

CITY OF BIRCHWOOD VILLAGE  
207 BIRCHWOOD AVENUE  
BIRCHWOOD, MINNESOTA

MINUTES OF THE CITY COUNCIL MEETING  
VIA TELECONFERENCE  
MARCH 8, 2022, 7:00 P.M.

**MEMBERS:**

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

**STAFF:**

Andy Gonyou	City Administrator
H. Alan Kantrud	City Attorney
Steve Thatcher	City Engineer

**GUESTS:**

Ryan Hankins	Planning Commission Vice Chairman
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Minutes prepared by Anh Nguyen of Minutes Solutions Inc. from an audio recording.

1. **CALL TO ORDER**

In light of the status of the ongoing COVID-19 health pandemic, the City of Birchwood Village is conducting its March 2022, meeting using interactive web-based technology. Pursuant to *Minnesota Statutes, Chapter 13D.021 Subdivision 1(1)*, the City of Birchwood Village is declaring that, "an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic...".

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 Foster, 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:

- Planning Commission Discussion

- T.A. Schifsky & Sons Bid
- Ring Camera for City Hall
- Fence Tower Announcement
- Impervious Surface Code Adopted by the City of Mahtomedi

City Administrator Andy Gonyou requested that the following item be deferred until the April 2022 Council meeting:

- Approval of the Regular Meeting Minutes from February 8, 2022

#### 4. OPEN PUBLIC FORUM

**James Nelson, 256 Wildwood Avenue**, requested that Council meetings resume to in-person as community members are eager to speak to the Council in person. He referred to the Birchwood Village newsletter and expressed concern regarding Mayor Wingfield reporting that Birchwood Village has never regulated content on signs. He noted this was a contradiction to the treatment he received as a result of his sign.

James Nelson reported that his sign followed size limitations and was not erected for more than 30 days in a calendar year, yet he was not provided an opportunity for polite discussion before being issued a citation. He reported that he would be attending the next in-person Council meeting with the support of fellow residents.

#### 5. ANNOUNCEMENTS

- A. **Social Media:** Follow Birchwood Village on Facebook @BirchwoodCityHall or on Twitter @CityofBirchwood.

#### 6. ADMINISTRATIVE PRESENTATION

- A. **Sheriff Report:** A report of law enforcement incidents and citations for February 2022, was provided for the Council's review.
- B. **Planning Commission Regular Meeting Minutes:** The minutes of the February 10, 2022, Planning Commission meeting was provided for the Council's review.

#### 7. CITY BUSINESS – CONSENT AGENDA

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

- A. **Approval of the Special Meeting Minutes:** The meeting minutes of the February 15, 2022, special Council meeting was provided for the Council's review and approval.
- B. **Approval of the Treasurer's Report:** The Treasurer's Report for the period ending March 3, 2022, was provided for the Council's review and approval.

8. **CITY BUSINESS – REGULAR AGENDA**

A. **176 Cedar Street Lot Split**

a. **Public Hearing:** Steve Schad expressed concern regarding the number of trees that will be removed to accommodate the construction of houses. He queried the management of the potential water runoff. He was not in favor of the lot split and requested that the Council strictly adhere to city codes regarding water management and tree removal, and that variances regarding lot setbacks not be approved.

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

c. **Council Deliberation:**

**On a motion made by Councilmember Fleck, seconded by Councilmember Woolstencroft, it was resolved to approve the lot split at 176 Cedar Street. All in favor; motion carried.**

Mayor Wingfield requested that the builder, Paul Husnik of Husnik Homes, direct any questions to the City Attorney, H. Alan Kantrud, or the City Administrator, Andy Gonyou.

B. **Planning Commission Discussion**

a. *ACTION – Councilmember McCarthy will incorporate the feedback from the Planning Commission into a maintenance agreement for review at the next Council meeting in April 2022.*

*ACTION – Councilmember McCarthy will send Ryan Hankins a draft of the maintenance agreement before the next Council meeting.*

Ryan Hankins reported that the Planning Commission has done considerable work on the impervious surface code including transitioning to conditional use permits, refining language, and clarifying how the City Engineer evaluates the code. The Planning Commission requested feedback from the Council regarding the aforementioned changes, as well as guidance on pervious pavement surfaces.

C. **Variance Case No. 22-01-VB**

a. **Council Deliberation:**

**On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to deny the driveway variance request on the basis that it does not meet practical difficulty and the solution presented by the applicant is due to the applicant's own initiative. All in favor; motion carried.**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the variance request for the south side yard setback of 7.9 feet on the basis of practical difficulties due to a narrow lot. All in favor; motion carried.**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the variance request for the north side yard setback of 7.5 feet for the cantilever bump out and 8.5 feet for the existing structure as presented on the basis of practical difficulties due to a narrow lot that expands towards the lake, and for the preservation of the existing sightlines for the neighbors, and on the condition that the house not be expanded closer to the lake and be recorded with Washington County. All in favor; motion carried.**

**On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to deny the variance request for impervious surface on the basis that it does not meet practical difficulty and exceeds 25% impervious surface as per city code. Councilmember Foster voted no. Motion carried.**

Mayor Wingfield noted that the Council needs to be cognizant of the city's 60-day policy as the application was submitted on February 8, 2022, and will expire before the next Council meeting in April 2022.

Ryan Hankins reported that the Planning Commission recommended to approve all variance requests except the minimum setback requirement for the driveway due to reasonable use for the property under the current zoning code.

The Council expressed concern regarding the driveway being too close to the neighbor and the potential for runoff into the neighboring property.

H. Alan Kantrud confirmed that the variance request for the south side yard would set a new setback of 7.9 feet and the city code allows a maximum projection of 2 feet from the setback. The builder, Kyle Hunt, noted that the fireplace has a 1-foot projection from the setback.

Mayor Wingfield accepted the 8.5 feet setback from the lot on the condition that the house, including bump outs, cantilevers, or eaves, does not approach closer than 8 feet to the lot line to allow open space for neighbors on either side to build if they wish.

The applicant confirmed that he had no intention of encroaching towards the lake in the future and agreed to record the stipulation with Washington County for property records.

Steve Thatcher confirmed the project has an impervious surface of 29.56% and 42.7% including the pervious pavers. Mayor Wingfield reminded the Council that an impervious surface over 35% has not been historically permitted by the Council. The application is incompatible with the city's open space, values, and the Council's decisions in the past. Mayor Wingfield expressed concern regarding

setting a precedent and reiterated that the Council imposed a standard to deny any variance request over 25% impervious surface. Mayor Wingfield denied the request based on the builder's inability to mitigate the impervious surface down to 25% as per city code or to present a practical difficulty.

H. Alan Kantrud advised the Council to follow past precedent but noted that it is not acceptable to inject terms that are not included in the city code to the applicant's current variance request. He confirmed that if the builder can decrease the impervious surface to 25% or less, it is within city code and a variance is not required.

The Council agreed to waive the application fee if another variance request is required for the same issue.

**D. Variance Case No. 22-02-VB**

**a. Council Deliberation:**

**On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to approve the variance request to erect a fence 61 feet back from Birchwood Lane on the west property line and 50 feet south of the White Bear Lake high water mark, on the basis that the county line road is intended to keep property far back from the right of way but East County Line Road turns away from the lot and presents a practical difficulty, and on the condition that permission is obtained from Washington County. All in favor; motion carried.**

Mary Jane LaVigne, a resident of Birchwood Village, expressed concern that a variance was granted, without proper notification to neighbors, for the construction of the applicant's driveway given its close proximity to a busy intersection. She objected to the fence citing interference with green space and no practical difficulty to warrant a fence.

Mayor Wingfield confirmed that the city code permits a fence not within 20 feet of the right of way. She noted that the Council had previously indicated that the side yard setback to the county line did not apply to the applicant because Feistner Beach intervened the county road and the property. This was erroneous and Feistner Beach does not sit in between East County Line Road and the property.

The applicant agreed to move the start of the fence to the back of the garage. This would be 61 feet away from the right of way of Birchwood Lane and on the property line until 50 feet south of the White Bear Lake high water mark.

A letter of no objection from Washington County is required before the applicant can obtain a fence permit, as recommended by H. Alan Kantrud.

- b. Approve Resolution 2022-06, Authorizing Extension:** A resolution was passed on March 8, 2022, to authorize a 60-day extension for decision in the variance case of 22-02-VB, thus extending the deadline to May 24, 2022.

**E. Variance Case No. 22-03-VB**

**a. Council Deliberation:**

**On a motion made by Mayor Wingfield, seconded by Councilmember McCarthy, it was resolved to approve the variance request to modify the roof to allow the encroachment as requested. All in favor; motion carried.**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the variance request to reduce the impervious surface from 30.3% to 29%. All in favor; motion carried.**

Ryan Hankins noted that the variance request will update the roof to meet current energy efficiency standards.

Steve Thatcher reported that the applicant has agreed to a maintenance agreement for their raingarden.

**F. Wildwood Avenue Lift Station**

**a. Update from City Engineer:** Steve Thatcher reported that he is preparing the plans and specifications, to be ready by May 3, 2022. The surveying of existing structures in the area will be completed weather permitting.

A notice will be posted in the newspaper and bids will be opened on June 7, 2022. The bids will be reviewed at the Council meeting on June 14, 2022. The contractor would start no earlier than the weekend of July 4, 2022, with completion aimed for December 5, 2022.

Mayor Wingfield reported no funding from the state. Any funding support would be in the form of low interest loans. She noted that the Council recovered funds from the removal of the Birchwood Lane Lift Station for the past three years, but would have to continue the capital improvement plan to cover the \$500,000 expenditure for the project.

Mayor Wingfield reiterated that the current Wildwood Avenue Lift Station is not OSHA compliant and is a liability. Steve Thatcher also noted that the above ground lift station is in a hazardous position next to the road.

**G. Second Reading of Ordinance 2022-02-01, Amending Section 404**

**a. Public Hearing:**

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

Councilmember McCarthy reported that unused definitions, a screen requirement, and inaccurate cross references to state billing code were removed.

There were no comments for the public hearing.

**b. Council Deliberation and Approval:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-01, Amending Section 404. All in favor; motion carried.**

**c. Approve Resolution 2022-05, Summary Publication:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve Resolution 2022-05, Summary Publication. All in favor; motion carried.**

**H. Second Reading of Ordinance 2022-02-03, Repealing Section 301.065**

**a. Public Hearing:**

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

Councilmember McCarthy reported that requirements for obtaining variances and administrative appeals were separated, refined, and streamlined. He noted that Section 301.065 referred to an old standard that was not removed from the city code.

There were no comments for the public hearing.

**b. Council Deliberation and Approval:**

**On a motion made by Councilmember Woolstencroft, seconded by Councilmember McCarthy, it was resolved to approve Ordinance 2022-02-03, Repealing Section 301.065. All in favor; motion carried.**

**c. Order Publication: ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-03, Repealing Section 301.065.**

**I. Second Reading of Ordinance 2022-02-04, Amending Section 302.055**

**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.**

Councilmember McCarthy reported that unnecessary verbiage was removed.

There were no comments for the public hearing.

**b. Council Deliberation and Approval:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-04, Amending Section 302.055. Councilmember Fleck abstained. Motion carried.**

- c. Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-04, Amending Section 302.055.*

**J. Second Reading of Ordinance 2022-02-05, Repealing and Replacing Section 304**

**a. Public Hearing:**

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

Councilmember McCarthy reported that repealing and replacing Section 304 provided more clarity for applicants to easily understand city code with respect to variances.

There were no comments for the public hearing.

**b. Council Deliberation and Approval:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-05, Repealing and Replacing Section 304. Councilmember Fleck abstained. All in favor; motion carried.**

- c. Approve Resolution 2022-04, Summary Publication:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve Resolution 2022-04, Summary Publication. Councilmember Fleck abstained. All in favor; motion carried.**

**K. Second Reading of Ordinance 2022-02-06, Adding Section 310**

**a. Public Hearing:**

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

Councilmember McCarthy reported that the old administrative appeals section was removed and placed into a separate section.



There were no comments for the public hearing.

**b. Council Deliberation and Approval:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve Ordinance 2022-02-06, Adding Section 310. All in favor; motion carried.**

- c. Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-06, Adding Section 310.*

**L. Second Reading of Ordinance 2022-02-07, Adding Irrigation Standards**

**a. Public Hearing:**

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

There were no comments for the public hearing.

- b. Council Deliberation:** Mayor Wingfield reported that the addition of irrigation standards was required to ensure the city's water system remains safe, and that the burden remains on any landowner with an irrigation system to properly provide a backflow valve to prevent contamination of city water.
- c. Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-07, Adding Irrigation Standards.*

**M. COVID-19 Protocols**

**a. Council Deliberation:**

**On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to return to in-house meetings and to rescind the mask mandate following the adjournment of the Council meeting on March 8, 2022. Councilmember Fleck abstained. All in favor; motion carried.**

The Council discussed resuming with in-person meetings at City Hall based on the current status of the COVID-19 situation. Andy Gonyou expressed his support for in-person meetings.

**N. Councilmember Reports**

**a. Mayor Wingfield**

- i) Streetlights:** *ACTION – Mayor Wingfield will confirm that there is no charge for Xcel Energy to replace the bulbs for the streetlights at the east end of Wildwood Park with LED bulbs.*

*ACTION – Mayor Wingfield will request that Xcel Energy install a longer arm at the streetlight for better lighting on the road at no charge.*

*ACTION – Councilmember McCarthy will speak to his neighbors regarding the two private streetlights at the end of his street.*

*ACTION – Mayor Wingfield will request that the city workers trim the tree on Owl Street that is currently obstructing the streetlight as reported by Councilmember Foster.*

Mayor Wingfield noted that street lighting should be uniform. The Council authorized Mayor Wingfield to arrange for the streetlight bulbs in question to be changed.

- ii) **Dog Licenses:** *ACTION – Andy Gonyou will amend the fee schedule to reflect that dog license are valid for three years and will present it to the Council at the next Council meeting.*

Mayor Wingfield noted that the rabies vaccine is valid for three years, which does not coincide with the city's dog license of two years. The Council agreed it would be an administrative burden not to have the license coincide with the vaccine.

Mayor Wingfield reported that part of the fee from dog licenses is allocated to dog patrolling at a cost of \$80 per month.

- iii) **Data Practices Requests:** *ACTION – Andy Gonyou will draft a data practices request policy to be included on the consent agenda for the next Council meeting.*

Mayor Wingfield suggested that staff inform the Council when a data practice request is received. This will help determine how much staff time is allocated to data practices requests and how often the requests are received.

- iv) **Snow Plowing Services:** *ACTION – Mayor Wingfield will inform the snow plowing contractor that the clean-up work on March 9, 2022, is not required.*

Mayor Wingfield reported that the snowfall to date is 20.8 inches and expenses on snow plowing to date is \$17,000. The budget for snow plowing is \$22,000. The city has not been billed for the most recent heavy snowfall. The Council agreed that additional clean-up is not required given the warmer weather.

v) **T.A. Schifsky & Sons Bid:**

**On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to approve the bid provided by T.A Schifsky & Sons for crack filling, patching, and watermain breaks, to be completed in May 2022. All in favor; motion carried.**

*ACTION – Mayor Wingfield will confirm that street sweeping can be completed in tandem with the work by T.A. Schifsky & Sons.*

Mayor Wingfield noted a potential surcharge based on current oil prices.

vi) **Ring Camera for City Hall:** The Council agreed to install a Ring camera at City Hall.

Mayor Wingfield reported that the camera would monitor the front of City Hall, the garage across the street, and the bell tower at a monthly cost of \$3.

vii) **Fence Tower Announcement:** Mayor Wingfield reported that the fence post will be erected at the water tower receiver in a few weeks.

viii) **Impervious Surface Code Adopted by the City of Mahtomedi:** *ACTION – Mayor Wingfield will obtain the ordinance from Mahtomedi's city attorney and will present it to the Council, the Planning Commission, and the City Attorney for review.*

b. **Councilmember McCarthy**

i) **Sign Ordinance:**

**On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to suspend the enforcement of Section 601 effective immediately. All in favor; motion carried.**

*ACTION – Andy Gonyou will include the repealing of the current sign ordinance for public hearing on the agenda for the next Council meeting.*

Councilmember McCarthy presented a proposal to repeal the city's current sign ordinance. He noted constitutional concerns along with concerns that the current ordinance allows commercial signage with no time limit compared to non-commercial signage. He is working on a content neutral, size-based, revised ordinance and will present it at the next Council meeting.

H. Alan Kantrud advised city staff not to enforce the current sign ordinance, no criminal citations be issued pursuant to the sign ordinance, and no complaints regarding the sign ordinance be entertained pending the formal repeal of the ordinance at the next Council meeting. H. Alan Kantrud confirmed that a second reading can be waived as there is no state law requiring two readings.

- ii) **Administrative Complaint Procedure:** Councilmember McCarthy reported a misinterpretation of the city's ordinance by the public and the media. A revision is pending.
- ii) **Hall's Marsh Update:** Councilmember McCarthy reported that the Priebe Lake Inlet structure was completed; however, the dam eroded overnight and resulted in running water from the pipe into Hall's Marsh. A meeting with the Rice Creek Watershed District (RCWD) was held regarding the breach in which Councilmember McCarthy reiterated that the RCWD requires permission from Birchwood Village to draw down Priebe Lake.

A RCWD workshop was held on March 7, 2022, where staff were directed to develop a comprehensive plan and will be working with Birchwood Village. Councilmember McCarthy confirmed that a letter was sent to the RCWD, the City of White Bear Lake, and the City of Mahtomedi as previously discussed.

9. **NEXT MEETING**

The next Council meeting will be held at a date and time to be determined.

10. **ADJOURNMENT**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft 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

04/12/2022  
 Date

  
 City Administrator Andy Gonyou

04/12/2022  
 Date

