

CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
BIRCHWOOD, MINNESOTA

MINUTES OF THE CITY COUNCIL MEETING
OCTOBER 10, 2023, 6:45 P.M.

MEMBERS:

Margaret Ford	Mayor
Mark Foster	Councilmember
Ryan Hankins	Councilmember
Justin McCarthy	Councilmember
Katherine Weier	Councilmember

STAFF:

Rebecca Kellen	City Administrator
Marcus Johnson	City Engineer, Bolton & Menk (until 6:53 p.m.)

Minutes prepared by Angela Fracassi of Minutes Solutions 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 (0:00:30)**

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.

The following items were added to the agenda:

- Solar Ordinance Discussion was moved forward on the Consent Agenda.
- Response from Rice Creek Watershed District Discussion was added.
- Cable Commission Grant was added.

4. **OPEN PUBLIC FORUM (0:02:44)**

Johnathan Fleck, 425 Hall Ave, noted that Council was undertaking many Code changes, and he advised that Council slow the pace of the changes because of the affect the workload would have on City staff and the community. He expressed dissatisfaction with the ordinance supporting gabled roofs over flat roofs, which he said was unfair.

James Nelson, 256 Wildwood Avenue, noted his general opposition to Johnathan Fleck.

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

5. **ANNOUNCEMENTS (0:08:18)**

- a. **Truth in Taxation Hearing:** The hearing was scheduled for December 12, 2023, at 6:45 p.m. at City Hall.
- b. **Lift Station Fees Correction:** There was a misstatement of Lift Station Fees during the September City Council meeting. It was incorrectly stated that Thatcher fees for the Wildwood lift station were \$100,000; however the total was \$79,718.49.
- c. **Canoes and Kayaks:** The public was reminded that canoes and kayaks must be removed from the racks by October 31, 2023.
- d. **2023-2024 Deer Hunt Dates:** The deer hunt will take place October 12 to 13, October 29 to 30, November 20 to 21, 2023, and December 6 to 7, 2023.

6. **CONSENT AGENDA (0:09:28)**

On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to approve Consent Agenda items A, C, and E, as presented. Motion carried.

a. **September Meeting Minutes (Consent Agenda Item B) (0:10:59):**

On a motion made by Councilmember Weier, seconded by Councilmember McCarthy, the minutes from the City Council meeting on September 12, 2023, were approved as amended. All in favor; motion carried.

The following change was made to the minutes of September 25, 2023:

- Item 6f should read "city newsletter," instead of "community club newsletter."

b. **Treasurer's Report (Consent Agenda Item D) (0:11:59):**

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the claims list in the Treasurer's Report. All in favor; motion carried.

Councilmember Hankins inquired about the permit issued to 117 Wildwood Avenue. Ms. Kellen confirmed that the permit was issued, but could not confirm whether the fees related to engineering had been collected. It was also noted that the construction was delayed due to the weather.

Councilmember Hankins noted that the Treasurer's Report Memo included a call to animal control for a dog charge; the resident should be billed for the amount \$124.89, which could be approved during the fee schedule discussions.

c. **Birchwood Dock Association Dock Permit Application (0:16:33):**

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the Birchwood Dock Association dock permit application. All in favor; motion carried.

Nick Nephew, 20 Birchwood Avenue, spoke on behalf of the Dock Association. The Association would be bringing Birch into compliance and extending Ash while remaining in compliance.

7. **CITY BUSINESS – OLD BUSINESS (0:19:58)**

a. **Discussion of Ordinance 2023-06-01 (Solar Panels) (0:19:58):**

i) **Public Hearing**

Mayor Ford opened the public hearing.

Jonathan Fleck, 425 Hall Avenue, stated that he has a permit and is working through an electrician. He provided Council with a copy of the draft ordinance, with his proposed changes and omissions. He believed the original ordinance, as written, was unnecessarily long, and covers standards that are already covered by state legislation. He was advised by the electrician who installed his solar panels that no other municipality requires a Special Use Permit for solar panels on a roof. Mr. Fleck withdrew his Special Use Permit once he learned of the draft ordinance. Council discussed the need for a permit requirement, due to height issues and issues with ballast mounts, as an inadequate ballast mount could fail in high winds and cause significant damage to property and pose a danger to the public.

Mr. Fleck also objected to Section 3b, as a ballast mount system would never be installed at the same angle as a flat roof. Councilmember Hankins advised Mr. Fleck that until the ordinance is passed, he will need to apply for a Building Permit at minimum.

ii) **Discussion and Approval**

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to approve Ordinance 2023-06-01 as amended. All in favor; motion carried.

Council reviewed and discussed the ordinance. The agreed-upon changes included:

- Solar panels on gabled roofs must be installed at no more than 10 inches above the roof, and to remove the language about the "same angle as the roof";
- Solar panels on flat roofs may be no more than 15 inches above the surface of the roof;
- Under General Requirements, Item 5, change section D to state that the application must comply with the Minnesota state statutes, and strike "building code."

b. **Parks and Natural Resources Committee Member Selection (1:05:45):**

On a motion made by Councilmember McCarthy, seconded by Mayor Ford, it was resolved to approve Amy Hewlett's appointment to the Parks and Natural Resources Committee.

c. **Wildwood Lift Station Potential Placement and Timeline (1:06:55):** Marcus Johnson explained the next steps were soil borings and plan completion by Bolton and Menk. Bolton and Menk Environmental Engineer Seth Peterson met at the lift station with Birchwood Water Superintendent John Manship and Birchwood City Engineer Marcus Johnson on September 29, 2023, to take pictures and discuss technical preferences.

Mr. Johnson reported that he should have an update on the timeline for the soil borings in the coming days. Bolton and Menk should have the plan completed within the next two weeks. The EPA review would take place after the plan completion and soil borings, which will take between three weeks to eight weeks. The next step would be tendering bids, which would take approximately one month. Once a contractor is selected, the estimated lead times for material

components is four to six months. Construction was estimated to take three to four weeks in the summer of 2024. The ultimate deadline to have everything completed was October 31, 2024.

Bolton and Menk's next step is to bring to Council one design for review and incorporate Council's feedback. The plan is to be as minimalist as possible and will not extend into the street or park.

d. Second Reading of Ordinance 2023-09-01 City Parks Systems (1:26:03)

i) Public Hearing

Mayor Ford opened the public hearing.

Cathy Madoor, 413 Lake Avenue, referred to Article 607.215 regarding lost articles, and suggested that items should be returned to the owner, if known. Council agreed to the suggestions. She also noted that lake tracks should be open only to Birchwood residents and not to the public. Council explained that the courts ruled that restricting access would be a first amendment violation; however, Council suggested that they could obtain a legal opinion to confirm.

Ms. Madoor also suggested that the lake tracks should close at 9:00 p.m., and law enforcement should be able to remove violators. Council agreed to the suggestion.

Johnathan Fleck, 425 Hall Avenue, commented that he did not believe that Council could restrict access to a body of water to non-residents; however, they may be able to levy additional fees to non-residents.

ii) Council Deliberation & Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to approve Ordinance 2023-09-01, subject to the removal of section 607.213, moving 607.300B to 607.201, and removing 607.400D. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to approve Resolution 2023-42, approving summary publication ordinance 2023-09- 01. All in favor; motion carried.

Mayor Ford stated that she had received comments against the proposed elimination of fishing on Kay Beach. Other Councilmembers stated they had received comments from the public in support of eliminating fishing. It was noted that this beach was designated for swimming. Council debated the dog prohibition, and ultimately decided to allow fishing on Kay Beach but to prohibit dogs, and to remove Section 607.213.

e. Second Reading of Ordinance 2023-07-01 (302.045): Zoning Code Requirement and Performance Standards: Structure Height (1:46:49)

Councilmember Hankins provided a summary of the ordinance. He stated that the intention of the ordinance is to bring Birchwood in line with other nearby municipalities.

i) Public Hearing

Johnathan Fleck, 425 Hall Avenue, stated that the ordinance as written is biased against flat roofs. He suggested raising the height limit for flat roof structures to 32.5 feet.

Cathy Madoor, 413 Lake Avenue, suggested checking the height of flat roof structures around town, because some are well done.

ii) Deliberation and Approval

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to add language to Ordinance 2023-07-01 increasing the height limit for flat roof structures by 2.5 feet. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve Ordinance 2023-07-01, as amended. Councilmembers McCarthy, Foster, Weier, and Mayor Ford in favor; Councilmember Hankins opposed. Motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to approve resolution 2023-41 approving summary publication ordinance 2023-07-01. All in favor; motion carried.

Council agreed to add a cross reference to the solar ordinance where relevant.

f. Second Reading of Ordinance 2023-09-02 (302) Setback Changes (2:09:57):

Councilmember McCarthy provided a summary of the Ordinance 2023-09-02.

i) Public Hearing

Mayor Ford opened the public hearing.

Cathy Madoor, 413 Lake Avenue, asked for clarifications regarding the landscaping specifications. Councilmember Hankins clarified that the maximum setback only applies to municipal streets and intersections. She also inquired about accessory structures. Councilmember Hankins explained that includes any building that is not a dwelling.

Jonathan Fleck, 425 Hall Avenue, made some suggestions regarding the proposed ordinance.

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

ii) Deliberation and Approval

On a motion made by Councilmember McCarthy, seconded by Mayor Ford, it was resolved to approve Ordinance 2023-09-02 as presented. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Mayor Ford, it was resolved to approve the publication of Ordinance 2023-09-02. All in favor; motion carried.

Councilmember Hankins inquired if there was a definition of the term "landscaping barriers," and noted that landscaping barriers are not permitted within 50 feet of the lakes. Councilmember McCarthy clarified that landscaping barriers are hedges and bushes that could act as a fence. He requested clarification regarding the term "non-address side of corner lot," as this could confuse the public.

Cathy Madoor inquired whether she could request a stop sign at Wildwood and Lake. Mayor Ford responded that it is not related to this discussion; however, she would make a note of the suggestion and include it in the upcoming traffic study.

8. NEW BUSINESS

a. Halls Marsh Project Update (1:15:47):

On a motion made by Councilmember McCarthy, seconded by Mayor Ford, it was resolved to approve Resolution 2023-43. authorizing additional engineering resources on the Halls Marsh project. All in favor; motion carried.

Mr. Johnson was in contact with Rice Creek Watershed District who reached out with an MOA. A future meeting will be scheduled soon. Mr. Johnson indicated that Rice Creek Watershed District was pushing back, as expected. He will keep the Council informed.

b. Mayor Updates (2:31:24): Radon testing was done at City Hall, and levels were found to be high. It was recommended that additional testing be done. Additionally, there was a cable grant available that Mayor Ford recommended applying for in order to purchase a larger screen for the public, as well as screens for Council.

On a motion made by Mayor Ford, seconded by Councilmember McCarthy, it was resolved to allow city staff to purchase additional technology for City Hall at Best Buy. Motion carried.

c. Snowplow Contracts (2:34:00):

On a motion made by Councilmember Foster, seconded by Councilmember Hankins, it was resolved to approve the quote from Brightview Landscaping for snow removal services. All in favor; motion carried.

d. Recommendation for Past Due Expenses Due from Residents (2:40:15):

On a motion made by Councilmember McCarthy, seconded by Mayor Ford, it was resolved to advise staff to follow the recommendations regarding past due expenses, as amended. Motion carried.

Council agreed that a \$3,000 escrow fee should be charged only when an engineer must be involved. Council agreed to discuss an ordinance at the next Council meeting. Mayor Ford stated that staff should follow these directives, with the understanding that a more formal ordinance would be forthcoming.

Ms. Kellen asked if the City could withhold a permit from a resident who has outstanding fees. Council believed that they were able to withhold the permits, but noted that a legal opinion would

be needed to confirm this. Councilmember McCarthy suggested that the City begin charging late fees in the future.

Council agreed to remove language stating that Council has the power to reduce fees. Ms. Kellen agreed to look into whether the new permitting software could flag residents who owe outstanding fees.

e. Animal Control Charge (2:57:06):

On a motion by Councilmember Hankins, seconded by Mayor Ford, it was resolved to authorize and request that staff bill the dog owner in question \$124.89 for animal control. All in favor; motion carried.

f. Recycling Grant (2:59:00):

On a motion made by Mayor Ford, seconded by Councilmember Hankins, it was resolved to direct city staff to pursue the \$1,500 recycling grant. All in favor; motion carried.

g. Fee Schedule Updates (3:00:44): Council agreed to continue the discussion and approve the fee schedule at a future meeting. Councilmember Hankins provided a summary of the proposed fee schedule changes. Councilmember Hankins requested that Ms. Kellen consult the permitting software and provide recommendations. Councilmember McCarthy suggested a certain percentage as an administrative fee and to consult with the planner to determine their fee.

h. Delinquent Utility Bill Certification (3:16:02): These bills totaled \$13,489. Ms. Kellen advised that the next step would be to send a letter giving individuals 30 days to pay. Other leftover amounts are added to property taxes as a special assessment. Councilmember Hankins inquired if the City is sure that the water meters are functioning properly. It was noted that it is the resident's responsibility to inform the City if they suspect that the meter is not measuring correctly.

On a motion made by Councilmember McCarthy, seconded by Mayor Ford, it was resolved to authorize City staff to implement the recommendations made by Ms. Kellen regarding delinquent utility accounts. All in favor; motion carried.

9. MEETING CLOSE (3:18:55)

On a motion duly made by Mayor Ford, seconded by Councilmember McCarthy, it was agreed that there was no further business of the Council to transact in an open session; the meeting was closed to the public at 10:03 p.m.

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 Margaret Ford

12-12-23
Date



City Administrator Becky Kellen

12-12-23
Date