

**CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
BIRCHWOOD, MINNESOTA**

**MINUTES OF THE CITY COUNCIL MEETING
JULY 12, 2022, 7:00 P.M.**

MEMBERS:

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

STAFF:

Becky Kellen	City Administrator
H. Alan Kantrud	City Attorney

GUESTS:

Ryan Hankins Vice Chairman, Planning Commission

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

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

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

Mayor Wingfield requested the addition of the following items to the agenda:

- Recap of Closed Meeting held on June 28, 2022
- The inclusion of Announcement (A) in the consent agenda
- Public Data Practices Policy

Councilmember McCarthy requested the addition of the following item to the agenda:

- Road Signage for Pedestrians and Cyclists

4. OPEN PUBLIC FORUM

James Nelson, 256 Wildwood Avenue, expressed concern regarding what he viewed as the Council's hypocrisy as it relates to the city's sign limitations and what he felt was the Council targeting him for his political beliefs.

5. ANNOUNCEMENTS

- A. Change in the August 2022, and November 2022, City Council Meetings:** The Council meetings in August 2022, and November 2022, are scheduled for the third Tuesday of each respective month to accommodate polling at the Birchwood Village City Hall.
- B. Resignation:** Robert Leeves is resigning as the city's videographer effective July 31, 2022. Mayor Wingfield expressed her gratitude to Robert Leeves for his service.
- C. Sheriff's Report:** A report of law enforcement incidents and citations for June 2022, was not available for the Council's review.

6. CITY BUSINESS – CONSENT AGENDA

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster, it was resolved to approve the consent agenda except for items B and C. All in favor; motion carried.

- A. Approval of the Treasurer's Report:** The Treasurer's report for the period ending July 7, 2022, was provided for the Council's review and approval.
- B. Approval of the April Council Meeting Minutes:** The approval of the meeting minutes of the April 12, 2022, Council meeting was deferred pending revisions to be made.
- C. Approval of the May Council Meeting Minutes:** The approval of the meeting minutes of the May 10, 2022, Council meeting was deferred pending revisions to be made.
- D. Approval of the June Special Meeting Minutes:** The minutes of the special Council meeting held on June 13, 2022, were provided for the Council's review and approval.
- E. Approval of the June Special Closed Meeting Minutes:** The minutes of the special closed Council meeting held on June 28, 2022, were provided for the Council's review and approval.
- F. Recap of Closed Meeting:** The Council met with its attorney as assigned by the League of Minnesota Cities to confer in a closed session due to attorney-client privilege in the case of Nicklaus v. City of Birchwood. All matters were discussed in private and there is nothing further to report as it is ongoing litigation.
- G. Resolution 2022-11 Birchwood Village EJ Resolution:** A resolution appointing election judges for the primary election held on August 9, 2022, was provided for the Council's review and approval.
- H. Change in the August 2022, and November 2022, City Council Meetings:** The Council meetings in August 2022, and November 2022, are scheduled for the third Tuesday of each respective month to accommodate polling at the Birchwood Village City Hall.

7. CITY BUSINESS – REGULAR AGENDA

A. First Reading Ordinance 2022-07-01, Amending Section 617

a. **Council Deliberation:** The Council noted that the city has a separate provision stating that residents are permitted to have lifts as authorized by the Council.

b. **Order Second Reading and Public Hearing:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to order a second reading and public hearing of Ordinance 2022-07-01, Amending Section 617, subject to the removal of “after May 15” from subsection 6. All in favor; motion carried.

B. Ryan Hankins

a. **Fee Schedule Changes:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the first reading of the fee schedule changes and to order a second reading and public hearing subject to the amendments requested. All in favor; motion carried.

ACTION – Becky Kellen will post the second reading of the fee schedule changes and the final approval of the fee schedule on the City of Birchwood Village website.

Ryan Hankins reported that 75% of the valuation building permit fees are allocated to the building inspector and only 25% of the fees are retained by the city. This does not warrant an increase in the valuation of building permit fees that are passed on to residents. The fee has been reverted to the previous valuation building permit fee on the fee schedule.

The Council noted that the small craft fees should remain at \$30 as it serves the intention of covering the city’s costs.

The Council referred to the list of proposed code changes for Section 607.400 Camping and requested keeping subsection 607.410 but to omit “except by permit and then only in areas specifically designated for such use”.

The Council recommended that “boat hoist” be defined in Section 617.380 to be inclusive of boat lifts.

b. **Monthly On-Call Fee for John Manship:**

On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to approve an increase in John Manship’s monthly on-call fee to \$700 retroactive to July 1, 2022. All in favor; motion carried.

The current monthly on-call fee for John Manship, the City Water Superintendent, is \$600 as set in 2019. John Manship is requesting an increase to \$700 monthly to account for inflation.

C. Birch Beach Dock and Amended BDA (Birchwood Dock Association) Application Discussion

On a motion made by Councilmember Foster, seconded by Councilmember McCarthy, it was resolved to retroactively approve the dock location at Birch Beach. All in favor; motion carried.

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to authorize a Task Force to investigate how the community prefers to proceed with the management of the docks by the Birchwood Dock Association (BDA), with a particular focus on the Birch Beach dock, to investigate the cost of boat slips, and to provide a recommendation to the Council before the Council meeting held in October 2022. Councilmember Fleck, Councilmember Foster, and Councilmember McCarthy opposed. Motion not carried.

Nick Nephew, 20 Birchwood Avenue, confirmed that the Birch Beach dock was relocated 10 feet to the west and shortened by 6 feet to accommodate eight boats. Eight-foot sections were removed from the Elm Beach dock and the ramp was repositioned. The dock is now 53 feet over water in compliance with the city code. The BDA has not conducted a survey to confirm the location of the ordinary high-water mark.

Lynn Hanson, 700 Hall Avenue, noted that, historically, the water's edge would establish the length of a dock. The ordinary high-water mark is generally reserved for the commercial bay and not the BDA. He referred to the BDA applications noting the White Bear Lake Conservation District advised it was only concerned with how far the docks extend into the water and not into the shore.

Lynn Hanson, 700 Hall Avenue, expressed concern regarding Mayor Wingfield's rendition of the conversation shared regarding the Birch Beach dock not being in compliance.

Dick Galena, 217 Wildwood Avenue, noted that he would support the BDA amending the length of the Birch Beach dock from 116 feet, which was previously approved, to 128 feet for 2022; however, this would have to be reviewed again for 2023.

Dick Galena, 217 Wildwood Avenue, noted that the format of the dock application is not consistent with changes from the White Bear Lake Conservation District, which contributes to confusion regarding the ordinary high-water mark. The Conservation District recently established that the starting point to measure the length of a dock would be the ordinary high-water mark as a constant elevation.

H. Alan Kantrud confirmed that the ordinary high-water mark is set by the Department of Natural Resources (DNR) as a measure to determine where its jurisdiction ends and/or begins.

Mayor Wingfield expressed concern regarding the administrative process around the Birch Beach dock and the bypassing of the city code regarding notice to residents and an opportunity for residents to speak at Council meetings.

Mayor Wingfield recommended reverting the Birch Beach dock to a public entity with a committee. A task force would investigate the concerns regarding compliance, in addition to the cost of a boat slip, and whether the city could recover some of its budget from dock fees. The boat at Birch Beach dock also currently extends beyond the placement of the

dock. A task force could address these reported issues that the Council should not be monitoring.

D. SWPPP Amendments/MS4 Permitting Requirements

ACTION – H. Alan Kantrud will incorporate the minimum that the Minnesota Pollution Control Agency (MPCA) is requesting with respect to erosion settlement and waste control into the SWPPP (Storm Water Pollution Prevention Program) as directed by the Council and will include an additional section regarding best management practices for review at the next Council meeting.

H. Alan Kantrud reported that the MPCA is requesting that cities with an MS4 manage and monitor any activities related to stormwater. The MPCA has updated its minimum control measures and is requesting that cities, as the permit holder, update their city code to reflect the new standards.

The city has three options that include incorporating all the MPCA general construction guidance and regulations, incorporating parts of their permitting that relate to erosion settlement and waste control, or the MPCA will provide a model mechanism to cover all requirements.

E. Feistner Beach Updated Lease

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to issue a \$1,000 refund to the Wormwood family valid for 15 days, and to revert the Curt Feistner Memorial Preserve to its original condition as it was January 1, 2022. All in favor; motion not carried.

John Redpath, 63 Pine Street, spoke on behalf of the Wormwood family as approved by Torie Redpath. He noted that the Curt Feistner Memorial Preserve is an additional asset owned by the city that should be maximized for utilization. He expressed concern regarding the lease suggesting the provision of a boat slip or dock; however, neither were provided, which prompted a request by the Wormwood family for a boat lift for safety concerns.

John Redpath, 63 Pine Street, suggested no modifications to the lease and to instead focus on open discourse with an agreement on a purpose for the lake tract. He stated that the Wormwood family will proceed with installing a dock at Curt Feistner Memorial Preserve should the city fail to provide a boat slip or dock as indicated on the lease agreement.

H. Alan Kantrud reported that a communication was sent to the lessees from the city attorney's office regarding the modification of the agreement to allow for a boat lift; however, the canopy must be removed immediately, or it will result in a termination of the agreement. He confirmed that the tree removal constitutes destruction of city property, in addition to the storage of personal effects, which was not authorized, and warrants a breach of the agreement and a terminable part of the lease.

Mayor Wingfield reiterated that the lease agreement does not include any obligation by the city to provide a boat slip or dock. She advised the Wormwood family that the installation of a dock at Curt Feistner Memorial Preserve in a public right of way is not authorized under any circumstances irrespective of the lease.

F. Mayor Wingfield Updates

a. Appoint Diseased Tree Task Force:

On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to appoint Gretchen Johnson, John Lund, Ross Jenkins, Mary Simmons, and Tom Patsy to serve on the tree task force with a specific charge to review the city's current ordinance and update it as relevant to the emerald ash borer and management of trees in the community. All in favor; motion carried.

Five residents expressed their interest in joining the tree task force. Mayor Wingfield reiterated that the purpose of the task force is to address the city code as it is written and to help the city going forward in identifying and managing diseased trees.

b. Temp Contract Law Enforcement Officer:

On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to approve the Washington County sheriff's office to provide additional patrol at a cost of \$70 to \$92 per hour, not to exceed \$500 per week, up to a total of \$2,500 for a five-week period, pending further review at the next Council meeting. All in favor; motion carried.

ACTION – Mayor Wingfield will advise Washington County that the expense incurred by Birchwood Village for the additional patrol is a result of the road detour created by Washington County and request their cooperation in cost-sharing.

ACTION– Mayor Wingfield will request that the Washington County sheriff's office provide weekly reports to monitor the effectiveness of the additional patrol.

Mayor Wingfield spoke to the Washington County sheriff's office and confirmed that the extra patrol would include a law enforcement officer and a vehicle to provide specific services for the management of the city's road at a length of three hours at a time. The city would receive 20% of any traffic violation fines issued. The Council noted that the number of vehicles bypassing the sign and barricade poses a public safety issue that the city is obligated to address.

c. Emerald Ash Borer Tree Study: Mayor Wingfield reported that a tree study conducted by the Boy Scout Eagle Project 12 years ago was received by the city. If the study does not qualify for the emerald ash borer grant, additional monies may need to be authorized to conduct a new tree study.

d. Crosswalk Painting Bids:

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to engage the Public Works Department to paint the four crosswalks at Oakridge, Cedar, Whitepine, and Jay at a cost not to exceed \$2,000. All in favor; motion carried.

Mayor Wingfield reported that the safety company provided a cost-prohibitive quote to paint the crosswalks.

e. Public Data Practices Policy:

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to adopt the data practices policy as previously reviewed by the Council, to go on file and be administered as such. All in favor; motion carried.

G. Councilmember McCarthy Updates:

a. Birch Beach:

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to purchase additional sand for Birch Beach pending details regarding the volume and cost. All in favor; motion carried.

ACTION – Mayor Wingfield will confirm with the League of Minnesota Cities whether the city is covered by its insurance for the installation of a water slide at Birch Beach.

ACTION – Councilmember McCarthy will investigate the necessary volume and associated cost for washed sand at Birch Beach.

The Council agreed that the addition of sand would make Birch Beach more appealing and accessible to swimmers. The Council expressed concern regarding the liability of a slide in the lake given no lifeguard on duty. The Council discussed the addition of a swim raft instead of a water slide.

H. Alan Kantrud reported that the League of Minnesota Cities would likely treat the water slide as a piece of playground equipment that would not be problematic if used as intended and with supervision. He suggested a sign indicating no children under a set age unless supervised but agreed to confer with the League of Minnesota Cities.

Dick Galena, 217 Wildwood Avenue, agreed with the addition of sand but expressed concern regarding the water slide as a liability concern and it detracts from the appeal of Birch Beach. He does not support a swim raft as it would interfere with boats and could potentially attract seagulls.

Further discussion regarding the addition of sand at Kay Beach was deferred pending additional information to be obtained by Councilmember McCarthy regarding the volume and cost of the sand.

b. Road Signage for Pedestrians and Cyclists: ACTION – Becky Kellen will arrange for the city’s workers to spray paint the designated pedestrian and cyclist lane to indicate it is intended for pedestrian and cyclist use.

Councilmember McCarthy reported pedestrians and cyclists are not aware there is a designated lane for pedestrian and cyclist use as they were previously using the traffic lane.

H. City Administrator Updates:

- a. **Ordinance 2022-04-22 Pending DNR Approval to Move Forward with Public Hearing:** *ACTION – H. Alan Kantrud will confirm whether the DNR has a statutory timeline to complete their review.*

Becky Kellen reported that a response from the DNR is still pending.

- b. **Proposal for Mary Cahill, Assistant Treasurer:**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster, it was resolved to approve a 6% salary increase retroactive to one-year from Mary Cahill's start date of July 1, 2021. All in favor; motion carried.

8. ADJOURNMENT

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster and carried unanimously, it was agreed that there was no further business for the Council to transact; the meeting was closed at 9:25 p.m. by Mayor Wingfield.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting of the members of the Birchwood Village City Council. This document shall not be considered to be a verbatim copy of every word spoken at the meeting.



Mayor Mary Wingfield

9/13/2022

Date



City Administrator Becky Kellen

9/13/2022

Date