**CITY OF BIRCHWOOD VILLAGE**

**REGULAR CITY COUNCIL MEETING**

**October 25, 2011**

**MINUTES**

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

**MEMBER ABSENT: Tony Sampair**

**STAFF PRESENT: City Engineer Kristie Elfering, City Clerk Dale Powers, City Treasurer Cindie Reiter, and City Attorney Kevin Sandstrom**

**OTHERS PRESENT: Tom Delmont, Mike Evangelist, Randy Felt, Richard Galena, Jim Greeley, Dyan Hanson, Lynn Hanson, and Tom Schway.**

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

**AGENDA APPROVAL: *Harper/Mitchell 4-0 (Sampair absent) to approve the agenda for the October 25, 2011 Regular Meeting.***

**COMMUNITY EVENTS AND ANNOUNCEMENTS: Mitchell** noted the following announcements and community events:

* The White Bear Lake School District is holding an election on Tuesday, November 8; voting to take place at Sunrise Park Middle School.
* On Thursday, October 27, a meeting regarding Open Meeting Law and public information, hosted by the White Bear Lake League of Women Voters, will take place at White Bear Lake City Hall. The meeting starts at 7:00pm.

**OPEN PUBLIC FORUM:** No one addressed the Council during Open Public Forum.

**CONSENT CALENDAR: *Peterson/Harper 4-0 (Sampair absent) unanimous to approve the following consent calendar items:***

1. ***Approval of the Minutes of the September 13, 2011 Regular Meeting***
2. ***Approval of the Disbursements Register as prepared by the City Treasurer and presented to the City Council on October 25, 2011, including Check #’s 26791-26824 and Electronic Funds Transfers PERA083111, FED092011, MN 092011, and PERA091511***

**Reiter** advised the public that if they wanted to pay off their special assessments that payment needs to be submitted no later than November 15.

**CAIN GARAGE RENTAL: CONSIDERATION OF AWARDING OF ANNUAL LEASE: Powers** reviewed with the Council the bids received by the City on rental of the garage across Birchwood Avenue from City Hall, and noted that he received an e-mail from Kim Otness withdrawing the bid submitted by herself and Ken Kixmoeller. **Powers** further noted that the lease term is November 1- October 31. The remaining bids were $252.00 from John Velin and $825.00 from Lori Carter. **Harper** advised the Council that she would be abstaining from the vote since her husband (John Velin) is one of the bidders.

***Peterson/Carson 3-0 (Harper abstaining; Sampair absent) to accept the bid from Lori Carter for the 1-year lease for the Cain garage at $825.00.***

**VILLAGE HALL CHIMNEY>FLASHING AND TUCKPOINTING: REVIEW OF BIDS AND CONSIDERATION OF AWARD: Powers** reviewed with the Council the bids received for this project, and noted that while there isn’t a real “apples to apples” comparison to review, the bids represent a range of scope of work that includes additional work beyond flashing and tuckpointing that appears to be in need of repair. **Powers** said that Gulden Construction offered two options: a basic job for $185.00 and an enhanced look that would blend with the existing entryway for $385.00; Nelson Roofing and Sheetmetal’s bid, in addition to the flashing and tuckpointing, included installation of a new concrete cap to the chimney – total bid was $650.00; and Bello Roofing’s estimate included replacing 3 broken bricks and rotted boards along the rear side of the chimney, and their work is warrantied for 5 years, at a total bid of $1,300.00. **Powers** noted that Bello also bid for tree trimming and sweeping of the roof for an additional $100.00.

**Peterson** asked about the process used to secure the estimates. **Powers** responded that he was directed by the Council to get estimates for installation of flashing and also for tuckpointing the chimney, and that was subsequently passed on to the vendors. **Powers** further noted that he is not experienced in this kind of work, and encouraged the vendors to provide estimates for other work that needed to be done, as long as an estimate for the flashing installation and the tuckpointing was also provided. In response to a question about where the money is coming from, **Reiter** noted that there is still $12,250 in the “City Hall-Government Buildings” account.

**Harper** expressed disappointment that there couldn’t be a better way of specifying up front the work to be done so that an “apples to apples” comparison could be presented, instead of the contractors telling us what we need.

***Carson/Harper 4-0 (Sampair absent) to award the contract for repair of the City Hall chimney to Bello Roofing at $1,300.00 per the submitted bid not to include the additional $100.00 for tree trimming***.

**WATER FEE: AUTHORIZE SHELLY RUECKERT TO WORK WITH COUNCIL MEMBER HARPER AND THE FINANCE COMMITTEE TO RECOMMEND A REVISED WATER FEE: Harper** shared with the Council a memo regarding the fact that the Water Fund has run deficits for the past two years and is on target to be in the red again this year, and noted that the Finance Committee is aware that a need exists to revise the water fee to ensure revenue stream for both operating expenditures and future infrastructure repairs and to avoid going into the reserve funds. **Harper** related that Shelly Rueckert, City of Little Canada Finance Director and the City’s utility billing agent, is willing to work with her and the Finance Committee to develop a revised fee for review by the Council, and has submitted a quote of $45.00 per hour with a capped cost of $360.00.

***Harper/Peterson 4-0 (Sampair absent) to engage the services of Shelly Rueckert to assist with recommending revised water fee rates for a cost of $45.00 per hour not to exceed eight (8) hours of time for a total cost of $360.00.***

**ORDINANCE 2011-05/RESOLUTION 2011-20>ESTABLISHING A UTILITY LATE FEE INTEREST CHARGE: REVIEW OF DRAFT ORDINANCE & RESOLUTION AND CONSIDERATION OF SCHEDULING A PUBLIC HEARING: Powers** reviewed with the Council that last fall, the Council considered establishing an interest charge on delinquent utility bills, and heard a presentation in December 2010 by Rueckert concerning the rates other cities charge for interest. **Powers** continued by saying that the Council directed Sandstrom to draft ordinance and resolution language for Council consideration at the January 2011 Council meeting; Sandstrom produced the requested documents; and that for some reason the issue fell through the cracks. **Powers** concluded by stating that the draft ordinance and resolution has returned to the Council for review and consideration of scheduling a public hearing per the requirements of the Rules of Procedure.

**Mitchell** asked whether the 5% interest rate compounds; **Sandstrom** responded that whether the interest compounds or not is up to the Council to decide. **Mitchell** said he has a concern over the clause “shall be entitled to” in the draft ordinance, and believes that clause should be stricken to make it clear to the public that a late fee with 5% interest will be charged. The consensus of the Council was to strike that language from the draft ordinance subject to the public hearing.

***Harper/Carson 4-0 (Sampair absent) to recommend the draft ordinance as amended, and the draft resolution, for public hearing at the December 13, 2011 regular meeting.***

 **RESOLUTION 2011-21>DENIAL OF A CONDITIONAL USE PERMIT FOR ROGER KROPELNICKI: REVIEW AND ADOPTION: Mitchell** reviewed with the Council this agenda item, and noted that Kropelnicki stated at the August 9, 2011 Council meeting that he intended on withdrawing his conditional use permit request if the conditions imposed on the use were to be enforced. **Mitchell** further stated that the Council extended the time for agency review of the request an additional 60 days in order for Kropelnicki to submit his withdrawal request in writing to the City. **Mitchell** concluded by stating that Kropelnicki has yet to submit a written withdrawal request, and the 60-day extension is close to expiring, it is appropriate for the Council to act by formally voting to approve Resolution 2011-21 denying Kropelnicki’s conditional use permit request.

***Mitchell/Peterson 4-0 (Sampair absent) to approve Resolution 2011-21.***

**CITY ENGINEER’S REPORT:**

**Shared Services with White Bear Lake: Elfering** updated the Council on her discussions with the City of White Bear Lake (WBL) on the draft list of public works services that could potentially be offered on a contract basis, and noted that discussion were ongoing about this matter. **Elfering** stated that an issue WBL raised with the City is the number of water tests required by the state Department of Health; that number has been identified. **Elfering** concluded by saying that she hopes to have some hard numbers for the Council at the November meeting.

**Backup Vendor for Emergency Water Main Breaks: Elfering** shared with the Council the bids for providing emergency water main break services to the City as a backup to the City of White Bear Lake (WBL), and noted that the hourly rates of each vendor exceeds what the City pays WBL. **Elfering** also noted that she has talked to Saint Paul Regional Water, a public entity which provides an array of water services to St. Paul and surrounding suburbs, including White Bear Township. **Elfering** stated that Saint Paul Regional Water quoted a rate of $325.00 per hour for labor, $100.00 per hour for equipment, and overtime would be billed at $390.00 per hour, and noted that these rates are lower than WBL’s rates to provide primary emergency water main break service.

***Harper/Carson 4-0 (Sampair absent) to enter into an agreement with Saint Paul Regional Water to provide the City‘s emergency water services. the rates listed in the Elfering memo - $325.00 per hour base rate, $390.00 per hour overtime, and $100.00 per hour for equipment.***

**COUNCIL MEMBER REPORTS: Mitchell** shared with the Council that he is working with Ben Eggan on the revisions to the city’s building fee and building regulations ordinance and hopes to have a draft out for Council review at the second November meeting. Additionally, **Mitchell** said that the USGS (United States Geological Society) has issued a quarterly report on the White Bear Lake lake level study, and if the public would like a copy of the report to contact the City Clerk.

Finally, **Mitchell** also mentioned the school district election on November 8th, and noted that state law prohibits any public meetings between 6pm and 8pm on an election day. **Mitchell** said that the Council could meet at 8pm on the 8th or change the date of the meeting, and related that the agenda for the 8th so far seems to be light. The consensus of the Council is to hold to the November 8th date and start at 8pm that night.

**Harper** noted that there still is a lot of work to be done on the 2012 budget, and that if any of the Council members have specific questions and comments to get them to the Clerk so he can forward them on to me to allow for a more structured budget workshop on November 22nd. **Mitchell** added that the same offer goes to the public, as well, and the proposed 2012 budget is posted on the City’s website.

**REVIEW OF BIRCHWOOD DOCK ASSOCIATION ANNUAL PERMIT: L. Hanson** shared with the Council the process used for determining how many boat slips and the length of the docks at each easement for the 2012 boating season, and stated that the agenda for the Dock Association annual meeting held on October 8th contained an opportunity for the neighbors to weigh in on the proposal. **L. Hanson** continued by going over the specific dock length and boat slip requests for 2012, as follows:

* Ash Beach: 104 foot dock with 6 boat slips
* Birch Beach: 160 foot dock with 8 boat slips (from 116 feet in 2011)
* Elm Beach: 57 foot dock with 4 boat slips
* Dellwood Beach: 136 foot dock with 6 boat slips
* Kay Beach: 76 foot dock; NO BOAT SLIPS

**Peterson** asked whether it is important economically to get more boats in the water. **Evangelist** responded, stating that for 2011 expenses came to $950.00 per boat, and with lore people being able to utilize the docks the costs per boater are less.

**L. Hanson** concluded his remarks by asking for permission to store boat lifts and docks on the easements.

**Harper** noted that the application doesn’t call for noting the changes proposed from year to year, and no schematic showing relationships between these docks and adjacent docks on private property.

The following residents came forward to comment on the proposal:

**Galena** felt the ordinance wasn’t followed by the Dock Association’s failure to hold a separate neighborhood meeting as required by City Code 617.360; the length of the Birch Beach dock is not “consistent” with the length of docks on adjacent private property as required by City Coe 617.380(3); the basis for the rationale for increasing the dock length from 116 to 160 feet was a temporary trail merging of the Pakonen and Calderon docks in 2011 that subsequently will not be continued in the future; and that there is an agreement with the Birch Beach neighbors to keep the dock length at 110 feet and the number of boat slips at 5. **L. Hanson** responded that the ordinance is not clear whether a separate neighborhood meeting is required.

**Schway** noted that he lives next to Birch Beach and his dock is 115 feet.

**Delmont** said that he lives immediately adjacent to Ash Beach on the west and agrees with the letter submitted by Suzanne Walfoort (who lives immediately adjacent to Ash Beach on the east) in opposition to the proposal reversal of the boat slips on Ash from the west side of the dock to the east side of the dock, and to six boat slips, stating that there is not room and that 3 slips would be better.

**Greeley** concurred with the sentiments of the previous speakers and noted that everything seemed to work well this year and is concerned that the trust and goodwill earned this year by the Dock Association may be lost by the way the process for having a neighborhood meeting was ignored. **Greeley** concluded by requesting this matter be tabled pending a neighborhood meeting as required by the ordinance.

**Mitchell** responded that he is in favor of providing greater access to the lake, while being mindful of the concerns of the neighbors. **Mitchell** also said he wasn’t convinced that a neighborhood meeting would have changed the positions of the Dock Association and the neighbors; that in his view the ordinance doesn’t call for a separate neighbor meeting – the neighbors were invited to the annual meeting and the schematics shown tonight were shown then. **Mitchell** concluded by saying that Section 102.100 of the City Code provides that the title of an ordinance has no meaning. **Carson** said that it appears that 10 feet of dock length would provide space for 3 additional slips at Birch and would support a 146 foot dock there. **Peterson** commented that there needs to be some flexibility and compromise, noting that the Dock Association acted in good faith by inviting the neighbors to the annual meeting and perhaps clarify that issue for future years. **Harper** said she agreed that the ordinance is unclear whether the neighbor meeting needs to be a separate meeting, and agreed that another meeting would not result in anything different. **Harper** also stated that, in her mind, “consistent” means how far the dock encroaches into the lake, not the actual length of the dock.

***Carson/Mitchell to recommend to the White Bear Lake Conservation District approval of the 2012 application by the Birchwood Dock Association to place docks on the public lake tracts, as follows:***

* ***Ash Beach: 104 foot dock with 6 boat slips***
* ***Birch Beach: 136 foot dock with 8 boat slips***
* ***Elm Beach: 57 foot dock with 4 boat slips***
* ***Dellwood Beach: 136 foot dock with 6 boat slips***
* ***Kay Beach: 75 foot dock with no boat slips***

***The motion also includes issuance of a City dock permit for the 5 docks, as well as authorization to store up to 22 boat lifts on the public lake tracts during the non-boating season.***

***Harper/Peterson 3-1 (Carson voting in the negative; Sampair absent) to amend the length of the Birch Beach dock to 116 feet.***

***The motion, as amended by Harper/Peterson, reads as follows:***

***Carson/Mitchell to recommend to the White Bear Lake Conservation District approval of the 2012 application by the Birchwood Dock Association to place docks on the public lake tracts, as follows:***

* ***Ash Beach: 104 foot dock with 6 boat slips***
* ***Birch Beach: 116 foot dock with 8 boat slips***
* ***Elm Beach: 57 foot dock with 4 boat slips***
* ***Dellwood Beach: 136 foot dock with 6 boat slips***
* ***Kay Beach: 75 foot dock with no boat slips***

***The motion also includes issuance of a City dock permit for the 5 docks, as well as authorization to store up to 22 boat lifts on the public lake tracts during the non-boating season.***

***The motion, as amended, was approved 3-1 (Carson voting in the negative; Sampair absent.***

**ADJOURN:** Without a motion, the Council adjourned the meeting @9:30pm.

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Dale Powers

City Clerk