

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

**MINUTES OF THE CITY COUNCIL MEETING
December 10, 2024, 6:45 P.M.**

MEMBERS:

Margaret Ford	Mayor
Ryan Eisele	Councilmember
Ryan Hankins	Councilmember
Kathy Weier	Councilmember
Justin McCarthy	Councilmember

STAFF:

Rebecca Kellen	City Administrator
Marcus Johnson	City Engineer
Ben Wickstrom	City Planner

Minutes prepared by Rebecca Kellen from a video recording.

1. CALL TO ORDER

A. Mayor Ford called the meeting to order at 6:45PM.

2. Commissioner Karwoski Certificate Presentations to Departing Mayor and Councilmembers

A. **Stan Karwoski, Washington County District 2**, presented County Commissioner Service Awards to Justin McCarthy, Mayor Margaret Ford and previous Councilmember Mark Foster.

3. APPROVE AGENDA (00:11:20)

- Mayor Ford added Ordinance 2024-12-01, An Ordinance Amending the Fee Schedule for Water and Sewer Fees with City Business item B, Utility Rate Increase.
- Councilmember Weier removed City Business item L – Hockey Rink Boards Replacement – including both RESOLUTION 2024-51 Approving Acceptance of Gift and RESOLUTION 2024-52 Approving Purchase of Replacement Boards for
- Mayor Ford said she will be adding an announcement about a workshop that is being scheduled.

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

4. PUBLIC FORUM (0:12:24)

Mayor Ford opened the public forum.

John Waller, Rice Creek District Manager for Washington County thanked the council for the letter they wrote for him and said he enjoyed working with Councilmember McCarthy on Priebe Lake project. He mentioned that the RCWD agreement is in process and he will continue to work on that. He thanked Mayor Ford for her support and said he is looking forward to continuing to work with Councilmember Weier on the RCWD agreement.

Randy Lafoy, 200 Wildwood Ave and Cable Commission Representative expressed gratitude to the departing council members.

Barton Winter, 1 Five Oaks Lane, expressed concerns about the ice rinks. He said there should be ice already and expressed concerns with the flooding schedule and council and staff support of the rink.

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

5. ANNOUNCEMENTS (0:21:52)

A. Ice Rink Opening Date TBD – Watch the Website for Announcement.

B. Upcoming Deer Hunt Dates: December 13-14.

C. December Planning Commission meeting on December 19th due to the holidays.

D. Birchwood Christmas Party December 15, 2024, from 1pm – 3pm

E. Thank you to Mayor Ford for putting up a tree representing Birchwood Village at the Festival of Trees being put on by the WBL Historical Society being held at the WBL Armory until 12/21/24.

F. Mayor Ford announced that incoming Mayor Jennifer Arsenault has scheduled a workshop on December 16, 2024 at 6:30PM to discuss goals.

6. CONSENT AGENDA (0:23:28)

On a motion made by Councilmember Weier, seconded by Councilmember Hankins, it was resolved to approve the consent agenda items except for A and H. All in favor. Motion carried.

A. Item A – Treasurers Report

- a. Councilmember Hankins asked about Pg 28 of the agenda, Cornerstone Land Surveying, "Land Survey Ash 7235* \$775.00 Path-2023--2nd Time". He asked whether it is a 2023 or 2024 charge.
- b. Councilmember McCarthy asked about WB township charge for \$3435. Equipment and PW charges, on page 7 of the packet.
- c. Councilmember McCarthy asked about Solar energy charges from September and April on pg. 7 of the agenda; what the charge is for and why there is one from April.
- d. Councilmember McCarthy asked about the new laptop purchase to which Administrator Kellen said this was for our new Treasurer. He also asked that administrator Kellen ensure the new computer is secure with Techie Dudes.

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to approve the Treasurers' report subject to the investigation of discussed charges. All in favor. Motion carried.

B. Item H - NYSF Agreement for 2025 (0:31:23)

- a. Councilmember Eisele asked about the background of this agreement to which Councilmember Hankins said the agreement is not due to be concluded until the end of January. They requested some stats for NYSE be presented in January and table this until then.

7. CITY BUSINESS (0:34:38)

A. Appeal Regarding Building Permit at 483 Lake

- a. Mayor Ford explained that the appeal arises from construction work, a permit issued from the City, replacing an existing deck and wall due to rotting footings and wood, and replacing a screen pergola on top of a deck.

Mayor Ford opened the public forum.

- b. **Susie Mahoney, 479 Lake Ave**, said that she has concerns about the construction going on at 483 Lake. She said she does not have a problem with the deck however in the past there was a privacy fence on the deck that is now being replaced by a wall. She handed out pictures, on page 79 of the packet, showing the previous structure. She expressed concerns for the lack of a definition of a fence in the City ordinance and read a definition and how it differs than a wall and how that is related to the structure in question. She said the wall goes

to the top of the deck and she takes issue with the claim that the new structure is shorter. She showed pictures of the new and old structure. She said the siding length is being increased. She said she added trees for privacy but she is uncertain about their longevity.

- c. **Larry Mahoney, 479 Lake Ave**, said their concern is that the fence that used to be see through is now a wall and referred to the photos, saying it is not the same. He also said that the new structure is supposed to be the same size and it is not. He discussed the pergola adding height. He said the new structure is larger than the old one. He also said that it is getting costly to replace the trees.
- d. Councilmember McCarthy explained that new issues cannot be added.
- e. Councilmember Hankins asked if the only issue being raised is that the fence is now being turned into a wall to which Mr. Mahoney said yes. Mrs. Mahoney discussed the distance from the lot line. She said the deck was nonconforming to begin with and said now a wall is being added.
- f. Councilmember McCarthy asked about adverse possession and the nonconformity to which Mrs. Mahoney said the Harrods had tried to take some of their property in 2012 and they went to court and they lost 3.5 feet of their property. Mr. Mahoney said the loss was down by the beach. Mrs. Mahoney said she would like to see a privacy fence like they had before because the siding is not attractive and it will be visible from their property and they should have had a variance.
- g. **Debbie Harrod, 483 Lake Ave**, read the letter that she had put in the packet. She said that they were building according to what had been approved and the City Building Official and City Planner has deemed the structure a wall. She said the new structure is shorter than the old one and that the contractor wrote a letter confirming that, which is in the packet. She said they support the Planning Commissions decisions after attending a lengthy meeting and was concerned about the adding of complaints. She said the planning commission denied the appeal in its entirety. She said there is no hardship for the Mahoney's. She said they stole 3.5 feet of their property which made the deck noncompliant. She expressed gratitude to those who have spent time on this.
- h. Councilmember McCarthy asked if the structure in question previously sat on the deck to which Mrs. Harrod replied that it had.
- i. **Susie Mahoney, 479 Lake Ave**, said it is offensive that Mrs. Harrod said they stole her property, which she said is not true.

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

- j. **Ben Wickstrom, City Planner**, said that in his discussions with the City Building Official and City Attorney regarding the fence versus wall determination came down to the fact that it is a structure on the deck and because of the 7.75 setback that's what makes this considered legally nonconforming. He said they can replace the structure and it is not an expansion. He said the planning commission agreed with this and was not certain about the siding being an expansion. He said that if they were applying for this today they would be getting a building permit and not a fence permit. He said there is not an opaqueness requirement for a wall. He said the council should determine if the siding is an expansion of the legal nonconformity.
- k. Councilmembers asked questions to Planner Wickstrom regarding the structure and the project.
- l. Councilmember Hankins asked if anything is nonconforming and Mrs. Mahoney said that the pergola is not conforming. She said the footings are within the 10-foot setback. Councilmember McCarthy said it has to do with the footings not overhangs.
- m. Councilmember Hankins asked if 302.070.2 – notice to neighbors is still an issue and Mrs. Mahoney said that no, they had 2 issues that they explained and that nothing was being added. Councilmember McCarthy said that they should go through all the issues from the planning commission meeting.
- n. Councilmember Hankins asked about 302.020 structure location requirements with respect to the set back was still being pursued to which Mrs. Mahoney said that the pergola is nonconforming because it is a new structure on a nonconforming deck.
- o. Mrs. Harrod said the Planning Commission said they were within code requirements.
- p. Councilmember Eisele asked the Mahoney's what they don't like about the project to which they said they said it is partially an aesthetic issue and councilmember McCarthy asked about a fence between the properties.
- q. Councilmember Hankins discussed 302.070.2, notice to neighbors, asking the Mahoney's if they are continuing to pursue the claim to which Mrs. Mahoney replied no. Councilmember McCarthy said it should still be decided. He said that this applies to zoning permits and not building permits. He said therefore there was no notice requirement.
- r. Mrs. Mahoney asked about the support of the pergola to which Councilmember McCarthy asked that Planner Wickstrom address.

Planner Wickstrom said that without the wall the pergola would still be standing.

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to deny the notification to neighbors requirement because the requirement does not apply because this is a building permit and not a zoning permit and you are allowed to have a fence, or a wall, even if we are assuming this is a fence, as part of a building permit and there is no notification requirement. All in favor. Motion carried.

- s. Councilmember Hankin asked about 302.050 Impervious Surfaces and lot coverage. He said the claim is that the pergola will have a roof and increase the impervious surface. He said this was withdrawn from the PC and the Mahoney's said that no they are not pursuing it. (1:26:51)

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to deny the claim that there is an increase to impervious surface because there is no roof on the structure, it is a screen. All in favor. Motion carried. (1:27:08)

- t. Councilmember Hankins talked about b,302.020. – saying this claim is that the fence/wall extends into the setback. Mrs. Mahoney said they are still pursuing that claim. She said the pergola rafters tacked onto a wall and extends 6 inches outside a previous area which makes it 7 feet not 7.5. Councilmember McCarthy asked where that was mentioned and said that he does not see the issue since there is an allowance for eaves.
- u. Planner Wickstrom said the footings for the pergola meet the 10-foot setback. (1:30:50)
- v. Mrs. Mahoney said that she thinks the pergola is nonconforming and the council discussed with Mrs. Mahoney. Mrs. Harrod expressed frustration with the hearing process.

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to deny the claim that the pergola is nonconforming because the foundation of the pergola is within 10 foot setback and the overhang is allowed by code. All in favor. Motion carried. (1:35:51)

- w. The Council and Planner Wickstrom further discussed the differences between a wall and a fence and how it applies to this project.

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to dismiss the claim that the structure is a fence as

opposed to a wall because it is not an encloser or to divide land, rather it provides a barrier, is not supported by posts with connecting board and wires, and it is fully supported by the deck; and therefore not an expansion of a nonconforming structure because the structure that was there before was a wall and what it is being replaced with is a wall. All in favor. Motion carried. (1:39:44)

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to deny the claim that there is a certain amount of opaqueness required because it was determined that the structure is a wall. All in favor. Motion carried (1:42:10)

- x. Councilmember McCarthy asked about fence height to which Councilmember Hankins referred to 302.070.4, having to do with the height of the structure.

On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved that because the structure has been deemed a wall, the fence ordinance does not apply and there is no evidence that the height of the structure has increased. All in favor. Motion carried. (1:43:35)

- y. The council discussed 304.040

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to deny the appeal that the pergola is a nonconforming structure because it is supported by its own separate foundation and it is not structurally part of the deck. All in favor. Motion carried. (1:45:47)

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to deny all causes of the appeal because there is no evidence that they have been aggrieved. All in favor. Motion carried. (1:46:22)

- z. Mayor Ford asked the council if there were any further issues that needed to be addressed and Councilmember Weier asked about the siding. Mrs. Harrod said that siding had been left off the wall at this point.
- aa. Planner Wickstrom said that he had asked that they not put up the siding because the original appeal was claiming that this was a fence and not a wall and if it was in fact deemed to be a fence during these proceedings there would perhaps be an opaqueness requirement. He said he wanted to wait until the council made their determination before the project proceeded to ensure the opaqueness requirements did not apply. (1:50:17). He also discussed the encroachments and what is negligible. He said that a survey would not show siding so that would not be part of the measurement. Councilmember McCarthy said that this was negligible and supports Ben's call on this.

On a motion made by Councilmember Weier, seconded by Councilmember McCarthy, it was resolved to permit the Harrods to finish their building permit as planned adding siding to the wall. All in favor. Motion carried. (1:52:30)

- bb. The council requested an email be sent to the Harrods telling them they can continue their project as planned, as soon as possible. (1:54:02)

B. Utility Rate Increase – Shelly Rueckert (2:03:23)

- a. **Shelly Rueckert, St. Anthony Village Utility Billing**, said that she has the rate adjustments for the water sewer funds calculated. She said they review the previous year and look at trends and operations to date. She said they also look at Met Council costs which are going up over 6%. She explained that there is a fee added to cover lift station costs that will go away eventually. She reviewed the new rates and how she calculated them and reviewed the financials.
- b. The council expressed gratitude for Shelly's help.
- c. The council discussed the bids numbers and Engineer Johnson discussed the capital needs of the project.
- d. The council discussed the timing of the fees changes being implemented.

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to approve Resolution 2024-54, A Resolution Approving The 2025 Water And Sewer Rate Increases. All in favor. Motion carried. (2:20:11)

- C. 1st reading of Ordinance 2024-12-01, An Ordinance Amending the Fee Schedule for new Water and Sewer Rates
 - a. 2 corrections to the ordinance were noted.

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to order a public hearing second reading for Ordinance 2024-12-01. All in favor. Motion carried. (2:20:49)

D. 20 mph speed limit – Cora Hankins (2:24:49)

- 1. **Cora Hankins, 165 Wildwood Ave, Road Safety Task Force**, explained that she worked with the committee to develop a policy.

2. Councilmember McCarthy said to send the policy – page 150, second paragraph- use “minimal funding” instead of “no funding”.
3. Councilmember McCarthy made edits to the resolution.
4. Mrs. Hankins said she will print out the studies (from 20 is plenty) and send them to Administrator Kellen.
5. Mrs. Hankins said she would work with staff to do follow-up and communication.

On a motion made by Councilmember McCarthy, seconded by Weier, it was resolved to adopt Resolution 2024-53 as amended. All in favor. Motion carried.

6. Ron Malles, Road Safety Task Force, offered to work with staff to implement.
7. **The council discussed adding this policy to the next newsletter, putting signs on existing posts, and resident notification requirements/needs.**

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approved \$700 for 20 mph signs. All in favor. Motion carried.

E. Lift Station Bids – Marcus Johnson (2:44:40)

- a. Engineer Johnson said that 4 bids were received and 1 was removed because it was incomplete, and he described the incompleteness. He said he will bring engineering fees next month which he anticipates to be around \$30K.
- b. Councilmember McCarthy said a resolution is needed and put one together. (2:57:34)

On a motion made by Councilmember McCarthy, seconded by Councilmember Weier, it was resolved to approve 2024-56, Approving Bid For Lift Station Construction To S.M. Hentges & Sons, Inc for \$585,037.21. All in favor. Motion carried. (3:03:20)

F. Truth in Taxation/Adoption of Final Levy and Budget (3:04:00)

Mayor ford opens public hearing.

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

- a. Mayor Ford said that the attorney column is \$10,000 short and she thought that changes should be made to the following areas to accommodate: page 166, legislative legal notices moves from \$3,000 to \$2,000; On page 167 under general government buildings and plant, repair and maintenance supplies move the current budgeted \$2500 to \$1500; On page 168 for snow an ice removal move \$40,000 to \$32,000.
- b. Councilmember McCarthy said that page 506, professional services, can be removed, \$2000, since there are no more surveys needed. He recommended \$2000 total go back into snow removal, and the council agreed.
- c. Treasurer Marsha Olson asked about legal services to which Mayor Ford said that they should be increased from \$20,000 to \$30,000. She confirmed that the total number did not change.

On a motion made by Councilmember Hankins, seconded by McCarthy, it was resolved to approve resolution 2024-48, Final Budget Adoption. All in favor. Motion carried.

On a motion made by Councilmember Hankins, seconded by McCarthy, it was resolved to approve resolution 2024-49, Final Levy Adoption. All in favor. Motion carried.

G. Approve RESOLUTION 2024-50, Certification of Delinquent Utility Accounts to the – (3:10:23)

Mayor Ford opens public hearing.

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

On a motion made by Councilmember McCarthy, seconded by councilmember Hankins, it was resolved to approve resolution 2024-50, Certification of Delinquent Utility Accounts to the County. All in favor. Motion carried.

H. Second Reading ORDINANCE 2024-11-01 (302.055) Run Off Changes

Mayor Ford opens the public hearing.

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

On a motion made by Councilmember McCarthy, seconded by Mayor Ford, it was resolved to pass Ordinance 2024-11-01 (302.055) Run Off Changes. All in favor. Motion carried.

- I. Second Reading ORDINANCE 2024-03-01 (402) Solid and Hazardous Waste Management (3:13:43)

Mayor Ford opens the public hearing.

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

- a. Councilmember McCarthy said that he went through the ordinance and reorganized and consolidated, removed and simplified.

On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to approve Ordinance 2024-03-01. All in favor. Motion carried.

On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to approve Resolution 2024-55. All in favor. Motion carried.

- J. Second Reding ORDINANCE 2024-03-02 (401) Scavenging of Recycling Material Prohibited (3:17:53)

Mayor Ford opens the public hearing.

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

On a motion made by Councilmember Hankins, seconded by Councilmember McCarthy, it was resolved to approve Ordinance 2024-03-02, Repealing (401) Scavenging of Recycling Material Prohibited. All in favor. Motion carried.

- K. Attorney Updates – (3:19:18)

- a. Mayor Ford explained that there is an edited contract in the packet and said she recommends doubling the current salary.

On a motion made by Mayor Ford, seconded by Councilmember Hankins, it was resolved to approve the attorney contract. Motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Hankins, it was resolved to approve the old rate of pay for Attorney Kantrud for the 1st ½ of Dec and then start the new pay rate. All in favor. Motion carried.

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the RFP if the former City Attorney does not accept the contract. All in favor. Motion carried.

- L. New Variance Application– (3:24:49)

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve the new variance application subject to amendments proposed by Councilmember McCarthy. All in favor. Motion carried. (3:27:24)

M. Administrator Updates– (3:29:16)

- a. Discussed tree steward support program for Birchwood through Washington Conservation District and Mayor Ford said she would send information on tree removal services.

On a motion made by Councilmember Hankins, seconded by Mayor Ford, it was resolved to approve moving forward with the Tree Stewart Program. All in favor. Motion carried. (3:31:52)

- b. Technology Conversion Update – Administrator Kellen said that the phone are functioning well and the cut over is scheduled for Thursday and everything seems in place for the cut over.

8. MEETING CLOSE (3:34:39)

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 10:15 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

City Administrator Becky Kellen

Date

Date