

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

**MINUTES OF THE CITY COUNCIL MEETING
NOVEMBER 15, 2022, 7:00 P.M.**

MEMBERS:

Mary Wingfield	Mayor
Jon Fleck	Councilmember
Mark Foster	Councilmember
Justin McCarthy	Councilmember
Kevin Woolstencroft	Councilmember (via teleconference)

STAFF:

Becky Kellen	City Administrator
H. Alan Kantrud	City Attorney

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 Woolstencroft, it was resolved to approve the agenda, as amended. All in favor; motion carried.

Councilmember McCarthy requested the addition of the following items to the agenda:

- Tighe-Schmitz Hockey Rink

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

- DNR Lost Lake Elevation
- Elections with Washington County
- Planning Commission Open Position
- White Bear Township Sewer Charge Update
- RFP for City Attorney Position
- General Proceedings for City Agenda

4. OPEN PUBLIC FORUM

Ryan Hankins, 183 Wildwood Avenue, expressed gratitude to the residents of Birchwood Village for their civic participation and was in favor of a new Councilmember orientation.

5. **ANNOUNCEMENTS**

- A. **Truth in Taxation Hearing:** The hearing is scheduled to be held at City Hall on December 13, 2022, at 7:00 p.m. prior to the next Council meeting.
- B. **City Hall Office Hours:** Effective November 1, 2022, the City Hall office hours have changed to Tuesdays and Thursdays from 10:30 a.m. to 1:30 p.m., and by appointment.
- C. **Deer Hunt:** The deer hunt is scheduled for November 28, 2022, through to November 29, 2022; December 11, 2022, through to December 12, 2022; and December 19, 2022, through to December 20, 2022.
- D. **Birchwood Village Election:** The Birchwood Village election will be highlighted in a story airing on Fox 9 on November 15, 2022, at 9:00 p.m. A story will also be included in the St. Paul Pioneer Press and the Star Tribune on November 16, 2022.

6. **CITY BUSINESS – CONSENT AGENDA**

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

- A. **Approval of the Treasurer's Report:** *ACTION – Becky Kellen will reconcile a list of donations accepted by the city and include a resolution to approve all the donations on the agenda for the next Council meeting.*

The Treasurer's report for the period ending November 8, 2022, was provided for the Council's review and approval.

- B. **Approval of the October Council Meeting Minutes:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the minutes of the Council meeting held on October 11, 2022, as amended. All in favor; motion carried.

The Council requested the following amendments:

- Guests: Ryan Hankins is the Vice-Chair of the Planning Commission
- Section 6. A.: replace "\$1,500" with "\$15,000"

- C. **Approval of Resolution 2022-14 – Suspending Section 609.020 Hunting:** Section 609.020 of the city code will be suspended for the duration of the 2022 deer hunt.
- D. **Approval of Resolution 2022-15 – Appointing Mary Cahill as Treasurer:** Mary Cahill was appointed as City Treasurer, effective November 15, 2022.
- E. **Approval of Updating the 2022 Beginning Balance for the General Fund and the Special Revenue Fund:** The beginning balance for the 100 – General Fund will be updated by \$25,190.39 and the beginning balance for the 210 – Special Revenue Fund will be updated by \$300.

- F. **Approval of the White Bear Lake Fire Department Contract:** The fire services contract with the White Bear Lake Fire Department is a five-year agreement effective January 1, 2023, through December 31, 2028.

7. **CITY BUSINESS – REGULAR AGENDA**

A. **Ordinance 2022-10-01, Amending Section 307.010 Zoning Permit Application**

- a. **Planning Commission Revision and Approval:** The ordinance was revised to provide more clarity to residents regarding the zoning permit application requirements.

b. **First Reading and Council Deliberation:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the first reading of Ordinance 2022-10-01, Amending Section 307.010 Zoning Permit Application. All in favor; motion carried.

- c. **Order Second Reading and Public Hearing:** *ACTION – Becky Kellen will publish the second reading and public hearing for Ordinance 2022-10-01, Amending Section 307.010 Zoning Permit Applications.*

B. **Ordinance 2022-10-02, Amending Section 605 Animals**

a. **First Reading and Council Deliberation:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve the first reading of Ordinance 2022-10-02, Amending Section 605 Animals, as amended. All in favor; motion carried.

The Council requested the following amendment:

- Section 605.021.2, term; renewal; late penalty charge, replace the second sentence with “New dog permits issued during the second or third year of the term shall have their fee reduced as per the fee schedule.”

b. **Order Second Reading and Public Hearing**

C. **Ordinance 2022-10-03, Amending Section 607.400 Camping**

a. **First Reading and Council Deliberation:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the first reading of Ordinance 2022-10-03, Amending Section 607.400 Camping, as amended. All in favor; motion carried.

The Council requested the following amendment:

- 607.480, replace “exclusively use” with “reserve”.

- b. **Order Second Reading and Public Hearing**

D. **Ordinance 2022-10-04, Amending Section 617 Public Lake Tracts**

- a. **First Reading and Council Deliberation:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve the first reading of Ordinance 2022-10-04, Amending Section 617 Public Lake Tracts, as amended. All in favor; motion carried.

The Council requested the following amendment:

- Section 617.380 c (5), remove the first sentence.

- b. **Order Second Reading and Public Hearing**

E. **Ordinance 2022-10-05, Amending Section 701 Fees**

- a. **First Reading and Council Deliberation:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the first reading of Ordinance 2022-10-05, Amending Section 701 Fees, as presented. All in favor; motion carried.

- b. **Order Second Reading and Public Hearing:** *ACTION— Becky Kellen will publish the second reading and public hearing for Ordinance 2022-10-05, Amending Section 701 Fees.*

F. **Ordinance 2022-10-06, Fee Schedule Ordinance**

- a. **First Reading and Council Deliberation:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve the first reading of Ordinance 2022-10-06, Fee Schedule Ordinance, as amended. All in favor; motion carried.

ACTION— Ryan Hankins will revise the fee schedule to indicate a cost of \$25 for three years of the three-year dog license term, \$20 for two years of the three-year dog license term, and \$15 for one year of the three-year dog license term.

- b. **Order Second Reading and Public Hearing**

G. Ordinance 2022-11-01, Amending Section 201.080 Meters

a. First Reading and Council Deliberation:

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the first reading of Ordinance 2022-11-01, Amending Section 201.080 Meters, as amended. All in favor; motion carried.

The Council requested the following amendments:

- A requirement of compliance in order to sell the property.
- Failure to timely report any water meter readings twice in any quarter period is a violation of the code and is a misdemeanor.
- Failure to timely produce a legible and time-stamped water meter reading shall result in double the fee as set in the fee schedule.

b. Order Second Reading and Public Hearing

H. Emerald Ash Borer Tree Management Program

On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to approve the Emerald Ash Borer Tree Management Plan as drafted and to forward a copy of the plan to the Department of Natural Resources (DNR). All in favor; motion carried.

ACTION – Becky Kellen will send a copy of the city's Emerald Ash Borer Management Plan to the DNR.

I. Bid for Tree Removal on Public Land

On a motion made by Councilmember Foster, seconded by Mayor Wingfield, it was resolved to approve the bid for tree removal on public land by Steve Dean Tree Trimming at a cost of \$21,300. Councilmember McCarthy objected. Motion carried.

John Lund revoked his bid based on a perceived conflict of interest. Mayor Wingfield confirmed that John Lund is legally permitted to provide a bid; however, he is unable to receive funds from the DNR emerald ash borer grant as it prohibits a tree inspector from benefiting from their own markings. Becky Kellen confirmed that John Lund's bid was higher than the proposed bid from Steve Dean.

A third contractor, Sorenson Companies, expressed interest in providing a bid for the tree removal. Councilmember McCarthy was in support of obtaining a third bid given that John Lund revoked his. H. Alan Kantrud noted it is best practice to obtain at least two or three bids for major projects.

The Council expressed concern regarding the third contractor submitting a lower bid than Steve Dean based on public knowledge of the proposal by Steve Dean Tree Trimming. The Council noted that Steve Dean has historically provided the lowest bids and the city is content with the work provided by the contractor.

J. 15 Birchwood Lane

ACTION – Becky Kellen will include an update on 15 Birchwood Lane on the agenda for the next Council meeting.

ACTION – H. Alan Kantrud will request an official report from Steve Thatcher, the City Engineer, that quantifies the claims of impervious surface excess at 15 Birchwood Lane and will continue to work with the homeowner of 15 Birchwood Lane for compliance.

A letter regarding water from Birchwood Lane that is not draining into the culverts as anticipated and the potential excess of impervious surface was sent to the homeowners of 15 Birchwood Lane in mid-October 2022. A response has not been received.

H. Alan Kantrud met with the homeowners of 15 Birchwood Lane on site and confirmed that the water is draining. There are two ponding areas, and it was discussed whether grinding could help to encourage the flow of water into the swale entering the ditch. The road is not well-crowned but it is draining into the ditch. The homeowners are working with the county to obtain an inlet closer to the county road at the height of the elevation to help the drainage issues.

The Council expressed concern regarding non-compliance and possible impervious surface issues. As per Steve Thatcher, the City Engineer, the homeowners exceeded the work that was approved by Council and surpassed the impervious surface allowance. In addition, additional items were not accounted for that further contributed to an excess of impervious surfaces.

The Council noted that an official report from Steve Thatcher to quantify the claims of impervious surface excess should be obtained before consideration to proceed with legal action. The Council referred to ongoing litigation regarding a similar issue and reiterated that an exception cannot be made for the homeowners.

Further discussion regarding the drainage issues was deferred to spring 2023 pending the completion of the construction work in the area.

K. Mayor and Council Salary Adjustment

A resident reported that the Council missed the deadline to approve the ordinance in 2020 to increase the Council's pay. The state law states that an ordinance must be passed and will only take effect after the next successive election. A review of the previous Council meeting minutes confirmed that the resident's claims were accurate.

The October 2020 meeting minutes reflected that the ordinance was passed and the City Administrator, at the time, processed the increase in pay. In actuality, the motion carried was to close the public hearing for the ordinance; there was no vote to pass the ordinance. The ordinance was not passed until it was included on the consent agenda for the November 2020 Council meeting.

Mayor Wingfield noted that city council salaries were historically never published by ordinance as required by law. She expressed disappointment regarding the undervaluing of the Council's work and service to the community. The new incoming Council will also be affected as the ordinance was never published and consequently cannot take effect until the next election in 2024.

Members of the Council will make their respective repayments.

L. Hall's Marsh Memorandum of Agreement

ACTION – Councilmember McCarthy will send Birchwood Village's response to the Rice Creek Watershed District's Memorandum of Agreement regarding Hall's Marsh as drafted.

M. New Council Workshop

Councilmember McCarthy noted that knowledge will be lost with the three outgoing members of the Council. A new workshop would provide an opportunity to educate the new incoming members of the Council in preparation for their role on the Council.

Councilmember Fleck reported that the League of Minnesota Cities is a professional organization that provides similar workshops to all elected officials every election cycle. He expressed concern regarding allowing a private citizen to lead the workshop in lieu of the League of Minnesota Cities.

Councilmember McCarthy reiterated that Al Mitchell is a former mayor and is an attorney who worked in state government. Al Mitchell wrote the Birchwood Village rules and procedures, is well-versed in the Council's operation, and previously conducted workshop training.

Mayor Wingfield reported that the new incoming members of the Council can meet at any time before January 3, 2023, after which they will become a collective body and will require a quorum to conduct any business. Mayor Wingfield was inclined not to make any sanctions from a municipal standpoint.

Councilmember Fleck expressed concern regarding a violation of the open meeting law and the request for the city to permit a meeting of more than three current and/or new members of the Council before January 3, 2023. Councilmember McCarthy reiterated that he is requesting the city to post a notice and hold an open public meeting where no business affecting the city will be discussed.

The Council did not approve the request to hold an open public meeting in city hall.

N. Tighe-Schmitz Hockey Rink

Councilmember McCarthy and Mayor Wingfield marked boards on the hockey rink that need to be replaced based on cosmetics and/or safety hazards, as well as boards that require additional screwheads and support.

Councilmember McCarthy and Mayor Wingfield investigated the complaints of leveling at the pleasure rink and concluded that several attempts have been made to address the issue; however, the ground is close to the water table and consequently heaves leading to fluctuations in the leveling. Steve Thatcher referred to the area as subject to differential leveling. No further action will be taken.

O. 232 Cedar Street Rental Property

There have been several complaints from residents regarding 232 Cedar Street, including loud noise, late parties, and drug use since the summer of 2022. Councilmember Foster noted recurring concerns regarding rental properties each year and queried whether consideration should be given to a rental ordinance.

Mayor Wingfield noted a city code for excessive use of services. Mayor Wingfield did not recall any specific recurring complaints throughout the summer of 2022 on the sheriff's report. Mayor Wingfield reiterated that the use of the city code for excessive use of services to address problematic properties requires residents to report complaints to the sheriff's office to ensure sufficient documentation.

H. Alan Kantrud echoed Mayor Wingfield's statements regarding reporting to the sheriff's office and confirmed that the sheriff's office is familiar with the residence. H. Alan Kantrud recommended that residents continue to file complaints with the sheriff's office as needed.

H. Alan Kantrud suggested quarterly updates from the deputy to Council to review properties that the sheriff's office is responding to and to obtain feedback on properties that require special attention.

P. Mayor Wingfield Updates

- a. DNR Lost Lake Elevation:** *ACTION – Mayor Wingfield will draft a resolution to be presented at the next Council meeting stating that the city is on record with the DNR to leave the Lost Lake elevation as is and not to adjust the culvert for any remedial measures.*

There were discussions with the city of Mahtomedi regarding rectifying the issue of elevation of Birchwood Road by lowering the culvert in Lost Lake. The DNR reported this may result in a reduction of half of a foot of Lost Lake.

- b. Elections with Washington County:** *ACTION – Becky Kellen will follow up with Washington County regarding steps that need to be taken to ensure that Birchwood residents can sit as election judges for the next election.*

A request was made for Washington County to hold the city's elections with the assurance that the city's personnel would be retained as election judges; however, most of the election judges at the last election were not from Birchwood.

A publication will be posted in May 2023 or June 2023 for residents interested in training to sit as an election judge for the next elections.

- c. **Planning Commission Open Position:** *ACTION – Becky Kellen will include the open position on the Planning Commission in the newsletter with an application deadline of January 3, 2023.*
- d. **White Bear Township Sewer Charge Update:** *ACTION – Becky Kellen will contact the contractors used by White Bear Township to obtain more information regarding the high sewer charge from White Bear Township.*
- e. **RFP for City Attorney Position:** Mayor Wingfield suggested a joint meeting between the existing Council and the new Council to discuss an RFP for the City Attorney. Councilmember Fleck and Councilmember McCarthy agreed that the decision regarding an RFP for City Attorney should be made by the new Council.
- f. **General Proceedings for City Agenda:** This item was not discussed.

Q. Administrator Updates

- a. **City Engineer/Planner RFP Update:** *ACTION – Becky Kellen will work with Steve Thatcher and H. Alan Kantrud to review the draft RFPs for the City Engineer and City Planner for presentation at the next Council meeting.*
- b. **Tree Task Force Update:** *ACTION – Becky Kellen will include the Tree Task Force proposal on the agenda for the January 2023 Council meeting.*

The Tree Task Force held their final meeting on October 26, 2022, at which point it was unanimously agreed to proceed with the proposal to the Council. Becky Kellen reported dissent from some members of the Tree Task Force after the fact, who claimed they did not intend to agree with the proposal. The Council agreed to defer the review of the Tree Task Force's proposal to the new Council.

- c. **2023 RCWD Stormwater Management Program:** Councilmember Foster and Becky Kellen will be meeting with the RCWD on November 17, 2022, to discuss the stormwater management program.
- d. **Land Surveys (Ash Path and Feistner Beach):** H. Alan Kantrud reported that a separate bid for the land survey of Ash Path is pending and will be ready for presentation at the next Council meeting.
- e. **Administrator's Performance Review:** *ACTION – The Council will submit any feedback or concerns regarding the City Administrator's performance to H. Alan Kantrud by December 1, 2022, to be forwarded to Councilmember McCarthy.*

Councilmember McCarthy will act as the Council's liaison and conduct the City Administrator's performance review.

- f. **Unpaid Utility Bill Letters Mailed:** Any outstanding payments to be included on property taxes will be reviewed at the next Council meeting.
- g. **Staffing Update:** Becky Kellen provided a staffing update and noted that Tom's onboarding is going well.

- h. **Water Meter Installation Update:** This item was not discussed.
- i. **Maintenance Updates:** The canoes and kayaks were removed. The hockey rink will be flooded at the beginning of December 2022, weather permitting. The roof cleaning was completed at the end of October 2022, and the boiler check was completed in November 2022. The generator was inspected and reports of natural gas odors are being investigated.

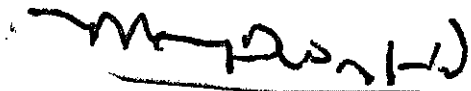
Leaf pickup was completed; however, there were resident complaints of leaves not being picked up. Currently, only 10 to 15 residents are using the city's leaf pickup service. Further discussion was deferred to the Council meeting in April 2023 to determine how to proceed with leaf pickup.

8. 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 8:51 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. This document shall not be considered a verbatim copy of every word spoken at the meeting.



Mayor Mary Wingfield

12-13-2022

Date



City Administrator Becky Kellen

12-13-2022

Date

