

**CITY OF BIRCHWOOD VILLAGE  
REGULAR CITY COUNCIL MEETING  
May 10, 2011**

**MINUTES**

**MEMBERS PRESENT:** Mayor Alan Mitchell; Council Members Barb Carson, Jane Harper, Mark Peterson, and Tony Sampair

**STAFF PRESENT:** City Clerk Dale Powers and City Treasurer Cindie Reiter

**OTHERS PRESENT:** Karen Charpentier-Kropelnicki, City Engineer Kristie Elfering, Jim Greeley, Roger Kropelnicki, Randy LaFoy, John Lund, Bryan McGinniss, Troy Morehead, City Utility Billing Manager Shelly Rueckert, and Chad Woolhouse.

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

**AGENDA APPROVAL:** *Harper/Peterson unanimous to approve the agenda for the May 10, 2011 regular Meeting, as amended to remove the following items off of the Consent Calendar and place them under Regular Business:*

1. *Approval of the minutes of the April 12, 2011 Regular Meeting*
2. *Approval of the minutes of the April 26, 2011 Regular Meeting*
6. *Approval of expenditure not to exceed \$1,000.00 for the replacement of broken signage*
7. *Approval of expenditure not to exceed \$1,000.00 for repair of priority items in Village Hall*
8. *Approval of expenditure of \$200.00 for fireworks*
9. *Acceptance of the bid for the garage rental.*

**CONSENT CALENDAR:** *Mitchell/Sampair unanimous to approve the following consent calendar items:*

3. *Approval of Resolution 2011-08: A Resolution Establishing Limited Clean Up and Property Damage Protection for Sewer Back-Ups and Water Main Breaks for Water and Sewer Customers*
4. *Approval of the Disbursements Register as prepared by the City Treasurer and presented to the City Council on May 10, 2011, including Check #'s 26547-26548, 26572-26603, and Electronic Funds Transfers FED042011, MN042011, PERA033111 and PERA041511*
5. *Approval of \$410.00 expenditure for the City Clerk to attend Year Two of the Minnesota Municipal Clerks Institute July 11-15 in Brooklyn Center*

**APPROVAL OF MINUTES FROM THE APRIL 12, 2011 REGULAR MEETING:** Mitchell wanted the minutes to reflect at Line 78 that a public hearing was held and no comments were filed.

*Mitchell/Sampair unanimous to approve the minutes of the April 12, 2011 regular meeting as amended.*

**APPROVAL OF MINUTES FROM THE APRIL 26, 2011 REGULAR MEETING:** Mitchell wanted the minutes to reflect at Paragraph 72-78 that the contract for pothole repair was awarded to the low bidder.

*Mitchell/Carson unanimous to approve the minutes of the April 12, 2011 regular meeting as amended.*

**APPROVAL OF EXPENDITURE NOT TO EXCEED \$1,000.00 FOR THE REPLACEMENT OF BROKEN**

**SIGNAGE:** Elfering reviewed with the Council her memo on sign replacement, and noted that at the last meeting the Council could replace signage that needed to be replaced for safety reasons within the \$1,000.00 previously budgeted for this purpose. Elfering recommended the following signage to be replaced at this time as (1) missing stop sign at Jay Street & Birchwood Avenue; (2) two nearly illegible "no parking" signs at the north end of the south section of Birchwood Avenue and by Hall's Marsh; and (3) missing street name signs at Oakhill Court & Oakridge Drive. Elfering also noted that the Council may want to consider additional signage needs such as several Ordinance 502 (Parking Regulations) signs that are missing or need to be replaced. Elfering related that if the "502" signs were placed at the street entrances to the City, the interior "502" signage could be removed. In addition, Elfering noted that the Sampair/Flick report mentioned the lack of a stop sign at Wildwood and Lake Avenues and, while that may be due to the steepness of the hill and issues with winter stopping, the Council may want to revisit that intersection and place a stop sign there. Sampair responded that there was a miscommunication on the missing signage at that intersection and that the "No Parking 50 feet" signs are missing at Wildwood and Lake.

Harper asked whether the "502" signs could be ordered and stay within the \$1,000.00 budgeted for signs. Elfering responded that the "502" signs cost \$50.00 per sign and could be ordered within the stated budget amount.

Mitchell asked whether the new signs will meet the new federal retroreflectivity standards. Elfering said that they would. Mitchell also asked whether there is an issue on what the "no parking" hours are. Elfering said that are discrepancies in what the "no parking" hours are depending on location in the City. Mitchell noted that has to be addressed at a future time.

*Peterson/Sampair unanimous to approve the expenditure to replace the first four bulleted signs on Page 1 (Sign Posts 41, 40, 50, and 108); install three Ordinance 502 (Parking Regulation) signs - 1 at the east entrance of the City (Hall Avenue) and 2 at the west entrances of the City (Cedar Street and Birchwood Lane) ; and to remove the unnecessary Ordinance 502 signs at the interior locations of the City; to straighten the stop sign at Birchwood Avenue and Cedar Street, and to cap the expenditure at \$1,000.00.*

**APPROVAL OF EXPENDITURE NOT TO EXCEED \$1,000.00 FOR REPAIR OF PRIORITY ITEMS AT VILLAGE**

**HALL:** Mitchell wanted this item pulled off of the consent agenda to advise the Council and public that the City is going to authorize up to \$1,000.00 to get some of the urgent safety matters repaired in the Village Hall and as reported by White Bear Lake City Building Official Ben Egan and as prioritized by the City Council at the April 26, 2011 regular meeting.

*Sampair/Mitchell unanimous to approve up to \$1,000.00 to get some of the urgent matters repaired in the Village Hall as reported by Egan and prioritized by the City Council.*

**APPROVAL OF EXPENDITURE OF \$200.00 FOR FIREWORKS:** Mitchell noted that this is an item that the City has done every year and wanted to clarify where the money is coming from since it was not

budgeted for this year. Powers recommended that \$200.00 from the savings the City realized from purchasing the new computers could go towards this expenditure. **Harper** noted that the audit noted that the City needs to better document the times when it spends money that was not budgeted for and identify the accounts that are going to be amended.

***Harper/Peterson unanimous to approve an expenditure of \$200.00 to the White Bear Lake Fireworks Fund as the City's contribution, with the money coming out of the savings the City realized from the purchase of the new computers.***

**APPROVAL OF THE BID FOR THE GARAGE RENTAL:** **Mitchell** noted that this item was pulled off of the consent calendar due to the presence of a second bid of \$55.00 from Randy LaFoy. The first bid is for \$305.00 from Kim Otness and Ken Kixmoeller. **Peterson** asked whether the term was for 6 months. Powers responded the term of the contract is at the discretion of the Council. **Harper** noted that it was the desire of the Council to have a one-year term November-November so people could use it for boat storage or fall clean-up and a five-month term would get the Council to that point.

***Peterson/Harper unanimous to accept the Otness/Kixmoeller bid, prorated 5 months from June through October 2011 at a total rent of \$127.00 for the term.***

**COMMUNITY EVENTS AND ANNOUNCEMENTS:** **Mitchell** noted that the annual Plant Exchange will be Saturday, May 21 at 10:00am at City Hall; the Birchwood All-City Garage Sale is Saturday, June 4; Music in the Park starts Sunday, June 5, and subsequent dates will be posted in the newsletter coming out in early June; the docks have been put out at the easements and if City residents want access to all 5 docks, you can join the Birchwood Dock Association for \$35.00; and a big THANK YOU to the volunteers who've worked at Nordling Park. **Carson** wanted to thank Erica Peterson, John Lund, Cynthia Tomlinson, Steve Dean, and everyone who helped out at Nordling Park.

**OPEN PUBLIC FORUM:** No one came forward and addressed the Council during Open Forum.

**DEBT SERVICE SPECIAL ASSESSMENT INTEREST CALCULATION:** **Reiter** reviewed with the Council this issue, which was brought to the Council's attention at the April 12, 2011 meeting. **Reiter** noted that interest on the special assessments was inadvertently calculated twice, once by the City and once by the County. The Council discussed this situation in a general matter at its April 26, 2011 meeting and a consensus was developed for hearing back from **Reiter** on options for refunding the overcharge at this meeting. **Reiter** noted that the overcharge isn't actualized until the property owner pays the special assessment; until then it is only on paper. Consequently, **Reiter** recommends issuing a refund during the first quarter 2012 to those property owners whom the County verifies as having paid the overcharge during 2011 through their property taxes. Going forward, **Reiter** assured the Council that the assessment rolls would be corrected to eliminate the overcharge for assessments payable in 2012 and thereafter.

***Harper/Sampair unanimous to have staff send a letter to the affected residents explaining the situation and that the City will be providing a reimbursement next year after it has been informed by the County that the assessment has been paid.***

**FISCAL YEAR 2010 AUDIT UPDATE:** **Mitchell** was to update the Council and public that the audit is complete and will be going to the Office of the State Auditor on May 16. Mitchell noted that he, Harper, and Reiter attended an exit interview with the audit firm to get an overview of the results. Mitchell

noted that the 2009 audit had 4 areas of material weakness and 23 significant deficiencies. The 2010 audit has 2 areas of material weakness and 7 significant deficiencies. Peggy Moeller will be at the June 14, 2011 Council meeting, and the audit will be posted on the website as soon as possible. Finally, the audit came in at the budgeted amount of \$15,000.00.

**Harper** noted that some of the findings are those that are a result of the City's staffing levels and the City couldn't afford to maintain staffing levels sufficient to eliminate those findings. **Harper** concluded that a lot of credit needs to go to the staff for working hard to address the issues from the previous audit.

**Carson** asked whether there will be an audit next year. **Mitchell** said that was discussed and that most likely there will not be an audit. **Harper** noted that is an area that will be reviewed at budget time, and it depends on whether the City continues to have a separate clerk and treasurer position or a combined position. **Harper** concluded that the City may choose to have an audit next year even if one is not required.

**RESOLUTION 2011-11 APPROVING ORDINANCE 2011-02: AN ORDINANCE TO REVISE SECTION 403 (TREE DISEASES) OF THE BIRCHWOOD CITY CODE TO INCLUDE PROVISIONS REGARDING THE EMERALD ASH BORER AND TWO-LINE CHESTNUT BORER:** **Mitchell** opened the public hearing at 7:43pm and, hearing no requests to speak, closed the public hearing at 7:44pm.

**Mitchell** noted that by adoption of this ordinance amendment, the City would not be chopping down ash and trees right away, and said that the amendment gives the City the right to remove trees infected with these two pests.

***Mitchell/Carson unanimous to approve Resolution 2011-11 Approving Ordinance 2011-02 and also to approve publication of the ordinance summary in the White Bear Press.***

**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 7:45pm and, hearing no requests to speak, closed the public hearing at 7:46pm.

**Harper** noted that Section 201.090 of the Code should be amended to state that water use rates are to be applied to each household, building, or structure served by the City water system, and then define what a household is. An item later on in tonight's agenda raises a question about two structures served by one connection with a "Y" – do they get billed twice? Section 201.080 clearly states that every household or final consumer must have its own meter. **Harper** recommends changing that language to be consistent with Section 201.090, to read "every household", to clarify the issue.

**Mitchell** stated that he is hesitant about changing the draft at this point in the process before having a discussion about the "Y" issue. **Harper** asked whether the agenda could be amended to discuss this matter after reviewing the "Y" issue later on. **Mitchell** said that there are historical precedents that need to be considered when contemplating changing the billing structure.

***Harper/Carson unanimous to table this item until Item #20 ("Y" connection issue) is discussed.***

**RESOLUTION 2011-13 APPROVING ORDINANCE 2011-04: AN ORDINANCE TO REVISE SECTION 202 (CITY PLUMBING & SEWERAGE SYSTEM) OF THE BIRCHWOOD CITY CODE TO CLARIFY REPAIR AND MAINTENANCE RESPONSIBILITIES:** Mitchell opened the public hearing at 7:52pm and, hearing no requests to speak, closed the public hearing at 7:53pm.

**Harper** noted that these changes modernize the code based on the City Engineer's recommendations. The changes increased the value of work requiring a permit from \$500.00 to \$1,000.00; providing additional technical information; clarifying the responsible party for repair & maintenance of the service line from the main to the private structure; prohibiting discharge of water from hot tubs, swimming pools, sump pumps, and similar facilities; and clarify the definition of "building."

***Harper/Sampair unanimous to approve Resolution 2011-13 Approving Ordinance 2011-04 and also to approve publication of the ordinance summary in the White Bear Press.***

**DRAFT FUND BALANCE POLICY:** Mitchell opened the public hearing at 7:58pm and, hearing no requests to speak, closed the public hearing at 8:00pm.

**Harper** noted that this policy governs and guides the City's fund accounting of the public's money; requires the City to maintain an unreserved fund balance between 40-50% of budgeted operating expenditures or 6 months operating revenue – whichever is greater; and establishes definitions for certain fund accounting terms. **Harper** further noted that due to word changes effective in 2012, this policy will need to be amended at the end of this year to incorporate those word changes.

***Harper/Peterson unanimous to approve the draft Fund Balance Policy as amended to change the phrase "and in anticipation" to "or in anticipation" under the second guideline.***

**OWL STREET:** Due to the absence of Randy LaFoy, the consensus of the Council was to table this matter until Randy arrives.

***Mitchell/Peterson unanimous to table the Owl Street discussion until Randy LaFoy arrives.***

**MUSIC IN THE PARK:** Mitchell reviewed with the Council his memo on the Music in the Park series, where several issues were identified. **Mitchell** noted the first issue is expenses, and said he would like to either change his mind about refusing the mayor's salary and take it to use for the concert series, or preferably, that the Council act to direct that the \$1,500.00 mayor's salary be devoted to the concert series. Secondly, **Mitchell** wanted residents to have the right to have a glass of wine or beer during the concerts, and pointed out that the City Code allows alcohol on city land with approval. **Mitchell** also indicated that he would alert the White Bear Lake Police about the alcohol use if approved. Discussion occurred to make clear that no beer or wine would be sold and no hard liquor would be permitted.

**Harper** asked whether the neighbors have been informed. **Mitchell** responded that while there has been informal notice given through word-of-mouth and announcements at Council meetings, no formal notice to the immediate neighbors had been given and that it would be a good idea to do so for those around the concert location near Dellwood Beach and the hockey rink.

***Carson/Peterson unanimous to authorize the \$1,500.00 to be used for the Mayor's salary toward payment of expenses for the Music in the Park series.***

***Sampair/Carson unanimous to authorize persons of legal age to possess and consume beer and wine during the Sunday evening concerts during 2011, but only in the park where the concert is being held and only during the hours of the concert, and provided further that no person shall offer for sale any intoxicating liquor at such places and at such times.***

**Powers** advised the Council that if the City Hall is to be used as a backup location, the City will need to reserve the Hall for those dates and times. **Mitchell** responded that he did think about that, but he wasn't too concerned since the Hall isn't rented out that often on Sunday evenings. **Powers** mentioned that he will reserve the Hall for 6:00pm each listed Sunday on the schedule, and add additional Sundays when they are firmed up.

**SUMMER PARKS HELP JOB DESCRIPTION AND AUTHORIZATION TO HIRE:** **Carson** shared with the Council that the Parks Committee has budgeted \$500.00 for a summer parks help to devote 45 hours for various maintenance and upkeep duties with the hockey rink and other park areas. None of the duties would require use of motorized equipment. **Carson** noted that a draft job description is on the back of the memo and thinks the draft is great, except that she would like the age lowered from 17 to 16.

**Mitchell** asked who would select the person hired for this job? **Carson** responded that the Council would make the decision at the July 2011 meeting. **Mitchell** asked who would this person report to? **Carson** responded that he/she would report to the City Clerk and the Chair of the Parks Committee. **Mitchell** asked if this person would need a contract? **Carson** responded that this position would be similar to the hockey rink attendants.

**Harper** noted that the City has a handyman (KEJ) and how does this relate to the handyman and the contract the City has with KEJ? **Carson** responded that this position would pay \$10.00 per hour, which is much less than what the City pays KEJ. **Harper** advised the Council that when the City budgets for next year, it needs to differentiate and better define the duties of the handy man, the lawn service, and the parks attendant.

***Carson/Sampair unanimous to advertise for a park attendant at \$10.00 per hour for the summer of 2011, not to exceed 45 hours or \$450.00 pay.***

**HOME OCCUPATION AT 501 WILDWOOD AVENUE:** **Powers** reviewed with the Council his memo on this matter, and related that he had received any number of complaints about noise emanating from 501 Wildwood Avenue. **Powers** investigated the complaint and determined that a cabinet-making business was being conducted from the garage of the residential property. **Powers** concluded his remarks by reviewing Section 306.070 of the City Code, which regulates home occupations. **Kropelnicki**, the cabinet-maker, addressed the Council and explained the nature of his cabinet-making activity and the hours that he works. **Charpentier-Kropelnicki** shared with the Council the fact that there have been complaints made about her and her husband in the past, most of which were unfounded. **Morehead** and **Woolhouse** each addressed the Council as neighbors of Kropelnicki and stated they have no issue with Kropelnicki's activity.

***Harper/Sampair unanimous to forward this complaint to the Planning Commission for review and recommendation to the Council.***

**CHANGING THE NAME OF LOWER BIRCH STREET TO OWL STREET:** **LaFoy** and **McGinniss** updated the Council on the previous discussion from earlier this year on the public safety issues resulting from Birch



Street not going through from Wildwood to Birchwood Avenues. If lower Birch Street was changed to Owl Street, a substantial number of these public safety issues would be obviated.

Council discussion centered on legal descriptions, right of way issues, who is responsible for the costs of the change, and where the dollars will be coming from. **Elfering** indicated that she has spoken to the County and that a precise legal description is not required, only a general description of where the street is located.

***Harper/Peterson unanimous to do what's necessary to change lower Birch Street to Owl Street, to include presentation to the Council of draft language on the proposed ordinance; presentation of a firmer cost estimate for the change; and a recommendation on where the dollars are going to come from to pay for the name change.***

**UTILITY BILLING: REVIEW OF SITUATIONS WHERE TWO RESIDENCES ARE SERVED BY A "Y" TO ONE SERGVICE TO THE MAIN:** **Rueckert** mentioned that the issue is with sewer, and that Section 201 (City Water System) and Section 202 (City Plumbing & Sewerage System) treats this issue differently. Whereas 201 states "every household or other final consumer" must have its own meter, 202 states that multiple connections are permitted only by special application to the City. **Rueckert** noted that with the change to a "base plus flow" billing structure, the issue may take care of itself because the City is capturing the usage in its billing when it wasn't before under the old billing system.

**Harper** asked for clarification on how many bills were being sent out and when. **Rueckert** responded that two bills were being sent out, then when Little Canada took over the billing it was reduced to one bill, then under the direction of former Mayor Mary Wingfield two bills were being sent out again.

**Mitchell** noted that he doesn't remember any complaints about the billing. McKenzie complained about the assessment rather than the billing and he doesn't see any difference. **Rueckert** noted that the assessment is about a fixed charge and the billing is for usage. Harper noted that the situation is clear and that McKenzie should receive two bills. **Mitchell** said the ordinance is not so clear when there is no information as to whether McKenzie has prior authorization for one bill. **Harper** challenges that conclusion due to the fact that a "mistake" was made when Little Canada was assigned the billing and that "mistake" is now being corrected. **Rueckert** responded by saying that McKenzie's argument is that since there is only one connection from the main to his property, he should pay only one sewer bill. **Sampair** noted that the ordinance revisions better clarify the situation.

**Harper** mentioned that while there is language in the Water Code on billing dispute resolutions, no such language exists in the Plumbing & Sewerage Code. **Harper** recommends incorporation of dispute resolution language in the Plumbing & Sewerage Code. **Mitchell** recommends adopting the changes to the Water Code and not to go out and install second meters at this time. **Harper** said that the Sewer Code clearly states that each premise is billed, and that the existing language has enough authority to bill for two residences.

The consensus of the Council was to direct staff to communicate with Mr. McKenzie the Council's decision on this matter and if he wants to further dispute the matter he can address the Council.

**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:**

***Harper/Mitchell unanimous to take this matter off the table.***

**Harper** suggested that the revised Section 201 should have language in it as previously discussed to reinforce the requirement that the rates are to be applied to every household. As such, **Harper recommends** tabling further consideration of Resolution 2011-12 until the June meeting so that language can be incorporated into the draft. **Mitchell** recommends that a motion be adopted to amend the draft as suggested by Harper, then hold another public hearing in June on the amended draft.

***Harper/Sampair unanimous to amend Section 201.090 to add the following sentence: "A water use rate is hereby imposed upon each household served by the City water system." and to hold a public hearing at the June 14, 2011 Council meeting on the amended draft resolution and ordinance.***

**PARK AVENUE RIGHT OF WAY:** **Powers** informed the Council that he investigated a complaint about storage of personal property located in the right of way of Park Avenue and Lake Avenue in the vicinity of the northwest corner of Tight-Schmitz Park, and determined that the right of way was being encroached upon by the personal property. The complainant requested that I communicate with the property owner and tell him to move the property. **Powers** subsequently asked Elfering to visit the property to determine where the right of way line is along the west side of Park Avenue so he could inform the residents exactly where the line is between the City's right of way and their property. **Elfering** determined that the property line is 10 feet from the hydrant and 4 feet inside the fence line. Elfering shared with the Council an exhibit indicating the location of the tree line, the fence, and the right of way line.

**Greeley** addressed the Council and identified himself as the complainant. **Greeley** mentioned that this is an exterior storage issue as much as it is a right of way issue, and quoted from Section 615.010 of the City Code which addresses exterior storage on private property. **Greeley** believes the material stored is unsightly and an impediment to selling his property. In conclusion, Greeley indicated that the ordinance calls for the Mayor or another Councilmember to investigate the complaint. **Mitchell** responded that he will investigate the situation.

**Carson** left the meeting at 9:55pm.

**Sampair** shared a concern that if the City finds out that a fence or other structure is on the City's property, I'm not sure this can be easily dismissed that the City needs to address this issue. **Harper** said she brought this up in 2009 and perhaps the City needs to start surveying its open spaces, to insure that work the city is doing in the park is on the City's property. **Sampair** mentioned that he is concerned about access to the fire hydrant.

**NEXT MEETING – JUNE 14, 2011 – TOPICS:** **Mitchell** related that the following issues will be on the June 14, 2011 agenda: budget assignments; Parks Committee By-Laws Approval; Owl Street issues; Ordinance 201 (City Water System); and cost estimates for repair of City Hall (the major items).

**Mitchell** advised the Council and public that the May 24, 2011 meeting will be cancelled.

***Mitchell/Sampair unanimous to cancel the May 24, 2011 Council Meeting.***

**ADJOURN:** ***Mitchell/Sampair unanimous to adjourn @10:04pm.***



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Dale Powers  
City Clerk