**CITY OF BIRCHWOOD VILLAGE**

**REGULAR CITY COUNCIL MEETING**

**September 11, 2012**

**MINUTES**

**MEMBERS PRESENT: Mayor Alan Mitchell; Council Members Barb Carson, 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: Suzanne Donnell, Mike Evangelist, Dick Galena, Jim Greeley, Dyan Hanson, Lynn Hanson, John Lund, and Mary Sue Simmons**

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

**AGENDA APPROVAL: *Sampair/Harper unanimous to approve the agenda for the September 11, 2012 Regular Meeting, amended as follows:***

* ***Move Item # 9 (Scheduling a Date/Time for Dock Association Permit Review Meeting) to immediately after Item # 6.***
* ***Harper requested discussion regarding additional hours for the clerk to account for election responsibilities, and also discussion on the clerk’s jury duty responsibilities. Mitchell recommended adding those items to Item # 10 (Council Reports)***

**Powers** advised the Council that he is required by Article 3.02 of the Rules of Procedure to report all requested agenda items that were not placed on the agenda, and noted that a member of the Council requested 2 agenda items pertaining to complaints at 479 Lake Avenue and 483 Lake Avenue be placed on the agenda for this meeting and they were not. **Powers** noted that the reason the requested items were not placed on the agenda for this meeting was that there were several items on the agenda that the clerk considered to be time-consuming, the information pertaining to these items is still being developed, and that one of the complainants requested in writing that their complaint not be heard by the Council, and that their complaint against the other property owner not be heard by the Council. **Mitchell** requested that these items be placed on the October agenda, and quoted from City Code § 615.040 that he believes the matter needs to be discussed at “the next Council meeting.” **Harper** said she wasn’t sure what the issue is about; **Mitchell** responded that is the reason for the Council discussion. **Sampair** asked the clerk whether the complaints were investigated last year; **Powers** responded that the complaint on the 483 property was investigated last year and it was determined that there was not a violation of the code. **Mitchell** noted that the clerk made legal determinations without consulting the city attorney and the Council was not notified of the complaint. **Sampair** asked Powers whether he made the “no violation” determination on his own; **Powers** responded that, based on his close to 20 years’ experience with these matters, he did make that determination on his own.

**COMMUNITY EVENTS AND ANNOUNCEMENTS: Mitchell** noted the following: (1) the Little Free Library is up next to the outdoor bulletin board; (2) Washington County is providing a free document shredding event on Friday, September 21 from 9am-2pm at the County Environmental Center in Woodbury; and (3) Washington County also is sponsoring the collection of unwanted prescription drugs from 10am-2pm on Saturday, September 29th at the Court House in Stillwater. **Sampair** wants to point out that when residents rake leaves to get rid of them right way, and noted that it is so dry that the leaves can provide fuel for fires.

**OPEN PUBLIC FORUM:**  **Lund**, chair of the Parks Committee, wanted to see a line item in the Parks budget for a new warming house, and also there are 2 large trees that are down – one at Tighe-Schmitz Park and one at Nordling Park – that need to be removed. **Lund** stated that he was in contact with Steve Dean and was quoted $1,071.00 to remove the tree at Nordling Park and $857.00 to remove the tree at Tighe-Schmitz Park. **Lund** recommends removing both downed trees at this time, as Dean can move his equipment right up to the trees given the dry soil conditions. **Mitchell** asked Reiter how much is in the budget for tree removal; **Harper** responded that there is $1,817.00 available; she also noted that later tonight the Council will be discussing trimming the tree canopy and recommends discussing this issue at that time.

**Greeley** asked for clarification on the land surveying being done in the Dellwood Beach area and wondered if those surveys will end up in a different result than surveys done on behalf of private property owners. **Mitchell** responded that the Council budgeted for the surveys and felt it was necessary for the City to know where the property lines are located, citing the warming house variance. **Carson** said that she thought the Council was under the impression that none of the easements was surveyed; **Elfering** responded that Dellwood Beach was surveyed in 1989 and that the City had not surveyed the other easements, and said that residents have been quite helpful in showing where the survey markers are located. **Sampair** asked when the surveys will be completed; **Elfering** said that the surveys will be ready for review at the next Council meeting.

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

1. ***Approval of the Minutes of the August 7, 2012 Regular Meeting***
2. ***Approval of the Minutes of the August 23, 2012 Special Meeting***
3. ***Acceptance of the Financial Report and Disbursements Register as prepared by the City Treasurer and presented to the City Council on September 11, 2012 in the amount of $38,222.06, including Check #’s 27377-27390, Check #’s 27394-27423, and Electronic Funds Transfers LIFT082012, PERA081512, FED082012, MN082012, and PERA083112.***

**Mitchell** requested that item numbers, corresponding to the agenda item numbers, be inserted into the minutes.

**4. RECOMMENDATIONS FROM EACH MEMBER OF THE PERSONNEL COMMITTEE**

**4a. Consideration of Pay Increases For City Staff** and

**4b. Approval of Revised Employment Agreement For City Staff: Mitchell** said that Powers has not performed up to his expectations for a city clerk, that he has been actively looking for another job, and that if he has not found another job by the end of the year, the Council should terminate his employment. **Sampair** indicated the Personnel Committee is not in unison on that matter, and believes that Powers has obtained a lot of his goals and has performed his job in a professional manner. **Sampair** continued by saying that he believes the Mayor and the clerk do not get along personally. **Carson** said that Powers does a good job with the minutes and agenda; that there are personality differences but overall believes Powers is doing a good job. **Harper** commented that she agrees with Sampair and Carson that the goals set for Powers, generally, have been attained; that Powers and Reiter have stabilized the office –there isn’t the chaos that was present before Reiter arrived; and that the Council should set interim goals for the clerk and evaluated his performance after 6 months instead of a year. **Sampair** agreed and said that would be a good direction to take going forward. **Sampair** further noted that the Council has asked Powers to provide guidance and direction to the Parks Committee and the Planning Commission, but doesn’t allow him the extra hours to attend those meetings. **Sampair** recommends giving Powers additional hours to attend those meetings. **Harper** responded that Powers should organize a joint meeting with the Council and Parks Committee to make sure the Committee knows the expectations of the Council, but doesn’t believe additional hours are required for that – hours can be juggled to accommodate the extra hours. **Sampair** said that perhaps the Council can keep Powers’ hours at 30 and see what gets done and what doesn’t get done and evaluate it in three months; **Harper** agreed with that recommendation.

Moving on to recommendations for pay increases, **Sampair** noted that he agrees that Reiter should receive a 6% increase and Powers, having already received a 4% increase last year, should receive a 2% pay increase.

***Sampair/Harper unanimous to approve the City Treasurer’s Employment Agreement as submitted in the agenda packet, subject to adding a goals addendum and also to increase the pay of the City Treasurer 6% to $20.14 per hour, retroactive to July 1, 2012, and also as amended to change the provision in Item # 10 of the Employment Agreement calling for a fixed dollar amount for professional development to be consistent with similar language in the City Clerk Employment Agreement calling for an amount in accordance with the adopted budget for that year.***

***Sampair/Harper 4-1 (Mitchell opposed) to amend the City Clerk’s Employment Agreement to provide for a 2% pay increase, retroactive to July 1, 2012, subject to adding a goals addendum to the Agreement and maintaining language under “Professional Development” calling for a dollar amount for that item to be in accordance with the adopted budget for that year.***

**4c. Approval of Work Goals For City Staff: Sampair** opened the discussion on goals for the City Clerk and mentioned that Powers would act as an administrator overseeing the Parks Committee and attend their meetings, assisting with directing the agenda and minutes, making sure the Committee stays on task and budget and providing and communicating short and long range goals. **Harper** reiterated that she would like the clerk to schedule a workshop with the Council and Committee to discuss future goals, work plan, capital improvements over the next 3-5 years, and other Parks activities. **Sampair** said that this would be a 3-month trial and that Powers would report back to the Council on the results of his attendance at Parks meetings. **Sampair** also recommends the clerk develop a handbook for incoming Council members; history of ordinances when being amended should be provided to the Council; continue to build effective working relationships with others; continue to develop a list of possible volunteer services to the City; as a stretch goal, fully develop a filing system and a standardized application form. **Harper** would like the Clerk to work with the City Engineer on developing a multi-year capital improvement plan for road improvements, although the bulk of the work will be done by the Engineer. **Harper** noted that she is uncomfortable with approving this at this meeting; she would like to see a list for review and decision at the October meeting.

**5. FISCAL YEAR 2013 PRELIMINARY LEVY AND PROPOSED BUDGET**

**5a. RESOLUTION 2012-25 Establishing the Preliminary 2013 Levy Certification for the City’s General Fund** and

**5b. RESOLUTION 2012-26 Adopting the City’s Proposed Preliminary 2013 Budget: Reiter** noted that she provided the Council with a revised spreadsheet that corrected an Excel formula error on Line 192 of the document, resulting in a $10,000 reduction in the levy and budget. **Reiter** stated that the proposed levy of $369,872 represents a 13.8% increase from 2012; the budget of $388,110 represents an 11.9% increase from 2012. **Harper** suggested the following reductions:

* Line 117 (Professional Services – Engineering): reduce from $15,000 to $5,000 (later increased from $5,000 to $8,000 by Harper); this seemed to be high for what is expected for 2013; if engineering work is needed in association with a capital project, it should be included in the capital budget.
* Line 133 (Telephone): eliminate cell phone reimbursement of $550, lowering this item to $1,450; the Council discussed having a cell phone for the city clerk for city business and, at this time, did not see the need.
* Line 167 (Survey Public Spaces): reduce from $1,000 to $0, since the City surveyed 3 spaces this year, the City can pass on this for 2013.
* Line 172 (Seal Coat): reduce from $25,000 to $12,500, and
* Line 173 (Crack Sealing): reduce from $10,000 to $5,000; to be reduced in half, with the other half coming from special assessment.
* Line 244 (Miscellaneous): reduce from $9,750 to $6,500, which is 2% of the levy that allows for unpaid taxes.
* Line 219 (Parks General Fund Subtotal): reduce from $17,000 to $14,000; and
* Line 218 (Parks Project): increase from $8,000 to $11,000 (later reduced from $11,000 to $9,900 by Harper); the total amount is the same, and the Parks Committee would be bringing forth their work plan; **Harper** noted that Parks planned for 4 applications for weed control, which she believes is too many, and recommends reducing the line item for weed control from $3,100 to $2,000. **Harper** said that the $9,900 comes from the Special Revenue Fund (dock permit fees, storage fees, etc.) and $14,000 from the levy.

**Harper** asked about the difference between Weed Control in Public Works (Line 191) and Weed Control in Sanitation (Line 233); **Carson** explained that Line 233 is the milfoil. **Harper** requested that Line 233 should clarify that expense is for milfoil removal.

**Carson** asked if the hours are split between supervisors and Levels I/II for rink attendants can the amount of salaries (Line 199) be reduced from $9,400 to $5,500. **Sampair** recommends a smaller reduction to $7,500. **Mitchell** said that, in either case, it means there isn’t going to be a supervisor.

**Mitchell** expressed a concern about the lack of a line item for a warming house; **Sampair** said that the people raising money for the warming house can approach the Council with this information and ask that the Council establish a line item for the warming house. **Harper** stated that this is one more reason to have a workshop with the Parks Committee, and is comfortable with conducting that meeting in November. **Carson** thinks that $35,000 is too much to spend on a warming house that gets used for a small part of the year. **Hullsiek** stated that the workshop should discuss a capital improvement plan for parks.

**Harper** shared with the Council the amended preliminary levy number as $336,013.00, which represents a 3.4% increase, and the amended preliminary budget number as $373,310.00.

***Harper/Sampair unanimous to approve Resolution 2012-25 Establishing the Preliminary Levy Certification for the City’s General Fund at $336,013.00.***

Hullsiek left the meeting @ 9:14pm.

***Harper/Sampair 4-0 (Hullsiek absent) to approve Resolution 2012-26 Adopting the City’s Proposed Preliminary Budget at $373,310, amended as follows: (1) in the title of the resolution and in the second recital, replace “general fund” with “operating”; (2) in the second recital, delete the phrase “which must be certified to the Washington County Auditor/Treasurer by September 17, 2012.***

**6. ORDINANCE 2012-10/RESOLUTION 2012-27: Revision of City Code Section 617.360 (Public Lake Tracts – Neighborhood Meeting) Clarifying the Requirement of a Separate Neighborhood Meeting**

**6a. Public Hearing: Sampair** noted that this matter has been brought to the Council’s attention, saying that there has been a level of confusion about whether the Birchwood Dock Association’s meeting with the neighbors of the lake tracts where docks are to be placed is to be a separate meeting, or could be incorporated into the Association’s membership meeting to review dock placement for the upcoming year. **Sampair** believed that the spirit and intent of the ordinance was for the neighbor meeting to be separate, and stated he confirmed this belief with former Council Member Nino Nardecchia, the author of the ordinance. **Sampair** further stated that the first year of the requirement of a neighbor meeting, the process worked fine; the second year it did not, and noted that the neighbors believed there would be a separate meeting like the first year and were concerned when the separate meeting did not occur. **Sampair** said he offers the amendment to clarify that the neighborhood meeting is separate and distinct and to be conducted before the Association’s membership meeting to review dock placement for the upcoming year.

**L. Hanson**, president of the Dock Association, disputed Sampair’s account and stated that the neighbor meetings occurred each year and, when this matter was brought to the Council’s attention at this time last year, the Council confirmed that the manner in which the Association conducted the neighbor meetings was proper. **L. Hanson** shared with the Council a document showing the notices sent to the neighbors, stating that the neighbor meeting was included in the agenda for the Association’s dock placement meeting; **L. Hanson** said that he doesn’t see where the confusion is, since the notification was sent out the same way each year. **L. Hanson** shared with the Council a proposed revision of the Ordinance [NOTE: The recording secretary was not given a copy of this document.] **Carson** asked how the meeting went this year; **L. Hanson** said the meeting went well.

**Greeley** said that one of the issues last year was that the neighbors were not notified of the meeting. **Greeley** explained that the neighbors want input into the process and he supports the clarifying language.

**Simmons,** secretary of the Dock Association,addressed the Council and underscored what L. Hanson said; **Simmons** supports the existing language and advised Sampair and Greeley that the Association is trying to keep with the spirit and intent of the ordinance.

**Galena** stated that the Dock Association seems to be getting better each year, and the proposed change clarifies the original intent and eliminates ambiguity.

**6b. Consideration of Approval: Mitchell** shared with the Council his proposed revisions to the ordinance, and noted that the revisions allow the Association to request of the neighbors their plans for dock placement; **Mitchell** said this information may be important to the Association because it may impact where the Association places their docks for the upcoming season. **Mitchell** continued by stating his revisions remove the requirement for a measurement from the ordinary high water mark, and also removes the language restricting the Council from reviewing dock applications without the minutes of the neighborhood meeting.

**Sampair** responded by saying that the proposed changes will allow for the neighbor meeting to be incorporated into the Association’s member meeting and the minutes of both meetings will be included in the application package, so that the restrictive language in the second paragraph is not needed; **Sampair** also supports removal of the ordinary high water level mark language. **Sampair** stated that the reason his proposed language called for notifying all neighbors within 200 feet of a lake tract’s boundaries is that the Council had heard from nearby property owners whose property doesn’t abut on the lake tracts themselves that they want to be noticed and heard on the issue.

There was general agreement amongst the Council, after reviewing the version of Resolution 2012-27/Ordinance 2012-20 drafted by Mitchell, to work off of Mitchell’s versions of the document.

***Sampair/Harper 4-0 (Hullsiek absent) to approve the version of Resolution 2012-27/Ordinance 2012-10 as drafted by Mitchell, amended to delete the word “special” wherever it appears in the documents, and also to delete all of the language about the neighbors advising the dock association about their dock plans for next summer.***

**9. SCHEDULING A DATE/TIME FOR DOCK ASSOCIATION PERMIT REVIEW MEETING: Mitchell** asked the Council whether this meeting could be scheduled for the regular October 9th Council meeting. **L. Hanson** advised the Council that the dock permit application package needs to be sent to the White Bear Lake Conservation District (WBLCD) before October 15 and said that the City may need to get an extension from WBLCD. **Mitchell** reminded L. Hanson that the dock application needs to be submitted to the City 10 days before the meeting.

**7. SNOW PLOWING CONTRACT> REVIEW OF BIDS: Powers** related to the Council that the City received 2 proposals; the KEJ proposal came in relatively quickly, and White Bear Township volunteered a bid later on. **Sampair** asked whether Brian Lauzon submitted a bid; **Powers** responded by saying that Lauzon was sent the bid specs individually and was encouraged to submit a proposal, yet none was received. The Council discussed that it made sense to enter into a two-year contract to take advantage of a 10% discount offered by KEJ.

***Sampair/Carson 4-0 (Hullsiek absent) to award the snow plowing contract for 2 years to KEJ Enterprises, subject to KEJ providing contact information when Ken Johnson is absent, and subject to the City entering a formal written agreement with KEJ and authorizing the Mayor to execute the contract.***

**8. TRIMMING THE TREE CANOPY ABOVE CITY STREETS>DISCUSSION AND REQUEST TO SOLICIT BIDS FOR SERVICE: Powers** received a complaint about the trees in the Oakridge area being too low and scratching their vehicle; driving around the City, it is obvious that there are locations that are below the 12-foot minimum height. **Mitchell** recommends putting a notice in the newsletter about this project. **Harper** noted that she is uncomfortable about writing a blank check for this project, and would like to know how much the project will cost to give the Council the option of breaking up the project - doing some this year and some next year. The Council directed staff to contact Steve Dean to provide the Council with the scope of the project and proposed costs.

**Harper** reminded the Council that it needs to address the issue raised by Lund earlier in the meeting about removal of the dead trees at Nordling and Tighe-Schmitz Parks. The consensus of the Council was to defer this matter until the October meeting.

**10. COUNCIL REPORTS: Mitchell** reported the following: (a) he met with the mayors and council people around the lake to discuss the Lake Level study, and noted that the group was going to request that the WBLCD create a task force or committee to pull in some technical and financial people to talk about the feasibility of pursuing various proposals for addressing the low lake level; (b) he received a letter from the Centers For Disease Control stating that the City was selected to participate in a pilot study called the Community Based Healthy Eating Active Living Policy Supports Pilot Study, a 60-minute computer survey that looks at government policies addressing obesity; (c) the Met Council is involved in Thrive Minnesota 2040 hearings in Stillwater on September 27th and in Vadnais Heights on September 19th; (c) Don Hankins submitted his resignation from the Planning Commission effective at the end of the year; the clerk will put a notice in the newsletter soliciting interest; (d) the White Bear Lake Area School District Community Services and Recreation Department is soliciting interest in serving on an advisory council; let the clerk know if you are interested; (e) there is still room on the WBLCD boat tour if any Council members are interested; **Harper** said she would attend.

**Harper** asked the clerk to look at his calendar to see if there is a need for additional paid hours to cover elections during that pay period; and that with the clerk on-call for jury duty, it reminds her that the City has no policy to address paying employees for jury duty. **Sandstrom** stated there are no provisions in statute to pay employees while on jury duty, saying it is up to each employer to pay. **Harper** stated that Washington County’s policy is that employees can take the per diem paid by the County for jury duty or they can take the pay from their employer, but they can’t take both; if the employee takes the pay for jury duty, the employee must turn the jury duty pay over to the employer. **Mitchell** recommends bringing a draft policy to the Council for review at the October meeting.

**11. NEXT MEETING – OCTOBER 9, 2012> TOPICS: Mitchell** noted the following topics for the October 9th meeting: Dock Association Permit review; results of land survey of Tighe-Schmitz, Dellwood, and Kay; goals for the clerk and treasurer; extra election hours; jury duty policy; the two complaints that were removed from tonight’s agenda; the complaint and enforcement draft ordinances from Council Members Sampair and Harper (**Mitchell** said he would have his own version of the complaint ordinance); **Harper** noted that in November the Council will have the Parks Committee work plan, and the Committee needs to be advised that the Council adjusted the Committee’s budget and to tell the Committee that the Council desires to have a joint workshop in January 2013 to communicate with each other.

Carson left the meeting @10:05pm.

**ADJOURN:**  ***Sampair/Harper 3-0 (Carson and Hullsiek absent) to adjourn the meeting @ 10:07pm.***

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Dale Powers

City Clerk