

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

**MINUTES OF THE CITY COUNCIL MEETING  
MARCH 14, 2023, 6:45 P.M.**

**MEMBERS:**

Margaret Ford	Mayor
Mark Foster	Councilmember
Ryan Hankins	Councilmember
Justin McCarthy	Councilmember
Katherine Weier	Councilmember (via teleconference)

**STAFF:**

Becky Kellen	City Administrator
H. Alan Kantrud	City Attorney

**GUESTS:**

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

**1. CALL TO ORDER**

Mayor Ford called the meeting to order at 6:45 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.**

Mayor Ford requested the removal of the following item from the agenda:

- Section 7, City Business, Item D, Lake Links Trail

**4. OPEN PUBLIC FORUM**

**Barton Winter, 1 Five Oaks Lane**, expressed concern regarding snow on the roof of the warming house posing a safety hazard, comments made by Kevin Woolstencroft at the previous open public forum, and the performance of the city's maintenance work as it pertains to the skating rink. He requested an update on the petition he submitted in January 2023 to replace the city's maintenance worker with either himself or Joe Wormwood.

**Councilmember Foster** noted the skating rink is closed for the season, and reported more compliments regarding the skating rink during the 2022-2023 winter season than ever before.

**Councilmember Hankins** requested that Barton Winter submit a plan to improve the roof of the warming house to the City Administrator for the Council's review. Councilmember Hankins reiterated his support of the city's employees.

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

5. **ANNOUNCEMENTS**

- a. **Music in the Park Schedule:** The schedule has been finalized for the summer of 2023.
- b. **Canoe and Kayak Assignments:** The rack assignments are scheduled for the beginning of April 2023.
- c. **Spring Birchwood Dock Association (BDA) Meeting:** The meeting is scheduled for April 1, 2023, at 10:00 a.m.
- d. **Board of Appeals Meeting:** The meeting is scheduled for April 11, 2023, at 6:00 p.m.
- e. **Lift Station Bids:** The bids will be posted by April 30, 2023.

6. **CITY BUSINESS – CONSENT AGENDA (0:08:30)**

- a. On a motion made by Councilmember Weier, seconded by Councilmember McCarthy, it was resolved to approve the consent agenda with the exception of items C, D, and G. All in favor; motion carried.
- b. **Approval of the Acceptance of the Ricecreek Watershed District (RCWD) Lift Station Grant**
- c. **Approval of Resolution 2023-18 – Delegating Treasurer Authority to EFT**
- d. **Approval of Resolution 2023-19 – \$500 Expense Approval (2:58:05):**

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to adopt Resolution 2023-19. All in favor; motion carried.

Mayor Ford reported that, historically, the Mayor and City Administrator were provided a \$500 discretionary allowance for city business expenses as needed. It was suggested by the City Treasurer and City Administrator to memorialize the expense approval. The Council reported that the city also has an existing interim spending policy of \$500.

- e. **Approval of Resolution 2023-20 – Cancelling Annual Deer Hunt (3:02:15): ACTION – Becky Kellen will issue a notice to residents requesting any final comments or feedback regarding the annual deer hunt before the Council makes a decision at the next meeting.**

Councilmember McCarthy expressed concern regarding the administrative burden on city staff given the ineffectiveness of reducing the deer population through the deer hunt. He noted the Minnesota Bowhunters Association requires 90-day notice prior to canceling the deer hunt. The Council suggested allocating some of the administrative work to volunteers. Further discussion was deferred to the next meeting.

- f. **Approval of the February Council Meeting Minutes:** The minutes of the closed Council meeting held on February 14, 2023, were provided for the Council's review and approval.

**g. Approval of the Removal of the Resident Engineering Fees**

**h. Approval of the Treasurer's Report (3:08:13):**

On a motion made by Councilmember Weier, seconded by Councilmember McCarthy, it was resolved to approve the Treasurer's Report for the period ending March 7, 2023, with the exception of checks No. 32272, No. 32273, No. 32274, No. 32275, and No. 32276 for Kevin Woolstencroft, Justin McCarthy, Mark Foster, Jon Fleck, and Mary Wingfield, respectively, and check #EFT12302022 for Mary Wingfield. All in favor; motion carried.

*ACTION – Becky Kellen will obtain a quote to secure the antenna from damage by squirrels.*

The Treasurer's report for the period ending March 7, 2023, was provided for the Council's review and approval.

Becky Kellen reported the \$850 service line repair from Dynamic Earth & Civil LLC resulted when the contractor discovered that the city's curb stop was damaged and required repairs. As the contractor already had access to the curb stop, the repairs were more cost-effective and confirmed through a proposal obtained from a second contractor at a cost of \$3,750.

The Council reported the city code states that residents are responsible for the curb stop. The Council agreed to cover the cost as advance notice of the repairs, and the cost was not provided to the resident; however, moving forward, the cost will be charged to residents.

H. Alan Kantrud advised that the Council is able to approve a resolution to accept all donations from the Artist Group at the end of the year instead of monthly.

**i. Approval of Resolution 2023-21 – Minnesota Municipal Clerks Institute Training**

**7. CITY BUSINESS**

**a. City Engineer and City Planner Proposals (0:09:40)**

- i. Candidate Presentations:** Presentations for both, or either, of the City Engineer and City Planner positions were provided by WSB, Bolton & Menk, Graef, SRF, TKDA, and Ben Wikstrom.

All vendors confirmed they will only charge for meetings in which they are required to attend as per the Council's request.

Becky Kellen clarified that the city will require 70 to 80 hours of engineering services and 10 hours of planning services.

- ii. Council Discussion:**

On a motion made by Councilmember Foster, seconded by Mayor Ford, it was resolved to proceed with a conditional approval of Ben Wikstrom for the City Planner position pending a review of a proposal for planning services with a revised monthly retainer. All in favor; motion carried.

**On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to proceed with a conditional approval of Bolton & Menk for the City Engineer position pending a review of the engineering services contract. All in favor; motion carried.**

Becky Kellen recommended Ben Wikstrom for the City Planner position as he scheduled an informational interview to obtain more information on the city's needs. She reported WSB did the same, and recommended proceeding with WSB for the City Engineer position or, alternatively, Graef based on the firm's response regarding Hall's Marsh. She preferred to separate the engineering and planning services.

Councilmember McCarthy agreed with Ben Wikstrom as the City Planner noting that a monthly retainer is a good structure given the city's fee schedule. He noted travel expenses may be a challenge as it would be a 50-mile roundtrip for Ben Wikstrom, at an estimated cost of \$65 per trip. He expressed concern regarding additional charges related to escrows for WSB, and the firm's working relationship with the city of Mahtomedi.

Councilmember McCarthy reported a preference for an independent and unbiased engineer as it relates to Hall's Marsh, and recommended Bolton & Menk based on a reasonable monthly rate, access to a water resource team, and no potential conflicts of interest.

Councilmember Weier also preferred Bolton & Menk for engineering services as the firm's proposal discussed wetlands, water remediation that might help with Tighe-Schmitz, and grant opportunities, which she anticipates the city will require given the projected expenses to address the issues with Hall's Marsh.

Councilmember Foster deferred to Becky Kellen's preferences as she will be working with the City Engineer and City Planner. He reported a previous working relationship with Graef and noted that the firm is very responsive.

Mayor Ford reported a preference for Graef or Bolton & Menk; however, she expressed concern regarding the cost of engineering services with Graef.

Councilmember Hankins requested time for the Planning Commission to review the proposals as there is a civil engineer and an architect on the Commission who can provide feedback on the candidates.

Councilmember Foster noted the urgency to engage an engineer and planner as Steve Thatcher will be exiting on April 22, 2023. Councilmember Foster emphasized the Council is responsible for making hiring decisions for the city and should not be consulting with the Planning Commission. The Council agreed budgetary constraints should also be considered when making a selection.

H. Alan Kantrud recommended a special meeting to review the revised retainers and contracts proposed by the selected planner and engineer before final approval. He confirmed that, in his experience, the larger engineering firms will appoint a singular contact person to engage with the Council.

iii. **Next Steps:** *ACTION – Becky Kellen will request an updated proposal with a revised monthly retainer for planning services from Ben Wikstrom and Engineering Services from Bolton and Menk.*

*ACTION – Becky Kellen will arrange a special meeting for the Council to review the revised retainer and proposed contracts for City Planner and City Engineer for final approval.*

b. **Attorney General's Opinion Regarding City Council Salary (1:31:50)**

**On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to disallow checks No. 32272, No. 32273, No. 32274, No. 32275, and No. 32276 for Kevin Woolstencroft, Justin McCarthy, Mark Foster, Jon Fleck, and Mary Wingfield, respectively, and check #EFT12302022 for Mary Wingfield, to direct the City Attorney to send a letter to the previous Council members requesting repayment of the salary overpayments, and to engage with the city's auditor to confirm the action that Council should take regarding investigating the base salary for Council.**

**In favor: Councilmember Hankins, Councilmember McCarthy, Councilmember Weier  
Abstained: Councilmember Foster, Mayor Ford  
Motion carried.**

**On a motion made by Mayor Ford, seconded by Councilmember Weier, it was resolved to direct the City Attorney to obtain a legal opinion from the League of Minnesota Cities regarding the legality of the Council pay raise based on the same information package provided to the Attorney General's office. All in favor; motion carried.**

*ACTION – Becky Kellen will confirm with the City Treasurer the amounts owed by the previous Council members in light of the Attorney General's opinion regarding the Council pay raise.*

*ACTION – H. Alan Kantrud will issue a letter to the previous Council members requesting repayment of the salary overpayments for 2021 and 2022 by a designated deadline and will offer a payment plan as needed.*

*ACTION – H. Alan Kantrud will confirm whether the League of Minnesota Cities has a statute of limitations regarding the Council pay raise issue.*

H. Alan Kantrud reported that, in January 2023, the Council requested he obtain an opinion from the Attorney General regarding the Council pay raise initiated in 2020. He noted municipal government laws state that any pay raise cannot take effect until after the next municipal election.

Based on when the pay raises in question were initiated and passed, it was suggested that the pay raises should not have gone into effect until January 2023. The previous Council ratified and approved the pay raise for 2021 and 2022; however, some Council members repaid the salary overpayments in an effort to correct the issue.

The Attorney General referred to a previous opinion issued by the office in 1970 and concluded the Council pay raises should not have taken effect until January 2023, and any payments received prior were unlawful. The opinion was sent to the previous Council members who are no longer sitting on the Council.

Councilmember Foster queried whether the Attorney General was made aware that the previous Council held a first hearing and passed a motion regarding the Council pay raise in September

2020. H. Alan Kantrud reported providing the Attorney General's office with a package including the agenda and minutes of every meeting discussing the matter leading up to the resolution made in December 2022.

Councilmember McCarthy reported the proposed Council pay raise was included on the November 2020 consent agenda for approval, thus, nulling the suggestion that it was passed in September 2020. He noted that, by policy, the Council would have had to approve the Council pay raise through a second hearing and not the consent agenda.

Mayor Ford queried how the comparison of the 1970 case referenced by the Attorney General determined that the previous Council's failure to follow protocol made the salary pay raises unlawful. H. Alan Kantrud reported that, based on his understanding, in the 1970s, it was a case of minor housekeeping errors that were deemed insufficient to invalidate the pay raises.

Councilmember Hankins acknowledged the impact on Councilmember Foster and Councilmember McCarthy for errors made by the previous Council.

H. Alan Kantrud recommended the Council proceed with requesting the repayment of any outstanding salary overpayments for 2021 and 2022. If the funds are not returned, it would be deemed illegal conduct to hold the funds and the Council would make a referral to the county attorney for prosecution.

Councilmember McCarthy expressed concern regarding the city presumably having never paid Council through a salary ordinance, and the implications on Councilmember Foster and Councilmember McCarthy as tax season approaches. He noted the issue is not the money owed, but rather the legality of the pay raise and reiterated that Council should take any action that is legally obligated to avoid criminal charges.

Councilmember Foster expressed concern regarding the amount of Council time and effort and legal fees incurred to reclaim the salary overpayments from previous Council members.

H. Alan Kantrud suggested obtaining an opinion from the city's auditor regarding how far back in the city's records the City Administrator should investigate for a resolution or ordinance allowing any Council pay. In the interim, a letter should be sent to the previous Council members requesting the return of the salary overpayments.

Mayor Ford requested clarification on the Attorney General's opinion and that a legal opinion be obtained from another legal entity. For this reason, Mayor Ford abstained from the vote to disallow the checks and request repayment. Councilmember Foster also abstained from the same vote due to personal implications.

**c. Deputy Clerk Position Applicant Review (2:26:15)**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to designate Mayor Ford, Councilmember Weier, Becky Kellen, and Mary Cahill to review the candidates for deputy clerk and provide a recommendation to the Council. All in favor; motion carried.**

**d. Radon Test Results and Action (2:29:45)**

**On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to direct city staff to:**

- Purchase the Radonova Radtrak long-term test;
  - Conduct the test over at least three months in the location of the previous 4.7 pCi/l reading;
  - Report the results to the Council via e-mail and in the next regular meeting agenda.
- All in favor; motion carried.

The Council noted the radon test results in the utility room do not pose an imminent threat; however, the levels warrant long-term testing for monitoring.

e. **Section 609 Firearms (2:31:50)**

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the first reading of an Ordinance replacing Ordinance No. 609 titled "Firearms" and repealing Ordinance No. 608 titled "Trapping Prohibited". All in favor; motion carried.

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the first reading of an Ordinance repealing and replacing Ordinance No. 610 titled "Curfew for Minors; Firearms; Tobacco". All in favor; motion carried.

The Council referred to Section 610.045 Use of Tobacco and agreed to remove the references to the dock of the dock association, and any boat at a dock, boat lift, or boat hoist at a public lake tract.

f. **Section 201 Water Meters (2:44:35)**

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the first reading of an Ordinance amending Section 201.080 of Ordinance No. 201 titled "City Water Systems". All in favor; motion carried.

g. **Administrator Updates (2:48:58)**

- i. **Village Hall Security Keypad:** *ACTION – Becky Kellen will explore additional lock systems for the Village Hall including a keypad and lockbox system.*

Becky Kellen reported the smart lock system suggested by Council requires a connection to a cellular phone. She recommended continuing to use a regular lock and key system noting that additional security measures have since been implemented at Village Hall. Committees and residents using the Village Hall would be required to obtain the key from city staff during office hours or by appointment.

The Council discussed alternative options such as a keypad lock with code access that can be changed as needed, or a lockbox for the keys to the Village Hall. Further discussion was deferred to the next meeting.

- ii. **Leaf Pick-up:** Leaf pick-up services have been discontinued due to the administrative strain on city staff and low utilization by residents. Joe Wormwood, the leaf pick-up contractor, agreed with discontinuing the service as maintained by the city.

8. **CITY BUSINESS – PENDING BUSINESS**

A list of pending items was included in the meeting package but not discussed.



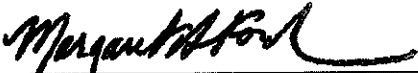


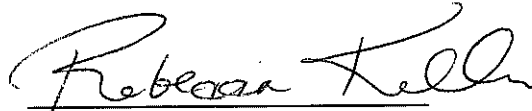
9. ADJOURNMENT

On a motion made by Councilmember Foster, seconded by Mayor Ford and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 10:17 p.m. by Mayor Ford.

DISCLAIMER

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

  
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Mayor Margaret Ford  
4-13-2023  
Date

  
\_\_\_\_\_  
City Administrator Becky Kellen  
4-13-2023  
Date

