

CITY COUNCIL MEETING
CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
WASHINGTON COUNTY, MINNESOTA

REGULAR CITY COUNCIL MEETING

December 8, 2009

Members Present: Mary Wingfield, Jay Brunner, Barb Carson, Jane Harper,
David Jann
Others Present: Kristi Elfering, Kevin Sandstrom, Ry-Chel Gaustad, John Lund, Kathy Malles,
Greg Donovan, Others ?

Call to Order: by Mayor Wingfield at 7:00 p.m.

Pledge of Allegiance was said.

Approve Agenda

Councilmember Jann stated that he sent an email asking to have the replay of City Council meetings on the agenda, but it was not an agenda item. He had also sent a second email asking for three items to be on the agenda and none of these items were on the agenda. The three items were:

- Replaying of the City Council meetings,
- Accuracy of the water bills for the prior period, and
- Discussion of who is involved in the city's finances and computer programs having anything to do with finances.

After seeing the draft agenda and noting that those items were not on the agenda, he sent an email asking why those items were not included in the agenda and did not receive a response. City Clerk Gaustad noted that a representative from Channel 16 would be attending the meeting and that issue was already on the agenda as were the others items, just under different headings such as the City Clerk and the Administrative updates. Councilmember Jann asked that in the future he receive a response so he knows that the items are on the agenda. City Clerk Gaustad apologized for not responding.

Mayor Wingfield then stated she would like to amend the agenda. After the public forum, she would like to talk about prepayment of the outstanding bond and schedule regarding the sewer lift station and special assessment bond and special assessment certification to Ramsey County for the 2008 sewer improvement. Under the bills she would like to discuss an outstanding bill for US Bank, under City Clerk she wanted to add a discussion of the White Bear Lake Locate Contract, and under Mayor she wanted to discuss the publication of the dog fee ordinance.

MOTION BY COUNCILMEMBER HARPER, SECONDED BY COUNCILMEMBER CARSON, TO APPROVE THE AGENDA AS AMENDED. MOTION PASSED UNANIMOUSLY.

Open Truth In Taxation Public Hearing for the 2010 Budget Levy

There were no comments regarding the 2010 Budget and Levy.

Close Public Hearing

Reconvene City Council Meeting

2009 Year-To-Date Expenditure Reports

Councilmember Harper asked for the year-to-date expenditures through December to determine whether there is any remaining, unspent money, which could impact the budget because they could earmark that money for 2010 expenses or the money could be rolled into the General Fund. City Clerk Gaustad reported that she had spoken with the CPA firm, and the contract was to bring the city up to date up through October. Mayor Wingfield stated that it looked like, per the report that the city had spent \$197,000 through the third quarter out of the \$380,000 budget. Councilmember Harper noted that her information shows \$197,000 spent plus \$64,000, but there is a mix of the general fund and the water fund. Mayor Wingfield had concerns that the city had spent a little more than half of the budget, but the CPA bill is on the agenda for approval. Councilmembers noted that they had not had enough time to review the report in detail. Councilmember Harper noted that they would need to have the facts together in time for the audit.

Councilmember Jann noted that Councilmember Harper had been asking for a current year-to-date expenditure list for quite some time, and the City Council still had not received it. He had some concerns that some of the Councilmembers had received information while others had not. He felt that information provided to one Councilmember should be provided to all Councilmembers. He noted that the previous City Clerk had provided a year-to-date expenditure report on a monthly basis. Councilmember Jann expressed great concern for what he perceived as the City Council acting on autopilot without a uniform understanding of the city's spending. Mayor Wingfield felt that was a valid concern and noted discrepancies in some reports. She did not feel the work was completed as they had asked for and therefore was not prepared to authorize payment to the CPA firm.

City Clerk Gaustad noted that expenditures for April - October were not properly coded in the system and had to be created. The contract was to be done for the meeting in October, but they did not have it completed at that time. Councilmember Jann stated that the biggest issue facing the city right now was the disorder of the City's finances, citing the lack of a year-to-date expenditure report for the last eight months. He noted that if it was an issue of the contractor not performing their duties under the contract, they should give them a certain amount of time to complete those duties. If not done in that time they could be considered in breach of the contract, and the city could find a firm that could complete the work in a timely fashion. He stated it was irresponsible for the city not to have that information current. Councilmember Harper stated she would be willing to schedule a day to work with the City Clerk to code the bills and get their information up-to-date.

Mayor Wingfield asked if the City Council had all gotten the information, and Councilmember Jann stated he had not received it. City Clerk Gaustad stated she had sent the information regarding year-to-date expenditures to Councilmembers on Sunday via email. Councilmember Harper noted that it was through October and not November as they needed.

BUDGET ITEMS

Handy-man Service

Mayor Wingfield noted that currently the city is are paying \$53 per hour for services. The city had gotten proposals from other companies for handyman services, and the fees were generally \$45 - \$50 per hour for the same type of work. One company is performing services for Dellwood for \$45 per hour, which is approximately a 15% decrease from what the City of Birchwood Village is currently paying. She noted the differences in the billable rate. A retired person has put in a bid for \$12.50 per hour for small projects such as doorknob replacement, which would provide a significant savings. Due to this, she felt the city could see a reduction of 15% in this area.

Councilmember Harper pointed out that there was no handyman budget item last year. Mr. Lauzon's fees are noted in other areas of the budget. She wondered where items such as water testing and hydrant flushing would fall under. Mayor Wingfield noted that the White Bear Lake Employment Agreement covers their personnel who are available to maintain the sewer/water system. She further explained that \$15,000 of the Deputy Clerk's salary came out of the sewer/water budget, but this year it would not be a budget item. Most charges/expenses are for the services provided by Mr. Lauzon except drainage and snowplowing. Mayor Wingfield noted that Councilmember Harper had asked what services are provided by other contractors as compared to what the city currently is provided with. Mayor Wingfield noted that Dellwood has the same services provided, and they are happy with what they are receiving. City Clerk Gaustad noted that there is a charge associated with White Bear Lake to do the locates for the city. Mayor Wingfield responded that item

would be discussed later in the meeting. Mayor Wingfield stated that the handyman item in the budget is higher than what their expenditures will actually be, and it could be decreased by 15%. The council agreed to the line item on the budget for handyman services to be \$21,250.

Water/Sewer Expense

Councilmember Harper noted discussions regarding whether some of the City Clerk's hourly wage will come out of the sewer/water fund. She suggested extra help would be needed until May to free up the City Clerk's time to prepare for the audit and prepare financial reports. She noted this could result in an increase of approximately \$5,000.

Mayor Wingfield pointed out that there is an increase of \$10,000 in the sewer/water budget which would result in a positive offset. Councilmember Harper stressed the importance of properly allocating where the City Clerk's time will be spent and whether the wages will come out of the General Fund or the Sewer/Water Fund as has been the past practice. Mayor Wingfield noted that the salary (previously \$54,000) has been substantially reduced for 2009. She agreed with Councilmember Harper that they should consider some of the City Clerk's salary coming out of the Sewer/Water Fund so they do not have overages in the budget. She stated that in her preliminary analysis, they had spent \$32,000 in salaries through September while they had budgeted \$66,000. Councilmember Harper clarified that they had not accounted for the City Clerk's wages in the Sewer/Water Fund in 2009, but they will account for that in 2010 as is the past practice, so \$40,000 will be sufficient.

Wages – Council, Staff, Honorarium and Parks Committee

Councilmember Harper then noted that it looked like a typing error under Administration, and the City Council's wages should be \$4,300 not \$6,300. She stated they had agreed to continue the Planning Commission's honorarium of \$99 per year so the total should be \$495 instead of \$1,200. Mayor Wingfield confirmed that Mr. Walker was getting the changes.

She stated that the Parks Committee had presented the City Council with a detailed list of work that was needed by priority. The Parks budget did not include any money for the park improvements. She asked that the City Council increase the parks budget to include some of the priorities the Parks Committee had been working on. However, she noted that if there is a surplus (which could have been determined by a year-to-date expenditure list) they could earmark that for the improvements. She stated that she would be comfortable with the budget the way it is with the understanding that any surplus is earmarked for park improvements, and in the case of no surplus, some of the General Fund be earmarked for the park improvements. Mayor Wingfield noted that the lift fees that will be generated will be dedicated to parks. She also noted that \$10,000 can be generated if each lift fee is increased to \$200. There are 32 lifts, so that total would be \$6,400, there is at least \$2,000 in lift fees. The lift fee has not yet been imposed, but the money will go for park use. Councilmember Harper then suggested leaving the budget for parks at \$13,000, but asked that the dock fees be earmarked for park use. Councilmember Carson inquired about the warming house (replacement). Mayor Wingfield noted that information is lacking to date regarding the warming house, but if there is a surplus, they could review the issue again.

City Audit – Water Main Break Contract

In regards to the audit, Mayor Wingfield noted that a quote had been submitted by HLB Tautges Redpath for \$15,000. She felt they should leave the budget amount at \$16,000 in case there are any add-ons.

Councilmember Harper asked City Clerk Gaustad if she had gotten an answer from the City of White Bear Lake regarding emergency response on water main breaks. She has had conversations with them, but no concrete amounts for contract have yet been set. If that money is to be taken out of the water fund, it may affect water rates for next year.

Levy Amount Certification

Mr. Walker presented figures after changes based on council's discussion. He presented that by reducing the handyman total by \$3,750, the new total would be \$324,969; by reducing administration costs by \$2,000, the total would be \$322,969; and by correcting the Planning Commission amount, the total would be \$322,264. He suggested rounding the number up to \$323,000 with the additional \$736 going to miscellaneous bringing that total to \$1,486.

Councilmember Harper noted that a resolution would be needed to certify the levy to the county. In the City Council's agenda packets, there was a draft resolution but Councilmember Harper pointed out that there was no space in the resolution for the actual number of the levy. The amount would be needed in the resolution as that is what is being certified, not the tax rate which is mentioned in the resolution. City Clerk Gaustad noted that the levy is certified, not the budget itself. Councilmember Harper stated that the following needed to be added to the resolution: Be it further resolved that the city certifies a levy of \$323,000 for fiscal year 2010. She suggested making this the second to the last statement of the resolution.

MOTION BY COUNCILMEMBER HARPER, SECONDED BY COUNCILMEMBER BRUNNER, TO APPROVE THE RESOLUTION ADOPTING THE LEVY OF \$323,000.

Mayor Wingfield inquired about the process of the levy certification. Councilmember Harper noted that there had been a change to the statutes that the budget could not be approved on the same night as the Truth In Taxation meeting. Now, the budget can be approved on the same date. Councilmember Brunner explained it in further detail. Mayor Wingfield then noted that on the forms received for property taxes, it had stated the meeting was at 6:00 p.m., but the meeting was actually at 7:00 p.m. She wondered if that was an issue. The City Attorney noted that those property tax forms were sent out by the county, and next year the city should coordinate with the county to ensure the correct date and time are noted on the forms.

MOTION PASSED, 4 AYES, 1 NAY (JANN).

Minutes

May, June and October Minutes

Mayor Wingfield asked that the approval of the May and June minutes be tabled as she had not had time to review them thoroughly. The other members of the City Council did not object to this.

In the October 20, 2009 minutes, the City Attorney's last name is misspelled. Mayor Wingfield stated that she had not received the October minutes. Councilmember Harper noted that she had received them at the start of the meeting and had not had time to review them. City Clerk Gaustad suggested the City Council table these minutes as well as council had not time to review them before the meeting. Councilmember Harper noted that these minutes should all be approved in January as they will need to be part of the information provided to the auditor. Mayor Wingfield asked that when they receive the minutes in January that they reflect the changes that they had approved for the September, August, and July minutes. They had not been provided with the follow-up showing that the changes were made. She requested hard copies of the minutes with the changes in them.

November 10, 2009 Minutes

Councilmember Jann noted that on page 2 in the paragraph second from the bottom the second to the last word should be "contracted." On page 3, in the third paragraph where it starts "Council discussed . . ." he asked Councilmember Harper for clarification because he did not understand the sentence as it was worded. Councilmember Harper stated that what she had said was that the City should hire ice rink workers as contractors and not as employees in order to avoid an unemployment issue. She did not think the minutes reflected this and also did not understand what the sentence meant. She and Councilmember Jann suggested that the City Clerk change it accordingly. Councilmember Jann then noted that at the top of page 4, the first sentence at the top should read "lift station" not "luft station." Also on page 4, in the third paragraph regarding the snow plow contract, he did not recall having discussed the topic of who would be providing the snow plowing for the winter of 2009-2010. Mayor Wingfield agreed with this statement. Councilmember Jann then

stated that in the next paragraph, it should read floodplain ordinance. He also asked that under adjournment, the minutes reflect that he left the City Council meeting at 9:20 p.m. Mayor Wingfield felt that it should be noted in the minutes that he left at 9:20 p.m. when that time occurred, so it would be clear when Councilmember Jann was no longer participating in the discussions. It was noted that 9:20 p.m. was when the budget discussion was starting. The City Attorney stated that there was discussion on Mr. Lauzon's snow plowing contract that the City Attorney's office would contact Mr. Lauzon to determine the snow plowing, but no action was taken.

Councilmember Harper noted that on page 2, item 5, it should refer to Mr. Oni as Richard Oni instead of Michael. On page 3, in the fifth paragraph, it should read "rink attendant" instead of "attendance." At the top of page 4, a heading seemed to be missing and she wanted it to read "Planning and Zoning Members - the City Council elected to retain current per diem of \$99 per year. This way there would be a record of what those members are paid. In the next sentence, there should be a new heading because the license fee of \$10 for 2 years would seem to refer to the dog tag fee, with a \$30 late fee if received after February. Councilmember noted that there was a motion made by her to maintain the \$99 per diem for the Planning and Zoning members. However, no motion was noted in the minutes.

Councilmember Harper noted a request regarding how the City Council wanted motions reflected in the minutes. In previous years, who made the motion, who seconded the motion, and the result of the vote was specified in the minutes. She thought that was a better way to reflect the motions. City Clerk Gaustad noted that the November 10, 2009 minutes were contracted out and apologized to the City Council for the lack of standards.

Mayor Wingfield inquired how the minutes were billed. She questioned whether they were paying for simple completion or correct completion. When changes were made by the City Council, those changes were usually made by the City Clerk. The service emailed the completion so the City Clerk had them on file. There was discussion regarding how the minutes were billed - whether it was a flat fee or billed by the hour. Mayor Wingfield stated she was not satisfied with their product as there were typing errors and other corrections that needed to be made. The City Council suggested they could submit their changes to via email, and City Clerk Gaustad would send them to the service for them to make the changes.

Councilmember Jann stated he was not aware that the city was contracting out for the typing of the meeting minutes. City Clerk Gaustad explained that the interim City Clerk had been unable to complete the minutes so the five - six sets of minutes were sent out to a service in an effort to have them completed in time for the audit. The minutes were completed by a local resident who was a paralegal and had done meeting minutes before. It was noted that this person had only written the November meeting minutes and City Clerk Gaustad had written the others. The City Council did not realize that these minutes were done by a different person. It was further explained that \$500 had been approved for the minutes to be contracted out. Therefore, the November 10, 2009 and the November 17, 2009 minutes were contracted out per Councilmember Harper's approval.

City Clerk Gaustad then explained that the October 20, 2009 meeting was not taped, so she had to write those minutes based off of her memory and her handwritten notes. There was no DVD of this meeting due to issues with the cable system. All corrections will be submitted to the City Clerk via email within a week for the November 10, 2009 minutes. Councilmember Harper asked that a notation be made on the minutes stating that the City Clerk is submitting the minutes for approval, but they were prepared by someone else and include who prepared them. The November 10, 2009 minutes were tabled until January.

November 17, 2009 Minutes

Councilmember Jann stated that on page 1, in the last paragraph, the first sentence should read "to place their personal property on the easement at the time that the items of personal property were placed there in approximately mid-October, 2009." On page 2, the paragraph numbers get out of order. The paragraph on page 2 that is number paragraph 5, the same issue that he just discussed with the Elm Beach Association. He stated that he had asked that question for each of the 4 easements where the personal property was placed. He asked for that statement to be repeated under each of the four easements except Kay because that did not occur on Kay. On page 2, the second paragraph after the paragraph labeled 5, Councilmember Jann asked for clarification so the paragraph would make sense. City Clerk Gaustad noted that the minutes had come back to her as 36 pages so she did try to scale them back a little, and perhaps inadvertently took something out that would explain that section in a better manner. On page 3, at the bottom of the page, in paragraph 8,

regarding the Triangle Dock Association, it should read 0.16% not 0.6%. Councilmember Jann noted that on page 4, under the Public Hearing comments, the spelling of the last name should be "Hauser." He stated that on page 5, the gentlemen's name should be "Sterling McKusick." The name is misspelled many times in the paragraph and should be corrected throughout. In regards to the final sentence in that paragraph, he asked the mayor if she remembered that statement as he had no recollection of it. She stated that the way it was written was very close to the discussion that took place regarding his proposal, which was not part of the Parks Committee's proposal.

On the bottom of page 6, under the statement of Michael McKenzie, the minutes reflect that Mr. McKenzie stated that the City Council should research and obtain a legal opinion regarding the ethical standards considering recusal of voting by a public official. Councilmember Jann thought Mr. McKenzie had suggested the concept of "conflict of interest" be researched. Councilmember Jann stated that he had responded to Mr. McKenzie with research regarding conflict of interest. On page 7, the second full paragraph the citizen being referred to there is Mr. Sampair. In the last paragraph on page 7, it mentions that he cited the legal opinion of the Attorney General, but he also cited the legal opinion of the City Attorney, and that is not mentioned.

Councilmember Jann referred to page 9, the third paragraph from the bottom. There was a vote on the motion regarding the Kay Beach Association application. The minutes reflect that he voted "no" on the matter, but he thought he had voted "yes." Councilmember Brunner thought that was the one that was unanimous and that he had voted "yes," but Councilmember Harper stated her recollection was that he voted "no." Mayor Wingfield stated that her recollection was that Councilmember Jann had voted "yes" in regards to the Kay Beach Association. It was noted that the recording should be reviewed to determine the correct vote.

On page 12, in the second paragraph from the bottom, he thought that he had said "identical to previously stated basis" not "previous finding." At the bottom of page 12, Councilmember Jann did not understand the sentence regarding Councilmember Harper discussing with her attorney "not a policy definition of conflict of interest." Councilmember Harper confirmed that she had said that, and she explained that she had researched the legal definition in the Minnesota statutes, not the policy definition, as the City Council does not have a policy definition. On page 15, in the top paragraph, the second sentence from the end, read ". . . to all other residents of the city." He stated that did not make sense, and if he said it he does not know what it meant. He suggested removing that phrase as it did not seem to mean or add anything.

Councilmember Harper noted that on page 2, the second paragraph under item 5, she stated it should reflect her statement that she clarified that not all people on the seniority list are also waiting for a boat slip. She thought that addition would make sense out that section.

Mayor Wingfield felt that the minutes, at 36 pages, were much too long, and instructions should be given to better describe what they needed in the minutes. She felt the information could be further condensed. The City Clerk noted the level of detail involved in the topic (boats/docks) and a lot of good information had been provided at the meeting. Mayor Wingfield stated that the minutes did not need to reflect much more than the business conducted. City Clerk Gaustad explained that the pages billed for was 12 pages, not 36 pages.

MOTION BY COUNCILMEMBER HARPER TO APPROVE THE MINUTES OF THE NOVEMBER 17, 2009 CITY COUNCIL MEETING WITH CHANGES DISCUSSED.

Mayor Wingfield stated she would be abstaining from the vote due to lack of time to review the minutes. She felt more time should be given in the future to review items up for approval.

MOTION SECONDED BY COUNCILMEMBER BRUNNER.

Councilmember Jann agreed that 36 pages seemed long, but he did not agree that the minutes should be so brief as to state just the issue and the vote. The subject was a very contentious issue in the city and deserved the detail shown and needed to reflect a thorough record of what transpired.

MOTION PASSED, 4 AYES, 1 ABSTENTION (WINGFIELD).

December Disbursements

City Clerk Gaustad noted that the City Council had received a hard copy of the disbursements list in their packets. She noted that there was one additional check for \$16,919.04 for US Bank. It was a required payment due on December 1. She requested pre-approval for all future bond payments. This payment is not on the disbursements list.

Councilmember Brunner questioned whether the City Council's pay was \$600 or \$700. His recollection was \$600, but it was listed as \$700. City Clerk Gaustad noted that she got the information from last year's wages. A discussion then took place regarding taxes being the difference. The City Clerk noted that in 2008, action was taken to increase the Mayor's wages. Councilmember Brunner expressed his concern over the appearance of a wage increase. The City Clerk noted that the tax amount explained the deviation between \$600 and \$700. It was agreed that the Mayor's pay had been increased prior to the last election. Councilmember Jann noted that \$100 could be repaid by Councilmembers if it was an error. City Clerk Gaustad again noted that she was confident that \$700 was accurate.

Councilmember Harper reminded all that she would meet with City Clerk Gaustad regarding the codes for the items. She noted that some of them items were not coded correctly. She referenced the CPA invoice of \$4,500 and noted that she was not comfortable paying that without seeing the product and what was done. She stated that she would like to withhold that payment for now. Mayor Wingfield stated that she had seen the code errors also. She also noted that she had withheld the signing of the check to the City Engineer. She noted that a check to Pipe Services Inc. in the amount of \$4,516.31 is also owed but not listed on the disbursements. She questioned whether the City Engineer had been paid the correct amount and whether the new amount was combined or a new bill. City Clerk Gaustad noted that a \$5,000 check had been voided as she had discovered through conversations with the City Engineer that it should have been divided between the contractor and the City Engineer. There was a review of the checks for the City Engineer. The city owes the City Engineer \$346.50 for this month and November's invoice minus the fee for Pipe Services Inc.

Mayor Wingfield noted that payment for the City Clerk's PERA, and City Hall cleaning was not included. City Clerk Gaustad reminded the City Council of the past practice of paying those items on the day prior to the day of the City Council meeting. Since the disbursements list is run before the payroll date, they were not on the list. City Clerk Gaustad also noted that bills received after the end of the month cutoff date are not listed.

There was a discussion regarding administrative staff hours and how to pay that. Mayor Wingfield noted that she was not comfortable with paying when not knowing what they are paying for. City Clerk Gaustad noted that the time sheets and checks are available at the meeting. She also noted that she was just following the past practice as described to her. Councilmember Harper noted that there should be a way of showing the month's payments if the information has been received. City Clerk Gaustad stated she could adjust the cycle of the payroll so employees are on same cycle as the contractors.

City Clerk Gaustad provided that \$139.88 was owed to Mary (former City Clerk) for 9 hours at \$15 per hour and noted that Mary is still helping out as needed during the time of transition. Mayor Wingfield felt that the City Council should be notified when Mary is working so they are aware of what is being done and what she is doing. She noted that a policy should be in place for the extra help so they can better track the expenses against the budget. City Clerk Gaustad continued that \$1,856.55 is owed to her for 29.9 hours per week since November 10, 2009. She pointed out that no payment was made for Veteran's Day. The City Hall cleaning invoice was not submitted, but the amount has been quite consistent - approximately \$74 per month. Mayor Wingfield noted that the cleaner, Carrie Rohling, could be paid subject to approval by the Mayor and City Clerk as it was under \$100. It was noted that the cable provider, Judy, was owed \$73.50. The City Clerk noted that the item for Carrie Rohling (\$11.38 for cleaning supplies) should be removed from the list.

Councilmember Harper questioned legal fees. City Clerk Gaustad responded that the bill was for \$1,988.22. Mayor Wingfield asked if that fee included the memo to the Supreme Court. It was noted that was part of the prior month's bill, but briefing was included for professional services in the bill for December. The City Attorney noted that an invoice is submitted to the city at the beginning of the month for the previous month's work. Discussion took place regarding a flat fee for the brief of \$3,500, but the total actually came to approximately \$2,600 for the completed brief.

City Clerk Gaustad then noted that the bill for Qwest came in for \$98. A check has not yet been issued, but she will get that done. Mayor Wingfield then stated she would like to see the withholdings from paychecks. She stated that it had been done in the past.

Councilmember Carson questioned the amount for supplies purchased. She did not think they had amounted to over \$500 and asked for clarification. City Clerk Gaustad noted that amount was a grand total

and included \$125 for the printer (supplies). She suggested they could review that and make any necessary adjustments.

Councilmember Brunner asked for confirmation that they would withhold payment to Schleiss (CPA) until the City Council determines they are satisfied with the performance.

MOTION BY COUNCILMEMBER BRUNNER, SECONDED BY COUNCILMEMBER CARSON, TO APPROVE THE BILLS AS PRESENTED. MOTION PASSED UNANIMOUSLY.

Public Forum

Mayor Wingfield noted that she would allow people with public comments 3 minutes to speak.

James Nelson, 256 Wildwood, voiced his concern that residents owed a total of \$12,856 for delinquent water bills. He questioned why there was no penalty incurred by these people. As a business owner, he knew that there is typically a late fee of 1.5% if not paid by the due date. He suggested that since there is a waiting list for boat slips, the permit holder should be a member in good standing and not owe any money to the city. The permit could be withheld if they do not pay. He noted that one resident; Dick Galena owed \$1,478 in delinquent water bills. He noted that Mr. Galena asked the City Council for a donation for fireworks for the White Bear Lake Fund. Mr. Galena then admonished the City Council for not fulfilling their donation in a timely fashion. Mr. Nelson wondered how long it takes to build up large water bills and why residents were allowed to go unpaid for a considerable time without penalty. Mayor Wingfield noted that 5 - 6 residents paid outstanding balances in full, which cut the city's debt for that in half. She stated that now; people will be charged 4% interest on balances carried forward.

Special Assessment Bills

Mayor Wingfield noted that special assessment bills were sent out, and the 2008 special assessment was approved for graduated payments. Each year for 10 years this is certified to the county. The principal remains the same, but the interest changes. She was frustrated because the information was not relayed to the city in the transition period, and therefore the clerks have not performed the necessary certifications to the county by the end of November. She spoke with the County Assessor, and the city can send out special assessment bills to approximately 100 residents: 126 residents were actually assessed, and 30 paid in advance. She believes this will save the city money by not incurring the county's fee of approximately \$3 per assessment processed. She noted that the city has a payment due this year of \$212.83 per assessed property, which is usually paid in two increments. She asked the City Attorney if they could require that payment to be made in a lump sum and in what timeframe. The City Attorney stated he would check into that issue. Councilmember Harper noted that the agreement that was made when those residents chose not to prepay may have some answers. She stated there may have been an understanding that it would be paid in two payments annually. The minutes from that time may also have documentation.

Mayor Wingfield noted that the remedy now is for the city to be its own agent for these payments. The City Attorney clarified that the \$212.83 was the payment for the entire year. He stated he would review the statutes. City Clerk Gaustad requested that Mayor Wingfield remind her of when she told her of this required recertification as she did not recall being told. Mayor Wingfield stated that the special assessment information was on another desk (treasurer's) in brightly colored folders. She suggested that the 2005 payments may also need to be done. Mayor Wingfield stated that she did not blame anyone for this. It was an issue that fell through the cracks, and now they have a remedy. It was also noted that there is an assessment for Birchwood Lane from 2004 that is ongoing.

Prepayment of Outstanding Bond

Mayor Wingfield noted that there was an outstanding bond of approximately \$120,000, Councilmember Harper has been working on. Councilmember Harper noted that a motion was made at the November City

Council meeting to prepay the bond by the end of 2009 the \$22,000 that was left on the first bond (2001 series). She noted that Mayor Wingfield is the only person on the account, so she would be the only one who could implement that payment. She suggested Mayor Wingfield schedule with the clerk to do that by the end of the year. Councilmember Harper then noted that it was recommended by the Finance Committee that the city prepay the 2004 A bond, which has approximately \$105,000 left. The committee felt that this should wait until they had some better information on the fund balance and year-to-date finances. She suggested this be put out for review after the Mayor gets information on when it can be prepaid. Mayor Wingfield noted that there was no prepayment penalty. Councilmember Harper noted a due date of August 1 for payment of this bond. She was unsure if prepayment would get the city any benefit in terms of interest, but asked the Mayor to get information for a determination of when it would benefit the city most in terms of prepayment. Mayor Wingfield stated she had access to that information and requested that the Finance Committee look at the issue again. Councilmember Harper noted that the last fund balance provided was in March 2008, and the Finance Committee needs more data to validate their assumptions of balances. Mayor Wingfield noted that the city pays \$500 per month in interest. The city's ability to earn interest is minimal, and it would be beneficial to eliminate this cost. Councilmember Brunner suggested that without those fund balances, no action should be taken. Mayor Wingfield agreed, but noted her concern over the \$500 per month interest expense. She asked Councilmember Harper to keep updating the City Council regarding this issue.

Volunteer Recognition

City Clerk Gaustad stated that she wanted to keep the City Council abreast of volunteers at the office and in other areas of the city. She was saddened to learn this month that two of the regular volunteers will no longer be able to volunteer. Barb Brenny was one of them, and she had been a large time contributor. She noted a great crew who stuffed envelopes to get the utility bills and newsletter out. She thanked the 12 residents for their help.

Councilmember Carson gave recognition to John Fleck, Bob Carson, and Chad Carson spent time flooding the ice rink, and Pat Connelly noted the high quality of the ice. John Lund, Gene Ruehle, and Bev Ringsak helped clean up Ash Walkway. Paul Slack donated money for the refurbishment of the hockey nets. Mayor Wingfield asked City Clerk Gaustad to recognize these volunteers in the newsletter as well.

Cable Commission – Greg Donovan

Greg Donovan informed the City Council they had \$12,600 in capital funds to be used for cable related equipment. Those funds were set aside by the cable company approximately 9 years ago. White Bear Township has a new facility, and they use overhead projectors and document projectors. He asked the City Council for permission to talk with vendors to discuss good uses for that money. The PC that runs continually for things like the bulletin board has been repaired (power supply), but the City Council had authorized the purchase of a new unit for approximately \$3,600. It recently arrived, but in the meantime the Cable Commission was able to build a spare from the old one. The unit is basically a software and unique video card. Therefore, the newly purchased unit can be sent back with a 15% restocking fee, but the city would still see as return of approximately \$2,400. He and the Cable Commission recommend doing this. After this is adjusted, he is asking for permission to talk to the vendor about equipment that could be used in City Hall such as projectors and a screen or production equipment.

**MOTION BY MAYOR WINGFIELD, SECONDED BY COUNCILMEMBER HARPER,
TO ALLOW MR. DONOVAN TO TALK TO VENDORS TO COME UP WITH EQUIPMENT
NEEDS TO IMPROVE THE CITY'S COMPUTER BROADCAST DELIVERY SYSTEM.**

Mayor Wingfield reminded everyone that this expense will not come from the General Fund, as Cable funds are dedicated to communication and computer system needs. Funds need to be used or they are lost. The city would get back only approximately 1.3 cents per dollar lost. Mr. Donovan noted that he would be back with more information in March. City Clerk Gaustad noted Mr. Donovan's concern regarding the equipment dysfunction in the cable room. Mayor Wingfield called the question and asked for the vote.

MOTION PASSED UNANIMOUSLY.

Mr. Donovan then explained the equipment malfunction in June which caused problems with the re-broadcasts of meetings. One issue was the incorrect disc style had been purchased, which did not allow for recording of the meeting. Another issue was that a sequence device failed to operate, which again caused rebroadcast failure. Councilmember Jann noted that he hears complaints every month regarding the failure or inaccuracy of re-broadcasts. Mr. Donovan asked that all issues/complaints be received by him or the City Clerk. Mr. Donovan provided a public phone number for himself.

Mayor Wingfield asked if the re-broadcast schedule was affected if the disc is removed. Mr. Donovan was unsure and stated he would look into it. Ryan noted that the controller feeds to RWCC, so the disc needs to stay in and be in before the next play time. Mr. Donovan suggested a dual recording DVD for spare copy to be checked out or for staff use. Mr. Donovan spoke of a uniform equipment set-up so operators are able to work between municipal locations and have consistency.

Councilmember Jann asked City Clerk Gaustad to note that he was leaving at 9:40 p.m.

Mayor Wingfield noted that the representative from Waste Management was in attendance and asked that she be allowed to address the City Council at this time rather than in her (mayor's) report. Councilmember Harper stated that she needed to leave at 10:00 p.m. and had several items on the agenda she wanted to address (Items 9 and 11).

HLB Tautges Redpath Letter of Engagement

Councilmember Harper explained that what she was looking for with this item was action to approve the Mayor and City Clerk the authority to sign an agreement to hire HLB Tautges Redpath for up to \$16,000 for audit services after the City Attorney's review.

Councilmember Harper stated she would give the City Attorney a copy of the sample policy for him to address.

Garbage Service – Request For Proposal

Jennefer Klennert was in attendance representing Waste Management. Mayor Wingfield explained that the city had sent out RFPs for garbage service. 4 - 6 responses were received. The City Clerk provided that Waste Management missed the deadline for submission listed in the RFP by 1.5 hours. Jennifer Klennert provided a copy of Waste Management's RFP. It is essentially for the same service the city currently has - same day, same price, same billing, etc. Ms. Klennert noted that were some items that were not in the RFP, but she included them as she thought they were things that should be considered such as senior service (68 homes) and re-cap of numbers. Mayor Wingfield noted that it was still a blind bid and did not want to eliminate what could be the best bid because the deadline was missed by such a short time. She felt that allowing Waste Management's RFP was in the best interest of the city to ensure the best deal is found.

Mayor Wingfield directed the City Council's attention to Tennis Sanitation's RFP for discussion. Tennis's cost for the 96 gallon container was approximately 31 cents cheaper. She noted that 50% of the garbage fee is taxes, and thought this was significant because the cost margins are very tight. Ms. Klennert provided the current breakout of the services provided by Waste Management based on container size. Mayor Wingfield noted that the costs are nearly identical between the two providers for the large container. The difference in price for the medium size (64 gallons) is \$4.47 per quarter. She then noted that the small container has a significant difference in price (\$64.92 from Waste Management and \$48.60 from Tennis). For at least 62 residents that would amount to a savings of approximately \$65 per year. Seniors would have a bill that was approximately \$4 higher per quarter. The contract with Tennis would result in a savings of approximately \$8,000 per year for the entire city (residents) collectively.

When asked by Councilmember Harper, Ms. Klennert confirmed that environmental charges are the same for all carriers. She noted that the charges quoted by the Mayor included the taxes and fees. Mayor Wingfield noted that both carriers provided compost services (Waste Management - \$72 per year, Tennis - \$100 per year), and they both use the same type of truck. Councilmember Harper noted comments she had

received from residents that they appreciated the automated reminder service by Waste Management when there was a change in day of service due to a holiday. She wondered if Tennis had the same automated system. Mayor Wingfield did not know the answer. Ms. Klennert noted that the location where both Tennis and Waste Management bring the waste is raising their tipping fee starting January 1, 2010. Waste Management's prices reflected that increase, but she did not know if Tennis's prices reflected it.

Ms. Klennert explained that anyone 62 years or older qualified for the senior service. They get the 32 gallon service weekly. There were 68 users of that service in the city, which is over 50% of the 32 gallon service users. It was noted that a notice in the newsletter may be helpful in notifying residents of that service. Ms. Klennert further explained that if residents will be gone for 4 weeks or longer, they can stop service for that time period. Mayor Wingfield noted that it was unknown if that service was allowable with Tennis.

Councilmember Brunner commented that the bid came in after the deadline, and wondered if a bid submitted after the stated deadline should be considered. Councilmember Harper asked if actual RFPs were sent out. Mayor Wingfield confirmed that the formal process had been followed, and providers were found in the phone book. Councilmember Brunner expressed the concern that if the City Council considered a proposal that did not follow the criteria set forth in the RFP, they would be opening themselves to a challenge on every bid. He worried about the legal issues and noted they could be creating an opportunity to be sued. The City Attorney noted that things that fall within the realm of professional services have more lax standards than for a public construction contract in terms of how the city gets bids or proposals. His legal opinion was that the city would have the right to take the bid that did not meet the deadline in this case as it was not an item that was required by statute to be competitively bid.

Councilmember Harper stated that if the deadline was strictly enforced, they should be sure that all bidders were notified at the same time. She noted differences in posting a bid available at the same time to all versus calling the providers to get verbal bids. Mayor Wingfield noted that all service providers did not get the notice at the same time. Ms. Klennert stated the RFP did not get to Waste Management's office. The City Clerk confirmed the RFP was sent via email.

Mayor Wingfield stated that by her math, the difference between the two bids totaled approximately \$5,200 per year. It is a four year contract, so the savings with Tennis Sanitation would be \$20,000.

MOTION BY MAYOR WINGFIELD, SECONDED BY COUNCILMEMBER CARSON, TO ACCEPT THE PROPOSAL FROM TENNIS SANITATION FOR GARBAGE SERVICE, AND IF THEY ARE UNABLE TO COMPLY BY JANUARY 1, 2010, THE CONTRACT WILL REVERT BACK TO WASTE MANAGEMENT.

Councilmember Harper requested that whichever company was awarded the contract that they be asked whether they provide the services the City Council talked about earlier (automated call, the ability to suspend service if gone for extended period of time, etc.). There was discussion regarding the day of service. Mayor Wingfield stated she would contact Tennis to inquire about this. It was noted that the last day of service with Waste Management will be December 31, 2010. The Mayor restated the motion that they retain Tennis Sanitation for garbage service if they are willing to comply by the same terms and conditions as the city has with Waste Management and they can start on January 1, 2010.

MOTION PASSED, 4 AYES, 1 ABSENT (JANN).

Mayor Wingfield noted that she would like the City Attorney to review the contract if Tennis Sanitation has a standard contract, and that the City Attorney draft one if not provided by Tennis. City Clerk Gaustad inquired whether Mayor Wingfield would be following up on this issue with Tennis Sanitation. Mayor Wingfield stated she would do so. Jennefer Klennert thanked the City Council for the past business with the city.

Councilmember Harper asked to have item 9 and 11 moved to be addressed now as she needed to leave.

HLB Tautges Repath Audit Services

A sample letter of engagement with HLB Tautges Redpath was provided in the City Council packets. It was noted that the statutes require an audit when the City Clerk and Treasurer were a combined position.

Mayor Wingfield checked with the State Auditor, and they are not available to perform the audit. The audit would cover the cash basis the city uses as well as the city practices/operations. The audit report is due to the state by March 31, 2010. Councilmember Harper asked for approval of HLB Tautges Redpath for audit services costing up to \$16,000 and authorizes the Mayor to sign an agreement to engage the service for the audit. She noted that a lot of work needed to be done before the audit could begin. This is a one-year contract and will review for future years if combined City Clerk/Treasurer position is retained. There was discussion of \$16,000 versus \$15,000 expense and how it would be billed. City Clerk Gaustad suggested the City Council approve an amount not to exceed \$16,000.

Councilmember Harper noted that an hourly basis for billing may need to be worked into contract for expectations and expenses. Mayor Wingfield noted that other quotes had been up to \$20,000, and the state had estimated \$16,000. She noted she was comfortable with HLB Tautges Redpath, but many of the documents on their list do not exist. Councilmember Harper noted that the change in city staff had allowed the city's documents to become sloppy and not on track. She also expressed HLB's concern for the city only budgeting levy dollars and not doing an actual budget. City Clerk Gaustad expressed gratitude that the City Council was going to have an auditor come in, especially with the high staff turnover in the past year. The City Council confirmed that they had never had an audit performed.

MOTION BY COUNCILMEMBER HARPER, SECONDED BY MAYOR WINGFIELD, TO APPROVE THE HIRING OF HLB TAUTGES REDPATH TO CONDUCT THE 2009 CITY AUDIT FOR A COST NOT TO EXCEED \$15,000 AND TO AUTHORIZE THE MAYOR AND DEPUTY MAYOR TO NEGOTIATE A CONTRACT AND FOR THE MAYOR TO SIGN THE CONTRACT UPON FINAL REVIEW BY THE CITY ATTORNEY.

Councilmember Harper noted that she had brought this to the Finance Committee and the only comment was that the city should ask for a review and not an audit, but she explained that it is state law that an audit is required. Councilmember Brunner confirmed that statement. Councilmember Harper noted that Councilmember Brunner would be involved as well as part of the Finance Committee. The Mayor noted that the meeting must be posted so the city was not in violation of the Open Meeting Law (OML).

MOTION PASSED. 4 AYES, 1 ABSENT (JANN).

Financial Data Access (Item 11)

Councilmember Harper noted previous discussions regarding who has access to the city's financial data and accounts, and she had not been able to get information from the bank or investment firm. She felt it would be wise to have a policy in place to conduct background checks before people are added to have access to the accounts and funds. She noted that past City Clerks, Treasurer, and Mayor are listed on those accounts. Councilmember Harper then explained that the policy provided in the City Council packet was a draft policy as proposed, and the copy that was emailed to Councilmembers was from the City Attorney and was the result after his review, suggestions, and minor revisions. The City Attorney noted that it was good business practice to have this policy in place and that the background check would be comprehensive, not just a criminal check.

Councilmember Harper noted that signed, written authorization must be provided by person being checked. An ordinance would need to be passed to allow a police officer to conduct a criminal background check. If the city has the signed authorization, they can go to the Bureau of Criminal Apprehension (BCA) with the authorization in hand. City Clerk Gaustad noted that using the BCA would result in a more comprehensive review, as not all their records would be available to a police officer or outside company. A background check would cost \$50 - \$90 and the result would come back within 30 - 90 days. The City Clerk then asked the City Attorney if an ordinance would need to be in place if the signed authorization was in hand and the White Bear Lake police department conducted the background check. The City Attorney responded that an ordinance would need to be in place. City Clerk Gaustad then asked if the White Bear Lake ordinance would allow Birchwood this option since they contracted with the White Bear Lake police department for services. The City Attorney felt that Birchwood should have its own ordinance in place to allow for this. Without the ordinance, the policy would allow for permission to be obtained from the person, and perform the check using an outside

firm to conduct it. There was further discussion regarding a legislative law of 2008 regarding an independent agency conducting a background check without an ordinance.

Mayor Wingfield expressed concern that an outside firm would conduct an expensive report and provide inaccurate information. She also noted that information revealed in a background check was private and would need to be destroyed at some point. City Clerk Gaustad requested that the policy include who would have access to the data. Mayor Wingfield expressed great concern for information or allegations that are not correct. She noted that some of the policy language seemed questionable. The City Attorney explained that this policy would generally pertain to employees. He further noted that it is now advisable to run background checks on critical employees such as those working with the financial information of the city. He noted that he can change the policy language if desired. Councilmember Harper explained that those people on signatory accounts are the ones needing the background check. She noted that the policy also stated that the city must follow federal guidelines and that data is to remain confidential. The City Attorney added that the Minnesota Data Practice Act states that the information gathered is non-public, private data and not open to public view. Mayor Wingfield expressed concern that statutes are not always followed exactly.

Councilmember Harper noted that this can be delayed and put under further review, but access to data will be limited for audit preparations. City Clerk Gaustad stated her past experience in obtaining the criminal and financial background data for finance employees. Mayor Wingfield stated that she, Councilmember Harper, and City Clerk Gaustad could sign their permission for a background check, but has concerns for lack of policy to check on employees. Councilmember Harper noted it would be difficult if the City Clerk is not a signatory on the accounts. Mayor Wingfield expressed her willingness to approve this to get things moving forward, but felt it warranted further review and discussion. Councilmember Harper suggested that it could be approved to conduct the background check on the three of them for the purposes of moving forward.

The City Attorney advised passing a motion that states a policy will be introduced in the future regarding the conduction of background checks on those dealing with financials, but direct action tonight to conduct the background checks on the three needing the access.

MOTION BY COUNCILMEMBER HARPER, SECONDED BY MAYOR WINGFIELD, TO INITIATE A BACKGROUND CHECK ON THE CITY CLERK, THE MAYOR, AND THE DEPUTY MAYOR FOR CRIMINAL BACKGROUND AND CREDIT BACKGROUND WITH FORMAL WRITTEN POLICY TO FOLLOW. MOTION PASSED, 4 AYES, 1 ABSENT (JANN).

Councilmembers Harper and Brunner note that they need to leave.

It was noted that Mike Connelly of the Parks Committee has been waiting and needs City Council action. Mr. Connelly presented the need for at least a temporary shelter for the ice rink.

Councilmember Harper left at 10:40 p.m.

Councilmember Brunner agreed to stay until 11:00 p.m.

Mr. Connelly presented a report from the Building Inspector, which noted mold in the warming house creating a potential hazard to people's health. The city's options would be a temporary shelter at a cost of \$2,600 or a thorough cleaning of the warming house at a cost of \$850, which could leave the possibility of hazardous mold. Councilmember Carson noted that she preferred the temporary shelter to the clean-up of the mold. She provided information on potential placement to the east of the existing warming house.

Mayor Wingfield expressed concern about the expense of temporary electrical service and also the building. She stated she could not justify the expense. She has not seen the report, but was troubled by what had been said. She stated she does not want anyone impaired, and feels she does not know enough about mold and does not have enough information to justify the expense and make the decision. She stated a need to understand how to abate the mold.

Mr. Connelly noted the process for testing and evaluating mold to see if it is a health concern. Testing is needed to make the determination whether the mold was hazardous. Therefore, the temporary shelter is being recommended. If this issue has to be put on hold for another month, the season will essentially be gone before resolving the problem. He gave his personal opinion that \$2,800 was worth spending for the benefit of the kids in the community. Mayor Wingfield agreed and wanted to make something work, but the expense was

high. She stated others in the community would come with their issues and want them resolved. Mr. Connelly noted that was a good point, but the amount of resident volunteer hours was great, and it saved the city on payroll. Volunteers also committed to providing future labor to rebuild the facility. The cost to replace the building would be approximately \$23,000 with volunteer labor or \$32,000 without volunteer labor. He noted that residents were doing what they could to mitigate the costs. He repeated his feeling that \$2,800 is worth the expense, and a fish house would have its flooring cut by skates.

Mayor Wingfield noted her feeling that the temporary electrical hookup would be expensive and nothing of value would be left at the end of the season. She wondered if there was a way to have the temporary shelter without electricity going to the shelter only. Mr. Connelly noted another consideration is that the future of the facility needs to be evaluated. If they were to use the interim facility going forward, the cost would only be \$400 as the electrical hook-up would be reused. Mayor Wingfield stated that if they can re-use the hook-up, she sees no problem, but she has heard that after one year, they would need to set up permanent electrical service.

Mr. Connelly reviewed the costs associated with a temporary shelter which would be used for more than one year. Mayor Wingfield noted that a temporary shelter could be a permanent solution.

MOTION BY COUNCILMEMBER CARSON, SECONDED BY MAYOR WINGFIELD TO APPROVE THE RENTAL OF THE TEMPORARY WARMING HOUSE/SHELTER (8' X 20') FOR \$210 PER MONTH AND \$1,500 FOR ELECTRICAL HOOK-UP AND RENT IT THROUGH THE END OF FEBRUARY. MOTION PASSED, 2 AYES, 1 NAY (BRUNNER), 2 ABSENT (HARPER, JANN).

MOTION BY COUNCILMEMBER BRUNNER, SECONDED BY COUNCILMEMBER CARSON, TO ADJOURN AT 10:50 P.M. MOTION PASSED, 3 AYES, 2 ABSENT (HARPER, JANN).

Mayor, Mary Wingfield

Attest: City Clerk, Cindie J Reiter

Drafted by A Truhlar, Transcriptionist.