the next Council meeting.*

Mayor Wingfield noted the conditional use permit should not have been required for the solar project at 8 Oak Hill Court. Mayor Wingfield reiterated that only structures that impede on open spaces in yards should require a conditional use permit. Mayor Wingfield recommended a retroactive removal of the conditional use permit and that fees collected be returned to the respective parties.

**C. Resolution 2022-18, Certification of Delinquent Utility Accounts to the County**

**a. Public Hearing:**

**On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to close the public hearing. All in favor; motion carried.**

*ACTION – Becky Kellen will amend Resolution 2022-18, Certification of Delinquent Utility Accounts to the County, to include that an additional collection fee of \$50 per account will be levied by the county against each resident.*

Letters were sent to residents with delinquent utility accounts with a deadline for payment of November 30, 2022. If payment is not received before December 14, 2022, the outstanding amounts will be included in the property tax owed by each respective homeowner.

**b. Council Deliberation and Approval:**

**On a motion made by Councilmember Foster, seconded by Councilmember McCarthy, it was resolved to approve Resolution 2022-18, Certification of Delinquent Utility Accounts to the County, as amended. All in favor; motion carried.**

**D. Resolution 2022-23, Council Salary**

**a. Council Deliberation:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to direct the City Attorney to obtain an advisory opinion from the state Attorney General's office regarding the Council pay raise initiated in 2020. All in favor; motion carried.**

On August 18, 2020, the previous Council agreed to increase councilmember salary from \$600 to \$1,500, and the mayor's salary from \$1,500 to \$2,500. The proposed salary increase was published in the adopted budget and posted online to notify residents. A preliminary budget hearing was scheduled for September 8, 2020, and a first hearing was held where the pay increase was passed. The pay increase was also published in a newsletter distributed to all residents in September 2020. A second public hearing was held in October 2020 with no comments made. A public forum for the League of Women Voters was held on October 12, 2020, and again no issue was made despite all previous notices. Mayor Wingfield was subsequently re-elected in November 2020.

H. Alan Kantrud reiterated that concerns regarding the Council pay raise are not a publication issue, but rather that the Council pay raise was not passed until November 2020 and published in December 2020, after the election.

**b. Approval of Resolution 2022-23:**

**On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to approve Resolution 2022-23 for the Council pay as was set out in 2020 before the election. Councilmember Foster and Councilmember McCarthy opposed; motion carried.**

**E. Second Reading Ordinance 2022-10-02, Amending Section 605 Animals**

**a. Public Hearing:**

**On a motion made by Councilmember Fleck, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. All in favor; motion carried.**

**b. Council Deliberation and Approval:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the second reading of Ordinance 2022-10-02, Amending Section 605 Animals, as amended. All in favor; motion carried.**

The Council requested the following amendments:

- Section 605.028. Chickens: re-number "2. License" and "3. Inspection" as "1. License" and "2. Inspection" accordingly.
- Section 605.028. Chickens and Section 605.029. Miniature Vietnamese Pot-Bellied Pigs: replace "Chapter 701" with "the fee schedule".

**c. Approve Resolution 2022-24, Summary Publication:**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember McCarthy, it was resolved to approve a summary publication of Resolution 2022-24. All in favor; motion carried.

**F. Second Reading Ordinance 2022-10-03, Amending Section 607.400 Camping**

**a. Public Hearing:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to close the public hearing. All in favor; motion carried.

**b. Council Deliberation and Approval:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the second reading of Ordinance 2022-10-03, Amending Section 607.400 Camping, as presented. All in favor; motion carried.

**c. Approve Resolution 2022-25, Summary Publication:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve a summary publication of Resolution 2022-25. All in favor; motion carried.

**G. Second Reading Ordinance 2022-10-04, Amending Section 617 Public Lake Tracts**

**a. Public Hearing:**

On a motion made by Councilmember Foster, seconded by Councilmember Fleck, it was resolved to close the public hearing. All in favor; motion carried.

**b. Council Deliberation and Approval:**

On a motion made by Councilmember Fleck, seconded by Councilmember McCarthy, it was resolved to approve the second reading of Ordinance 2022-10-04, Amending Section 617. Public Lake Tracts, as amended. All in favor; motion carried.

The Council requested the following amendment:

- Section 617.380: add "designed to be" between "structure" and "placed".

**c. Approve Resolution 2022-26, Summary Publication:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve a summary publication of Resolution 2022-26. All in favor; motion carried.

H. Second Reading Ordinance 2022-10-05, Amending Section 701 Fees

a. Public Hearing:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to close the public hearing. All in favor; motion carried.

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the second reading of Ordinance 2022-10-05, Amending Section 701 Fees, as presented. All in favor; motion carried.

c. Approve Resolution 2022-27, Summary Publication:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember McCarthy, it was resolved to approve a summary publication of Resolution 2022-27. All in favor; motion carried.

I. Second Reading Ordinance 2022-10-06, Fee Schedule Ordinance

a. Public Hearing:

On a motion made by Councilmember Fleck, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. All in favor; motion carried.

Kathy Weir, 613 Wildwood Avenue, requested clarification regarding the city's definition of a dangerous dog.

The Council reported that the city follows Minnesota state law regarding dangerous dogs. The definition of a dangerous dog is dependent on behavior, not breed, as per state code.

b. Council Deliberation and Approval:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember McCarthy, it was resolved to approve the second reading of Ordinance 2022-10-06, Fee Schedule Ordinance, as amended. All in favor; motion carried.

*ACTION – Becky Kellen will include a discussion regarding an RPZ backflow preventer installation and test in the city's code on the agenda for the next Council meeting.*

The Council requested the following amendments:

- Boat Hoist Registration Fee: add "per owner" to the \$25 fee.

- Plumbing, Fire, Gas, Heating, and Mechanical Permit Fees: change the fees to \$150 plus \$100 per hour after one hour to cover John Manship's hourly rate and the City Administrator's hourly rate.

- c. **Approve Resolution 2022-28, Summary Publication:**  
**On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve a summary publication of Resolution 2022-28. All in favor; motion carried.**

J. **Resolution 2022-05, Lost Lake Discussion**

- a. **Council Deliberation:** The resolution requires the city of Mahtomedi to seek alternative measures to correct flooding problems from the reconstruction of Birchwood Road.

- b. **Approve Resolution 2022-22**

**On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to approve Resolution 2022-22. All in favor; motion carried.**

K. **Highland Avenue/Birchwood Avenue Trail Extension Discussion**

**On a motion made by Councilmember Fleck, seconded by Councilmember Foster, it was resolved to authorize Mayor Wingfield to coordinate a volunteer group, including Jim Rydeen the City Maintenance worker, to proceed with the trail extension to Highland Avenue and Birchwood Avenue at a cost not to exceed \$1,000 for engineering fees and material costs. All in favor; motion carried.**

*ACTION – Becky Kellen will issue an informational letter to residents residing in the vicinity of the proposed trail extension to Highland Avenue and Birchwood Avenue to inform them of the city's plan to proceed with the trail extension in spring 2023.*

*ACTION – Mayor Wingfield will include a notice in the next newsletter seeking volunteers for the trail extension to Highland Avenue and Birchwood Avenue.*

The Council confirmed that the trail extension would be on public property and is of low cost and low impact to the city. The trail extension would also satisfy several resident requests for additional paths.

L. **Grant Monies**

- a. **Wildwood Lift Station:**

- Federal:** The funding committee is requesting an extension for the grant deadline to December 23, 2022. Senate approval by a minimum vote of 60 is required. An update will be provided by December 31, 2022, and posted to the city's website.
- RCWD:** The deadline for additional funding from the RCWD is December 22, 2022. Becky Kellen submitted a draft proposal on December 12, 2022.



- b. **Lake Links Association: ACTION** – Mayor Wingfield will send Becky Kellen the additional funding resources from the Lake Links Association for consideration by the new incoming Council.

The Lake Links Association reported having no funds available for the city. Mayor Wingfield suggested withholding signs to discourage the active mobility of residents from the city of Mahtomedi through Birchwood Village.

The city of Mahtomedi previously indicated they had \$53,000 in unspent funds and that legislative action would be taken to have the money re-assigned to Birchwood Village; however, no action was taken.

**M. 310/312 Wildwood Avenue Runoff from Driveway**

*ACTION* – The Council will provide the City Building Inspector with a copy of the city's maintenance code and request that the inspector provide a report to Council in January 2023 regarding non-compliance items identified at 310/312 Wildwood Avenue.

*ACTION* – Becky Kellen will include an update on 310/312 Wildwood Avenue on the agenda for the next Council meeting.

Drainage from the driveway at 310/312 Wildwood Avenue has been perpetual and unaddressed and poses a safety concern.

H. Alan Kantrud recommended waiting for another drainage incident to issue a citation, at which point the Council can declare a public nuisance, which would justify an abatement action.

A legal letter will be issued to the estate of 310/312 Wildwood Avenue regarding the failure to address the runoff from the driveway of the property in addition to non-compliance items identified pending a report from the building inspector.

**N. RFP for City Engineer**

This item was deferred to the next Council meeting for the new incoming Council to review and discuss given that the proposal deadline is not until March 1, 2023.

Mayor Wingfield advised that the RFP be scaled back to be inclusive of smaller engineering firms citing concerns regarding the service provided by large engineering firms and prices that are cost prohibitive.

**O. RFP for City Planner**

This item was deferred to the next Council meeting for the new incoming Council to review and discuss given that the proposal deadline is not until March 1, 2023.

Mayor Wingfield cautioned that several of the large engineering firms also provide planner services; however, she expressed concern regarding the conflict of interest in having an engineer and planner working for the same firm.

**P. 15 Birchwood Lane**

*ACTION – Becky Kellen will follow up with the City Engineer regarding his reconsideration of the swale at 15 Birchwood Lane as an impervious surface given the water infiltration that serves as a pervious surface.*

The Council noted that the fence is 40 feet away from the lake instead of 50 feet and needs to be in compliance.

The homeowner of 15 Birchwood Lane reported that a third party confirmed that the impervious surface is pervious through a riprap. The Council noted it must be verified and confirmed with the City Engineer. The homeowner expressed concern regarding the lack of direct feedback from the City Engineer.

Mayor Wingfield recommended the homeowner's contractor provide adequate proof to the City Engineer that the swale acts as an absorbent. The homeowner reiterated that the City Engineer's claim is the surface of the swale is impermeable and should be included in the impervious surface calculation; however, the surface is in fact permeable by definition of a swale. The homeowner reported that several surveys have been conducted throughout the process to ensure the property remains below the 25% impervious surface allowance.

As per the maintenance agreement, should the draining system fail, the city will be responsible to cover the cost.

**Q. Mayor Wingfield Updates**

Updates were included in the meeting package. Items that required further elaboration are documented below.

**a. Council Hall Mayor Board:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to authorize Mayor Wingfield to update the Council Hall mayor board at a cost not to exceed \$200. All in favor; motion carried.**

**b. City Hall Windows:**

**On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to approve the invoice from Historic Restorations for all the city hall windows at a cost of \$10,354.75. All in favor; motion carried.**

**c. Deer Update:** As of December 13, 2022, there has been no success with hunting deer. A recommendation was made to start the deer hunt earlier in November to ensure greater success.

**d. Signs:** The new city signs need to be painted and can be erected in 2023.

**R. City Attorney Updates**

- a. **Ash Easement Survey Update:** A separate bid for the land survey of Ash Path is pending and will be followed up on December 15, 2022.

The Council reported several resident complaints regarding a homeowner using a four-wheeler to go on city property, which needs to be addressed to protect city property rights.

S. **Administrator Updates**


- a. **Correction to Public Tree Inspection Results Communication:** The correct estimated amount to remove infected trees after the initial 2022 public tree inspection was \$45,010, not \$72,825.


9. **ADJOURNMENT**

On a motion made by Councilmember Fleck, seconded by Councilmember Woolstencroft and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 9:42 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. This document shall not be considered a verbatim copy of every word spoken at the meeting.

  
\_\_\_\_\_  
Mayor Margaret Ford  
1-10-2023  
Date

  
\_\_\_\_\_  
City Administrator Becky Kellen  
1-10-2023  
Date

