**CITY OF BIRCHWOOD VILLAGE**

**REGULAR CITY COUNCIL MEETING**

**October 9, 2012**

**MINUTES**

**MEMBERS PRESENT: Mayor Alan Mitchell; Council Members Barb Carson (@ 7:03pm), Jane Harper, Bill Hullsiek, and Tony Sampair**

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

**OTHERS PRESENT: Doug Anschutz, Barb Brenny, Dick Galena, Jim Greeley, Lynn Hanson, Sharon Kuehn, John Lund, Lawrence Mahoney, Susan Mahoney, and Brent Peterson.**

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

**AGENDA APPROVAL: *Harper/Sampair 4-0 (Carson absent) to approve the agenda for the September 11, 2012 Regular Meeting.***

**COMMUNITY EVENTS AND ANNOUNCEMENTS: Mitchell** mentioned that the general election is coming up on November 6, and that the Washington County Fire Chiefs have issued a total burning ban in the County – including camping and recreational fires – due to the drought. **Hullsiek** said that the old Kay Beach Dock Association purchased a new Adirondack table and chairs that will be placed at Kay Beach. **Harper** wanted to remind those residents with outstanding special assessments that they have until November 14to pay off the assessments in full.

Carson arrived at the meeting at 7:03pm.

**OPEN PUBLIC FORUM**: No one wished to address the Council at this time.

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

1. ***Approval of the Minutes of the September 11, 2012 Regular Meeting***
2. ***Acceptance of the Financial Report and Disbursements Register as prepared by the City Treasurer and presented to the City Council on October 9, 2012 in the amount of $34,383.84, including Check #’s 27424-27441, Check #’s 27444-27461, and Electronic Funds Transfers LIFT092012, PERA091512, PERA2012, FED092012, MN092012, and PERA093012.***
3. **CODE RED OVERVIEW: Mitchell** noted that he brought this matter to the Council’s attention, stating that the CodeRED system has been used for notifying residents when the City’s quarterly newsletter has been posted on the City’s web site, yet he hasn’t received any of the calls. **Mitchell** also stated that a couple of City residents expressed a concern that using CodeRED in that manner was inappropriate. **Mitchell** asked that a representative from the County attend this meeting to inform the Council and residents about CodeRED. **Anschutz,** a Commander with the Washington County Sheriff’s Department, addressed the Council on CodeRED and stated that the system is designed for both emergency and general notifications, such as community announcements. **Anschutz** said that for emergency notifications the County purchases a list of all land line telephone numbers, including those nonpublished and nonlisted. For general notifications, **Anschutz** said that the County only uses listed land lines; if a resident has an unlisted or nonpublished number or has a cell phone, the resident would need to go to the Washington County Sheriff’s website for the CodeRED system and add that number to the database.

**Harper** asked Powers whether he uses the words “Code Red” and “emergency” when notifying residents about the newsletter; **Powers** responded that he is fairly positive he doesn’t use “emergency”, but couldn’t recall if he used the words “Code Red”. **Harper** suggested in the future to not use the phrase “Code Red” so residents are assured that the message is not urgent.

**4. FUNDING REQUEST BY WASHINGTON COUNTY HISTORICAL SOCIETY: Peterson,** Executive Director of the Washington County Historical Society, addressed the Council on a request for $1,000.00 for the purpose of purchasing and renovating a building in Stillwater into the Washington County Heritage Center. **Peterson** noted that the Heritage Center will include exhibits, a research facility, and will be climate-controlled for preservation of historic artifacts. **Mitchell** asked whether the Society needs the funding yet this year, or can it wait until next year; **Peterson** responded that either would be fine with the Society. The consensus of the Council was to consider this request for inclusion in the 2013 budget, but if there are unspent funds in this year’s budget to consider making the contribution in 2012.

**5. CAIN GARAGE RENTAL> CONSIDERATION OF AWARDING OF ANNUAL LEASE: Powers** informed the Council that the lease on the City’s garage (known as the Cain garage) across the street from City Hall expires at the end of October, and said that an announcement was inserted in the City newsletter about accepting bids to lease the garage. **Powers** informed the Council that the City received one bid to lease the garage, from the current lessee John Velin at the current rate of $21.00/month.

***Sampair/Hullsiek 4-0 (Harper abstained) to award the annual lease, running from November 1, 2012 to October 31, 2013, to John Velin at the rate of $21.00 per month.***

**6. REVIEW OF COMPLAINT AT 483 LAKE AVENUE: Mitchell** shared with the Council the results of his investigation into the complaint about the placement of an ice fishing house at 483 Lake Avenue within the setback area from the ordinary high water level of White Bear Lake. **Mitchell** went over a memo in the Council packet that detailed the history of the complaint, applicable ordinances, his investigation, and recommendation. **Mitchell** determined that the placement of the ice fishing house is inside the aforementioned setback area, and is also less than 10 feet from the Kay Beach easement boundary, and recommends that a letter be written to the property owners directing them to move the structure to conform to the City’s setback requirements. **S. Mahoney** addressed the Council on this matter, stating that she is tired of looking at the fish house. **Harper** recommends that the property owners work with the White Bear Lake Planning Department on where the ice fishing house can be located on the property that would be conforming with the ordinance and, if the property owners either can’t locate the structure legally or desires to leave the structure where it is, the property owners can consider applying for a variance.

***Harper/Sampair unanimous to direct White Bear Lake planning staff to get in touch with the Harrods to discuss the legal placement of their fish house and, if they don’t want to move it to advise them of their options relating to requesting a variance.***

**7. RESOLUTION 2012-28/ORDINANCE 2012-11 ADOPTING CITY CODE CHAPTER 618 CITY ADMINISTRATIVE PROCESS**

**7a. Review of Ordinance: Mitchell** noted that there are two drafts versions of Chapter 618; one prepared by Councilmembers Harper and Sampair and one prepared by himself.  **Mitchell** reviewed a document he prepared comparing the two versions as they relate to the following areas: complaint, investigation, staff authority, City Council involvement, public hearing, logbook, and administrative penalties. **Mitchell** said that one big difference between the two versions is that the Harper/Sampair version calls for administrative fines, while his version does not. Other than that, **Mitchell** said that there are only minor differences between the two drafts.

**Sampair** commented that he agreed with Mitchell that language authorizing assistance from law enforcement and planning was intended to be in their draft and is meant by the word “staff” in their draft. As for City Council involvement, **Sampair** noted that on a recent complaint investigation, there was a “washing of the hands” on the issue, and feels that the staff should impose the conditions with Council review and have the opportunity to request a hearing before the Council to be heard on the issue. **Sampair** agrees that a log book is a good idea, and also said that the dollar amount of the administrative penalty was inserted for discussion purposes and can be modified to gain Council approval. **Sampair** concluded by saying that Mitchell’s version has accomplished the goal of getting Council members out of the investigation of complaints, which should be the responsibility of professional staff; that there are areas of agreement that can be combined into one document, and areas on which there are continued disagreement.

**Harper** stated that she agreed with Sampair, and thinks that staff should handle more of the complaints. Historically, **Harper** said that the clerk would bring complaints to the Council, which would discuss among themselves who would investigate the complaint. **Harper** added that the Council member could investigate the complaint but could not take action without bringing it before the Council. **Harper** said the log book is a good idea in that in the most recent complaint, the Council would have been aware of the complaint from last year, and also that patterns of violations can be discovered.

**Mitchell** noted that there are mainly areas of agreement; the only areas of disagreement is that he believes the Council should set the conditions if a violation is found; if staff determines a violation is present and the property owner doesn’t informally comply that the matter should come before the Council for resolution. **Sampair** responded that in other cities there are specific timelines for compliance that puts teeth in the enforcement process, and also the right to appeal the penalties to the City Council.

**7b. Public Hearing: Mitchell** opened the public hearing. **Greeley** stated his belief that the Council should not be investigating complaints, and noted that he was dissatisfied with the resolution of his complaint with the neighbor across the street. **Greeley** noted that staff should be investigating complaints and should have the authority to issue penalties.

**Galena** said that he reviewed the synopsis of the two drafts, and recommends that the appeal process utilize the services of a neutral, third-party hearing officer paid for by the City.

**7c. Council Deliberation and Consideration of Approval:** The consensus of the Council was to table this matter until the next meeting so that the two versions can be reconciled into one draft that can be the subject of a public hearing. **Harper** requests that the combined draft be reviewed by the City Attorney.

**8. RESOLUTION 2012-29/ORDINANCE 2012-12 ADOPTING CITY CODE CHAPTER 619 PENALTIES AND ENFORCEMENT:**  The consensus of the Council was that, since this ordinance is linked to 618, that this matter be tabled until 618 is returned to the Council for review and consideration of approval.

**9. REVIEW OF BIRCHWOOD DOCK ASSOCIATION ANNUAL DOCK PERMIT APPLICATION: Hanson**, treasurer of the Dock Association, reviewed the dock permit application and noted that there is very little change from last year. **Sampair** asked about the low water situation on the lake and asked what would the Dock Association do if a dock is allowed to have 6 boats and only 3 are used, and noted that he doesn’t want to see 3 empty boat slips. **Hanson** said that is an issue for the Dock Association, but there wouldn’t be empty boat slips at the dock. **Sampair** also stated that the length of the docks that is approved by the City Council is the length that is applied for at the White Bear Lake Conservation District, not the additional 6-8 feet. **Hanson** responded that the length of the docks is what they are, and that the important measurement is the distance from the water’s edge. **Sampair** responded that what’s happening is that the distance requested by the Dock Association is changing from when it’s approved by the Council to when it’s submitted to the Conservation District; **Sampair** wants the numbers to be consistent. **Hanson** said that he didn’t think there was any confusion, and what happened is that the Dock Association applied for one length of dock, the Council reduced the length of dock, but both schematics (showing before and after lengths) were submitted by the City to the Conservation District, which created the level of confusion with the Conservation District. **Hanson** recommends noting the length of the dock and the length beyond the water’s edge and keeping that consistent in the Conservation District application materials.

**Mitchell** reviewed the dock length for each dock and noted the following lengths of docks from the water’s edge: Ash 100 feet, Birch 116 feet, Elm 57 feet, Dellwood 130 feet, and Kay 76 feet; **Hanson** verified those distances are correct.

**Greeley** commented that there was a level of confusion at the Conservation District, and noted that the Conservation District’s application form under “Dock Information” calls for two measurements – total dock length into the lake and length from water’s edge. **Greeley** noticed that the phrase “into the lake” was omitted from the Dock Association’s application materials. **Hanson** acknowledged he removed that phrase, stating that he thought it made the application more confusing. **Hanson** added that the two figures are helpful in determining the length of the dock that needs to be out of the water. **Greeley** noted that he has no issue with the amount of dock that is out of the water.

**Harper** commented that with the water levels down that it would be a good opportunity to undertake erosion control measures at Elm Beach created by the City’s stormwater runoff, and noted that she had talked to a DNR hydrologist that is willing to give the City some advice on stabilizing the shore. The Council directed the City Engineer to contact the DNR to arrange for a field visit.

***Mitchell/Sampair unanimous to approve the dock permit application by the Birchwood Dock Association for the placement of docks for the 2013 boating season, directing staff to submit a cover letter to the White Bear Lake Conservation District stating the length of the docks from the water’s edge at each easement that was approved by the City Council as follows: Ash Beach 100 feet, Birch Beach 116 feet, Elm Beach 57 feet, Dellwood Beach 130 feet, and Kay Beach 76 feet; that Council Member Hullsiek as the Council’s dock liaison will be presenting the application to the Conservation District at its meeting when the application is up for consideration; and also that the Dock Association is directed to submit a revised application without removing the phrase “into the lake” under “Dock Information” and to make the dock lengths under “Dock Information” the same number.***

**10. RESULTS OF LAND SURVEY OF TIGHE-SCHMITZ PARK AND DELLWOOD & KAY BEACH EASEMENTS: Elfering** reviewed with the Council her memo regarding the land survey of Tighe-Schmitz and Dellwood & Kay Beach, and noted that discrepancies in the Lakewood Park Third Addition plat have created a need for additional research and field time for completing the work. **Elfering** stated that the project is still anticipated to be completed within budget.

**11. DRAFT JURY DUTY POLICY:**  **Harper** brought this matter to the Council’s attention, and noted that with the City Clerk being called to jury duty that the City should have a policy for future incidents. **Harper** submitted a draft Court Duty policy for review by the Council. Discussion centered on the different pay structures and time commitments for jury duty, responding to subpoenas, and being called as a witness; as well, given the part time nature of staff that there should be an allowance for fulfilling jury duty responsibility then going to work. The Council consensus was to keep the policy only for jury duty and to create flexibility in the policy for staff to work on the same day they are called for jury duty.

***Harper/Carson unanimous to approve the draft Jury Duty Pay Policy, amended as follows: change the name of the policy from “Court Duty” to “Jury Duty”; remove the phrase “…or who are subpoenaed or called as a witness for a court case…” from the first sentence of the policy; change the word “day(s)” to the word “time” where it appears in the first sentence of the policy.***

**12. TREE ISSUES**

**12a. Discussion on Best Practices for Trimming the Tree Canopy over the City Streets: Powers** informed the Council that Steve Dean requested to appear before the Council to discuss this item, but since he isn’t here this matter will need to be tabled.

**12b. Consideration of Approval of Removal of Dead Trees at Tighe-Schmitz and Nordling Park: Powers** related that at the last meeting the Council discussed the removal of a large fallen dead willow tree from Tighe-Schmitz Park and a large fallen dead ash tree from Nordling Park, but deferred approving the expenditures pending resolution of the issue of trimming the tree canopy above the city streets. **Lund** mentioned that Erica Peterson requested that the ash tree remain in place at Nordling Park and removing the brush on the tree instead; **Lund** stated that the cost of removing only the brush lowers the cost from $1,071.35 to $500.00. **Kuehn** addressed the Council and said that she lives next to the dead willow tree and would like it removed. **Lund** also brought up the matter of removal of two diseased elm trees that was also tabled.

**Harper** stated that, from a budgetary standpoint there is $1,817.25 in the budget for tree removal; this figure doesn’t include dollars in the Parks budget for removal of trees.

The Council reviewed the cost estimate provided by Dean and asked Lund about the $214 figure. **Lund** replied that a large fallen box elder tree to hung up in the oaks behind City Hall; it costs $214.35 to take down the tree and leave it there and about $1,000.00 to haul the tree away.

***Sampair/Harper unanimous to authorize the following expenditures: $749.88 for the removal of 2 diseased elm trees; $857.00 for the removal of the large fallen dead willow tree from Tighe-Schmitz Park; and $214.25 to take down the dead box elder tree behind the City Hall, for a total expenditure of $1,821.13, and leave the Nordling Park brush removal to the County Sentence-to-Serve crews.***

**13. COUNCIL REPORTS:**  **Mitchell** noted that at next week’s White Bear Lake Conservation District meeting, the District is considering forming a committee to investigate what can be done about the lake levels, and is looking for representatives from each community.

**Powers** informed the Council that it appears that the City’s contractor for snow plowing have other employment during the day and wanted to bring this to the Council’s attention; **Powers** advised the Council that there is a problem with the water shutoff valve at Tighe-Schmitz Park that was discovered by Hugo Plumbing, and when he called Elferingon the matter she said that water shutoff and turn-on is part of the City’s contract with Saint Paul Regional Water. **Elfering** noted that she is getting cost estimates from Hugo Plumbing and Saint Paul Regional Water; however, the valve needs to be replaced and is asking for Council approval to get the valve fixed, up to a cost of $750.00. The Council authorized that expenditure.

**Carson** informed the Council that the Parks Committee was told about the condition of Curt Feistner Nature Preserve and she found some six volunteers to pull, treat, and remove the buckthorn there and clean up the park.

**14. NEXT MEETING> NOVEMBER 23, 2012 – TOPICS: Mitchell** said that the following items are scheduled: Ordinances 618 and 619 pertaining to ordinance enforcement; an update on the land surveys; discussion on tree trimming; seating the winner of the special Council election; and parks committee per diem and approval of work plan. **Mitchell** also said that Powers sent a memo stating that the Council needs to set a time for the Canvassing Board to meet and certify the municipal election results; **Mitchell** thinks the Canvassing Board meeting should be held on November 13th immediately before the regular City Council meeting.

**ADJOURN:**  Without a motion, the Council adjourned the meeting @ 10:02pm.

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Dale Powers

City Clerk