

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

**MINUTES OF THE CITY COUNCIL MEETING
JUNE 14, 2022, 7:00 P.M.**

MEMBERS:

Mary Wingfield	Mayor
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
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REGRETS:

Jon Fleck	Councilmember
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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 McCarthy, seconded by Councilmember Foster, it was resolved to approve the agenda, as amended. All in favor; motion carried.

ACTION – Becky Kellen will include an affirmative declaration on the consent agenda for the Council meeting in July 2022, stating that the Council meeting regularly scheduled on the second Tuesday of every month will take place on August 16, 2022, and November 15, 2022, to accommodate the Washington County elections.

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

- Door Lock
- 232 Cedar Street Complaint
- Special Closed Meeting for Litigation Discussion with City Attorney

Becky Kellen requested the addition of the following item to the consent agenda:

- Approval of City Hall as a Voter Polling Station for Washington County Elections

4. OPEN PUBLIC FORUM

Barton Winter, 1 Five Oaks Lane, offered to repair the three corner boards of the hockey rink. The resident recommended white paint in the crown of the rink to deflect sunlight and that the figure skating rink be flattened out to accommodate easier flooding. The resident also requested that the hockey nets be relocated inside to prevent rusting and to consider purchasing net bags for 2023.

James Nelson, 256 Wildwood Avenue, presented comments from Birchwood Village residents in support of his concerns regarding the regulation of his sign.

Mayor Wingfield clarified that the Council was under the assumption that the City Administrator, at the time, had sent the resident a letter of complaint and that the police department had provided the resident with a verbal warning, as had occurred with a neighboring resident with a similar sign violation. Mayor Wingfield noted that the Council was not aware that its statute regarding signs was unconstitutional until brought to the Council's attention.

Dana Klemp, 414 Birchwood Court, provided clarification on the Birchwood Dock Association's intentions regarding relocating the Birch Beach dock 10 feet to the west of its original alignment. He noted that the Dock Association will fulfill the request in compliance with the White Bear Lake Conservation District.

5. ANNOUNCEMENTS

- A. Music in the Park:** The concert series began on June 12, 2022, at 6:00 p.m. at Tighe-Schmitz Park and will continue through to August 2022.
- B. Birchwood 4th of July Parade:** The 4th of July parade will be held on July 4, 2022, at 10:30 a.m. starting from 5 Birchwood Avenue with a queue up time of 9:00 a.m.

6. ADMINISTRATIVE PRESENTATION

- A. Sheriff's Report:** A report of law enforcement incidents and citations for May 2022, was provided for the Council's review.

7. CITY BUSINESS – CONSENT AGENDA

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

- A. Approval of the Treasurer's Report:** The Treasurer's report for the period ending June 7, 2022, was provided for the Council's review and approval.
- B. Approval of the Council Meeting Minutes:** The meeting minutes of the May 15, 2022, special Council meeting was provided for the Council's review and approval.

C. **Approval of City Hall as a Voter Polling Station:** City Hall will serve as a polling station for the Washington County elections to be held on August 9, 2022, and November 8, 2022.

8. **CITY BUSINESS – REGULAR AGENDA**

A. **Second Reading Ordinance 2022-05-01, Replacing City Code 601.030 Signs**

a. **Public Hearing:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. All in favor; motion carried.

b. **Council Deliberation and Approval:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-05-01, Replacing City Code 601.030 Signs on the condition that Section 601.040, paragraph two, “all signs must be a minimum of five feet from other lot lines”, be eliminated and Section 601.030 be changed from a total of nine square feet to a total of 12 square feet. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve the summary publication for Ordinance 2022-05-01, Replacing City Code 601.030 Signs as drafted by H. Alan Kantrud on June 14, 2022. All in favor; motion carried.

B. **Ryan Hankins**

a. **Fee Schedule Changes:** *ACTION – Councilmember McCarthy will review the Council’s ruling regarding late dog license fees and work with Ryan Hankins to update the fee schedule accordingly.*

ACTION – Councilmember McCarthy will review the renewal fee and annual fee under the dangerous dog ordinance for discussion at the next Council meeting.

ACTION – H. Alan Kantrud will make an amendment to Section 617 to include that boat lift storage requires registration, to be approved at the next Council meeting.

ACTION – Ryan Hankins will investigate the boat slip fees of other neighboring communities for comparison.

Councilmember McCarthy noted that it may be redundant to have a renewal fee as well as an annual fee for the dangerous dog ordinance.

The Council noted that the post-season boat storage violation fee should be amended to state “post-season storage violation fee” to include other items such as boat lifts. The Council also noted that “season” should be clearly identified.

The Council agreed that the storage of boat lifts requires registration to keep track of ownership. This will help to identify owners who violate boat storage policies and costs incurred by the city can be charged back to owners accordingly.

The Council suggested that specific fee amounts stated in the city's ordinances should be replaced with a reference to "as set by the fee schedule". This will ensure consistency and accuracy between fees set in the city's ordinances and the fee schedule and will not require a change to an ordinance every time a fee is updated in the fee schedule.

The Council reported that the lot coverage permit application fee is pending approval from the Department of Natural Resources of the impervious surfaces code 302.050.

H. Alan Kantrud referred to the Street Vacation Application and advised that "permitting costs" should be changed to "staff review time" since city staff do not issue any permits for the street vacation application.

Ryan Hankins reported that the city is well below the state statute amounts for the Roofing, Siding Replacement, Window Replacement, and Building Permit fees. He noted that Shelly Rueckert, the finance director from St. Anthony Village suggested that the city increase its fees to be in accordance with the state statute.

- b. **Monthly On-Call Fee for John Manship:** The monthly on-call fee for John Manship, the City Water Superintendent, is \$700.

C. Birch Beach Dock Discussion

On a motion made by Mayor Wingfield, seconded by Councilmember McCarthy, it was resolved to amend the city's dock application to include a request to relocate the dock 10 feet to the west of the midpoint of the easement at Birch Beach. All in favor; motion carried.

On a motion made by Mayor Wingfield, seconded by Councilmember McCarthy, it was resolved to proceed with a Task Force of up to five people, to be established at the next Council meeting, to investigate how the community would like to proceed with Birch Beach and its management. All opposed except Mayor Wingfield. Motion not carried.

Mayor Wingfield reported that unsuccessful attempts were made to include the Birch Beach Dock on the agenda of the May 17, 2022, White Bear Lake Conservation District.

Mayor Wingfield expressed concern regarding a boat lift at the entrance of Birch Beach that is interfering with public use of the space.

Mayor Wingfield noted that the Birch Beach dock is 26 feet over the length that was approved by the Council in October 2021. The Elm Beach dock is also 23 feet over the approved length. Mayor Wingfield expressed concern regarding the Birchwood Dock Association's (BDA) failure to comply with what was approved by the Council.

Mayor Wingfield reiterated that the city's assets need to be used in the best interest of the community. She noted that the BDA is a private organization and not complying should result in a revocation of the permit to operate at Birch Beach. Mayor Wingfield noted that the city has liability insurance that would cover the dock at no additional cost should the city decide to manage the Birch Beach dock.

The floor was opened for public comments.

Dana Klemp, 414 Birchwood Court, referred to Curt Feistner Memorial Preserve and expressed concern that the city was not complying with its own code Section 617 with a dock limit of 19 feet length. He noted that the BDA is permitted 57 feet at Elm Beach but is at 65 feet over water in part due to the lake rising one foot since the installation. He agreed that the Birch Beach dock is over the length limit and not in compliance; however, he reported no complaints from residents regarding the dock length. He noted that a boat may have to be removed to shorten the dock to be in compliance with the length limit as approved by the Council.

Mayor Wingfield reported that the boat at Curt Feistner Memorial Preserve is based on a dock permit that does not follow the same regulations as dock associations. She expressed concern that the dock application was put forward to the White Bear Lake Conservation District under the BDA's knowledge that the docks were not in compliance. This information was provided to Mayor Wingfield by the Board of the BDA itself.

H. Alan Kantrud confirmed that the White Bear Lake Conservation District measures dock length from the ordinary high-water mark. H. Alan Kantrud reported that the White Bear Lake Conservation District would not investigate the dock length unless a complaint was filed. An alternative option would be to send the BDA back to the White Bear Lake Conservation District to amend the existing permits for their docks. He reiterated that the permits should be amended to account for the difference in the dock lengths and the dock relocated 10 feet to the west of its original alignment to remedy all the violations.

Dick Galena, 217 Wildwood Avenue, reported that he is a resident in the Birch Beach neighborhood. He noted that the Birch Beach dock is in a residential area, therefore, resident feedback is important regarding the size, length, and location of the dock. This has historically been achieved by the BDA inviting residents in the vicinity of the intended docks to attend the BDA's annual meeting. The resident reported that he had no intention of filing a complaint regarding the length of the dock and suggested permitting the extended dock length as a temporary measure and to revisit the item in 2023.

Further discussion was deferred to the next Council meeting pending efforts by the BDA to enter into compliance for all docks exceeding the lengths as approved by Council.

D. Diseased Tree Ordinance Proposal

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to designate a Task Force to review the city's diseased tree ordinance. All in favor; motion carried.

Mayor Wingfield reported that Section 403 regarding diseased trees is incomplete and insufficient compared to the proposal presented by White Bear Township.

E. Emerald Ash Borer Update

Mayor Wingfield reported that she submitted a \$25,000 grant application. The city was approved for \$9,500 to be received by July 1, 2022.

A request was made to use some of the grant funding for planting trees. Approval was not granted for the planting of spruce trees unless the city can prove that less than 10% of its trees are spruce trees. A tree inventory at a cost of \$500 will provide confirmation to the Department of Natural Resources. A tree survey will also include a count of the green ashes in the city park easements.

Mayor Wingfield reported that \$4,500 will be allocated to remove emerald ash borers and \$4,500 will be allocated to the planting of trees.

F. Sewer Lift Station Grant Update

Mayor Wingfield reported an application for federal assistance in the amount of \$480,000. The grant is currently one of the top projects being considered and is before the Senate Appropriations Committee with help from Representative Betty McCollum's office.

Letters of support from Washington County Commissioner Stan Kowarski and the Rice Creek Watershed District Board were provided to Representative Betty McCollum's and Senator Tina Smith's office.

G. Erosion Sock at 310-312 Wildwood Avenue

ACTION – Becky Kellen will issue a letter to the estate and the current residents at 310-312 Wildwood Avenue advising that the Council granted the request for an erosion sock at the property.

Mayor Wingfield reported that a resident is requesting an erosion sock to be placed at the driveway of 310-312 Wildwood Avenue to prevent rocks from falling onto Wildwood Avenue after a rainstorm.

H. Alan Kantrud suggested issuing a letter to the property owner advising that the Council will be placing an erosion sock to address the ongoing public nuisance issue of rocks on the right of way.

H. Park Bench at City Hall

ACTION – Mayor Wingfield will inform the property owner next to the City Hall property lines of the park bench.

Mayor Wingfield reported that a donation of a park bench was made by a resident in honor of the resident's deceased husband.

I. **Wormwood Dock Request**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to authorize H. Alan Kantrud to take the appropriate measures to register Curt Feistner Memorial Preserve as owned by Birchwood Village and recorded with Washington County. All in favor, motion carried.

ACTION – H. Alan Kantrud will ensure that the parcel of land at Curt Feistner Memorial Preserve is registered as owned by the city of Birchwood Village.

ACTION – Becky Kellen will issue a notice to the Wormwood residence advising that the canopy on the boat lift violates the lease agreement with the city and must be removed by June 30, 2022. Failure to comply will result in a termination of the lease.

Councilmember McCarthy reported that as per Darren, the city's White Bear Lake Conservation District representative, the White Bear Lake Conservation District would be agreeable to the dock request.

H. Alan Kantrud confirmed that a permit from the White Bear Lake Conservation District would only be required for a multi-use dock or a dock accommodating more than four boats.

Councilmember McCarthy expressed concern regarding whether the dock would be accessible to the public and the city's need for liability coverage. He noted the limited space for a dock at Curt Feistner Memorial Preserve.

Mayor Wingfield expressed concern regarding the lease agreement granting a lift for boat access and not a lift acting as a buoy, as it is currently being used. Mayor Wingfield noted that the mooring needs to be remedied immediately and any further violation would result in a rescinding of the lease.

The floor was opened for public comments.

Greg Sherwood, 15 Birchwood Lane, reported that there are three houses on Birchwood Lane with deeded access to 20 feet of space on White Bear Lake adjacent to Curt Feistner Memorial Preserve. The dock request would violate the White Bear Lake Conservation District's rule that a dock cannot be installed if it will prevent other residents from safely accessing other docks that are in the ordinance. He noted that, as per the White Bear Lake Conservation District, any dock must be 10 feet from any structure and there is not enough space to accommodate the dock request. The resident also expressed concern regarding the boat lift and its violation of the city's ordinance. The resident queried who would be liable if a watercraft were damaged by the boat lift.

H. Alan Kantrud confirmed that Curt Feistner Memorial Preserve is in the jurisdiction of Birchwood Village. If the parcel of land is unowned then the assumption is that it is owned by the city. He reported that if a boat or watercraft is damaged by the boat lift at Curt Feistner Memorial Preserve, the liability would be on the individual operating the watercraft, not the lift, which is a stationary structure on the water. H. Alan Kantrud noted that the White Bear Lake Conservation District only regulates docks that are connected to the land. Any structure in the water such as a lift or buoy is regulated by the Sheriff's office.

Torie Wormwood, 112 Wildwood Avenue, expressed concern regarding the Birchwood Village spring 2022 newsletter advertising the Curt Feistner Memorial Preserve as access for one boat and a lift. She noted that the lease agreement does not make any reference to a canopy being unauthorized.

Mayor Wingfield reported that the spring 2022 newsletter was issued well in advance of any finalized details regarding the boat lottery at Curt Feistner Memorial Preserve. She noted that it was conveyed to the resident that boat lift access would not be included when the boat access was awarded to the resident.

H. Alan Kantrud confirmed that although a canopy is not explicitly excluded in the lease agreement, it does not authorize the use of a canopy as a canopy is not required for the purpose of a lift. He noted that a canopy is a visual obstruction and distraction.

Torie Wormwood, 112 Wildwood Avenue, reported that the canopy would be removed.

The Council agreed to deny the Wormwood dock request and that concerns arising from the lift should be addressed to the White Bear Lake Conservation District.

J. Mahtomedi Request for Meeting

ACTION – Becky Kellen will send an e-mail informing the city of Mahtomedi that the Council has declined their request for a meeting.

K. Mayor Wingfield Updates

a. Storm Water Management Plan for RCWD: Mayor Wingfield reported that the Rice Creek Watershed District Board recommended the city adopt a plan to support its demand for storm water management especially as it pertains to Hall's Marsh.

b. Birchwood Village City Entrance Signs: Mayor Wingfield reported Forest Products could provide two signs made of pseudo wood at a cost of \$800. The Council agreed to proceed with the installation of the city entrance signs.

c. Code Red Info: Mayor Wingfield reported that, as an alternative to posting notices across the city, Code Red will distribute information to 1,212 contacts via phone, text, and e-mail in the event of an emergency. Residents interested in being added to the notification list, or removed, were advised to go to the link on the city's website.

The Council encouraged residents to sign-up for the city's e-mail list.

d. New Benches at Tennis/Pickleball Courts: Mayor Wingfield reported that the new benches at the tennis courts have been well-received and are of better quality than the previous benches.

e. Sewer Line Review at Watermain Break at 207 Birchwood Avenue: Mayor Wingfield reported that both sides of the sewer line were scoped by Gopher Sewer and Drain to ensure there was no rock shifting and was found to be clear.

- f. **Streetlights Update:** *ACTION – Councilmember McCarthy will provide Mayor Wingfield with an update regarding the streetlight on the end of his street.*
- g. **Door Lock:** Mayor Wingfield reported that new door locks will be installed at City Hall.
- h. **232 Cedar Street Complaint:** *ACTION – H. Alan Kantrud will follow up with the Sheriff's office to investigate the complaints regarding 232 Cedar Street.*

The Council noted that residents reported loud noise and unruly behavior at all hours of the night and are concerned regarding the use of the property as a short-term rental.

- i. **Special Closed Meeting for Litigation Discussion with City Attorney:** *ACTION – Becky Kellen will post a notice regarding the closed meeting at least three days prior to the confirmed date.*

The Council agreed to schedule the closed meeting with the League of Minnesota Cities on either June 20, 2022, at 5:00 p.m. or June 23, 2022, at 5:00 p.m. via Zoom.

L. City Administrator Updates:

- a. **Ordinance 2022-04-22 Pending DNR Approval to Move Forward with Public Hearing:** *ACTION – Becky Kellen will follow up with the Department of Natural Resources (DNR) for confirmation that the DNR agrees with Ordinance 2022-04-22 and the city can proceed with a public hearing if no response is provided by the DNR after 30 days as per the state statute.*

Becky Kellen reported that a response from the DNR is pending. She noted that a similar request was made by the city to the DNR in 2017 and was not approved.

- b. **SWPPP Amendments into City Code Per MS4 Permit:** *ACTION – Becky Kellen will send city code 212 to H. Alan Kantrud to be updated to include new language.*

9. ADJOURNMENT

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 10:39 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

8/16/2022

Date



City Administrator Rebecca Kellen

8/16/2022

Date