

BIRCHWOOD CITY COUNCIL
Emergency Meeting—Village Hall
December 29, 2009
Minutes

The meeting was called to order by Mayor Wingfield at 7:06 P.M.

Present: Councilmembers Brunner, Harper, Jann, Mayor Wingfield
Also present: City attorney Kevin Sandstrom, Bryan McGinnis, Mary Hauser, Ed and Sandy Herbert, Jim Greeley, Bob and robin Nicholson, Kathy and Herb Weber, Dick Galena, Sterling McCusick.

Mr. Jann informed the council that he believed the meeting was illegal and a violation of state law because the circumstances must be adjudged an emergency by the “public body” as a whole before an emergency meeting may be called, that the mayor had no authority to call the meeting, and that attending the meeting would constitute an open meeting violation.

Mr. Jann then left the council table and continued to observe the meeting from the back of the city hall.

Attorney Sandstrom informed the council that he was of the opinion that the immediate resignation of the clerk on December 26, 2009 along with the fact that the city has received multiple past due notices for bills, including two from Xcel Energy which sent notice of delinquency and threatened to terminate its service to the city hall and one of the city’s lift station might constitute an emergency in the judgment of the public body and the calling of the meeting by the mayor was within her authority because an emergency is a form of special meeting pursuant to Minn. Stat. 13D.04, subd. 3(e), and special meetings may be called by the Mayor pursuant to Minn. Stat. 412.191, subd. 2.

Mayor Wingfield noted that all councilmembers had been duly notified of the meeting as well as the White Bear Press. Mr. Brunner requested to discuss what constituted an emergency.

Agenda item #1: Rescinding certified delinquent utility bills due to inaccuracy of the amounts owing to the city. Mayor Wingfield informed the council that the amounts owing were substantially less than the figures certified to the county by the clerk in November. To avoid double payment and interest charges, the mayor recommended the city withdraw the certification and carry the debt on the city’s books for 2010. The estimated amount was about \$2000.

Mr. Brunner disputed that such constituted an emergency. The problems created by the certification might be regarded as burdensome, but it was not appropriate to address this as an emergency matter.

Mr. Brunner again requested proof of an emergency for the meeting. Mayor Wingfield reiterated that bills were past due and late fees were accumulating for checks that had been previously written in November but not sent out. Other bills had not been presented to the council at the regular December meeting that should have been paid since the amounts owing from month to month were constant. In addition, the city had received two Notices of cancellation of services from Xcel Energy for nonpayment on its accounts. Cancellation was threatened for December 22, 2009 and December 26, 2009 at the city hall and the lift station at 207 Wildwood Avenue. These past due bills could affect the city's credit rating. Also, the city office was not staffed and provisions needed to be made for keeping the office open during regular business hours.

Ms. Harper suggested that the council address item #3 first since it was the most pressing issue on the agenda.

Item #3: Ry-chel Gaustad informed the city via e-mail on Saturday, December 26, 2009 at 10 A.M. that she had receive an opportunity that she could not turn down. Her resignation for city clerk was effective immediately. The council noted that due to the resignation, the City now had no staff. The council considered this matter and determined that it constituted an emergency such that the emergency meeting could proceed.

Motion Wingfield/Second Brunner: The city accepts the resignation of Ry-chel Gaustad. Motion passed unanimously.

Ms. Harper explained that options the city has: 1) go through a temporary accounting service for staffing in preparation of the audit which will commence in mid February, 2) do an employee search, which would take a number of weeks, 3) contract with a specific person, or 4) share an employee from another city. Option #3 was the most viable under the circumstances. Ms. Harper has received information from the city's contracting auditor that the city clerk from Lake St. Croix Beach would be available starting next week. She has experience in city clerk/treasurer duties and is willing to act as an independent contractor for the next three months. Ms. Harper has checked two references and they were satisfactory.

Motion Brunner/ Second Harper: Council directs Ms. Harper to enter into a contract with Cindie Reiter Roberts for a term up to April 1, 2010 at an hourly rate of \$25/hour for approximately 32 hours per week commencing January 4, 2010.

Council discussed that this is an independent contractor status with no continuing obligation of either party. Ms. Roberts would be responsible for all taxes, insurance and other expenses under these terms.

Motion passed unanimously.

Attorney Sandstorm will assist with the contract.

Mr. Brunner left the meeting at 8:10. A quorum was lacking and the meeting was adjourned.

Drafted by Mary Wingfield
Mayor