**CITY OF BIRCHWOOD VILLAGE**

**REGULAR CITY COUNCIL MEETING**

**July 10, 2012**

**MINUTES**

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

**STAFF PRESENT: City Engineer Kristie Elfering, City Clerk Dale Powers, City Treasurer Cindie Reiter, and City Attorney Kevin Sandstrom**

**OTHERS PRESENT: Suzanne Donnell, Greg Donovan, Mike Evangelist, Richard Galena, Don Hankins, Dyan Hanson, Lynn Hanson, Jim Greeley, Randy LaFoy, John Lund, and Mary Wingfield**

**Mitchell** called the regular meeting to order @ 7:01pm, and the Pledge of Allegiance was recited.

**AGENDA APPROVAL: *Harper/Sampair unanimous to approve the agenda for the July 10, 2012 Regular Meeting, as amended to table Item #10 (RESOLUTION 2012-25 Adopting Ordinance 2012-11 Establishing City Code 619 [Penalties and Enforcement] in its entirety until the September 11, 2012 meeting; to discuss Item # 9 (RESOLUTION 2012-24 Adopting Ordinance 2012-10 Establishing City Code 618 [Complaints] but table action until the September 11, 2012 meeting.***

**COMMUNITY EVENTS AND ANNOUNCEMENTS: Mitchell** noted that the “Swim Across The Lake” will be on Saturday, July 21st at 7:00am at Birch Beach; Music In the Park continues with Men In Black on July 15th, Blue Wolf Bluegrass Band on July 22nd, and the Dixie Hicks on July 29th; Tuesday, August 7th  is “National Night Out”; and Tuesday, August 14th is Primary Election Day.

**OPEN PUBLIC FORUM:**  The following residents addressed the Council at this time:

**Donovan** and **LaFoy,** Birchwood’s representatives on the Ramsey Washington Suburban Cable Commission, reported that the Commission made some updates to its telecasting equipment, spending about $600,000. **Donovan** noted also that a needs assessment for each community will be undertaken in the near future, which will identify each community’s telecasting and communications needs.

**Donnell**, one of Birchwood’s representatives on the White Bear Lake Conservation District (WBLCD), reported that the District had contracted with the United States Geological Survey (USGS) for a lake level study, and that Perry Jones is ready to prepare a final report and has requested an additional $11,500.00 from WBLCD to cover the costs of report preparation.

**Donnell** also noted that there appears to be a discrepancy on the length of her term on the WBLCD Board, stating that she was notified by WBLCD that her term was for 3 years ending in June 2015 and that the City Council said her term ended in 2014.

***Harper/Peterson unanimous to appoint Suzanne Donnell to a 3-year term on the White Bear Lake Conservation District Board, expiring July 2015.***

**Harper** noted that WBLCD will be doing an expanded milfoil treatment this year, and also approved the 2013 budget with a 23% increase in member dues which will be going to milfoil treatment. **Harper** commented on the lake level study, stating that the Met Council and the Minnesota Department of Health have yet to contribute to the study – Perry Jones will be contacting each agency to request funding.

 **Wingfield** addressed the Council on her concerns about dog licenses.

**CONSENT CALENDAR: *Sampair/Peterson unanimous to approve the following consent calendar items:***

1. ***Approval of the Minutes of the June 12, 2012 Regular Meeting***
2. ***Acceptance of the Financial Report and Disbursements Register as prepared by the City Treasurer and presented to the City Council on July 10, 2012 in the amount of $34,199.72, including Check #’s 27222-27335 and Electronic Funds Transfers PERA061512, FED062012, MN062012, and PERA63012.***
3. ***Re-Appointment of Debbie Harrod to the Parks & Natural Resource Committee for a 3-year term ending July 2015, and Appointment of James Ecker to the Parks & Natural Resource Committee for a 3-year term ending July 2015.***

**COUNCIL VACANCY> APPOINTMENT VS. SPECIAL ELECTION> DISCUSSION AND SELECTION OF OPTION TO FILL VACANCY: Mitchell** noted that last month Peterson said he accepted a position with Northland College in Ashland, Wisconsin. **Mitchell** said that Peterson will be resigning from the Council effective July 15, 2012, and stated that the Council needs to address filling the vacancy. **Harper** asked that the City Attorney advise the Council on options for filling the seat. **Sandstrom** responded that the Council will need to hold a special election to fill the remaining time of Peterson’s term, the special election can be held on November 6 with the general election, and also that the Council will need to appoint an individual to fill the position until the November 6th general election. **Sandstrom** concluded his remarks by saying that the winner of the special election will be seated immediately, and serve the remaining 26 months of the term. **Harper** asked if a candidate needs to declare for the special election seat, or could the City have the top 2 candidates win the 4-eyar term and the 3rd place candidate gets the 2-year term; **Sandstrom** responded that candidates need to file specifically for the 2-year seat.

***Sampair/Harper unanimous to adopt Resolution 2012-23 Accepting the Resignation of Council Member Mark Peterson, Declaring a Council Vacancy, and Adoption of Procedures for Filling the Council Vacancy, amended as follows: (a) delete the second “held” in the second “be it further resolved” clause, to be replaced by the word “conducted”; (b) replace the phrase “letter of application” with “statements of interest” in the fourth “be it further resolved” clause; (c) delete the phrase “for appointment to the City Council until such time that a successor is qualified by the aforementioned special election” in the fourth “be it further resolved” clause, to be replaced with “no later than August 14”; and (d) change the month of adoption from June to July.***

**Mitchell** gave Peterson a certificate of appreciation for his service to the City, and **Peterson** gave some concluding remarks of thanks to the City and residents for the opportunity to serve as a City Council member.

**ROADS AND STREETS COMMITTEE> APPOINTMENT OF MEMBERS: Mitchell** noted that the Council created a Roads and Streets Committee and solicited letters of interest, and stated that the letters the City has received are all from Hall/Cedar residents. **Mitchell** envisioned that the Committee would be more representative of the community as a whole. **Peterson** concurred, stating that any recommendations of a committee with all Hall/Cedar members may possibly be viewed with suspicion and believe a 3-4 balance is ideal. **Mitchell** asked Elfering when the pavement condition report would be complete; some folks might look at the report, see the condition of their street and be interested in being on the Committee. **Harper** thought that sending out a CodeRED notification to the community would be appropriate. **Sampair** noted the recommendation made last meeting to use the MN/DOT maintenance schedule as an interim measure until such time that the Committee could make recommendations to the Council; **Elfering** responded that the roads are in much better condition than they should be based on the MN/DOT maintenance schedule and require less maintenance. The consensus of the Council is to hold off appointing members to the Committee pending receipt of additional applications; and to send out a CodeRED notification to the public soliciting volunteers to serve on the Roads and Streets Committee once the pavement condition report is received and posted on the City’s web site.

**VARIANCE FOR THE PROPOSED WARMING HOUSE AT TIGHE-SCHMITZ PARK> REVIEW OF PLANNING COMMISSION REPORT: Hankins,** representing the Planning Commission, reported its findings on the variance request to the Council, and recommends no more than a 20-foot encroachment into the front yard area adjacent to the right-of-way of Lake Avenue.  **Mitchell** noted than an issue with this is that the grant application has been rejected and there is no assurance that the proposed structure that was the subject of the grant application will be built, and also that the Council needs to give the Parks Committee direction on how to proceed going forward. **Mitchell** asked the City Attorney if the City could even grant the variance if the building isn’t going to be built; **Sandstrom** responded in the affirmative.

***Harper/Sampair unanimous to grant the City an indefinite extension for review of the variance request until such time that the Parks Committee reports back to the Council its response to the rejection of the grant application and what their proposed actions are going forward.***

**DISCUSSION OF DOCK ISSUES WITH THE BIRCHWOOD DOCK ASSOCIATION: L. Hanson** and **Evangelist**, representing the Birchwood Dock Association, responded to concerns regarding unused lifts and the length of the docks. **L. Hanson** noted that the dock application called for a total dock length at Dellwood Beach of 136 feet and 130 feet from the water’s edge. **L. Hanson** further stated that he is perplexed that the process in the ordinance for resolving complaints hasn’t been followed, and said he has communicated with the Council liaison on complaints. **L. Hanson** also stated that if the process would have been followed, perhaps these grievances wouldn’t need to be aired at a public forum.

**Sampair** noted that he is responding to reports by residents that the dock at Dellwood Beach is longer than allowed by the permit, and noted that John Lund measured the dock at 136 feet. **Peterson** said that L. Hanson has a legitimate point in making sure the complaint process detailed in the ordinance is used.

**Galena** addressed the Council to discuss the length of the dock at Birch Beach, and noted that he assumed that the Dock Association would adhere to the allowed dock length and never gave it much thought until this matter was mentioned at a previous meeting. **Galena** further stated that he measured the Birch Beach dock this morning and it measured 128 feet instead of the 116 feet approved by the City. **Galena** said that since 2005, the Birch Beach dock consisted of seven 16 ½-foot sections, but now it consists of eight 16 ½-foot sections, which accounts for the extra length; consequently, with the lake rising only 1 inch, it is not the rising water levels that are creating the problem. **Galena** noted that the application submitted to the Council for review called for a 116-foot dock at Birch Beach, and when it was submitted to the [White Bear Lake] Conservation District for review the dock length was 160 feet, not 116 feet; **Galena** said he was at the Conservation District meeting and spoke to correct the dock length. **Harper** asked if the length of the Birch Beach dock was measured from the water’s edge; **Galena** confirmed that the measurement is from the water’s edge.

**L. Hanson** responded to Galena’s concerns by stating that the additional section is used as a ramp to get to the dock from the shore, and noted that he was under the impression that the lake level has risen 5 inches, not 1 inch as mentioned by Galena. **Mitchell** asked when the Dock Association made the measurement; **L. Hanson** said in April when the dock was installed.

**Sampair** thanked the Dock Association for addressing some of these problems, and noted that situations like this - slowly increasing the length of the docks – create a level of suspicion with the neighbors. **Sampair** said that there is a boat lift in a state of disrepair that is taking space that could be used by someone else. **Evangelist** said that was his lift and it is not in disrepair but is for sale and will remove it.

**Sampair** also noted that there was an issue with early use of the docks that has been addressed by the Dock Association.

**REVISION OF CITY CODE SECTION 617.360 (PUBLIC LAKE TRACTS - NEIGHBORHOOD MEETING)> CLARIFYING THE REQUIREMENT OF A SEPARATE NEIGHBORHOOD MEETING>REVIEW OF DRAFT AND CONSIDERATION OF SCHEDULING A PUBLIC HEARING: Sampair** noted that in previous meetings, it became clear that there is a need to clarify that the neighborhood meeting is to be distinct and separate from the Dock Association meeting to go over the proposed dock length and number of boat slips for the upcoming year. **Sampair** further noted that he talked with former Council Member Nino Nardecchia about this matter, who said that the intent of the ordinance was to have a separate and distinct meeting of the neighbors. **Sampair** continued by saying that the first year under the revised ordinance there was a separate meeting that went well, but this past time without the separate meeting it was reported to him (Sampair) that there was a level of confusion since there was not a separate meeting. **Sampair** said the proposed amendment clarifies that there is a separate meeting prior to the dock application review meeting is required; however, **Sampair** noted that this separate meeting can be held the same day and at the same location as the dock permit review meeting.

**Mitchell** noted that the exhibit in the packet is confusing in that what is labeled as “existing language” is not the existing language, then it says “redline changes” and on the back it says “new language” and all of those are different. **Mitchell** asked Sampair for clarification on which is the existing language and which is the proposed language. **Sampair** said that his changes are on the “existing language” part of the exhibit and are what is proposed to be changed.

**Mitchell** asked L. Hanson what he thinks of the changes; **L. Hanson** noted that Section 617.320 requires that the Dock Association shall provide written notice of its meetings to neighboring lakeshore property owners within 200 feet of a lake tract’s side boundaries, and also notify these property owners of the spring and fall meetings. **Sampair** responded by saying that the Dock Association conducted the neighbor meetings differently this past year than the year before; that is motivating the clarifying language in 617.360. **Evangelist** said the Dock Association is in agreement with the proposed amendment and acknowledged that there may have been a level of confusion over whether they were supposed to attend that meeting. **Mitchell** asked Sampair for clarification on the fact that the neighbors want to have an opportunity to review the dock placement and boat slip proposal before submitting an application to the Council, realizing that by that time the proposal has already been determined; **Sampair** agreed.

**Greeley** stated that he believes the neighbors will feel more comfortable discussing the proposal only with the officers of the Dock Association, and would feel less comfortable discussing their concerns with the entire Dock Association membership in attendance. **Greeley** said a 15 minutes meeting between the neighbors and the Dock Association officers to go over the plan would suffice. **Mitchell** said the Dock Association by-laws call for notice to the membership. **Sampair** said the neighbors don’t have to agree with the proposal, but the officers can report back to the general membership the concerns of the neighbors. **Galena** noted that Sampair had it exactly right in that the intent is to have a meeting between the neighbors and a representative of the Dock Association, to see if the neighbors and the Dock Association can agree to a plan in advance of presentation of the plan to the Council. **Galena** said it was never intended for the neighbor meeting to be a part of the Dock Association meeting.

**Harper** stated that she would like the “side neighbor” part removed to allow for all neighbors within 200 feet to be notified of the neighbor meeting. **Powers** mentioned that the word “lakeshore” should be removed if the intent is to include non-lakeshore property owners to be included in the notification requirement.

***Sampair/Mitchell 4-1 (Carson opposed) to schedule a public hearing for August 7, 2012 on the proposed amendment to 617.360, using the language titled “Redline Changes” amended to delete the words “lakeshore” and “side” from the second sentence of Section 1.***

**DISCUSSION ON THE PROPOSED COMPLAINTS ORDINANCE SECTION 618: Mitchell** commented that the original 618 was for a process to handle complaints; now, it has been expanded to allow for the imposition of administrative fines. **Mitchell** would like the concepts separate. **Mitchell** noted that the imposition of administrative fines carries with it additional due process protections, among other things, and the City Attorney should be consulted on the legality of administrative fines. **Mitchell** also stated that the Council should think about whether it wants the City Clerk to impose administrative fines. **Sampair** said the intent is not for staff to impose fines. **Mitchell** responded that the courts look at the plain language of the ordinance, not legislative history or intent; **Sampair** disagreed and said that courts look for the intent as well, and that was a factor in how the ordinance was written. **Harper** wanted clarification on which version is being reviewed. **Sampair** said he will clarify with the City Clerk on that matter.  **Mitchell** asks that administrative fines be separate from the rest of the ordinance.

**PERSONNEL POLICIES> REVIEW OF DRAFT POLICIES AND CONSIDERATION OF ADOPTION: Mitchell** said the Personnel Committee (himself and Sampair) have been working with Jennifer Nodes, an attorney with Eckberg Lammers, and the City Clerk to develop a draft set of personnel-related policies for the Council’s review and consideration. **Mitchell** noted that Nodes gave the Committee some drafts to work off of, and the Committee looked at the policies of other cities so it could adapt these drafts to the situation at Birchwood with 2 part-time employees. **Mitchell** stated that there are 5 policies – grievance, disciplinary policy, internet access and e-mail policy, compensation of City employees, and personal motor vehicle use policy.

**Harper** commented that on the grievance procedure, there is a reference in Step 2 to the employee filing a grievance with the City Clerk, and asked what would happen if the City Clerk is the one filing a grievance – do they write themselves a notice? **Harper** added that if it involves the Clerk, the grievance should go to the Chair of the Personnel Committee. **Powers** added that if the grievance is against the City Clerk, it could chill the employee from filing a grievance. The consensus of the Council is to change the language in Step 2 so that the grievance is filed with the Personnel Committee and not the Clerk.

**Harper** next thought that, under the actions that are not grievable, it should also list the numbers of hours worked and other conditions of employment. **Sampair** suggests adding “conditions of employment” to the non-grievable actions. **Harper** next asked about the retaliation language, stating that this is a grievance procedure involving employees, not anyone outside the organization. **Sandstrom** noted that the language is intended for employees only. **Mitchell** recommends changing the word “individual” to “employee” in this section. **a**

 **Harper** next asked about the phrase “report of alleged violations” in the context of retaliation; **Mitchell** suggested deleting that clause and substituting the word “grievance”.

**Harper** next discussed her concerns with the draft disciplinary policy, and noted that under the second paragraph in “Policy Provisions” it mentions “counseling”, which to her sounds like the City will be sending the employee to a counselor. **Harper** thinks that a better phrase would be “verbal warning”; **Sandstrom** agrees with Harper and recommends “verbal coaching” might be a better phrase. **Sampair** said that the 1st bullet point under Level 1 actions should be amended to change “counseling” to “verbal coaching”. **Harper** also recommends language be added to the policy that any disciplinary action will be placed in the employee’s file; **Mitchell** recommends adding that language to the first paragraph of “Policy Provisions”.

**Harper** then turned to the Policy on Compensation of City Employees, stating that the Council has discussed offering health insurance to employees at some time in the future, so that the 2nd sentence of the 1st paragraph – “The wage or salary so established shall be the total remuneration for the work performed” – should be amended to reflect that. **Sandstrom** recommends deleting that sentence.

As it relates to the Motor Vehicle Use Policy, **Harper** mentioned that the City has seasonal workers that may need to use their personal vehicles for City business. **Sandstrom** noted that this clause is a limiting clause in that seasonal workers will need prior approval from the City Clerk in order to use their personal vehicles for City business. **Harper** also suggested that the phrase “for certain one-time tasks” be eliminated as unnecessary, and also to add “or City Treasurer” at the end of that sentence to allow the City Treasurer to authorize the motor vehicle use in the absence of the City Clerk.

***Mitchell/Sampair unanimous to approve the following personnel policies: Grievance Procedure , Disciplinary Policy, Internet Access and E-Mail Policy, Policy on Compensation of City Employees, and Personal Motor Vehicle Use Policy, amended as follows:***

1. ***GRIEVANCE PROCEDURE: Step 2, replace “City Clerk” with “Personnel Committee”; add “Conditions of Employment” to the list of non-grievable actions; replace “individual” with “employee” in the paragraph starting “The City may discipline….”; delete the phrase “report of alleged violations”, to be replaced with “grievance”.***
2. ***DISCIPLINARY POLICY: The following sentence to be added to the 1st paragraph of “Policy Provisions”>”Any disciplinary action taken shall be documented and placed in the employee’s personnel file.”; “Policy Provisions”>2nd paragraph, 1st sentence AND 1st bullet point under Level 1 Actions: replace “counseling” with “verbal coaching”.***
3. ***POLICY ON COMPENSATION OF CITY EMPLOYEES: Remove 2nd sentence of the 1st paragraph.***
4. ***PERSONAL MOTOR VEHICLE USE POLICY: Replace the phrase “for certain one time tasks” with “or City Treasurer”.***

**MANHOLE RING REPLACEMENT PROJECT: Elfering** updated the Council on the replacement of the remaining 69 manhole rings in the City, and noted that there are issues with 3 of the manholes and a segment of the sanitary sewer main. The bottom 10 feet of Manhole # 41 has roots penetrating through the concrete; roots are also present in Manhole #’s 92 and 93. **Elfering** also mentioned that about 8 to 10 gallons per minute of clear water was running through Manhole # 92; she noted that this is not typical and could be an indication of an issue with the main or a sanitary sewer service. **Elfering** stated that the contractor hired by the City for the replacement of the manhole rings is not capable of performing this work, and obtained a quote from Infratech of $7,280.00 for completion of the work, to include cleaning the manholes, applying acid resistant mortar, and televising the sanitary sewer segment in question. The Council directed Elfering to obtain additional quotes for service and report back at the August 7th meeting.

**DOG LICENSE ISSUE: Powers** went over with the Council his memo which details an issue with the requirement of presenting a certificate of vaccination that extends beyond the term of the dog license. **Powers** noted that with this past round of dog license renewals, the vast majority of certificates expired before the end of the 2-year license term; rather than turn those residents away, **Powers** said he developed a spreadsheet that indicated when the vaccination expires and sends out reminder letters to those dog owners whose dog’s vaccination is about to expire. **Powers** noted that an issue still remains about how to address those dog owners who refuse to renew their vaccinations. **Mitchell** responded that the ordinance language does present an issue, and said that he will work with Powers to come up with an ordinance amendment. **Harper** noted that when the ordinance is reviewed, the fees should also be reviewed.

**SNOW PLOWING CONTRACT: Powers** noted that the contract for snow and ice removal with KEJ Enterprises has expired and some thought should be given to putting out a Request For Proposals (RFP) for providing this service. The Council authorized the City Clerk to draft and publish an RFP for this service for Council review of the bids at the August 7th meeting.

**SET DATE FOR THE AUGUST BUDGET WORKSHOP: Mitchell** said he is looking at August 23rd for the budget workshop meeting. **Harper** advised the Council not to put it off too far, as the City needs to certify a preliminary levy by September 15. **Mitchell** also noted that the new Council member would be appointed that day; **Powers** noted that the appointment of Mark’s replacement should take place at a special meeting before the budget workshop.

***Mitchell/Harper unanimous to schedule a special meeting for August 23rd, 2012 at 7:00pm, to be followed by the budget workshop.***

**COUNCIL REPORTS: Mitchell** noted that with the earlier discussion about the warming house variance, the City has $2,500.00 money budgeted for surveying and asked whether we should be doing something in that area. **Harper** said that was the intention when that amount was budgeted. **Elfering** stated that the corners are located so it should be easier to survey. The Council directed Elfering to submit a cost estimate at the August 7th meeting.

**Harper** mentioned that updated budget trend data will be submitted to the Council for review before the August 23rd budget meeting.

**NEXT MEETING – AUGUST 7, 2012> TOPICS: Mitchell** noted the following topics are scheduled for the August 7th meeting: survey quotes; draft dog ordinance; employee review for the City Clerk; consider appointing members to the Roads and Streets Committee; review of snow plowing bids; and review of quotes for manhole work.

**ADJOURN:**  ***Harper/Peterson unanimous to adjourn the meeting @ 10:25pm.***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dale Powers

City Clerk