



AGENDA OF THE
REGULAR MEETING OF THE CITY COUNCIL
CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
WASHINGTON COUNTY, MINNESOTA
FEBRUARY 8, 2011
7:00 P.M.

CALL TO ORDER – PLEDGE OF ALLEGIANCE

APPROVE AGENDA

CITY BUSINESS – CONSENT CALENDAR

1. Approval of the Minutes of the January 11, 2011 Regular Meeting (see exhibit)
2. Approval of the Minutes of the January 25, 2011 Regular Meeting (see exhibit)
3. Approval of Resolution 2011-05 Authorizing Council Member Barbara Carson to sign Time Cards for Rink Attendants

COMMUNITY EVENTS AND ANNOUNCEMENTS

OPEN PUBLIC FORUM

CITY BUSINESS

4. 7:15 Financial Report and Approval of Disbursements (Reiter – see exhibit)
Time Budget: 15 minutes
5. 7:30 Approval of additional hours for the City Treasurer while the City Auditor is on site (Reiter)
Time Budget: 5 minutes
6. 7:35 DOCKET 2011-01-05: Incidental Spending Policy – Review Draft (Powers – see exhibit)
Time Budget: 15 minutes
7. 7:50 Review of Tree Removal Proposal (Carson – see exhibit)
Time Budget: 5 minutes
8. 7:55 DOCKET 2011-01-02: Draft Policy on Rules of Procedure: Approve Language and Setting a Public Hearing Date (see exhibit)
Time Budget: 20 minutes
9. 8:10 DOCKET 2011-01-07: Birch Street > Changing the name to Owl Street – Council direction (RandyLaFoy – see exhibit)
Time Budget: 10 minutes
10. 8:20 DOCKET 2011-01-08: Amending the Employment Agreement of the City Clerk (Harper – see exhibit)
Time Budget: 10 minutes

11. 8:30 City Clerk Report (Powers – see exhibit)
 - a. Approval of Expenditure of \$ 225.00 – Clerk’s Registration and Workshop – Municipal Clerks and Finance Officers Association Annual Conference (see exhibit)
 - b. Accident Coverage For City Volunteers (see exhibit)
 - c. Newsletter Deadline: February 18, 2011
 - d. Community Announcements on Community Access ChannelTime Budget: 10 minutes

12. 8:40 City Engineer’s Report - Stormwater (Elfering – see exhibit)
Time Budget: 15 minutes

13. 8:55 City Attorney’s Report (Sandstrom – see exhibit)
Time Budget: 5 minutes

14. 9:00 Next Meeting – February 22, 2011 – Possible Items (see exhibit)
 - a. **WORKSHOP TOPIC:** Review of Dock Association By-Laws; update on anything related to the implementation of the Public Lake Tract Ordinance; discussion of fee for storage of canoes and small watercraft on Public Lake Tracts
 - b. **REGULAR MEETING:** Approval of dock applications for submittal to White Bear Lake Conservation District
 - c. **MARCH WORKSHOP TOPIC:** Parks Committee – review 2011 work plan and proposed expendituresTime Budget: 15 minutes

15. 9:15 ADJOURN



CITY OF BIRCHWOOD VILLAGE
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 tel
651-426-7747 fax
birchwoodvillage@comcast.net

EXECUTIVE SUMMARY – FEBRUARY 8, 2011 CITY COUNCIL MEETING

NOTE: This executive summary is provided by the City Clerk to the Council to give a broader detail on the various agenda items. This summary is to be used as an adjunct to the agenda packet, and should not be considered a substitute for reading the agenda packet.

CONSENT AGENDA: There are three items on the consent agenda. Two of the items are approval of minutes from the 2 January meetings.

The third item has to do with the seasonal rink attendants. Council Member Carson has been signing time cards for the rink attendants. However, as a part of the financial internal control document that was approved by the City Council, the Council needs to appoint a responsible party for review, verification, and signing of the time cards. While this can be done by motion, staff has prepared a resolution for your consideration.

CITY BUSINESS:

FINANCIAL REPORT AND APPROVAL OF DISBURSEMENTS: City Treasurer Cindie Reiter prepares a financial report that summarizes the financial transactions made since the last Council meeting. As well, she prepares the listing of revenues and expenditures for your review and approval. No expenditure of public money can be made without the approval of the City Council; however, payments made on a regular recurring basis or required by statute to be paid by the City are routinely paid between meetings. These obligations generally include taxes, PERA, utilities, payroll, and expense reimbursement, *and are indicated as such on the Disbursements List*. Other requests for payment are considered to be discretionary and will not be paid until the Council approves the expenditure. **If there are any questions about a particular expenditure, please contact Cindie or Dale before the meeting for an explanation.**

APPROVAL OF ADDITIONAL HOURS FOR THE CITY TREASURER WHILE THE CITY AUDITOR IS ON SITE: During the course of performing an audit of the City's 2010 financial transactions, representatives of HLB Tautges Redpath will need to be on site for document review. In addition, before the audit team arrives Cindie will need to provide documents and complete additional tasks in furtherance of audit completion. Since Cindie is knowledgeable about finding documents required to be reviewed by the auditor, it is considered to be critical that Cindie be available for this purpose. This requires work beyond the usual scope of her employment agreement, which calls for 12 hours per week. It is anticipated that up to an additional 12 hours per week will be required for this purpose, until the audit is complete.

Draft motion: "To approve up to an additional 12 hours per week for the City Treasurer for the purpose of assisting in the audit of the City's 2010 financial transactions, upon approval of the Mayor or Deputy Mayor, until the audit is complete."

DOCKET 2011-01-05: INCIDENTAL SPENDING POLICY – REVIEW DRAFT: At the December 14, 2011 regular meeting, the City Council directed that an incidental spending policy be developed to regulate spending by staff, council members, and City boards and commissions. A draft policy is included in the packet for your review.

REVIEW OF TREE REMOVAL PROPOSAL: At the November 9, 2010 regular meeting, the Parks Commission presented a request for an expenditure of \$1,874.19 to remove and/or trim several trees at the tennis courts. . The submitted documentation did not indicate whether the trees to be removed were alive or dead. Subsequently, the Council voted to table consideration of this request until such time that the Council could tour the tennis courts. Since the Parks Commission requested this matter be reconsidered at this meeting, it may be surmised that the tour has been conducted. The 2011 budget allows for \$4,000.00 for tree removal.

Draft Motion: "To approve the expenditure of \$1,446.19 to take down and remove debris of large ash, large boxelder, small boxelder and clump of buckthorn, grind stumps and remove debris from the western edge of the tennis courts, and to approve the expenditure of \$428.50 to trim and remove branches from four oaks overhanging the fence and remove small boxelder from the northeastern corner of the tennis courts, all consistent with the bid submitted by Steve Dean."

DOCKET 2011-01-02: RULES OF PROCEDURE – APPROVE LANGUAGE AND SET A PUBLIC HEARING DATE: At the January 25, 2011 regular meeting, Mayor Mitchell indicated that the draft Rules of Procedure are to be in policy form, instead of ordinance form. At this meeting, the draft policy language is to be reviewed and finalized for consideration at a public hearing. The Council is also to set the date and time for the public hearing. (NOTE: Policy adoption does not require a public hearing. As a result, the draft motion will indicate that the public hearing is not statutory or required.)

The following additional submittals are included in the agenda packet for background information: August 11, 2008 memorandum from City Attorney Cameron Kelly regarding conflict of interest; January 5, 2009 correspondence from Assistant Attorney General Kenneth E. Raschke, Jr regarding conflict of interest; and Sections N, O, and P of the League of Minnesota Cities Policy Memo regarding conflict of interest (said sections requested to be included by Council Member Sampair).

DOCKET 2011-01-07: BIRCH STREET (NE SECTION) – CHANGING THE NAME TO OWL STREET: Enclosed in the agenda packet is a memo from the City Clerk about this item, generated by a request from City resident Randy La Foy. Mr. LaFoy will be present at this meeting to speak to the Council on this matter. In addition, a memo by City Attorney Kevin Sandstrom is included for your review and consideration.

DOCKET 2011-01-08: AMENDING THE EMPLOYMENT AGREEMENT OF THE CITY CLERK: The following amendments are proposed for Council approval: clarify that attendance at Council meetings counts as "normal office hours" work, and to grant 6 hours pay for holidays and 6 hours per month vacation, consistent with a 0.75 FTE employee. In addition, some redundancies relating to hours and status of work are removed. Finally, references to "Personnel Director" were changed to "Deputy Mayor".

Draft Motion: "To approve the amended employment contract for the City Clerk, as presented."

CITY CLERK'S REPORT: In the City's 2011 budget is \$220.00 for attendance at the annual Municipal Clerk's and Finance Officers Association. Enclosed in the agenda packet is the program for the conference. I believe this conference has several sessions that will be helpful to me in doing my job. As a first-time attendee, the cost is reduced from \$220.00 to \$180.00 for the conference. Since the conference is in St. Cloud, there is no need for lodging. There is an extra session on Microsoft Publisher that I would like to attend. Since I am responsible for the newsletter, using Microsoft Publisher might be a good platform for future newsletter editions. The cost of the special session is \$45.00, which can come out of the "Continuing Education" and not specifically from the conference budget itself.

Accident Coverage For City Volunteers: At the last Council meeting, the Council asked for information regarding the City's insurance coverage for volunteers that was approved last fall. Enclosed in the packet is information about the coverage. It so happens that the City was not covered for volunteers – staff apologizes for letting this matter fall through the cracks. It has been addressed and the City has been billed \$61.00 until the end of June 2011. A full year's premium is \$159.00 for this coverage.

Newsletter deadline is February 18 for the March newsletter.

Community announcements can be placed on the City's community access channel. The cablecaster can enter the information into the system. The cost for paying the cablecaster is reimburseable through RWSCC.

CITY ENGINEER'S REPORT: City Engineer Kristi Elfering will lead a discussion on stormwater issues in the City. Enclosed in the agenda packet are reports from Thatcher Engineering and Houston Engineering for your review.

CITY OF BIRCHWOOD VILLAGE
REGULAR CITY COUNCIL MEETING
January 11, 2011

MINUTES

MEMBERS PRESENT: Mayor Alan Mitchell; Council Members Barb Carson (@7:15), Jane Harper, Mark Peterson, and Tony Sampair

STAFF PRESENT: City Engineer Kristie Elfering; City Clerk Dale Richard Powers; Interim Assistant City Clerk/City Treasurer Cindie Reiter; and City Attorney Kevin Sandstrom

OTHERS PRESENT: John Lund, John McCormick, Shari Mitchell, Mary Sue Simmons, Mary Wingfield

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

OATH OF OFFICE: City Clerk Powers administered the oath of office to incoming Mayor Mitchell and incoming Council Members Peterson and Sampair.

APPROVAL OF THE AGENDA: Peterson/Harper 4-0 (Carson absent) to approve the agenda with the following changes:

- *Removing Item # 1 (Approval of the December 14, 2010 Regular Meeting Minutes) from the Consent Calendar to discuss under City Business*
- *Remove approval of the Animal Control appointment from the list of 2011 Appointments*

OPENING REMARKS – MAYOR ALAN MITCHELL: Mitchell introduced himself to those in attendance and also watching on television, and told about his family; educational and occupation background; how long he has lived in the City; previous Council experience; and some of the issues he would like to address during his term in office.

OPENING REMARKS – COUNCIL MEMBER MARK PETERSON: Peterson introduced himself to those in attendance and also watching on television, and told about his family and his desire to enhance the sense of community in the City. Peterson also wanted to recognize the efforts of Mary Wingfield, Jay Brunner, and Nino Nardecchia as elected officials the previous two years.

OPENING REMARKS – COUNCIL MEMBER TONY SAMPAIR: Sampair remarked that he shares the sentiments of Mitchell and Peterson, and advised those in attendance and watching on television that he is available any time to discuss citizen concerns.

Carson arrived at approximately 7:15pm,

CONSENT CALENDAR: Harper/Carson unanimous to approve the following Consent Calendar motions:

- *Approve the hiring of Kenneth Ronnan as Cablecaster, at a rate of \$14.00 per hour.*

- 47 • *Approve the hiring of Christopher Johnson, Chad Peterson, John Geier, and Tabor Wilde as*
48 *Level 2 Rink Attendants, at a rate of \$8.00 per hour.*
49 • *Approve Resolution 2011-02: Abating the portion of an amount of an unpaid utility bill*
50 *certified to Washington County erroneously as delinquent.*
51 • *Approve Resolution 2011-02: Acceptance of Cash Donations*
52

53 **APPROVAL OF THE MINUTES OF THE DECEMBER 14, 2010 REGULAR MEETING:** Harper requested the
54 following changes to the minutes:

- 55
56 • Insert the approved resolutions
57 • At line 238, change the wording to state "would draft a letter of engagement".
58

59 *Harper/Carson unanimous to approve the minutes of the December 14, 2010 Regular Meeting as*
60 *amended.*
61

62 **COMMUNITY EVENTS AND ANNOUNCEMENTS:** Mitchell made the following announcements:
63

- 64 • A water main has broken along Cedar Street between Birchwood Avenue and Hall Avenue.
65 Mitchell had been advised that the main would be repaired by around 10:00 this evening.
66 • Hockey Day Minnesota will be celebrated at Ollie Washburn Hockey Rink on Saturday, February
67 12, 2011, from 11:00am to 2:00pm. There will be refreshments, games, and fun! This event is
68 sponsored by the Parks and Natural Resource Committee.
69 • There will be a Dock Association Formation meeting on Saturday, January 22, 2011 at 9:30am, at
70 City Hall.
71 • Also on Saturday, January 22, 2011, in the afternoon, there is a charity golf event on White Bear
72 Lake to raise money for the White Bear Food Shelf.
73 • The United State Geological Survey (USGS) is proposing an extensive study of White Bear Lake,
74 at a cost of \$200,000, half of which is to be raised locally. State Representative Carol McFarlane
75 is hosting a meeting to discuss this study on Thursday, February 10, 2011 from 6:30pm to
76 8:30pm at the Country Inn on US 61 in White Bear Lake. Each jurisdiction has been asked to
77 send 2 representatives to this meeting, Mitchell asked the rest of the Council to consider
78 attending this meeting, as he will be out of town that day.
79 • Monday, January 17, 2011 is Martin Luther King, Jr. Day, and there will be a breakfast at the
80 Minneapolis Convention Center featuring Newark, NJ Mayor Corey Booker. If you are unable to
81 attend that meeting, there will also be a NE Area Community Breakfast at the White Bear
82 Unitarian Universalist Church in Mahtomedi at 7:00am in which the Minneapolis gathering will
83 be televised. Cost is \$5.00.
84

85 **OPEN PUBLIC FORUM:** Wingfield addressed the Council on concerns she had relative to the City's
86 bookkeeping records.
87

88 **APPROVAL OF DISBURSEMENTS:** Reiter reviewed with the Council the submitted disbursement list, and
89 advised the new Council members on the difference between discretionary and non-discretionary
90 disbursements. Non-discretionary disbursements – such as FICA, PERA, payroll, lights, sewer and water,
91 and other utilities – are obligations of the City and are routinely paid on a timely basis prior to formal
92 approval of the expenditure by the Council. Discretionary disbursements – such as vendor payments –
93 are subject to approval by the Council before payment is made. Harper noted that there has been a

94 concern about the spending policy that allows expenditures up to \$500 without Council approval, as
95 well as amending the City's internal financial controls that need to be sent to the Office of the State
96 Auditor no later than January 26, 2011. The clerk is drafting a spending policy for Council consideration
97 and the internal financial controls will be reviewed at the January 25, 2011 Council meeting.
98

99 *Harper/Carson unanimous to approve the submitted disbursement requests.*

100

101 **CLOSING OF THE CONTRACT WITH SHELLY RUECKERT ON UTILITY BILL INVESTIGATIONS:** Harper
102 commented that since the work for which the City contracted with Shelly Rueckert is complete, she felt
103 the Council should take an affirmative action to formally close out the contract.
104

104

105 *Harper/Carson unanimous to close out the contract with Shelly Rueckert for the utility bill research.*

106

107 **DISBURSEMENT REQUEST FROM THE PARKS & NATURAL RESOURCE COMMITTEE:** The Council
108 reviewed a request from the Parks Committee to spend \$557.02 for the purchase of 3 heavy duty nets
109 and 2 heavy duty shooter tutors. Carson advised the Council that the existing nets are in pretty bad
110 shape, and the shooter tutors would be used in conjunction with the Hockey Day in Minnesota event at
111 Ollie Washburn Hockey Rink in February. The funds would be coming out of the Parks Fund.
112

112

113 *Carson/Sampair unanimous to approve the expenditure of \$557.02 for the purchase of 3 heavy duty
114 nets and 2 heavy duty shooter tutors.*

115

116 **APPOINTMENT OF ACTING MAYOR:** *Mitchell/Peterson unanimous to appoint Jane Harper as Acting
117 Mayor.*

118

119 **NAMING OF THE OFFICIAL DEPOSITORY:** *Sampair/Harper unanimous to approve Resolution 2011-01
120 naming US Bank as the official depository of City Funds.*

121

122 **NAMING THE CITY'S OFFICIAL NEWSPAPER:** *Peterson/Sampair unanimous to name the White Bear
123 Press as the City's official newspaper.*

124

125 **ESTABLISHING REGULAR COUNCIL MEETING DATES AND TIMES:** Mitchell discussed with the Council
126 adding a second regular meeting each month that can act as a workshop, as well as to address issues not
127 covered at the first meeting.
128

128

129 *Mitchell/Peterson unanimous to set the 2nd and 4th Tuesday of each month at 7:00 PM as regular
130 meeting dates and times.*

131

132 **ACKNOWLEDGEMENT OF 2011 CITY APPOINTMENTS:** Mitchell reviewed with the Council the following
133 appointments:
134

134

135 CITY ENGINEER Elfering & Associates	CITY ATTORNEY Eckberg, Lammers, Wolf & Vierling
136 WATER SUPT White Bear Lake Pub Wks	CITY HISTORIAN Scott Freeberg
137 TREE INSPECTOR Steve Dean	BOARD OF ADJUSTMENTS Planning Commission
138 PLUMBING, SEWER, WATER, HEATING, AND BUILDING INSPECTIONS Lake Area Inspections	
139 WHITE BEAR LAKE CONSERVATION DISTRICT Debbie Harrod and TBD	
140 ZONING ADMINISTRATOR Lake Area Inspections	

141 PARKS AND NATURAL RESOURCE COMMITTEE Chair John Lund; Cynthia Tomlinson, Kathy Malles, Gene
142 Ruele, Debbie Harrod, Craig Aichele, TBD
143 CABLE COMMISSION Greg Donovan & Randy La Foy
144 PLANNING COMMISSION Chair Len Pratt; Members John Winters, Randy Felt, Don Hankins, Doug Danks
145 TRANSIT COMMISSIONER Milo Haus & Mark Peterson
146 BUDGET COMMITTEE Jane Harper, Larry Walker, Barb Carson
147 FINANCE COMMITTEE Jane Harper, Jay Brunner, Bob Manke, Clint Dixon
148 POLICE White Bear Lake Police Department FIRE White Bear Lake Fire Department
149

150 **APPROVAL OF MAYORAL APPOINTMENTS:** Mitchell reviewed with the Council the Mayor's Committee
151 assignments, as follows:

152
153 MAYOR ALAN MITCHELL Administration: Intercommunity Relations; Personnel Matters; Contracts; Rules
154 of Procedure; Code of Conduct

155
156 COUNCIL MEMBER JANE HARPER Planning: Deputy Mayor; Budget, Finance, and Audit; Sewer and
157 Water; Planning Commission Liaison; Comprehensive Plan and Capital Improvement Plan

158
159 COUNCIL MEMBER BARB CARSON Parks: Parks Committee Liaison; City Hall Maintenance; Assistant
160 Weed Inspector; Invasive Species; Hockey Rink, Tennis Courts, Tighe Schmitz

161
162 COUNCIL MEMBER MARK PETERSON Public Works: Roads and Streets; Storm Water and Drainage; Rain
163 Gardens; Public Lake Tracts; White Bear Lake Transit Commission

164
165 COUNCIL MEMBER TONY SAMPAIR Public Safety: Police and Fire; Civil Defense and Pandemic Planning;
166 Hazardous Materials; Ambulance; Recycling

167
168 *Mitchell/Sampair unanimous to approve the Mayoral appointments.*

169
170 **ANNOUNCEMENT OF MAYOR AND COUNCIL PAY:** Harper advised the Council and attendees that one of
171 the recommendations of the 2009 audit was to formally adopt the Council's pay each year.

172
173 *Harper/Carson unanimous that the Mayor is to be paid \$1500.00 per year and each Council Member is*
174 *to be paid \$600.00 per year for 2011.*

175
176 **APPOINTMENT TO THE BIRCHWOOD PARKS COMMITTEE:** The Council next reviewed the applications
177 to fill a vacancy on the Birchwood Parks Committee. The City received three letters of interest: John
178 McCormick, Katie Cavenor, and Karleen Corliss. Mitchell reviewed the letters and found each of them
179 more than qualified to serve and recommends naming all three of them to the Parks Committee,
180 expanding the Committee to 9 members.

181
182 *Mitchell/Carson unanimous to appoint John McCormick, Katie Cavenor, and Karleen Corliss to the*
183 *Parks Committee, and to direct the Parks Committee to report back to the City Council confirming that*
184 *the group's organizational structure has been changed to allow for the additional members.*

185
186 **VACANCY ON THE WHITE BEAR LAKE CONSERVATION DISTRICT:** Mitchell announced that Joe Allaben,
187 one of the two Birchwood representatives on the White Bear Lake Conservation District Board of
188 Directors, will be moving outside the City in March. His term expires in March 2013. Discussion was held

189 pertaining to the announcement of the vacancy, seeing as the term of the City's other representative
190 (Debbie Harrod) expires in July, and whether the City should solicit letters of interest for that upcoming
191 vacancy, as well.

192

193 ***Mitchell/Peterson unanimous to announce the two vacancies and solicit letters of interest for each***
194 ***vacancy, through an ad in the White Bear Press and also on the City's website, with a deadline of***
195 ***Tuesday, February 15th for submission of the letter of interest.***

196

197 **ANNOUNCEMENT OF SOLICITATION FOM RICE CREEK WATERSHED DISTRICT CITIZENS ADVISORY**

198 **COMMITTEE:** Mitchell noted this solicitation, and advised City residents to contact Dale at City Hall for
199 application materials.

200

201 **OPEN MEETING LAW REVIEW:** Sandstrom presented a review of the state's Open Meeting Law.

202

203 **DOCKET 2011-01-02 – RULES OF PROCEDURE ORDINANCE DRAFT:** Mitchell reviewed with the Council a
204 draft ordinance pertaining to rules of procedure that would regulate Council meetings and the agenda
205 formation process. Mitchell noted that the draft was largely based on a model ordinance developed by
206 the League of Minnesota Cities, and stated that this is being presented to the Council for informational
207 purposes only at this time. Mitchell concluded by stating that he wanted this item on the agenda for the
208 January 25th meeting for the purpose of further discussion and to set a public hearing date.

209

210 **DOCKET 2011-01-03: APPROVAL OF EMPLOYMENT AGREEMENT FOR THE CITY TREASURER:** Harper

211 noted that Cindie Reiter came to the City as clerk-treasurer with one week notice in January 2010 when
212 the previous employee quit in December 2009. When Dale came on as clerk, Cindie stepped back to the
213 treasurer position on a contract basis until 3 months ago when she was granted employee status on a
214 interim basis through the end of January to get the City through the year and to have stable staffing
215 through 2010. Her agreement ends in January 31. The current agreement would be maintained; just
216 converting Cindie from interim to permanent. Cindie is still an "at will" employee, so she can be
217 terminated if there are any issues. Cindie has over 10 years experience as clerk and treasurer, she has
218 municipal clerk certification; she also serves as backup to Dale when he is not here. Cindie also has CTAS
219 experience.

220

221 Peterson responded that, notwithstanding Cindie's service to the City, and to acknowledge the Mayor's
222 earlier statement about process, that he would be more comfortable with extending Cindie's interim
223 status for 60-90 days to get her through the 2010 audit, and to post the position and review
224 applications. Harper noted that while he shared Peterson's sentiments as a general rule, in this case the
225 City had gone through several recruitments for the clerk and treasurer positions and reviewed the
226 qualifications of over 100 applicants, and could not find anyone with Cindie's level of experience.

227

228 Sampair commented that he has concerns with the completion of the Financial Report and
229 Disbursements List in a timely manner so that it can be inserted into the agenda packet when ti is
230 delivered the Thursday before the Council meeting. Sampair also inquired about how long it will take to
231 get the audit completed once it is scheduled. Reiter responded that the audit should be completed
232 within 4-5 weeks after commencement, once it is scheduled.

233

234 ***Harper/Carson 4-1 (Peterson) to appoint Cindie Reiter City Treasurer according to the terms of the***
235 ***enclosed employment agreement.***

236

237 **DOCKET 2011-01-04: CREATION OF PERSONNEL COMMITTEE:** Mitchell noted that the City Council
238 approved a motion at the December 14, 2010 meeting to create a personnel committee to deal with
239 staff issues. Mitchell further stated that as Mayor he is assigned to the Personnel Committee, and he
240 recommends that Council Member Harper, as Deputy Mayor and most senior Council Member, be also
241 named to the Committee.

242
243 *Mitchell/Carson unanimous to appoint Mitchell and Harper as the Personnel Committee.*

244
245 **DOCKET 2011-01-05: CREATION OF INCIDENTAL SPENDING POLICY:** Mitchell stated that the City
246 Council approved a motion at the December 14, 2010 meeting to create an incidental spending policy to
247 govern expenditures made by staff, committees, and Council Members.

248
249 *Mitchell/Sampair unanimous to direct the City Clerk to present a draft incidental spending policy to*
250 *the Council for review at its February 8, 2011 Regular Meeting.*

251
252 **SET DATE FOR ACTION ON 2011 DOCK PERMIT APPLICATIONS:** Substantial discussion was held among
253 Council Members on this matter. The White Bear Lake Conservation District has authorized an extension
254 for the presentation of the City-approved dock permit applications to allow the City to get through the
255 initial workings of the new Public Lake Tract Ordinance. Mitchell noted that there is going to be a Dock
256 Association formation meeting on Saturday, January 22, 2011 – 9:30am – at City Hall.

257
258 *Mitchell/Carson unanimous to set a deadline of February 10, 2011 for submission of the application*
259 *packet to the City for review and approval by the City Council at its February 22, 2011 Regular*
260 *Meeting.*

261
262 **RICE CREEK WATERSHED DISTRICT – RFP 2011 URBAN STORMWATER REMEDIATION COST-SHARE**
263 **PROGRAM:** Powers advised the Council that the City was awarded cost-sharing funds last year under
264 this program that the City Engineer will be advising the Council later on in this meeting, and wanted
265 direction by the Council on whether the City should apply for cost-sharing funds this year. The
266 consensus of the Council is that the Parks Committee should review this program for potential projects
267 and report back to the Council.

268
269 *Carson/Sampair unanimous to direct the Parks Committee to review the RFP and recommend a*
270 *qualifying project to the Council at its February 22, 2011 Regular Meeting.*

271
272 **CITY CLERK REPORT:** Powers brought two issues to the Council's attention:

- 273
274
- 275 • The City received a request from the Minnesota Association of Small Cities (MAOSC) to join. This
276 was brought to the Council's attention because, while the group's target market seems to be
277 small outstate cities, the Clerk noted that the Executive Director (former Afton Mayor Dave
278 Engstrom) and chief lobbyist (former State Representative Peg Larson) are from Washington
279 County and there may be some interest on the Council for joining MAOSC. The consensus of the
280 Council was to not consider this expenditure.
 - 281 • Powers shared with the Council the approved Sewer Maintenance Policy from 2005, and noted
282 that the Council approved a motion at the December 14, 2010 Regular Meeting to create such a
283 policy. It appears that this matter was previously addressed.

284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331

CITY ENGINEER REPORT: Elfering commented that the 2009 catch basin project was awarded cost-share funding from the Rice Creek Watershed District for the installation of 3 sumps. A fourth sump location was identified and later approved by the Watershed District for funding as part of the previously-approved grant. The previous Council declined to authorize work on the project. The previous Mayor asked for further review by the Watershed District, which reiterated the need. The Council then went to Thatcher for independent review of the project. Thatcher found that three sumps were needed, but recommended waiting until the street was reconstructed. The Watershed District noted that the grant money is still there, but is requesting direction from the new Council on the matter. Harper asked whether this matter could be the subject of a future Council workshop. Elfering responded that the deadline for using the grant money is June 19, 2011, which means the project would need to be bid, completed, and billed prior to that date. Harper would like this matter put on the February 8th meeting agenda for further Council consideration.

CITY ATTORNEY REPORT: Sandstrom noted that he is drafting a letter of engagement to HLB Tautges Redpath, and asked if any Council Members wanted to review the letter prior to sending it out. Mitchell requested to review the letter. Also, Sandstrom noted that Sampair requested that a workshop on conflict of interest be held. Discussion was held among Council Members on contractual vs. non-contractual conflict of interest. A colloquy ensued between Mitchell and Sampair on this issue, ending with Mitchell asking Powers to pull together the following documents for Council review: Mitchell letter; Sandstrom letter; Assistant Attorney General Ken Raschke letter; LMC memo – all on conflict of interest.

NEXT MEETING – JANUARY 25, 2011 – POSSIBLE TOPICS: Mitchell noted the following items to be discussed at the January 25th meeting: rules of procedure; maybe conflict of interest; the animal control contract; ascertain who will be representing the City at the USGS meeting on February 10 (Harper, Sampair, and Peterson all expressed interest, schedules permitting); John Lund wanted to discuss tree removal at the tennis court; boat slip waiting list mechanics; individual Council goals for 2011.

Harper noted that the City's 2009 audit revealed 27 findings of material weakness. The proposed workshop for the January 25, 2011 meeting would address those findings, the City's response in addressing those findings, and review the City's Internal Financial Controls Policy and approve any amendments to that document. Harper noted that the Office of the State Auditor requires the City to produce this document to it no later than January 26, 2011.

ADJOURN: Harper/Sampair unanimous to adjourn @10:07pm.

Mayor Alan Mitchell

ATTEST:

332
333 Dale Richard Powers, MA, AICP
334 City Clerk
335

DRAFT

CITY OF BIRCHWOOD VILLAGE
WORKSHOP and
REGULAR CITY COUNCIL MEETING
January 25, 2011

MINUTES

MEMBERS PRESENT: Mayor Alan Mitchell; Council Members Barb Carson, Jane Harper, Mark Peterson, and Tony Sampair

STAFF PRESENT: City Clerk Dale Richard Powers and City Treasurer Cindie Reiter

OTHERS PRESENT: Jim Greeley and Lynn Hanson

Mitchell called the workshop to order @ 7:08pm.

WORKSHOPS: The City Council held four workshops. The topics of the workshops were (a) 2009 Audit – Management Responses to the Audit Findings; (b) Review of the City’s Financial Internal Control Document and draft amendments regarding electronic funds transfer and establishment of a petty cash fund; (c) Review and comment on the draft Rules of Procedure; and (d) Recitation by each Council Member of their individual goals for 2011.

The workshops ended at 9:24pm.

Mitchell called the regular meeting to order at 9:24pm.

AMENDMENTS TO FINANCIAL INTERNAL CONTROL DOCUMENT:

Harper/Carson unanimous to approve the amended Financial Internal Control Procedures Document with the changes listed below, and to direct staff to draft a cover letter to the Office of the State Auditor advising the Office of these changes and that the Document will be reviewed as circumstances warrant:

- *Add a section under “Revenues and Expenditures” to read as follows: “Budgeted – The disbursement amount has been accounted for in the City budget, or is within the terms of an approved contract.*
- *Under “Disbursements”, at Item 21 insert the phrase “unless disputed” between “receipt,” and “or”.*
- *Under “Payroll”, at Item 12 delete the phrase “non-exempt.”*

BOAT SLIP WAITING LIST ISSUES: Discussion ensued with the Council, staff, Hanson and Greeley on the mechanics of how to populate the initial Boat Slip Waiting List. Powers related that mailings have gone out to those already on the list, but have not completed an application and paid the deposit; to those who were on the waiting list but subsequently dropped off the list when the maximum length of time

45 was reduced from 10 years to 6 years; and to those who paid the fee and were assigned a boat slip, but
46 the City is unsure whether the boat slip privilege was used – all with a January 31, 2011 deadline.
47 **Hanson and Greeley** each expressed a concern that the community is still unaware that the Ordinance
48 was adopted, and that perhaps the deadline for “open season” for the mailing list should be extended
49 past February 1.

50
51 **Carson** left the meeting @ 9:50pm.

52
53 **Sampair/Harper 4-0 (Carson absent)** to direct staff to prepare a letter to all City residents advising
54 them of the new ordinance and directing them to the City’s web site where the Ordinance is posted.
55 Said letter is to allow for an initial “open enrollment” period of February 14 through February 18 when
56 complete application packages (form and fee) for getting on the Boat Slip Waiting List will be
57 accepted and the order of placement on the list is to be determined by a lottery. After that date,
58 residents can apply to be on the waiting list and will be placed on the list as their applications are
59 received.

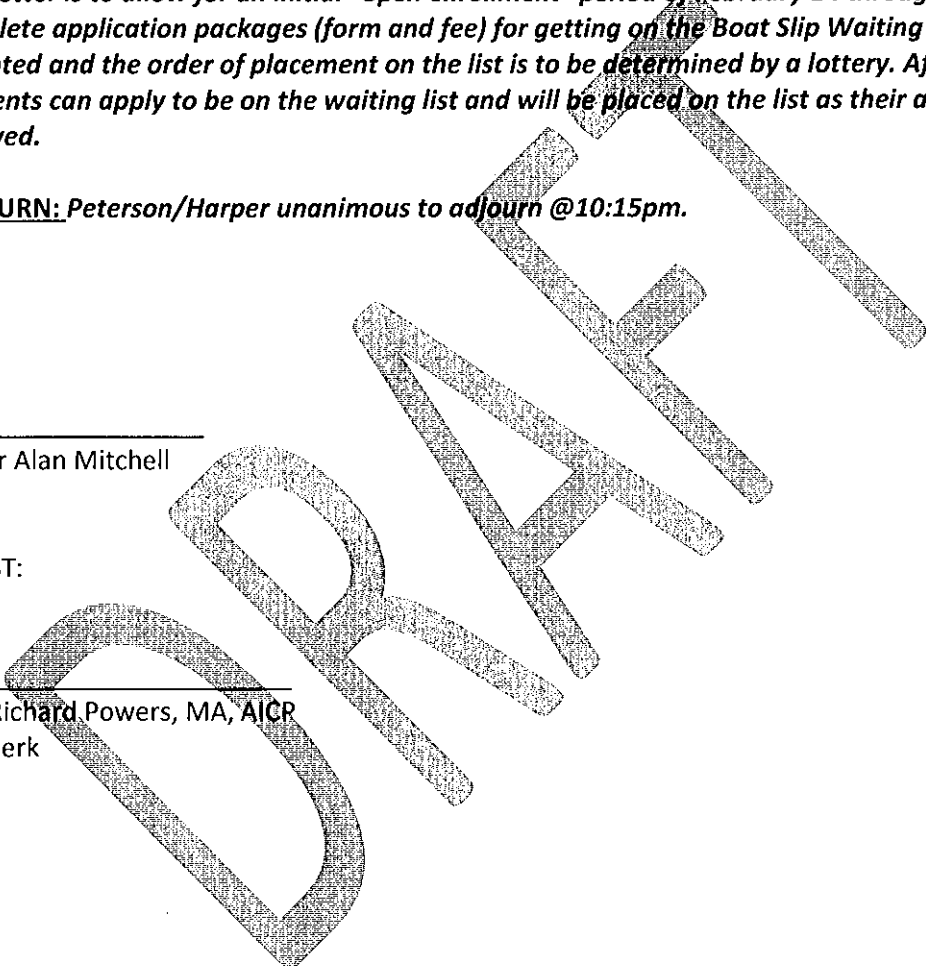
60
61 **ADJOURN: Peterson/Harper unanimous to adjourn @10:15pm.**

62
63
64
65
66
67
68 _____
69 Mayor Alan Mitchell

70
71 ATTEST:

72
73
74 _____
75 Dale Richard Powers, MA, AICP
76 City Clerk

77



RESOLUTION 2011- 05

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**A RESOLUTION AUTHORIZING COUNCIL MEMBER BARBARA CARSON TO
SIGN TIME CARDS FOR SEASONAL RINK ATTENDANTS**

WHEREAS, the City of Birchwood Village maintains park facilities within its corporate limits; and

WHEREAS, one of these facilities is a skating rink at Tighe-Schmitz Park; and

WHEREAS, the City employs seasonal rink attendants to maintain the skating rink and to oversee the rink's usage; and

WHEREAS, the seasonal rink attendants are paid an hourly wage and are required to note on time cards the hours worked each pay period; and

WHEREAS, said time cards need to be reviewed for accuracy and signed by a responsible party as verification of hours worked for pay purposes per the provisions of the City's Financial Internal Control Procedures; and

WHEREAS, the City is required to authorize said responsible party for management and audit purposes.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Birchwood Village that Council Member Barbara Carson is hereby authorized to review and sign the time cards of seasonal rink attendants employed by the City.

I certify that the City of Birchwood Village adopted the above Resolution on this 8th day of February, 2011.

Jane Harper, Deputy Mayor

ATTEST:

Dale Richard Powers, MA, AICP
City Clerk



CITY OF BIRCHWOOD VILLAGE
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 tel
651-426-7747 fax

TO: CITY COUNCIL

FROM: Cindie J Reiter
City Treasurer

RE: CLAIMS LIST FOR APPROVAL

The items listed on the following pages have been entered as Claims since the last council meeting. Where required the CLAIMS have now become DISBURSEMENTS via electronic payment or signed paycheck.

Please call with any questions for the items on the list.

THANKS & HAVE A GOOD WEEKEND.

City of Birchwood Village

Claims List for Approval

01/13/2011

Date range: 01/01/2011 to 01/13/2011

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Detail</u>
01/13/2011	IRS - US Treasury	FED Taxes - EFT Dec 2010	516	\$1,690.26	100-41400-164 100-41400-162 100-41400-160 100-41400-166 100-41400-110	\$120.89 \$516.94 \$120.89 \$516.94 \$414.60
01/13/2011	PERA	Staff Retirement PE 12/15/10	517	\$258.90	100-41400-121 100-41400-120	\$119.49 \$139.41
01/13/2011	PERA	Staff Retirement PE 12/31/10	518	\$252.81	100-41400-121 100-41400-120	\$117.04 \$135.77
01/13/2011	MN Department of Revenue	State W/H PE 12/15/10	519	\$254.33	100-41400-115	\$254.33
Total For Selected Claims				\$2,456.30		\$2,456.30

Approved

Date

These have been approved by the Controller

Date range: 02/01/2011 to 02/01/2011

Date Vendor
02/01/2011 U S Bank

Description
Debt Service Int - 2004A

Claim #
535

Total
\$2,511.47

Account #
301-47100-610

Detail
\$2,511.47

Total For Selected Claims

\$2,511.47

\$2,511.47

Approved

Date

Robert [unclear]
Paul [unclear]
1/16
Frank [unclear]

1

Date range: 01/13/2011 to 01/13/2011

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Detail</u>
01/13/2011	Aure, Nirki	Nov Videographer Fee	535	\$35.00	100-41950-305	\$35.00
Total For Selected Claims				\$35.00		\$35.00

Approved _____ Date _____

City of Birchwood Village

Claims List for Approval

02/03/2011

Date range: 01/10/2011 to 02/03/2011

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Detail</u>
02/03/2011	City of White Bear Lake Public Work	Lift Stn & Water Service Dec, 2010	536	\$1,409.55		
02/03/2011	Washington County	SalvSand Dec 10	537	\$264.37	600-43180-305	\$593.55
02/03/2011	On-Site Sanitation Inc	Rental Unit - Park Jan 2011	538	\$102.98	605-43190-305	\$816.00
02/03/2011	Washington County	SalvSand Dec 10	539	\$327.18	100-45200-305	\$102.98
02/03/2011	Schwaab, Inc.	Council Nameplates	540	\$192.74	100-43125-305	\$327.18
02/03/2011	TSE, INC	City Hall Janitorial - Jan 2011	541	\$19.00	100-41420-200	\$192.74
02/03/2011	TSE, INC	City Hall Janitorial - Nov 2010 (9 & 16)	542	\$57.00	100-41940-305	\$19.00
02/03/2011	Water Conservation Service Inc.	Water Main Break - Leak Locate	543	\$445.90	100-41940-305	\$57.00
02/03/2011	Schwaab, Inc.	Council Nameplates	544	\$25.16	600-43180-300	\$445.90
02/03/2011	S&T Office Supplies	Paper & Envelopes	545	\$179.56	100-41420-200	\$25.16
02/03/2011	Press Publications	Notice -Vacancy WBCD	546	\$56.60	100-41420-200	\$65.20
02/03/2011	Washington County	TnT Notice 2011	547	\$90.94	100-41420-200	\$114.36
02/03/2011	TKDA Engineering Arch Planning	Meter Reading - Nov 2010	548	\$320.00	100-41130-351	\$56.60
02/03/2011	Xcel Energy	Lift Stn - Jan 2011	549	\$566.94	100-41130-350	\$90.94
02/03/2011	Ronnan, Kenny	Videographer - Training and Service Jan 2011	550	\$150.50	600-43180-305	\$320.00
02/03/2011	Mobile Mini, Inc	Warm House /Rental Feb 2011	551	\$267.03	605-43190-380	\$566.94
02/03/2011	League of Min Cities Insurance Trust	Volunteer Premium 2010-2011	552	\$61.00	100-41950-305	\$150.50
02/03/2011	KEJ Enterprises	Snow & Ice Removal	553	\$3,101.25	100-45200-520	\$267.03
02/03/2011	KEJ Enterprises	Watermain Break - Ice Removal	554	\$750.00	100-41560-150	\$61.00
02/03/2011	League of MN Cities	Newly Elected (3) Conference 2011	555	\$855.00	100-43125-305	\$3,101.25
02/03/2011	MIN Mayors Assn	Mayors Assn Dues 2011	556	\$20.00	600-43180-305	\$750.00
02/03/2011	Eltering & Associates	Engineering/Watermain Break - Jan 2011	557	\$521.50	100-41920-310	\$855.00
					100-41920-433	\$20.00
					100-41650-300	\$49.50
					600-41650-300	\$472.00

City of Birchwood Village

Claims List for Approval

02/03/2011

<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Claim #</u>	<u>Total</u>	<u>Account #</u>	<u>Detail</u>
02/03/2011	Xcel Energy	City Hall - Jan 2011	558	\$447.49	100-41940-380	\$447.49
02/03/2011	Xcel Energy	Warming House - Jan 2011	559	\$320.28	100-45200-380	\$320.28
02/03/2011	City of White Bear Lake Public Work	Lift Str Nov, 2010	560	\$816.00	605-43190-305	\$816.00
02/03/2011	Eckberg, Lammers, Briggs, Wolff	Legal Service - Dec 2010	561	\$884.88	100-41600-300	\$884.88
02/03/2011	Qwest	Phone/Fax lines Jan 2010	562	\$108.87	100-41940-321	\$108.87
02/03/2011	City of White Bear Lake Bldg Inspecc	Bldg Inspections - Dec 2010	563	\$377.00	100-42401-305	\$377.00
02/03/2011	City of White Bear Lake	Water Purchase Sept - Dec Qtr 2010	564	\$6,989.00	600-43180-210	\$6,989.00
02/03/2011	Washington County	Election Eqpmt Mntnc Fee 2011	565	\$470.00	100-41130-350	\$470.00
02/03/2011	TSE, INC	City Hall Janitorial -Dec 2010	566	\$19.00	100-41940-305	\$19.00
02/03/2011	Xcel Energy	Street Lights - Jan 2011	567	\$1,192.13	100-43160-380	\$1,192.13
02/03/2011	Waste Management of WI-MN	Recycle - Dec 2010	568	\$909.14	100-44100-305	\$909.14

Total For Selected Claims

\$22,317.99

\$22,317.99

Approved

Date

For Payroll Period Ending: 01/15/2011

<u>Account #</u>	<u>Employee #</u>	<u>Employee Name</u>	<u>Amount</u>
100-41400-100	010	Powers, Dale	\$1,024.17
	011	Reiter Roberts, Cindie	\$321.09
		Account Total	\$1,345.26
		Total For Period	\$1,345.26

FBid

signed by

Mozer

**SmartZone Communications Center**

birchwoodvillage@comcast.ne

± Font size -

tennis court trees

From : bbcn@comcast.net

Mon Nov 1 2010 10:17:45 AM

Subject : tennis court trees**To :** birchwoodvillage@comcast.net

Hello Dale and Cindie,

Could you please put the following information in this upcoming meeting packet.

Steve Dean has been asked by the Parks Committee to give us a quote on remove/trim the trees that are overhanging the tennis courts. These are the same trees/branches which contributed to the surface of the old tennis courts failure. Also, we could not keep up with the leaf removal, 2 hours after blowing the courts off it looked like it hadn't been done at all and rather than have the leaves ground into the court tiles John Lund locked up the courts on approx. October 21st. With the trees and branches taken care of maintenance would be much easier.

Steve Dean's Bid:

Take down and remove debris of large ash, large boxelder, small boxelder and clump of buckthorn, grind stumps and remove debris from the western edge of tennis courts. Total with tax is \$1,446.19.

Trim and remove branches from four oaks overhanging fence and remove small boxelder from the northeastern corner of the tennis courts. Total with tax is \$428.50.

If approved by the council I will ask Steve Dean to go ahead with his bid in December and grind the stumps in the spring. This bill then would than be paid out of the 2011 Parks budget since the trees are not diseased.

Barb Carson

City of Birchwood Village

Rules of Procedure

The City Council of the City of Birchwood Village hereby adopts the following Rules of Procedure to guide the actions and conduct of the City Council, staff, and the public in the performance of city business.

ARTICLE 1 GENERAL REQUIREMENTS

1.01. AUTHORITY. The City of Birchwood is authorized to adopt rules of procedure and provide for order at city council meetings pursuant to Minn. Stat. § 412.191.

1.02. PURPOSE. The purpose of these Rules of Procedure is to establish procedures for the conduct of the city council and to provide for orderly and respectful communications between and among council members, city staff, and citizens to promote the efficient working of the public's business at city council meetings.

1.03. STATE LAW. All meetings of the city council shall be conducted in accordance with requirements of state law. The requirements of these Rules of Procedure shall be interpreted and applied consistent with other applicable requirements of state law. In the event state law shall impose requirements that are in addition to the requirements of these procedures or inconsistent with these procedures, the state law shall prevail.

ARTICLE 2 COUNCIL MEETINGS

2.01. COUNCIL MEETINGS. Article 2 establishes requirements for scheduling and noticing city council meetings.

2.02. LOCATION. All meetings, including regular, special, recessed, and continued meetings, shall be held at the city hall, unless otherwise designated pursuant to Minn. Stat. § 13D.04.

2.03. REGULAR MEETINGS. A schedule of regular meetings shall be kept on file with the city clerk.

2.04. SPECIAL MEETINGS. A special meeting is a meeting that is held at a time or location different from that of a regular meeting. A special meeting may be called by the mayor or any two city council members by filing a request for the meeting with the city clerk at least three days before the meeting. The mayor or council members calling for a special meeting shall designate the purpose of the meeting. No special meeting shall be scheduled without first confirming that a quorum will be able to attend.

2.05. EMERGENCY MEETINGS. An emergency meeting is a special meeting called because of circumstances that, in the judgment of the city council, require immediate consideration by the council. An emergency meeting may be called by the mayor or any two city council members. No emergency meeting shall be scheduled without first confirming that a quorum will be able to attend.

2.06. CLOSED MEETINGS; OPEN MEETING LAW. The Minnesota Open Meeting Law, Minnesota Statutes chapter 13D, allows some meetings to be closed to the public for defined purposes. No meeting of the city council shall be closed to the public except in conformance with the requirements of the Open Meeting Law. When a meeting is to be closed, the presiding officer shall state in public on the record before closing the meeting, the reason for closing the meeting and the state statute that permits closure. The presiding officer shall give a summary of the discussion at the closed meeting at the first open meeting following the closed meeting.

2.07. RECESSED OR CONTINUED MEETINGS. When a meeting is recessed or continued, the presiding officer shall state, pursuant to Minn. Stat. § 13D.04, subd. 4, the time and place for the next meeting to occur. The time and place shall be noted in the Minutes.

2.08. ORGANIZATIONAL MEETING. The council shall conduct its organizational meeting concurrent with the first regular council meeting in January of each year to:

- (a) Appoint an acting mayor pursuant to Minn. Stat. § 412.121.
- (b) Select an official newspaper pursuant to Minn. Stat. § 412.831.
- (c) Select an official depository for city funds.
- (d) Establish the schedule for regular city council meetings.

2.09. WORKSHOPS. The mayor or two council members may call for a workshop. A workshop is a meeting of the council with other governmental bodies or organizations or persons for the purpose of advising the council about matters of interest to the city and the council. A quorum need not be present to hold a workshop. The council shall not take any formal action at a workshop unless proper notice is given in advance that such action may be taken and a quorum is present.

2.10. NOTICE OF MEETINGS.

(a) *Notice Generally.* The council shall give such notice of all meetings of any kind as shall be required by state law.

(b) *Posted Notice.* The city shall post a notice and an agenda of each meeting on the bulletin board outside city hall at least three days in advance of the meeting, except for emergency meetings.

(c) *Emergency Meetings.* Posted or published notice of an emergency meeting is not required. However, the city will make a good faith effort to notify each news outlet that has filed a written request for notice. Notice must be given by telephone or any other method to notify members of the public body. The notice must include the subject of the meeting.]

(d) *Recessed or Continued Meetings.* If the time and place of a recessed or continued meeting are stated at the meeting that is recessed or continued, no additional notice of the meeting is required. However, if the time and place are not stated, the notice procedures for special meeting shall be required. Additional notice may be given if time and circumstances permit.

(e) *Workshops.* The council shall give at least three days notice of a workshop by posting notice on the bulletin board outside city hall and by whatever other means the council determines are appropriate.

(f) *Days.* In calculating the number of days for providing notice, the first day that the notice is given is not counted, but the day of the meeting is counted. If the meeting day is a Saturday, Sunday, or legal holiday, that day is omitted from the calculation.

(g) *Webpage.* The city shall to the extent reasonable post notice of all meetings and workshops on the city webpage.

(h) *E-mail.* The city shall provide notice via e-mail of all meetings and workshops to individuals who have requested such notice and provided an e-mail address to the city.

ARTICLE 3 AGENDAS

3.01. AGENDA. The city clerk shall prepare an agenda for all city council meetings and workshops in accordance with the requirements of Article 3.

3.02. COUNCIL MEMBER ITEMS. The mayor and any city council member may request that an item be placed on a meeting agenda. The clerk shall determine whether to place the matter on the agenda, considering the number of items already on the agenda and whether supporting materials are available and the urgency of the matter. The clerk shall advise the council at the next meeting of all requested items that were not placed on the agenda. The council may direct the clerk to include the item or items on a future meeting agenda.

3.03. PUBLIC ITEMS. Any person may request that an item be placed on a council agenda. All requests to place an item on an agenda shall describe the subject matter to be

considered by the council and any action requested. The clerk may require the person to submit the request in writing. The clerk shall determine whether or not to place the item on the agenda. The clerk shall advise the council at the next meeting of all items that were requested to be placed on the agenda that were not included. The council may direct the clerk to include the item or items on a future meeting agenda or may take such other action as the council deems appropriate. Any person whose requested agenda item has not been placed on the agenda may appear at the council meeting and bring the matter to the attention of the council pursuant to section 3.06 and 4.08 (Public Forum).

3.04. CONSENT AGENDA. The clerk may include a consent agenda for items that can be approved by the council without discussion and with only one motion and vote. Any item on the consent agenda may be removed from consideration by the request of any one council member. Any item removed from the consent agenda shall be placed on the regular agenda for discussion and consideration at a time determined by the presiding officer.

3.05. MINUTES. The agenda shall include an item for consideration of the Minutes from the previous meeting or meetings if such Minutes are available.

3.06. PUBLIC FORUM. Each regular meeting shall include a time for the public to address the council on any matter. This item shall be placed early in the agenda to accommodate the public. The public forum item may be used to announce upcoming community events.

3.07. ACTION ITEMS. Other than for routine matters like approval of Minutes and adoption of the agenda, the clerk shall include with each item on the agenda a description of the action the council will consider taking.

3.08. DOCKET NUMBERS. The clerk may assign a docket number to each major item on a meeting agenda. The docket number, once assigned, shall continue with the matter for future reference and action.

3.09. AVAILABILITY OF AGENDA. The agenda for any meeting, except an emergency meeting, shall be prepared at least five days in advance of the meeting. The agenda shall be posted on the city bulletin board at city hall and posted on the city webpage.

3.10. DELIVERY TO COUNCIL. For all regular meetings the agenda for each meeting, along with any supporting materials for the various items on the agenda, shall be delivered to each council member at least five days in advance of the meeting. For emergency meetings and special meetings, the clerk shall deliver the required materials as far in advance of the meeting as time permits. Delivery may be by mail or e-mail or by actual delivery to the council member. The council may allow additional written materials to be submitted after this date or at the meeting but the council can also determine to postpone consideration of the matter to allow additional time to consider late-filed information.

ARTICLE 4 CONDUCT OF MEETINGS

4.01. CONDUCT OF MEETINGS. All meetings of the council shall be conducted in accordance with the requirements and procedures set forth in Article 4.

4.02. QUORUM. No meeting of the city council shall occur without the presence of a quorum. A simple majority of the council – three members – shall constitute a quorum for the valid transaction of any scheduled business to come before the council.

4.03. MEETING CANCELLATION. The clerk shall cancel any scheduled meeting of the city council when it is determined that a quorum will not be present for the meeting. In such event, the clerk shall post notice of the cancellation on the bulletin board outside city hall and provide notice to all council members by e-mail or telephone and to all individuals who have requested to be notified by e-mail of all council meetings. Any subsequent meeting scheduled after cancellation of a meeting shall occur only after compliance with applicable notice requirements.

4.04. PRESIDING OFFICER. The mayor shall preside at all meetings of the city council, unless the mayor is absent, in which case the deputy mayor shall preside. In the absence of both the mayor and the deputy mayor, the city clerk shall call the meeting to order and the remaining three council members shall decide who shall preside. The presiding officer shall have the following duties and authority:

(a) *Preserve Order.* The presiding officer shall preserve order and decorum, enforce the requirements of chapter 104, and determine all questions of procedure and order, subject to the final decision of the council on appeal as provided in paragraph (e).

(b) *Council Discussion.* The presiding officer shall determine which member has the right to speak and may move matters to a vote once the officer has determined that all members have had an opportunity to speak.

(c) *Motions and Voting.* The presiding officer may determine whether a motion or proposed amendment is in order and may call members to order. The presiding officer may make motions, second motions, speak on any question, and vote on any matter properly before the council.

(d) *Adjourn Meetings.* If considered necessary to preserve order, the presiding officer may adjourn or continue a meeting to another time or suspend a meeting for a specified time.

(e) *Appeal of Ruling.* In the event a council member disagrees with the ruling of the presiding officer on a procedural matter, the council member may make a motion to appeal the decision to the full council. The member making the motion may speak once on the motion and the presiding officer may explain the ruling, and other council members may speak once on the motion. Once both the maker of the motion and the presiding officer have been heard, the matter shall be voted on by the council.

4.05. ADOPTION OF AGENDA. The council shall follow the agenda that has been prepared for the meeting, but the council may re-order the agenda at the start of the meeting prior to adopting the agenda. When the council determines that a matter not on the agenda should be considered at the meeting in order to avoid delay, the matter may be added to the agenda. The presiding officer may switch the order of items on the agenda in order to accommodate schedules or other requests.

4.06. DECORUM OF COUNCIL MEMBERS. The following rules of decorum shall apply to all council meetings.

(a) All council members shall assist the presiding officer in preserving order and decorum and in providing for the efficient operation of the meeting.

(b) No councilmember shall engage in conduct that delays or interrupts the proceedings or which hinders honest, respectful discussion and debate.

(c) All council members shall conduct themselves in a courteous manner that recognizes the validity of differing points of view and promotes the ideal of democratic discussion and debate free of insult, slander, and personal attacks and threats.

4.07. PUBLIC PARTICIPATION. Members of the public are generally not allowed to participate in council discussion and deliberation. Members of the public shall not engage in conversation or other behavior that may disrupt proceedings of the council. Members of the public shall refrain from applauding unless invited to do so by the presiding officer. The presiding officer may recognize a member of the public and allow the person to speak to an agenda item under terms established by the presiding officer. A member of the public who is permitted to speak may be asked questions by the council members. Speakers shall comply with the requirements of section 4.08(b).

4.08. PUBLIC FORUM. A limited forum for members of the public to speak with the council will be provided on the agenda for regular meetings. Public comments during the public forum are subject to these limitations:

(a) Speakers may be requested to sign up prior to speaking and provide a name, address, and brief summary of the subject matter they wish to address.

(b) Speakers must be recognized by the presiding officer before speaking and may be limited to three minutes for comment. Speakers must direct their remarks toward the presiding officer. Speakers shall not use obscene, profane or threatening language, nor conduct themselves in a threatening, loud, or boisterous manner that disrupts the conduct of the meeting or the security of the public. When multiple speakers appear to speak on the same topic, comments should not be repetitive. The presiding officer may request speakers to appoint a spokesperson.

(c) The presiding officer may place a time limit on the public comment period if necessary to allow for the conduct of city business. If there is not sufficient time at the

meeting to hear all public comments, the comment period may be deferred to another meeting.

(d) Council will generally not respond at the same meeting to an issue initially raised by a member of the public. The council may request that additional information be gathered and identify persons who will be asked to undertake that task.

ARTICLE 5 COUNCIL ACTION

5.01. COUNCIL ACTION. The city council shall take action on items in accordance with the provisions of Article 5.

5.02. PROPER MEETING. The council shall not take any official action as a council except at a properly called and noticed meeting of the council.

5.03. DELIBERATION. Each council member shall be permitted to participate in council deliberation of an item on the agenda. Deliberation may occur before and after a motion has been made. No council member shall speak until recognized by the presiding officer.

5.04. MOTIONS. A motion is a request by a council member for formal action by the city council. Motions shall be made and considered in accordance with the following provisions:

(a) Making Motions. Any city council member including the presiding officer shall be entitled to make and second motions. All motions must be seconded before being discussed. Only one motion at a time shall be considered and debated by the city council.

(b) Objections. Any member of the council may object to a motion if the member believes the motion is not in order. A motion is in order if:

- (i) it is germane to the item under consideration, and
- (ii) made at a proper time in the proper format, and
- (iii) does not violate any rule of law, and
- (iv) is not made for the purpose of delaying the proceedings.

An objection must be made immediately following the motion before debate begins and at no other time. Before ruling, the presiding officer shall allow the objector and then the mover to explain their positions on why the motion is or is not in order. The presiding officer shall determine whether the motion is in order, subject to appeal of the ruling. If the presiding officer rules that the motion is out of order, the motion shall not be considered.

(c) *Debate on a Motion.* Only one motion may be considered at a time in debate. A council member must be recognized by the presiding officer before speaking to the motion. The presiding officer may limit the amount of time any one council member may speak to the motion.

(d) *Amendment of Motion.* Any council member may move to amend a motion at any time before a vote is taken. The amendment requires a second. If the amendment is acceptable to the mover and seconder of the original motion, the amendment shall be considered a friendly amendment and no vote of the council is required to replace the original motion with the amended motion. Only two amendments may be made to an original motion, in order to avoid confusion.

(e) *Motion to Withdraw a Motion.* A motion to withdraw a motion can be made by the maker of the motion before it is seconded and the motion will be withdrawn. After a second is received, the seconder must agree to the withdrawal.

(f) *Motion to Limit Debate.* Any council member may move to limit debate on a motion under consideration. The motion must be seconded. The mover shall identify the length of time debate should occur. The motion itself is not subject to debate.

(g) *Motion to Table.* Any council member may move to table a motion at any time. The motion must be seconded. The motion is not subject to debate. The motion need not identify a length of time to table the motion but a date or time may be specified. A motion that has been tabled may be taken off the table by action of the council but the matter must be properly on the agenda in order to be taken off the table and acted upon.

(h) *Motion to Call the Question.* Any council member may move to call the question. The motion must be seconded. The motion is not subject to debate. If the motion passes, debate shall cease and the council shall vote on the motion before it.

5.05. RESOLUTIONS. The council shall determine those matters that are of such significance that action on the matter shall be taken by resolution rather than by motion. Such action may include approval of contracts, licenses, and permits, the adoption or amendment of city policies, rules, and ordinances, receipt of grants, donations, and other funds, and adoption of budgets. All resolutions shall be written and numbered in a manner consistent with the city's record keeping practices. All resolutions shall be acted upon in accordance with the provisions of this chapter.

5.06. VOTING. All votes of the city council shall be conducted in accordance with the following:

(a) No action shall be taken by the city council except upon a majority vote of the council, unless state law requires more than a majority on a particular matter. If only three members of the council are present and constitute the quorum, a matter may pass on a vote of two to one, unless state law provides otherwise or unless the matter is the adoption or amendment of an ordinance, which shall require three votes regardless of the

size of the quorum. If a matter shall end in a two to two tie vote, no action shall be taken but the matter may be placed on the agenda for a future agenda, unless state law provides otherwise. In the event a matter incurring a tie vote is placed on a future meeting agenda, any member may change his or her vote from one meeting to the next.

(b) Any council member or the clerk may ask the presiding officer to restate the motion that is being voted upon prior to the actual vote.

(c) The votes of the city council shall be taken by voice vote. Any member may call for a roll call vote on any motion or resolution. On a roll call vote, the clerk shall call on council members in random order so the same council member is not called upon first with every roll call vote.

(d) At the conclusion of every vote the presiding officer shall announce the results of the vote.

(e) Any member who abstains from voting because of a conflict of interest or other reason shall state on the record the reason for abstaining.

(f) A clear statement of the action voted upon and the votes of each member shall be stated in the Minutes of the meeting.

5.07. RECONSIDERATION. Any matter acted upon by the council may be reconsidered at a subsequent meeting or at any time until the deadline for an appeal has expired or as otherwise provided by state law. Only a council member who voted in the majority on the original action can make a motion for reconsideration. The matter must be on the agenda for the meeting and can be acted upon according to the provisions of these rules.

ARTICLE 6 RECORDKEEPING

6.01. MINUTES. The clerk shall prepare and maintain Minutes of each council meeting. Minutes of workshops shall not be required. The Minutes of each meeting shall be posted on the city webpage after approval by the council.

6.02. CONTENT OF MINUTES. The Minutes shall contain at a minimum the following:

- (a) The city council members who are present at the meeting.
- (b) The type of meeting (regular, special, continued, emergency).
- (c) Date and place the meeting was held.
- (d) Time the meeting was called to order.

(e) Approval of Minutes approved at the meeting.

(f) A description of all action of the council, including the name of the member making any motion and the member seconding the motion and the vote of each council member on the motion.

(g) Ordinances, contracts, and other documents approved by the council shall not be included in the Minutes but shall be maintained on file in the city hall by the clerk. Resolutions shall be included in the Minutes, although the documents that are the subject of the resolution shall not be included.

(h) The Minutes shall not constitute a transcript of the proceedings and shall not contain lengthy descriptions of council discussion of agenda items.

6.03. CODE BOOK. The Clerk shall maintain a Code Book containing the city ordinances that are in effect.

6.04. VIDEO RECORDING OF MEETINGS. The clerk shall maintain a video or audio recording of each city council meeting for which such a recording is available.

6.05. WEBPAGE. The city clerk shall post on the city webpage such information as the clerk deems appropriate or as is required by chapter 104 or the city council. The city clerk shall maintain an up-to-date code book on the city webpage.

6.06. DATA RETENTION. The council hereby adopts the Minnesota City General Records Retention Schedule (revised 2008) on file with the Minnesota Historical Society, State Archives Department. The city shall not destroy or discard any information required to be maintained by law except in conformance with this Schedule.

ARTICLE 7 ORDINANCES

7.01. PROPOSED ORDINANCE. Any council member may bring to the attention of the council a proposed ordinance or a proposed amendment to an existing ordinance if the matter is properly on the agenda. The proposed ordinance or amendment shall be presented to the council in writing.

7.02. PROCEDURE FOR ADOPTION. No new ordinance or amendment to an existing ordinance shall be adopted except in accordance with the following procedures:

(a) *Proposal.* The council shall first pass a motion to propose the adoption of a new ordinance or ordinance amendment. The language of the ordinance or ordinance amendment shall be in writing at the time of the action. No ordinance or amendment may be passed by the council at the meeting at which it is introduced.

(b) *Notice.* The council shall give twenty days notice of the proposed adoption of the ordinance or amendment in the same manner as notice of a regular meeting is given.

The notice shall include a summary of the ordinance language and indicate where a complete copy of the proposed ordinance may be reviewed. The notice shall inform the public that they will be permitted to submit oral comments at the public hearing and advise the public of how and when it may submit written comments on the proposed ordinance.

(c) *Public Hearing.* The council shall hold a public hearing as part of a council meeting on the proposed ordinance or amendment. The hearing shall be held in accordance with the requirements of Article 8.

(d) *Adoption.* The city council may take action on the ordinance or amendment any time after completion of the public hearing.

(e) *Majority Decision.* No ordinance or ordinance amendment shall be adopted by the council except upon the vote of a majority of the council members, regardless of how many constitute a quorum at the meeting at which the matter is decided.

7.03. Publication. After adoption of a new ordinance or ordinance amendment, the city shall publish notice of the adoption and the ordinance itself in the official newspaper of the city. The city may elect to publish a summary of the ordinance if the ordinance is lengthy provided four council members vote to do so and approve the summary.

7.04. EFFECTIVE DATE. Unless the city council provides differently in the adoption of the ordinance or amendment, the new language shall be effective after publication in the official newspaper. The clerk shall record the new ordinance in the code book within twenty days after publication.

7.05. CODE BOOK. Upon completion of the procedures to adopt an ordinance or an amendment, the clerk shall record the new ordinance in the code book.

ARTICLE 8 PUBLIC HEARINGS

8.01. HEARING REQUIRED. A public hearing shall be held whenever required by city ordinance, state law, or order of the city council.

8.02. PUBLIC NOTICE. Whenever a public hearing will be held, the city shall give notice of the hearing in the same manner as for the council meeting at which the hearing will be held. The city shall give such other notice as may be required by city ordinance or state law. The matter that is the subject of the hearing shall be included on the agenda for the meeting.

8.03. CONDUCT OF HEARINGS. Each public hearing shall be conducted in accordance with the following:

(a) The presiding officer shall open the hearing and announce the purpose of the public hearing.

(b) The presiding officer may call upon staff or other council members to make any opening statements if appropriate.

(c) The presiding officer shall recognize members of the public who would like to address the council and enter comments into the record. Persons making oral statements may be asked questions by members of the council. The presiding officer may ask commenters to limit the amount of time they speak or to select a spokesperson to represent a group of people if time becomes an issue.

(d) The presiding officer shall accept written comments into the record.

(e) The presiding officer shall identify any written comments that were received from persons not wishing to speak at the hearing and enter those into the record. The presiding officer may elect to have the written comments read into the record if appropriate. The presiding officer may refuse to accept unsigned, anonymous written comments.

(f) After every person who wishes to speak has had an opportunity to do so, the presiding officer shall close the public meeting.

(g) The presiding officer shall announce whether a period of time for the public to submit written comments will be established. No comment period shall be longer than twenty days from the close of the hearing. If a comment period is established, the council shall not take final action on the matter that is the subject of the hearing until after close of the comment period.

8.04. CONTINUATION OF HEARING. The presiding officer may elect to continue a public hearing if necessary to accommodate all members of the public who wish to speak.

8.05. COUNCIL ACTION. Any time after completion of the public hearing, including the day of the hearing, or any time after the close of a public comment period if one is established, the council may take action on the matter.

ARTICLE 9 COMMITTEES AND POLICIES

9.01. COMMITTEES. The city council may establish a committee to assist the council in carrying out its duties. Whenever the council creates a committee, it shall give the committee a name, establish its purpose, determine the number of members and their terms, and determine whether any compensation will be provided to members who serve on the committee. The council shall also determine whether the committee shall expire on a date certain or continue until further action of the council. The council's action in creating a committee shall be reduced to writing and may be placed on the city webpage by the clerk.

9.02. POLICIES. The council may adopt policies regulating matters within the jurisdiction of the council. All policies shall be in writing. The council may adopt a new policy or amend an existing policy at any time, provided the matter is properly on a council meeting agenda. The clerk shall maintain a handbook containing all policies adopted by the council and place all policies adopted by the council on the city webpage.

Adopted this ____ day of _____, 2011

Dale F. Powers,
City Clerk

Alan Mitchell
Mayor

8B

ECKBERG LAMMERS
MEMORANDUM

TO: City of Birchwood Village Mayor and City Council

FROM: Cameron R. Kelly, City Attorney

DATE: August 11, 2008

RE: Birchwood Village, City of - General
10622-10907

I attended a special city council meeting earlier this month to discuss ongoing litigation matters in which the City of Birchwood Village is a party. During the meeting, the issue of a conflict of interest was addressed in the context of participation by council members in confidential attorney - client conversations. Although the conversation did not produce a definitive answer, Mayor LaFoy voluntarily abstained from participating in the conversation to avoid the perception of a conflict.

Although no formal action was taken during the session, the remaining council members asked that the issue of conflict of interest be addressed at the next regularly scheduled city council meeting. Specifically, the question has been raised whether a council person with a dock license has a conflict of interest when dealing with the question of restructuring the dock licensing system in the City of Birchwood Village.

Contractual Conflicts

The two most common types of conflict have to do with conflicts over contractual matters, and conflicts over personal or financial matters. In my opinion, the restructuring of the dock associations, even if a licensing fee is required, is a non contractual matter. However, in the case that there is disagreement, it is worth mentioning that there is an exception stating that a council member may enter into a rental agreement for public facilities as long as the member does not participate in discussions relating to the rental, and so long as the rental amount paid is similar to other residents. Minn. Stat 471.88 Subdiv. 13. It is important to mention that the Minnesota Attorney General has opined that a council person is not only prohibited from forming a contract with him or her self, but also prohibited from participating in the process. Minn. Atty. Gen. Op. 90E-6 (June 15, 1988).

Non-Contractual Conflicts

More likely in my mind, this type of question falls under the category of a non-contractual conflict. The first type of conflict is where the action of a council person brings into question the council person's character or conduct. Again, in my opinion there is not a conflict based on the council person's character or conduct, neither of which is in question.

Instead, the question is whether the council person has an interest that is distinct from other members of the community. In this particular case, the question before the council is over the regulation of the dock associations; specifically, how the dock licenses or permits will be issued.

In licensing or permitting situations, the general rule is that the permit holder who is potentially affected by a decision should not vote. A.G. Op. 218-R (April 23, 1952). A conflict may exist even when the council member in question does not hold a permit, but could be shown to be personally interested. *Id.* A decision made where council members with conflicts participated is void. *Nodes v. City of Hastings*, 284 Minn 552 (1969).

Opinion

The basic question is not whether a council person could disregard their personal interest and vote in the interest of the general public, which could likely be done by any of the members of this council. Instead, the consideration is whether the perception of a conflict exists. Where there is the risk of a the public perceiving a conflict the best course of action is to err on the side of caution, and for the affected council members to refrain from participating. A mistake in a decision to participate could result in the council's decision being void.

My recommendation is that in order to avoid the perception of a conflict, that the council persons holding an interest in a dock slip abstain from participating in voting and discussions relating to the reorganization of the dock licensing/permitting.

CRK/crk



LORI SWANSON
ATTORNEY GENERAL

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

January 5, 2009

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

8c

Mr. Cameron R. Kelly
Eckberg Lammers
1809 Northwestern Avenue
Stillwater MN 55082

Dear Mr. Kelly:

I thank you for your correspondence dated November 18 and December 2, 2008, on behalf of the City of Birchwood Village (the "City").

You state that the City has four private "dock associations" which allocate continuing dockage rights at City-owned lake-front property to City residents on a "first-come-first-served" basis. You note that Association members pay annual association fees ranging from \$25 to \$100 and that commercial slips on the lake have market values of approximately \$2,500. Because persons holding such rights are granted the privilege of renewing them from year to year, some residents remain on waiting lists for vacant slips for more than ten years.

You also state that the associations operate under "rules and regulations" promulgated by the city council pursuant to annual permits which are granted at the council's discretion and are revocable. You state further that beginning in January 2009, there will be at least one council member who holds rights to a boat slip under one of the associations. In your December 2, 2008 letter you relate added comments of a council member which characterize the relationships among the City, the associations, and their members as "a system that unfairly denies equal access to [a] city authorized benefit to some, while protecting others."

The council has directed you to seek an opinion of this Office on the following questions:

1. Does a sitting council member who has a slip on a Dock Association have a conflict of interest such that they are barred from voting on any issue involving their particular Dock Association; and
2. Does a sitting council member who has a slip on a Dock Association or is on a waiting list for one or more Dock Associations have a conflict of interest such that they are barred from voting on any issue involving any of the Dock Associations.

First, for the reason noted in Op. Atty. Gen. 629a, May 9, 1975, this Office does not generally render opinions upon hypothetical or fact-dependent questions, or conduct a general review of a local undertaking to evaluate its validity or to identify legal problems. Therefore, we

express no opinion concerning the City's overall dock association program. *But cf.* Op. Atty. Gen. 273-a-17, March 10, 1948.

Second, Minn. Stat. §§ 412.311 and 471.87 (2008) generally prohibit a member of a statutory city council from having a personal financial interest in any sale, lease or contract made by the council. The prohibition does not generally apply to contracts that were made before the interested member took office. However, it would apply to any extension, renewal or amendments of such contracts made thereafter. *See, e.g.*, Op. Atty. Gen. 90a-1, March 30, 1961. These prohibitions are subject to certain exceptions which permit a local governing body to contract with an interested member for goods or services as prescribed in Minn. Stat. § 471.88 (2008).

Third, in circumstances not addressed by specific statutes, Minnesota courts have not applied any hard and fast rule regarding involvement of public officials in decisions that affect their personal financial interests. Rather, the courts have taken into account several factors in evaluating, on a case-by-case basis, whether a public official should be disqualified from participating in a particular official action due to a personal financial interest. These factors include:

1. The nature of the decision being made;
2. The nature of the pecuniary interest;
3. The number of officials making the decision who are interested;
4. The need, if any, to have interested persons make the decision; and
5. The other means available, if any, such as the opportunity for review, that serve to ensure that the officials will not act arbitrarily to further their selfish interests.

Lenz v. Coon Creek Watershed District, 153 N.W.2d 209, 210 (Minn. 1967); *see also Rowell v. Board of Adjustment*, 446 N.W.2d 917, 920-21 (Minn. Ct. App. 1989) (membership in interested organization standing alone does not constitute disqualifying personal interest).

Fourth, it seems clear from the facts given that a person who enjoys personal renewable dockage privileges through one of the private associations in question has a personal financial interest in retaining those privileges. The materials submitted do not, however, indicate the exact nature of the relationship between the City and the associations in question.¹ If that relationship is contractual in nature, then the prohibitions of sections 412.311 and 471.87 would apply.

¹ The City Regulations which were included with your letters make numerous references to the use of "easements." However, it is not clear whether the term refers to the nature of the City's own property interests or to property interests granted to the associations and other private persons.

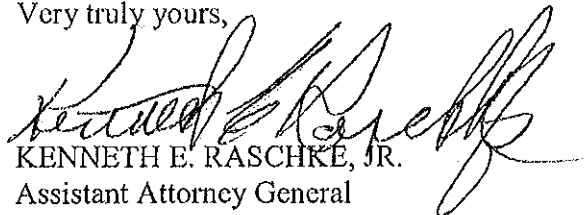
Mr. Cameron R. Kelly
January 5, 2009
Page 3

Furthermore, it is uncertain whether any of the exceptions listed in section 471.88 would be available, since the contract would not appear to be one for "goods or services."

Finally if, on the other hand, the relationship is essentially regulatory in nature, the statutory prohibitions would not apply, and the involvement of an interested council member in decisions affecting the associations should be evaluated on a case-by-case basis. *See, e.g.*, Op. Atty. Gen. 59a-32, September 11, 1978 (council member interested in council zoning action).

I hope the foregoing discussion is helpful to you in advising the City on these matters. For your convenience I have enclosed copies of the cited Attorney General Opinions.

Very truly yours,

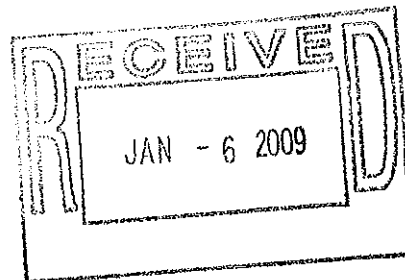


KENNETH E. RASCHKE, JR.
Assistant Attorney General

(651) 297-1141 (Voice)
(651) 297-1235 (Fax)

Enclosures: Op. Atty. Gen. 629a, May 9, 1975
Op. Atty. Gen. 273-a-17, March 10, 1948
Op. Atty. Gen. 90a-1, March 30, 1961
Op. Atty. Gen. 59a-32, September 11, 1978

AG: #2360159-v1



Paul Faraci

Opinions of the Attorney General

Hon. WARREN SPANNAUS

ATTORNEY GENERAL: OPINIONS OF: Proper subjects for opinions of Attorney General discussed.

Thomas M. Sweeney, Esq. May 9, 1975
Blaine City Attorney 629-a
2200 American National Bank Building (Cr. Ref. 13)
St. Paul, Minnesota 55101

In your letter to Attorney General Warren Spannaus, you state substantially the following

FACTS

At the general election in November 1974 a proposal to amend the city charter of Blaine was submitted to the city's voters and was approved. The amendment provides for the division of the city into three election districts and for the election of two council members from each district. It also provides that the population of each district shall not be more than 5 percent over or under the average population per district, which is calculated by dividing the total city population by three. The amendment also states that if there is a population difference from district to district of more than 5 percent of the average population, the charter commission must submit a redistricting proposal to the city council.

The Blaine Charter Commission in its preparation and drafting of this amendment intended that the difference in population between election districts would not be more than 5 percent over or under the average population for a district. Therefore, the maximum allowable difference in population between election districts could be as great as 10 percent of the average population.

You then ask substantially the following

QUESTION

Does the Blaine City Charter, as amended, permit a maximum population difference between election districts of 10 percent of the average population per district?

OPINION

The answer to this question depends entirely upon a construction of the Blaine City Charter. No question is presented concerning the authority to adopt this provision or involving the application or interpretation of state statutory provisions. Moreover, it does not appear that the provision is commonly found in municipal charters so as to be of significance to home rule charter cities generally. See Minn. Stat. § 8.07 (1974), providing for the issuance of opinions on questions of "public importance."*

* Minn. Stat. § 8.07 (1974) lists those officials to whom opinions may be issued. That section provides as follows:

The attorney general on application shall give his opinion, in writing, to county, city, town attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education he shall give his opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved be decided otherwise by a court of competent jurisdiction.

See also Minn. Stat. §§ 8.05 (regarding opinions to the leg-

IN THIS ISSUE		
Subject	Op. No.	Dated
ATTORNEY GENERAL: Opinions Of.	629-a	5/9/75
COUNTY: Pollution Control: Solid Waste.	125a-68	5/21/75

In construing a charter provision, the rules of statutory construction are generally applicable. See 2 McQuillin, Municipal Corporations § 9.22 (3rd ed. 1966). The declared object of statutory construction is to ascertain and effectuate the intention of the legislature. Minn. Stat. § 645.16 (1974). When the words of a statute are not explicit, the legislature's intent may be ascertained by considering, among other things, the occasion and necessity for the law, the circumstances under which it was enacted, the mischief to be remedied, and the object to be attained. Id.

Thus, an interpretation of a charter provision such as that referred to in the facts would require an examination of a number of factors, many of which are of a peculiarly local nature. Local officials rather than state officials are thus in the most advantageous position to recognize and evaluate the factors which have to be considered in construing such a provision. For these reasons, the city attorney is the appropriate official to analyze questions of the type presented and provide his or her opinion to the municipal council or other municipal agency. The same is true with respect to questions concerning the meaning of other local legal provisions such as ordinances and resolutions. Similar considerations dictate that provisions of federal law generally be construed by the appropriate federal authority.

For purposes of summarizing the rules discussed in this and prior opinions, we note that rulings of the Attorney General do not ordinarily undertake to:

- (1) Determine the constitutionality of state statutes since this office may deem it appropriate to intervene and defend challenges to the constitutionality of statutes. See Minn. Stat. § 555.11 (1974); Minn. R. Civ. App. P. 144; Minn. Dist Ct. (Civ.) R 24.04; Op. Atty. Gen. 733G, July 23, 1945.
- (2) Make factual determinations since this office is not equipped to investigate and evaluate questions of fact. See, e.g., Ops. Atty. Gen. 63a-11, May 10, 1955 and 121a-6, April 12, 1948.
- (3) Interpret the meaning of terms in contracts and other agreements since the terms are generally adopted for the purpose of preserving the intent of the parties and construing their meaning often involves factual determinations as to such intent. See, Op. Atty. Gen. 629-a, July 25, 1973.
- (4) Decide questions which are likely to arise in litigation which is underway or is imminent, since our opinions are advisory and we must defer to the judiciary in

islature and legislative committees and commissions and to state officials and agencies) and 270.09 (regarding opinions to the Commissioner of Revenue).

MINNESOTA LEGAL REGISTER

Published monthly and containing all Opinions
of the Minnesota Attorney General

Published by The Progress-Register

200 Upper Midwest Bldg., Minneapolis, Mn. 55401

Sold only in combination with The Progress-
Register (weekly) at \$15.00 per year in Min-
nesota. Out-of-state \$16.00 per year. Payable
in advance. Binder and index service included.
Second-class postage paid at Minneapolis, Mn.

such cases. See Ops. Atty. Gen. 519M, Oct. 18, 1956, and 196n, March 30, 1951.

(5) Decide hypothetical or moot questions. See Op. Atty. Gen. 519M, May 8, 1951.

(6) Make a general review of a local ordinance, regulation, resolution or contract to determine the validity thereof or to ascertain possible legal problems, since the task of making such a review is, of course, the responsibility of local officials. See Op. Atty. Gen. 477b-14, Oct. 9, 1973.

(7) Construe provisions of federal law. See textual discussion *supra*.

(8) Construe the meaning of terms in city charters and local ordinances and resolutions. See textual discussion *supra*.

We trust that the foregoing general statement on the nature of opinions will prove to be informative and of guidance to those requesting opinions.

WARREN SPANNAUS, Attorney General
Thomas G. Mattson, Assist. Atty. Gen.

COUNTY: POLLUTION CONTROL: SOLID WASTE: A county may require all households to pay for solid waste collection services if such a requirement is necessary in order to carry out the purposes of Minn. Stat. ch. 400. Minn. Stat. §§ 400.01, 400.04, and 400.08 (1974).

Luther P. Nervig, Esq.
Wadena County Attorney
503 South Jefferson
Wadena, Minnesota 56482

May 21, 1975
125a-68

In your letter to Attorney General Warren Spannaus, you state substantially the following

FACTS

Wadena County has enacted a solid waste disposal ordinance pursuant to Minn. Stat. ch. 400, the "County Solid Waste Management Act." Pursuant to the ordinance, a solid waste collection service is made available to all households in most cities of the county and a mandatory service charge is imposed for the availability of this service. Because of the relatively small population in those cities it was apparent that the service and charges had to apply to all households in order for the collection system to survive financially. Some persons do not desire to use this service and pay the charges.

You then ask substantially the following

QUESTION

Does a county have authority pursuant to Minn. Stat. ch. 400 (1974) to impose a mandatory service charge on all households in a municipality for the availability of a solid waste collection service if it has determined that this requirement is necessary in order to carry out the purposes of that chapter?

OPINION

Based upon the language of Minn. Stat. ch. 400 (1974) and prior opinions of this office interpreting the provisions of that chapter, we answer your question in the affirmative. Since factual questions are involved in determining whether a particular requirement is necessary to carry out the purposes of chapter 400, such a determination is, of course, for the county board and not this office to make.

Chapter 400 authorizes counties to operate or contract for the operation of a solid waste collection service and to obligate persons to pay "for solid waste management services to their properties." See Minn. Stat. §§ 400.03, 400.04 and 400.08 (1974). Although no provision in chapter 400 specifically authorizes a county to establish a program which makes a collection service available to all households and imposes a fee payable by all such households, Minn. Stat. § 400.04 subd. 1 (1974) provides that a county may conduct a solid waste management program which includes activities authorized by chapter 400 and other activities which are "necessary and convenient to effectively carry out the purposes" of that chapter.

Minn. Stat. § 400.01 (1974) sets forth the purposes of chapter 400 as follows:

In order to protect the state's water, air and land resources so as to promote the public safety, health, welfare and productive capacity of its population, it is in the public interest that counties conduct solid waste management programs.

A solid waste management program includes solid waste collection. Minn. Stat. § 400.03 subd. 2 (1974). It is our opinion that a county may determine that a mandatory charge of the type in question is necessary and convenient to carry out the purposes of chapter 400.

This conclusion is consistent with that reached in Op. Atty. Gen. 125a-68, Oct. 26, 1973, which held that a county could make a determination to award an exclusive contract for the collection, transportation and disposal of solid wastes within the county. That opinion stated:

Since the execution of an exclusive contract is not expressly prohibited, it is a proper activity if "necessary and convenient" to carry out the purposes of chapter 400. These purposes are summarized in Minn. Stat. § 400.01 (1971) . . . In our opinion, under appropriate factual circumstances a county may determine that promoting the objectives stated in section 400.01 requires the award of an exclusive contract for the provision of collection, transportation and disposal services. As this is a factual determination for the county board, we express no opinion as to the existence of appropriate factual circumstances in Lincoln County.

Our conclusion is also consistent with that in Op. Atty. Gen. 125a-68, June 7, 1973, where the question was whether a county could require that all solid waste generated within a county be collected and hauled only to disposal sites designated in the county solid waste management plan. It was stated:

In our opinion a county may determine, under appro-

Villages - Powers in respect to docks in navigable waters - Control.

M. S. A., Sec. 412.19, Subd. 22.

March 10, 1948

273-A-17

Mr. Edward L. Rogers
Cass County Attorney
Walker, Minnesota

Dear Mr. Rogers:

Your letter of March 4 states that you have for consideration the problem herein considered, based on those

FACTS:

OK
The village of Cass Lake owns certain lakeshore property upon which it established a dock and in the waters of the lake it built a harbor. The purpose was to furnish a public dock and afford public amusement, the authority for which is found in M. S. A., Sec. 412.19, Subd. 22.

469-A-9
The village leased the dock facilities to one L. The term of the lease is not stated. If the lease were for a term exceeding three years, it was a conveyance. M. S. A., Sec. 507.01. It was an interest in land. L died. He left a widow surviving. I do not know whether he left other persons surviving who were his heirs.

You have for consideration two

QUESTIONS:

Since the death of the lessee, may the village give an exclusive lease on the dock?

May the village treat the lease to L as continuing with the widow as successor of L in interest?

March 10, 1948

OPINION:

Under L. 1885, c. 145, Sec. 21, Subds. 8, 11, 26 and 28, M.S.A., Sec. 412.19, Subd. 22, is granted to villages governed thereby the power to control and protect village property, "to establish harbor and dock limits; to regulate the location, construction, and use of piers, docks, wharves, and boat-houses on navigable waters; and to fix rates of wharfage." It was held in the case of Nelson v. DeLong, 213 Minn. 425, that the village is authorized:

"Under L. 1885, c. 145, §21, subds. 8th, 11th, 26th, and 28th, granting to villages governed thereby the power to control and protect village property; to establish and improve public parks; to establish harbor and dock limits, regulate the location, construction, and use of all piers, docks, wharves, and boathouses on any navigable waters, and fix rates of wharfage; and to ordain and establish by ordinance police regulations for the government and good order of the village, such a village in the exercise of such governmental powers is authorized:

- (a) To establish and maintain a public dock on park property adjacent to a navigable lake;
- (b) To require all watercraft using the waters adjacent to the park to use the public dock to the exclusion of other shore lands of the park, notwithstanding the fact that the owners of such watercraft may have riparian rights in such shore lands;
- (c) To charge a fee for a permit to use a space on the dock;
- (d) To set apart for bathing purposes a part of such waters to the exclusion of all other uses of which the waters are susceptible."

As stated in Nelson v. DeLong, supra, on page 435;

"In Osborne v. Knife Falls Boom Corp. 32 Minn. 412, 21 N.W. 704, 50 Am. R. 590, we sustained a statute conferring on a boom corporation the exclusive right, as against the rights

March 10, 1948

of riparian owners and all others who might otherwise use a navigable stream, to take, drive, float, separate, and deliver all logs and to charge the owners thereof toll for such services. We there pointed out that, absent regulation, there would be a clashing of interests with respect to rights of floatage and use of the waters and a resulting confusion that might well prevent reasonable enjoyment of such rights by all. We said (32 Minn. 419, 21 N. W. 707):

"Who is to fix upon the just and proper compromise of these conflicting interests? Obviously, the legislature, -- that department of government which, in the exercise of a law-making and a police power, prescribes the rules by which the use of public highways in general is regulated, * * * and save as controlled by paramount law -- that is to say, in this instance, by our state constitution or enabling act -- the discretion of the legislature in the premises is practically unlimited. It may enact laws prescribing the manner in which the common right of floatage shall be enjoyed. It may determine what means shall be adopted, and by what agency, to secure results which, in its judgment, are the best and fairest practical compromises of conflicting interests, -- the best attainable good of all concerned. * * * In the exercise of its legislative discretion, it may authorize suitable means and instrumentalities to secure this end to be provided and employed by a private person or by a corporation, and it may prescribe what these means and instrumentalities may be, -- as booms, dams, piers, sluiceways, -- and what use may be made of them, and, in general, in what manner the business shall be conducted."

The case of Nelson v. LeLong indicates that this power to regulate use of public waters is vested by the legislature in the village council in the public interest. It is thus vested to secure to the public the public use of which the waters are susceptible and to preserve public order. The village has power to make a reasonable charge for the use of its dock.

If it was the intention of the village council and L at the time that the lease was made to L that he should, for his personal use, have the exclusive right to use the dock, such a contract would, in

Mr. Edward L. Rogers --4

March 10, 1948

my opinion, be quite questionable because it would seem that that would be putting the public property to the personal use of L, rather than making it available to the use of the public. But if the lease was made to L as an instrument to make the dock available to the public and the lease contained conditions reserving to the use of the public the right to sublet from L and the effect of the entire agreement was to make L the manager of the dock so that the public might deal with him and the dock was still open to public use, then the lease might be considered a mere instrument of convenience in the transaction of the business. But it would be my opinion that if this lease gave L the exclusive use of the entire dock and deprived the public of the use thereof, then the lease amounts to an appropriation of public property by L to the exclusion of the public right to use it and that in the making of such lease, the council exceeded its authority.

Since I have not examined the lease and do not know its precise terms, I am unable to say whether the death of L was in effect a termination of the lease. If the lease amounted to a management contract between the village and L, then it is my opinion that his death terminated the contract. If the lease in effect gave L the exclusive use of the wharf or dock, it may be disregarded as an unauthorized contract. In either of those two events, the council is at liberty to make a new arrangement for the operation of the dock and it would appear that it would be in conformity with the statutes if the village reserved to itself the power of management rather than giving the exclusive use

Mr. Edward L. Rogers --5

March 10, 1948

of the entire dock to an individual. From the facts presented, I am unable to say that the heirs of L have any property right in the dock flowing from the lease made to L.

Yours very truly

J. A. A. BURNQUIST
Attorney General

CEH:MR

CHARLES E. HOUSTON
Assistant Attorney General

17-2
MUNICIPALITIES - Officers - Conflict of Interest. Person entitled to commissions on insurance premiums payable by village pursuant to existing contract is eligible to municipal office. M.S. 471.87, 471.88, 412.311.

March 30, 1961

0.30
H.M.A.
Honorable Harold R. Pfeiffer
Attorney for Village of Danube
Olivia, Minnesota

90a-1
Dear Sir:

In your letter to Attorney General Walter F. Mondale you submit the following

FACTS:

"In 1959 a resident of the village who is in the insurance business sold three insurance policies to the village, one covering public liability and property damage from the use of the village police car, another covering public liability and property damage from the village fire truck and the third carrying fire and comprehensive on village owned buildings. In 1960, one of the members of the council resigned and the party having sold the insurance was requested to finish the unexpired term. He agreed to do so.

"If this party will be in violation of Section 471.88 then he intends to resign from the council rather than to sacrifice the commissions on the policy.

"The insurance policies are payable in annual installments and there are several installments remaining to be paid, including an installment payable in 1960. The total of all installments on all policies is less than \$500."

QUESTION

"Whether or not the now council member who sold the insurance before becoming a member of the council would be in violation of any portion of Section 471.87 of M.S.A. if these policies are continued in force and having in mind that this council member will receive some commission from each insurance company from each installment on these policies."

Honorable Harold R. Pfeiffer -- 2.

March 30, 1961

OPINION

If the obligation of the village to pay the installments of premiums payable in the future is fixed and determined by the provisions of the insurance contracts heretofore entered into, and the insurance agent now has an enforceable right to his commissions on such installments when paid, we see no reason why the insurance agent may not be appointed to and qualify for the office of village trustee and continue to receive such commissions. In answer to your particular inquiry, it is our opinion on the basis of such facts that his becoming such member will not be in violation of M.S. § 471.87. See in this connection Op. Atty. Gen. 90a-1, (1-K4) December 1, 1949.

Said § 471.87 and M.S. 412.311 may operate to prohibit the renewal, extension or modification of the insurance contracts while the agent holds the office of trustee, unless one or more of the exceptions contained in M.S. 471.88 will have application. A question of fact may then be involved. See Op. Atty. Gen. 90c-5, January 22, 1953, and Op. 90c-4, January 10, 1955.

Copies of all of the above opinions are herewith enclosed.

Very truly yours

WALTER F. MONDALE
Attorney General

HARLEY G. SWINSON
Assistant Attorney General

HGS-sm
Enc.

MINNESOTA LEGAL REGISTER

Published monthly and containing all Opinions
of the Minnesota Attorney General

Published by The Progress-Register

200 Upper Midwest Bldg., Minneapolis, Mn. 55401

Sold only in combination with The Progress-

Register (weekly) at \$16.00 per year in Min-

nesota. Out-of-state \$17.00 per year. Payable

in advance. Binder and index service included.

Second-class postage paid at Minneapolis, Mn.

in its discretion provide special instruction and services. "It is a well-recognized rule in the law that the express enumeration of one or more instances of many belonging to the same class impliedly excludes the others." *Tynan v. KSTP, Inc.*, 247 Minn. 168, 172, 77 N.W.2d 200, 203 (1956).

Based upon the foregoing and under the facts presented, it is our opinion that the School District is without authority to provide special instruction and services to an individual who is less than 21 years of age but who has graduated from secondary school. However, since the School District's decision to graduate the individual has the effect of removing the availability of special education services, the decision is subject to the procedures established by Minn. Stat. § 120.17, subd. 3b (1976). We note also that the individual may be entitled to participate in other programs in the School District pursuant to Minn. Stat. § 120.06 (1976).

WARREN SPANNAUS, Attorney General
Charles T. Mottl, Spec. Asst. Atty. Gen.

CITIES: ZONING: INTEREST OF COUNCILMAN:
Council not prevented by Minn. Stat. § 471.87 from rezoning property owned by council member or his client. Council member may not participate in consideration. Minn. Stat. § 412.311, 471.87 (1976).

Ms. Deborah Hedlund September 11, 1978
Minnetonka City Attorney 59a-32
14800 Minnetonka Boulevard (Cr. Ref. 90)
Minneapolis, Minnesota 55343

In your letter to Attorney General Warren Spannaus you present substantially the following

FACTS

Minnetonka City councilman X is the owner of certain property located within the City of Minnetonka, a home rule charter city. On October 20, 1975 such property was rezoned from R-1 to R-2 and B-1. Councilman X took no part in the portion of the meeting involving the rezoning. In August 1977, Councilman X applied again to have the lots rezoned. Following a public hearing and conditional approval of the application by the Planning Commission, Councilman X contracted to sell part of the property contingent upon rezoning. On November 21, 1977, a proposed ordinance to rezone the property was tabled.

On November 28, 1977, the prospective purchaser Y applied for rezoning of the property based upon the previously submitted site plans. Following approval of Y's application by the Planning Department, the council approved the application on January 23, 1978 and ultimately adopted the rezoning ordinance on February 21, 1978.

Councilman X did not participate in any council votes affecting the rezoning. His application to rezone a portion of the property is still pending.

You then ask substantially the following

QUESTION ONE

Is a rezoning, by a city council, of property owned by a member of the council, precluded by the prohibitions of Minn. Stat. § 412.311, or § 471.87.

OPINION

Subject to the qualifications set forth below, we answer your question in the negative.

Minn. Stat. § 471.87 * provides:

Except as authorized in section 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in his official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.

(Emphasis added.)

This office has previously ruled that the prohibitions of this statute are operative only where all elements are present. *Op. Atty. Gen. 90c-5, Jan. 15, 1960*. Plainly, section 471.87 only precludes certain officers from interest in or benefits from a government "sale, lease or contract." Municipal zoning is justified as an exercise of the delegated police power to enact ordinances for the health, safety and welfare of the citizenry. See, e.g., *State ex rel. Berndt v. Iten*, 259 Minn. 77, 106 N.W.2d 366 (1960); *Kiges v. City of St. Paul*, et al., 240 Minn. 622, 62 N.W.2d 363 (1953). As such, it cannot be seen as a matter of "sale, lease or contract" within the meaning of Minn. Stat. § 471.87.

A similar result was reached in *Op. Atty. Gen. 90E-4, Aug. 18, 1949* wherein it was determined that Minn. Stat. § 412.311, which prohibited any direct or indirect interest of village council members in village contracts, did not preclude issuance of a beer license to a councilman.

It is significant to note that, by virtue of required residence in the city, council members are affected, to their benefits or detriments, by many exercises of the local police power including zoning. To hold that a city council is powerless to act whenever an ordinance will affect the individual interests of any member would render the police power wholly ineffectual in many situations.

Thus, it is our opinion that Minn. Stat. § 471.87 does not operate to prohibit enactment or amendment of a zoning ordinance which affects property of a council member. Substantial self-interest by a council member may, however, disqualify the member from participation in the council proceedings involving the

* Minn. Stat. § 412.311 (1976), which imposes similar restrictions upon council members, is applicable only to statutory cities.

zoning. Participation by such an interested member may be cause for invalidation of the action. See generally, Ops. Atty. Gen. 477B-34, June 19, 1967 and 396g-18, Oct. 15, 1957 (copies enclosed); Rathkopf, *The Law of Planning and Zoning*, § 22.03; 4 McQuillin, *Municipal Corporations*, §§ 13.35, 13.35a. As the court noted in *Lenz v. Coon Creek Watershed Dist.*, 273 Minn. 1, 15, 153 N.W.2d 209, .. (1967):

The purpose behind the creation of a rule which would disqualify public officials from participating in proceedings in a decision-making capacity when they have a direct interest in its outcome is to insure that their decision will not be an arbitrary reflection of their own selfish interests. There is no settled general rule as to whether such an interest will disqualify an official. Each case must be decided on the basis of the particular facts present. Among the relevant factors that should be considered in making this determination are: (1) The nature of the decision being made; (2) the nature of the pecuniary interest; (3) the number of officials making the decision who are interested; (4) the need, if any, to have interested persons who make the decision; and (5) the other means available, if any, such as the opportunity for review, that serve to insure that the officials will not act arbitrarily to further their selfish interests.

(Footnote omitted.)

These standards would, in our view, preclude the participation by a member in consideration of a zoning ordinance of narrow applicability affecting property of the member, such as appears to be the situation described in the facts presented.

QUESTION TWO

Is the council precluded from acting upon a proposed rezoning where a council member has been employed as an architect or planner for the persons seeking the rezoning?

OPINION

In our view, the response to Question One applies whether the interest of the council member in the council's action stems from property ownership or from an employment relationship with interested parties. Thus, the interest in council action, while not directly proscribed by the terms of section 471.87, would, in many circumstances preclude participation by the interested member in the action of the council.

Where the council member in his private capacity has been involved in preparation of the specific proposal upon which council action is contemplated, the considerations set forth in *Lenz v. Coon Creek Watershed District*, supra, would dictate that such a member would be disqualified from acting in his official capacity upon the proposal.

WARREN SPANNAUS, Attorney General
Kenneth E. Raschke, Jr., Asst. Atty. Gen.

ROADS: SNOW REMOVAL: PRIVATE STREETS: Minn. Stat. §§ 412.221, subd. 6 (1976), and 412.221, subd. 32 (1976), authorize a city to remove snow from private streets open to public use should it be determined that the public interest is served by the snow removal.

William R. Soth, Esq. September 13, 1973
c/o Messrs. Dorsey, Windhorst, Hannaford, 377a-11
Whitney & Halladay
Counsel for the City of Deephaven
2300 First National Bank Building
Minneapolis, Minnesota 55402

In your letter to Attorney General Warren Spannaus you present substantially the following

FACTS

The City of Deephaven is a statutory city governed by the provisions of Chapter 412 of the Minnesota Statutes. Snow is removed from public streets pursuant to section 412.221, subd. 6 (1976). In addition, snow is removed from several streets under contract with the owners of the streets, usually homeowner's associations. The private streets from which snow is removed by the city are used by the public in much the same manner as publicly dedicated streets.

You then ask substantially the following

QUESTION

Does the City of Deephaven have the power, under the provisions of Minn. Stat. § 412.221, subd. 32 (1976), to remove snow from private streets open to public use within the city limits of Deephaven if the city is paid for the cost of removal?

OPINION

Subject to the qualifications set forth below, we answer your question in the affirmative.

A city has no inherent powers but possesses only those powers which are granted to it by statute or which may be implied directly therefrom. *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347 Minn. 347, 143 N.W.2d 813, 820 (1966); *Minnetonka Electric Co. v. Village of Golden Valley*, 273 Minn. 301, 141 N.W.2d 138 (1966).

In Op. Atty. Gen. 377a-11, Nov. 19, 1951, this office ruled in that regard that a city, absent a statutory or charter provision had no authority to use city snow removal equipment to plow private driveways and charge the owners. In our view, however, that opinion does not stand for the proposition that a city has absolutely no power with respect to snow removal on any road which is in private ownership. That opinion stressed that the driveway snow removal was viewed as a wholly private benefit to the property owner.

In addition to specifically enumerated powers,* more general authority is delegated to statutory cities in Minn. Stat. § 412.221, subd. 32, as follows:

* With respect to streets, Minn. Stat. § 412.211, subd. 6 provides:

The council shall have power to lay out, open, change, widen or extend streets, alleys, parks, squares, and other public ways and grounds and to grade, pave, repair, control, and maintain the same; to establish and maintain drains, canals, and sewers; to alter, widen or straighten water courses; to lay, repair, or otherwise improve or discontinue sidewalks, paths and crosswalks. It shall have power by ordinance to regulate the use of streets and other public grounds, to prevent encumbrances or obstructions, and to require the owners or

CONFLICT OF INTEREST

8d

N. Specific situations

There is far from complete agreement among the various courts on the kinds of interest and the situations that prevent an interested official from taking part in non-contractual official actions. A summary of some of these situations follows:

1. Determination of an official's right to office

On the theory that no person should be the judge of his or her own case, courts have generally held that an officer may not participate in proceedings involving his or her status. Thus, city council members are probably prohibited from judging themselves on an offense in which the majority of the council participated. Likewise, determination of a councilmember's residency may be one such issue from which an interested officer should abstain.

2. Self-appointment

Minn. Stat. § 471.46.

Minn. Stat. § 415.15.

Generally, city officials may not appoint a councilmember to an elected position, even if he or she resigns before the appointment is made. However, a councilmember may be appointed to the position of mayor or clerk, but the councilmember may not vote on the appointment. Likewise, resigning council members may not vote on their successors.

See Part V -
Incompatibility of
offices.

In the situation of appointment to a non-elective position, the general rule is that the official has a self-interest and he or she is disqualified from participating in the decision. Whether the councilmember serving the city in a second function creates an incompatibility must also be considered.

3. Fixing official's own compensation

Minn. Stat. § 415.11.

State law authorizes a council of any second, third or fourth class city in Minnesota to set its own salary and the salary of the mayor by ordinance. However, the change in salary cannot begin until after the next regular city election. Since every councilmember has a personal interest in determining his or her compensation, the need for interested officials to make the decision is determinative in this situation.

A special situation is involved in setting the clerk's salary in a Standard Plan statutory city. In these cities, the clerk is elected and is thus a voting member of the council. The other four council members may vote on the clerk's compensation without any disqualifying self-interests. However, it is probably best for the clerk not to vote on his or her own salary.

4. Family connections

A.G. Op. (April 14, 1975) (informal letter opinion).

In an informal letter opinion, the attorney general has advised that a councilmember was not disqualified from voting on a rezoning because his father owned legal title to the tract in question.

A.G. Op. 90a-1 (Dec. 9, 1976).

The attorney general has also advised that a prohibited interest does not necessarily arise when the spouse of a city employee is elected mayor. The opinion carefully avoids any statement about future action of the council on the existing employment relationship.

Minn. Stat. § 363.03, subd. 1(2); Also see Part III - D - Validity of contracts with relatives of city officials.

It should be noted that the Minnesota Human Rights Act prohibits discrimination in employment based upon marital status. Cities should exercise caution when making inquiries into the marital status of employees or applicants for positions with the city.

5. Business connections

A.G. Op. 430 (April 28, 1967).

Other types of business interests may also be prohibited, indirect interests even though there is not a personal financial interest under the general law. The attorney general has advised that a housing authority commissioner had a conflict of interest when the commissioner was also a foreman who would aid a contractor in making a bid to the housing authority.

A.G. Op. 90e (Aug. 25, 1997).

In a different opinion, the attorney general found that a mayor or councilmember would not be disqualified from office because he was an employee of a nonprofit corporation that provided public access cable service to the city. However, the attorney general also concluded that the individual must abstain from participating in any actions related to the cable franchise.

6. Land issues

Since a city council must deal with land matters, it is almost inevitable one of these decisions may affect property that is owned or used by one of its members.

a. Local improvements and special assessments

Petition of Jacobson, 234 Minn. 296, 48 N.W.2d 441 (1951); *Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (1967).

A councilmember owning land to be benefited by a local improvement is probably not prohibited from petitioning for the improvement, voting to undertake it, or voting to adopt the resulting special assessment. Although one Minnesota decision took a different view on a county ditch proceeding, it seems to have been sharply limited as a precedent by a later case. The two cases can also be distinguished on their facts.

Petition of Jacobson,
234 Minn. 296, 48
N.W.2d 441 (1951).

The first case concerned a proposed county ditch that bypassed a county board member's property. Although the board member participated in preliminary proceedings before the board regarding the feasibility of the improvement, he did not attend the final hearing. The court vacated the county board's order establishing the proposed ditch since the preliminary proceedings may have had a substantial effect on later actions taken at the final hearing. The court also said the board member should not have participated in any of the proceedings regarding the project.

*Lenz v. Coon Creek
Watershed Dist.*, 278
Minn. 1, 153 N.W.2d
209 (1967).

The court in the second case found there was no disqualifying conflict of interest when four of the five managers of a watershed district owned land that would be benefited by a proposed watershed district improvement project. The court recognized the situation was similar to those where members of a city council assess lands owned by them for local improvements. As a result, the court found this potential conflict of interest did not disqualify the district board members from participating in the improvement proceedings.

It is possible a councilmember's property ownership might result in a more favorable treatment of that property in an assessment project. If that happened, the assessment might be challenged for arbitrariness and set aside whether or not the councilmember participated in the assessment proceedings.

b. Zoning

A.G. Op. 59a-32 (Sept.
11, 1978).

The attorney general has advised that a council is not prevented from rezoning property owned by a councilmember or by his or her client. However, the councilmember may not participate in the council proceedings involving the rezoning.

A.G. Op. 471-f (Sept.
13, 1963).

In an earlier opinion, the attorney general said it was a question of fact whether a town board member had a disqualifying interest for having sold land that was the subject of rezoning. However, the attorney general appeared to assume that if the board member had a sufficient interest in the land, the member would be disqualified from voting on the rezoning.

i. Property ownership

Whether or not property ownership disqualifies a councilmember from participating in council action will depend, to some extent, on the amount of that interest compared to all land affected by the decision. At one extreme is adoption of a new zoning ordinance or a comprehensive revision of an existing ordinance that may have an impact on all property in the city. In this situation, the interest is not personal and the councilmember should be able to participate. If this wasn't allowed, no such ordinance could ever be adopted since all council members may be property owners.

At the other extreme is the application for a zoning variance or special use permit applying only to a councilmember's property. In this instance, there is such a specific interest that it will probably disqualify the member from participating in the proceedings. However, the councilmember should still be able to submit the required application to the city.

Between these two extremes are those proceedings affecting some lots or parcels, only one of which a councilmember owns. In such cases it is a question of fact whether the councilmember is disqualified from voting. If the councilmember chooses to vote, the council must decide whether the member should be disqualified—a decision which is subject to review in the courts if challenged. There will be many situations where the right to vote is doubtful enough that an interested councilmember should refrain from participating.

ii. Condemnation

Webster v. Bd. of County Comm'rs of Washington County, 26 Minn. 220, 2 N.W. 697 (1897).

There is little doubt a councilmember's ownership of land is so direct and significant as to preclude his or her participation in a resolution to condemn the land. The Minnesota Supreme Court has not ruled directly on this question. However, it did not disqualify a county board member from participating in condemnation proceedings to establish a highway when the board member owned land adjoining the proposed highway. The court suggested the decision might have been different if the owner had been entitled to damages if the highway had gone through his property.

iii. Church affiliation

Rowell v. Bd. of Adjustment of the City of Moorhead, 446 N.W.2d 917 (Minn. App. 1989).

The Minnesota Court of Appeals held that a zoning board member who was also a member of a church was not disqualified from voting on a zoning variance requested by that church. The court found the nature of the financial interest could not have influenced the voting board member. The person's membership in the church, without evidence of a closer connection, was not a sufficiently direct interest in the outcome of the matter to justify setting aside the board's zoning action.

c. Streets

i. Establishing streets and highways

Webster v. Bd. of County Comm'rs of Washington County, 26 Minn. 220, 2 N.W. 697 (1897).

It appears that a councilmember who owns land near an area where a street may be opened would not be prohibited from voting on the matter. The Minnesota Supreme Court has held that a county board member who owned land adjoining a proposed county highway did not have a disqualifying interest preventing him from voting on the establishment of the highway. The board member's interest was similar to that of the rest of the public and differed only in degree. A different decision may have been reached had the highway gone through any of the commissioner's land.

Township Bd. of Lake Valley Township v. Lewis, 305 Minn. 488, 234 N.W.2d 815 (1975).

The Minnesota Supreme Court also refused to disqualify a town board supervisor that asked a landowner to circulate a petition for a road. The court reasoned that by its very nature, the decision to establish a town road is of interest to all local citizens, including town board members, who often may be in the best position to be aware of the need for a road. The court also stated that the ability of affected property owners to appeal to the district court would adequately protect them from any possible prejudice.

ii. Street vacation

A.G. Op. 396g-16 (Oct. 15, 1957); *See also, Petition of Jacobson*, 234 Minn. 296, 48 N.W.2d 441 (1951).

It is arguable that a street vacation is not essentially different from the establishment of a street, where abutting owners have been held not to have a disqualifying interest. However, the attorney general advised that a councilmember who had an interest in property abutting a street proposed for vacation could not participate in the vacation proceedings.

7. Urban renewal

An interest in property subject to an urban renewal decision may be grounds for disqualification. However, when the property is within the area of a larger urban renewal program, but not in the project area subject to the decision, it is arguable the councilmember would not be disqualified from voting. Since there have been no Minnesota cases addressing this issue, councilmembers with these types of interests may wish to abstain from voting on these matters or seek an attorney general opinion regarding the legality of their participation.

8. Licenses

Although there have been no Minnesota cases directly on the subject, it seems obvious that when a councilmember is an applicant for a license to be granted by the council, there is enough of a personal financial interest that the member should not take part in the decision on the application.

A.G. Op. 218-R (April 29, 1952).

If a general licensing ordinance is the subject of the action, even a councilmember who does not hold a license may have a possible conflict of interest that could disqualify him or her from voting. The attorney general said that a councilmember who was a part-time employee of a liquor licensee could not vote on the question of reducing the liquor license fee if it could be shown that the councilmember was personally interested. For example, if the fee reduction would affect the councilmember's compensation or continued employment, he or she would obviously have a personal financial interest in the decision. However, whether an individual's personal interest is sufficient to disqualify him or her from voting on the decision is a fact question that must be determined on a case-by-case basis.

E.T.O., Inc. v. Town of Marion, 375 N.W.2d 815 (Minn. 1985).

In a similar case, the Minnesota Supreme Court held that since a town board member owned property across from a bar that was subject to a liquor license renewal decision, he was disqualified from voting on the license renewal. The town board member stated his property had been devalued by \$100,000 since the bar opened, and he was elected to the board based largely on his opposition to the bar. The court stated, “A more direct, admitted, financial interest is hard to imagine.”

Minn. R. § 7515.0430, subp. 5.

A state rule prohibits a councilmember from voting on a liquor license for a spouse or relative. The rule does not define who is included as a “relative,” so cities may need to consult with their city attorney for guidance in specific situations.

O. Effect of disqualifying interest on action

Nodes v. City of Hastings, 284 Minn. 552, 170 N.W.2d 92 (1969).

A contract that is prohibited due to a conflict of interest is generally void. However, actions taken in a non-contractual situation, where a councilmember has a disqualifying interest, may be valid if the result would have been the same without the interested official’s vote. For example, the Minnesota Supreme Court considered a case involving a decision by a three-member civil service commission to terminate a police officer for failing to pay his financial debts. The court held that it would have been a “better practice” for the commission member who had been a creditor of the officer to have disqualified himself and abstained from voting. However, the court held that the interested commission members’ participation in a unanimous decision did not invalidate the commission’s decision.

1989 Street Improvement Project v. Denmark Township, 483 N.W.2d 508 (Minn. App. 1992).

Council members who have a disqualifying interest in a matter are generally excluded when counting the number of councilmembers necessary for a quorum, or for the number necessary to approve an action by a four-fifths vote, such as approving a special assessment.

P. Conflict of interest checklist

- Consult with the city attorney.
- Disclose the interest.
 - i. Make disclosure at the earliest stage preceding the discussion.
 - Make oral disclosure to the governing body or board.
 - Make written disclosure.
 - ii. Don’t participate in discussions leading up to the decision.
- Don’t vote or take any official action unless the city attorney decides there is no prohibited conflict of interest.

- Don't influence others.
 - i. Don't participate in the discussion, either at the time of the vote or earlier.
 - ii. Leave the room when the governing body is discussing the matter.

Part V. Incompatibility of offices

Q. In general

The question of whether a city official can also serve the city in some other capacity is quite complicated. One must look at both the statutory law, and the common law that has been developed through Minnesota court decisions.

All individuals in elected office are prohibited from holding incompatible offices. In addition, many appointed officials may need to consider this law if taking a position that may conflict with their city responsibilities.

See McCutcheon v. City of St. Paul, 216 N.W.2d 137 (1974).

The common law doctrine of incompatibility applies to the functions of two inconsistent offices. However, there is no clear definition of what constitutes an "office" for the purpose of this law. Certainly it would include all elected offices. It may also include appointed offices such as city administrators, managers, and police chiefs. Generally, an office has greater responsibility, importance, and independence than mere city employment.

State v. Sword, 157 Minn. 263, 196 N.W. 467 (1923); *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (1886).

State laws generally do not prevent a person from holding two or more governmental positions. However, without specific statutory authority, government officials cannot hold more than one position if the functions are incompatible or if the jobs create a conflict between two different public interests.

5 U.S.C. §§ 7323(a)(3); 7322(2). (More information about the Hatch Act (5 U.S.C. §§ 7321-7326) is available at: www.osc.gov/hatchact.htm).

Federal employees are generally prohibited from being candidates in local partisan elections. An election is considered "partisan" if candidates are elected as representing political parties. State employees generally can run for and hold local elected office as long as there is no conflict with their regular state employment. The Minnesota Department of Employee Relations will determine whether a conflict exists.

R. Elements of incompatible offices

Positions are generally incompatible when one or more of the following conditions exist: