

**CITY OF BIRCHWOOD VILLAGE
REGULAR CITY COUNCIL MEETING
June 14, 2011**

MINUTES

MEMBERS PRESENT: Mayor Alan Mitchell; Council Members Barb Carson, Jane Harper, Mark Peterson, and Tony Sampair (@ 7:03pm)

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

OTHERS PRESENT: Jim Greeley, Mary Hauser, Bea Krinke, Doug Krinke, Roger Kropelnicki, Randy LaFoy, Bryan McGinniss, Peggy Moeller, Todd Smith, and Mary Wingfield.

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

AGENDA APPROVAL: *Harper/Peterson 4-0 (Sampair absent) to approve the agenda for the June 14, 2011 Regular Meeting.*

CONSENT CALENDAR: *Carson/Harper 4-0 (Sampair absent) to approve the following consent calendar items:*

- 1. Approval of the Minutes of the May 10, 2011 Regular Meeting*
- 2. Approval of the Disbursements Register as prepared by the City Treasurer and presented to the City Council on June 14, 2011, including Check #'s 26604-26615, 26618-26655, 26659, 26661-26663, and Electronic Funds Transfers PERA043011, EFT052411, MN052011, PERA053011, and FED32011*
- 3. Approval of maintaining the statutory tort limits on the City liability insurance coverage.*

Sampair arrived @ 7:03 pm.

COMMUNITY EVENTS AND ANNOUNCEMENTS: Mitchell noted the following announcements and community events:

- Washington County has been selected as a survey location for the National Health and Nutrition Examination Survey. Mitchell described the survey and stated that more information is available at City Hall.
- Music in the Park started off well on June 5, with anywhere from 60-100 people attending. The series continues this coming Sunday June 19 with Joe and Roxy Cruz and Sunday June 26 with Men in Black.
- Manitou Days Parade is this coming Friday, June 17.
- Gay Pride Parade is Sunday June 26 in Minneapolis.
- 4th of July Parade in Birchwood is coming up; contact Mary Wingfield for more information.
- Father's Day is June 19th – spend it at Music in the Park.
- Swim Across The Lake is in July, at a date to be determined.

- Keep your car doors locked – there has been some vandalism in the community.
- Still looking for 2 representatives to serve on the White Bear Lake Conservation District Board.
- July 1, state government may shut down, but City offices will be open.

OPEN PUBLIC FORUM: **Hauser**, of 616 Hall Avenue, addressed the Council on the need to mow the rights-of-way along the roadways. Hall Avenue and Birchwood Avenue especially need mowing, and Hauser mentioned that it is a safety issue should someone walking along those heavily-travelled streets need to get out of the way of traffic.

Mitchell inquired as to whether Ken Johnson could perform that service. **Powers** responded that he could, but it is not in his contract. **Carson** noted that it was in the contract in the past, to mow these rights-of-way once a year in July. **Carson** prepared a detailed list of tasks to be performed and a schedule on when this work would be done, and will forward this on to the Parks Commission. **Hauser** responded that it is a roads issue, not a parks issue. **Harper** recommends that this matter be discussed later in the agenda when KEJ's contract is discussed.

REVIEW OF THE CONTRACT WITH SMITH APPRAISAL: City Attorney **Sandstrom** reviewed with the Council a memorandum he prepared on the issue, and reviewed the history of the City's contracting with Smith Appraisal Services for real property assessment. The Minnesota Department of Revenue (DOR), when advised of the change to a private assessor, alerted the City that state statutes prohibit cities similarly situated as Birchwood from using a private assessor. As this relates to the contract entered into between the City and Smith Appraisal Services, **Sandstrom** noted that state statutes allow a contract that was entered into illegally can be voided as a violation of public policy, and noted that case law supports the notion that the subject contract qualifies as an illegal contract that can be voided.

Smith addressed the Council and stated that he was surprised by what has happened and discussed this matter with Deb Volkert of DOR, and hoped there is a way this situation can be remedied. Smith mentioned that he is not convinced that the prohibition is "hard and fast" and perhaps the City can negotiate this with DOR. Smith is looking for Council direction on how to proceed, as he is ready to perform on the contract.

Sampair asked whether the law had been repealed. **Sandstrom** responded that there were two ways to have a local assessor. The first is whether there was an election in the 1970's to authorize a local assessor, or under a provision of statute that was repealed in 1995 that authorized reinstatement of a local assessor through the Commissioner of Revenue between 1980 and June 2, 1995. **Sandstrom** concluded that once a city uses the county for assessment services, it can't go back to a local assessor unless the preceding actions were taken.

Peterson said he is perplexed by this issue, due to his understanding that DOR recommended Smith Appraisal to the City, and asked City staff if they were aware of any of these legal restrictions. **Powers** noted that he was not a party to any discussions on this matter, and **Sandstrom** mentioned that the legality of the City's actions was never an issue until this matter was raised by DOR.

Wingfield (who was Mayor at the time the City Council voted to switch to a local assessor) commented that this is a perplexing situation. The County was aware in 2008 that the City was concerned about the quality of its work, and the City shared those concerns with DOR at that time. DOR was "on notice" since 2008, and that DOR endorsed the quality of work of Smith Appraisal last summer. **Wingfield** also noted that Kevin Corbid, Washington County Director of Property Records and Taxpayer Services and the party

that brought this matter to the City's attention, is not a disinterested party in this matter, and questioned the timing of the communication with DOR at this time. **Wingfield** shared with the Council that Corbid was at the Council meeting in which the contract was awarded to Smith Appraisal, and the raising of a legal challenge at "the 13th hour" and "as the train has left the station" should be cause for Council concern.

As to the status of the contract between the City and Smith Appraisal, **Wingfield** noted that the contract can only be terminated for cause and clearly notes that if Smith prevails in a court challenge to his contract that the City would pick up his legal fees. **Wingfield** also alluded that the City Attorney, in his capacity as legal representative for the City Council, did not pick up the alleged statutory bar to the City contracting with a private assessor.

Mitchell commented that he has differing opinions on the matter than have been expressed, and noted that the County is not a party to the contract. It was a lousy contract in that it can be terminated only for cause, and DOR is saying the contract is illegal. **Sandstrom** wanted the record to reflect that the minutes of the meeting when the contract was approved was that the Council specifically voted to keep the "for cause" clause in the contract, and noted that Wingfield performed the background work on the contract. **Harper** asked Smith whether he has encountered any expenses in anticipation of performing on the contract. **Smith** noted that he has not as of this time, but has made the commitment to maintain his licensure in anticipation of performance. **Sampair** asked Smith for his opinion on how the Council should proceed at this time, given the potential liability the City is exposed to at this time. **Smith** noted that he has not consulted with an attorney and can't respond at this time, and is looking for direction himself going forward. **Mitchell** responded by cautioning Smith against any expenditures at this time. **Peterson** noted that he appreciates that Smith entered into this agreement in good faith, as did the City Council. It seems that the DOR, when advising the City on this issue, apparently was itself unaware of the statutory bar to the City. **Smith** noted that the statutory language is unclear and perhaps there is a way for the City to join him in appealing to the Commissioner of Revenue.

Peterson asked Sandstrom for an opinion on the potential to appeal this matter to the Commission of Revenue. **Sandstrom** responded that the sense he gets from DOR is that they are not eager to bless the contract, and noted that regardless of the Commissioner's desire to approve the contract, the fact of the matter is that the statute, while not clear as to standards, does say that the Commissioner needs to approve the City's naming of a local assessor. The City's failure to get the approval of the Commissioner before entering into the contract nullifies the contract. **Carson** asked whether it is too late to get approval. **Sampair** asked whether July 1 is the "drop dead" date, and whether the Council can direct the City Attorney to further research this matter and get back to the Council before that date. **Mitchell** noted that he is willing to ask DOR for guidance, but wants to make sure that Smith does not incur any expenses on this contract. **Mitchell** said his position is that the contract is null and void, but is willing to negotiate a new contract in July with Smith Appraisal once DOR has granted the City's request for a private assessor. **Harper** responded that the Council does not need to wait until July for a response, stating that the City Attorney can research this matter further and report back to the Council at the June 28 meeting.

Mitchell/Harper unanimous to instruct the City Attorney to contact the Minnesota Department of Revenue to see if the City can get a definitive answer as to whether the City can have a private assessor and report back to the Council at its June 28 meeting.

REVIEW OF THE CONTRACT WITH KEJ ENTERPRISES: Powers mentioned that Council Member Harper asked to get Ash easement mowed and cleaned up and wondered why it wasn't done before. Powers said that his investigation determined that Ash easement was originally in the KEJ contract, but Council Member Carson said that a volunteer could maintain Ash and it was not necessary to include it in the KEJ contract. Subsequent to execution of the contract, the volunteer ceased maintaining Ash easement. However, the contract was not amended to include Ash in KEJ's maintenance schedule. The consensus of the Council was that until such time that the contract could be formally amended, that KEJ had the authority under the existing contract to perform work directed by the Council or Clerk at the \$45.00 rate. Harper mentioned that \$7,700.00 has been budgeted for park and open space maintenance for this year.

Harper/Sampair unanimous to direct the Clerk to require KEJ to mow Ash easement every other week and to do the fall cleanup according to the schedule he is using for the mowing and cleanup of the other public spaces of the City, and also to mow the road rights-of-way of Hall/Cedar and Birchwood Avenue twice a year, in the middle of June and the middle of July, at the contract rate of \$45.00 per hour.

PRESENTATION OF THE FISCAL YEAR 2010 AUDIT: Moeller, of HLB Tautges Redpath, presented the results of the City's fiscal year 2010 audit. Highlights of the presentation are as follows:

- The 2010 audit provided a clean opinion, whereas the 2009 audit provided a qualified opinion – an improvement.
- The 2010 audit resulted in 6 material weaknesses, whereas the 2009 audit resulted in 19 material weaknesses – quite an improvement, according to Moeller.
- The 2010 audit resulted in 4 legal compliance findings, whereas the 2009 audit resulted in 8 legal compliance findings – an improvement.

RESOLUTION 2011-15 MODEL PERFORMANCE MEASURES FOR CITIES: Powers shared with the Council correspondence from the Office of the State Auditor about implementing the enclosed model performance measures. If so implemented, the City would receive 14 cents per capita as an incentive. The consensus of the City Council was to not participate in the program; however, the Council directed staff to develop a survey for Council review in a few months.

RESOLUTION 2011-12 APPROVING ORDINANCE 2011-03: AN ORDINANCE TO REVISE SECTION 201 (CITY WATER SYSTEM) OF THE BIRCHWOOD CITY CODE TO CLARIFY REPAIR AND MAINTENANCE

RESPONSIBILITIES: Mitchell opened the public hearing at 8:16pm and, hearing no requests to speak, closed the public hearing at 8:17pm.

Mitchell noted that the Council conducted a public hearing last month on proposed changes to Section 201, and no testimony followed. Mitchell further stated that during the Council discussion last month, Harper recommended adding language clarifying that every household is to pay a base water rate. That addition prompted the Council to table action on the draft changes last month and to conduct a public hearing on the new language this month.

Harper/Peterson unanimous to approve Resolution 2011-12 adopting Ordinance 2011-03 revising Section 201 and publication of the summary of the ordinance in the White Bear Press.

2011 CATCH BASIN PROJECT: REVIEW AND APPROVAL OF ADDITION \$5,500.00 EXPENDITURE: City Engineer **Elfering** reviewed this issue with the Council, and stated that after removing the existing catch basin structure in front of 267 Wildwood Avenue in anticipation of installing the new structure, it was determined that the sanitary sewer service for that property was located only 6 feet deep and lay in such a manner that would prevent installation of the new structure. Elfering further stated that it was determined that a smaller catch basin structure should be placed at the old location to provide a connection for the existing pipes and the new, larger structure would be placed downstream an appropriate distance from the sanitary sewer service. This additional work resulted in an additional cost of \$6,000.00 above and beyond the cost bid by the contractor.

Mitchell commented that while he would like to see more formal contracts that address issues like this, he is aware that situations in the field can come up, and asked Elfering about what contractual language is typical for these situations. **Elfering** responded that it is not feasible to bind the contractor to pay for all unforeseen circumstances. So the contract says that if the contractor finds something unforeseen in the field, he is to contact me for guidance. **Peterson** asked whether drainage issues will be improved after this work. **Elfering** said everything is functioning as it should, and with additional inlets and regrading the stormwater flows will be improved.

Mitchell stated that the total cost of the project before the grant being \$27,808.00, and with the \$13,460.00 in grant dollars, the total City cost of the project ended up being \$14,348.00.

Harper/Sampair unanimous to approve the change order resulting in an additional cost of \$6,000.00, pay the contractor, and to take the money out of the Capital Improvement Account.

CHANGING THE NAME OF LOWER BIRCH STREET TO OWL STREET> REVIEW OF ANTICIPATED EXPENSES AND DRAFT RESOLUTION/ORDINANCE LANGE, AND SCHEDULING A PUBLIC HEARING: **Powers** reviewed with the Council the following information pertaining to anticipated expenses for the proposed change of lower Birch Street to Owl Street:

- Publication of the ordinance: \$77.82; publication of the notice of public hearing: \$63.68
- Recording fees: \$46.00
- Signage: \$50.00

Mitchell noted that the City would need a new Ordinance 702.010 codifying the name change.

Mitchell/Carson unanimous to approve proceeding with a public hearing on this matter at the July 12, 2011 Council meeting.

SIGNS> REVIEW OF COST ESTIMATE AND CONSIDERATION OF 3-YEAR REPLACEMENT PLAN: **Sampair** reviewed the exhibit included in the packet that outlines how proposed sign changes would be paid over a 3-year period, noting that “no parking” signs would be replaced in the first year at a cost of \$2,400.00; regulatory signs such as “stop” and “yield” signs would be replaced in the second year at a cost of \$3,600.00; and street name signs would be replaced in the third year at a cost of \$3,000.00. **Powers** advised the Council that these costs are for the hardware and do not include \$600.00 in annual installation costs. **Mitchell** noted that there is no need for a motion at this time, but wants to make sure this is included in the budget for future years.

HOME OCCUPATION – 501 WILDWOOD AVENUE – REVIEW OF PLANNING COMMISSION

RECOMMENDATION: Powers reviewed with the Council the findings of the Planning Commission on the issue of whether cabinet-making is considered to be an “allowed” home occupation or a “prohibited” home occupation, and noted that the Commission voted 2-1 to recommend to the Council deem cabinet making as a prohibited home occupation.

Mitchell noted that he agrees that cabinet making is not an allowed home occupation, but it is also not a prohibited home occupation so Kropelnicki apply for a conditional use permit. Mitchell also expressed his disappointment that shortly after Kropelnicki told the Council he was not running a business that he (Kropelnicki) ran a “Certificate of Assumed Name” legal in the White Bear Press. **Sampair** responded that the Planning Commission makes recommendations and did not follow any specific guidelines in formulating its recommendation, and agreed with Commissioner Danks that a conditional use permit is the best way to mitigate the noise issues that appear to be central to the problems with the neighbors.

The general consensus of the Council is that Kropelnicki is eligible to apply for a conditional use permit.

401 WILDWOOD AVENUE>COMPLAINT: **Mitchell** reviewed his exhibit detailing his investigation of the exterior storage complaints about 401 Wildwood Avenue, as well as to examine the parking situation on Park Avenue. **Peterson** noted that some of these issues are clearly in violation of the ordinance, such as the boat lift stored on the City’s right of way is clearly a violation, while the others are more subjective. **Harper** noted that there are 2 issues – one where it is stored, the other is when it is stored which applies to a lot of properties in the city. **Peterson** noted that if something clearly is in violation, what happens? **Mitchell** said the Clerk sends out a letter noting the violation.

Peterson noted that Harper hit on another issue with seasonal storage, and said that while Mitchell struggles with a definition of “seasonal”, he (Peterson) sees more clarity to the definition. **Harper** noted that there are several lakeshore properties with lifts stored in the back yard and the City needs to be consistent in its enforcement and not pick on this particular property owner. **Sampair** noted that if the lift can be screened, that abides with the spirit of the ordinance. **Carson** asked whether he can move the lift and screen it. Harper noted that there are specific hardships with the subject lot in that it is a triple-frontage lot and perhaps a variance could be approved.

Greeley addressed the Council on his concerns and noted that while the ordinance prohibits non-seasonal storage of the lift, if it is screened it isn’t a problem. **Greeley** further noted that while the Mitchell report notes the elevation of the lot as an issue, all of the items stored on the property are visible from his property regardless of the variations of the lot. Mitchell asked Greeley for a summary of his requests. Greeley responded with the following:

- No parking on Lake Avenue down the hill;
- Removal of the boat lift from Park Avenue;
- Clean up the yard – chaise lounge and canoe, etc.

Harper noted that it was in last 6 months or so that she had worked with White Bear Lake Police on the parking issue, and noted that the “no parking” sign that was posted was unclear as to where the parking restriction started. **Harper** further stated that Elfering and White Bear Lake Police Officer Rob Flick went out to review the site and recommended new signs that more clearly defined where “no parking” was allowed, and that these signs have been installed. **Harper** also said that the proposed “no parking” location on Lake Avenue is outside the existing “no parking” area. **Mitchell** responded by saying that he

is inclined to have the hill down by the bottom of Lake Avenue be no parking. **Sampair** said that he and Flick reviewed the area and found it is dangerous for school buses to see when cars are parked on the hill.

Addressing the exterior storage issue, **Mitchell** noted that exterior storage ordinance doesn't prohibit the storage of firewood, canoes, barbecue grills. As for boating paraphernalia, **Mitchell** stated this is an issue that he would like the Planning Commission to review, and commented that there are a lot of this stored outside in this town. **Peterson** commented that there should be an allowance for boat lift storage if the lift can't be used as intended due to low water levels. **Harper** noted that if the Planning Commission is going to look at the exterior storage issue, she would like to know why boat lifts were singled out and boats, trailers, and trampolines were not.

Mitchell/Carson unanimous to direct the Clerk to send a letter to the owners at 401 Wildwood Avenue asking them to clean up their yard, remove the boat lift from City property, try to avoid parking at the bottom of the hill, and to let us know if they need any help.

Mitchell/Sampair unanimous to ask the Planning Commission to look into the matter of Park Avenue including parking, right-of-way issues, safety, fences, fire hydrant and access, and to report their findings in September.

As to the matter of parking on Lake Avenue, the consensus of the Council was to not install signage at this time and to deal with the matter at the June 28th meeting after reviewing additional material.

CAIN GARAGE RENTAL>REQUEST FOR LONGER CONTRACT: **Powers** noted that this is before the Council due to the lessee's request for additional time on the lease. The consensus of the Council was not to extend the lease and, if the lessee did not want to accept these terms that was fine and the Council would offer the lease to the next-highest bidder.

BUDGET PROCESS: **Harper** reviewed with the Council budget documents that assigned to staff and Council members certain responsibilities relative to line items in the budget, and noted that the previous "levy budget" format created categories that were too broad and did not give sufficient direction to staff as to specific budgeted amounts for items within those specific categories. **Harper** also noted that she is trying to get a budget handbook together and it would be helpful if each of you wrote up a short paragraph about what is covered by each line item. Harper concluded her remarks by stating that the Budget Committee (herself, Council Member Carson, and Larry Walker) will be meeting with the 3rd or 4th week in July to review the materials and start the 2012 budget process.

WHITE PINE LANE OUTLOT – REMOVAL OF TREES AND BRUSH: **Powers** brought this matter to the Council's attention after an episode with the property owner at 7 White Pine Lane and branches of trees on the City's outlot hanging over the property line. Powers reviewed with the Council a photo array portraying the condition of the outlot and inquired as to how the Council wants to proceed. Harper noted that Washington County has a sentence-to-serve (STS) program that might be appropriate to investigate using. The Council directed staff to contact STS for this service.

COMPUTER INSTALLATION AND SOFTWARE TRANSFER: **Powers** shared with the Council that the vendor that was awarded the contract in May subsequently refused to perform on the c contract. Powers contacted the other 2 vendors, each of whom said they would honor their bids from before. Powers concluded his remarks by saying that while he has no preference for one vendor over the other, if forced to choose he would select the vendor that the City purchased the computers from (Compar).

Mitchell/Sampair unanimous to award the contract for computer installation and software transfer to Compar, and if Compar refuses the contract to award the contract to Connor IT Solutions.

CITY HALL IMPROVEMENTS>PLANNING COMMISSION RECOMMENDATION OF A FEASIBILITY STUDY:

Powers shared with the Council comments made by the Planning Commission at its July 7th meeting relating to review and cost estimates for major ADA compliance repairs at City Hall. Powers said the Commission commented that if the Council was to contemplate tearing down the existing structure that it recommends a feasibility study be conducted and reviewed by the Council before making that kind of decision.

LMCIT LAND USE INCENTIVE: Powers reviewed with the Council correspondence received from the League of Minnesota Cities Insurance Trust (LMCIT) pertaining to a land use incentive program it is offering that could result in lower deductibles for land use claims. In exchange, Powers noted that a quorum of the City Council, the Chair and one other planning commission member, and the city planner would need to complete an on-line training course offered by LMCIT at a cost of \$30.00 per person with a \$180.00 lifetime cap. The consensus of the Council was not to participate in the program and to budget for training courses offered by GTS or other training providers in the 2012 budget.

CITY CLERK'S ABSENCE: Powers advised the Council and public that he will be away from the office on June 15-17 to attend the League of Minnesota Cities annual conference, and also from July 11 -15 to attend the Clerk's Institute. The office will be staffed on open office days on July 11 and 14 by the City Treasurer.

NEXT MEETING – JUNE 28, 2011 – TOPICS: Mitchell related that the following issues will be on the June 28, 2011 agenda: results of the City Attorney's investigation of the City's authority to contract with a private assessor; parking issues on Lake Avenue and Park Avenue.

JULY 12, 2011 – TOPICS: Mitchell noted the following topics will be on the July 12, 2011 agenda: Owl Street public hearing, and a draft out-of-state travel policy.

ADJOURN: *Harper/Sampair unanimous to adjourn @10:10pm*

Dale Powers
City Clerk